

**VILLAGE OF GATES MILLS  
SPECIAL COUNCIL MEETING AGENDA  
FEBRUARY 17, 2023  
8:00 a.m.**

**VILLAGE HALL COUNCIL CHAMBERS, 1470 CHAGRIN RIVER ROAD  
(Livestream available on YouTube – click the link on  
[www.gatesmillsvillage.com](http://www.gatesmillsvillage.com) to watch)**

1. Roll call.
2. **Resolution No. 2023-9 First Reading** **AuWerter.**  
A Resolution Authorizing the Mayor and the Clerk to Enter Into a Lease with Gavi's River, LLC, for a Coffee Shop at 1501 Chagrin River Road and Declaring an Emergency.
3. Executive Session.
4. **Motion** to Authorize the Mayor to Engage Professional Design Services for the Purpose of Construction at the Village's Property at 1501 Chagrin River Road in an Amount not to Exceed \$50,000.
5. Adjourn.

Proposed Ordinances and Resolutions on the Agenda may be obtained by calling Village Hall, 440-423-4405.

RESOLUTION NO. 2023- 9

BY COUNCILMEMBERS AuWERTER

A RESOLUTION AUTHORIZING THE MAYOR AND THE CLERK TO ENTER INTO A LEASE WITH GAVI'S RIVER, LLC, FOR A COFFEE SHOP AT 1501 CHAGRIN RIVER ROAD AND DECLARING AN EMERGENCY.

WHEREAS, the Village owns the property known as 1501 Chagrin River Road, Gates Mills, Ohio, 44040;

WHEREAS, on July 14, 2015, by Ordinance 2015-18, this Council approved an Amended and Restated Lease for a portion of said property with Gavi's River, LLC ("Lessee") which commenced August 1, 2015 and runs through July 31, 2025;

WHEREAS, additional space at 1501 Chagrin River Road has now become available, and is unused and unneeded for Village purposes; Lessee wishes to lease that additional space contiguous to its current leased space for purposes of establishing a coffee shop; and this Council desires to lease that additional space to the Lessee through the same term of the existing Amended and Restated Lease and as provided in the "Indenture of Lease" attached hereto and incorporated herein as "Exhibit A";

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Gates Mills, County of Cuyahoga, State of Ohio, that:

Section 1. The Mayor and the Clerk are authorized to execute an Indenture of Lease with Gavi's River, LLC, under the terms as set forth in said Lease that is attached hereto as Exhibit A.

Section 2. The actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings held in compliance with all legal requirements.

Section 3. This Resolution is declared to be an emergency measure, which is immediately necessary for the public peace, health, safety, and welfare; such necessity existing for the further reason that it is necessary for the Village to authorize the within Lease for the property known as 1501 Chagrin River Road, Gates Mills, Ohio, 44040, so that it may commence as quickly as possible given construction schedules related to the obligations of both the Village and the Lessee and for the ongoing business needs of the Lessee; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
Clerk

APPROVED:

\_\_\_\_\_  
Mayor

**“EXHIBIT A”**

**INDENTURE OF LEASE**

THIS INDENTURE OF LEASE (“Lease”) is made and entered into at Gates Mills, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the VILLAGE OF GATES MILLS, hereinafter called “Lessor” and GAVI’S RIVER, LLC, an Ohio limited liability company, hereinafter called “Lessee”.

WHEREAS, Lessor and Lessee are contemplating entering into an Amendment to Lease regarding portions of the building known as 1501 Chagrin River Road, Gates Mills, Ohio 44040 where Sara’s Restaurant operates to add provisions for use of the Burton Court and the contiguous North Patio and South Patio in front of the building at 1501 Chagrin River Road, and to make other amendments thereto; and

WHEREAS, the parties contemplated in the Amendment to the Lease for the operation of Sara’s Place and now the operation of Burton Court and the North and South Patios that Lessee would provide for establishment of a coffee shop in space located on the first floor of the building to the south of the front entrance of Sara’s Place in an area consisting of approximately five hundred and one (501) square feet with dimensions of 16’9 by 29’2 approximately (“Demised Premises”); and

WHEREAS, Lessor and Lessee desire to execute this Lease to provide for a term commensurate with the term of the lease for Sara’s Place (the latter referred to as the “Sara’s Lease”).

**WITNESSETH:**

**1. Demised Premises**

A. For the rents and upon the terms and conditions hereinafter set forth, Lessor hereby leases to Lessee certain premises, containing approximately five hundred one (501) square feet of first floor space in the building known as 1501 Chagrin River Road, Gates Mills, Ohio 44040, located on the parcel of land described on **Exhibit “A”**, attached hereto and made a part hereof, being outlined or crosshatched on the floor plan marked **Exhibit “B”**, attached hereto and made a part hereof, all hereinafter called the “Demised Premises”.

B. Subject to the terms of Section 5, below, Lessee has examined the Demised Premises and the same are known to the Lessee to be in good condition and repair, and Lessee hereby accepts them in their present condition.

C. Lessor reserves the right to place, maintain, repair and replace utility lines, pipes, tunneling and the like, in, under, over and through the Demised Premises and building in which the Demised Premises are located as may be reasonably necessary or desirable for the servicing, repair, renovation or improvement of the Demised Premises or the building in which the demised Premises are located. Lessor shall have the right to enter the Demised

Premises during normal business hours upon no less than 24 hours written notice to Lessee, except that Lessor may enter at any time in response to an emergency presenting an immediate danger to life or property, and to the use of the roof and exterior walls of the Demised Premises and building for such purpose. Lessee shall receive a pro-rata reduction in the rent specified in Section 3 hereof for each day that such work by Lessor renders the Demised Premises substantially unusable for Lessee's normal business operations.

D. Except as hereafter set forth, Lessee already has exclusive use of the South Patio immediately adjacent to the Demised Premises as more fully depicted in Exhibit B to Sara's Lease (the "South Patio") if it is operating during lunch hours. Notwithstanding the foregoing, Lessee may utilize the South Patio as part of its operation of a coffee shop from the Demised Premises during the hours in which the Demised Premises will be operated by Lessee, or its sublessee. The Lessor hereby waives its right to utilize the South Patio but only during those times when Lessee, in operating from the Demised Premises, shall, subject to Lessee's right to operate at the South Patio pursuant to Sara's Lease, have exclusive use of and access to the South Patio at the times when either the coffee shop or Sara's Place is open for lunch. In the event no lunch is served from either Sara's Place or the coffee shop, then exclusive use of the South Patio will only occur when Lessee is open for daily business or preparing to open for food service each day.

## 2. Term; Option to Renew.

A. Term. Except as hereinafter set forth, Lessee shall hold the Demised Premises from the Effective Date of the execution of this Lease until July 31, 2025. In the event the Lessee extends the current term of the lease for the Sara's Lease, before July 31, 2025, as a result of making improvements to the Sara's Restaurant Premises, then Lessee shall have the option to extend the term of this Lease to match the current term expiration date of the Sara's Lease by giving written notice to Lessor within ninety (90) days after the Sara's Lease term is extended.

B. Option to Renew. Lessee shall have the option to extend the term of this Lease for two (2) additional terms of five (5) years provided that Lessee is not in default of any and all of the terms, covenants and conditions of this Lease (subject to applicable notice and cure periods in this Lease) either on the date that notice of extension is given or on the Commencement Date of the extended term. Such options to extend shall be exercised by the Lessee by giving written notice to the Lessor not less than six (6) months prior to the expiration date of the original term of the Lease or any renewal term. The extension of this Lease shall be upon the same terms, covenants and conditions as are contained in this Lease.

