

COMMERCIAL LEASE

**292 MIRACLE MILE
CORAL GABLES, FLORIDA**

between

CITY OF CORAL GABLES

and

STARBUCKS CORPORATION

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COMMERCIAL LEASE

Multi-Tenant Building

THIS COMMERCIAL LEASE ("**Lease**"), is made and entered into as of _____, 2016 ("**Effective Date**"), by and between **City of Coral Gables**, a Florida municipal corporation ("**Landlord**"), and **Starbucks Corporation**, a Washington corporation ("**Tenant**").

1. PREMISES.

1.1. **PREMISES.** Landlord is the owner of a building located at the southeast corner of Miracle Mile and Salzedo Street commonly known as "292 Miracle Mile" ("**Building**") situated upon the real property legally described in **Exhibit A** attached hereto and by this reference incorporated herein ("**Property**"). In consideration of the mutual promises, covenants, and conditions herein set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, for the Term (defined below) of this Lease, those certain endcap retail premises in the Building with an address of 292 Miracle Mile, Coral Gables, Florida, containing approximately 2,250 square feet of Gross Leasable Area (as defined below) as shown by cross-hatching on **Exhibit B** attached hereto and by this reference incorporated herein ("**Premises**"). For purposes of this Lease, the "Gross Leasable Area" of the Premises means the interior space of the Premises, which shall be measured in accordance with Section 12.2 but shall not include any outdoor seating area, common areas or any other areas exterior to the Premises.

2. TERM.

2.1. **TERM.** The "**Initial Term**" shall mean ten (10) Lease Years, commencing on the Rent Commencement Date (as defined in Section 3.1 below) and ending on the last day of the tenth (10th) Lease Year, unless sooner terminated or extended as provided herein. For purposes of this Lease, the word "**Term**" shall mean the Initial Term and any Extension Term (as defined in Section 2.4.1 below, and the "**Expiration Date**" shall mean the last day of the last Lease Year of the Term. Promptly after the Rent Commencement Date, Landlord and Tenant shall execute a certificate in the form of **Exhibit F** stating the actual Commencement Date (as defined in Section 2.2. below), the Rent Commencement Date, and the Expiration Date.

2.2. **DELIVERY.** The "**Commencement Date**" shall mean the date on which all of the following conditions have been satisfied or waived by Tenant in writing:

- (a) Landlord has completed Landlord's Work (as defined in Section 4.2);
- (b) Landlord has delivered actual possession and control of the Premises to Tenant;
- (c) Landlord and Tenant have executed and delivered a written notice of delivery and acceptance of the Premises in the form attached hereto as **Exhibit D**;
- (d) Landlord has delivered a fully executed copy of this Lease to Tenant;
- (e) The Premises is free of Hazardous Substances, the presence of which is in violation of applicable law; and
- (f) The Present Tenant has vacated the Premises pursuant to Section 4.5 below.

Landlord shall deliver the Premises to Tenant, in the condition called for in subsections (a) through (f) above on the later of (a) November 1, 2016 and (b) Tenant's satisfaction or waiver in writing of its permit contingency in Article 17 below ("**Scheduled Delivery Date**"). Tenant, in its sole discretion, may elect to accept delivery of the Premises prior to the aforesaid date, but is not required to do so. If Tenant desires to receive possession of the Premises prior to November 1, 2016, Tenant must provide written notice thereof to Landlord at least thirty (30) days prior to the desired early delivery date.

Upon receipt of such written notice of a desired early delivery date from Tenant, Landlord shall use its best efforts to deliver the Premises to Tenant by such desired early date. Tenant's election to accept delivery of the Premises prior to November 1, 2016 (or any other changes to the Scheduled Delivery Date) must be in writing and signed by a duly authorized signatory of Tenant in order to be effective.

2.3. LEASE YEAR. For the purpose of this Lease, subject to the two additional provisions set forth below in this Section 2.3, the term "**Lease Year**" shall mean and refer to that period of twelve (12) full consecutive calendar months beginning with the first full calendar month of the Term and each subsequent period of twelve (12) consecutive calendar months during the Term. If the Term commences on a day other than the first day of a calendar month, then the initial fractional month of the Term plus the next succeeding twelve (12) full calendar months shall constitute the first Lease Year of the Term. If the last day of the first Lease Year falls between September 1 and January 31, then the first Lease Year shall be extended to end on the last day in February and each subsequent Lease Year shall begin on March 1.

2.4. EXTENSION.

2.4.1. Provided that Tenant is open and operating in the Premises and not in default beyond any applicable cure periods at the time of exercise and upon commencement of the applicable term, Tenant shall have the option to extend the Term for four (4) consecutive five (5)-year period(s) (each, "**Extension Term**") upon the same terms and conditions as contained in this Lease. The Base Rent for each Extension Term shall be as set forth in Article 3 below. To exercise an extension option, Tenant shall give Landlord notice ("**Tenant's Extension Notice**") at least ninety (90) days prior to the then-current Expiration Date ("**Extension Deadline**"). Tenant's Extension Notice shall be effective to extend the Term without further documentation except as expressly provided in Section 2.4.2 below.

2.4.2. In the event Tenant exercises its option to extend the Term and there is no fixed Base Rent for the applicable Extension Term set forth in this Lease, then Landlord and Tenant will enter into a written amendment to this Lease setting forth the agreed upon Base Rent that will be applicable during any such Extension Term.

3. RENT.

3.1. BASE RENT. Tenant shall pay to Landlord at Landlord's address provided in Section 25 of this Lease, or to such other person or at such other place as Landlord may designate in writing, rent as follows ("**Base Rent**"):

<u>Lease Years</u>	<u>\$ Per Square Foot Per Year</u>	<u>Monthly Installment</u>	<u>Annual Rent</u>
1-5 ¹	\$45.00	\$8,437.50	\$101,250.00
6-10	\$49.50	\$9,281.25	\$111,375.00
<u>Extension Term(s):</u>			
11-15	\$69.58	\$13,046.25	\$156,555.00
16-20	\$80.00	\$15,000.00	\$180,000.00
21-25	Fair Market Rent		
26-30	Fair Market Rent		

Tenant shall begin to pay Base Rent and all other charges hereunder on the date ("**Rent Commencement Date**") that is the earlier to occur of (a) the date Tenant opens for business in the Premises and (b) one hundred twenty (120) days after the later to occur of (i) the Commencement Date and (ii) the date of Tenant's receipt of all Government Approvals pursuant to Section 17, and shall continue to pay Base Rent in monthly installments on or before the first day of every month thereafter during the Term. Tenant shall have a thirty (30)-day grace period to pay Base Rent, Annual Additional

¹ (Except the first three months per the last paragraph of Section 3.1).

Rent (as defined in Article 12), and any other charges due for the first month for which Base Rent is payable during the Term (or partial month as the case may be) in order to initialize its administrative procedures. During such grace period, no late fees, interest, or penalties shall accrue nor shall Tenant be deemed to be in default. Base Rent, Annual Additional Rent, and any other charges due for any period during the Term less than one calendar month shall be prorated on a daily basis based on a three hundred sixty-five (365)-day year. Notwithstanding the foregoing, Tenant shall not be required to pay Base Rent, Annual Additional Rent, or any other charges hereunder until Tenant receives from Landlord a completed and executed W-9 taxpayer identification form, provided that such rent shall continue to accrue and be due and payable once the W-9 is provided. Except for paying Base Rent, Annual Additional Rent, and the other charges expressly provided elsewhere in this Lease, Tenant has no obligation to pay Landlord any other amounts. Landlord acknowledges and agrees that Tenant, at Tenant's option, shall have the right to pay amounts due under this Lease to Landlord via electronic funds transfer, and that Landlord shall cooperate with Tenant, if necessary, to establish that manner of payment by Tenant.

Notwithstanding the foregoing, Tenant shall not be required to pay Base Rent for the first three (3) months after the Rent Commencement Date. If Tenant defaults and does not cure such default under this Lease, all Base Rent that would have been payable to Landlord during the aforementioned three (3) month abatement period shall immediately become due and payable.

3.2. **EXTENSION TERM RENT.** Base Rent for the third and fourth Extension Terms shall be an amount equal to the then-current Fair Market Rent for the Premises. As used herein, "**Fair Market Rent**" means an amount equal to the then-prevailing rate for tenants taking similar space (without receiving a tenant improvement allowance and without broker representation for either party) in a comparable building located within the Coral Gables, Florida metropolitan area during the previous six (6)-month period, as reasonably determined by Landlord. Tenant may, at any time prior to the then-current Expiration Date, request that Landlord negotiate the amount of such Fair Market Rent. To initiate the negotiation, Tenant shall notify Landlord in writing of Tenant's determination of Fair Market Rent. Landlord shall then notify Tenant in writing that it accepts Tenant's determination of Fair Market Rent or, if it does not, notify Tenant of Landlord's determination of Fair Market Rent. Landlord and Tenant shall negotiate in good faith regarding the determination of Fair Market Rent. In the event Landlord and Tenant are unable to agree upon the Fair Market Rent within one hundred and twenty (120) days before the Extension Deadline, then Fair Market Rent shall be determined by appraisal and, if necessary, arbitration as set forth below. In all instances, Tenant shall have the right to elect to exercise the applicable Extension Term at any time prior to the expiration of the 21-day period immediately following the date of determination of the Fair Market Rent, by written notice given to Landlord.

(a) Either Landlord or Tenant may submit the matter to appraisal by notifying the other party in writing. Not later than ten (10) business days after the date of such notice, Landlord and Tenant shall each (i) appoint an appraiser and (ii) give written notice to the other identifying that party's appraiser and indicating whether that party will submit supplemental written or oral evidence to support its proposal for Fair Market Rent. Any appraiser selected under this subsection shall be an appraiser or licensed real estate broker who has substantial experience in retail leasing in the geographic real estate market where the Premises are situated and who has not been regularly employed or retained as a consultant, appraiser, or agent of either Landlord or Tenant during the immediately preceding twelve (12) months.

(b) Not later than ten (10) business days after both appraisers have been appointed, Landlord and Tenant shall each submit a sealed envelope to each appraiser containing its proposed Fair Market Rent. After each of the appraisers receives a proposed Fair Market Rent determination from both parties, Tenant's appraiser shall provide a copy of each submission to both Tenant and Landlord. If neither party notified the other that supplemental information would be submitted, then each envelope shall contain only a proposed Fair Market Rent determination and no further information. If either notice given under subsection (a) above indicated that supplemental information would be provided, then either party may supplement its submission with written and/or oral presentations to both appraisers. Within twenty-one (21) days after receipt of both parties' proposals, the appraisers shall review the submissions and shall select one proposal as closer to the actual Fair Market Rent for the Premises, which shall

become the Fair Market Rent for the Premises for the applicable Extension Term. The appraisers shall promptly notify the parties of their decision, which shall be final and binding upon Landlord and Tenant.

(c) If the appraisers do not agree as to which party's proposal is closest to the actual Fair Market Rent, then not later than ten (10) business days after the appraisers have notified the parties of this fact, unless both Landlord and Tenant direct otherwise, the appraisers shall jointly select an arbitrator who shall determine which proposal is the closest to the actual Fair Market Rent. The arbitrator must have the same qualifications stated for an appraiser under subsection (a) above. The arbitrator shall conduct an arbitration under the provisions of the commercial arbitration rules of the American Arbitration Association. The arbitrator shall decide only which Fair Market Rent submission is closest to the actual Fair Market Rent for the Premises. The arbitrator's decision shall be binding on all parties and shall apply retroactively to the beginning of the Extension Term. The arbitrator shall make a final decision within thirty (30) days of the arbitrator's appointment.

(d) In the event the process and determination of Fair Market Rent set forth in (a) through (c) above continues beyond the Extension Deadline, the Extension Deadline shall be extended to the date that is twenty-one (21) days beyond the date on which the Fair Market Rent is determined. If the parties have not determined the Fair Market Rent by the then-current Lease Expiration Date, Tenant may in any event continue to occupy the Premises and pay Base Rent to Landlord at a rate equal to the Base Rent paid for the last full month immediately preceding the then-current Lease Expiration Date until the Fair Market Rent is determined. In the event Tenant elects to exercise the Extension Term, Fair Market Rent, once fully and finally determined, shall be applied retroactively to the beginning of the applicable Extension Term and Landlord and Tenant shall make the necessary adjustments and payments to Tenant's rental account within thirty (30) days of such final determination of Fair Market Rent.

3.3. LATE FEE. If Tenant fails to pay any Base Rent or Additional Rent due Landlord within ten (10) days of the date it is due two (2) times in any calendar year, then with respect to the third and any future late payments during the same calendar year, Tenant shall pay Landlord a late fee equal to five percent (5%) of the unpaid amount. Tenant shall pay as Rent an administrative fee of One Hundred Dollars (\$100) for any returned check, and Landlord may require Tenant to provide a certified or cashier's check if more than one (1) of Tenant's checks are returned for insufficient funds. Landlord shall have the right to apply any payments made by Tenant first to any deficiency in the payment of the late fee and administrative charges hereunder.

4. CONDITION OF THE PREMISES, POSSESSION, AND TENANT ALLOWANCE.

4.1. CONDITION OF THE PREMISES. Landlord represents and warrants that, to the best of Landlord's knowledge without investigation as of the Commencement Date, the Premises and Building, including, without limitation, all structural elements, the foundation, roof, roof membrane and roof system, exterior walls, plumbing, electrical, and other mechanical systems (a) comply with all federal, state, and local laws, codes, rules, and regulations, including, without limitation, handicapped accessibility standards, such as those promulgated under the Americans With Disabilities Act ("**ADA**"); and (b) are seismically and otherwise sound and in workable condition and repair at the time of delivery of the Premises to Tenant. Landlord represents and warrants that it has disclosed to Tenant any conditions or restrictions, including, without limitation environmental contamination, restriction on utilities, or exclusive use restrictions within Landlord's knowledge that would adversely affect Tenant's store design, permitting, construction, or use of the Premises as contemplated by this Lease. Notwithstanding the foregoing, Tenant shall be responsible for verifying all code requirements and bringing any building and site components at the Premises into compliance for Tenant's anticipated use of the Premises and construction of Tenant's work or installations in the Premises, including, without limitation, verification of compliance with federal, state and local laws, codes, rules and regulations (including ADA) and performing such work as may be necessary or required to so comply following delivery of the Premises to Tenant. Further, except as otherwise specifically set forth herein, Landlord and Tenant acknowledge and agree that the Premises are being delivered to Tenant in its "as-is" condition.

