SELECTMEN’S MEETING
TENTATIVE AGENDA
Juliani Room, Town Hall
11:30 am Thursday, April 4, 2019

1. 11:30 Call to Order – Open Session
2. 11:31 Public Comment
3. 11:35 Discuss Special Town Meeting
   - Review Draft Warrant
   - Funding Mental Health and Social Services
   - Wellesley Office Park Development Agreement
   - Delanson Road/148 Weston Road Development Agreement
4. 12:45 Approve Sublease for Wellesley Sports Center
5. 12:55 New Business and Correspondence

Please see the Board of Selectmen’s Public Comment Policy

Next Meeting Date
Monday, April 8, 6:00 pm – Middle School Library
Tuesday, April 9, 6:00 pm – Middle School Library
3. MOVE that the Board execute the warrant for the May 13, 2019 Special Town Meeting.

4. MOVE to execute the Consent to Sublease Agreement pending signature from Steward Medical Inc.
THURSDAY, APRIL 4, 2019

Our meeting will begin on Thursday at **11:30 am** in the Julani Room at Town Hall.

1. **Call to Order – Open Session**
3. **STM - Review Draft Warrant**

Attached is a draft warrant for the Special Town Meeting. This version of the draft is currently being reviewed by Town Counsel. If Town Counsel signs off on this version, and the Board is comfortable with the language, the Board could vote to sign the Warrant. If not, the Board will have to send all comments to staff/Town Counsel by Friday in order to finalize the Warrant for signatures on Monday, April 8, 2019, so the Warrant can be posted no later than April 9, 2019.

**MOVE** that the Board execute the warrant for the May 13, 2019 Special Town Meeting.
WARRANT
for the
SPECIAL TOWN MEETING
May 13, 2019

ADVISORY COMMITTEE PUBLIC HEARING (WARRANT ARTICLES)
Thursday, April 11, 2019 at 7:00 P.M. at Town Hall

PLANNING BOARD PUBLIC ZONING HEARING (WARRANT ARTICLES)
Wednesday, April 10, 2019 at 6:30 P.M. at Town Hall

Commonwealth of Massachusetts
Norfolk, ss.

To any Constable of the Town of Wellesley in the County of Norfolk,

GREETINGS:

In the name of the Commonwealth aforesaid, you are hereby required to notify the qualified Town Meeting Members of said Town of Wellesley to meet in the

Wellesley Middle School Auditorium
50 Kingsbury Street
May 13, 2019

at 7:00 P.M. at which time and place the following articles are to be acted upon and determined exclusively by Town Meeting Members, in accordance with Chapter 202 of the Acts of 1932, as amended, and subject to referendum as provided therein:

| ARTICLE 1 |
| Board of Selectmen |
| Town Reports |

To see if the Town will vote to choose a Moderator to preside over said meeting and to receive reports of town officers, boards and committees, including the Report of the Advisory Committee; or take any other action in relation thereto.
ARTICLE 2
Board of Selectmen
Smart Growth Zoning (40R) – Wellesley Office Park

To see if the Town will vote to amend the Zoning Bylaw to adopt two new sections; Section XIVJ (14J) Smart Growth Overlay Districts and Section XIVJ.1. (14J.1) Wellesley Park Smart Growth Overlay District, or take any other action in relation thereto.

ARTICLE 3
Board of Selectmen
Smart Growth Zoning (40R) Map Amendments
Wellesley Office Park

To see if the Town will vote to amend the Zoning Map to rezone properties located at 20 William Street, 40 William Street, 45 William Street, 55 William Street, 60 William Street, 65 William Street, 80 William Street, and 100 William Street (Assessor’s Parcel ID#s 2-1, 4-1-A, 3-4, 3-3, 3-1, 3-2, 3-1-B, 3-1-A), the area to be rezoned totaling approximately 26 acres in area, into the Wellesley Park Smart Growth Overlay District; the underlying zoning of the properties would remain unaffected, or take any other action in relation thereto.

ARTICLE 4
Board of Selectmen
Residential Incentive Overlay Amendment
Delanson Circle & 140, 148 Weston Road Projects

To see if the Town will vote to amend the Zoning Bylaw to modify Section XIVF (14F) Residential Incentive Overlay for the purposes of allowing its application over a greater number of zoning districts, allowing for additional levels of residential density, and making other associated changes, or take any other action in relation thereto.

ARTICLE 5
Board of Selectmen
Yard Regulations Amendment
Delanson Circle & 140, 148 Weston Road Projects

To see if the Town will vote to amend the Zoning Bylaw to modify Section XIX (19) Yard Regulations to provide for exemption of parcels in the Residential Incentive Overlay district from certain dimensional requirements, or take any other action in relation thereto.
To see if the Town will vote to amend the Zoning Map to rezone properties to the Residential Incentive Overlay district located at:

- 1-3 Delanson Circle, 2-4 Delanson Circle, 6 Delanson Circle, 8 Delanson Circle, 5-7 Delanson Circle, 12-18 Hollis Street (Assessor’s Parcel ID#s 123-13, 123-9, 123-10, 123-11, 123-12, 123-14), the area to be rezoned totaling approximately 82,000 square feet in area, into the Residential Incentive Overlay district; and

- 112 Weston Road, 134 Weston Road, 138 Weston Road, 140 Weston Road, 144 Weston Road, and 148 Weston Road (Assessor’s Parcel ID#s 137-36, 150-1, 149-1, 149-2, 149-3, 149-4), the area to be rezoned totaling approximately 155,000 square feet in area, into the Residential Incentive Overlay district.

Or take any other action in relation thereto.

To see if the Town will vote to amend the Zoning Map to rezone property located at:

- 6 Delanson Circle (Assessor’sParcel ID# 123-10) and portions of properties located at 2-4 Delanson Circle and 8 Delanson Circle (Assessor’s Parcel ID#s 123-9 and 123-11), the area to be rezoned totaling approximately 20,000 square feet in area, from the Single Residence District and 10,000 Square Foot Area Regulation District to the General Residence District; and

- 138 Weston Road, 140 Weston Road, 144 Weston Road, and 148 Weston Road (Assessor’s Parcel ID#s 149-1, 149-2, 149-3, 149-4), the area to be rezoned totaling approximately 77,000 square feet in area, from the Single Residence District and 15,000 Square Foot Area Regulation District to the General Residence District.

Or take any other action in relation thereto.

To see if the Town will vote to amend the Zoning Map to rezone properties to the General Residence district located at:

- 6 Delanson Circle (Assessor’s Parcel ID# 123-10) and portions of properties located at 2-4 Delanson Circle and 8 Delanson Circle (Assessor’s Parcel ID#s 123-9 and 123-11), the area to be rezoned totaling approximately 20,000 square feet in area, from the Single Residence District and 10,000 Square Foot Area Regulation District to the General Residence District; and

- 138 Weston Road, 140 Weston Road, 144 Weston Road, and 148 Weston Road (Assessor’s Parcel ID#s 149-1, 149-2, 149-3, 149-4), the area to be rezoned totaling approximately 77,000 square feet in area, from the Single Residence District and 15,000 Square Foot Area Regulation District to the General Residence District.

Or take any other action in relation thereto.
To see if the Town will vote to amend the Zoning Bylaw to modify Section 1 to add to the list of zoning districts the Smart Growth Overlay Districts, Wellesley Park Smart Growth Overlay District and Commercial Recreation Overlay District, or take any action in relation thereto.

**ARTICLE 9**

**Board of Health/Board of Selectmen**

**Funding for Mental Health and Social Services**

To see what funds, if any, the Town will appropriate to fund Mental Health and Social Services for fiscal year 2020,

Or take any other action in relation thereto.

**ARTICLE 10**

**Board of Selectmen/Board of Health**

**Funding for Mental Health and Social Services**

To see if the Town will vote to amend the General Bylaws to modify Article 8.10.

Notice of Town Meeting to relocate the posting of attested copies of warrants from Wellesley Square to the Police Station.

Or take any other action in relation thereto.
And you are directed to serve this warrant by posting attested copies in not less than two conspicuous places in the Town and by causing this warrant to be posted on the Town of Wellesley website (www.wellesleyma.gov) at least fourteen days before the date on which the meeting is to be held.

Hereof fail not and make due return of this Warrant and your doings thereon unto the Town Clerk at or before the time of holding said meeting.

Given under our hands this XXth day of April 2019.

Board of Selectmen

____________________________
Jack Morgan, Chair

____________________________
Marjorie R. Freiman, Vice-Chair

____________________________
Elizabeth Sullivan Woods, Secretary

____________________________
Thomas H. Ulfelder

____________________________
Lise M. Olney

A true copy, ______________________________
Attest: Constable, Town of Wellesley

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

Wellesley, MA April ____, 2019

I have this date caused the within warrant to be served by posting two copies in two conspicuous places in the Town, i.e., the Town Hall and Wellesley Square, and causing the warrant to be posted to the Town of Wellesley website.
STM - Funding Mental Health and Social Services

The Board indicated to Town Meeting that a warrant article would be added to the Special Town Meeting to fund mental health and social services. In addition, on Friday, March 29, 2019 the Board of Health submitted a warrant article for the STM to see what funds, if any, the Town will appropriate to fund Mental Health and Social Services for Fiscal Year 2020. The Board must discuss the amount of funds they would like to appropriate for anticipated programmatic needs in preparation for the STM Advisory hearing on April 11th.
STM- Wellesley Office Park

Town Counsel and staff continue to work with Wellesley Office Park. The latest Development Agreement is included for your review. John Hancock is eager to finalize the Development Agreement, so any outstanding comments on the draft language should be forwarded to Town Counsel and staff as soon as possible. The Board should work to finalize and sign agreements, if possible, prior to the Advisory and Planning Board Public Hearings on this item.
DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into this ___ day of April, 2019, by and between the Town of Wellesley (the “Town”), acting by and through its Board of Selectmen, and John Hancock Life Insurance Company (U.S.A.), a Michigan corporation (the “Owner,” and together with the Town, the “Parties”).

RECITALS

WHEREAS, the Owner owns certain real property comprising approximately 26 acres of land known as the Wellesley Office Park located within the Administration & Professional (“AP”) zoning district along Boylston Street (Route 9), Wellesley, Norfolk County, Massachusetts (the “Site”), which Site is more particularly described and depicted on Exhibit A attached hereto and incorporated herein;

WHEREAS, the Site is identified in the Town’s Housing Production Plan as a priority site for multi-family and mixed-use residential development in order to produce housing units eligible to be counted on the Town’s subsidized housing inventory (“SHI”), a critical municipal housing production goal;

WHEREAS, the Town desires to have a minimum of ten percent of its housing stock be eligible for and included in the SHI;

WHEREAS, according to the Housing Production Plan, the Town currently has 663 units of affordable housing listed on the SHI and needs an additional 336 units of affordable housing to reach its goal of having a minimum of ten percent of its housing stock be included in the SHI;

WHEREAS, the Owner is planning for the phased, mixed-use redevelopment of the Site (the “Master Plan”) that is anticipated to advance this important housing production goal by adding approximately 350 (but no less than 345) units of SHI-eligible affordable housing units in the first phase of the Master Plan (“Phase I”) while also providing net positive fiscal and other benefits to the Town, including direct financial payments to the Town under G.L. c. 40R, as supported by a fiscal analysis performed on behalf of the Owner and peer-reviewed on behalf of the Town;

WHEREAS, Phase I is anticipated to include the demolition of the office building at 40 William Street and the construction of an approximately 350 (but no less than 345) unit residential apartment building and parking garage along with limited accessory retail space, landscaping and associated site improvements, as depicted in the conceptual plan attached hereto as Exhibit B;

WHEREAS, the Owner will agree herein that all housing units included in Phase I (and all housing units in subsequent phases of the Master Plan) will count towards the Town’s SHI and will therefore help the Town make progress towards the goals identified in its Housing Production Plan, including redeveloping office parks and creating additional affordable housing;

WHEREAS, subsequent Master Plan phases are not yet fully defined but are anticipated to require razing additional existing office buildings which may be replaced by a mix of potential
uses, including approximately 250 units of additional rental housing, a limited service hotel, additional accessory retail, and/or new office space, the size and configuration of which has not yet been determined;

WHEREAS the Department of Housing and Community Development ("DHCD") is expected to find that the proposed Wellesley Park Smart Growth Overlay District (the “District”) meets the approval requirements established pursuant to G.L. c. 40R and 760 CMR 59.04(1) in order to establish a “Smart Growth” overlay zoning district;

WHEREAS, to further the Town’s housing production goals through the development of the Master Plan, the Town is seeking approval by Wellesley Town Meeting at a Special Town Meeting scheduled for May 13, 2019 (the “Special Town Meeting”) of the Wellesley Park Smart Growth Overlay District, Sec. XIV.J.1. of the Zoning Bylaw of the Town (the “District Bylaw”), substantially in the form attached hereto as Exhibit C, an overlay zoning district prepared pursuant to G.L. c. 40R and accompanying regulations at 760 CMR 59.00, encompassing the Site;

WHEREAS, engineering studies supporting the adequacy of existing or practicably upgraded water, sewer, electric, and traffic infrastructure serving the Site have been performed on behalf of the Owner and/or Town and have been reviewed by the Town;

WHEREAS, based on the engineering studies that have been performed, the Parties have identified the water, sewer, and traffic infrastructure improvements in connection with Phase I of the redevelopment of the Property, and which will be undertaken by the Owner as provided for herein;

WHEREAS, under the provisions of said G.L. c. 40R and the regulations promulgated thereunder, the Town has certified that the impacts of the build-out of the 600 residential units that would be allowed if the District Bylaw is approved will not overburden Site infrastructure as it exists or may be practicably upgraded to provide adequate accommodation of the demands of the District’s existing and future residents and uses;

WHEREAS, this Agreement is entered into by the Parties in an effort to establish a framework to supplement the District Bylaw and facilitate (i) the development of housing units to count on the Town’s SHI as well as (ii) infrastructure upgrades and other improvements to benefit the District and the Town in conjunction with the phased development of the Master Plan;

NOW, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. HOUSING

1.1 Number of Units. The Owner agrees with the Town that there shall be a maximum of 600 dwelling units allowed upon the Site, which shall include approximately 350
(but no less than 345) dwelling units in Phase I and approximately 250 dwelling units in a subsequent phase or phases. The Owner shall not develop, apply for, permit or construct any additional dwelling units on the Site, whether pursuant to the Town’s Zoning Bylaws, G.L. c.40B, Sections 20-23, or otherwise.

1.2 Housing Style. The Owner agrees that all dwelling units constructed on Site shall be apartment style.

1.3 Affordable Rental Housing. The Owner agrees that all residential housing units developed upon the Site up to the maximum of 600 units allowed under the District Bylaw shall be rental housing, and that no less than 25% of such housing units shall be affordable units, qualifying for enumeration under G.L. c. 40B, Sections 20-23 (the “Affordable Units”), to ensure that all housing units developed upon the Site count on the Town’s SHI.

1.4 Local Preference. To the maximum extent permitted by law and applicable regulation, local preference for the occupancy of Affordable Units within the Master Plan shall be given to residents of the Town satisfying all applicable eligibility requirements.

1.5 Miscellaneous. The Owner shall undertake a lottery and implement an Affirmative Fair Housing Marketing Plan to solicit interest for the occupancy of the Affordable Units in accordance with applicable DHCD procedures then in effect. Consistent with the terms and conditions established in this section, the Owner and the Town, in concert with DHCD’s review and approval, shall draft and execute a binding recordable affordable housing agreement that will detail the protocol for the marketing, leasing, management and oversight of the Affordable Units.

2. WATER AND SEWER INFRASTRUCTURE

2.1 Water Improvements. Municipal water infrastructure improvements supporting the Master Plan are informed by the memorandum prepared by Stantec Consulting Services, Inc. dated February 25, 2019 attached hereto as Exhibit D (the “Stantec Memorandum”), with additional consultation from the Town Department of Public Works. In preparation for the development of the Master Plan, the Owner will coordinate with the Town and the Massachusetts Department of Transportation (“MassDOT”) to prepare plans and specifications, obtain necessary permits, and privately install a new 12” water line (the “Water Line”) paralleling the existing 12” water line running east-west under Route 95 prior to the issuance of a final certificate of occupancy for the Phase I building, estimated to cost approximately $500,000. The Owner’s obligation to complete the installation of the Water Line is subject to the final design and construction approval of MassDOT and the Town for the new Water Line.