## 3. Rent.

A. Initial Rental. In consideration of said demise, Lessee covenants and agrees to pay to Lessor, without deduction or setoff of any kind, as rental for the use of the Demised Premises during the term of the Lease at the rate of Eight Hundred Dollars (\$800.00) per month. All such rental shall be payable in current legal tender of the United States of America, as the same is then by law constituted. All such sums are due and payable in

advance, on the first day of each and every calendar month during said term c/o Clerk of Gates Mills, 1470 Chagrin River Road, Gates Mills, Ohio 44040, or at such other place as Lessor may in writing designate. In the event any payment of base rental is not received by Lessor within ten (10) days of its due date, Lessor shall have the right at Lessor's option to charge Lessee a late fee of two percent (2%) of the amount of the overdue payment. If the late fee is charged, it shall be payable upon demand.

B. Rent for Renewal Term. The rent for any Renewal Term shall be increased in an amount equal to (i) the cumulative annual percentage increase in the Consumer Price Index for the prior term, or (ii) two percent (2%) for each year of the term then ended, whichever is less. For the purpose of this Lease, "Consumer Price Index" or "CPI" shall mean the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (1982-84=100) published by the Bureau of Labor Statistics of the United States Department of Labor. If during the term of this Lease the Bureau of Labor Statistics, United States Department of Labor, ceases to maintain said Consumer Price Index, such other index or standard which in Lessor's judgment will most nearly accomplish the aim and purpose of the Consumer Price Index and the use thereof by the parties hereto shall be used in determining the amount of any such adjustment. Lessee's right to exercise an option to renew under this Section is contingent on David J. Gromelski maintaining an ownership interest of no less than twenty percent (20%) in the entity entitled to exercise such option.

C. Expenses of Enforcement. Lessee shall pay, upon demand, all of Lessor's reasonable costs, charges and expenses, including without limitation, attorneys' fees and out-of-pocket expenses of counsel, agents and others retained by Lessor, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in a litigation, negotiation or transaction in which Lessee causes Lessor to become involved or concerned.

4. Building Services. Lessee further agrees to keep clean at all times all equipment used for food service in the Demised Premises in compliance with all Fire Code and Board of Health rules and regulations. Water and sewer charges shall be paid as specified in Section 10 hereof.

5. Additional Improvements to Building.

A. Lessor Improvements. Lessor shall, at a cost not to exceed Twenty Thousand Dollars (\$20,000.00) to Lessor, install a new rear door in the Demised Premises where it had previously been established, and install all necessary plumbing and electric service in order to be able to operate a coffee shop in the Demised Premises ("Lessor Improvements"). After Lessee takes possession and commences operating the coffee shop in the Demised Premises, the parties hereto shall meet in good faith to determine the best method to alleviate cold air coming in from the front, west side, of the Demised Premises, for the comfort of Lessee's patrons, and shall agree on a plan, at a cost allocation between the parties, to be agreed upon, in good faith to block cold air entering the Demised Premises. The Lessor shall pay for the Lessor Improvements, up to the maximum allowance of Twenty Thousand Dollars (\$20,000.00) in order to provide for electric and plumbing for food preparation and to have running water and the ability to heat food in the Demised Premises. Lessor shall be

responsible solely for the construction of the Lessor Improvements and for no other improvements or work whatsoever. Lessor shall substantially complete the same with due diligence and no later than forty-five (45) days after execution of this Lease, and Lessee shall not be obligated to pay any rent or other charges until thirty days after Lessor's Improvements have been substantially completed in accordance with this Section 5(A). The schedule for construction of said Lessor Improvements shall be coordinated with Lessee in order to minimize inconvenience to Lessee's business operations to the extent possible.

B. Lessee Improvements. Lessee shall at its own cost and expense (i) perform all work required to complete the Demised Premises in order to be able to operate a coffee shop from the Demised Premises, and (ii) equip the Demised Premises with the necessary furniture, fixtures and equipment ("Lessee Improvements"). All such items installed by Lessee shall be in good condition. Lessee shall obtain all permits and licenses for its work and agrees that all such work shall be done in accordance with all applicable building codes and regulations. Lessee agrees to perform its work diligently so as to be substantially complete to open the coffee shop within thirty (30) days after the completion of the Lessor's Improvements.

6. Use of Demised Premises.

The Demised Premises shall be used solely for the operation of a coffee and pastry shop to be used for the sale of coffee, pastry, at least three (3) soups, prepared salads and sandwiches and other related food items. Lessee agrees to keep open and operate the coffee shop at least six (6) days per week starting at 6:00 a.m. through 3:00 p.m. The Lessee shall not use or occupy, or permit the use or occupancy of, the Demised Premises, or any part thereof, in any unlawful manner or for any illegal purpose, or in such a manner as to constitute a nuisance or violate the terms and conditions of any certificate of occupancy or equivalent use permit applicable to the Demised Premises, or for any purpose or in a manner liable to cause structural injury to Lessor's property, and shall not use or occupy or permit the use or occupancy of the Demised Premises for other than purposes of the nature and to the extent permitted by the laws, rules, regulations, and other ordinances of the applicable governmental authorities and their agencies.

Lessee agrees that there shall be no smoking in the Demised Premises, or common areas inside the building.

7. Use of Patios at Sara's Place.

Subject to the provisions of Section 1(D) above, Lessee shall be permitted to use the South Patio, in coordination with the operation of Sara's restaurant, during the hours that it is operating the coffee shop, but no later than 3:00 p.m. Lessee shall not be required to pay any additional rent for such use, provided, however, that Lessee shall be responsible to repair and maintain the South Patio in good condition and repair at all times at Lessee's cost and expense, and if Lessee does not maintain a standard of cleanliness and repair for the South Patio satisfactory to Lessor in Lessor's reasonable discretion, Lessor shall have the right after 24 hours prior written notice to Lessee, to clean or repair or cause to be cleaned or repair the South Patio, and the cost of cleaning or repairing the South Patio shall be paid by Lessee to Lessor forthwith.

upon demand as additional rent. Lessee agrees that it is accepting the South Patio in its as is, where is condition with all faults. Upon termination of Lessee's use of the South Patio, Lessee shall remove all tables, chairs and other personal property and items located in or around the South Patio that it used for the coffee shop. Lessee acknowledges and agrees that any destruction, damage, theft or vandalism of or to such property and items shall be the sole responsibility of Lessee.

Lessee shall be permitted to offer seating in Sara's Place Restaurant for use by the coffee shop, which shall be subject to the control and direction of Lessee, with entry into Sara's Place being permitted from the new rear door to be installed by the Lessor as part of the Lessor Improvements.

#### 8. Compliance with Laws.

The Lessee shall, throughout the term of this Lease, at the Lessee's sole cost and expense, promptly comply with all laws and ordinances including without limitation, all environmental laws, rules and regulations, federal, state and local, and the orders, rules and regulations or requirements of all applicable governmental authorities and the orders, rules and regulations of the applicable Board of Fire Underwriters, or any other body now or hereafter constituted exercising similar functions, foreseen or unforeseen, ordinary as well as extraordinary, and whether or not the same require repairs or alternations, which may be applicable to the Demised Premises and the fixtures thereof, or the use or manner of use of the Demised Premises, except as provided elsewhere in this Lease. The Lessee shall likewise observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with respect to the Demised Premises. Lessor shall at its cost and expense comply with all laws and ordinances and the orders, rules, regulations or requirements of all applicable governmental authorities with respect to the building and improvements as a whole; provided, however, Lessee shall reimburse Lessor for its pro-rata share, as hereafter defined, of the costs incurred by Lessor to so comply.

Lessee's customers and patrons shall not disrupt the business of the other tenants of the building or unreasonably interfere with any such tenant's use and occupancy thereof. In no event shall Lessee use the Demised Premises or allow the Demised Premises to be used in any manner that will injure the reputation of the Demised Premises, the building, Lessor, or other tenants of the building.