4.2. LANDLORD'S OBLIGATIONS. Except for removal of all moveable personal property belonging to Landlord or the prior tenant of the Premises (collectively, "**Landlord's Work**"), Landlord shall not be required to perform any work in the Premises and shall deliver the Premises to Tenant "broom clean" in its present condition. Tenant may use or dispose of any personal property or fixtures remaining in the Premises upon delivery. Landlord shall notify Tenant in writing at least ten (10) days prior to the date when the Premises will be ready for Tenant's occupancy.

4.3. DELAY IN DELIVERY OF POSSESSION. Landlord shall satisfy all conditions listed in Sections 2.2 (a) through (e) above on or before the Scheduled Delivery Date. Landlord acknowledges that Tenant intends to start construction of Tenant's improvements on the Scheduled Delivery Date, and that a delay beyond such date will cause Tenant to suffer certain losses which are difficult to quantify including, by way of illustration and not of limitation, lost profits, construction delay costs, and employee wages. If the Commencement Date does not occur within fourteen (14) days after the Scheduled Delivery Date, Tenant shall be entitled to one (1) day of free Base Rent for each day of delay occurring from the Scheduled Delivery Date until the day that Landlord delivers possession of the Premises to Tenant; provided, however, that in no event shall Tenant be entitled to the foregoing exception of free Base Rent in the event that such delay in delivery was caused by Tenant or Tenant's agents.

4.4. DELIVERY OF POSSESSION. Notwithstanding the Scheduled Delivery Date, Tenant shall have possession of the Premises upon the later of (i) the date the existing tenant in the Premises vacates and the Landlord turns over the keys to Tenant in "as-is" but broom clean condition or (ii) Tenant receives all Government Approvals pursuant to Section 17 below, provided that in the case of this subsection (ii) Tenant meets the requirements of the below paragraph. If Tenant fails to meet the requirements of the below paragraph, subsection (ii) shall be null and void.

Provided that Landlord has full board approval by February 1, 2016 then Tenant shall submit plans for governmental approval by June 1, 2016. Tenant covenants and agrees to diligently pursue preliminary and final architectural design and issuance of a building permit for the Premises. Tenant shall file an application with the appropriate governmental authorities for a building permit (which Tenant shall use best efforts to submit an application that is complete in every regard and shall include all plans, specifications, exhibits, bonds, supplemental agreements and other submissions necessary or required to permit the full review thereof by all such governmental authorities) and shall respond to any comments of such governmental authorities within fourteen (14) business days after receipt of same. Tenant shall use diligent efforts to obtain said building permit as soon as reasonably practicable but in no event later than ten (10) months after the first submission for permit. If, despite Tenant's diligent efforts, Tenant shall be unable to obtain a building permit within the time stipulated herein and in the event Tenant has complied with all of the time frames described above, then either Tenant or Landlord shall have the right and option (without waiving any separate rights either party may have as a result of any defaults then existing) to cancel and terminate this Lease in its entirety by written notice to the other party. If either party shall elect to cancel this Lease as herein provided, this Lease shall terminate and expire, without further liability on the part of either party hereto, except for defaults arising thereto, ten (10) days after the date of the written notice of termination.

Landlord agrees to join in all applications for a building permit prepared by Tenant, if necessary, and to otherwise cooperate with Tenant in obtaining such building permit provided that Landlord shall incur no expense thereby. For purposes of this Lease, Tenant shall have been deemed to have received a building permit for the Premises when written notification shall be received from the appropriate governmental authorities that the same is available for issuance, regardless of when such permit is actually picked up and regardless of any requirement to post bonds. After issuance of the building permit, and subject to accepted construction practices regarding weather conditions, Tenant shall diligently and continuously proceed with the construction and shall use its best efforts to complete the same and open for business at the Premises within four (4) months after the obtaining of a building permit. Tenant shall cause its general contractor to construct the improvements in a good and workmanlike manner and in compliance with all legal requirements. Tenant shall furnish to Landlord satisfactory evidence of such completion in the form of a temporary Certificate of Occupancy issued by the appropriate governmental authority having jurisdiction.

4.5. PRESENT TENANT. The commencement of the Term of this Lease is conditioned upon the tenant presently occupying the Premises, Supercuts (“**Present Tenant**”) vacating, surrendering and releasing the Premises on or before (i) August 1, 2016 or (ii) the date that is fifteen (15) days following Tenant’s receipt of Government Approvals (as defined herein) relating to the Premises, whichever is later. In the event that the Present Tenant holds over, Landlord will use diligent efforts, including filing an eviction action, to obtain possession. If Landlord has not been able to evict the Present Tenant by November 1, 2016, then Tenant shall have the right to terminate this Lease. Notwithstanding anything to the contrary contained herein, Tenant shall provide at least thirty (30) days prior written notice of its desired delivery date in accordance with Section 2.2.

5. USE.

5.1. USE. Tenant may use and occupy the Premises and outdoor seating area for (a) a coffee store or (b) any other lawful retail or restaurant use, including, without limitation, the sale of beer and wine; provided, however, the Premises shall not be used for any of the Prohibited Uses set forth on **Exhibit G** attached hereto.

5.2. COMPLIANCE WITH LAW. During the Term, Tenant, at its expense, shall comply promptly with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant’s use of the Premises pertaining to (a) the physical condition of any improvements constructed by Tenant in the Premises and (b) Tenant’s specific business operations in the Premises. Tenant shall not be required to make any seismic or structural upgrades, repairs, improvements, or alterations to the Premises or the Building, in order to comply with the requirements of this Section. Landlord, at its sole cost and expense, shall comply with all other laws, rules, regulations, and ordinances made by any governmental authority affecting the Premises, Building and the Property, including, without limitation, all accessibility for the disabled requirements.

5.3. OPERATIONS AND RECAPTURE. Tenant may operate (or not operate) its business in such manner and at such hours as Tenant considers proper in Tenant’s sole business judgment. It is expressly understood and agreed that Tenant makes no representations or warranties, oral or written, as to the level of gross sales it may generate from the Premises or the number of customers that it will bring to the Building. The parties acknowledge that Tenant has no obligation to open or operate at the Premises but, in the event Tenant elects not to operate at the Premises for a period of sixty (60) consecutive days, excluding any closure(s) due to any Force Majeure Event, casualty, condemnation, inventory, renovation, remodeling, or assignment of this Lease or subletting of the Premises, Landlord may recapture the Premises and terminate this Lease upon thirty (30) days’ prior written notice to Tenant unless Tenant resumes operation in the Premises prior to the expiration of such thirty (30)-day notice period, in which case, Landlord’s recapture and termination notice shall be null and void.

5.4. EXCLUSIVITY. Landlord shall not use or allow any other person or entity (except Tenant) to use any portion of the Building for the sale of: (a) whole or ground coffee beans, (b) espresso, espresso-based drinks or coffee-based drinks, (c) tea or tea-based drinks, (d) brewed coffee or (e) blended coffee related beverages. In the event of a violation of Tenant’s exclusive use which continues more than sixty (60) days after Tenant provides written notice thereof to Landlord and Landlord has been unable to cure, all rent due under this Lease from and after the sixty-first (61st) day after Tenant’s notice shall be reduced by fifty percent (50%) until the violation has been cured and the competing tenant(s) at the Building cease the sale of any of the products protected by Tenant’s exclusive use described above. In the event that the violation continues for more than one hundred (120) days, Tenant shall have the right to terminate this Lease, provided such termination is exercised within ninety (90) days from the expiration of the foregoing one hundred twenty (120) day period.

Notwithstanding anything to the contrary contained herein, any existing tenant in the Building with a lease which predates the date of this Lease (which existing tenants, with a statement of their permitted use clauses, are set forth on **Exhibit H** attached hereto and by this reference incorporated herein) whose lease allows it to sell any of the forgoing products, shall not be subject to Tenant’s exclusive use restriction set forth herein, if and to the extent that any such existing tenant is permitted by its lease to sell

any of Tenant's exclusive use items; provided, however, that with respect to the tenants set forth on **Exhibit H**, Landlord agrees that to the extent Landlord has reasonable control over any such tenant's use and changes in use, Landlord shall exercise such control to enforce and protect Tenant's exclusive use rights described herein. .

Full service, sit-down restaurants with a wait staff and table service serving a complete dinner menu may sell, in conjunction with a sale of a meal, brewed coffee, tea and hot espresso drinks for on-premises consumption only. Furthermore, the existing Häagen Dazs tenant currently sells coffee.

6. MAINTENANCE, REPAIRS, AND ALTERATIONS.

6.1. **TENANT'S OBLIGATIONS.** Subject to the provisions of Sections 6.2 and 6.3 and Articles 9 and 15, Tenant, at Tenant's expense, shall keep the Premises in good order and repair, including maintaining all plumbing, HVAC, electrical and lighting facilities and equipment within the Premises and exclusively serving the Premises, and the store front, doors, and plate glass of the Premises. At Tenant's request, Landlord shall, to the extent assignable by Landlord, transfer or assign to Tenant all warranties, express or implied, under any contract or subcontracts relating to any improvements or equipment Landlord built or installed within the Premises to serve the Premises exclusively, including, without limitation, the warranty for the HVAC system. Notwithstanding any provision to the contrary, Tenant's obligations under this Section shall not include making: (a) any repair or improvement directly caused and necessitated by the gross negligence or willful misconduct of Landlord, its agents, employees or contractors; or (b) any repair or improvement caused by Landlord's failure to perform its repair and maintenance obligations hereunder.

6.2. **LANDLORD'S OBLIGATIONS.** Except for repairs, maintenance and replacements to the Premises and the Building for which Tenant is responsible under Section 6.1 and any repair, maintenance or replacement necessitated by the actions, inaction, negligence or misconduct of Tenant, its agents, employees or contractors, or by Tenant's licensees or invitees, Landlord shall maintain, repair and make replacements to the roof, structural components, exterior walls and foundation of the Building. Landlord shall, at its sole cost and expense (subject to Tenant's payment obligations, if any, pursuant to Article 12 below), make the repairs and replacements and perform such work that is necessary to maintain the Building in a condition comparable to other first-class retail buildings and shopping centers in the Coral Gables, Florida metropolitan area. Such repairs, replacements and maintenance shall include (without limitation) the upkeep of the roof, roof membrane and roof systems, foundation, exterior walls, interior structural walls, and all structural components of the Premises and the Building. Landlord may allocate the cost of such maintenance and repairs equitably among all tenants, if and to the extent provided in Article 12. Landlord shall not be required to maintain the interior surface of exterior walls, windows, doors or plate glass and store fronts (except where maintenance of the same is caused by Landlord's negligence or failure to perform its obligations under this Section). Landlord shall make all repairs under this Section promptly after Landlord learns of the need for such repairs but in any event within thirty (30) days after Tenant notifies Landlord of the need for such repairs. If Landlord fails to make such repairs within thirty (30) days after Tenant's written notice (except when the repairs require more than thirty (30) days for performance and Landlord commences the repair within thirty (30) days and diligently pursues the repair to completion), Tenant may, at its option, undertake such repairs and deduct the actual and reasonable cost thereof from the installments of Base Rent and Monthly Estimated Rent next falling due. Notwithstanding the foregoing, in the event of an emergency, Tenant may give Landlord such shorter notice as is practicable under the circumstances, and if Landlord fails to make such repairs promptly after being notified by Tenant, Tenant may immediately undertake such repairs and deduct the cost thereof from the installments of Base Rent and Additional Annual Rent next falling due.

6.3. **SURRENDER.** Upon the expiration or termination of this Lease, Tenant shall surrender the Premises to Landlord in broom clean condition, except for ordinary wear and tear and damage caused by fire or other casualty, whether or not insured or insurable.

6.4. **LANDLORD'S RIGHTS.** If Tenant fails to perform Tenant's obligations under this Article, Landlord may, but shall not be required to, enter upon the Premises, after thirty (30) days' prior written

notice to Tenant, and put the same in good order, condition, and repair, and the reasonable costs thereof shall become due and payable as additional rental to Landlord together with Tenant's next Base Rent installment falling due after Tenant's receipt of an invoice for such costs. Notwithstanding the foregoing, Landlord's rights under this Section shall be subject to Section 23.14.

6.5. ALTERATIONS AND ADDITIONS.

6.5.1. **Initial Improvements.** Tenant, at Tenant's cost, may install such fixtures, finishes, and other initial tenant improvements in the Premises as Tenant deems necessary or desirable for the conduct of Tenant's business therein ("**Initial Improvements**"); provided that such Initial Improvements are in compliance with applicable codes, rules and regulations. In addition, Landlord acknowledges and agrees that Tenant intends to seek certification of the Premises through the then-current standards established by the United States Green Building Council ("**USGBC**") for the certification of green buildings, commercial and retail interiors, and other facilities ("**LEED Certification**"). Landlord acknowledges that LEED Certification may be awarded at various certification levels as determined by the USGBC. Accordingly, notwithstanding anything in this Lease to the contrary, Landlord agrees to cooperate with Tenant in Tenant's efforts to achieve LEED certification (in a manner and at a level which shall be determined by Tenant in its sole discretion) and to take all reasonable steps requested by Tenant to achieve such certification; provided, that same shall be at no cost to Landlord. Further, Landlord agrees to assist Tenant in its efforts to maintain LEED Certification for the Premises throughout the Term; provided that same shall be at no cost to Landlord.

6.5.2. **Subsequent Improvements.** After the installation of the Initial Improvements, Tenant may make such interior non-structural alterations, improvements, and additions to the Premises, including, without limitation, changing color schemes, installing new countertops, flooring, wall-covering, and modifying the layout of the tenant fixtures, as Tenant deems necessary or desirable without obtaining Landlord's consent (but in compliance with applicable codes, rules and regulations). Notwithstanding the foregoing, Tenant shall not make any alterations, improvements, additions, or repairs in, on, or about the Premises which affect the structure or the mechanical systems of the Building (to the extent the mechanical systems do not exclusively serve the Premises) without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord shall be deemed to have approved any subsequent improvement proposed by Tenant unless Landlord disapproves of Tenant's proposal in writing within fourteen (14) days of receiving Tenant's proposal and request for consent.

6.5.3. **Liens.** Before commencing any alterations, additions, or improvements using outside contractors, Tenant shall notify Landlord of the expected commencement and completion dates of the work. Tenant shall not permit any mechanics' or materialmen's liens to be levied against the Premises for any labor or material furnished to Tenant or to its agents or contractors; provided, however, that Tenant shall not be required to pay or otherwise satisfy any claims or discharge such liens so long as Tenant, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to Landlord that remove such lien or stay enforcement thereof.

Notwithstanding anything to the contrary contained herein, in no event shall Landlord be required to install any improvements in the Premises with respect to Tenant's Initial Improvements, Tenant's subsequent improvements or otherwise.