2.2 Sewer Improvements. Municipal sewer improvements supporting the Master Plan are informed by the Stantec Memorandum with additional consultation from the Town Department of Public Works. In preparation for the development of the Master Plan, the Owner will coordinate with the Town, at the Owner’s sole cost and expense, to complete the design, permitting and installation of a replacement sewer pump station on the Site, which specifications shall be approved by the Town and which shall include a properly sized wet well, dual operation pumps on a serviceable slide rail system with an emergency backup power source, estimated to
cost approximately $310,000. Upon completion of the new pump station, the Owner will take responsibility for all costs associated with its ongoing operation and maintenance. The Owner will also coordinate with the Town and MassDOT to prepare plans, obtain necessary permits, and privately install a new 6” force main (the “Sewer Line”) as a replacement to the existing 4” force main running east-west under Route 95 prior to the issuance of a certificate of occupancy for the Phase I building, estimated to cost approximately $500,000. The Owner’s obligation to complete the installation of the Sewer Line is subject to the final design and construction approval of MassDOT and the Town.

2.3 Town Water Line and Sewer Line Contribution. Upon completion of the installation of the Water Line and the Sewer Line, the Owner shall submit to the Town documentation detailing the total cost incurred by the Owner to complete the Water Line and the Sewer Line (the “Cost Summary”). The Town shall contribute to the Owner fifty percent (50%) of the total project costs incurred by the Owner in planning, permitting, and installing both the Water Line and the Sewer Line, in an amount not to exceed the lesser of (i) $500,000 and (ii) the money it receives from the Commonwealth of Massachusetts in the form of “Incentive Payments” and “Bonus Payments” from the Master Plan pursuant to G.L. c.40R (the “Town Infrastructure Contribution”). Such payment to the Owner shall be contingent upon actual receipt of the 40R Payments (defined herein). The Town Infrastructure Contribution shall be paid in one or more installments to the Owner within thirty (30) days of the Town’s receipt of (i) the Cost Summary and (ii) “Incentive Payments” and/or “Bonus Payments” from the Commonwealth of Massachusetts pursuant to G.L. c. 40R (the “40R Payments”).

3. TRANSPORTATION

3.1 Phase I Traffic Improvements. Transportation improvements supporting Phase I of the Master Plan are informed by the Preliminary Transportation Impact Analysis memorandum (the “Traffic Memorandum”) prepared by Vanasse & Associates, Inc. dated March 21, 2019 attached hereto as Exhibit E, with additional consultation from BETA Group on behalf of the Town. In support of the development of Phase I of the Master Plan, the Owner will coordinate with the Town and MassDOT, at their sole cost and expense, to prepare plans, obtain necessary permits, and implement the traffic safety and operational improvements at the William Street/Frontage Road intersection that are identified in the Traffic Memorandum (the “Phase I Traffic Improvements”) prior to the issuance of a final certificate of occupancy for the Phase I building. The Owner and the Town acknowledge that the Phase I Traffic Improvements require final design and construction approval of MassDOT which may result in design modifications or alternative means of improvement. The Owner will also prepare, in accordance with MassDOT design guidelines and submittal requirements, the necessary plans, studies and documentation required to support a formal 25 Percent Design Submission to MassDOT for additional improvements to the William Street/Frontage Road/Route 9 intersection, including the addition of a right-turn slip-lane from William Street to the I-95 northbound on-ramp and any associated roadway, traffic control or related improvements (the “Design Submission”), as set forth in the Traffic Memorandum. The Design Submission and associated plans and documentation will be presented to the Town’s Planning Department for review prior to submission to MassDOT, and will be completed and submitted to MassDOT prior to the issuance of a final certificate of occupancy for the Phase I building. In order to encourage alternate means of transit and to
minimize, to the extent practicable, the traffic impacts associated with the Master Plan, the Owner also agrees to identify and implement the Transportation Demand Management policies, measures and transportation improvements ("TDM Measures") associated with Phase I as set forth in the Traffic Memorandum. These TDM Measures shall be reviewed and finalized during the site plan approval process for Phase I.

3.2 Future Phase Traffic Improvements. Additional traffic and pedestrian improvements may be required in conjunction with future phases of the Master Plan, which are currently undefined in nature and scope. The Owner agrees to assess traffic operations at the Site and the potential traffic impacts of such future phases of the Master Plan as they are identified and pursued, and to implement additional traffic mitigation measures (including additional TDM Measures) as may be warranted, which measures shall include consideration of all improvements identified in the Design Submission. To the extent that a subsequent traffic study indicates that existing operations and/or predicted traffic conditions so warrant, the Owner shall, in the course of the site plan review process or Project of Significant Impact Special Permit process, as may be applicable, propose potential traffic improvements to alleviate such impacts to the reasonable satisfaction of the Town, as may be reflected as conditions of site plan approval or Project of Significant Impact Special Permit. The Town and the Owner acknowledge that any future traffic improvements may require final design and construction approval of the Town and MassDOT.

4. EMERGENCY RESPONSE SERVICES

4.1 Communications Equipment. Prior to the issuance of a final certificate of occupancy for the Phase I building and in any future new building containing five (5) or more stories within the Master Plan, the Owner shall coordinate with the police and fire departments to install within such new building or upon the Site, at the Owner’s sole cost and expense, police and fire communications equipment as specified by the police and fire department intended to ensure adequate emergency communications within all portions of such building upon the Site. The estimated cost of this equipment to serve the building within Phase I is approximately $20,000.

5. ENVIRONMENTAL STRATEGIES

5.1 Phase I Environmental Strategies. As design of the Phase I building and potential future development is only at a conceptual stage, the Owner proactively agrees to consider implementation of a comprehensive array of environmental strategies in any new buildings on the Site. These environmental strategies are informed by the summary table prepared by the Owner dated February 28, 2019 attached hereto as Exhibit F (the "Environmental Table"), which has been informed by consultation with representatives and staff of the Wetlands Protection Committee, Natural Resources Commission, Trails Committee, and Design Review Board. In order to enhance the Site, the Owner agrees to diligently pursue and, to the extent practicable, implement at its sole cost and expense measures consistent with the environmental strategies for Phase I outlined in the column labeled "Phase I" in the Environmental Table. The Owner shall document the strategies selected for implementation in the course of site plan approval by the Planning Board and review by the Wetlands Protection Committee for the Phase I building.

Error! Unknown document property name.
5.2 Future Phase Environmental Strategies. Prior to the issuance of a certificate of occupancy for the first building constructed after Phase I, the Owner agrees to diligently pursue and implement, as appropriate to the stage of development, at its sole cost and expense measures consistent with the environmental strategies outlined in the column labeled “Phase 2” in the Environmental Table. As with Phase I, the Owner shall document the strategies selected for implementation in the course of review by the Planning Board and the Wetlands Protection Committee for any subsequent new building development upon the Site.

6. MISCELLANEOUS

6.1 Effective Date; Termination. This Agreement shall become effective upon approval of the District Bylaw by Wellesley Town Meeting at the Special Town Meeting. In the event that (i) the District Bylaw is disapproved by DHCD or the Massachusetts Attorney General, or (ii) Owner fails to obtain or maintain all final and effective discretionary federal, state and local permits necessary to allow for the construction and operation of Phase I, upon Owner’s delivery of written notice to the Town, this Agreement shall be null and void.

6.2 Successors and Assigns. The Parties agree that the Owner may amend or otherwise modify the existing subdivision plan of the Site (including through the creation of one or more condominiums or long term ground leases) and may transfer all or any subdivided portion of the Site to another entity (each a “New Entity”), subject to the Owner’s and any New Entity’s acknowledgement that:

6.2.1 This Agreement shall run with title to each subdivided portion of the Site and shall be binding upon the Owner insofar as it is the owner of the Site, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Site and/or their respective subdivided portion(s) thereof, provided that each predecessor-in-title shall be forever released from this Agreement upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Board of Selectmen with respect to such successor’s subdivided portion(s) of the Site; and

6.2.2 The obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Town.

6.3 Notices. Notices, when required hereunder, shall be deemed sufficient if sent registered mail to the Parties at the following addresses:

Town: Town of Wellesley
       Executive Director
       525 Washington Street
       Wellesley, MA 02482

       with a copy to:

       Miyares and Harrington LLP
6.4 **Force Majeure.** The Owner shall not be considered to be in breach of this Agreement for so long as the Owner is unable to complete any work or take any action required hereunder due to a *force majeure* event or other events beyond the reasonable control of the Owner.

6.5 **Default; Opportunity to Cure.** Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within fifteen days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within sixty days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such sixty-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default. Notwithstanding the foregoing, the Owner shall cure any monetary default hereunder within thirty days following the receipt of written notice of such default from the Town. No default hereunder by the owner (whether the Owner or a New Entity) of any subdivided portion of the Site shall be deemed to be a default by any other owner (whether the Owner or a New Entity) of any other subdivided portion of the Site.

6.6 **Limitations on Liability.** The obligations of the Owner or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise. The liability of the Owner or a New Entity is in all cases limited to their interest in the Site or subdivided portion thereof at the time such liability is incurred and shall not extend to any other portion of the Site for which another party has assumed responsibility pursuant to Section 6.1 hereof. In the event that all or any portion of the Site is subjected to a condominium regime or a long term ground
lease, the condominium association or the ground lessee, as applicable, shall be deemed to be the owner/New Entity of the affected portion of the Site.

6.7 Estoppels. Each Party agrees, from time to time, upon not less than twenty-one days’ prior written request from the other, to execute, acknowledge and deliver a statement in writing certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, setting them forth in reasonable detail); (ii) that the party delivering such statement has no defenses, offsets or counterclaims against its obligations to perform its covenants hereunder (or if there are any of the foregoing, setting them forth in reasonable detail); (iii) that there are no uncured defaults of either party under this Agreement (or, if there are any defaults, setting them forth in reasonable detail); and (iv) any other information reasonably requested by the party seeking such statement. If the Party delivering an estoppel certificate is unable to verify compliance by the other Party with certain provisions hereof despite the use of due diligence, it shall so state with specificity in the estoppel certificate, and deliver an updated estoppels certificate as to such provisions as soon thereafter as practicable. Any such statement delivered pursuant to this Section 7.7 shall be in a form reasonably acceptable to, and may be relied upon by any, actual or prospective purchaser, tenant, mortgagee or other party having an interest in the Master Plan. The Town Manager is hereby authorized to execute and deliver any such estoppel certificate on behalf of the Board of Selectmen.

6.8 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the original intention of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

6.9 Entire Agreement; Amendments. This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. This Agreement may not be amended, altered or modified except by an instrument in writing and executed by the Owner or any New Entity and by a majority of the Board of Selectmen of the Town.

6.10 Severability. The invalidity of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof. If any provision of this Agreement or its applicability to any person or circumstance shall be held invalid, the remainder thereof, or the application to other persons shall not be affected.

6.11 Time is of the Essence; Cooperation. Time shall be of the essence for this Agreement and, subject to economic conditions and approval of the District Bylaw by the Town at the Special Town Meeting, DHCD, and the Massachusetts Attorney General, the Owner shall
diligently pursue the remaining permitting and development of Phase I, beginning with the site plan review submission for Phase I within 120 days of the Owner’s receipt of notice of the Town’s receipt of DHCD’s “Letter of Approval” of the District Bylaw. The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly set forth herein, that may be necessary in connection with the design, permitting, and development of the Master Plan, the Water Line, the Sewer Line or the implementation of the goals and objectives of this Agreement, including but not limited to the execution and delivery of utility easements in public right-of-ways to third parties, the negotiation, execution and delivery of utility easements with third parties, the modification of existing utility easements, MassDOT applications related to water and sewer services and transportation improvements, and other state and local instruments and documents. The Town shall also work cooperatively with the Owner in permitting matters related to the Master Plan.

6.12 Counterparts; Signatures. This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

6.13 Record Notice. A notice of this Agreement in a form reasonably acceptable to the Owner may be recorded with the Norfolk Registry of Deeds.

6.14 No Third-Party Beneficiaries. Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby.

[Remainder of this page intentionally left blank. Signature page follows.]
EXECUTED under seal as of the date and year first above written,

TOWN OF WELLESLEY BOARD OF SELECTMEN
By: __________________________
Name: __________________________
Its: __________________________

JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.)
By: __________________________
Name: __________________________
Its: __________________________

LIST OF EXHIBITS
Exhibit A – Site Depiction
Exhibit B – Phase I Conceptual Plan
Exhibit C – District Bylaw
Exhibit D – Stantec Memorandum
Exhibit E – Traffic Memorandum
Exhibit F – Environmental Table
STM- Delanson and 148 Weston Road

Victor Sheen, Town Counsel and staff are in agreement on the proposed amendments to the Residential Incentive Overlay District. The latest version of the proposed zoning, redlined to show the changes is included in your packet. Additionally, staff has prepared a “cheat sheet” which identifies what the proposed language change is working to achieve. The latest draft of the Development Agreement for Delanson is included for your review. The 148 Weston Road version will be substantially in accordance with this. This version has been sent to Victor Sheen’s attorney and Town Counsel is awaiting further comment.
A. Purpose: To provide a residential reuse incentive for a parcel or parcels greater than one acre, located in close proximity to the Town’s commercial districts and public transportation, where one or more of the following conditions apply:

1. general site conditions and access constraints impede long-term successful commercial or industrial use;

2. the parcels that border the residential districts and their residential reuse would extend and complement the character and function of the existing surrounding neighborhood;

3. the parcels border unique natural features, open space, or historic resources which would be better preserved and enjoyed by the public over the long term through residential rather than commercial or industrial uses.

B. Applicability: The RIO shall be considered as overlaying other zoning districts. Specifically, the RIO may be applied over any Business District, Business District A, Industrial District, Industrial District A, Transportation District, and the Lower Falls Village Commercial District.

C. Underlying Zoning Districts: The RIO confers additional development options to be employed at the discretion of the property owner. The RIO does not in any manner remove or alter the zoning rights permitted by the underlying zoning district. However, use of one or more of the RIO development options requires consistency with all RIO requirements.

D. Permitted Uses: Conventional multi-family dwelling units, assisted elderly living, independent elderly housing, nursing homes and skilled nursing facilities.

E. Minimum Lot or Building Site Area: No building or group of buildings shall be constructed on a lot or development site containing less than two acres 45,000 square feet. No building conversion shall be approved on a lot or development site containing less than 25,000 square feet.

F. Minimum Open Space: There shall be provided a minimum open space as defined in Section 1B. of 30 percent of the lot or development site area, one half of which shall be enhanced open space as defined in Section 9, provided, however, that the amount of open space required for conversion projects shall be determined by the Planning Board under the project approval/special permit paragraph below.

G. Floor Area Ratio: Building floor area devoted to residential uses including conventional market-rate housing, assisted elderly living, independent elderly housing, nursing home and/or skilled nursing facilities shall not be subject to floor area ratio requirements notwithstanding other provisions of this Zoning Bylaw to the contrary.
H. Maximum Development Density: There shall be provided for each dwelling unit of assisted elderly living or independent elderly living a lot area of not less than fourteen hundred (1,400) square feet and the number of dwelling units on a lot or development site shall not exceed 150 units. There shall be provided for each dwelling unit of conventional multifamily housing a lot area of not less than eighteen hundred (1,800) square feet. A nursing home or skilled nursing facility on a lot or development site shall not exceed 250 beds.

I. Building Setbacks: Yard definitions shall be as specified in Section 19. RIO projects involving new construction shall provide the following: in Business, Business A, Industrial, Industrial A, or Lower Falls Village Commercial District shall provide the following:

Minimum Front Yard Depth 25 feet
Minimum Side Yard Depth 40 feet
Minimum Rear Yard Depth 40 feet

However, where the housing is not located in but abuts a residential zoning district, the setback shall be 60 feet and a buffer of natural material and/or an earthen berm shall be installed to provide screening on a year-round basis.