#### 9. Gross Lease Provision.

This Lease shall not be deemed and construed to be a "Net Lease". Lessee shall not be required to pay any share of common area maintenance charges ("CAM") or all real estate taxes and assessments, both general and special, except as set forth in Section 10.

#### 10. Utilities.

The Lessee shall, during the continuance of this Lease, pay for all heat, electric current, gas, telephone, internet services and other utilities used by Lessee in or upon the Demised



Premises. Lessor shall, at its option, install separate meters to measure Lessee's use of utilities but if said utilities are supplied to the building as a whole, Lessee's share of the utilities supplied to the building as a whole shall be calculated as set forth in the following paragraph.

Lessee shall also pay Lessor its pro-rata share of water and sewer charges based on the rentable square footage of the Demised Premises compared to the rentable square footage of the building where the Demised Premises are located.

#### 11. Insurance.

Lessor shall at Lessor's cost and expense (except to the extent reimbursed therefor for Lessee's pro-rata share thereof, as hereafter provided) secure and keep in effect during the term insurance policies in the amounts and covering the following risks:

A. For the benefit of Lessor, with respect to the building and improvements in which the Demised Premises are located, insurance against loss or damage by fire and such other risks as are from time to time included in a standard form of all risk (special form) or a fire and extended coverage and additional perils policy of insurance available in the State of Ohio.

B. For the protection of Lessor and Lessee, comprehensive general public liability insurance against claims for bodily injury or death occurring upon, in, or under the common areas and common facilities, as hereafter defined, to the extent of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death to any one person, and to the extent of not less than Two Million Dollars (\$2,000,000.00) for bodily injuries or death to any number of persons arising out of one accident or disaster, and property damage with limits of not less than Three Hundred Thousand Dollars (\$300,000.00).

Lessee shall reimburse Lessor for its pro-rata share of the premium cost to carry the aforesaid insurance described in subsections A and B above within ten (10) days from receipt of a bill from Lessor evidencing said costs and showing Lessee's pro-rata share thereof. Lessor shall bill Lessee for such insurance costs as often as Lessor is billed therefor by Lessor's insurer.

C. Throughout the term of this Lease, for the protection of Lessor, Lessee shall secure at Lessee's expense comprehensive general public liability insurance against claims for bodily injury or death occurring upon, in, or under the Demised Premises to the extent of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death to any one person, and to the extent of not less than Two Million Dollars (\$2,000,000.00) for bodily injuries or death to any number of persons arising out of one accident or disaster, and property damage with limits of not less than Three Hundred Thousand Dollars (\$300,000.00).

Lessor and Lessee agree that if the building and improvements at any time forming a part of the Demised Premises or the personal property of Lessee located in or about the Demised Premises shall be damaged or destroyed by an insured peril, and whether

or not such damage or destruction was caused by the negligence of or any act or omission of the other party, the other's agents or employees, neither party shall have any liability to the other on account of such damage or destruction, or the cause thereof, except as hereinafter stated, and each party shall with due diligence require all policies of risk insurance carried by such party during the term of this Lease to be endorsed with a provision by which the insurer designated therein shall waive its right of subrogation against the other party.

Furthermore, each of Lessor and Lessee agrees to, and does hereby waive all rights of recovery and causes of action against the other, the other's agents and employees, and all persons claiming through or under the other, relating to the loss of business, business interruption, or loss of rentals resulting from any damage or destruction to the Demised Premises, or building in which the Demised Premises are located, or any of Lessee's property contained therein, notwithstanding that any such damage or destruction may be due to the negligence or any act or omission of Lessor or Lessee, their respective agents or employees, as the case may be.

12.

A. Repairs by Lessor: Maintenance of Common Areas and Facilities. Subject to the provisions of Section 16, throughout the term of this Lease, Lessor shall, at Lessor's expense (except to the extent reimbursed therefor by Lessee's pro-rata share thereof, as hereafter provided), maintain the building (including its principal components) and other improvements at any time located on the land described in Exhibit "A" (including, without limitation of the generality of the foregoing, the roof, foundation, vaults, fences, water, sewer and gas connections, pipes and mains, plumbing, heating and ventilation, and electrical systems, parking lots, driveways and other appurtenances) in as good and tenantable repair as at the commencement of the term of this Lease, reasonable wear and tear excepted, provided Lessee notifies Lessor of the need for such repairs and further provided such repairs are not caused by the fault or negligence of Lessee, Lessee's agents and employees, except to the extent covered by Lessor's insurance. Said repairs shall include all necessary repairs, interior or exterior, ordinary as well as extraordinary, structural and otherwise, to the Demised Premises and building in which the same are located. When used in this Section 12, the term "repairs" shall include replacements or renewals when necessary.

Lessor shall be responsible for the cost of operation and maintenance of the common areas and common facilities, as more fully described in Section 26 below, including without limitation, costs of equipping, removing snow and ice from the parking areas, lighting, cleaning, landscaping, insuring, line painting, repairing and replace, and paying personnel to implement such services.

Lessor agrees to pursue all commercially reasonable efforts to resolve the Sewer odor emanating from Chagrin River Road and Lessor agrees that it shall comply with the provisions of the Sara's Lease regarding elimination of the sewer odor as part of its repair and maintenance obligations set forth in this Section 12.

### 13. Repairs by Lessee and Surrender.

Throughout the term of this Lease, Lessee will keep and maintain the interior of the Demised Premises and any fixtures, facilities or equipment therein in a good state of repair including, without limitation, all servicing and repairs required to the wiring, plumbing, sewage system, and heating and air cooling installations, ordinary wear and tear, damage by fire, casualty, invasion, acts of war, insurrection and the like, the elements and acts of God excepted. Lessee shall also keep, maintain and repair all exterior doors and window frames. Lessee will be liable for replacement of all broken glass of the same size and quality as that broken and will keep the entire Demised Premises in a clean, safe and healthy condition according to the applicable governmental ordinances and the direction of the proper public officers. It shall be Lessee's obligation to obtain its own cleaning service, Lessee shall be responsible for the removal of snow and ice from the sidewalks and entrances to the Demised Premises. Lessee further agrees to deliver up and surrender to Lessor possession of the Demised Premises upon the expiration or other termination of this Lease in as good condition as when taken, ordinary wear and tear and damage from the above-specified causes excepted.

14.

A. Alterations. Lessee shall make no alterations in, or additions or improvements to, said Demised Premises without the written consent of Lessor first obtained, which consent shall not be unreasonably withheld. If any permitted alterations, additions or improvements in or to said Demised Premises are made by Lessee, the Lessee covenants and agrees that Lessee will make all such alterations, additions or improvements in or to said Demised Premises at Lessee's own expense. Any such permitted alterations, additions or improvements which are begun by Lessee shall be completed by Lessee. No alterations, additions or improvements shall be made which will weaken the structural strength of any building at any time forming a part of the Demised Premises. Lessee shall, in making any such alterations, additions or improvements, and/or in using and/or occupying the Demised Premises, comply with all applicable laws and ordinances pertaining to such work and/or such use or occupancy, including without limitation the Americans with Disabilities Act of 1990, and all rules and regulation issued thereunder. Any additions, alterations or improvements made by Lessee shall become and remain a part of the Demised Premises and be and remain the property of Lessor upon the termination of this Lease or Lessee's occupancy of the Demised Premises. Lessee shall indemnify and save harmless Lessor from and against all expenses, liens, claims or damages to either property or person which may or might arise by reason of such repairs, alterations, improvements, additions or removals.