6.6. OWNERSHIP AND REMOVAL OF IMPROVEMENTS, FIXTURES, EQUIPMENT AND FURNISHINGS.

6.6.1. The term "**Tenant's Property**" shall mean all personal property, furnishings, machinery, trade fixtures, equipment, and improvements (trade or otherwise) which Tenant installs in the Premises or in the drive-through area (including, without limitation, the following when located in or serving the drive-through area: partitions, screens, art, plant walls along with the irrigation and suspended plants, specialized lighting fixtures, movable boulders, menu boards, signage, and other

nonstructural design elements). Until or upon the termination or expiration of the Term, Tenant may remove Tenant's Property from the Premises no later than the termination or expiration date of the Term. In addition, Tenant may remove from the Premises all items installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Premises, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademarks, trade names, or copyrights. Tenant shall repair any damage to the Premises or the Building caused by such removal, including patching and filling holes. Notwithstanding the foregoing, in no event shall Tenant be entitled pursuant to this Section 6.6.1 to remove, nor shall Tenant be required to remove, any restroom fixtures, flooring, ceilings, walls, or utility or electrical components located inside the walls, or any portions of the HVAC system(s). So long as Tenant is Starbucks Corporation or an affiliate or successor of Starbucks Corporation after a Permitted Transfer (as defined in Article 13), Landlord shall not have the right to place or permit liens or other encumbrances on any of Tenant's Property, and Landlord waives and releases any and all liens, whether statutory or under common law, on Tenant's Property which may be located from time to time in or about the Premises.

6.6.2. Any of Tenant's Property not removed from the Premises on the date this Lease terminates or expires shall be deemed abandoned and shall thereupon become the property of Landlord.

7. INSURANCE; INDEMNITY.

7.1. TENANT'S INSURANCE. During the Term, Tenant shall obtain and keep in full force and effect the following insurance, which may be provided under blanket insurance policies covering other properties as well as the Premises and which shall be maintained with an insurance company with an A.M. Best Company ("**Best's**") rating of at least A- and a Best's financial performance rating of at least VI. Tenant has provided Landlord access to an Internet website that certifies Tenant's current insurance coverage in a Memorandum of Insurance. Tenant shall maintain during the Term of this Lease, except as noted, the following insurance:

7.1.1. Commercial General Liability insurance with broad form endorsement or equivalent, products liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate. Said policy or policies shall name Landlord as an additional insured on a primary and non-contributory basis. If Tenant is a restaurant/bar and/or other business that sells, manufactures or serves alcohol of any kind, Liquor Liability, with a limit of \$1,000,000 per occurrence shall be required in addition to the coverage outlined above. Tenant and Landlord waive their rights of subrogation against one another and their respective insurance carriers with regards to general liability.

7.1.2. Worker's Compensation Insurance covering all employees of Tenant. Such insurance shall be provided with limits of liability no less than "Statutory" limits for Part One (Statutory Workers' Compensation) and \$500,000 each accident/each employee/policy limit for Part Two (Employer's Liability). This coverage will have a Waiver of Subrogation Endorsement in favor of the Landlord.

7.1.3. Automobile Liability insurance covering all owned, non-owned and hired vehicles of Tenant with a Combined Single Limit of no less than one million dollars per occurrence. If vehicles are not owned or leased (long term) by the Tenant, then only hired and non-owned coverage applies. Said policy will name the Landlord as an additional insured on a primary and non-contributory basis as well as a Waiver of Subrogation Endorsement in favor of the Landlord.

7.1.4. Property insurance covering all of Tenant's betterments, improvements, inventory, fixtures, equipment, including any and all business personal property, on a 100% replacement cost basis using as a minimum standard the equivalent terms and conditions included in the most recent edition of an unendorsed ISO (Insurance Services Office, Inc.) "Cause of Loss-Special Form" or its reasonable equivalent". Should the leased premises become historic in nature, the tenant is required to insure the building on a 100% historic reproduction cost basis with a Historic Reproduction Cost

Endorsement. In addition, business interruption coverage in an amount sufficient to reimburse Tenant for a minimum of one year's income for direct or indirect loss on an actual loss sustained basis shall be provided. In any event, Tenant waives any claim it may have against the Landlord and any insurer of Landlord for any type of property insurance loss, whether owned by Tenant or owned by others in the care, custody or control of Tenant, and for any claim for business interruption. Failure to maintain adequate insurance coverage shall not relieve Tenant of its obligations as set forth in this Lease, including, but not limited to, Tenant's obligation to rebuild and reopen as set forth in this Lease. Should Landlord be required to secure property insurance on behalf of Tenant, Tenant shall be responsible for the cost therefor plus all deductibles associated with this location and shall be billed said amounts as additional Rent. This property Insurance coverage shall name and endorse the Landlord as an additional Loss Payee.

7.1.5. Comprehensive Boiler and Machinery and/or Equipment Breakdown Insurance, including electrical apparatus. The limit of insurance shall be the same limit of insurance evidenced to Landlord on the property insurance policy and shall include coverage for business interruption in an amount sufficient to reimburse Tenant for a minimum of one year's income on an actual loss sustained basis for direct or indirect loss, including overhead power lines.

7.1.6. Commercial Glass Policy covering breakage and/or sudden chemical damage to commercial glass, including supplemental coverage and allowances for glass frame damage, board-up costs, security and obstruction removal.

Tenant shall provide at least ten (10) days' notice to Landlord of any change of Tenant's insurance carrier with respect to the above insurance coverages. If Tenant is not Starbucks Corporation or an affiliate or successor of Starbucks Corporation after a Permitted Transfer, then all above-mentioned insurance policies evidenced to Landlord shall contain provisions and/or be endorsed so that the Landlord will receive written notice, by receipted delivery, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy that has been evidenced to the Landlord. The Landlord will accept the State of Florida statutory notice provisions (including 10 day notice for cancellation due to non-payment of premium) provided such notice is provided to the Landlord in the same manner it is provided to the first named insured, the Tenant.

Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the Landlord. The Landlord reserves the right to request a copy of the required policies directly from their insurance representative for review at any time.

Tenant shall provide evidence of all insurance required under this Article X to Landlord, along with applicable copies of all applicable endorsements prior to occupying the Premises, and at a minimum, evidence of Commercial General Liability Insurance coverage shall be provided prior to execution of this Lease by Landlord, provided that Tenant's failure to provide such evidence to Landlord shall not extend the Rent Commencement Date.

Failure on the part of the Tenant to obtain and maintain all required insurance coverage is a material breach upon which the Landlord may, in its sole discretion, immediately terminate this Lease or obtain such insurance on behalf of Tenant and charge the cost therefor to Tenant, along with a ten percent (10%) administration fee as additional Rent. Tenant agrees to pay as Rent any increase in Landlord's insurance premiums, resulting from Tenant's activities, whether or not Landlord has consented to such activity..

If Landlord's insurance premiums for any separate insurance carried by Landlord exceed the standard premium rates for similar property because the nature of Tenant's operation results in extra hazardous exposure, then Tenant shall reimburse Landlord, immediately upon receipt of appropriate invoices from Landlord, for such increase in premiums. It is understood and agreed between the parties hereto that any such increase in premiums shall be considered as rent due and shall be included in any lien for Rent.

7.2. CONTRACTOR'S INSURANCE. Tenant's contractors and subcontractors shall provide evidence of insurance, and Tenant shall include or cause to be included in each contract for work to be performed at the Premises on behalf of Tenant the following insurance requirements:

7.2.1. Installation, floater or builder risk-completed value fire and extended coverage form covering damage to the construction and improvements to be made by Tenant in amounts at least equal to the estimated complete cost of the construction and improvements with one hundred percent (100%) coinsurance protection. Landlord and Tenant shall be named as an additional insured and loss payee.

7.2.2. Commercial General Liability insurance with broad form endorsement or equivalent, product liability, contractual liability, personal and advertising injury, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, and \$2,000,000 in the aggregate. Said policy or policies shall name Tenant and Landlord as an additional insured on a primary and non-contributory basis and shall reflect the hold harmless provisions contained herein.

7.2.3. Worker's Compensation Insurance covering all employees of Contractor. Such insurance shall be provided with limits of liability no less than "Statutory" limits for Part One (Statutory Workers' Compensation) and \$500,000 each accident/each employee/policy limit for Part Two (Employer's Liability).

7.2.4. Automobile Liability insurance covering all owned, non-owned and hired vehicles with a Combined Single Limit of no less than one million per occurrence. If vehicles are not owned or leased (long term) by the Contractor, then only hired and non-owned coverage applies.

Evidence of insurance shall include a Certificate of Insurance and copies of all applicable endorsements evidencing the required coverage. The Certificate of Insurance alone does not evidence insurance adequately. This includes, but is not limited to, endorsements evidencing additional insured status on a primary and non-contributory basis, waivers of subrogation, and endorsements amending the standard cancellation clause. The obligations set forth in this paragraph shall survive expiration or earlier termination of this Lease.

Tenant and its contractors and/or subcontractors shall comply with Florida Statutes Section 255.05, as applicable.

In the event that Tenant is not the sole occupant of the Building in which the Premises are located, Tenant shall pay its proportionate share of Landlord's cost to insure (i) the building structure (but not Tenant's improvements, furniture, fixtures, inventory or personal property, which remain Tenant's obligation to insure) for all risk coverage including windstorm, (ii) Commercial General Liability Insurance covering the common areas and shared facilities of the property, and (iii) any deductible required to be paid with regard to Landlord's policies. Tenant's proportionate share shall be determined by multiplying a fraction, the numerator of which is Tenant's leasable floor area and the denominator of which is the total leasable area of the building, by the allocated cost of insurance for the property of which the Premises is a part. Tenant shall pay its proportionate share of insurance annually within thirty (30) days of receipt of an invoice therefor.

7.3. INDEMNIFICATION BY TENANT. Provided that Landlord notifies Tenant in writing of any such third party claims within forty-five (45) days after Landlord becomes aware of such claim, Tenant shall defend, protect, indemnify, and hold Landlord and Landlord's agents, officers, directors, employees, and contractors harmless from and against any and all injuries, costs, expenses, liabilities, losses, damages, injunctions, suits, actions, fines, penalties, and demands of any kind or nature (including reasonable attorneys' fees) arising in connection with any and all third party claims arising out of (a) injuries occurring within the Premises; (b) any intentional conduct or negligence of Tenant or Tenant's agents, employees, or contractors; (c) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease; or (d) the failure of any representation or warranty made

by Tenant herein to be true when made. This indemnity does not include the intentional or negligent acts or omissions of Landlord or its agents, officers, contractors, or employees. This indemnity shall survive termination of this Lease only as to claims arising out of events that occur during the Term. Notwithstanding any provision of this Lease to the contrary, the provisions of this Section 7.3 and Tenant's covenants to provide insurance as provided in this Lease shall in no event extend to Landlord's independent liability.

8. ENVIRONMENTAL LIABILITY.

8.1. ENVIRONMENTAL LAW. The term "**Environmental Law**" means any federal, state, local law, statute, ordinance, regulation, or order and all amendments thereto pertaining to health, industrial hygiene, environmental conditions, or Hazardous Substances.

8.2. HAZARDOUS SUBSTANCE. The term "**Hazardous Substance**" shall mean any substance that is actually or allegedly harmful to human life, animal life, or vegetation or any other portion of the environment; toxic substances and vapors, wastes, or pollutants; and hazardous or dangerous substances or vapors, including any substances defined, listed, and/or regulated by any Environmental Law or by common law decision including, without limitation, chlorinated solvents, petroleum products or by-products, asbestos, polychlorinated biphenyl, and mold or substances which cannot be disposed of in a common landfill or require special handling or permits in conjunction with disposal.

8.3. LANDLORD'S COVENANTS. Landlord warrants, represents, covenants, and agrees as follows:

8.3.1. To the best of Landlord's knowledge, no Hazardous Substance has been released, discharged, or disposed of on, under, or about the Premises, the Building or the Property (or off-site of the Property which might affect the Premises, the Building or the Property) by any entity or person, or from any source whatsoever.

8.3.2. Landlord shall require each of its employees, agents, contractors, subcontractors, tenants, subtenants, or any other party over whom Landlord has supervision or control or right of the same to comply with all applicable Environmental Laws.

8.3.3. Without limiting the foregoing and to the best of Landlord's knowledge, (a) there are no underground storage tanks on the Premises, the Building or the Property; (b) no underground storage tanks have been removed from the Premises, the Building or the Property; (c) intentionally deleted; (d) no facilities involving the manufacture or disposal of any Hazardous Substance or the use or storage of more than five hundred (500) gallons of any Hazardous Substance per year, including, without limitation, gasoline stations, automobile repair facilities, dry cleaners, photo developing laboratories, junkyards, landfills, waste treatment storage, disposal, processing, or recycling facilities have been located on or adjacent to the Premises, the Building or the Property.

8.3.4. Landlord shall give prompt written notice to Tenant of (a) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Premises, the Building or the Property (or off-site of the Premises that might affect the Premises) or related to any loss or injury that might result from any Hazardous Substance; (b) all claims made or threatened by any third party against Landlord or the Premises, the Building or the Property relating to any loss or injury resulting from any Hazardous Substance; and (c) Landlord's discovery of any occurrence or condition on the Premises, the Building or the Property (or off-site of the Premises that might affect the Premises) that could cause the Premises or the Common Areas, if any, or any part of either, to be subject to any restriction on occupancy or use of the Premises under any Environmental Law.

8.3.5. Subject to Tenant's obligations set forth in Section 8.5.1, if any Hazardous Substance is deposited, released, stored, disposed, discovered, or present in or on the Premises, the

Building or the Property, Landlord, at Landlord's expense, shall promptly and diligently, to the extent required by any applicable law, including, without limitation, any Environmental Laws, rules, regulations, and policies of any governmental entity with jurisdiction over the same, and in compliance with such laws, remove, transport, and dispose of such Hazardous Substance. Landlord, at Landlord's expense, shall promptly and diligently investigate any claim from Tenant concerning the presence or suspected presence of a Hazardous Substance on or in the Property, the Building, or the Premises, including, without limitation, the sampling, monitoring, and analysis of soil (both surface and subsurface), groundwater, and air quality (both indoor and outdoor). Such investigation shall be performed by environmental contractors reasonably acceptable to Tenant. Landlord shall use its best efforts to minimize direct and indirect impact on Tenant, including its operations in the Premises and effective use of the Common Areas, if any, during all activities related to remediation. Notwithstanding the foregoing, in no event will Landlord be required to spend more than Ten Thousand Dollars (\$10,000.00) on the remediation efforts set forth in this Section 8.3.5 and if neither Landlord nor Tenant is willing to pay any additional amounts over and above Ten Thousand Dollars (\$10,000.00), then Tenant's sole recourse shall be to terminate this Lease with no liability thereafter to either party. If any asbestos or asbestos-containing material is discovered in the Premises during Tenant's inspection of the Premises, construction of its initial or subsequent tenant improvements, or at any other time during the Term, then Tenant shall be responsible to promptly remove the same or cause it to be removed at Tenant's sole cost and expense and, if the foregoing delays the construction or installation of Tenant's improvements, then the Rent Commencement Date shall be extended for one (1) day for each day of delay. In the event there shall now or in the future exist any Hazardous Substances in, on, under or about the Premises, the Building or the Property (not caused by Tenant or its employees, agents or contractors) that materially and adversely affect Tenant's use of or operations from the Premises, access to or visibility of the Premises, Tenant's construction of its improvements, or Tenant's use of the Common Areas (collectively "**Interference**"), then Base Rent and all other charges payable under this Lease shall be equitably abated in proportion to the effect of the Interference on Tenant's operations. If such Interference continues for more than one hundred eighty (180) days, Tenant may terminate this Lease by providing written notice thereof to Landlord, in which event Tenant shall have no further liability under this Lease.