J. Building Height: Maximum building height as defined in Section 20 for new construction shall be 4 stories and 45 feet for buildings used for assisted elderly living, independent elderly housing, and conventional multi-family housing located in Business, Business A, Industrial, Industrial A, or Lower Falls Village Commercial Districts; new construction shall be 36 feet for buildings located in Single Family Residential Districts. The maximum building height for nursing homes and skilled nursing facilities shall be three stories and 36 feet. See Building Conversion paragraph below for height restrictions for conversion of existing buildings to these uses.

K. Signs: Signs shall comply with the sign requirements of Section 22A. For the purposes of Table 22A.1 of Section 22A, RIO projects shall comply with the signage allowances of the underlying zoning district, except that signs located in Single Residence Districts or General Residence Districts shall comply with the signage allowances for Commercial Districts Fronting Streets Other Than Worcester Street, as provided for in Table 22A.1.

L. Off-Street Parking: Off-street parking shall be provided in accordance with Section 21.

M. Building Conversion: An existing building may be converted to uses allowed in the RIO subject to the terms of a special permit granted by the Planning Board. In no instance shall the building be expanded to exceed the height limitations specified below or the current height of the building if said height is greater than 45 feet. There shall be no maximum residential density. However, if the building proposed for conversion presently does not conform to the requirements of the underlying zoning district the provisions of
Section 17 shall apply to the conversion project. In this instance application shall not be made to the Zoning Board of Appeals under Section 17 prior to the issuance of a special permit by the Planning Board under this Section.

N. Mixed Use Projects: Any combination of conventional housing types is permitted up to a maximum density of 24 units per acre. Further, up to 75 conventional units of any type of housing shall be permitted in conjunction with development of a facility providing at least 100 nursing home beds, 100 beds associated with a skilled nursing facility, or at least 80 assisted living or independent elderly housing units. A mix of residential units comprising independent elderly housing, assisted elderly living, skilled nursing, nursing homes, and any type of conventional housing shall also be allowed, consistent with the dimensional regulations of the RIO.

In RIO projects that provide at least 100 elderly dwelling units of any type, including skilled nursing facilities, or at least 50 conventional housing units of any type, up to 10,000 sq. ft. of retail space in a structure or structures separate from the residential units or nursing facility shall be permitted. All such developments shall be consistent with the dimensional and parking requirements of the underlying district as applicable for retail business in the Lower Falls Commercial District.

O. Project Approval/Special Permits: The provisions of Section XVIA. shall apply in all respects to projects in the RIO. Application shall not be made under Section 16A prior to the issuance of a special use permit by the Planning Board under this section. A special use permit shall be required from the Planning Board in conjunction with all projects employing RIO development options for building conversion or new construction and the Planning Board may waive specific dimensional requirements in accordance with the following:

1. A report shall have been received from the Design Review Board finding that
   a. the proposed projects in the Lower Falls RIO District are consistent with the Wellesley Lower Falls Plan, Zoning, Urban Design and Landscape Guidelines ("Lower Falls Guidelines") adopted and from time to time amended by the Planning Board, which guidelines encourage retail activities at the street edge, pedestrian oriented uses, improvement of building facades to enhance the pedestrian experience, improving the landscape and facilitating pedestrian access to and use of the river;
   b. the proposed project is consistent with the Design Criteria listed in Section 22C;

2. The proposed project shall provide and/or contribute toward pedestrian and bicycle amenities and shall, as applicable, accommodate pedestrian and bicycle circulation and safety in accordance with the Lower Falls Guidelines and nationally recognized and accepted standards.
3. The proposed project shall provide and/or contribute toward the improvement of pedestrian or public transit access to the river, and, open space, public trails or other public amenities.

4. The proposed project shall provide and/or contribute toward the creation of a village center, town green, or mini-park within or adjacent to further enhance the pedestrian experience in Lower Falls RIO.
Description of Proposed Modifications to Section 14F. RIO

This document is intended to accompany the proposed zoning amendments to the Residential Incentive Overlay District to detail the basis for the proposed amendments.

**Unchanged Provisions:** The following provisions of the Residential Incentive Overlay have no changes: C. Underlying Zoning Districts, D. Permitted Uses; G. Floor Area Ratio; H. Maximum Development Density; L. Off Street Parking; M. Building Conversion; and N. Mixed-Use Projects.

**Modified Provisions:** Below there is a brief description of the changes that are being proposed to the RIO Overlay to facilitate the redevelopment of the Delanson Circle and 148 Weston Road projects:

A. **Purpose:** This section has been broadened in scope to allow for the use of RIO in areas of Town that are within close proximity to commercial districts and along public transportation corridors.

B. **Applicability:** This section has been broadened in scope to overlay zoning districts in general, rather than detailing all of the various districts.

E. **Minimum Lot or Building Site Area:** Reduction from 2 acres to 45,000 square feet or approximately 1 acre. There are no changes to the building conversion provisions.

I. **Building Setbacks:** Reduces the side yard and rear yard setback requirements for RIO projects, and maintains the 60 foot setback requirement for projects in Commercial Districts that abut residential districts.

J. **Minimum Open Space:** Open space is a defined term. Minor adjustment in the formatting of the text, but no change in the intent to require 30% open space, of which 15% has to be “enhanced open space” that enhances the quality of the community through trails, large open space, storm water amenities.

K. **Building Height:** Maintains the existing building height for projects in Business, Business A, Industrial, Industrial A, and Lower Falls Village Commercial Districts, but adds separate height requirements of 36 feet for projects in the Single Family and General Residence Districts.

L. **Signs:** Creates provisions for projects in the Single Family and General Residence Districts to have signs of adequate size. The sign standards will be consistent with signage standards in commercial districts not fronting Worcester Street. (Signs for example located in Wellesley Square have the same provisions)

O. **Project Approval/Special Permits:** Amends the section to add findings by the Planning Board that meet the purpose of the revised bylaw to facilitate projects in close proximity to commercial districts and public transportation corridor. The language maintains the RIO
findings in the Lower Falls Village Commercial District under the Lower Falls Guidelines, and expands the findings to also include pedestrian or public transit access to a river, open space, public trails or other public amenities. The added language creates flexibility between the various districts and their locations within the Town.
DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is entered into as of this __ day of 2019, by and between the Board of Selectmen (the “Board”) of the Town of Wellesley, Massachusetts (the “Town”), and Delanson Realty Partners, LLC as owner of the Property (as hereinafter defined) (together, with its/their successors and assigns, the “Owner,” and together with the Board, the “Parties”).

WHEREAS, the Owner owns the parcels of land located at 1-3, 2-4, 5-7, 6 and 8 Delanson Circle, and 12-14 and 16-18 Hollis Street (the “Property”), and further described and identified in Exhibit A.

WHEREAS, the Owner has filed with the Town of Wellesley Zoning Board of Appeals (the “ZBA”) an application for development of the Property under G.L. c. 40B §§ 20 et seq. known as Case Number ZBA-2017-99 (the “40B Application”). The next session of the hearing under said Application has been continued by the Owner and the ZBA until May 1, 2019 and will be further continued as provided herein.

WHEREAS, the Owner and the Board have determined that a less impactful development of the Property, as described in more detail herein (the “Revised Project”), would be more appropriate for the Property but would require an amendment of the zoning applicable to the Property.

WHEREAS, the Board, as the chief executive officer of the Town is authorized to propose the zoning amendments described herein, call a Special Town Meeting, and execute this Agreement on behalf of the Town.

WHEREAS, this Revised Project is a multifamily residential condominium development at the Property consisting of a single new building containing 35 dwelling units (not to exceed 75 bedrooms) and the renovation, but not expansion, of four existing dwelling units at 12-14 and 16-18 Hollis Street.

WHEREAS, the Parties wish to establish a framework to facilitate the development of the Revised Project as more particularly described and depicted on a certain plan of land entitled “Wellesley Square Residences dated March 27, 2019”, containing 14 sheets and attached hereto and incorporated herein as Exhibit B (the “Delanson Development Plan”) and described in a certain Project Narrative by Embarc Design attached hereto and incorporated herein as Exhibit C (the “Project Narrative”).

NOW THEREFORE, the development of the Revised Project shall be subject to the terms and restrictions set forth in this Agreement and the Owner shall impose such restrictions and undertake and complete such obligations, as set forth in this Agreement as follows:

1. PROPOSED ZONING AMENDMENTS

1.1 The Board agrees to propose a Zoning Bylaw amendment to the Planning Board and to a Special Town Meeting, to be held May 13, 2019 in the form substantially as set forth in Exhibit D (the “Bylaw Amendments”) which would allow the Revised Project to be developed
under and subject to the processes and limitations contained within Zoning By-Law Section 14F, Residential Incentive Overlay and Section 16A. Project Approval; and to support a favorable report on the Bylaw Amendments by the Planning Board and the adoption thereof by Town Meeting.

2. **40B PETITION**

   2.1 Upon the Planning Board’s favorable recommendation on the Warrant Articles the Owner will seek a so-called “standstill” agreement with the ZBA, which shall extend, pursuant to 760 CMR 56.05 (3), the time for conducting the public hearing on the 40B Application, making a decision on that Application, and filing that decision with the Town Clerk for a sufficient time so that the ZBA may suspend its review of the 40B Petition while the Owner pursues all local approvals for the Revised Project.

   2.2 Upon the Owner’s receipt of its first building permit for the Revised Project the Owner shall simultaneously withdraw the 40B Petition with prejudice.

3. **REVISED PROJECT**

   3.1 Forthwith upon adoption of the Zoning Bylaw amendment by Town Meeting and approval by the Attorney General, the Owner will apply for such special permits, site plan approvals and other required local approvals from the Town as is required by the Zoning Bylaw Amendment (the “Revised Project Permits”).

   3.2 The Owner’s application for the Revised Project shall adhere to the Delanson Development Plan Exhibit B and the Project Narrative Exhibit C. The number of units shall not exceed 35, the number of bedrooms shall not exceed 75 bedrooms. The Owner acknowledges that the special permit and site plan approval for the Revised Project may include conditions typical for such projects in Wellesley including without limitation conditions related to drainage and utility design, traffic impacts (and offsite mitigation to mitigate traffic impacts, including, but not limited to a crosswalk on Linden Street), landscaping, sequencing of construction, a construction management plan, and post-construction reviews.

   3.3 In addition to the 35 new units described above, the Owner shall renovate, but not expand, the existing four (4) dwelling units each containing two (2) bedrooms located at 12-14 and 16-18 Hollis Street. The Owner shall subject all four (4) renovated units to a Department of Housing and Community Development (DHCD) approved Regulatory Agreement in perpetuity. The Regulatory Agreement shall be in a form approved by Town Counsel, shall be recorded in the Norfolk County Registry of Deeds and shall be sufficient to make all four (4) renovated units at 12-14 and 16-18 Hollis Street (the “Affordable Units”) eligible for inclusion on the DHCD’s Subsidized Housing Inventory (the “SHI”) as provided for in 760 CMR 56.02. The finishes in the Affordable Units shall be similar in quality to the 35 new units described above. The Affordable Units will be declared as condominium units within the condominium Master Deed created for the new thirty-five (35) units, and the Affordable Units will have appurtenant percentages of interest in the condominium established in accordance with
G.L. c. 183A. The Affordable Units may be either sold to eligible individuals or held as rental units by the Owner. The Revised Project Permits may provide that not more than 6 Certificates of Occupancy may be issued for any new construction units within the Revised Project unless Certificates of Occupancy have been issued for the 4 Affordable Units at 12-18 Hollis Street following renovation pursuant to the requirements of this section.

3.4 Construction of the Revised Project shall be managed in accordance with the Construction Management Plan dated ____ and attached hereto as Exhibit E. All construction related traffic shall follow the trucking routes detailed in said Construction Management Plan, however, the Construction Management Plan is subject to change and/or refinement by local permit granting authorities.

3.5 In the event the Zoning Bylaw Amendment is not adopted by a Special Town Meeting on May 13, 2019, then this Agreement, unless extended in writing by the Parties, shall terminate and the Parties shall have no further obligations to the other hereunder. If the Zoning Bylaw Amendment is adopted, in its current or substantially similar form, The Owner shall in good-faith pursue governmental permitting and approvals necessary for the project as defined in exhibits B and C and shall not seek permits and approvals for any other development of the site for the duration of this Agreement.

3.6 The owner may terminate this agreement if and only if any of the approvals are (1) denied, (2) annulled, or (3) not exercised by the owner because either (a) the Permit is appealed by third party and neither the Owner nor the Town elects to defend the Permit in the appeal and allows the Permit to be annulled or lapse, or (b) the Permit is issued subject to conditions unacceptable to the Owner. The Owner shall notify the Town of said termination in writing.

3.7 The Board and the Owner recognize that the Revised Project may undergo revisions and modifications in the usual course of the local approval process. This Agreement shall remain in full force and effect, so long as such revisions and modifications are satisfactory to the applicable regulatory board and shall not result in an increase in the number of dwelling units or bedrooms, or in the size or height of the buildings or any conditions specifically referred to or adopted in this Agreement.

4. **TRAFFIC IMPROVEMENTS AND MITIGATION**

4.1 The final site plans submitted in connection with the Revised Project shall be consistent with the Delanson Development Plan Exhibit B and shall include the following improvements (the “Roadway Improvements”) to be undertaken by the Owner prior to the issuance of the first Certificate of Occupancy of the Revised Project:

   (a) Crosswalk across Linden Street (to be located by the Planning Board);

   (b) The width of the pavement on Hollis Street shall be extended on the Owner’s (west) side of Hollis Street, for the full length of the Property, in order to provide a paved travel way of not less than 18 feet. The Owner shall also install a sidewalk and curbing to Planning Board standards,
located adjacent to and along the full length of the Property on Hollis Street.

(c) Improve Hollis Street to include, at the option of the Planning Board and the consent of all property owners who abut Hollis Street: 1) repaving the full length of Hollis Street located to the west of Linden Street, 2) constructing a sidewalk and installing curbing, or other improvements, on the east side of Hollis Street; 3) installing or improving street lighting and utilities; provided that the work under this paragraph shall only be performed at the time of the later of (i) the Board’s written request under this Paragraph and (ii) issuance of the first Certificate of Occupancy for the Revised Project.

5. MISCELLANEOUS

5.1 Forbearance from Suit

The Parties shall forego any actions at law or equity attempting to contest the validity or prevent the enforceability of any provision(s) of this Agreement. Such forbearance shall not preclude any Party from bringing any action for breach of contract on the part of the other Party or acts of intentional misconduct with respect to matters contemplated herein.

5.2 Cooperation

The Parties agree to work cooperatively, on a going-forward basis, to execute and deliver documents, and take such other actions, whether or not explicitly set forth herein, that may be necessary in connection with implementation of the goals and objectives of this Agreement.

5.3 Successors and Assigns

The Parties agree that the Owner may transfer all or any interest in the Property to another entity (each a “New Entity”), subject to the terms of this Agreement, provided that all obligations under this Agreement shall be joint and several among any parties with an interest in the Property, and further provided that the obligations of this Agreement shall run with the Property. To that end, any transfer to a New Entity shall be subject to any New Entity’s acknowledgement that:

This Agreement shall run with title to the Property and shall be binding upon the Owner insofar as it is the owner of the Site, and each of its successors or assigns as to the obligations which arise under this Agreement during their respective periods of ownership of the Property and/or their respective interest in the Property.

Any predecessor-in-title shall be released from its obligations under this Agreement only upon procuring a written acknowledgment from its immediate successor, addressed to the Town, acknowledging and agreeing that such successor-in-title is bound by the terms of this Agreement and that this Agreement shall be enforceable against such successor by the Board of Selectmen with respect to such successor’s subdivided portion(s) of the Site; and
The obligations created hereunder shall not be treated as assumed by any New Entity until such notice is delivered to the Town.

In accordance with the terms of this section, a notice of this Agreement in a form reasonably acceptable to the Owner may be recorded with the Norfolk Registry of Deeds.