B. Lessee's Work. Lessee shall: (i) perform all work and supply all installations required to maintain the Demised Premises for the operation of Lessee's business as described hereinabove, and (ii) fully equip the Demised Premises with all trade fixtures, lighting fixtures, furniture, furnishings, fixtures, and any special equipment and other items of construction and personal property necessary for the completion of the Demised Premises and the proper operation of Lessee's business. Lessee shall not permit any lien or security interest to attach to any of the equipment supplied to the Demised Premises for use in Lessee's business. If any lien or security interest does attach to Lessee's equipment, Lessee shall cause the lien or security interest to be removed prior to the termination of this Lease. All such items installed shall be new or in good

condition. Lessee shall be required to obtain all permits and licenses for its work and agrees that all such work shall be done in a good and workmanlike manner and in accordance with all applicable building codes and regulations. Prior to commencement of any work, Lessee shall submit to Lessor the plans and specifications, and the same shall be subject to the approval of Lessor, not to be unreasonably withheld. Approval by Lessor of such plans and specifications shall not constitute the assumption of any liability on the part of Lessor for their adequacy for Lessee's business. Lessee shall not commence Lessee's work without first delivering to Lessor a policy or policies of public liability and property damage insurance of the type and with limits set forth in Section 11 hereof, naming Lessor as an additional insured.

C. Mechanic's Liens. The Lessee shall not suffer or permit any mechanic's or other liens to be filed against the Demised Premises or any part thereof by reason of work, labor, services, or materials supplied or claimed to have been supplied to the Lessee or anyone holding the Demised Premises or any part thereof through or under the Lessee. If any such mechanic's lien or other liens shall at any time be filed against the Demised Premises, the Lessee shall cause the same to be discharged of record within thirty (30) days after the date of filing the same. If the Lessee shall fail to discharge such mechanic's lien within such period, then in addition to any other right or remedy of the Lessor, the Lessor may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit in court, or by giving security or in such other manner as is, or may be, prescribed by law. Any amount paid by the Lessor for any of the aforesaid purposes, and all reasonable legal and other expenses of the Lessor, including reasonable attorney fees, in or about procuring the discharge of such lien with all necessary disbursements in connection therewith, with interest thereon at the rate of eight percent (8%) per annum from the date of payment, shall be repaid by the Lessee to the Lessor on demand, and if unpaid may be treated as additional rent owed to Lessor. Nothing contained herein shall imply any consent or agreement on the part of the Lessor to subject the Lessor's estate to liability under any mechanic's lien law.

#### 15. Destruction of Demised Premises.

A. If the Demised Premises, or any part thereof, or building in which the same is located, shall be destroyed or damaged during the term of the Lease, and the same can reasonably be repaired or restored within one hundred eighty (180) days following such occurrence and provided there are at least one hundred eighty (180) days remaining during the term of the Lease, Lessee shall not be entitled to surrender possession of the Demised Premises, or any part thereof, nor shall Lessee's liability to pay rent under this Lease cease; but in case of any such damage or destruction, this Lease shall continue in full force and effect. Lessor shall be obligated to repair and reconstruct such damage as soon as reasonably possible, subject to delays beyond the control of Lessor. In the event of any such damage or destruction and the same cannot reasonably be repaired within one hundred eighty (180) days following such occurrence, Lessor or Lessee may elect to terminate this Lease by, all proceeds of the insurance covering such damage or destruction shall belong absolutely to the Lessor. In the event that neither Lessor nor Lessee elects to terminate this Lease, the Lessor's obligation shall be the same described above under circumstances where the damage and destruction can be repaired within one hundred eighty (180) days.

B. If any damage or destruction to the Demised Premises or the repair or rebuilding thereof shall render the Demised Premises untenable in whole or in part, Lessee shall be allowed a proportionate reduction or abatement of the rental and other charges hereunder corresponding to the time and space of which Lessee shall be deprived (giving due consideration to the reasonable use of the remaining portion of the Demised Premises) from the date of the occurrence of such damage or destruction until the date Lessor completes the repair or restoration thereof.

C. For the purposes of subsection 15(A) above, the phrase "term of the lease" shall mean the renewal term of this Lease if Lessee, at any time prior to the expiration of fifteen (15) days after the occurrence of said destruction or damage, shall have exercised Lessee's option to extend the term pursuant to the provisions of Section (2B) above.

#### 16. Eminent Domain.

A. If all of the Demised Premises or building in which the Demised Premises are located, or the common areas or such portion thereof as shall substantially interfere with the Lessee's use and occupancy thereof, shall be condemned or taken by any governmental authority, or sold to any such governmental authority to prevent such taking, then this Lease shall wholly terminate effective as of the date possession is taken by said authority and the rent, taxes, insurance and other items payable under this Lease shall be equitably apportioned and paid to the time of such termination. Thereupon, all parties shall be relieved of any further obligation accruing under this Lease.

B. If the amount of property or type of estate taken shall not substantially interfere with the conduct of Lessee's business, this Lease shall continue in full force and effect, except that the rental shall be equitably reduced, and Lessor, at Lessor's expense, shall promptly commence and diligently complete the repair and restoration of the remainder of the Demised Premises, subject to delays beyond its reasonable control, to a condition as nearly equivalent as feasible to the condition of the Demised Premises existing prior to such taking.

C. Whether such taking shall be partial or the entire Demised Premises, and whether this Lease shall be reason thereof be terminated or not, Lessee shall not, because of such taking, assert any claim against the taking authority or against Lessor for any compensation because of such taking, except that Lessee shall be entitled to make a separate claim for any rights Lessee may have for Lessee's cost of moving or relocating any trade fixtures, equipment or other personal property that Lessee placed upon the Demised Premises, or for the recovery of any other provable damages to Lessee's business. For this purpose, Lessee reserves the right to participate at Lessee's expense in any condemnation proceeding., In no event, however, shall the Lessee's rights, as stated above, reduce the Lessor's award from the condemning authority as the owner of all interests in the real estate.

D. For purposes of subsection 16(B) above, the phrase "this Lease" shall mean the renewal term of this Lease if Lessee, at any time prior to the expiration of fifteen (15) days after the date possession is taken by the authority, shall have exercised Lessee's option to extend the term of the Lease as set forth hereinabove.

## 17. Rights of Lessor Upon Default.

A. This Lease is made upon the condition that Lessee shall punctually perform all of its covenants and agreements as herein set forth and if,

- 1) Lessee defaults in payment of rent, or any additional charge or amount of money to be paid by Lessee as provided in this Lease, and such default shall continue uncorrected for a period of ten (10) days after written notice to the Lessee thereof; or
- 2) Lessee defaults in the prompt and full performance and observance of any of the terms and conditions of this Lease to be performed or observed by Lessee and not relating to the payment of money, and any such default shall continue uncorrected for a period of thirty (30) days after written notice to the Lessee thereof, or if any such last mentioned default cannot reasonably be corrected within such thirty (30) day period, then if Lessee shall not within such period have commenced in good faith to correct such default; or
- 3) Lessee abandons the Demised Premises; or
- 4) Lessee becomes insolvent under state law, makes a general assignment for the benefit of creditors, a receiver or trustee is appointed to take possession of Lessee's assets and is not removed within thirty (30) days, or any execution, attachment or other order of court shall be issued upon or against the interest of Lessee in this Lease and shall continue for a period of thirty (30) days after notice, then in such event, in addition to any and all rights and remedies allowed by law and equity, Lessor may, with or without further notice, forthwith terminate this Lease and Lessee's right to possession of the Demised Premises, or Lessor may, without terminating this Lease, terminate Lessee's right to possession of the Demised Premises. Upon the termination of this Lease (by reason of a default by Lessee, the expiration of the term of the lease or otherwise), or upon the termination of Lessee's possession, Lessee shall vacate the Demised Premises leaving all leasehold fixtures in place. Any personal property or items purchased by Lessee that are not considered permanent restaurant fixtures shall be the property of Lessee.