8.4. TENANT'S USE OF ANY HAZARDOUS SUBSTANCE. The only Hazardous Substances Tenant may use in its operations are cleaning solutions and other substances as are customarily used in Tenant's business. Tenant will manage such use in accordance with the Environmental Laws. Tenant shall promptly notify Landlord in writing of any Hazardous Substances caused by Tenant or any other party at the Premises or the Building.

8.5. INDEMNITIES. Tenant shall protect, defend, indemnify, and hold harmless Landlord and Landlord's employees, agents, parents, and subsidiaries from and against any and all loss, damages, costs, claims, damage, expense, or liability, including, without limitation, attorneys' or other professional fees, and the costs of repairs and improvements necessary to return the Premises to the physical condition existing prior to undertaking any activity related to any Hazardous Substance ("**Claims**") actually incurred by Landlord directly arising out of or attributable to Tenant's or Tenant's agents, contractors, or employees use, manufacture, storage, release, or disposal of a Hazardous Substance on the Premises, the Building or the Property. This indemnity shall survive the termination of this Lease.

9. DAMAGE OR DESTRUCTION.

9.1. MATERIAL DAMAGE. If the Premises, the Building or the Property are damaged or destroyed by fire or any casualty which cannot, despite diligent, good faith efforts be repaired or restored by Landlord or Tenant, as applicable in accordance with Sections 6.1 and 6.2 of the Lease, within one hundred eighty (180) days following the date on which such damage occurs, then Tenant may elect to terminate this Lease effective as of the date of such damage or destruction, provided that such repair or restoration was an obligation of Landlord pursuant to the terms of Section 6.2 of this Lease. Within thirty (30) days after the date of such damage, the parties shall reasonably determine how long the repair and restoration will take. After that determination has been made, Tenant shall have a period of thirty (30) days to terminate this Lease by giving written notice to Landlord.

9.2. REPAIR AFTER DAMAGE. If Tenant does not give written notice of Tenant's election to terminate as provided in Section 9.1, then Landlord shall, provided that such repair or restoration was an obligation of Landlord pursuant to the terms of Section 6.2 of this Lease, subject to the provisions of this Section, commence and diligently pursue to completion the repair of such damage so that the Premises, the Building and the Property are restored to a condition of similar quality, character, and utility for Tenant's purposes. Notwithstanding anything contained herein to the contrary, if the Premises, the Building and/or the Property are not repaired and restored within one hundred eighty (180) days from the date of the damage, Tenant may terminate this Lease at any time before Landlord completes the repairs and delivers the restored Premises to Tenant, provided that such repair or restoration was an obligation of Landlord pursuant to the terms of Section 6.2 of this Lease. If Tenant does not so terminate, Landlord shall diligently continue to restore the Premises. In the event of termination, Landlord shall return any prepaid Base Rent and other prepaid amounts to Tenant within thirty (30) days from the date of termination of this Lease.

In no event shall the foregoing be deemed to require Landlord to make repairs if some are not enumerated on Landlord's obligations pursuant to Section 6.2.

9.3. UNINSURED DAMAGE. If damage or destruction is caused by a peril not required to be insured against hereunder and for which insurance proceeds are not available, either Landlord or Tenant may terminate this Lease by thirty (30) days' written notice to the other of its election so to do and this Lease shall be deemed to have terminated as of such date unless the other party agrees in writing to pay for such repairs or restoration.

9.4. DAMAGE DURING FINAL TWO YEARS. If any damage or destruction (i) was not caused by Tenant, (ii) occurs to the Premises during the last two (2) years of the Initial Term or any Extension Term, (iii) the cost to repair the damage exceeds One Hundred Thousand Dollars (\$100,000.00), as evidenced by appropriate documentation to be submitted by Tenant and reviewed and approved by Landlord, either Landlord or Tenant may terminate this Lease upon giving the other party thirty (30) days' written notice; provided, however, that if Landlord notifies Tenant that it wishes to terminate this Lease, then Tenant may, if it has not already done so, exercise its right to extend the term of this Lease under Section 2.4 whereupon Landlord's election to terminate shall be null and void. Notwithstanding anything to the contrary contained herein, in no event shall Tenant be entitled to terminate hereunder unless Tenant shall have first provided written notice to Landlord and Landlord has been afforded a reasonable opportunity to cure and repair such damage.

9.5. ABATEMENT OF RENT. If Landlord is required to repair or restore the Premises, the Building or the Property under any provision of this Article and Tenant's use of the Premises is materially and adversely affected, then until Landlord completes such repair or restoration, Base Rent and Annual Additional Rent shall abate from the date of destruction based on the degree of impact such damage and repairs have on Tenant's operations within the Premises as measured by the proportionate reduction in Tenant's sales volume.

10. PROPERTY TAXES.

10.1. DEFINITION OF "REAL PROPERTY TAXES". For purposes of this Lease, the phrase "**Real Property Taxes**" shall include general real estate taxes and assessments payable with respect to the Property that are imposed by any authority having the power to tax any legal or equitable interest of Landlord in the Property. Notwithstanding the foregoing, Real Property Taxes shall not include (a) any inheritance, estate, succession, transfer, gift, franchise, or capital stock tax; (b) any gross or net income taxes; or (c) any excise taxes imposed upon Landlord based upon gross or net rentals or other income received by it.

10.2. PAYMENT OF REAL PROPERTY TAXES. As of the Rent Commencement Date, (a) Landlord has paid in full all Real Property Taxes due as of the Rent Commencement Date, (b) Landlord shall pay when due all future Real Property Taxes, and (c) the tax parcel number of the Property is set forth on Exhibit A. Landlord shall render to Tenant, promptly after the receipt of the tax bill applicable to

the Premises for a given period during the Term, a full complete and legible copy of such tax bill and a detailed statement showing the amount of Real Property Taxes and indicating in reasonable detail the items included in Real Property Taxes and the computation of Tenant's Pro Rata Share of Real Property Taxes. For each Lease Year during the Term, Tenant shall pay Landlord, as additional rent, Tenant's Pro Rata Share of Real Property Taxes in the manner set forth in Article 12. Subject to making estimated payments pursuant to Article 12, Tenant shall pay Real Property Taxes only as such taxes become due and payable during the Term (as defined in Section 2.1), prorated for any partial assessment period occurring immediately before the Rent Commencement Date and after the Expiration Date. If Real Property Taxes assessed against the Property for periods of time during the Term are billed by the applicable taxing authorities following the expiration or earlier termination of the Term, the parties agree that the Real Property Taxes for such period during the Term shall be calculated based on the Real Property Taxes billed by the applicable taxing authorities for the immediately preceding period during the Term, in full satisfaction of such reimbursement obligation to Landlord. In the event the taxing authority offers a discounted tax rate or a penalty rate based on the date of payment, Tenant's property tax shall be calculated at the lowest possible discounted amount regardless of the date of Landlord's payment to the taxing authority. Tenant shall have the right to challenge, at its sole expense, the Real Property Taxes, and Landlord agrees to provide whatever assistance or cooperation that Tenant may reasonably require, including Landlord's agreement to sign all necessary instruments in connection with such application or appeal. Upon the request of Tenant, and if required to preserve the right to challenge such taxes, Landlord will pay all Real Property Taxes under protest or in such other manner as will preserve the right to challenge such taxes. Tenant may challenge Real Property Taxes if Tenant pays any protested amount to Landlord. Landlord will reimburse Tenant for Tenant's Pro Rata Share of any refund of Real Property Taxes received as a result of any tax contest.

10.3. PERSONAL PROPERTY TAXES. Tenant shall pay, prior to delinquency, all personal property taxes assessed against Tenant directly and applicable to its personal property located in the Premises.

11. UTILITIES.

11.1. UTILITIES. Tenant shall pay all utility connection fees (including without limitation all water and sewer connection fees), traffic impact fees and any other impact and extraordinary fees that are associated with the construction of Tenant's initial improvements or Tenant's use of the Premises. Tenant shall have the right to sufficient utilities and ventilation to support its intended use of the Premises. Landlord acknowledges that Tenant has the right to contract with and use its own energy service providers and until it does so Landlord may use its own energy service providers to serve the Premises. The provisions in this Section 11.1 are subject to the provisions set forth in Section 11.2 below.

11.2. ALTERNATIVE ENERGY SYSTEM. Notwithstanding anything contained in Section 11.1 or elsewhere in this Lease, Tenant (in its sole discretion) or its solar contractors, suppliers, or other alternative energy agents ("**AE Agent**") shall have the right to install, utilize, maintain, and remove a solar photovoltaic or similar solar energy system, including all related equipment, appurtenances, wiring, and meters or any other form of alternative energy system (collectively, "**AE System**") on the roof of the Building for use at the Premises provided same shall be permitted by municipal code. The installation will include the right to make necessary penetrations through the roof and/or walls of the Building for such use. At Tenant's election, the AE System shall be connected to the electrical/mechanical system of the Building in lieu of (or as a supplement to) the standard electrical usage for the Premises set forth in Section 11.1 above. The AE System shall be in accordance with applicable law and the approved AE Performance Specifications and shall comply with the proper roofing standards for such systems. Tenant shall be permitted to make any necessary changes, alterations, or additions to the AE System at any time during the Term (including any extensions or renewals). It shall be Tenant's and/or its AE System Agent's sole responsibility (including all costs) to (i) obtain all required related permits; (ii) install, operate, and maintain the AE System; and (iii) indemnify Landlord, its agents, and employees, from and against all costs for property damage arising solely out of the installation, operation, maintenance, and/or removal of the AE System. Tenant and/or its AE Agent shall be entitled to remove the AE System at end of the Term, or at any time during the Term in its sole discretion, without Landlord's consent, provided Tenant

repairs any damage caused by such removal. Tenant shall be entitled to the exclusive use of the electricity generated by the AE System at the Premises, even if it is purchased from its AE Agent. Tenant, and/or its AE Agent are solely entitled the proceeds from the sale of any unused AE System electricity generated at the Premises.

11.3. INTENTIONALLY DELETED.

11.4. FINANCING. Landlord agrees that, in the event Tenant's and/or the AE Agent's lender(s) or an AE System lessor (collectively, "**AE Lender**") provides financing or a rental arrangement for AE System, the AE System (regardless how it is attached to or incorporated in the Building and the Premises) shall remain the property of Tenant, the AE Agent, and/or the AE Lender. Any collateral securing such financing would create a first priority security interest ("**Security Interest**") in the AE System in favor of the AE Lender to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code as personal property only, and not as a fixture upon the Building. Landlord acknowledges and accepts the existence of such Security Interest and agrees that the AE System shall at all times remain the personal property of Tenant, AE Agent, and/or AE Lender for which Landlord disclaims and releases any lien of Landlord in or to the AE System as a fixture or otherwise. Landlord, to the best of its knowledge, represents and warrants that the installation of the AE System and the granting of the Security Interest will not violate any covenant, restriction, lien, financing agreement, or security agreement to which Landlord is a party. Upon the request of Tenant or AE Agent, Landlord shall execute and deliver an acknowledgement, in a form reasonably satisfactory to AE Lender, confirming the provisions of this Section 11.2. Landlord disclaims and waives any right to receive any and all savings, subsidies, credits, renewable energy credits, allowances, rebates, tax incentives, or other incentives based upon the installation and maintenance of the System, all of which shall be for the exclusive benefit of Tenant, AE Agent, and/or AE Lender (as the case may be).

12. TENANT'S PRO RATA SHARE OF COMMON AREA OPERATING EXPENSES, INSURANCE AND TAXES.

12.1. GENERAL DEFINITIONS. The term "**Operating Expenses**" shall mean the out-of-pocket costs and expenses actually paid in any calendar year attributable to maintaining, operating, and providing services to and for the Common Areas without duplication, including the costs of utilities, maintenance, supplies, and wages, and subject to the exceptions set forth in Section 12.5. The term "**Common Areas**" shall mean all portions of the Building (excluding the Premises and any other space in the Building and Property designed to be leased to another tenant for its exclusive use) including landscaped areas, parking lots, and sidewalks. The terms "**Landlord's Insurance**" and "**Real Property Taxes**" shall have the meanings assigned in Sections 7.2 and 10.1, respectively, and shall not be included in Operating Expenses for any purpose, including, without limitation, the calculation of any management or administrative fees.

12.2. DEFINITION OF TENANT'S PRO RATA SHARE. Tenant's Pro Rata Share shall be the ratio of the Gross Leasable Area of the Premises to the Gross Leasable Area in the Building ("**Tenant's Pro Rata Share**"). For purposes of this Lease, "**Gross Leasable Area**" of any tenant's premises in the Building (other than Tenant's Premises) means the number of gross square feet of leasable floor area which shall be measured from the exterior face of exterior walls and the exterior face of service corridor walls, the line along the front of the such premises where it abuts the sidewalk or other Common Area (which line is commonly known as the "lease line"), and the center line of any wall that such premises shares with other leasable areas of the Building. Tenant's Pro Rata Share is estimated to be fifty-six and 24/100 percent (56.24%). Landlord represents that as of the date hereof, the Building contains four thousand one (4,001) square feet of Gross Leasable Area. If the number of square feet of Gross Leasable Area in the Building increases during the Term, then Tenant's Pro Rata Share shall be adjusted accordingly. The denominator of such fraction used to determine the Pro Rata Share may be reduced from time to time with respect to a particular service if all of the tenants in the Building do not use or receive said service.