5.4 Notices

Notices, when required hereunder, shall be deemed sufficient if sent registered mail to the Parties at the following addresses:

Town: Board of Selectmen
       Town of Wellesley
       Wellesley Town Hall
       525 Washington Street
       Wellesley, MA 02482

with a copy to: Thomas J. Harrington, Town Counsel
               Miyares and Harrington LLP
               40 Grove Street Suite 190
               Wellesley, MA 02482
               tom@miyares-harrington.com

Owner: Delanson Realty Partners
       Aura Properties, LLC
       49 Coolidge Street
       Brookline, MA 02446

with a copy to: Alan J. Schlesinger
                Schlesinger and Buchbinder, LLP
                1200 Walnut Street
                Newton, MA 02461

5.5 Default; Opportunity to Cure

Failure by either Party to perform any term or provision of this Agreement shall not constitute a default under this Agreement unless and until the defaulting Party fails to commence to cure, correct or remedy such failure within fifteen (15) days of receipt of written notice of such failure from the other Party and thereafter fails to complete such cure, correction, or remedy within thirty (30) days of the receipt of such written notice, or, with respect to defaults that cannot reasonably be cured, corrected or remedied within such 30-day period, within such additional period of time as is reasonably required to remedy such default, provided the defaulting Party exercises due diligence in the remedying of such default.

5.6 Limited Undertaking
Nothing in this Agreement shall be construed as an undertaking by the Owner to construct or complete the Revised Project, or any portion thereof, and the obligations hereunder being limited to compliance with the provisions hereof to the extent the Revised Project, or any portion thereof, is commenced, constructed or completed.

5.7 **Limitations on Liability**

The obligations of the Owner or any New Entity do not constitute personal obligations of their members, trustees, partners, directors, officers or shareholders, or any direct or indirect constituent entity or any of their affiliates or agents. The Town shall not seek recourse against any of the foregoing or any of their personal assets for satisfaction of any liability with respect to this Agreement or otherwise.

5.8 **Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. If any term, covenant, condition or provision of this Agreement or the application thereof to any person or circumstance shall be declared invalid or unenforceable by the final ruling of a court of competent jurisdiction having final review, then the remaining terms, covenants, conditions and provisions of this Agreement and their application to other persons or circumstances shall not be affected thereby and shall continue to be enforced and recognized as valid agreements of the Parties, and in the place of such invalid or unenforceable provision, there shall be substituted a like, but valid and enforceable provision which comports to the findings of the aforesaid court and most nearly accomplishes the objectives of the Parties. The Parties hereby consent to jurisdiction of the courts of the Commonwealth of Massachusetts sitting in the County of Norfolk.

5.9 **Entire Agreement; Amendments**

This Agreement sets forth the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any prior agreements, discussions or understandings of the Parties and their respective agents and representatives. Amendments to the terms of this Agreement may be agreed to on behalf of the Town by its Board of Selectmen. No representation, promise or other agreement with respect to the subject matter hereof shall be binding on any Party unless it is expressly set forth herein. The Parties expressly acknowledge and agree that this Agreement does not and shall not apply to any development by Owner, or any of its affiliates, other than the Project.

5.10 **Interpretation**

Capitalized terms used but not defined herein shall have the meanings assigned to them under the Town of Wellesley Zoning Bylaws.

5.11 **Counterparts; Signatures**

This Agreement may be executed in several counterparts and by each Party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which
together shall constitute one instrument. It is agreed that electronic signatures shall constitute originals for all purposes.

5.12 No Third-Party Beneficiaries

Notwithstanding anything to the contrary in this Agreement, the Parties do not intend for any third party to be benefitted hereby, and no third party shall have any right to enforce any obligations or exercise any rights hereunder.

5.13 Headings.

Headings are inserted for convenience only and do not form part of this Agreement.

[Signatures on following page(s)]
EXECUTED under seal as of the date and year first above written,

DELANSON REALTY PARTNERS LLC

By: __________________________
Manager

TOWN OF WELLESLEY BOARD OF SELECTMEN

By: ______________________________

By: ______________________________

By: ______________________________

By: ______________________________

By: ______________________________

LIST OF EXHIBITS

Exhibit A – Land Description
Exhibit B – Revised Plan
Exhibit C – Project Narrative
Exhibit D – Warrant Articles
Exhibit E – Construction Management Plan
EXHIBIT A

Land Description
EXHIBIT B

Revised Plan
EXHIBIT C

Project Narrative
EXHIBIT D

Zoning Bylaw Amendment
EXHIBIT E

Construction Management Plan
4. **Approve Sublease for 900 Worcester Street**

The 900 Worcester Street Ground Lease allows for Wellesley Sports Center to enter into subleases, without further Town approval, for concessions, training, and physical therapy. Steward Medical Inc. is a proposed subtenant that qualifies as a physical therapy and training facility. Steward Medical would like to lease 6,888 square feet on the upper floor of the Sports Center. Brian DeVellis has indicated they have also purchased naming rights for the facility. Steward Medical has asked, given their investment into the project, that the Town sign a consent agreement to the sublease. Town Counsel has reviewed the Consent to Sublease document and has signed off on the terms. Town Counsel did want to note, the Town is not obligated to sign this document as the Ground Lease allows for this use, and signing of the document is more of a courtesy in this instance rather than necessity. A provision of the Consent to Sublease document “3. Recognition: Attornment” would confer rights which state that if the Tenant (Brian/WSC) should go bankrupt, the Town would take on the tenant/landlord role with Steward Medical.

**MOVE to execute the Consent to Sublease Agreement pending signature from Steward Medical Inc.**
SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (hereinafter “Sublease”), is made as of the ____ day of March 2019 between Wellesley Sports Center LLC, a Delaware Limited Liability Company (hereinafter "Landlord"), and Steward Medical Group, Inc., a Massachusetts non-profit corporation (hereinafter "Tenant").

WHEREAS; the parties hereto wish to enter into an agreement for the sublease of certain space to be erected by Landlord, upon and subject to the terms and conditions set forth in this Sublease;

Now, therefore, the parties hereto agree as follows:

WITNESSETH, THAT:

1. LEASED PREMISES. Landlord, subject to the terms and conditions of this Sublease, leases to Tenant the premises (hereinafter the "Leased Premises") as shown on the plans attached hereto as Exhibit A, consisting of approximately 6,888 useable square feet located in the Wellesley Sports Center (the “Building”) to be constructed by the Landlord at 900 Worcester Road, Wellesley, MA (the “Property”). Tenant and its agents, employees, guests, customers, and invitees shall have access to the common areas to which Tenant reasonably needs access for purposes of entry into the Leased Premises, including parking in common with other users of the Property, and other related activities and to other common areas accessible by all (subject to reasonable rules and regulations governing use enacted from time to time). Tenant shall not have access to pool, rinks or turf. Landlord represents and warrants that, from and after the date the Tenant occupies the Leased Premises, the Leased Premises and the Property will and shall continue to comply with all laws, zoning ordinances, governmental regulations, covenants and restrictions applicable to the Leased Premises and the Property.

2. PERMITTED USE. Throughout the Term (as defined in Section 3), Tenant shall the exclusive right to use the Leased Premises for the operation of a Strength Training & Physical Therapy center, to include group and private conditioning, rehabilitation and therapy programs, clinic space to treat and evaluate patients, wellness area for pilates, sports training, and yoga, as well as such other ancillary uses reasonably related thereto. Throughout the Term, Landlord shall not permit any person or entity other than Tenant to use any portion of the Property for the operation of a Strength Training & Physical Therapy center, including any group and private conditioning, and rehabilitation and therapy programs, unless otherwise expressly approved in writing by Tenant, which approval may be withheld in Tenant’s sole and absolute discretion. Landlord acknowledges that (i) this exclusive right is essential to the success of Tenant’s operations at the Leased Premises, (ii) this covenant will not constitute an unreasonable hardship or deprive Landlord of the ability to adequately own, operate, utilize, and/or lease the Property, (iii) Tenant would sustain irreparable harm and damage in the event that Landlord violates this covenant, and (iv) that damages would not provide an adequate remedy to Tenant in the event of such violation by Landlord, and therefore, in addition to the other remedies available to Tenant under this Sublease, at law, or in equity, Tenant shall be entitled to seek injunctive relief to enforce this exclusive use covenant.

3. TERM. The Term shall commence on the later of (i) June 1, 2019 or (ii) the date Landlord receives the certificate of occupancy for the Building (the “Commencement Date”) and shall continue through and including May 31, 2024 (the “Termination Date”), as such term may be extended from time to time pursuant to this Sublease, and unless sooner terminated as herein provided (the “Term”). The Leased Premises will be delivered to Tenant at such time as Landlord obtains a Certificate of Occupancy for the Building and the Leased Premises conforms to the requirements of Section 6.1 of this Sublease. Although Landlord anticipates that it will be able to deliver the Leased Premises to Tenant on or before June 1, 2019, Tenant understands that the Property is currently under construction and Landlord cannot guarantee a Commencement Date on or before that date. Upon Landlord’s delivery of the Leased Premises to Tenant, Landlord and Tenant shall each execute a document confirming the actual Commencement Date (hereinafter “Tenant Occupancy Letter”). The term “Lease Year” as used in this Sublease shall mean (i) each twelve (12)-month period commencing on the Rent Commencement Date (as defined in Section 5(1), except that if the Rent Commencement Date does not occur on the first day of a calendar month, the first Lease Year shall commence on the Rent Commencement Date and terminate on the last day of the month in which the first anniversary of the Rent Commencement Date occurs, and (ii) each successive period of twelve (12) calendar months thereafter during the Term.
4. **EXTENSION OPTIONS.** Tenant shall have five (5) options to extend the term hereof for a period of five (5) years each. To exercise the extension options hereunder the Tenant must give written notice of the exercise of said option given to Landlord at least nine (9) months prior to the expiration of the initial term hereof or the then extension term, as applicable, time being of the essence. Further, no such election shall be effective if the Tenant is in default of any of the terms and conditions hereof beyond any applicable notice and cure period at the time of exercise of any option hereunder. In the event that Tenant duly provides Landlord with such written notice, this Sublease shall be automatically extended for such extension term upon all of the terms, conditions, covenants, and agreements of this Sublease without the need for the parties to execute any additional documents.

5. **RENT.**

   (1) **Term Rent.** For the purposes of this Sublease, the term “Rent Commencement Date” shall mean the earlier to occur of (i) the date occurring ninety (90) days after the Commencement Date, or (ii) the date Tenant begins conducting its business operations at the Leased Premises; provided, however, Landlord and Tenant acknowledge and agree that Tenant’s construction and other activities to prepare the Leased Premises for Tenant’s use and occupancy shall not be considered conducting business operations at the Leased Premises for the purpose of determining the Rent Commencement Date. Beginning on the Rent Commencement Date and continuing thereafter throughout the Term of this Sublease (as may be extended in accordance with the terms hereof), the Tenant shall pay to the Landlord, at the address specified herein, or furnished pursuant hereto, during the Term, as follows: for the first Lease Year, annual rent in the amount of $275,520.00 (calculated as $40.00 per useable square foot of the Leased Premises), to be paid monthly, in advance, on the first day of each month (hereinafter “Term Rent”) in the amount of $22,960.00, and prorated for any partial month. For each Lease Year thereafter, the Term Rent shall annually increase by 3% over the Term Rent payable for the immediately prior Lease Year during the Term. In the event the Tenant exercises any option to extend hereunder, the Term Rent shall continue to increase by the amount of 3% of the Term Rent for the prior Lease Year during such extension terms.

   (2) **Additional Rent.** Tenant shall pay to Landlord, from and after the Rent Commencement Date throughout the Term, within sixty (60) days of Landlord’s written demand thereof (except as otherwise set forth below), Tenant’s pro rata share of the below described expenses attributable to the Property and Building of which the Leased Premises are a part, such pro rata share to be determined by dividing the square footage of the Leased Premises by the net rentable square footage of the Building, which shall be based on the architect certification provided in Section 5(4) (the “Proportionate Share”):

   a. **Real Estate Taxes:**

      For the purposes hereof, “Real Estate Taxes” shall mean all taxes, assessments, betterments, rates, charges, license fees, municipal liens, levies, excises, or impose, whether general or special, or ordinary or extraordinary, of every name, nature, and kind whatever, including all governmental charges of whatever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge on the Property or the improvements, or any part of same. For purposes hereof, the Landlord shall elect to pay betterments and special assessments over the longest period of time permissible and only the portion of such betterments or assessments payable in any given year, together with interest imposed thereon by the municipality, will be treated as Real Estate Taxes payable hereunder. Also included shall be all reasonable out-of-pocket costs incurred by Landlord’s efforts to abate any Real Estate Taxes. If any portion of the Real Estate Taxes is attributable to a period that does not fully occur within the Term, then the amount payable by Tenant for such period shall be prorated such that Tenant shall only pay for the portion occurring within the Term. Notwithstanding the foregoing, Real Estate Taxes shall not include any interest, fine, penalty, or other cost imposed for the late payment of such taxes, assessments, betterments, rates, charges, license fees, municipal liens, levies, excises, impose, or governmental charges by Landlord. In the event Landlord receives any refund or abatement of the Real Estate Taxes, then provided that Tenant has duly paid Tenant’s Proportionate Share of such Real Estate Taxes in accordance with this Section 5, Landlord shall credit Tenant’s Proportionate Share of such refund or abatement (less any out-of-pocket costs and expenses incurred by Landlord in obtaining such refund or abatement that have not already been included in the Real Estate Taxes) to the Rent (as hereinafter defined) payable by Tenant; provided, however, if the Term has expired or terminated when the Landlord receives such refund or abatement with respect to any Real Estate Taxes occurring within the Term, then Landlord shall pay Tenant’s Proportionate Share of such refund or abatement to Tenant within sixty (60) days after Landlord
receives such refund or abatement.

b. **Common Area Expenses:**

For the purposes hereof, “Operating Costs” shall mean all operating costs of the Property and shall consist of all expenditures by Landlord to operate and maintain all of the Property in operation at the beginning of the Term and such additional facilities as may be improved at the Property thereafter, except as specifically excluded herein. If any portion of the Operating Costs is attributable to a period that does not fully occur within the Term, then the amount payable by Tenant for such period shall be prorated such that Tenant shall only pay for the portion occurring within the Term. The term “Operating Costs” as used herein shall mean all expenses, costs and disbursements (but, except as otherwise herein provided, not replacement of capital investment items except as provided below, nor specific costs specifically billable to or payable by specific tenants) of every kind and nature which Landlord shall pay or become obligated to pay because of or in connection with the ownership, maintenance, repair, promotion, insuring or operation of the Property, including, but not limited to, the following:

i. Wages and salaries of all employees engaged by Landlord, or Landlord’s property manager, in operation and maintenance or security (to the extent provided) of all or any part of the Property excluding employees of Landlord engaged in any retail, restaurant or other commercial activities operated or owned by Landlord, including taxes, insurance and benefits relating to such employees.

ii. All supplies and materials used by Landlord, or Landlord’s property manager, in the operation and maintenance of any part of the Property excluding parts of the Property used for any retail, restaurant or other commercial activities operated or owned by Landlord.

iii. Costs of all utilities for the Property, including the cost of water and power, heating, lighting, air conditioning and ventilating for all or any part of the Property, except to the extent such costs are separately billable to specific tenants or occupants of the Property by Landlord (other than as part of the Operating Costs) or the utility provider.

iv. Costs of all maintenance, janitorial, security (to the extent provided) and service agreements for the Property, and the equipment therein, including alarm service, window cleaning, snow removal and elevator maintenance.

v. Costs of all insurance premiums relating to the Property, including cost of casualty and liability insurance and Landlord’s personal property used in connection therewith, excluding insurance in connection with the use of any part of the Property for any retail, restaurant or other commercial activities operated or owned by Landlord.

vi. Costs of repairs and general maintenance of any part of the Property (excluding repairs and general maintenance paid by proceeds of insurance or by Tenant or other third parties, and alterations attributable solely to tenants or occupants of the Building other than Tenant) including, without limitation, landscaping of any part of the Property.

vii. The costs and expenses of any capital improvements only if such capital improvement either (i) is intended in the good faith reasonable judgment of Landlord to reduce Operating Costs (as for example, a labor saving or energy saving improvement) provided, the amount included in Operating Costs in any calendar year shall not exceed an amount equal to the savings reasonably anticipated to result from the installation and operation of such improvement, and/or (ii) is made to comply with any applicable Laws (as defined in Section 8) enacted after the Commencement Date. All of such costs shall be amortized over the reasonable life of such improvements, and a pro rata portion thereof included within Operating Costs for each year the same is so amortized, together with interest at the rate of six percent (6%) per annum on all unamortized balances. The reasonable life and amortization schedule of the foregoing shall be determined in accordance with generally accepted accounting principles (GAAP), and in no event shall such reasonable life extend beyond the reasonable life of the Building or other part of the Property to which such costs are related.

viii. Landlord’s central accounting and overhead costs attributable to the Property, excluding any such costs attributable to any retail, restaurant or other commercial activities operated or owned by
ix. All fees, costs and charges paid by Landlord, or Landlord’s agent, to any person or entity who provides services, including management and marketing services to any part of the Property, excluding services in connection with the use of any part of the Property for any retail, restaurant or other commercial activities operated or owned by Landlord; provided, however, in no event shall Tenant’s Proportionate Share of such marketing expenses exceed $10,000.00 for any calendar year. In determining the amount of Operating Costs for any calendar, if less than 95% of the rentable areas of the Property are occupied by tenants or Landlord at any time during any such year, Operating Costs that vary based on occupancy, such as cleaning costs, shall be determined for such year to be an amount equal to the like expenses which would normally be expected to be incurred had such occupancy been 95% throughout such year. Debt service and leasing commissions’ payable by Landlord shall be excluded from any computation of Operating Costs.