B. Upon the termination of this Lease, or upon the termination of Lessee's right to possession without termination of this Lease:

- 1) Lessee shall surrender possession and vacate the Demised Premises immediately, and Lessor may enter into and repossess said Demised Premises, with or without process of law, and remove all persons and property therefrom; and
- 2) If any equipment and furnishings not elected to be kept by Lessor are not removed by Lessee, Lessor may remove from the Demised Premises any and all property found therein, and such repossession shall not release Lessee from Lessee's obligation to pay the rents herein provided.

C. In the event of termination of this Lease as provided in Section 17, Lessor, in addition to any and all rights and remedies allowed by law and equity, shall upon such termination be entitled to recover damages in the amount equal to the then present value of the rent reserved in this Lease for the entire residue of the stated term hereof less the then present worth of the fair rental value of the Demised Premises for the residue of the term hereof as then in effect, plus the

costs incurred, including reasonable legal expenses, to terminate this Lease and Lessee's possession of the Demised Premises.

D. In the event of any repossession by Lessor without terminating this Lease, Lessor shall use Lessor's best efforts to relet and keep rented the Demised Premises or any part thereof, as agent of Lessee, to any person, firm or corporation, and on such terms as Lessor may determine, provided that Lessor shall use reasonable efforts to mitigate damages to Lessee arising from Lessee's continuing liability under this Lease. Lessor may make repairs, alterations, replacements, and/or decorations in or to the Demised Premises to the extent reasonably necessary and advisable for the purpose of reletting the Demised Premises, and in the making of such repairs, alterations, additions, replacements and/or decorations shall not operate or be construed to release Lessee from liability hereunder; and Lessee shall upon demand pay the cost thereof, together with Lessor's expense of reletting (including reasonable legal expenses and brokerage commissions). If the rents collected by Lessor upon any such reletting are not sufficient to pay monthly the full amount of the rent reserved herein, together with the cost of such repairs, alterations, additions, replacements, decorations and expenses, Lessee shall pay to Lessor the amount of each monthly deficiency upon demand, and if the rent so collected from any such reletting is more than sufficient to pay the full amount of the rent reserved herein, together with such costs and expenses of Lessor, Lessor shall, at least every twelve (12) months after such eviction, account for any surplus to Lessee.

E. Any and all property which may be removed from the Demised Premises by Lessor may be handled, removed, stored, or otherwise disposed of by Lessor at the risk and expense of Lessee, and Lessor shall in no event be responsible for the preservation of the safekeeping thereof. Lessee shall pay to Lessor, upon demand, any and all expenses incurred in such removal and all storage charges against such property, so long as the same shall be in Lessor's possession or under Lessor's control.

#### 18. Bankruptcy: Assumption; Assignment; Adequate Protection.

A. Chapter 7. If a petition is filed by or against Lessee under Chapter 7 of the Bankruptcy Code and the Trustee in Bankruptcy ("Trustee") elects to assume this Lease for the purpose of assigning it or otherwise, the assumption or assignment, or both, may be made only if all of the terms and conditions of subsection 18. C. below are satisfied. If the Trustee fails to assume this Lease within sixty (60) days after the Trustee's appointment, or within such additional time period as the Bankruptcy Court may allow, this Lease shall be deemed to have been rejected. Assumption of this Lease must satisfy all of the conditions of subsection 18C. below, which Lessor and Lessee acknowledge to be commercially reasonable. In the event this Lease is rejected, Lessor shall then immediately be entitled to possession of the Demised Premises without further obligation to Lessee or the Trustee and this Lease shall be cancelled. Lessor's right to be compensated for damages in the bankruptcy proceeding, however, shall survive.

B. Chapter 11. If a petition for reorganization under Chapter 11 of the Bankruptcy Code is filed by or against Lessee, or a proceeding that is filed by or against Lessee under any other chapter of the Bankruptcy Code is converted to a Chapter 11 proceeding and Lessee as debtor in

possession fails to assume this Lease within sixty (60) days from the date of filing of the petition or the conversion, or within such additional time period as the Bankruptcy Court may allow, debtor in possession will be deemed to have rejected this Lease.

C. Assumption of Lease. Assumption of this Lease must satisfy, in Lessor's business judgment, all of the following conditions which Lessor and Lessee acknowledge to be commercially reasonable:

- 1) The Trustee or the debtor-in-possession has cured or has provided to Lessor adequate assurance as defined hereinbelow that:
  - a) The Trustee will cure all monetary defaults under this Lease within ten (10) days from the date of the assumption; and
  - b) The Trustee will cure all non-monetary defaults under this Lease within thirty (30) days from the date of the assumption.
- 2) The Trustee or the debtor-in-possession has compensated Lessor or has provided to Lessor adequate assurance as defined hereinbelow, that within ten (10) days from the date of the assumption Lessor will be compensated for any pecuniary loss it incurred arising from the default of Lessee, Trustee, or the debtor-in-possession.
- 3) The Trustee or the debtor-in-possession has provided Lessor with adequate assurance of future performance, as defined hereinbelow, of each of Lessee's obligations under the Lease; provided however, that:
  - a) The Trustee or debtor-in-possession will also deposit with Lessor, as security for the timely payment of rent, an amount equal to three (3) months rental and other monetary charges accruing under this Lease.
  - b) If required by the terms of this Lease, the Trustee or the debtor-in-possession will also pay in advance, on each day the rental is payable, one twelfth (1/12) of Lessee's annual obligation for operating expenses and real estate taxes and assessments.
- 4) Lessor has determined that the assumption of this Lease will not:
  - a) Breach any provision in another lease, mortgage, financing agreement, or other agreement by which Lessor is bound relating to the building of which the Demised Premises is a part (the "Building"); or
  - b) Disrupt, in Lessor's judgment, the lessee mix of the Building or any other attempt by Lessor to provide a specific variety of tenants in the Building, that in Lessor's judgment, would be most beneficial to all of the tenants of the Building and would enhance the image, reputation and profitability of the Building.
- 5) For purposes of this subsection 18C, "adequate assurance" means that:
  - a) The Trustee or the debtor-in-possession has, and will continue to have, sufficient assets to assure Lessor that Trustee or the debtor-in-possession will have sufficient funds to fulfill Lessee's obligations under the Lease and to keep the Demised Premises properly staffed with sufficient employees to conduct a fully operational, actively promoted business on the Demised Premises; and
  - b) An order will have been entered segregating sufficient cash payable to Lessor and/or a valid and perfected first lien and security interest will have been granted on the property of the estate that is acceptable for value and kind to



Lessor, to secure to Lessor the obligation of the Trustee or debtor-in-possession to cure the monetary or nonmonetary defaults under this Lease within the time period set forth above.

- c) If the Trustee or the debtor-in-possession has assumed the Lease under the terms of subsection 18A or 18B above, and elects to assign Lessee's interest under this Lease or the estate created by that interest to another person, that interest or estate may be assigned only if Lessor acknowledges in writing that the intended assignee has provided adequate assurance of future performance, as defined herein below, of all of the terms, covenants and conditions of this Lease to be performed by Lessee.
- d) For the purposes of this Section 18C, "adequate assurance of future performance" means that Lessor has ascertained that each of the following conditions has been satisfied:
  - i. The assignee has submitted a current financial statement, audited by certified public accountant, that shows a net worth and working capital in amounts determined by Lessor to be sufficient or to assure future performance by the assignee of Lessee's obligations under this Lease;
  - ii. If requested by Lessor, the assignee will obtain guarantees in form and substance satisfactory to Lessor, from one or more persons who satisfy Lessor's standards of creditworthiness;
  - iii. Lessor has obtained all consents or waivers from any third party required under any lease, mortgage, financing agreement, or other agreement by which Lessor is bound to permit the assignment;
  - iv. When, pursuant to the Bankruptcy Code, the Trustee or the debtor-in-possession is obligated to pay reasonable use and occupancy charges for the use of all or a portion of the Demised Premises, the charge will be no less than base rental and additional rent and other monetary obligations of the Lessee included in this Lease.