12.3. TENANT'S PAYMENT. Commencing on the Rent Commencement Date, for each calendar year of the Term (prorated for any calendar year falling partially within the Term), Tenant shall pay to Landlord as additional rent Tenant's Pro Rata Share of Operating Expenses, Landlord's Insurance, and Real Property Taxes (collectively, "**Annual Additional Rent**"). Prior to the Rent Commencement Date and at least thirty (30) days prior to the beginning of each calendar year thereafter, Landlord shall furnish to Tenant a written statement setting forth (a) the amount Landlord estimates Landlord will pay for Operating Expenses (broken down into reasonable categories), Real Property Taxes, and Landlord's Insurance for the then upcoming calendar year; (b) Landlord's estimate of Tenant's Annual Additional Rent; and (c) a calculation of one-twelfth (1/12) of Landlord's estimate of Tenant's Annual Additional Rent ("**Monthly Estimated Rent**"). Landlord's estimates of Tenant's Annual Additional Rent shall be reasonably based on the actual amounts paid by Tenant for such expenses during the previous year. Tenant shall pay to Landlord the Monthly Estimated Rent beginning on the Rent Commencement Date and on the first day of every successive calendar month thereafter during the Term. Monthly Estimated Rent for a period of less than one month shall be prorated on a daily basis based on a three hundred sixty-five (365) day year. Landlord estimates that Tenant's Pro Rata Share of Landlord's Insurance from the Rent Commencement Date through the end of the first full calendar year shall be approximately Zero and 82/100 Dollars (\$0.82) per square foot of Gross Leasable Area in the Premises, and estimates that Tenant's Pro Rata Share of Real Property Taxes from the Rent Commencement Date through the end of the first full calendar year shall be approximately Six and 58/100 Dollars (\$6.58) per square foot of Gross Leasable Area in the Premises. Notwithstanding anything contained herein to the contrary, the portion of Tenant's Annual Additional Rent attributable to Operating Expenses for any calendar year following the first full calendar year of the Term shall not exceed one hundred five percent (105%), on a non-cumulative basis, of the portion of Tenant's Annual Additional Rent attributable to Operating Expenses payable by Tenant for the previous calendar year.

12.4. RECONCILIATION. For each calendar year of the Term, within sixty (60) days after the end of each calendar year, Landlord shall furnish to Tenant, at the notice address provided for in Article 25, a statement in reasonable detail and certified as complete and correct by an authorized representative of Landlord, including supportive documentation, setting forth (a) Landlord's actual costs for Operating Expenses, Real Property Taxes and Landlord's Insurance for that year by category and amount; (b) the amount of Tenant's Annual Additional Rent; and (c) the sum of Tenant's Monthly Estimated Rent payments made during the year. If the amount of Tenant's Annual Additional Rent exceeds the sum of Tenant's Monthly Estimated Rent payments (and a statement has been received during such sixty [60]-day period), Tenant shall pay the deficiency to Landlord within forty-five (45) days after Tenant's receipt of such statement, provided that Tenant may suspend payment of any amount which (x) it disputes in good faith, (y) was paid by Landlord in a calendar year other than the year covered by the statement, or (z) it has not been provided with reasonable details as set forth above, until resolution thereof. If the sum of Tenant's Monthly Estimated Rent payments during the year exceeds the amount of Tenant's Annual Additional Rent, Landlord shall pay the excess to Tenant at the time Landlord furnishes the statement or, if the Term has not expired, may credit the excess toward the payments of Base Rent and Tenant's Monthly Estimated Rent next falling due. Landlord shall be deemed to have waived its right to payment for any amount which is understated or not included in the statement for the year in which the work was performed or the cost was billed to Landlord.

12.5. EXCLUSIONS FROM OPERATING EXPENSES. Notwithstanding anything to the contrary contained in this Lease, Operating Expenses shall not include: (a) the initial costs of any item properly chargeable to a capital account (using generally accepted accounting principles consistently applied) nor the original costs of constructing the Building and Property; (b) the cost of any capital addition, repair or replacement to the Building or the Property (unless amortized over the useful life); (c) expenses for which Landlord is or will be reimbursed by another source (excluding Tenant's reimbursement for Operating Expenses), including, but not limited to, repair or replacement of any item covered by warranty; (d) costs incurred to benefit (or as a result of) a specific tenant or items and services selectively supplied to any specific tenant; (e) expenses for the defense of Landlord's title to the Property; (f) structural repairs and replacements; (g) depreciation and amortization of the Building or financing costs, including interest and principal amortization of debts; (h) charitable, lobbying, special interest, or political contributions; (i) costs of improving or renovating space for a tenant, or space vacated by a

tenant; (j) any amounts expended by Landlord to comply with any Environmental Laws, except for routine compliance costs incurred in connection with normal operations; (k) costs to correct original or latent defects in the design, construction, or equipment of the Building and/or Property; (l) any repair, rebuilding, or other work necessitated by condemnation, fire, windstorm, or other insured casualty or hazard; (m) any expenses incurred (i) to comply with any governmental laws, regulations, and rules or any court order, decree, or judgment including, without limitation, the Americans with Disabilities Act, except for routine compliance costs incurred in connection with normal operations; or (ii) as a result of Landlord's alleged violation of or failure to comply with any governmental laws, regulations, and rules or any court order, decree, or judgment; (n) leasing commissions, advertising expenses, and other costs incurred in leasing or procuring new tenants; (o) rental on ground leases or other underlying leases; (p) intentionally deleted; (q) cost of the initial stock of tools and equipment for operation, repair, and maintenance of the Building and Property; (r) any duplicate expenses or costs; (s) amounts billed (directly or indirectly) for overhead, and expenses for office rent and office supplies; and (t) administrative or management fees (in the aggregate) which exceed ten percent (10%) of the Operating Expenses. As noted in Section 12.1 above, Landlord's calculation of administrative and/or management fees shall not be based on any charges related to Common Area utility costs, Landlord's Insurance, and/or Real Property Taxes.

12.6. **RECORDS.** Landlord shall keep records showing all expenditures incurred as Operating Expenses, Landlord's Insurance, and Real Property Taxes for each calendar year for a period of two (2) years following each year, and such records shall be made available for inspection and photocopying by Tenant and/or its agents during ordinary business hours in the city in which the Premises are located.

12.7. **DISPUTE RESOLUTION.** Tenant may dispute Landlord's calculations of Tenant's Annual Additional Rent by delivering written notice of such dispute to Landlord ("Dispute Notice") within one hundred eighty (180) days following Tenant's receipt of the statement provided pursuant to Section 12.4 above. If Tenant fails to deliver the Dispute Notice to Landlord within such one hundred eighty (180) day period, Tenant shall be deemed to have waived its right to dispute Landlord's calculations of Tenant's Annual Additional Rent for the applicable year. Any dispute with respect to Landlord's calculations of Tenant's Annual Additional Rent shall be resolved by the parties through consultation in good faith within sixty (60) days after written notice by Tenant to Landlord. However, if the dispute cannot be resolved within such period, the parties shall request an audit of the disputed matter from an independent, certified public accountant selected by both Landlord and Tenant, whose decision shall be based on generally accepted accounting principles and shall be final and binding on the parties. If there is a variance of three percent (3%) or more between said decision and Landlord's determination of Tenant's Annual Additional Rent, Landlord shall pay the actual and reasonable out-of-pocket costs of the audit and shall credit any overpayment toward the next Base Rent and/or Monthly Estimated Rent payment falling due or pay such overpayment to Tenant within thirty (30) days of completion of the audit. If the variance is less than three percent (3%), Tenant shall pay the cost of said audit. Each party agrees not to enforce any alleged reconciliation defaults during the period in which the parties are exercising such good faith resolution efforts prior to a final audit determination.

13. ASSIGNMENT AND SUBLETTING.

13.1. Tenant may, without Landlord's consent, sublet all or any portion of the Premises or assign its interest in this Lease to (a) a parent, subsidiary, affiliate, division, or other entity controlling, controlled by, or under common control with Tenant or (b) a successor entity related to Tenant by merger, consolidation, reorganization, or government action (each, "**Permitted Transfer**"), provided that (i) such successor shall continue to use the Premises only as permitted by this Lease and (ii) such successor shall be of good reputation and character, and have a net worth at least equal to the net worth of Tenant as of the execution of this Lease as evidenced by certified financial statements supplied to Landlord in order to confirm such successor's financial strength, creditworthiness and overall financial ability to undertake and perform the obligations of this Lease or the sublease, taking into consideration all relevant circumstances at the time. Tenant shall provide prior written notice to Landlord of any Permitted Transfer hereunder together with confirmation that the requirements of the foregoing subsections (i) and (ii) have been met, and in the event that same are not met, then Landlord shall be entitled to terminate this Lease upon written notice to Tenant. For the purpose of this Lease, any sale or transfer of Tenant's capital

stock, redemption or issuance of additional stock of any class shall not be deemed an assignment, subletting, or any other transfer of this Lease or the Premises. Landlord shall not be entitled to any consideration in connection with any assignment or sublet, except as set forth herein. Except in the case of a Permitted Transfer, prior to any assignment or sublet, Tenant shall first notify Landlord of its intent to market the Premises for assignment or sublet and provide a draft assignment and/or sublease together with any other document or information deemed necessary by Landlord relating to Tenant's proposed assignment or sublease. Upon receipt of such notice and the Tenant's proposed draft assignment and/or sublease together with any other document or information required by Landlord, Landlord shall have thirty (30) days to elect to terminate this Lease by notice to Tenant. Such termination shall be effective ninety (90) days after Tenant's receipt of such notice. If Landlord does not elect to terminate this Lease within such thirty (30) days, Tenant shall have the right to sublet all or any portion of the Premises or assign this Lease with Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed provided that the "**Assignment Conditions**" (as hereinafter defined) are met.

13.2. Except with regard to a Permitted Transfer, any attempted transfer, assignment, subletting, license or concession agreement or hypothecation without Landlord's consent shall be void and confer no rights upon any third party. Except with respect to a Permitted Transfer, if, without Landlord's prior written consent, there shall be an attempted assignment or subletting Landlord, may as its exclusive remedy, under this Lease terminate this Lease by giving Tenant at least thirty (30) days' prior written notice, in which event this Lease shall expire and come to an end with the same force and effect as if such date were originally set forth in this Lease for expiration of the Term.

13.3. Landlord's consent to a sublease or an assignment under this Section 13 may be conditioned upon the following, among other factors (individually and collectively, the "**Assignment Conditions**"): (i) the proposed subtenant or assignee's use of the Premises is permitted under this Lease and is consistent with the operation of a first-class building in Coral Gables, Florida and is compatible with the operation of other tenants' businesses in the Building; (ii) the proposed subtenant or assignee does not intend to use the Premises for a Prohibited Use; and (iii) Tenant and such proposed subtenant or assignee otherwise comply with the conditions set forth in this Section 13. If Landlord shall consent to an assignment or sublease, then Tenant shall have seventy-five (75) days from the date of Landlord's consent to effectuate such assignment or sublease according to the terms of this Lease; provided, however, if such permitted assignment or sublease is not completed by Tenant and its assignee or subtenant within such seventy-five (75) day period, then such Landlord's consent shall be deemed null and void. In the event of a sublease, assignment or other transfer, Tenant shall pay Landlord a fee of \$1,000.00 as Additional Rent and reimburse Landlord for any third party accounting costs, administrative or other costs incurred by Landlord including reasonable legal fees up to a maximum of \$5,000.00 with respect to each request for an assignment and/or sublease hereunder.

13.4. If Landlord shall consent to any requested transfer, assignment, sublease, hypothecation, license and/or concession (each, a "**Transfer**"), such consent shall be deemed a consent to that particular transaction only and shall not be deemed consent to any other or future Transfer, as the case may be. Any permitted Transfer shall be expressly subject to each and every term, covenant and condition of this Lease, unless otherwise specifically provided by Landlord in writing, and Tenant shall remain jointly, severally and fully liable and obligated under all of such terms, covenants and conditions.

13.5. In the event an assignment or sublease is permitted under this Lease, it shall be upon the express condition, *inter alia*, that the assignee or subtenant shall execute and deliver to Landlord (i) a copy of the signed original instrument of assignment or sublease and (ii) an agreement in form and substance reasonably satisfactory to Landlord, duly executed by the assignee or subtenant, whereby the assignee or subtenant shall unconditionally assume observance and performance of and agree to be personally bound by all of the terms, covenants and conditions of this Lease on Tenant's part to be performed and observed including, without limitation, the provisions of this Section 13. Notwithstanding the execution of such agreement by the assignee or subtenant, however, the original Tenant shall remain jointly and severally liable for all of the terms, covenants and conditions of this Lease.

14. DEFAULTS; REMEDIES.

14.1. TENANT'S DEFAULTS. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

(a) Failure by Tenant to make any payment of Base Rent, Additional Rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after Tenant's receipt of Landlord's notice in writing of such failure; or

(b) Failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than the payment of sums due hereunder, where such failure shall continue for a period of thirty (30) days after Tenant's receipt of Landlord's written notice thereof; 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 such thirty (30) day period and thereafter diligently pursues such cure to completion, not to exceed ninety (90) days.

(c) Upon the happening of any default this Lease shall at Landlord's option, cease and terminate after Landlord provides written notice thereof to Tenant and complies with all applicable laws with respect thereto. Landlord may proceed to recover possession of the Premises by virtue of any legal process as may at the time be in operation and force in like cases relative to proceed between landlords and tenants and Tenant shall pay for any and all costs in connection with the foregoing including, without limitation, all court costs relative to such proceedings and reasonable attorneys' fees or Landlord may at Landlord's option re-enter and re-rent the Premises for the account of the Tenant and in such event, Tenant shall remain liable to Landlord for any and all deficiencies in the Base Rent and such other amounts payable by Tenant under this Lease (including without limitation the Base Rent and Additional Annual Rent for the unexpired portion of the Term). If Tenant cures a non-monetary Default within the applicable grace period but then creates or permits the same non-monetary Default to reoccur within three (3) months of the prior non-monetary Default, then in such event all grace periods applicable to that Default shall be eliminated so that Landlord may terminate this Lease effective upon the sending of written notice to Tenant.

14.2. REMEDIES IN DEFAULT. In the event of any such default which remains uncured after the expiration of the applicable notice and cure period(s) specified above, Landlord may, in accordance with procedures required by law, pursue one of the following remedies:

(a) In the event of a material default, Landlord may terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall surrender possession of the Premises to Landlord within thirty (30) days after Tenant's receipt of Landlord's written notice of termination. Landlord shall not be entitled to terminate this Lease during any time that the parties are involved in a good faith dispute regarding the existence of an alleged material default. In the event Landlord is permitted to terminate this Lease as set forth herein, Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting (but excluding necessary renovation and alteration of the Premises for use by a subsequent tenant or occupant), and the Base Rent and Annual Additional Rent as it becomes due hereunder; provided that Tenant shall be entitled to a credit against such amounts equal to (i) the amounts received by Landlord by re leasing the Premises or otherwise mitigating its damages or (ii) if Landlord fails to re-lease the Premises, the fair market rental value of the Premises for the applicable period. Notwithstanding anything in this Lease to the contrary, in no event shall Tenant be liable for (i) any consequential damages or (ii) lost Base Rent in excess of two (2) years of Base Rent. If Landlord relets the Premises, then any rent or other concessions given to the new tenant shall be prorated evenly throughout the entire term of the new lease; or

(b) Landlord may maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event,

Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the Base Rent and Annual Additional Rent as it becomes due hereunder.