Notwithstanding the foregoing or anything to the contrary contained in this Sublease, Operating Costs shall not, however, include: (A) costs of leasing commissions, attorneys’ fees, marketing costs, and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of the Property; (B) costs (including permit, license and inspection costs) incurred in renovating or otherwise improving, decorating or redecorating rentable space for other tenants or vacant rentable space; (C) costs incurred due to the violations by Landlord of the terms and conditions of any sublease of space in the Property; (D) costs of principal, interest, or other charges on debt or amortization on any mortgages or other financing arrangements, or payments under any ground lease or sale/leaseback arrangement, with respect to the Property; (E) costs of utilities separately metered and paid directly by Tenant or any other tenant or occupant; (F) costs for which Landlord is entitled to separate reimbursement under insurance policies, warranty or otherwise by third parties (including other tenants); (G) any items furnished to other tenants in the Building but not to Tenant hereunder; (H) costs relating to Landlord’s existence as a corporation, partnership or other entity; (I) costs of fix

up tenant space, including in renovating or otherwise improving, decorating, painting or redecorating tenant space; (J) fees, fines or penalties which Landlord is obligated to pay by reason of Landlord’s or the Property’s violation of applicable law, or Landlord’s failure to timely pay any such amount when due; (K) the incremental increases in premiums for insurance required to be carried by Landlord pursuant to this Sublease when such increases are caused by any special hazardous use of the Property by Landlord or other tenants; (L) costs required to remedy any noncompliance of the Building with applicable law in effect as of the Commencement Date; (M) capital expenditures, except to the extent provided in Section 5(2)(b)(vii) above; (N) reserves; (O) marketing, advertising, lobbying, and promotional expenditures, and charitable and political contributions; (P) the cost of acquiring, leasing, installing, maintaining, protecting or restoring works of art; (Q) costs of the Landlord’s Work (as defined in Section 6.1); (R) depreciation, amortization; (S) Landlord’s general corporate overhead and general and administrative expenses; (T) services provided and costs incurred in connection with the operation of any retail, restaurant or other commercial operations in the Property; (U) costs arising from latent defects in the Landlord’s Work; (V) salaries and bonuses of any employee of Landlord or Landlord’s property manager above the level of building manager, or management fees for the Property in excess of six percent (6%) of the gross annual rents at the Property; (W) any cost included in the Operating Costs representing an amount paid to a person, firm, corporation, or other entity affiliated with Landlord which is in excess of the amount which would have been paid on an arm’s length basis in the absence of such relationship; (X) costs of permitting, designing, developing, and constructing the Building or any other portion of the Property; (Y) costs of selling, syndicating, financing, mortgaging, or hypothecating all or any part of Landlord’s interest in the Property (including, without limitation, legal, accounting, consulting, brokerage, and other professional fees and costs of appraisals, inspections, testing, and other due diligence associated with such financing or sale); (Z) costs of repairing damage to the extent due to the gross negligence or willful misconduct of Landlord, Landlord’s property manager, or their respective employees, contractors, consultants, agents, or representatives; and (AA) any costs incurred in connection with any environmental clean-up, response action, or remediation of any Hazardous Waste (as defined in Section 8) on, in, under, or about the Property.

Landlord reserves the right to estimate the annual costs of the foregoing Real Estate Taxes and Operating Costs and collect Tenant’s Proportionate Share of such estimated Real Estate Taxes and Operating Costs
in monthly installments, which installments shall be due and payable at the same time monthly installments of rent are due hereunder. Within ninety (90) days following the end of each calendar year, the Landlord shall reconcile the actual costs incurred for the Real Estate Taxes and Operating Costs for the applicable calendar year and provide Tenant with a copy of such annual reconciliation. If the Landlord has collected more than Tenant’s Proportionate Share of the actual Real Estate Taxes and Operating Costs, it shall give Tenant a credit in the amount of the excess amount collected, applied to the then next installment or installments, as applicable; provided, however, if the Term has expired or terminated, then Landlord shall remit the amount of such difference to Tenant within sixty (60) days after the completion of such annual reconciliation. If the estimated amount of the Operating Costs paid by Tenant for the previous year is less than the actual amount of the Operating Costs required to be paid by Tenant for the previous year, then Tenant shall pay such difference to Landlord within sixty (60) days after receiving the annual reconciliation from Landlord. In the event the Landlord has collected less than Tenant’s Proportionate Share of the actual Real Estate Taxes and Operating Costs, Tenant shall pay to the Landlord the deficiency within sixty (60) days of after receiving the annual reconciliation from Landlord.

(3) All sums of money due and payable by Tenant to Landlord under the terms of this Sublease in addition to the Term Rent shall constitute additional rent (“Additional Rent”) hereunder for the purposes of the collection thereof. Landlord shall have the same remedies for default in the payment of Additional Rent as are available to Landlord in the case of a default in the payment of Term Rent. Term Rent and/or Additional Rent are sometimes referred to as “Rent.” All rent shall be paid by check drawn on good and immediately available funds at Landlord’s address as provided herein (or at such other address as may be designated by Landlord from time to time). Tenant agrees to pay all rent under this Sublease at the times and in the manner herein provided, without set-off, counterclaim, abatement or deduction whatsoever, except as otherwise expressly set forth in this Sublease.

(4) Upon completion of construction of the Building, Landlord shall provide Tenant with an architect’s certification of the actual square footage of the Leased Premises and the actual square footage of the Building on the Property whose occupants will share in the payment of Real Estate Taxes and Operating Costs. In the event that the useable square footage of the Leased Premises as actually constructed differs from the useable square footage set forth herein, Landlord and Tenant agree to adjust the Term Rent and the Tenant’s Proportionate Share, which adjustments shall be included in the Tenant Occupancy Letter.

(5) Tenant’s Right to Audit. Landlord shall keep and make available upon written notice, for the examination and audit of or by Tenant, or Tenant's authorized employees, agents or representatives during normal business hours at Landlord’s cost, all data, materials and information, including but not limited to records of all receipts, all books, accounts, memoranda, files and all or any other documents indicating, documenting, verifying or substantiating the above referenced costs and expenses related to the Property. Tenant shall have the right to conduct such examination and audit, no more than one (1) time per calendar year. Further, no such request may be made, and Landlord shall not be required to provide such information, later than six (6) months after either (i) the end of each applicable calendar year, or (ii) Tenant’s receipt of the annual reconciliation report if Landlord has elected to bill Tenant for Tenant’s Proportionate Share of the Real Estate Taxes and Operating Costs for such year on an estimated basis as contemplated by this Sublease. Tenant shall keep all such information confidential and shall only share such information with its accountants or other professionals who need to review such information who, in turn, shall keep such information confidential.

6. OBLIGATIONS OF LANDLORD

6.1 Construction. Landlord, at Landlord’s sole cost and expense, shall (a) construct the Building and develop the Property in accordance with the terms and conditions of the Ground Lease (as defined in Section 20.1), and (b) construct the Leased Premises to steel studs, stubbed for utilities, in compliance with all applicable Laws and the plans and specifications mutually agreed upon by the parties, and attached to this Sublease as Exhibit A (collectively, the “Landlord’s Work”). The parties acknowledge and agree that, except for the Landlord’s Work, the final design and build out of Leased Premises shall be the sole responsibility of Tenant.

6.2 Janitorial Services. Landlord shall provide reasonable and customary janitorial and trash removal services to the common areas of the Building and the Property ONLY.

6.3 Garbage. Landlord shall provide the Building with a dumpster for rubbish removal services, to be used in
common with all other tenants. Tenant shall be solely responsible for any and all rubbish termed “Medical Waste”.

6.4 **Repair and Cleanliness.** It is understood and agreed that the Landlord shall be responsible for maintaining in a good state of repair the exterior structural walls, exterior glass, the roof, all utility and mechanical systems and equipment for all spaces of the Building in which the Leased Premises is located, including, without limitation those exclusively serving the Leased Premises, including without limitation plumbing, electrical, heat and HVAC systems, and the common areas of the Property, including without limitation parking areas, excepting, however, any damage thereto caused by the negligence of Tenant, its agents, servants, employees and invitees, unless otherwise provided in Section 9.1, Section 9.2, Section 9.3, or Section 11.5. In addition, Landlord shall be responsible for removal of snow and ice in and on all areas of the Property.

6.5 **Building Services.** Landlord shall also provide the common areas of the Building with (i) central heating, ventilation, and air conditioning services during the Building’s normal business hours, (ii) electricity and lighting services, (iii) hot and cold water for drinking, lavatory, and toilet purposes, (iv) fire alarms, sprinklers, and other life-safety services, and (v) pest and vermin control services, as well as exterior window cleaning and landscaping services. All such services shall be provided in a manner and in such amounts as are reasonable and customary for buildings similar to the Building in the area in which the Building is located.

6.6 **Interruption of Services and Utilities.** With respect to any repairs, services, or utilities to be furnished by Landlord under this Sublease, Landlord shall not be liable for any interruption or failure to provide such repairs, services, or utilities unless such failure or interruption (a) continues for more than seven (7) consecutive days, (b) occurs for a reason other than the negligence or willful misconduct of Tenant or Tenant’s agents, employees, representatives, contractors, patients, or invitees, or a general power failure or other catastrophe effecting other buildings in the surrounding area, and (c) materially adversely effects the conduct of Tenant’s normal business operations at the Leased Premises, as reasonably determined by Tenant, in which case there shall be an abatement of one (1) day’s Term Rent and Additional Rent with respect to Tenant’s Proportionate Share of the Real Estate Taxes and Operating Costs for each day during which such failure or interruption exists.

7. **OBLIGATIONS OF TENANT – Tenant agrees that it shall:**

7.1 **Construction.** Be responsible for the design, permit and construction of Leased Premises. The design shall be approved by the Landlord, which approval shall not be unreasonably withheld or delayed.

7.2 **Utilities.** Tenant shall pay for its actual use of all utilities furnished to the Leased Premises, including, without limitation, water, electricity, gas, telephone, air conditioning, and cable. In any portion of the Leased Premises that is separately metered and/or for which the Tenant is directly and separately billed for the utilities, Tenant shall directly pay for all utilities and purchase the electrical energy required by Tenant for the operation of the Leased Premises, including, without limitation, any lighting fixtures, equipment, appliances, and supplemental A/C equipment in the Leased Premises, directly from the applicable public utility company serving the Building. If not paid by Tenant when due to that utility, then it shall be a material default by Tenant under this Lease and all amounts due shall be Additional Rent. At no time shall Tenant’s use of electrical energy in the Leased Premises exceed the capacity of any of the electrical conductors and equipment in or otherwise serving said Leased Premises; provided, however, Landlord shall provide such electrical conductors and equipment to supply the Leased Premises with sufficient electrical capacity to support Tenant’s intended uses of the Leased Premises set forth in Section 2, which shall not be less than 200 amps. In any portion of the Leased Premises that is not separately metered and/or if any utility item is not billed separately and directly to Tenant, the Tenant shall reimburse the Landlord for the cost of said utility, as may be adjusted from time-to-time in Landlord’s reasonable discretion, in equal monthly installments for said utility, including, without limitation, the electrical energy required by Tenant for operation of the lighting fixtures, equipment, appliances, and supplemental A/C equipment in the Leased Premises directly from the public utility company serving the Building. Such reimbursement shall be deemed to be Additional Rent for the purposes of this Sublease. Landlord shall not be liable in any way to Tenant for any failure or defect in the supply or character of electrical energy furnished to said Leased Premises by reason of any requirement, act or omission of said public utility company.

7.3 **Ad Valorem Taxes.** Pay all ad valorem and similar taxes or assessments levied upon or applicable to any of Tenant’s trade fixtures or any other equipment, fixtures, furniture and other property situated in the Leased Premises and all license and other fees or charges imposed on the business conducted by Tenant on the Leased Premises. Upon request by Landlord, Tenant will furnish Landlord annually with official tax receipts and other
official receipts showing payment of such taxes, assessments, fees and charges. If Landlord shall be required to pay a higher ad valorem tax as a result of Tenant’s leasehold improvements, then Tenant shall pay to Landlord, upon demand, the amount of such increase in ad valorem taxes.

7.4 **Damages.** Keep the Leased Premises in good condition and in an orderly, clean and sanitary condition as required by the governmental laws and ordinance applicable thereto, and shall keep the Leased Premises in as good a condition as existing as of the Commencement Date, with the exception of any (i) reasonable wear and tear, (ii) damage caused by fire or other casualty, or as a consequence of a taking by eminent domain, (iii) damage caused by the negligence or willful misconduct of Landlord or Landlord’s employees, officers, agents, contractors, consultants, or invitees, (iv) those repairs for which Landlord is responsible under the terms of this Sublease, or (v) the construction and improvements permitted under this Sublease. Except to the extent that such damage is waived in accordance with Section 11.5, Tenant agrees to reimburse Landlord for any expenses incurred as a result of property damage caused either by the negligence or willful misconduct of Tenant, its agents, servants, and employees and invitees. Notwithstanding anything to the contrary contained in this Sublease, except with respect to any items or space improvements installed or made by Tenant during the Term, the parties acknowledge and agree that in no event shall Tenant be responsible for the performance or payment of any repairs, maintenance, replacements, or any other items with respect to the Leased Premises that would be considered a capital expenditure according to generally accepted accounting principles, including, without limitation, any capital repairs or replacements of (a) the roof or any other structural components of the Leased Premises or the Building, (b) any mechanical, electrical, or utility systems and equipment serving the Leased Premises or the Building, except for any supplemental systems or equipment installed by Tenant that exclusively serves only the Leased Premises, or (c) any parking areas serving the Leased Premises or the Building, all of which shall remain the sole responsibility of Landlord.

7.5 **Leased Premises Rules.** Observe the reasonable rules and regulations as from time to time may be put in effect and amended by Landlord for the general safety, comfort and convenience of Landlord and the other occupants and tenants of the Building; provided that Tenant is made aware of and provided in advance a written copy of the rules and regulations and any amendments thereto. In no event shall Landlord enact changes to the rules and regulations that adversely affect Tenant’s quiet enjoyment of the Leased Premises, materially diminish Tenant’s rights under this Sublease, or that impose greater burdens on Tenant than other tenants of the Property.

7.6 **Landlord Access.** Allow Landlord access to the Leased Premises at all reasonable times upon at least one (1) business day prior notice and, if requested by Tenant, accompanied by an escort supplied by Tenant, without charge or diminution of rent, to enable Landlord to examine the Leased Premises and to make repairs, additions and alterations as Landlord may deem advisable. In accessing the Leased Premises, Landlord shall cause as little interference as possible with Tenant’s use of the Leased Premises. In no event may Landlord make additions or alterations which reduce the usable area of the Leased Premises without Tenant consent. In the case of emergency, as reasonably determined by Landlord or public service personnel, Landlord shall have immediate access to the Leased Premises without any prior notice to Tenant.