#### 19. Lessor's Access to Demised Premises.

Lessor reserves the right to enter the Demised Premises during the normal business hours of Lessee only upon twenty-four (24) hours written notice to Lessee, or at any time in case of an emergency, for the purpose of examining, repairing, renovating, improving and protecting the Demised Premises, or for the purpose of showing the Demised Premises to a prospective purchaser or mortgagee, and also during the last six (6) months of the term of this Lease for the purpose of exhibiting the Demised Premises to prospective tenants and putting up the usual notice "to rent" or "for sale", which notice shall not be removed or hidden by Lessee.

#### 20. Indemnity

Lessee agrees that no representations or warranties, whether express or implied, have been made with reference to the condition of the Demised Premises or their fitness for the use of any purpose whatsoever. Lessee shall indemnify, defend and save harmless Lessor from any and all liabilities, damages, penalties, costs, expenses, claims, suits or actions due to or arising out of (i) any breach, violation or nonperformance of any covenant, condition or agreement in this

Lease contained on the part of Lessee to be fulfilled, kept, observed and performed; (ii) any damage to property or any injury to persons (including death) resulting at any time therefrom in, on, under or about the Demised Premises or the adjacent streets, sidewalks and other adjoining or adjacent areas caused by the negligence, willful acts or omissions of Lessee, or of the employees, agents, invitees, visitors, assignees and sublessees; and (iii) any and all liens places or permitted to be placed thereon by Lessee, or any other person claiming by, through, from or under Lessee.

## 21. Loss or Damage to Lessee's Property

All trade fixtures, equipment, inventory and all other personal property belonging to Lessee, Lessee's agents, licensees, guests or sublessees, located in or about the Demised Premises shall be at the sole risk of Lessee, and Lessor shall not be liable for the theft or misappropriation, nor for any damage or injury thereto, nor for any damage or injury to Lessee, or any of Lessee's officers, agents, employees, licensees, guests, or sublessees, or to other persons or to any property caused by fire, explosion, wind, water, rain, snow, frost, steam, gas, electricity, any acts of God, heat or cold, dampness, falling plaster and/or ceilings, sewers or sewage odors, noise, leaks from any part of the Building or by the bursting or leaking of pipes, plumbing, electrical wiring and equipment and fixtures of all kinds, or by any act or neglect of any other tenant or of any person; provided, however, subject to the provisions of Section 11, Lessor shall not be relieved of liability for the negligence, intentional wrongful acts or omissions of Lessor, Lessor's agents and employees.

## 22. Assignment and Subletting

Lessee shall not be permitted to mortgage, pledge or encumber this Lease. Lessee may sublet all of the Demised Premises to an operator of the coffee shop without the consent of the Lessor but may only assign this Lease or any interest Lessee may have hereunder, if:

A. the signed written consent of the Lessor to any assignment shall first be obtained (which consent shall not be unreasonably withheld, delayed or conditioned); and

B. in the event of any subletting or permitted assignment, Lessee shall remain liable as Lessee for the performance of all of the conditions and covenants on the part of Lessee to be performed under this Lease, unless Lessor shall otherwise expressly consent in writing.

Lessee shall supply to Lessor all financial and other information with respect to a prospective assignee or sublessee, other than a coffee shop operator, as required by Lessor. The parties hereby agree that it shall be reasonable under this Lease or under any applicable law for Lessor to withhold consent to any proposed transfer to an assignee where one (1) or more of the following applies (without limitations to other reasonable grounds for withholding consent): (i) the assignee is of the character or reputation which is not consistent with the quality or nature of the other tenants in the Building, or would be a significantly less prestigious occupant of the building than Lessee; (ii) the assignee intends to use the Demised Premises, or any portion

thereof, for purposes which are not permitted under this Lease; (iii) the assignee is a government entity (or an agency or instrumentality thereof); (iv) the proposed assignee or affiliate thereof is an occupant of the building, or has negotiated to lease space in the building from Lessor during the prior twelve (12) months; (v) the proposed assignee does not have, in Lessor's sole good faith determination, satisfactory references, a reasonable financial condition in relation to the obligations to be assumed in connection with the assignment, or does not have the experience or skills to operate a first class restaurant with the potential to generate gross sales in the amount sufficient to generate a percentage rental by its operation of the business at the Demised Premises; (vi) the assignment involves a partial or collateral assignment, or a mortgage, pledge, hypothecation, or other encumbrance or lien on this Lease, or is a transfer by operation of law; (vii) the proposed assignment would cause Lessor to be in violation of any laws or any other lease, mortgage or agreement to which Lessor is a party, would give another tenant in the building a right to cancel its lease, or would create adverse tax consequences for Lessor; or (viii) Lessee has committed a default under this Lease and failed to cure the same within the applicable grace period. If Lessee disagrees with Lessor's decision to deny approval, Lessee agrees that its sole remedy shall be to seek injunctive relief.

Any attempt to assign this Lease or to sublet all or any portion of the Demised Premises, for any use not contemplated by this Lease, or to a sublessee who has no experience in operating a coffee shop, without Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed, shall be void and, at Lessor's option, shall constitute an event of default under this Lease. The right on the part of Lessee to assign this Lease under any of the foregoing provisions of this Section 22 shall be upon the express condition that such assignment shall be in writing, executed by Lessee and the assignee, that in such writing the assignee shall, in consideration of such assignment, agree to assume, perform and be bound by all of the terms, obligations and conditions on the part of Lessee to be performed under this Lease, and that a duplicate executed counterpart of such instrument of assignment and assumption shall be delivered to Lessor within ten (10) days after the execution thereof. For purposes of this Lease, the sale or transfer of the majority of the common stock of Lessee, or the majority of the beneficial or equitable interests of the owner of a non-corporate Lessee, shall be considered an assignment of the Lease subject to the provisions of this Section 22. In the event Lessor consents to any such assignment or sublease to any assignee or sublessee that is not related to Lessee in the manner hereafter described in the next Section, all options granted to Lessee herein, if any, whether renewal, expansion or otherwise, shall not apply to such assignee or sublessee.

Notwithstanding the foregoing, if Lessee is a corporation or a limited liability company, Lessee shall have the right to assign this Lease or sublet a portion thereof without Lessor's consent to any subsidiary, parent or successor corporation or limited liability company of Lessee. A successor corporation or limited liability company shall mean any corporation, limited liability company or entity which shall acquire all or a substantial part of the assets in the business of Lessee whether by merger, consolidation, dissolution, corporate reorganization or otherwise. However, in such event, Lessee shall remain liable under the Lease and shall notify Lessor in writing of such event within thirty (30) days of its occurrence, and of the exact name and address of the new entity.

If Lessee requests that Lessor consent to a sublease of the Demised Premises, not already permitted by this Lease, or a portion thereof, or an assignment of the Demised Premises (other than in connection with the sale of Lessee's business) in lieu of granting such consent, Lessor shall have the right and option to exclude ("recapture") from this Lease the space proposed to be subleased or assigned, effective as of the proposed commencement date of the sublease. If Lessor elects to recapture such space, Lessor shall give Lessee written notice thereof within thirty (30) days of receipt of Lessee's written request to sublease such space, in which event Lessee shall surrender such space as of the proposed commencement date. Effective as of the date of recapture of the space proposed to be subleased or assigned, the base rent and additional rent with respect to such recaptured space shall be prorated as of such date, and if the space to be recaptured is not the entire Demised Premises, the base rent and additional rent for the balance of the term shall be adjusted accordingly.