Notwithstanding the foregoing, with respect to any remedy exercised by Landlord, Landlord shall have an affirmative obligation to obtain another tenant for the Premises promptly, at a fair market rental, and to otherwise mitigate its damages.

In the event of any breach by Tenant or any persons claiming through Tenant of any of the provisions contained in this Lease, Landlord shall be entitled to enjoin such breach and shall have the right to invoke any right or remedy allowed at law, in equity, or otherwise, as if reentry, summary proceedings or other specific remedies were not provided for in this Lease.

All rights and remedies of Landlord under this Lease shall be cumulative and shall not be exclusive of any other rights and remedies provided to Landlord now or hereafter existing under law.

14.3. LANDLORD DEFAULTS AND REMEDIES. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Landlord: (a) Landlord's failure to do, observe, keep, and perform any of the terms, covenants, conditions, agreements, or provisions of this Lease required to be done, observed, kept, or performed by Landlord within ninety (90) days after written notice by Tenant to Landlord of said failure (except when the nature of Landlord's obligation is such that more than ninety (90) days are required for its performance, then Landlord shall not be deemed in default if it commences performance within the ninety (90)-day period and thereafter diligently pursues the cure to completion); or (b) the failure of any material representation or warranty to be true when deemed given hereunder. Notwithstanding the foregoing, in the event Landlord's breach creates an emergency situation or is of such a nature that materially impairs Tenant's ability to operate at the Premises (which shall include by way of illustration and not limitation, obstructions or disruptions to common areas, parking, access to the Premises or the Property, visibility, utilities, roof leaks, health and safety, then Landlord shall be required to remedy such breach as soon as commercially reasonable. In the event of a default by Landlord that continues beyond the foregoing ninety (90)-day notice and cure period set forth herein, Tenant, at its option, upon prior written notice to the Landlord (except in the event of an emergency), may remedy such default or breach and deduct the actual costs thereof from the installments of Base Rent and Annual Additional Rent next falling due. Notwithstanding the foregoing, Tenant shall have an affirmative obligation to mitigate any damages in the event of a Landlord default, including, without limitation and by way of example, reducing any damages to the Premises arising from any roof leaks by containing and taking reasonable steps to reduce water damage throughout the Premises.

14.4. LANDLORD'S INTEREST IN PROPERTY. Tenant shall look solely to Landlord's interest in the Property and rents, profits and proceeds therefrom, and not to any other or separate business or non-business assets of Landlord or any partner, stockholder, officer, official or representative of Landlord, for the satisfaction of any claim brought by Tenant against Landlord, and if Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only (i) out of the net proceeds of sale received upon levy against the right, title and interest of Landlord in the Property and/or (ii) to the extent not encumbered by a secured creditor out of the rents or other incomes receivable by Landlord from the Property of which the Premises is a part. Landlord shall not, under any circumstances, except for Landlord's actual (as opposed to implied or derivative) fraud, or with respect to Landlord's obligations under Article 8 hereunder, be liable for any consequential or punitive damages. Tenant agrees that it will not seek any personal judgment against any constituent member, officer or official of Landlord or against any constituent member, officer or official of any constituent member of Landlord for any default by Landlord under this Lease or for any other claim arising from or in connection with this Lease or otherwise.

15. CONDEMNATION.

15.1. CONDEMNATION OF PREMISES. If any portion of the Premises is taken by a government entity exercising the power of eminent domain, or sold to a government entity by Landlord

under the exercise of said power (the final judicial order that permits the taking is herein referred to as "condemnation"), this Lease shall terminate as to the part so taken as of the date the condemning authority takes possession of the condemned portion of the Premises ("**Condemnation Date**"). If so much of the Premises is taken that, in Tenant's reasonable business judgment, the Premises are no longer reasonably suitable for Tenant's operations, Tenant may terminate this Lease. If the entire Premises are condemned, then this Lease shall automatically terminate as of the Condemnation Date. The party who receives the condemnor's notice of intention to take ("**Condemnation Notice**") shall immediately give a copy of such notice to the other party.

15.2. CONDEMNATION OF THE PROPERTY. If, as a result of any condemnation of the Property or any portion thereof (even though the Premises are not physically affected), either (a) the Premises, the Building or Property are no longer reasonably suited for the conduct of Tenant's business in Tenant's reasonable business judgment, then Tenant may terminate this Lease at any time after Tenant receives the Condemnation Notice by giving Landlord thirty (30) days' written notice.

15.3. CONDEMNATION OF THE BUILDING. If a condemnation of any portion of the Building (even though the Premises are not physically affected) renders the Building unsuitable for use as a retail building or in either party's reasonable business judgment, then either Landlord or Tenant may terminate this Lease by giving the other at least thirty (30) days' written notice.

15.4. RESTORATION. If this Lease is not terminated, (a) it shall remain in full force and effect as to the portion of the Premises remaining, provided the Base Rent and all other charges payable hereunder shall be reduced in the same proportion that the area taken bears to the total area of the Premises prior to taking; and (b) Landlord shall use the condemnation award to restore the Premises, the Building and/or the Property as soon as reasonably possible to a complete unit of the same quality, character, and utility for Tenant's purposes existing prior to the condemnation. Notwithstanding anything contained herein to the contrary, if the restoration of the Premises, the Building and/or the Property, is not commenced within thirty (30) days of Landlord's receipt of the condemnation award or is not completed within one hundred eighty (180) days from the Condemnation Date, then Tenant may terminate this Lease at any time before Landlord completes the restoration. If this Lease is terminated, Landlord shall return any deposits, all prepaid Base Rent, and other prepaid sums to Tenant within thirty (30) days of the date of termination of this Lease.

15.5. AWARD. Landlord and Tenant may each pursue any condemnation award to which it is entitled by applicable law. Tenant may recover from the condemning authority or from Landlord (if Tenant can show that such amount was included in Landlord's award) that portion of any net award or payment attributable to Tenant's work or installations in the Premises, including, without limitation, the unamortized value of improvements installed in the Premises by Tenant at Tenant's expense based on straight-line depreciation over the Initial Term without regard to the condemnation. For the purposes of this Section, a "net" award or payment shall mean the entire award or payment for such taking, less the actual and reasonable expenses incurred in collecting such award or payment.

16. SIGNAGE. Tenant, at its cost, shall have the right to install or place signs, awnings, or other advertising materials in, on, or about the Premises or on the Building to the maximum extent permitted by local law.

Landlord shall not vary or change the location, size, or position of Tenant's signage, including, but not limited to, the position of Tenant's signage on any pylon or monument signs. Notwithstanding anything contained herein to the contrary, Landlord hereby consents to, and Tenant shall be permitted to install, Tenant's then-current trademarked name(s), colors, letters, font, and logo in Tenant's signage as depicted on Exhibit B-2. Notwithstanding anything contained herein to the contrary, Tenant shall not be required to obtain Landlord's consent for any promotional or advertising signs or displays within the interior of the Premises. Landlord shall not allow any signage other than Tenant's to be erected on the exterior walls of the Premises or on the face of the Building immediately in front of the Premises or on the roof above the Premises.

If Landlord requests that Tenant temporarily remove Tenant's exterior signage after installation for any reason and Tenant consents to such removal in writing, Landlord shall reimburse Tenant for the actual and reasonable cost incurred by Tenant to remove, store, and re-install the exterior signage. If Landlord has not paid Tenant those costs within thirty (30) days after Tenant re-installs its exterior signage, then, in addition to any other remedies Tenant has, Tenant may offset the unpaid amount against Base Rent and all other charges (at Tenant's discretion) until Tenant's costs are fully offset.

17. TENANT'S CONTINGENCIES.

17.1. PERMIT CONTINGENCY. Tenant's obligations under this Lease are conditioned on Tenant's obtaining any permits (including, but not limited to, conditional use permits, building permits, variances, and other governmental approvals) which Tenant agrees to use commercially reasonable efforts to make application for as soon as reasonably practicable following the execution of this Lease (collectively, "**Government Approvals**") that are required by applicable laws to enable Tenant legally to (a) construct Tenant's improvements to the Premises in accordance with Tenant's plans and specifications for the Initial Improvements; (b) install Tenant's signage on the Premises according to City code and regulations; and (c) provide and operate outdoor seating for the Premises. Tenant shall, at Tenant's expense, initiate and diligently pursue each Government Approval pertaining to the tenant improvements Tenant constructs inside the Premises, including, without limitation, the outdoor seating area. Landlord shall use commercially reasonable efforts to diligently work with Tenant in connection with Tenant's obligation to obtain the Government Approvals including, without limitation, executing permit applications and providing Tenant with such further assistance and cooperation as Tenant may reasonably require in connection with applications for such Government Approvals; provided that in no event shall Landlord incur any expense in connection therewith. If Tenant does not obtain such Government Approvals, Tenant shall have the right to terminate this Lease, which termination shall be effective ten (10) day after the date of the written notice of such termination to Landlord. After a termination hereunder, neither party shall have any rights or liabilities under this Lease, and Landlord shall return any deposits and prepaid amounts to Tenant, if any. Notwithstanding anything to the contrary contained herein, in no event shall Tenant have the right to terminate the Lease hereunder as a result of any reasonable costs and/or requests by governmental entities including, without limitation, any license, inspection or permit fees.

17.2. INSPECTION CONTINGENCY. Tenant shall have until thirty (30) days after Tenant first opens the Premises for business to the public (the "**Inspection Period**") to perform any and all inspections and investigations (including without limitation, asbestos, environmental, structural, availability and adequacy of utilities, lead, roof, etc.) with respect to the Premises and Building. If such inspections disclose previously unknown issues or previously unanticipated work which in the aggregate would cost Tenant more than One Hundred Thousand Dollars (\$100,000.00) to remedy or performs, Tenant shall have the right to terminate this Lease by providing written notification thereof to Landlord on or before the last day of the Inspection Period, in which event Tenant shall have no further liability under this Lease.

17.3. LATENT DEFECTS CONTINGENCY. Notwithstanding anything contained herein to the contrary, in the event that Tenant shall discover a latent defect or issue with the Premises, Building or Property at any time during the Term which Landlord cannot or will not remedy (other than structural repairs which Landlord is obligated to repair pursuant to Section 6.2 of the Lease), and which costs more than One Hundred Thousand Dollars (\$100,000.00) to remedy and the existence of which has a material adverse effect on Tenant's business from the Premises, then Tenant may terminate this Lease by providing written notification thereof to Landlord, in which event Tenant shall have no further liability under this Lease.

18. OUTDOOR SEATING. If such seating is permitted by the local authorities, Landlord shall provide to Tenant a minimum 300 square foot outdoor seating area (including any railings or buffer required by code) for its customers on the property owned by Landlord adjacent to the Premises (the dimensions and location of such area are set forth on Exhibit B-1 or otherwise as mutually agreed upon

by Landlord and Tenant). Tenant may provide outdoor seating on such area at any time during the Term of this Lease at no additional rental.

19. **TENANT'S RIGHT OF EARLY TERMINATION.** Notwithstanding anything contained herein to the contrary, provided that Tenant is not in default, Tenant, in its sole discretion, shall have the right to terminate this Lease as of the Early Termination Date. The "**Early Termination Date**" shall be any date on or after the last day of the sixtieth (60th) full calendar month of the Term. In order to exercise this early termination right, Tenant must give Landlord written notice no less than one hundred twenty (120) days before the Early Termination Date. Upon the date Tenant specifies for the Early Termination Date, Tenant shall be fully and forever released and discharged from any and all obligations, covenants or liabilities of whatsoever kind or nature in law or equity or otherwise arising out of or in connection with this Lease or any other agreements by and between Landlord and Tenant except any obligation or liability accrued before the Early Termination Date. Should Tenant elect to terminate this Lease as permitted under this Section 19, Tenant shall pay to Landlord, on or prior to the Early Termination Date a termination fee of One Hundred Thousand Dollars (\$100,000.00).

20. **TENANT'S USE OF COMMON AREAS.** Tenant shall have the right to use any and all appurtenances and easements benefiting the Premises, the Building and the Property, along with sufficient Common Areas and parking to support its intended use of the Premises. In addition to the foregoing, Tenant shall have the right of access to such portions of the Building and Property outside the Premises as are necessary to enable Tenant to exercise its rights under this Lease. Landlord shall not allow any permanent or temporary kiosk, cart, or other obstruction to be constructed or placed on the Property within one hundred fifty (150) feet of the Premises. Any changes, additions, or alterations to the Premises, the Property or the Building shall not (a) impair access to, visibility of, or frontage of the Premises; (b) materially affect the conduct of Tenant's customary business therein; or (c) detract from Tenant's signage, create confusion regarding the business conducted in the Premises, or adversely affect the presentation of Tenant's exterior signage and storefront. In the event of any such interference, in addition to Tenant's other rights and remedies under applicable law and this Lease, the Base Rent and Annual Additional Rent shall be equitably abated based on the degree of interference with Tenant's business.

21. **PARKING AND ACCESS.** Parking servicing Tenant's employees and customers is generally available in garages near the Premises, and based upon monthly permit fees in effect from time to time, which are currently Ninety-Five Dollars (\$95.00) per month. The BID valet service will be available for Tenant's patrons to participate to the extent parking spaces are available.

22. **TRASH REMOVAL.** Tenant shall arrange for its trash and recycling services and shall pay any costs directly to the company providing such service. Landlord shall provide Tenant with a lawful location on the Property (as shown on **Exhibit B-1**) to store a four (4) cubic-yard trash container and a four (4) cubic-yard recycling container. Such storage location shall be (a) exclusively for Tenant's use; (b) at least twenty-six (26) feet long and seven (7) feet wide; (c) enclosed if required by code or by the terms of **Exhibit C**; (d) no greater than 500 feet from the entrance to the Premises, without interrupting the flow to drive-thru lane (if applicable) or access to the parking areas or ingress or egress to and from the Premises; (e) shall not be an area under overhead wires or other barriers; and (f) must be positioned so that Tenant's trash removal vendor can access the container(s) by either a front load or rear load trash removal vehicle.