7.7 **Tenant Property.** Upon the termination of this Sublease in any manner whatsoever, remove Tenant’s goods and effects and those of any other person claiming under Tenant, and quit and deliver up the Leased Premises to Landlord peaceably and quietly in as good order and broom-clean condition as the same are now in or hereafter may be put in by Landlord or Tenant, with the exception of any (i) reasonable wear and tear, (ii) damage caused by fire or other casualty, or as a consequence of a taking by eminent domain, (iii) damage caused by the negligence or willful misconduct of Landlord or Landlord’s employees, officers, agents, contractors, consultants, or invitees, (iv) those repairs for which Landlord is responsible under the terms of this Sublease, or (v) the construction and improvements permitted under this Sublease.

7.8 **Signage.** Not place signs visible on the exterior of the Building or within the Leased Premises except signs approved by the Landlord and local zoning restrictions, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord agrees that Tenant shall be permitted to install a reasonable amount, not to exceed an aggregate of 125 square feet, of Tenant’s signage and branding in or immediately outside the Leased Premises at the expense of the Tenant, including banners, etc., all in locations and appearance as shall be mutually agreed by Landlord and Tenant and provided that Tenant removes same at the end of the Sublease and restores any affected areas to their former condition at sole expense of the Tenant. Exterior signage shall be determined and paid for by Tenant provided that Tenant shall be entitled to exterior signage no less visible than exterior signage provided for any other tenant of the Building.
7.9 **Damages.** Not overload, damage or deface the Leased Premises or do any act which may make void or voidable any insurance on the Leased Premises or the Building or which may render an increased or extra premium payable for insurance. Tenant shall indemnify and release Landlord from and against any and all claims or liability occurring on or about the Leased Premises or the Building and any common areas caused by the negligence of the Tenant or its agents, employees, invitees or contractors subject to the limitations contained herein.

7.10 **Alterations.** Not make any alteration, improvements or additions to the Leased Premises without the prior written approval of the Landlord, which shall not be unreasonably withheld, conditioned, or delayed. All alterations, additions or improvements which may be constructed or installed by either of the parties hereto upon the Leased Premises, except movable office furnishings, shall be the property of the Landlord upon the expiration or termination of this Sublease, unless otherwise agreed to by the parties in writing prior to construction and/or installation such alterations, additions or improvements, and shall remain upon and be surrendered with the Leased Premises, as a part thereof, at the expiration or termination of this Sublease or any extension thereof. The above-referenced written approval shall also include a determination as to the disposition of such alteration, improvement or addition at the termination of this Sublease.

7.11 **Liens.** Keep the Leased Premises and the Property in which the Leased Premises are situated free from any liens arising out of any work performed, materials furnished or obligation incurred by Tenant.

7.12 **Conduct.** Use the Leased Premises only for the purposes set forth in Section 2 hereof. Tenant further agrees not to commit or permit any act to be performed on the Leased Premises or any omission to occur which shall be in violation of any statute, regulation or ordinance of any governmental body; provided, however, the foregoing shall not apply with respect to any obligations for which Landlord is responsible under this Sublease, or any acts or omissions of Landlord or Landlord’s employees, property manager, contractors, consultants, or agents. The Tenant shall not unreasonably disturb other occupants of the Building by making any undue or unseemly noise or otherwise (in the context of a strength training and physical therapy center) and shall not do or permit to be done in or about the Leased Premises anything which could create potential harm or loss. The Tenant shall keep and maintain the Leased Premises, including all bathrooms and utilities exclusively serving the Leased Premises in a clean, safe and orderly condition, subject to the terms, conditions, and limitations set forth in Section 7.4.

8. **HAZARDOUS WASTE.** Landlord and Tenant shall at all times be in full compliance with all Federal, State and Local laws, statutes and regulations (hereinafter “Laws”) concerning the generation, storage, transportation, treatment and disposal of Hazardous Wastes or Infectious Wastes (as these terms are customarily understood) as it relates to the Building and Leased Premises. In no event shall any Hazardous Wastes or Infectious Waste be stored, handled or disposed of in the Building or on the Leased Premises other than in strict compliance with all appropriate Laws. If any transportation, storage, use or disposal of Hazardous Wastes or Infectious Wastes in or upon the Leased Premises during the Term of this Sublease result in contamination or loss or damage to person(s) or property, then the party responsible shall indemnify, defend and hold the other party harmless from and against any claims, suits, causes of action, costs and fees, including attorney’s fees, arising from or connected with any such contamination, loss or damage. Landlord shall indemnify, defend and hold Tenant harmless from and against any claim, damage or expense arising out of Landlord’s use of the Building or Leased Premises prior to the Commencement Date hereof.

9. **DESTRUCTION OR TAKING OF LEASED PREMISES.**

9.1 **Damage or Destruction.**

(a) In the event that the Leased Premises shall become untenantable, inaccessible, or unfit for occupancy, in whole or in part, by the total or partial destruction of the Leased Premises, the Building, or the Property by fire or other casualty, Landlord or Tenant may terminate this Sublease by written notice to the other.

(b) Except as otherwise set forth in this Sublease, in the event that the Leased Premises, the Building, or the Property shall be damaged or destroyed by fire or other casualty and this Sublease has not been terminated pursuant to Section 9.1(a), then Landlord shall proceed to repair such damage or destruction so as to restore the Leased Premises, the Building, and/or the Property to a condition no less than substantially similar to the condition existing immediately prior to such fire or other casualty, subject to any applicable Laws, including, without limitation, any applicable zoning laws and building codes. To the extent any insurance proceeds from Tenant’s insurance as required hereunder, are in the possession of Landlord, same may be made available to Tenant for restoration of Tenant’s improvements,**
alterations, renovations, equipment, fixtures, and furnishings at the Leased Premises by Tenant in conjunction with Landlord’s restoration of the Leased Premises, the Building, and the Property in accordance with this Section 9(b). Notwithstanding the foregoing, the parties expressly acknowledge and agree that Landlord’s restoration obligation shall be subject to, and contingent upon, the terms and conditions of any mortgage, Ground Lease, or other similar financing arrangement affecting the Building or the Property, and shall be limited to the net amount of insurance proceeds available to Landlord. If (i) Landlord shall be restricted from restoring the Leased Premises, the Building, and/or the Property due to the terms and conditions of any mortgage, Ground Lease, or other similar financing arrangement affecting the Building or the Property, including, without limitation, being required to transfer any insurance proceeds to the mortgagee, ground lessor, or other lender, or (ii) the net amount of insurance proceeds available to Landlord shall be insufficient to cover the total costs of restoring the Leased Premises, the Building, and/or the Property, then Landlord may elect to terminate this Sublease by providing written notice to Tenant within ninety (90) days after the occurrence of such damage or destruction.

(c) In the event that Landlord fails to restore the Leased Premises, or any portion of the Building or Property rendering the Leased Premises unsuitable for Tenant’s intended use, in accordance with Section 9.1(b) within two hundred ten (210) days after the occurrence of any such fire or other casualty, then Tenant’s sole remedy shall be the right to terminate this Sublease by providing Landlord with written notice at least thirty (30) days prior to the intended termination date; provided, however, such termination shall not be effective if Landlord completes the restoration of the Leased Premises, or such portion of the Building or Property rendering the Leased Premises unsuitable for Tenant’s intended use, prior to the expiration of such thirty (30)-day period.

9.2 Eminent Domain.

(a) If at any time during the Term, all or any portion of the Building or the Property shall be taken by condemnation or eminent domain, then this Sublease shall automatically terminate as to the portion of the Building or the Property so taken as of the date of such taking, but shall remain in full force and effect as to the remainder of the Building or the Property unless Landlord elects to terminate this Sublease (even if Landlord’s entire interest in the Building or the Property may have been divested) by providing written notice to Tenant within ninety (90) days after the occurrence of such taking.

(b) If at any time during the Term, all or any portion of the Leased Premises shall be taken by condemnation or eminent domain, then this Sublease shall automatically terminate as to the portion of the Leased Premises so taken as of the date of such taking, but shall remain in full force and effect as to the remainder of the Leased Premises. Notwithstanding the foregoing, if a taking by condemnation or eminent domain of a portion of the Leased Premises, the Building, or the Property renders the Leased Premises, or remainder of the Leased Premises, unsuitable for Tenant’s intended use, as determined in the reasonable judgment of Tenant, then either party may elect to terminate this Sublease by providing the other party with written notice thereof within ninety (90) days after the occurrence of taking by condemnation or eminent domain.

(c) Landlord reserves for itself any awards or damages created by reason of any taking by condemnation or eminent domain, and Tenant hereby waives, and assigns to Landlord, any interest it may have in such awards or damages. Notwithstanding the foregoing, Tenant may claim dislocation damages and make a claim in any taking or condemnation proceedings for the value of any Tenant’s improvements, alterations, renovations, equipment, fixtures, and furnishings installed or located at the Leased Premises.

(d) In the event that this Sublease has not been terminated pursuant to Section 9.2(a) or Section 9.2(b), Landlord shall proceed to restore the remainder of the Leased Premises, the Building, or the Property to a condition no less than substantially similar to the condition existing immediately prior to such taking by condemnation or eminent domain, subject to any applicable Laws, including, without limitation, any applicable zoning laws and building codes.

(e) In the event that Landlord fails to restore the Leased Premises, or any portion of the Building or Property rendering the Leased Premises unsuitable for Tenant’s intended use, in accordance with Section 9.2(d) within two hundred ten (210) days after the occurrence of any such taking by condemnation or eminent domain, then Tenant’s sole remedy shall be the right to terminate this Sublease by providing Landlord
with written notice at least thirty (30) days prior to the intended termination date; provided, however, such termination shall not be effective if Landlord completes the restoration of the Leased Premises, or such portion of the Building or Property rendering the Leased Premises unsuitable for Tenant’s intended use, prior to the expiration of such thirty (30)-day period.

9.3 **Rent Abatement.** In the event that all or any portion of the Leased Premises, the Building, or the Property is damaged or destroyed by fire or other casualty, or taken by eminent domain or condemnation, so as to either deprive Tenant of possession of the Leased Premises, or render the Leased Premises or any portion thereof unsuitable for Tenant’s intended use, as determined in the reasonable judgment of Tenant, then the amount of Rent payable by Tenant under this Sublease shall be fairly and equitably reduced or abated in proportion to the amount of the Leased Premises that has been either rendered unsuitable for Tenant’s intended use or Tenant’s possession thereof has been deprived. Such abatement or reduction shall commence upon the date of such damage, destruction, condemnation, or taking by eminent domain, and shall continue thereafter until either this Sublease is terminated, or the Leased Premises, and/or any portion of the Building or Property rendering the Leased Premises unsuitable for Tenant’s intended use, have been fully restored in accordance with this Sublease.

10. **INDEMNIFICATION.** Except as otherwise expressly set forth in this Sublease, to the extent permitted by applicable Laws, Tenant shall indemnify Landlord (and Landlord’s officers, directors, employees, and representatives), and hold Landlord (and Landlord’s officers, directors, employees, and representatives) harmless from and against all claims, actions, damages, judgments, fines, liabilities, and expenses (including attorneys’ and other professional fees) that may be imposed upon or incurred or paid by or asserted against Landlord, as a result of any injury, death or property damage occurring in, on or about the Leased Premises or elsewhere on the Property, in either case to the extent arising from Tenant’s negligence, or the negligence of Tenant’s employees, agents, contractors and invitees.

Except as otherwise expressly set forth in this Sublease, to the extent permitted by applicable Laws, Landlord shall indemnify Tenant (and Tenant’s officers, directors, employees, and representatives) harmless from and against all claims, actions, damages, judgments, fines, liabilities, and expenses (including attorney’s and other professional fees) that may be imposed upon or incurred or paid by or asserted against Tenant as a result of any injury, death or property damage occurring in, on or about the Property or Leased Premises due to any cause (except to the extent of the negligence of Tenant, its employees, agents, contractors and invitees), including without limitation arising from any litigation, arbitration, governmental inquiry or other proceeding commenced by any third party alleging or arising from (i) operation of the Building, the entrances, exits and lobbies of the Building and the sidewalks, streets, approaches and parking lots adjoining the Building; (ii) the negligence or willful misconduct of Landlord or Landlord’s employees, agents, contractors, consultants, or representatives; (iii) Landlord’s breach of its obligations or covenants under this Sublease; or (iv) any accident, damage, or injury to any person or property occurring at the Property to the extent caused by any conditions or aspects of the Leased Premises or the Property for which Landlord is responsible.

11. **INSURANCE.**

11.1 **Tenant Liability Insurance.** Tenant shall at all times during the Term keep in force comprehensive general liability insurance, insuring against all liability and claims thereof arising out of injuries, deaths and/or property damage occurring in, on or from the Leased Premises. Said insurance shall afford protection for personal injury, death and property damage in a single limit of not less than $1,000,000.00 for any one claim. Certificates of insurance shall be delivered to Landlord evidencing such coverage and allowing for a 30-day notice (if available per the policy) to Landlord of cancellation of coverage. Landlord shall be named as an additional insured under the Tenants comprehensive general liability insurance policy. Notwithstanding any provision to the contrary, Tenant shall have the right to provide commercial general liability insurance through an offshore captive insurance company, provided such captive insurance is funded at least in accordance with the recommendation of an independent nationally recognized insurance actuarial firm.

11.2 **Tenant Property Insurance.** Tenant shall, during the Term of this Sublease, obtain and maintain in full force and effect at its sole cost and expense a policy or policies of insurance insuring all of its personal property located within the Leased Premises from time to time, as well as all Tenant improvements made thereto by Tenant, against loss or damage by fire, explosion or other such hazards and contingencies for the full replacement value thereof. Tenant shall be permitted to carry the insurance required in this Sublease under a blanket policy which also covers other locations of Tenant, provided that the coverage afforded by reason of the use of such blanket policy shall not be reduced or diminished from the amount set forth in this section.
Tenant shall furnish evidence satisfactory to Landlord at the time this Sublease is executed and thereafter from time to time upon request by Landlord that such coverage is in full force and effect.

11.3 Insurance Required by Ground Lease. Tenant shall keep and maintain all insurance as may be required under Sections 6.3, 6.4, 6.5 and 6.6 of the Ground Lease, which insurance provisions are incorporated by reference herein. Said policies shall name the Landlord, the Town of Wellesley and any mortgagee of which Tenant has notice as additional insureds. Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that Tenant’s commercial general liability insurance and umbrella liability insurance is written on a per claim basis, but the terms of Section 6.3 and Section 6.6 of the Ground Lease require these policies to be written on a per occurrence basis, and Tenant’s commercial general liability insurance does not have an aggregate limit per location endorsement required by Section 6.3 of the Ground Lease. Landlord and Tenant further acknowledge and agree that Tenant may satisfy its obligation under this Section 11.3 with respect to the insurance requirement set forth in Section 6.3 and Section 6.6 of the Ground Lease with insurance policies that are written on a per claim basis if (i) such policies otherwise satisfy the requirements of Section 6.3 and Section 6.6 of the Ground Lease, and (ii) Tenant maintains such policies, or similar replacement policies, for a period of three (3) years following the expiration or termination of this Sublease, and Tenant’s commercial general liability insurance shall not be required to have an aggregate limit per location endorsement contemplated by Section 6.3 of the Ground Lease. Landlord agrees to obtain Ground Landlord’s consent to the terms set forth in this Section 11.3.

11.4 Landlord Insurance. Landlord currently has in place, and during the entire Term shall continue to have in place all insurance coverages as required by the Ground Lease.

11.5 Waiver of Subrogation.

(a) Landlord and Tenant mutually agree that any property damage insurance carried by either party shall provide that such insurance company waives any right of subrogation against the other party.

(b) Notwithstanding anything to the contrary contained in this Sublease, Tenant hereby releases Landlord from any and all claims that Tenant may have against Landlord with respect to any property damage or loss suffered by Tenant (even if such damage or loss is caused by the fault or negligence of Landlord) that is covered by any insurance maintained by Tenant, or required to be maintained by Tenant under this Sublease; provided, however, such release is limited to the extent of the insurance proceeds paid with respect to such property damage or loss, or which would have been paid if Tenant had duly maintained the insurance coverage required under this Sublease.