Lessee shall submit all requests for Lessor's consent to an assignment or sublease not already permitted by this Lease, in writing to Lessor, accompanied by a non-refundable service fee of Five Hundred Dollars (\$500.00) to cover Lessor's consideration of the request. Such written request shall include the name and address of the proposed sublessee, and the terms of the proposed sublease, including without limitation, the sublease term, rental rate and description of the space. In addition, Lessee shall be responsible for the reasonable legal fees incurred by Lessor in connection with (i) the review of any subleases and preparation or review of consents to subleases, and in connection with the review or preparation of any assignments of the Lease or consents to assignments; and (ii) the review or preparation of any construction contracts related to the buildout of space for the subtenant or assignee.

23.

A. Limitation of Lessor's Liability. The term "Lessor", as used in this Lease so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee of the Demised Premises. In the event of any transfer or transfers of title to such fee, the Lessor herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be freed and relieved from and after the date of such transfer and conveyance of all liability with respect to performance of any covenants or obligations on the part of Lessor contained in this Lease thereafter to be performed. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of the Lessor hereunder during the transferee's ownership of the Demised Premises. Lessor may transfer Lessor's interest in the Demised Premises without the consent of Lessee, and such transfer or subsequent transfer shall not be deemed a violation on Lessor's part of any of the terms and conditions of this Lease.

B. No Personal Liability. Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed, such understanding and agreement being a significant and material inducement to the execution of this Lease by Lessor, that (i) there shall be absolutely no personal liability of whatever nature imposed upon Lessor's officers, agents, employees, personal representatives, successors and assigns, with respect to any terms, covenants or conditions of this Lease (ii) in the event that Lessor shall commit default or breach of any of the terms, covenants or conditions hereof and Lessee shall obtain a judgment against Lessor for such

default or breach, Lessee's sole exclusive remedy for the enforcement and collection of such judgment shall be the institution of foreclosure or other appropriate execution proceedings solely against the land described in Exhibit "A" and improvements thereon, and (iii) regardless of whether or not the proceedings described in "(ii)" immediately above shall result in a complete satisfaction of Lessee's judgment, in no event (whether by proceedings at law, in equity, administrative proceedings or otherwise) shall any deficiency or other personal judgment be rendered or enforced against Lessor or Lessor's officers, agents, employees, personal representatives, successors or assigns.

#### 24. Mortgage Subordination.

The Lessee understands that Lessor may have or hereinafter desire to place a mortgage upon all or part of the land described herein and the Building constructed thereon of which the Demised Premises is a part. It is further understood that the mortgagee of said mortgage may require that the within Lease be subordinated to said mortgage, in which event Lessee agrees to execute any document required by such mortgagee to evidence such subordination; provided, however, that the mortgagee of any such mortgage shall covenant in writing that the Lessee's leasehold interest hereunder shall not be foreclosed in any action brought under such mortgage or in the event of a sale of the Demised Premises as a result of said action if at the time of bringing an action to foreclose or at the time of said sale the Lessee is not in default in the payment of rental or in the performance of any other obligation under this Lease, with due allowance to be given for the payment of any past due rental or for the correction of any other default by Lessee within the period of time permitted after any notice is given or required to be given by the terms of this Lease. It is further understood that the mortgagee of said mortgage may require that the Lessee agree to attorn to any purchaser of the property in the event that the same should be sold through foreclosure proceedings, and that the Lessee agrees to waive any and all rights to treat any such foreclosure proceedings as a breach of the Lease by Lessor, in which event Lessee agrees to execute any document required by such mortgagee to evidence such agreements.

#### 25. Estoppel Certificate.

Lessee and Lessor, upon request of the other, will execute, acknowledge and deliver to the requestor, promptly upon request, a certificate certifying that (a) this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which basic rent, additional rent and other sums payable hereunder have been paid, and (c) no notice has been received by the party providing the certificate of any default which has not been cured, except as to defaults specified in said certificate, it being intended that any such certificate may be relied upon by any prospective purchaser or mortgagee of the property or any part thereof, or any lender, assignee, sublessee or purchaser of Lessee's business operations or member interests.

#### 26. Common Areas.

“Common areas” and “common facilities”, as used in the within Lease, include, without limitation, all of the parking areas, approaches, entrances, driveways, sidewalks and service areas and landscaping located on the parcel of real estate described on Exhibit “A”, but does not include the South and North Patios, and all public or semi-public parts of the building in which the Demised Premises are located, including, without limitation, halls, exits, stairs, lavatories, doors or windows. Lessor shall operate, manage, equip, repair, replace and maintain the common areas and common facilities for their intended purposes in such manner as Lessor shall, in Lessor’s sole discretion, determine; provided, however, Lessor agrees to keep said common areas and common facilities clean and to remove snow and ice from the common areas as promptly as possible.

Lessor reserves the right to change the location, size, evaluation or nature of the common areas and common facilities, including without limitation, the right to construct an additional building containing approximately 3,000 square feet on the parcel on which the building is situated. Such building, if constructed, shall be at Lessor’s sole cost and expense. In the event such building is constructed, it is anticipated that the tenants of such building shall share in the use of the common areas. In such event, those expenses related solely to the use of the outside common areas by the tenants of both buildings shall be passed on a pro-rata basis to the tenants of both buildings, based on an allocation to the tenants taking into consideration the total rentable square feet in both buildings. The pro-rata share of those common area expenses shall be equivalent to the percentage obtained by dividing the rentable square feet in the Demised Premises by the total rentable square feet in both buildings. Lessor may, from time to time, make reasonable rules and regulations for the use of said common areas and common facilities, which regulations shall be promulgated when established.

The Lessee, Lessee’s agents, employees, invitees, and sublessees shall have the right to use said common areas and common facilities jointly with Lessor, Lessor’s agents and employees, and other tenants of the above-described Building, their agents, employees and invitees. All of such use of any of the common areas and common facilities shall be such as will not unreasonably obstruct or interfere with the joint use thereof, and shall be in compliance with all applicable laws, rules and regulations.

## 27. Signs.

Lessee shall have the right to erect or install at its expense, an exterior sign which sign may also include adequate lighting to make it visible at night, subject to the prior approval of the Village of Gates Mills and its applicable governmental agencies. An interior sign on the Building directory and an interior sign near the Lessee’s Demised Premises may be installed by Lessee at Lessee’s expense provided such signs comply with Lessor’s standard specifications for such interior signs as they relate to the design, size and location of the sign.

Lessee shall maintain said signs in good condition and repair at all times, and shall save Lessor harmless from injury to person or property arising from the erection or maintenance of said signs. Upon the written request of Lessor, any signs (interior or exterior) shall be removed by Lessee at Lessee’s expense upon the expiration or sooner termination of this Lease, and all

damage caused by the removal of such signs shall be fully repaired at the cost and expense of Lessee.

28. Quiet Enjoyment.

The Lessor covenants that Lessor has lawful title to the above described real property and the right to make this Lease for the term aforesaid and, conditioned upon the prompt performance and observance by the Lessee, Lessee's agents, employees, and sublessees of all of the terms, covenants and conditions hereof required to be performed or observed by Lessee, Lessee's agents, employees, and sublessees, Lessee shall at all times during the term of this Lease have the peaceable and quiet enjoyment of the Demised Premises.

29. Withholding Premises.

Should Lessee withhold possession of the Demised Premises after the termination of this Lease, whether by lapse of time or otherwise, Lessee shall be subject to all of the terms of this Lease except the rent required to be paid shall be at a rate equal to two (2) times the base rental (plus additional rental payments) required to be paid immediately prior to such holdover. In addition, if Lessor shall suffer any damage or loss which may result from Lessor's inability to timely deliver the Demised Premises to a subsequent tenant, Lessee shall promptly pay the amount to Lessor. Should Lessee occupy the Demised Premises after the termination of this Lease for any cause whatsoever, Lessee shall be considered a tenant-at-will and by sufferance of Lessor and no such occupancy shall operate as a renewal of the Lease or any part thereof.

30. Effect of Demand.

Any demand for rent upon the Lease after the same shall have become due and payable, or for the performance or observance of any covenant or condition of this Lease after the same is required to be performed or observed under the provisions hereof, shall have the same effect as though made at the time and place such rent became due or such obligation should have been performed or observed, any law to the contrary notwithstanding.

31. Effect of Waiver.

No waiver of any condition or covenant of this Lease or of the breach of any condition or covenant shall be taken to constitute a waiver of any subsequent breach of such condition or covenant, or to justify or authorize the nonobservance on any other occasion of the same or any other condition or covenant thereof. The acceptance of rent by the Lessor at any time when the Lessee is in default of any covenant or condition shall not be construed as a waiver of such default or of the Lessor's rights under Section 17 above on account of such default, nor shall the payment of rent by the Lessee at any time when Lessor is in default under any covenant or condition hereof be construed as a waiver of such default, nor shall any waiver or indulgence granted by the Lessor or Lessee be taken as estoppel against the party granting the same.

### 32. Notices.

Whenever Lessor or Lessee shall make any demand or serve any notice which is required to be in writing under the terms of this Lease upon the other, the same shall be in writing and shall be sufficiently given if sent, postage prepaid by United States registered or certified mail, or delivered by a nationally recognized overnight carrier, addressed to Lessee to Mr. David J. Gromelski, 15 Deep Creek Lane, Moreland Hills, Ohio 44022, and addressed to Lessor at c/o Clerk of Gates Mills, 1470 Chagrin River Road, Gates Mills, Ohio 44040, or at such other address as Lessor or Lessee may theretofore by written notice to the other have designated for the service of such notice.

### 33. Terminology; Captions.

Where the context so requires or such interpretation is appropriate, any word used herein denoting gender shall include all genders, natural or artificial, and the singular and plural shall be interchangeable. The term "Section" shall refer to all Sections under the caption in question, where appropriate. The captions of the various provisions of this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease or provisions which they precede or in any other manner affect this Lease.

### 34. Short-Form Lease.

This Lease shall not be recorded, but the parties agree to execute a skeleton lease, or memorandum of lease, incorporating the terms of this Lease and including a legal description of the property upon which the Demised Premises is situated, at the request of Lessee or Lessor. The same shall be duly executed in form suitable for recording and any costs incurred in connection therewith shall be at the expense of the party requesting same.

### 35. Successors and Assigns.

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Lessor, Lessor's successors and assigns, and shall be binding upon and inure to the benefit of Lessee, Lessee's heirs, legal representatives, or successors and those assignees of Lessee who become assignees in accordance with and as permitted by the terms of Section 22 above.

### 36. Severability.

In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.



### 37. Broker

Lessor warrants, which warranty shall survive the execution of this Lease, that no brokerage fee or other compensation is due any real estate broker or other person or entity by reason of this transaction. Lessee warrants, which warranty shall survive the execution of this Lease, that no broker induced Lessee to enter into this transaction.

### 38. Rules and Regulations

Lessor reserves the right from time to time to adopt such rules and regulations as Lessor may deem necessary for the preservation, safety, care, cleanliness or operation of the Building, common areas and common facilities, provided such rules and regulations are promulgated by Lessor and are uniformly enforced among all of the tenants in the Building.

### 39. Authority of Lessee

Lessee hereby agrees that prior to Lessee's execution and delivery of this Lease to Lessor and as such a condition of Lessor's duties and obligations hereunder, Lessee will provide Lessor with such a reasonable documentation as Lessor may require, including, without limitation, a resolution evidencing the Lessee's authority to execute and deliver this Lease.

### 40. Village Approval

This Lease is expressly conditioned upon its approval by the Council of the Village of Gates Mills.

### 41. Remedies Not Exclusive

All rights and remedies of the Lessor and Lessee herein set forth shall not be exclusive, but shall be in addition to any and all rights and remedies allowed by law and equity.

### 42. Entire Agreement

This Lease contains the entire agreement between the parties hereto. Any agreement hereafter or heretofore made shall not operate to change, modify, terminate or discharge this Lease, in whole or in part, unless such agreement is in writing and signed by each of the parties hereto.

### 43. Generator.

It is contemplated that the Lessor and the Lessee will agree to amend the Sara's Lease, to make a generator available to the Sara's Lease Demised Premises. Lessor agrees to the extent the generator or any replacement generator is capable of providing generator backup power to

the Demised Premises, that Lessor agrees that such service shall be made available to the benefit of the Demised Premises in accordance with the same terms and conditions as may be set forth in an amendment to the Sara's Lease.

44. Put Right.

Lessee shall have the right to terminate this Lease on the anniversary date of the Lessee opening to the public for business for a coffee shop, in the event the Lessee determines, in its sole judgment, that the operation of the coffee shop is not economically viable and/or is unable to obtain sufficient staffing to operate the coffee shop during the hours required by this Lease. Lessee shall make such election, in writing, and provide notice to the Lessor on or before the anniversary date of opening for business to the public, in which event the Lease shall terminate at the later of one (1) year after the execution of this Lease, or thirty (30) days after the termination notice is provided by Lessee to Lessor. Upon such termination, Lessee shall remove all furniture, furnishings, fixtures and equipment that it installed in the Demised Premises, without causing unreasonable or unnecessary damage to the Demised Premises.

**IN WITNESS WHEREOF**, Lessor and Lessee have executed this Lease and this Lease shall become effective as set forth in the first paragraph of this Lease, after all Parties have executed this Lease as indicated below.

VILLAGE OF GATES MILLS

By: \_\_\_\_\_  
Karen E. Schneider, Mayor

and: \_\_\_\_\_  
Beth DeCapiteClerk

GAVI'S RIVER, LLC

By: \_\_\_\_\_  
David J. Gromelski, Managing Member

State of Ohio            )  
                                  ) ss:  
County of Cuyahoga)

This is an acknowledgment clause. No oath or affirmation was administered to the signer.

Before me a Notary Public in and for said County and State personally appeared Karen E. Schneider, Mayor, and Beth DeCapite, Clerk, on behalf of the VILLAGE OF GATES MILLS, a body corporate and politic, whose identities were known or proven to me and who did sign the foregoing instrument and acknowledged the signing hereof to be their voluntary act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

State of Ohio            )  
                                  ) ss:  
County of \_\_\_\_\_)

This is an acknowledgment clause. No oath or affirmation was administered to the signer.

Before me a Notary Public in and for said County and State personally appeared DAVID J. GROMELSKI, Managing Member, on behalf of Gavi's River, LLC, an Ohio Limited Liability Company, whose identity was known or proven to me and who did sign the foregoing instrument and acknowledged the signing hereof to be his voluntary act and deed.

\_\_\_\_\_  
David J. Gromelski, Managing Member

In Testimony Whereof, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## **EXHIBIT “A”**



Exhibit A Legal  
Description.pdf



EXHIBIT B Coffee  
Shop Layout by Dave **EXHIBIT "B"**