23. **GENERAL PROVISIONS.**

23.1. **ESTOPPEL CERTIFICATE.** Tenant shall within thirty (30) days following Landlord's request, execute, acknowledge, and deliver to any prospective purchaser or mortgagee, or to Landlord on such party's behalf, a statement in writing on Landlord's reasonably requested form (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect); (b) stating the date to which the Base Rent and other charges are paid and the amount of any security deposit held by Landlord, if any; (c) acknowledging that there are not, to the actual knowledge of the person executing such certificate, any

uncured defaults on the part of Landlord hereunder, or specifying such defaults, if any, which are claimed; and (d) acknowledging such other facts or statements as may be reasonably requested by Landlord therein. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Such certificates shall not affect, prejudice or waive any rights or remedies of Tenant against Landlord.

23.2. LANDLORD'S INTERESTS. Landlord represents and warrants to Tenant that, as of the Effective Date of this Lease, (a) Landlord owns and holds fee title in and to the Building, the Premises, and the Property enabling Landlord to enter into an enforceable lease with Tenant on the terms and conditions contained herein; (b) the real property identified on **Exhibit A** contains the Premises described in Section 1.1; (c) there are no encumbrances, liens, agreements, or covenants in effect that would materially and adversely limit Tenant's rights or augment Tenant's obligations hereunder, and Landlord further represents and warrants that it will not enter into any such encumbrances, liens, agreements, or covenants that do so; and (d) Landlord is unaware of any impending condemnation plans, proposed assessments, or other adverse conditions relating to the Property. The term "**Landlord**" as used herein shall mean only the owner or owners, at the time in question, of the fee title (or a tenant's interest in a ground lease) of the Premises. In the event of an assignment or transfer of this Lease by Landlord for other than security purposes, Landlord shall cause its assignee or transferee to assume the provisions of this Lease and deliver a new notice address to Tenant and Landlord shall deliver written notice of such assignment or transfer and a copy of the effective instrument of transfer to Tenant within fifteen (15) days after the date of transfer. Tenant shall be entitled to continue to pay rent and give all notices to Landlord until Tenant has received the foregoing from Landlord and notice information from Landlord's transferee. Landlord shall deliver all funds in which Tenant has an interest, including, but not limited to, Tenant's security deposit, if any, to Landlord's purchaser or assignee. From and after a sale of the Premises, the Building or the Property, Landlord shall be released from all liability toward Tenant arising from this Lease because of any act, occurrence, or omission of Landlord's successors occurring after the transfer of Landlord's interest in this Lease, provided Landlord's purchaser or assignee expressly assumes Landlord's duties and covenants under this Lease. Nothing herein shall be deemed to relieve Landlord of any liability for its acts, omissions, or obligations occurring or accruing up to and including the date of such transfer.

23.3. AUTHORITY. Each of Landlord and Tenant hereby represents and warrants that this Lease has been duly authorized, executed, and delivered by and on its behalf and constitutes such party's valid and binding agreement in accordance with the terms hereof.

23.4. SEVERABILITY. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

23.5. TIME OF ESSENCE. Time is of the essence to the parties executing this Lease.

23.6. INTERPRETATION. Article and section headings are not a part hereof and shall not be used to interpret the meaning of this Lease. This Lease shall be interpreted in accordance with the fair meaning of its words, and both parties certify they either have been or have had the opportunity to be represented by their own counsel and that they are familiar with the provisions of this Lease, which provisions have been fully negotiated, and agree that the provisions hereof are not to be construed either for or against either party as the drafting party.

23.7. INCORPORATION OF PRIOR AGREEMENTS, AMENDMENTS. This Lease contains all agreements of the parties as of the date hereof with respect to any matter mentioned herein. No prior agreement, correspondence, or understanding pertaining to any such matter shall be effective to interpret or modify the terms hereof. Oral commitments or promises are not enforceable and shall not be binding or made part of this Lease. Any revisions or modifications to this Lease must be in writing and mutually accepted by persons with full and complete authority to bind the party, as designated by this Lease. Landlord waives the right to claim or assert the existence of any other modifications to this Lease. This Lease may be modified only in writing, signed by the parties in interest, at the time of the modification.

Landlord specifically acknowledges that Tenant's employees at the Premises do not have authority to modify this Lease or to waive Tenant's rights hereunder.

23.8. WAIVERS. No waiver by Landlord or Tenant of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant or Landlord of the same or any other provision. A party's consent to or approval of any act shall not be deemed to render unnecessary obtaining such party's consent to or approval of any subsequent act. No waiver shall be effective unless it is in writing, executed on behalf of Landlord or Tenant by the person to whom notices are to be addressed.

23.9. RECORDING. Landlord or Tenant may record a short form or memorandum of lease at the requesting party's expense, substantially in the form attached to this Lease as Exhibit K. At Landlord's or Tenant's request, the parties shall execute a memorandum of lease in recordable form giving notice of such non-monetary terms as Tenant may reasonably request, including Tenant's exclusivity and option rights. If Tenant elects to record a memorandum of lease and Landlord requests in writing the removal of same upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's expense, remove the recorded memorandum from the title records.

23.10. HOLDING OVER. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term, with or without the consent of Landlord, such occupancy shall be a tenancy from month-to-month at 200% of the amount of the Base Rent payable in the last month of the Term, plus all other charges payable hereunder, and upon the terms hereof applicable to month-to-month tenancies.

23.11. CUMULATIVE REMEDIES. Except where otherwise expressly provided in this Lease, no remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

23.12. BINDING EFFECT; CHOICE OF LAW. This Lease shall be binding upon and benefit the parties, their personal representatives, successors, and assigns. This Lease shall be governed by the laws of the state where the Premises are located.

23.13. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT. This Lease shall be subordinate to all existing mortgages and/or deeds of trust affecting the Premises as of the Effective Date of this Lease, provided that Tenant may require that Tenant, Landlord, and Landlord's lender execute and record a subordination, nondisturbance and attornment agreement ("**SNDA**") in form and substance satisfactory to Tenant, Landlord and Landlord's lender. If requested by Landlord, Tenant agrees to subordinate this Lease to the lien of any mortgage or deed of trust subsequently placed on the Property and to attorn to Landlord's successor following any foreclosure, sale, or transfer in lieu thereof; provided that the mortgagee, transferee, purchaser, lessor, or beneficiary ("**Landlord's Successor**") agrees, in an SNDA in form and substance satisfactory to Tenant and Landlord, that Tenant's use or possession of the Premises shall not be disturbed. Notwithstanding any foreclosure or sale under any mortgage or deed of trust (or transfer by deed in lieu thereof), this Lease shall remain in full force and effect.

23.14. LANDLORD'S ACCESS. Landlord and Landlord's agents shall have the right to enter the Premises upon forty-eight (48) hours' prior written notice for the purpose of inspecting the same, showing the same to prospective purchasers or lenders, and making such repairs to the Premises or to the Building as Landlord is obligated to make pursuant to the terms of this Lease. Notwithstanding the foregoing, in the event of an emergency requiring Landlord's entry into the Premises, Landlord may give Tenant shorter notice in any manner that is practicable under the circumstances. When entering or performing any repair or other work in, on, or around the Premises or the Building, Landlord, its agents, employees, and/or contractors (a) shall identify themselves to Tenant's personnel immediately upon entering the Premises; and (b) shall not, in any way, affect, interrupt, or interfere with Tenant's use, business, or operations on the Premises or obstruct the visibility of or access to the Premises. In the event of interference with Tenant's operations in the Premises, the Base Rent and Annual Additional Rent shall be equitably abated if the interference continues for more than forty-eight (48) hours. In the event

such interference shall continue for longer than six (6) months, Tenant shall have the option to terminate this Lease or continue to operate with rent abatement after such interruption has ceased for a time period equal to the duration of such interruption.

23.15. ONLY LANDLORD/TENANT RELATIONSHIP. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture, or any association between Landlord and Tenant. Landlord and Tenant expressly agree that neither the method of computation of rent nor any act of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

23.16. ATTORNEYS' FEES. If either party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, proceeding, trial, or appeal, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court.

23.17. FORCE MAJEURE. In the event either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Lease to be performed by such party ("**Required Act**"), and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God ("**Force Majeure Event**"), then the performance of such Required Act shall be excused for the period of delay and the time period for performance of the Required Act shall be extended by the same number of days in the period of delay. For purposes of this Lease, the financial inability of Landlord or Tenant to perform any Required Act, including, without limitation, failure to obtain adequate or other financing or Landlord's failure to become the fee simple owner of the Property, shall not be deemed to constitute a Force Majeure Event. A Force Majeure Event shall not be deemed to commence until ten (10) days before the date on which the party who asserts some right, defense, or remedy arising from or based upon such Force Majeure Event gives written notice thereof to the other party. If abnormal adverse weather conditions are the basis for a claim for an extension of time due to a Force Majeure Event, the written notice shall be accompanied by data substantiating (i) that the weather conditions were abnormal for the time and could not have been reasonably anticipated and (ii) that the weather conditions complained of had a significant adverse effect on the performance of a Required Act. To establish the extent of any delay to the performance of a Required Act due to abnormal adverse weather, a comparison will be made of the weather for the time of performance of the Required Act with the average of the preceding ten (10) years' climatic range based on the National Weather Service statistics for the nearest weather reporting station to the Premises. No extension of time for or excuse for a delay in the performance of a Required Act will be granted for rain, snow, wind, cold temperatures, flood, or other natural phenomena of normal intensity for the locality where the Premises are located.

23.18. CONFIDENTIALITY OF LEASE. From and after the date lease negotiations were entered into and throughout the Term of this Lease, the parties shall not disclose any of the terms, covenants, conditions, or agreements set forth in the letters of intent or in this Lease or any amendments hereto, nor provide such correspondence, this Lease, any amendments hereto or any copies of the same, nor any other information (oral, written, or electronic) which is communicated by or on behalf of Tenant or on behalf of Landlord relating to Tenant's proposed development of the Premises (including, without limitation, architectural plans, specifications, site plans, and drawings) or Tenant's business, to any person, including, without limitation, any brokers, any other tenants in the Building, or any affiliates, agents, or employees of such tenants or brokers except as set forth herein, without Tenant's written consent or except as ordered by a court with appropriate authority, provided Landlord seeks available protective orders. Notwithstanding the foregoing, Landlord may disclose the terms of this Lease to those of its partners, employees, consultants, attorneys, accountants, current or potential mortgagees, lenders, or purchasers of the Property who agree to be bound by the terms of this Section and Tenant may disclose the terms of this Lease to those of its partners, employees, consultants, attorneys, accountants, and current or potential lenders, assigns, or subtenants who agree to be so bound.

23.19. BROKERS. Landlord agrees to pay a brokerage commission of four percent (4%) of the Base Rent payable during the Initial Term to The Shopping Center Group, LLC for services provided in

connection with this Lease in accordance with the terms of a separate commission agreement. Except as specifically identified in this Section, Landlord and Tenant each represent to the other that they have not dealt, directly or indirectly, in connection with the leasing of the Premises, with any other broker or person entitled to claim a commission or leasing fees. In no event may this Lease be construed to create any express or implied obligation on the part of Tenant to perform this Lease on behalf of any broker (or any person claiming a commission or leasing fee) as primary obligee or as a third party beneficiary. Landlord and Tenant each shall indemnify and hold each other harmless from any loss, liability, damage, or expense (including, without limitation, reasonable attorneys' fees) arising from any claim for a commission or leasing fee arising out of this transaction made by any unidentified broker or other person with whom such party has dealt.

23.20. RULES AND REGULATIONS. Tenant agrees to comply with Landlord's reasonable rules and regulations relating to the Premises and/or the Building as same may be in effect from time to time; provided, however, that any such rules or regulations shall not materially limit or restrict Tenant's rights or materially increase Tenant's costs or obligations under this Lease, and to the extent of any conflict or inconsistency between the terms of this Lease and such rules and regulations, the terms of this Lease shall govern and control.

23.21. WAIVER OF JURY TRIAL. WITH RESPECT TO ANY LITIGATION ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, LANDLORD AND TENANT HEREBY EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY.

23.22. COUNTERPARTS. This Lease may be signed in two or more counterpart copies with the same effect as if the signature to each counterpart copy were on a single instrument. Each counterpart shall be deemed an original as to any party whose signature it bears and all such counterparts shall constitute one document. Facsimile or electronically scanned copies shall be deemed original.

23.23. GOVERNING LAW. This Lease shall be subject to and governed by the laws of the State of Florida, without regard to its conflict of laws provisions. The parties agree that any action or proceeding arising out of or related in any way to this Lease shall be brought solely in a court of competent jurisdiction in Miami-Dade County, Florida.

23.24. OTHER STORES. Notwithstanding anything in this Lease to the contrary, under no circumstances do the parties to this Lease intend to limit or otherwise affect in any way the ability or right of Tenant and Tenant's affiliates to open, operate, merchandise, or close any stores anywhere, regardless of the proximity to the Premises or the potential or actual effect of the opening, operation, merchandising, or closing of such stores, and further regardless of any obligations or rights based on the sales generated at the Premises expressly set forth in this Lease. Without limiting the generality of the foregoing, the parties confirm that neither Tenant nor its affiliates are subject to a so-called "opening covenant," "continuous operation clause," "operating covenant," "radius restriction," or similar limitation in favor of Landlord or its affiliates or other tenants in the Building.

24. QUIET ENJOYMENT. Without limiting any rights Tenant may have by statute or common law, Landlord covenants and agrees that, so long as this Lease is in full force and effect, Tenant shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term of this Lease without disturbance by Landlord or by any person having title paramount to Landlord's title or by any person claiming through or under Landlord.

25. NOTICES. Whenever a provision is made under this Lease for any demand, notice, or declaration of any kind (even if the provision does not expressly require notice in writing), or where it is deemed desirable or necessary by either party to give or serve any such notice, demand, or declaration to the other party, it shall be in writing and served either personally or sent by United States mail, certified, postage prepaid, or by pre-paid nationally recognized overnight courier service, addressed at the addresses set forth below or at such address as either party may advise the other from time to time. In the event a party refuses to accept delivery of a properly issued notice, the date of rejection shall be

deemed the date notice has been received. Any such notice, demand, or declaration which does not comply with the foregoing requirements above shall be ineffective for purposes of this Lease.

To Landlord at: The City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134
Phone: (305) 460 5218
Attn: Craig Leen, Esq., City Attorney

with a copy to: Holland & Knight LLP
Attn: Vivian de las Cuevas-Diaz, Esq.
701 Brickell Avenue, Suite 3300
Miami, FL 33131
Phone: 305-789-7452

To Tenant at: Starbucks Corporation
Attn: Property Management Department
RE: Starbucks Coffee Company Store #_____ - ____
[Starbucks to Provide]
Mailstop S-RE3

by mail at: P.O. Box 34067
Seattle, WA 98124-1067

or by overnight delivery to: 2401 Utah Avenue South, Suite 800
Seattle, WA 98134
Phone: (206) 447-1575

Notices, demands, or declarations given under this Lease will be deemed to have been given when received or when receipt is refused.