(c) Notwithstanding anything to the contrary contained in this Sublease, Landlord hereby releases Tenant from any and all claims that Landlord may have against Tenant with respect to any property damage or loss suffered by Landlord (even if such damage or loss is caused by the fault or negligence of Tenant) that is covered by any insurance maintained by Landlord, or required to be maintained by Landlord under this Sublease; provided, however, such release is limited to the extent of the insurance proceeds paid with respect to such property damage or loss, or which would have been paid if Landlord had duly maintained the insurance coverage required under this Sublease.

12. DEFAULT.

12.1 Landlord’s Default. In the event Landlord fails to (i) materially comply with any federal, state or local law, or (ii) observe or perform any term, condition, or covenant to be kept, observed or performed by Landlord under this Sublease (including, without limitation, any default by Landlord in the performance or observance of Landlord’s obligations as tenant under the Ground Lease), and such failure, as to the foregoing items (i) and (ii) continues for thirty (30) days after written notice from Tenant (except that if the nature of Landlord’s default is such that more than thirty (30) days are reasonably required for its cure, then Landlord shall not be deemed to be in default if Landlord commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion), Tenant shall have the option (a) to immediately terminate this Sublease by giving notice to Landlord, whereupon the obligations of the parties shall cease, or (b) to pursue any other legal or equitable relief available to Tenant.

12.2 Tenant’s Default. Upon an event of default on the part of Tenant and following Tenant’s failure to adequately remedy such default within the time periods set forth below, Landlord at its option and upon twenty (20) days’ written notice to Tenant, and without limiting Landlord’s other rights and remedies to which it is entitled...
under law and/or equity by reason of an event of default and without relieving Tenant of its obligations under this Sublease, may terminate this Sublease and may re-enter the Leased Premises and remove all persons there from, all as set forth in this Section. An event of default shall occur upon the happening of the any of the following:

(i) **Late Payments.** The failure by Tenant to pay any Rent or other payment required to be made by Tenant hereunder, as and when due, and such failure shall continue for a period of ten (10) days after receipt of written notice thereof by Tenant from Landlord (except that in the case of any nonpayment, no such late notice shall be required if a late notice has been sent two (2) or more times in any 12-month period), or

(ii) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Sublease required to be performed by Tenant, other than Tenant’s payment obligations (which are addressed in Section 12.2(i) of this Sublease), and such failure shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, 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 commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.3 **Landlord’s Right to Cure.** If Tenant shall default in the performance of any covenant on Tenant's part to be performed as in this Sublease contained, which default continues beyond any applicable grace or notice and cure period, Landlord may immediately, or at any time thereafter while such default continues, without notice, perform the same for the account of Tenant. If Landlord at any time is compelled to pay or elects to pay any sum of money, or do any act which will require the payment of any sum of money, by reason of the failure of Tenant to comply with any provision hereof, which default continues beyond any applicable grace or notice and cure period, Tenant shall, within sixty (60) days of receiving Landlord’s written demand, pay to Landlord by way of reimbursement the sum or sums so paid by Landlord. Without limiting the generality of the foregoing, in the event that any Rent is in arrears by more than fifteen (15) days after written notice thereof by Landlord to Tenant, Tenant shall pay, as Additional Rent, a delinquency charge equal to one percent (1%) of the arrearage for each calendar month (or fraction thereof) during which it remains unpaid; provided, however, such delinquency charge shall not apply to the first instance of any such late payment of Rent in each calendar year, unless such Rent is in arrears by more than twenty-five (25) days after written notice thereof by Landlord to Tenant. Tenant shall pay to Landlord all reasonable out-of-pocket costs and expenses, including reasonable attorney’s fees, of Landlord in enforcing the terms of this Sublease.

12.4 **Tenant’s Right to Cure.** In the event that either (i) Landlord shall be in default in the performance or observance of any of its obligations, covenants, or agreements under this Sublease beyond any applicable cure period, or (ii) in the case of an emergency arising due to Landlord’s failure to observe or perform any of its obligations, covenants, or agreements under this Sublease, then Tenant may, but shall not be obligated to, cure any such default or failure on behalf of Landlord. All reasonable, out-of-pocket costs and expenses incurred by Tenant in curing any such default, including reasonable out-of-pocket attorneys’ fees actually incurred by Tenant, shall be paid by Landlord to Tenant within sixty (60) days of Landlord’s receipt of written demand from Tenant. Notwithstanding anything to the contrary contained in this Sublease, if Landlord fails to make any such payment to Tenant within such sixty (60)-day period, then Tenant shall have the right to offset such costs and expenses against the next installment or installments, as applicable, of any Rent payable by Tenant under this Sublease.

12.5 **Damages - Termination.** Upon the termination of this Sublease under the provisions of this Section 12, Tenant shall pay to Landlord any accrued and unpaid Term Rent and other charges payable under this Sublease by Tenant to Landlord up to the time of such termination, shall continue to be liable for any preceding breach of covenant, and in addition, shall pay to Landlord as damages, at the election of Landlord, either:

(a) liquidated damages in the amount by which, at the time of the termination of this Sublease (or at any time thereafter if Landlord shall have initially elected damages under Section 12.5(b), below), (i) the present value of the aggregate of the annual Rent payable by Tenant hereunder projected over the period commencing with such time and ending on the then-current Termination Date, discounted at a rate of eight percent (8%) per year, exceeds (ii) the present value of the then-fair market rental value of the Leased Premises for such period, discounted at a rate of eight percent (8%) per year, or,
amounts equal to the annual Rent which would have been payable by Tenant had this Sublease not been so terminated, payable upon the due dates therefor specified in this Sublease following such termination and until the then-current Termination Date, provided, however, if Landlord shall re-let the Leased Premises during such period, Landlord shall credit Tenant with the net rents received by Landlord from such re-letting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such re-letting the expenses incurred or paid by Landlord terminating this Sublease, as well as the expenses of re-letting, including altering and preparing the Leased Premises for new tenants, brokers' commissions, and all other similar and dissimilar expenses properly chargeable against the Leased Premises and the rental therefrom, it being understood that any such re-letting may be for a period equal to or shorter or longer than the then-remaining term of this Sublease; and provided, further, that (i) in no event shall Tenant be entitled to receive any excess of such net rents over the sums payable by Tenant to Landlord hereunder, and (ii) in no event shall Tenant be entitled in any suit for the collection of damages pursuant to this Section 12.5(b) to a credit in respect of any net rents from a re-letting except to the extent that such net rents are actually received by Landlord prior to such determination. For purposes of this clause, the term “re-let” shall include the Landlord’s (or any agent of Landlord) takeover and operation of the Leased Premises at an imputed rental rate equal to the then-fair market rental value of the Leased Premises.

Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Landlord from time to time at its election, and nothing contained herein shall be deemed to require Landlord to postpone suit until the date when the term of this Sublease would have expired if it had not been terminated hereunder.

Nothing herein contained shall be construed as limiting or precluding the recovery by Landlord against Tenant of any sums or damages to which, in addition to the damages particularly provided above, Landlord may lawfully be entitled by reason of any default hereunder on the part of Tenant. Landlord agrees to act in good faith to mitigate its damages by using commercially reasonable efforts to re-let all or any portion of the Leased Premises upon such terms and conditions as Landlord may reasonably determine.

Upon Tenant’s payment of the liquidated damages and any accrued and unpaid Rent in accordance with Section 12.5(a), Tenant shall be fully and completely released from any remaining liabilities or obligations in connection with this Sublease.

12.6 Remedies Not Exclusive. The specified remedies to which a party may resort hereunder are cumulative and are not intended to be exclusive of any remedies or means of redress to which such party may at any time be lawfully entitled, and a party may invoke any remedy (including the remedy of specific performance) allowed at law or in equity as if specific remedies were not herein provided for.

13. NOTICES. All bills, statements, notices or communications which Landlord may desire or is required to give to Tenant shall be deemed sufficiently given or rendered if in writing and either delivered to Tenant personally or sent by registered or certified mail or nationally recognized overnight mail carrier addressed to Tenant at Tenant address noted herein, and the time of rendition thereof or the giving of such notice or communication shall be deemed to be the time when the same is delivered to Tenant or three business days from the date deposited in the mail as herein provided. Any notice by Tenant to Landlord must be delivered personally or sent by registered or certified mail or nationally recognized overnight mail carrier addressed to Landlord at Landlord’s address noted herein, or in case of subsequent change upon written notice by either party given, to the latest address furnished. The time of rendition of such notice by Tenant or the giving of such notice or communication shall be deemed to the time when the same is delivered to Landlord or three business days from the date deposited in the mail as herein provided. Notices for purposes of this Sublease, shall be given as follows:

If to Landlord:

WELLESLEY SPORTS CENTER LLC
c/o ESG Associates, Inc.
41 North Road, Suite 203
Bedford, MA 01730
Attn: Brian DeVellis
brian@devellis.net

With a copy to:
14. ASSIGNMENT AND SUBLEASE. Tenant, with Landlord’s written consent (such consent not to be unreasonably withheld, conditioned or delayed, but subject to the consent of the Ground Lease), may assign or sublet its interest in this Sublease or all or any portion of the Leased Premises. Tenant shall also have the right, without Landlord’s consent, to enter into an assignment or sublease with: (i) a direct or indirect parent corporation or entity; (ii) any direct or indirect subsidiary corporation or entity of Tenant or Tenant’s direct or indirect parent corporation or entity; (iii) an affiliated entity in which Tenant or its subsidiaries or parent corporation or entity directly or indirectly holds a majority of the outstanding shares of ownership interest, or (iv) an entity into or with which Tenant is merged or consolidated, or to which all or substantially all of Tenant’s assets are transferred. Tenant shall also have the right, without Landlord’s consent, to enter into a sublease or license agreement with a third-party solely for the purpose of providing yoga services at the Leased Premises as long as such sublease or license agreement requires such third-party to perform reasonable screening of its employees and staff at the Leased Premises, including without limitation, completing a standard Criminal Offender Record Information check for each employee.

15. GENERAL. This Sublease does not create the relationship of principal and agent or of partnership, joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of lessor and lessee. No waiver of any default of a party hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repealed, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.

Landlord’s right to assign this Sublease or sell or convey the Building and the Property upon which the Building and other improvements are located shall remain unqualified. Upon any said assignment, sale or conveyance, and assumption by such assignee, purchaser, or transferee, Landlord shall thereupon be entirely freed of all obligations of the Landlord thereafter arising and shall not be subject to any liability resulting from any act or omission or event occurring after said assignment, sale or conveyance.

This Sublease can only be modified or amended by a written instrument signed by the parties hereto. All provisions hereof shall be binding upon the heirs, successors and assigns of each party hereto.
16. **QUIET ENJOYMENT.** Subject to Tenant's performance of all its obligations under this Sublease, Tenant shall have the peaceful and quiet use of the Leased Premises for the purposes set forth in this Sublease. Further, the Landlord warrants and represents that the Building and Leased Premises are suitable for the safe and healthy occupancy of Tenant, its employees, agents, invitees and visitors.

17. **ATTACHMENTS.** The Exhibit(s) attached to this Sublease are hereby declared to be a part of this Sublease to the same extent in the same manner as if the provisions thereof were actually embodied in this Sublease.

18. **GOVERNING LAW / JURISDICTION.** The laws of the Commonwealth of Massachusetts shall govern the validity, construction, and enforceability of this Sublease, without giving effect to its conflict of laws principles. All suits, actions, claims, and causes of action relating to the construction, validity, performance and enforcement of this Sublease shall be in the courts of the state of Massachusetts.

19. **FORCE MAJEURE.** Neither the Landlord nor the Tenant shall be responsible for any delays or failure to perform its obligations under this Sublease due to acts of God, strikes or other disturbances, war, insurrection, terrorist acts, embargoes, governmental restrictions, acts of governments or governmental authorities, or other causes of any kind beyond the control of such party; provided, however, that the party declaring a Force Majeure Event shall make all reasonable efforts to continue to meet its obligations throughout the duration of the force majeure condition; and provided, further, that the party declaring force majeure shall notify the other party promptly when the force majeure condition begins, the nature of the force majeure condition, and when such condition has terminated. The suspension of any obligations shall only last during the time the force majeure condition continues (and such reasonable time thereafter to allow said party to respond to such condition).

20. **GROUND LEASE.**

   **20.1 Subordination.** The parties acknowledge that this Sublease is subject and subordinate to that certain Ground Lease (“Ground Lease”), dated March 2, 2017, by and between the Town of Wellesley (“Ground Landlord”) and Landlord with respect to the Property, a copy of which is attached to this Sublease as Exhibit B. Landlord warrants and represents that the Ground Landlord has approved this Sublease and Landlord has provided the Ground Landlord with a copy of this Sublease within ten (10) days of execution. With respect to Tenant’s use and occupancy of the Leased Premises and Tenant’s obligations under this Sublease, Tenant shall not take any action or suffer any acts which would cause Landlord to be in violation of said Ground Lease; provided, however, the foregoing shall not be deemed to obligate Tenant to perform any of Landlord’s obligations under the Ground Lease. No amendment of this Sublease or assignment or sublet by Tenant shall be effective without the written consent of the Ground Landlord. Landlord agrees to obtain a subordination, non-disturbance, and attornment agreement reasonably acceptable to Tenant evidencing that Ground Landlord consents to this Sublease, agrees to recognize this Sublease and the rights and obligations of the parties hereto, and further agrees not to disturb the right of Tenant to use and occupy the Leased Premises in accordance with the terms and conditions of this Sublease if Tenant duly performs Tenant’s obligations under this Sublease, including, without limitation, the payment of Rent.

   **20.2 Landlord’s Representations and Warranties.** Landlord hereby represents and warrants to Tenant that, as of the date of this Sublease, (i) the copy of the Ground Lease attached to this Sublease as Exhibit B is true, correct, and complete in all respects, and has not been modified, supplemented, or amended in any way; (ii) the Ground Lease is in full force and effect; (iii) Landlord, as tenant under the Ground Lease, is not in default under the Ground Lease, nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute a default by Landlord under the Ground Lease; and (iv) to the best of Landlord’s knowledge, there is no default by Ground Landlord under the Ground Lease, nor has any event occurred which, with the passage of time or the giving of notice, or both, would constitute a default by Ground Landlord under the Ground Lease.

   **20.3 Landlord’s Compliance with Ground Lease.** Landlord, to the extent of its obligations under the Ground Lease, shall maintain the Ground Lease in full force and effect during the Term, and shall not, voluntarily or involuntarily, by any act or omission, cause the Ground Lease to terminate prior to the scheduled expiration date of the Ground Lease. Landlord shall pay all rent, additional rent, and any other amounts required to be paid by Landlord under the Ground Lease on or before the date due, and shall perform all other duties and obligations required to be performed by Landlord under the Ground Lease. Landlord shall not amend or otherwise modify the Ground Lease in a manner that would materially diminish Tenant’s rights, or materially increase Tenant’s obligations, under this Sublease, without the prior written approval of Tenant. Landlord
shall not take any action, or do or permit to be done anything, which (i) will result in a violation of, or default under, any of the terms, covenants, conditions, or provisions of the Ground Lease, or (ii) will result in any additional cost or other liability to Tenant unless paid for by Landlord, or approved in advance by Tenant in writing unless as otherwise provided for or required by the Ground Lease or this Sublease. Landlord shall use commercially reasonable efforts to cause the Ground Landlord to perform or provide all maintenance, repairs, replacements, restoration or any other services or obligations required of Ground Landlord under the Ground Lease, as applicable. If the Ground Landlord shall default in the performance of any of its obligations under the Ground Lease as it relates to the Subleased Premises, Landlord shall, upon the written request of Tenant, promptly give notice of such fact to the Ground Landlord and use its diligent good faith efforts to enforce its remedies under the Ground Lease to cause the Ground Landlord to comply with its obligations thereunder for the benefit of the Tenant. In the event the Ground Lease is reasonably anticipated to be terminated, revoked, cancelled, or otherwise no longer valid, Landlord shall use commercially reasonable efforts to notify Tenant in advance of such event as soon as reasonably practicable. Upon any event of termination of the Ground Lease prior to the expiration of the Term of this Sublease, Tenant shall have the right to terminate this Sublease immediately upon written notice to Landlord without penalty or additional charge as against Tenant.

21. RIGHTS OF MORTGAGEE.

21.1 Right to Cure. No act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Sublease, or by law, to be relieved of Tenant’s obligations hereunder or to terminate this Sublease, shall result in a release or termination of such obligations or a termination of this Sublease unless (i) Tenant shall have first given written notice of Landlord’s act or failure to act to Mortgagee (as defined in Section 21.5) specifying the act or failure to act on the part of Landlord which could or would give basis to Tenant’s rights; and (ii) Mortgagee, after receipt of such notice, shall have failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this paragraph shall be deemed to impose any obligation on Mortgagee to correct or cure any such condition. “Reasonable time” as used above means and includes a reasonable time to obtain possession of the Leased Premises if Mortgagee elects to do so and a reasonable time to correct or cure the condition if such condition is determined to exist, but in no event shall such reasonable time exceed a total of one hundred twenty days from Mortgagee’s receipt of such notice from Tenant. Notwithstanding the foregoing, nothing in this Section 21.1 shall be deemed to modify, condition, diminish, restrict, delay, terminate, or otherwise apply to (i) Tenant’s termination and/or abatement rights under Section 9.1, Section 9.2, or Section 9.3, (ii) Tenant’s cure rights and offset rights under Section 12.4, or (iii) Tenant’s abatement rights under Section 6.6, and in no event shall Tenant be obligated to provide Mortgagee with notice, obtain Mortgagee’s consent, or allow Mortgagee an opportunity to cure, in order to exercise any such termination and/or abatement rights available to Tenant under Section 9.1, Section 9.2, or Section 9.3, any such cure rights and offset rights under Section 12.4, or any such abatement rights under Section 6.6.

21.2 Prepaid Rent. No Rent shall be paid more than thirty (30) days prior to the due dates thereof and, as to Mortgagee, payments made in violation of this provision shall be a nullity as against Mortgagee and Tenant shall be liable for the amount of such payments to Mortgagee, unless (i) this Sublease expressly requires such a prepayment, (ii) such sums are actually received by Mortgagee, or (iii) such prepayment shall have been expressly approved of by Mortgagee. Notwithstanding the foregoing, Tenant’s payment of Tenant’s Proportionate Share of the Real Estate Taxes and/or Operating Costs in accordance with Section 5 shall not be deemed to be paid more than thirty (30) days prior to the due date thereof if paid in accordance with Section 5.

21.3 Subordination. This Sublease and Tenant’s rights hereunder shall be at all times subject to and subordinate to the lien of any mortgage now or hereafter recorded and affecting the Leased Premises provided that such subordination shall be conditioned upon such Mortgagee’s agreement to the effect that, in the event of any foreclosure of such mortgage, such holder will not disturb its possession under the Sublease. Notwithstanding the foregoing provisions of this Section 21, Tenant agrees, at the request of Landlord or Mortgagee, to execute and deliver promptly any certificate or other instrument which Landlord or Mortgagee may request subordinating the Sublease and all rights of Tenant under the Sublease to the mortgage held by Mortgagee, and to all advances made under such Mortgage, provided that the holder of such mortgage shall execute and deliver to Tenant a nondisturbance agreement to the effect that, in the event of any foreclosure of such Mortgage, such holder will not name Tenant as a party defendant to such foreclosure nor disturb its possession
under the Sublease. No amendment of this Sublease shall have any effect unless the Mortgagee shall have consented thereto in writing, such consent to not be unreasonably withheld.

21.4 Limitations on Liability. Nothing contained in the foregoing Section 21.3 or in any such nondisturbance agreement or nondisturbance provision shall, however, affect the prior rights of the holder of any mortgage with respect to the proceeds of any award in condemnation or of any fire insurance policies affecting the Leased Premises (but not any insurance proceeds available to Tenant with respect to Tenant’s property at the Leased Premises, or any condemnation awards available to Tenant for dislocation damages or with respect to Tenant’s property at the Leased Premises), or impose upon any such holder any liability (i) for the erection or completion of the Leased Premises, or (ii) in the event of damage or destruction to the Leased Premises by fire or other casualty, for any repairs, replacements, rebuilding or restoration except such repairs, replacements, rebuilding or restoration as can reasonably be accomplished from the net proceeds of insurance actually receive by, or made available to, such holder, or (iii) for any default by Landlord under the Sublease occurring prior to any date upon which such holder shall become Tenant's Landlord; provided, however, the foregoing shall not limit Mortgagee’s obligation to correct any conditions that exist as of the date when Mortgagee (or Mortgagee’s successor or assignee) succeeds to Landlord’s interest in the Property that violate such new Landlord’s obligations under this Sublease, or (iv) for any credits, offsets or claims against the rent under the Sublease as a result of any acts or omissions of Landlord committed or omitted prior to such date, or (v) for return of any security deposit or other finds unless the same shall have been received by such holder, and any such agreement or provision may so state.

21.5 Current Mortgage. Landlord represents and warrants that as of the date hereof the only mortgage affecting the Leased Premises and the Building is the mortgage given by Landlord to Northern Bank & Trust Company. The term “Mortgagee” as used herein shall mean any party to whom Landlord hereafter grants a mortgage on the Property. Promptly following the mutual execution of this Sublease, Landlord shall provide Tenant with a reasonably acceptable subordination, non-disturbance, and attornment agreement from such Mortgagee in accordance with Section 21.3.

22. INABILITY TO PERFORM - EXCULPATORY CLAUSE

Except as otherwise expressly provided in this Sublease, this Sublease and the obligations of Tenant to pay Rent hereunder and perform all other covenants, agreements, terms, provisions and conditions hereunder on the part of Tenant to be performed shall in no way be affected, impaired or excused because Landlord is unable to fulfill any of its obligations under this Sublease or is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make or is delayed in making any repairs, replacements, additions, alterations, improvements or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from doing so by reason of strikes or labor troubles or any other similar or dissimilar cause whatsoever beyond Landlord's reasonable control, including but not limited to, governmental preemption in connection with a national emergency or by reason of any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the conditions of supply and demand which have been or are affected by war, hostilities or other similar or dissimilar emergency. In each such instance of inability of Landlord to perform, Landlord shall exercise reasonable diligence to eliminate the cause of such inability to perform.

Tenant shall neither assert nor seek to enforce any claim for breach of this Sublease against any of Landlord's assets other than Landlord's interest in the Property and in the rents, issues and profits thereof, and Tenant agrees to look solely to such interest for the satisfaction of any liability of Landlord under this Sublease, it being specifically agreed that in no event shall Landlord (which term shall include without limitation any of the officers, trustees, directors, partners, beneficiaries, joint venturers, members, stockholders or other principals or representatives, disclosed or undisclosed of Landlord or any managing agent) ever be personally liable for any such liability. This paragraph shall not limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord or to take any other action which shall not involve the personal liability of Landlord to respond in monetary damages from Landlord's assets other than the Landlord's interest in said real estate, as aforesaid. In no event shall Landlord or Tenant ever be liable for consequential damages. In no event shall any of Tenant’s directors, officers, employees, shareholders, members, managers, partners, representatives, or agents, whether disclosed or undisclosed have any personal obligation or liability under this Sublease, and Landlord shall not seek to assert any claim or enforce any of its rights under this Sublease against any such individuals.

23. BROKERAGE. Tenant and Landlord each warrant to the other that it has not engaged or used any real estate broker in connection with this Sublease other than CBRE (“Broker”). Tenant will indemnify and hold Landlord harmless
from and against all costs, liability and expenses without exception (including reasonable attorneys’ fees and costs of mediation, arbitration and litigation) that may arise out of any allegation that a real estate broker other than the Broker is entitled to a commission from Landlord arising from or relating to this Sublease through Tenant or any of its affiliates. Landlord will indemnify and hold Tenant harmless from and against all costs, liability and expenses without exception (including reasonable attorneys’ fees and costs of mediation, arbitration and litigation) that may arise out of any allegation that a real estate broker is entitled to a commission from Tenant arising from this Sublease through Landlord or any of its affiliates.

24. **AUTHORITY TO BIND.** The parties hereto respectively represent and warrant to each other that: (a) each has the requisite power and authority to enter into this Sublease, (b) all necessary and appropriate approvals, authorizations and other steps have been taken to effect the legality of this Sublease, (c) the signatories executing this Sublease on behalf of each of the parties have been duly authorized and empowered to execute this Sublease, and (d) this Sublease Agreement is valid and shall be binding upon and enforceable against each of the parties.

25. **COUNTERPARTS.** This Sublease may be executed in any number of counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, binding on all of the parties. Delivery of an executed counterpart to this Sublease by facsimile or other electronic means (e.g., electronic mail or PDF) shall be effective as delivery of a manually executed counterpart to this Sublease.

*** REMAINDER OF PAGE LEFT INTENTIONALLY BLANK ***
This Sublease is executed under seal as of the date set forth above.

**LANDLORD:**

Wellesley Sports Center, LLC  
ESG Associates, Inc., its Manager

By: ___________________________  
   Brian DeVellis, President

Date: ___________________________

**TENANT:**

Steward Medical Group, Inc.

By: ___________________________  
   , President

Date: ___________________________
EXHIBIT A

LEASED PREMISES

DRAWINGS
EXHIBIT B

GROUND LEASE
CONSENT TO SUBLEASE

This Consent to Sublease ("Agreement") is made as of March _____, 2019 ("Effective Date"), by and among the Town of Wellesley, a Massachusetts municipal corporation ("Landlord"), and Wellesley Sports Center LLC, a Delaware limited liability company ("Sublessor"), and Steward Medical Group, Inc., a Massachusetts non-profit corporation ("Tenant"). Landlord, Sublessor, and Tenant may be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Sublessor, as tenant, and Landlord, as landlord, are parties to that Ground Lease, dated March 2, 2017 ("Lease"), with respect to the property located at 900 Worcester Road, Wellesley, Massachusetts ("Leased Premises"), subject to the terms and conditions set forth in the Lease;

WHEREAS, Tenant desires to sublease the a portion of the Leased Premises from Sublessor, and Sublessor desires to sublease a portion of the Leased Premises to Tenant, consisting of approximately 6,888 square feet ("Subleased Premises"), subject to the terms and conditions set forth in that certain Sublease Agreement, dated March ____, 2019 ("Sublease"), a copy of which is attached to this Agreement as Exhibit A;

WHEREAS, Landlord is willing to consent to Sublessor’s subleasing the Leased Premises to Tenant pursuant to the Sublease, subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The Parties hereby acknowledge and agree that all of the recitals set forth above are true and accurate, and are hereby incorporated by reference.

2. Consent; Subordination. Landlord hereby consents to Sublessor’s subletting of the Leased Premises to Tenant pursuant to the Sublease, subject to the terms and conditions set forth in this Agreement. The Sublease shall be subject and subordinate at all times to the Lease and to all of its provisions, covenants and conditions. Except as otherwise set forth in this Agreement, in case of any conflict between the provisions of the Lease and the provisions of the Sublease, the provisions of the Lease shall prevail unaffected by the Sublease as between Landlord, on the one hand, and Sublessor and Tenant, on the other hand. Sublessor hereby agrees that the obligations of Sublessor under the Lease shall not be discharged or otherwise affected by this Agreement or the Sublease, and Sublessor hereby reaffirms its primary liability for the performance of all obligations to be performed by Sublessor as the tenant under the Lease. Nothing contained in this Agreement shall be deemed or serve to release Sublessor as tenant under the Lease from any liability, obligation, or duty which Sublessor may have as tenant under the Lease.
3. **Recognition; Attornment.** Landlord and Tenant hereby agree that if the Lease is terminated for any reason prior to the expiration or earlier termination of the Sublease other than as a result of damage or destruction of the Leased Premises by fire or other casualty, then (a) Landlord shall recognize the Sublease and Tenant’s rights under the Sublease, and (b) Tenant shall recognize and attorn to Landlord as Tenant’s landlord under the Sublease, in both cases, as fully and completely as if the Sublease were a direct lease between Landlord, as landlord, and Tenant, as tenant. Landlord and Tenant each agree, upon request of the other the Party after termination of the Lease, to execute from time to time instruments to evidence and confirm such recognition and attornment.

4. **Insurance.**

   (a) In accordance with the terms and conditions of the Lease, the Sublease requires Tenant to keep and maintain all insurance as may be required under Section 6.3, Section 6.4, Section 6.5 and Section 6.6 of the Lease, as more particularly set forth in the Sublease; provided, however, the Parties acknowledge and agree that Tenant’s commercial general liability insurance and umbrella liability insurance is written on a per claim basis, but the terms of Section 6.3 and Section 6.6 of the Lease require these policies to be written on a per occurrence basis, and Tenant’s commercial general liability insurance does not have an aggregate limit per location endorsement required by Section 6.3 of the Lease.

   (b) Notwithstanding anything to the contrary contained in the Lease, the Sublease, or this Agreement, the Parties further acknowledge and agree that (1) Tenant may satisfy its obligation under the Sublease with respect to the insurance requirement set forth in Section 6.3 and Section 6.6 of the Lease with insurance policies that are written on a per claim basis if (i) such policies otherwise satisfy the requirements of Section 6.3 and Section 6.6 of the Lease, and (ii) Tenant maintains such policies, or similar replacement policies, for a period of three (3) years following the expiration or termination of the Sublease, and (2) Tenant’s commercial general liability insurance shall not be required to have an aggregate limit per location endorsement contemplated by Section 6.3 of the Lease.

5. **Assignment and Sublease.** Notwithstanding anything to the contrary contained in the Lease, the Sublease, or this Agreement, the Parties acknowledge and agree that Tenant shall have the right, without being required to obtain the consent of Landlord or Sublessor, to (a) enter into an assignment or sublease with: (i) a direct or indirect parent corporation or entity; (ii) any direct or indirect subsidiary corporation or entity of Tenant or Tenant’s direct or indirect parent corporation or entity; (iii) an affiliated entity in which Tenant or its subsidiaries or parent corporation or entity directly or indirectly holds a majority of the outstanding shares of ownership interest, or (iv) an entity into or with which Tenant is merged or consolidated, or to which all or substantially all of Tenant’s assets are transferred, and (b) enter into a sublease or license agreement with a third-party solely for the purpose of providing yoga services at the Subleased Premises as long as such sublease or license agreement requires such third-party to perform reasonable screening of its employees and staff at the Subleased Premises, including without limitation, completing a standard Criminal Offender Record Information check for each employee.
6. **Mutual Representations and Warranties.** The Parties respectively represent and warrant to each other that: (a) each has the requisite power and authority to enter into this Agreement, (b) all necessary and appropriate approvals, authorizations and other steps have been taken to effect the legality of this Agreement, (c) the signatories executing this Agreement on behalf of each of the Parties have been duly authorized and empowered to execute this Agreement, and (d) this Agreement is valid and shall be binding upon and enforceable against each of the Parties.

7. **Binding Effect.** This Agreement is being executed by the Parties hereto and shall inure to the benefit of, and be binding upon, the Parties and their respective successors and assigns, and shall be effective as of the Effective Date.

8. **Counterparts.** This Agreement may be executed in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, binding on all of the Parties. Delivery of an executed counterpart to this Agreement by facsimile or other electronic means (e.g., electronic mail or PDF) shall be effective as delivery of a manually executed counterpart to this Agreement.

[Signatures to appear on following page]

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, Landlord, Sublessor, and Tenant have executed this Agreement as of the Effective Date.

LANDLORD

Town of Wellesley

By its Board of Selectmen

By: _______________________________
   Name: __________________________
   Title: __________________________

SUBLESSOR

Wellesley Sports Center LLC

By: _______________________________
   Name: __________________________
   Title: __________________________

TENANT

Steward Medical Group, Inc.

By: _______________________________
   Name: __________________________
   Title: __________________________
Lease Code:

**Exhibit A**

Sublease

[See following pages]
5. **New Business and Correspondence**