Landlord shall send a duplicate copy of any notice given under Article 14 to the attention of the Law and Corporate Affairs Department at the same address, Mailstop S-LA1.

26. PUBLIC RECORDS DISCLOSURE. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119 (“**Chapter 119**”), shall be kept and maintained in accordance with such statute. Tenant acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the Landlord in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the Landlord for such disclosure and/or production. Tenant also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the Landlord. Furthermore, Tenant agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes.

27. SOVEREIGN IMMUNITY. The parties acknowledge that the Florida Doctrine of Sovereign Immunity bars all claims against Landlord other than claims arising out of this Lease. Specifically, Tenant acknowledges that it cannot and will not assert any claims against Landlord, unless the claim is based upon a breach by Landlord of this Lease. Furthermore, Tenant understands that it has no right and will not make any claims based upon any of the following: (1) claims based upon any alleged breach by Landlord of warranties or representations not specifically set forth in this Lease, as the parties stipulate that there are no such implied warranties or representations of the Landlord. All obligations of the Landlord are only as set forth in this Lease; (b) claims based upon negligence or any tort arising out of this Lease; (c) claims against any Landlord employee, elected or appointed official, officer, director or agent of the Landlord, or (d) claims based upon an alleged waiver of any of the terms of this Lease unless such waiver is in writing and signed by an authorized representative for the Landlord and Tenant. Nothing in this Lease is intended to operate as a waiver of Landlord’s sovereign immunity.

28. EXHIBITS. The following exhibits are attached to this Lease and by this reference are incorporated herein:

- Exhibit A** – Legal Description
- Exhibit B** – Property Site Plan Identifying Premises
- Exhibit B-1** – Diagram of Premises, Trash Enclosures, and Outdoor Seating Area
- Exhibit B-2** – Signage
- Exhibit C** – Reserved
- Exhibit D** – Delivery of Possession Letter
- Exhibit E** – Reserved
- Exhibit F** – Date Certificate
- Exhibit G** – Prohibited Uses
- Exhibit H** – Exclusions to Tenant’s Exclusive
- Exhibit I** – Reserved
- Exhibit J** – Reserved
- Exhibit K** – Memorandum of Lease

[signature(s) on following page(s)]

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

WITNESSES:

Print Name: _____

Print Name: _____

WITNESSES:

Print Name: _____

Print Name: _____

LANDLORD:

CITY OF CORAL GABLES, a Florida
municipal corporation

By: _____
Its: _____

TENANT:

STARBUCKS CORPORATION,
a Washington corporation

By: _____
Its: _____

Landlord's Federal Tax Identification
Number: 59-6000293

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the _____ of _____, duly commissioned and sworn, personally appeared _____, to me known as, or providing satisfactory evidence that he/she is the _____ of the City of Coral Gables, a municipal corporation, the corporation that executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said _____ for the uses and purposes therein mentioned and on oath stated that he/she is authorized to execute said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of Florida
residing at _____
My commission expires _____
Printed Name: _____

EXHIBIT A

LEGAL DESCRIPTION

Tax Parcel Number: _____

That certain tract of land situated in the County of Miami-Dade, State of Florida and more particularly described as follows:

[TO BE PROVIDED]

EXHIBIT B

PROPERTY SITE PLAN IDENTIFYING PREMISES

EXHIBIT B-1

DIAGRAM OF PREMISES, TRASH ENCLOSURE, AND OUTDOOR SEATING AREA

EXHIBIT B-2

SIGNAGE

EXHIBIT C

RESERVED

EXHIBIT D

DELIVERY OF POSSESSION LETTER

Project Name: _____ Store #: _____

Tenant: Starbucks Corporation

Landlord: _____

Premises Address: _____

Square Footage: _____

Without limiting any of Tenant's rights and remedies expressly set forth in this Lease, and without limiting Landlord's obligations thereunder, including, without limitation, requirements for the condition of the Premises, the completion of Landlord's Work, and the deadlines for completion of Landlord's Work and other items, Landlord and Tenant acknowledge and agree that:

Tenant Accepts/Rejects Possession of the Premises:		Status of Landlord's Work:	Possession Date:	Landlord's Work Complete Date:
Tenant <u>Accepts</u> Possession of the Premises	√	Landlord's Work is COMPLETE subject to the minor punchlist items listed below, or otherwise communicated to Landlord.		
Tenant <u>Accepts</u> Possession of the Premises		Landlord's Work is NOT COMPLETE. Tenant elects to complete the unfinished items of Landlord's Work at Landlord's expense subject to the terms and conditions of Landlord Work Modification Letter.		NA
Tenant <u>Rejects</u> Possession of the Premises		Landlord's Work is NOT COMPLETE. Tenant may enter the Premises to begin performing Tenant's improvements. Landlord shall complete Landlord's Work at Landlord's expense.	NA	NA
Tenant <u>Rejects</u> Possession of the Premises		Landlord's Work is NOT COMPLETE. Landlord shall complete Landlord's Work at Landlord's expense.	NA	NA

If Landlord's Work is NOT COMPLETE and Tenant REJECTS Landlord's delivery of possession, Landlord and Tenant shall re-execute this Delivery of Possession agreement once Landlord's Work is complete in accordance with this Lease requirements and Tenant's accepts possession of the Premises.

Incomplete Items of Landlord's Work: (Attach additional pages if necessary)	Landlord's Target Completion Date:

Landlord:

Tenant:

Printed Name: _____
 Title: Project Manager
 Date: _____

Printed Name: _____
 Title: Project Manager
 Date: _____

EXHIBIT E

Reserved

EXHIBIT F

DATE CERTIFICATE

Date
Attn: Name
Company Name
Address
City, State, Zip

Re: Starbucks Coffee at _____
City, State
Starbucks Store # _____

Dear Name:

Please confirm the following list of dates pursuant to the Lease by and between _____ and Starbucks Corporation for the above referenced location:

Possession Date: ___/___/___
Permit Date: ___/___/___ [if referenced in the Lease]
Commencement Date: ___/___/___
Starbucks Store Opening Date: ___/___/___
Rent Commencement Date: ___/___/___
Expiration Date: ___/___/___

Pursuant to Section ____ of the Lease, the Base Rent schedule shall be as set forth below:

___/___/___ - ___/___/___ \$ _____ Pro-rated: \$ _____ ÷ ___ days x ___ day(s)
___/___/___ - ___/___/___ \$ _____ Per month
___/___/___ - ___/___/___ \$ _____ Per month

[If applicable:]

Option 1 ___/___/___ - ___/___/___ \$ _____ Per month
Option 2 ___/___/___ - ___/___/___ \$ _____ Per month
Option 3 ___/___/___ - ___/___/___ \$ _____ Per month
Option 4 ___/___/___ - ___/___/___ \$ _____ Per month

Please have both copies of this letter signed and dated by Landlord and return one (1) of the originals in the envelope provided. If you have any questions regarding the above information please contact Name at (phone number).

Agreed to this _____ day of _____, 201_, by and between:

Landlord:

Starbucks Corporation:

Signature

Printed name and title

By: _____
Name
title

EXHIBIT G

PROHIBITED USES

1. No person shall burn any trash of any kind in or about the Property.
2. No loudspeaker device or any noise making device shall be used in such a manner as to be audible to anyone not within the Demised Premises.
3. No cooking or other noxious odors shall be permitted outside of any occupant's premises.
4. No premises shall be used for manufacturing or for the possession, storage, manufacture or sale of liquor or narcotics.
5. Grocery stores of the type of 7-11, meat and fish markets; provided, however, that this restriction shall not prevent the use of the premises for specialty or gourmet food, a delicatessen, fruit store or health food store, any one of which must have not more than 4,000 square feet of floor area, including storage area.
6. Information booth or gatehouse.
7. Restaurants, coffee shops or dining rooms, as described in the Miami-Dade County Code, which shall be in excess of 5,000 square feet, including kitchen and storage area.
8. Amusement center, as defined in the Miami-Dade County Code.
9. Auditoriums.
10. Automobile, new parts and equipment sales.
11. Automobile sales of any kind.
12. Automobile service station or self-service gas station.
13. Automobile tires, batteries and accessories sales.
14. Automobile washing.
15. Tool shops.
16. Billiard rooms and pool rooms.
17. Bowling alleys.
18. Convention halls.
19. Dance halls or dancing academies.
20. Dry cleaning establishments, as described in the Miami-Dade County Code; provided, however, that this exclusion shall not prohibit the operation of a business commonly known as a "drop shop", where none of the cleaning, washing or pressing is done on the premises.
21. Lawn mower retail sales and services.
22. Mortuaries or funeral homes.

23. Motorcycle sales and repairs.
24. Natatoriums.
25. Open air theatres.
26. Pawn shops.
27. Post office stations and branches.
28. Skating rinks.
29. Telephone exchange.
30. Automobile parking garage which are open to the general public for hire.
31. Major department stores of the type of Macy's, Nordstrom or Nieman Marcus.
32. Fast food drive thru.
33. Any use involving partial or full nudity.
34. City of Coral Gables Zoning Code; subject to the list above.

EXHIBIT H

EXCLUSIONS TO TENANT'S EXCLUSIVE

<u>Tenant</u>	<u>Permitted Use</u>
Aboti, LLC d/b/a Haagen Dazs	Tenant will use and occupy the Premises for the primary use of selling ice cream, yogurt, coffee, frozen desserts, blended drinks, pastries, and novelties and for no other use or purpose. Tenant has an exclusive use for sale of ice cream, yogurt, frozen desserts and blended drinks as a primary use within all Landlord's owned property on Miracle Mile.

EXHIBIT I

RESERVED

EXHIBIT J

RESERVED

EXHIBIT K

WHEN RECORDED RETURN BY MAIL TO:

First American Title Company
National Commercial Services
1790 Hughes Landing Blvd., Suite 110
The Woodlands, Texas 77380
ATTN: Sharon P. Mork
Vice President/Manager
Sr. Commercial Escrow Officer

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum") is entered into by and between City of Coral Gables, a Florida municipal corporation ("Landlord"), having its principal place of business at 405 Biltmore Way, Coral Gables, FL 33134, and Starbucks Corporation, a Washington corporation, having an office at 2401 Utah Avenue South, Seattle, Washington 98134 ("Tenant"), Landlord and Tenant having entered into a commercial lease having an Effective Date of _____, 20__ ("Lease").

1. The Lease covers certain commercial property located at Miracle Mile and Salzedo Street in Coral Gables, Florida, consisting of approximately 2,250 square feet of Gross Leasable Area ("Premises") at the building located at the southeast corner of Miracle Mile and Salzedo Street commonly known as "292 Miracle Mile" ("**Building**"), all as more particularly described in the Lease. The legal description of the Property on which the Premises is located is attached hereto as Exhibit A and incorporated herein by this reference.

2. The Lease provides for the rental of the Premises by Tenant for a term of ten (10) years ("Initial Term").

3. The Lease grants to Tenant the right to renew the Initial Term for up to four (4) consecutive five (5)-year period(s) ("Extension Term[s]") under the same terms and conditions contained in the Lease, provided Tenant exercises the applicable Extension Term in accordance with the applicable terms of the Lease. Base Rent during any Extension Term(s) shall be as specified in the Lease.

4. Tenant may use and occupy the Premises and outdoor seating area for (a) a coffee store or (b) any other lawful retail or restaurant use, including, without limitation, the sale of beer and wine; provided, however, the Premises shall not be used for any of the Prohibited Uses set forth on **Exhibit G** attached to the Lease.

5. Landlord shall not use or allow any other person or entity (except Tenant) to use any portion of the Building for the sale of: (a) whole or ground coffee beans, (b) espresso, espresso-based drinks or coffee-based drinks, (c) tea or tea-based drinks, (d) brewed coffee or (e) blended coffee related beverages. In the event of a violation of Tenant's exclusive use which continues more than sixty (60) days after Tenant provides written notice thereof to Landlord and Landlord has been unable to cure, all rent due under this Lease from and after the sixty-first (61st) day after Tenant's notice shall be reduced by fifty percent (50%) until the violation has been cured and the competing tenant(s) at the Building cease the sale of any of the products protected by Tenant's exclusive use described above. In the event that the violation continues for more than one hundred (120) days, Tenant shall have the right to terminate this Lease, provided such termination is exercised within ninety (90) days from the expiration of the foregoing one hundred twenty (120) day period.

Notwithstanding anything to the contrary contained in the Lease, any existing tenant in the Building with a lease which predates the date of the Lease (which existing tenants, with a statement of their permitted use clauses, are set forth on **Exhibit H** attached to the Lease) whose lease allows it to sell any of the forgoing products, shall not be subject to Tenant's exclusive use restriction set forth herein, if and to the extent that any such existing tenant is permitted by its lease to sell any of Tenant's exclusive use items; provided, however, that with respect to the tenants set forth on **Exhibit H**, Landlord agrees

that to the extent Landlord has reasonable control over any such tenant's use and changes in use, Landlord shall exercise such control to enforce and protect Tenant's exclusive use rights described herein.

Full service, sit-down restaurants with a wait staff and table service serving a complete dinner menu may sell, in conjunction with a sale of a meal, brewed coffee, tea and hot espresso drinks for on-premises consumption only. Furthermore, the existing Häagen Dazs tenant currently sells coffee.

6. This Memorandum shall not, under any circumstances, be deemed to modify or change any provisions of the Lease, the provisions of which shall in all instances prevail.

7. This Memorandum may be signed in two or more counterpart copies with the same effect as if the signature to each counterpart copy were on a single instrument. Each counterpart shall be deemed an original as to any party whose signature it bears and all such counterparts shall constitute one document. Facsimile or electronically scanned copies shall be deemed originals.

[SIGNATURES ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease this ____ day of _____, 20__.

LANDLORD:

CITY OF CORAL GABLES, FLORIDA

By: _____

Name: _____

Title: _____

ACKNOWLEDGEMENT OF LANDLORD

STATE OF _____)

) ss.

COUNTY OF _____)

On the ____ day of _____, 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within this Memorandum of Lease and acknowledged to me that he/she executed the same in his/her capacity as _____ of _____, and that by his/her signature executed the instrument on behalf of said _____.

Notary Public for the State of _____

Commission expires: _____

TENANT:

STARBUCKS CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT OF STARBUCKS CORPORATION

STATE OF WASHINGTON)
) SS.:
COUNTY OF KING)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity as _____ of **Starbucks Corporation**, and that by his/her signature executed this Memorandum of Lease on behalf of Starbucks Corporation.

Notary Public for the State of _____
Commission expires: _____

EXHIBIT A TO MEMORANDUM OF LEASE

Legal Description of the Property

That certain tract of land situated in the County of Miami-Dade, State of Florida, and more particularly described as follows: