

REAL ESTATE LEASE OF CAFÉ IN
CITY-OWNED TORPEDO FACTORY ART CENTER BUILDING

THIS LEASE AGREEMENT is made and entered into this ___ day of ___, 2018, by and between City of Alexandria, a municipal corporation of Virginia, whose address is 301 King Street, Alexandria; Virginia 22314, (hereinafter referred to as “Landlord”), and Sweetbake, Inc. (hereinafter referred to “Tenant”).

WITNESSETH:

WHEREAS, the Landlord is the owner of the building located at 105 North Union Street, Alexandria, Virginia, the Torpedo Factory Art Center (“TFAC”);

WHEREAS, the Tenant is a café in TFAC;

WHEREAS, the mission of the TFAC is to enhance public art appreciation and education by providing the opportunity to visit working art studios and artist cooperatives and take classes;

WHEREAS, the Alexandria City Council desires TFAC to continue its integral role in the economic, cultural, and educational framework of the City of Alexandria;

WHEREAS, the TFAC seeks to provide residents and visitors with opportunity to engage renowned artists, learn the process for creating fine art, and experience the intersection of art and community;

WHEREAS, the TFAC is strategically located on the Alexandria waterfront where it serves as a gateway for visitors and a threshold for residents; and

WHEREAS, the TFAC performs a critical role in supporting the City of Alexandria’ s economic well-being, drawing visitors and residents to our streets and our retail and commercial establishments.

NOW, THEREFORE, the parties hereto do mutually covenant and agree as follows:

ARTICLE I - GRANT OF LEASE

Landlord, in consideration of the rents to be paid and the covenants and agreements to be performed and observed by the Tenant, does hereby lease to the Tenant and the Tenant does hereby lease and take from the Landlord the property located at 105 North Union Street, Alexandria, Virginia, Studio 9, containing approximately 268 square feet (the “Leased Premises”).

ARTICLE II - LEASE TERM

The term of this lease shall begin on July 1, 2018, at 12:01 a.m., and shall end on September 30, 2019 at 11:59pm.

ARTICLE III - EXTENSIONS

No extensions are permitted under this Lease Agreement.

ARTICLE IV - RENT

The Tenant agrees to pay the Landlord and the Landlord agrees to accept, during the term hereof, at such place as the Landlord shall from time to time direct by notice to the Tenant, rent at the following rates and times:

Section 1. Rent. The Leased Premises contains the number of square feet set out in Article I above. Annual rent for the term of the Lease shall be calculated by multiplying the lease square footage by the annual rent rate per square foot. The lease rate is \$15.45 per square foot.

Section 2. Payment of Rent. The rent shall be payable in monthly installments of one-twelfth (1/12) of the total yearly rent, which shall be \$345.00 per month, due in total on September 30, 2019 or at the end of a terminated lease as outlined in Article XVI, section 1, below.

Payment can be made by check or money order, payable to the City of Alexandria. Payment should be delivered to City of Alexandria, Special Billing Operations, 301 King Street, Alexandria, Virginia 22314.

A late fee in the amount of five percent (5%) shall be assessed if payment is not postmarked or received by Landlord within 30 days of the due date.

Section 3. Adjustments to Rental Rate. The Landlord shall recalculate the rental rate at the end of this lease term, September 30, 2019, based upon the following factors:

- a) Rent shall be calculated based on profit Net Profit to the Tenant over the course of the lease term. Net profit shall be calculated, after an inspection of the Tenant's books and records and recognizing the cost of any build-outs and infrastructure costs as a deduction from the Tenant's profits to arrive at a Net Profit calculation.
- b) If Net Profit is greater than an average of \$2,000 a month for the lease term or \$30,000, Tenant shall pay the City at the end of the Lease Term a total of \$5,175.00.. If Net Profit at the end of the Lease Term, averages between \$1,000 and \$2,000 a month, Tenant shall pay the Landlord \$170 per month or a total of \$2,550. If the Net Profit averages less than \$1,000 a month, Tenant shall pay the Landlord \$1 a month or a total of \$15 for the Lease Term.
- c) Tenant shall keep accurate books of account for the purpose of determining Net Profit and the rent due to the Landlord over the Lease Term. Tenant, shall, within five (5) business days after a written request by the Landlord, permit the Landlord to review and/or audit Tenant's books of account necessary to determine Net Profit, which the Landlord may inspect during regular business hours at a mutually agreed location. Landlord agrees to hold in confidence, to the maximum extent permitted by law, any information it receives

from Tenant which, at the time that it is submitted to the Landlord is marked “proprietary information—confidential.”

ARTICLE V - SECURITY DEPOSIT

Section 1. Security Deposit. Landlord hereby acknowledges receipt of a security deposit in the amount of \$345.00 to secure Tenant’s performance of the terms of this Lease Agreement.

Section 2. Holding of Security Deposit. Landlord agrees to hold said security deposit (and any additions thereto) in an account segregated from the regular operating accounts of Landlord for the Tenant. The security deposit, or so much as is then available after deduction of all proper charges, shall be returned to the Tenant no later than sixty (60) days following termination of this Lease Agreement. In no event shall the Tenant receive interest on the security deposit held by Landlord.

Section 3. Use of Security Deposit. Landlord may use, apply, or retain the whole or any pro rata portion of the security deposit to the extent required for the payment of any rent and additional rent or other sum as to which the Tenant is in default or for any sum which the Landlord may expend or may be required to expend by reason of the Tenant’s default in respect of any of the terms of this Lease Agreement, including but not limited to, any damages or costs of removing abandoned property, whether such damages or deficiency accrued before or after summary proceedings or other reentry by Landlord. Tenant may not assign or encumber the money security deposit and the Landlord shall not be bound by any such assignment or encumbrance.

Section 4. Use of Security Deposit without Termination of Lease. In the event of any default in the terms and conditions of this Lease Agreement, which default results in the expenditure of funds by the Landlord, but which does not result in the termination of the Lease Agreement, Landlord shall have the option of applying so much of the security deposit as is necessary to cover such expenditure. If all or a portion of the security deposit is so applied, Tenant shall, upon written demand, deposit with Landlord within thirty (30) days of the date of such written demand sufficient funds to bring the security deposit to the sum of one month’s current rental. In the event Tenant shall fail to maintain the security deposit at the necessary amount, such failure shall constitute a ground of default.

Section 5. Tenant Responsibility Related to New Lease. At the expiration of the term of this Lease Agreement, Tenant shall be required to pay the cost of rendering the Leased Premises ready for leasing to a new Tenant, reasonable wear and tear excepted. It is expressly agreed that Tenant shall not be required to bear the cost of repainting of the Leased Premises, unless such expenditure is required due to the Tenant’s decoration of the Leased Premises which causes the same to be unrentable without such repainting.

ARTICLE VI - TAXES

Section 1. Personal Property Taxes. The Tenant shall be liable for all taxes levied against any personal property and trade fixtures owned or placed by the Tenant in the Leased Premises.

Section 2. Real Estate Taxes. During the continuance of this lease any and all real estate taxes are included in the reimbursable expenditure rent.

ARTICLE VII - UTILITIES

Section 1. Responsibility. All utilities (gas, water, sewer, electric), building operating expenses, real property taxes and building insurance are covered in the reimbursable expenditure rent except as noted in Section 3 below. Telephone, cable, and internet are not covered and are the sole responsibility of the Tenant.

Section 2. Function. Except as otherwise provided in this Section and provided Tenant is not in default under the terms of this Lease Agreement, Landlord shall provide utilities for heating, ventilation, and cooling, lighting, electricity and water for the entire building. Heating, ventilation, and cooling need be provided only between 9:00 A.M. and 9:30 P.M. and lighting between 6:00 A.M. and midnight (except for those days on which a special function has been scheduled, in which an event would require such utilities and shall be provided until the conclusion of such special function), except on certain holidays as specified by the Landlord.

Section 3. Special Equipment. The Landlord's permission must be obtained in order to install or operate special equipment, such as kilns or welding equipment. Tenant must agree to reimburse Landlord for the estimated or measured cost of utility services for such equipment. Landlord may also require additional insurance to be obtained related to the special equipment. Landlord shall also be allowed to perform an inspection subsequent to installation.

Section 4. No Liability. Landlord shall not be liable to the Tenant for damages arising in connection with a failure to furnish, or any cessation or interruption of, the services Landlord has agreed to provide in this Lease Agreement. In such event, Landlord shall undertake good faith efforts to restore, or arrange for the restoration of, any such services at the expense of the Tenant.

ARTICLE VIII - OBLIGATIONS FOR REPAIRS

Section 1. LANDLORD'S Repairs. The Landlord shall be required to maintain the building in good order and condition and shall repair only defects that are identified as safety concerns, deficiencies, deviations, or failures of materials or workmanship.

Section 2. TENANT'S Repairs. The Tenant is responsible for insuring that the Leased Premises are maintained in good repair. The Leased Premises includes the studio side of all partition walls and all additional Tenant improvements. The Tenant shall not be responsible for repairing or maintaining the building, except for maintenance, repair, or replacement necessitated as the result of the act or omission of Tenant or its licensees or contractors.

Section 3. Requirements of the Law. The Tenant agrees that if any federal, state or municipal government or any department or division thereof shall condemn the Leased Premises or any part

thereof as not in conformity with the laws and regulations relating to the construction thereof as of the commencement date with respect to conditions latent or otherwise which existed on the commencement date, or, with respect to items which are the Landlord's duty to repair pursuant to Section 1 of this Article; and such federal, state or municipal government or any other department or division thereof, has ordered or required, or shall hereafter order or require, any alterations or repairs thereof or installations and repairs as may be necessary to comply with such laws, orders or requirements; and if by reason of such laws, orders or the work done by the Landlord in connection therewith, the Tenant is deprived of the use of the Leased Premises, the rent shall be abated or adjusted, as the case may be, in proportion that time during which, and to that portion of the Leased Premises of which, the Tenant shall be deprived as a result thereof, and the Landlord shall be obligated to make such repairs, alterations, or modifications at Landlord's expense.

All such rebuilding, altering, installing, and repairing shall be done in accordance with plans and specifications approved by the Tenant, which approval shall not be unreasonably withheld. If, however, such condemnation, law, order, or requirement, as in this Article set forth, shall be with respect to an item which shall be the Tenant's obligation to repair pursuant to Section 2 of this Article VIII or with respect to Tenant's own costs and expenses, no abatement or adjustment of rent shall be granted.

Section 4. TENANT'S Alterations. The Tenant shall have the right, at its sole expense, from time to time, to redecorate the Leased Premises and to make such non-structural alterations and changes in such parts thereof as the Tenant shall deem expedient or necessary for its purposes; provided, however, that such alterations and changes shall neither impair the structural soundness nor diminish the value of the Leased Premises. The Tenant may make structural alterations and additions to the Leased Premises provided that Tenant has first obtained the consent thereto of the Landlord in writing. The Landlord shall execute and deliver upon the request of the Tenant such instrument or instruments embodying the approval of the Landlord which may be required by the public or quasi-public authority for the purpose of obtaining any licenses or permits for the making of such alterations, changes and/or installations in, to, or upon the Leased Premises and the Tenant agrees to pay for such licenses or permits.

Section 5. Permits and Expenses. Each party agrees that it will procure all necessary permits for making any repairs, alterations, or other improvements for which it is responsible, when applicable. Each party hereto shall give written notice to the other party of any repairs required of the other pursuant to the provisions of this Article and the party responsible for said repairs agrees promptly to commence such repairs and to prosecute the same to completion diligently, subject, however, to the delays occasioned by events beyond the control of such party.

Each party agrees to pay promptly when due the entire cost of any work done by it upon the Leased Premises so that the Leased Premises at all times shall be free of liens for labor and materials. Each party further agrees to hold harmless and indemnify the other party from and against any and all injury, loss, claims, or damage to any person or property occasioned by or arising out of the doing any such work by such party or its employees, agents, or contractors, to the extent permitted by law. Each party further agrees that in doing such work that it will employ materials of good quality, comply with all governmental requirements, and perform such work in a good and workmanlike manner.

ARTICLE IX - TENANT' S COVENANTS

Section 1. TENANT' S Covenants. Tenant covenants and agrees as follows:

- a. To procure and maintain any licenses and permits required for any use made of the Leased Premises by Tenant, and upon the expiration or termination of this Lease Agreement, to remove its goods and effects and those of all persons claiming under it, and to yield up peaceably to Landlord the Leased Premises in good order, repair, and condition in all respects; excepting only damage by fire and casualty covered by Tenant's insurance coverage, structural repairs (unless Tenant is obligated to make such repairs hereunder), and reasonable wear and tear;
- b. To provide copies of licenses and permits to the Landlord prior to the execution of this Lease Agreement and thereafter annually;
- c. To permit Landlord and its agent to examine the Leased Premises at reasonable times and to show the Leased Premises to prospective purchasers of the building and to provide Landlord, if not already available, with a set of keys for the purpose of said examination, provided, that Landlord shall not thereby unreasonably interfere with the conduct of Tenant's business;
- d. To permit Landlord to enter the Leased Premises to inspect such repairs, improvements, alterations, or additions thereto as may be required under the provisions of this Lease Agreement.
- e. Landlord and its representatives may enter and inspect the Leased Premises whenever such premises is occupied and may otherwise enter, at reasonable times and upon reasonable notice, for the purposes of inspecting the Leased Premises, or performing any work or maintenance necessary to the Leased Premises or the areas beyond the top of the interior partitions. In the event of emergency, Landlord and its representatives may enter without notice, solely to deal with such emergency.
- f. To maintain the Leased Premises in good repair and in accordance with the law.

ARTICLE X - INDEMNITY BY TENANT

Section 1. Indemnity and Public Liability. The Tenant shall save Landlord harmless and indemnify Landlord from all injury, loss, claims, or damage to any person or property while on the Leased Premises, but only to the extent caused by the negligent acts or omissions of the Tenant, its employees, agents, licensees, or contractors. Tenant shall maintain, with respect to the Leased Premises, public liability insurance with limits of not less than one million dollars for injury or death from one accident. Landlord shall be named as an additional insured on such policy proved that such additional insured status shall not extend to the negligence of any additional insured. A copy of the policy or a certificate of insurance shall be delivered to Landlord on or before the commencement date and no such policy shall be cancellable without sixty (60) days prior written notice to Landlord. See also Article VII, Section 3 for additional insurance obligations.

ARTICLE XI - USE OF PROPERTY BY TENANT

Section 1. Use. Tenant shall use the Leased Premises in accordance with the recitals which are incorporated herein by reference. Tenant agrees that it shall not modify its use of the Leased Premises without the prior written approval of Landlord. Landlord shall have the right to establish rules governing the use of Leased Premises by Tenant in order to ensure compliance with public laws, ordinances, and regulations and to protect the Leased Premises, public areas and the public health and safety. In furtherance of this provision, Landlord shall have the right to regulate and to prohibit potentially hazardous processes, the use and storage of potentially hazardous materials and supplies and to protect public areas and the Leased Premises, and the public health and safety, by regulating and prohibiting the use of types of machinery, equipment, or materials. Failure by Tenant to comply with such rules shall constitute a default under the lease.

Section 2. Nothing herein shall give Tenant the right to use the Leased Premises for any other purpose or to sublease, assign, or license the use of the Leased Premises to any sublessee, assignee, or licensee, which or who shall use the Leased Premises for any other use, except as described in Article XX, Section 1.

Section 3. Vacating. If Tenant decides to vacate the Leased Premises prior to or upon expiration of this Lease Agreement, Tenant must provide sixty (60) days written notice of intent to vacate to the Landlord. During this 60-day period the Tenant is responsible for any and all obligations under this Lease Agreement. In the event that the Tenant vacates the premises prior to the expiration of this Lease Agreement, or upon non-renewal of this Lease Agreement, the Tenant shall be liable for removing all items of personal property and leaving the premises broom clean and undamaged. Any items of personal property left in the Leased Premises upon the termination of the term of the lease, will be deemed abandoned by the Tenant and disposed of or sold by Landlord without further notice to the Tenant. Any necessary costs of removing abandoned property will be charged to the Tenant or withheld from the security deposit.

ARTICLE XII - INSURANCE

Section 1. Insurance Proceeds. In the event of any damage to or destruction of the Leased Premises that is not caused by Tenant or Tenant equipment or Tenant invitees, Landlord shall investigate the damage or destruction of the Leased Premises. The Landlord will have the option to file a claim with the Landlord's insurance companies issuing such policies. Any insurance proceeds in excess of such proceeds as shall be necessary for such repair, restoration, rebuilding, replacement, or any combination thereof of the Leased Premises shall be the sole property of the Landlord.

For property damage to or destruction of Tenant equipment in the care, custody, and control of the Landlord, excluding damage or destruction due to fire liability, Landlord will have the option to provide coverage in the amount of \$100,000 per occurrence.

Section 2. Subrogation. Landlord and Tenant hereby release each other, to the extent of the insurance coverage provided hereunder, from any and all liability or responsibility (to the other or anyone claiming through or under the other by way of subrogation or otherwise) for any loss to or damage of property covered by the fire and extended coverage insurance policies insuring the

Leased Premises, the building and any of Tenant's property, even if such loss or damage shall have been caused by the fault or negligence of the other party.

Section 3. Contribution. Landlord shall pay for all insurance premiums connected with or applicable to the Leased Premises and the building for whatever insurance policy the Landlord, at its sole and exclusive option, should select, with the exception of tenant renters and/or liability insurance.

ARTICLE XIII - DAMAGE TO DEMISED PREMISES

Section 1. Abatement or Adjustment of Rent. If the whole or any part of the Leased Premises shall be damaged or destroyed by fire or other casualty after the execution of this Lease Agreement and before the termination hereof, then in every case the rent reserved in Article IV herein and other charges, if any, shall be abated or adjusted, as the case may be, in proportion to that portion of the Leased Premises of which Tenant shall be deprived on account of such damage or destruction and the work of repair, restoration, rebuilding, or replacement or any combination thereof, of the improvements so damaged or destroyed, shall in no way be constructed by any person to effect any reduction of sums or proceeds payable under any rent insurance policy.

Section 2. Repairs and Restoration. Landlord agrees that in the event of the damage or destruction of the Leased Premises, Landlord forthwith shall proceed to repair, restore, replace, or rebuild the Leased Premises (excluding Tenant's leasehold improvements), to substantially the condition in which the same were immediately prior to such damage or destruction. The Landlord thereafter shall diligently prosecute said work to completion without delay or interruption except for events beyond the reasonable control of Landlord. Notwithstanding the foregoing, if Landlord does not either obtain a building permit within ninety (90) days of the date of such damage or destruction, or complete such repairs, rebuilding, or restoration within nine (9) months of such damage or destruction, then Tenant may at any time thereafter cancel and terminate this Lease Agreement by sending ninety (90) days written notice thereof to Landlord. Notwithstanding the foregoing, if such damage or destruction shall occur during the last year of the term of this Lease Agreement, or during any renewal term, and shall amount to twenty-five (25%) percent or more of the replacement cost, (exclusive of the land and foundations), this Lease Agreement, except as hereinafter provided in Section 3 of Article XIII, may be terminated at the election of either Landlord or Tenant, provided that notice of such election shall be sent by the party so electing to the other within thirty (30) days after the occurrence of such damage or destruction. Upon termination, as aforesaid, by either party hereto, this Lease Agreement and the term thereof shall cease and come to an end, any unearned rent or other charges paid in advance by Tenant shall be refunded to Tenant, and the parties shall be released hereunder, each to the other, from all liability and obligations thereafter arising under the lease.

Section 3. Damage by Tenant. If the damage is the fault of the Tenant, then the Tenant shall reimburse the Landlord the cost of making repairs and there shall not be any abatement or adjustment of rent.

ARTICLE XIV - CONDEMNATION

Section 1. Total Taking. If, after the execution of this Lease Agreement and prior to the expiration of the term hereof, the whole of the Leased Premises shall be taken under power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, then this Lease Agreement and the term hereof shall cease and terminate as of the date when possession of the Leased Premises shall be taken by the taking authority and any unearned rent or other charges, if any, paid in advance, shall be refunded to Tenant.

Section 2. Partial Taking. If, after the execution of this Lease Agreement and prior to the expiration of the term hereof, any public or private authority shall, under the power of eminent domain, take, or Landlord shall convey to said authority in lieu of such taking, property which results in a reduction by fifteen (15%) percent or more of the area in the Leased Premises, or of a portion of the Leased Premises that substantially interrupts or substantially obstructs the conducting of business on the Leased Premises; then Tenant may, at its election, terminate this Lease Agreement by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking. In the event of termination by Tenant under the provision of Section 2 of this Article XIV, this Lease Agreement and the term hereof shall cease and terminate as of the date when possession shall be taken by the appropriate authority of that portion of the entire Leased Premises that results in one of the above takings, and any unearned rent or other charges, if any, paid in advance by Tenant shall be refunded to Tenant.

Section 3. Restoration. In the event of a taking in respect of which Tenant shall not have the right to elect to terminate this Lease Agreement or, having such right, shall not elect to terminate this Lease Agreement, this Lease Agreement and the term thereof shall continue in full force and effect and Landlord, at Landlord's sole cost and expense, forthwith shall restore the remaining portions of the Leased Premises, including any and all improvements made theretofore to an architectural whole in substantially the same condition that the same were in prior to such taking. A just proportion of the rent reserved herein and any other charges payable by Tenant hereunder, according to the nature and extent of the injury to the Leased Premises and to Tenant's business, shall be suspended or abated until the completion of such restoration and thereafter the rent and any other charges shall be reduced in proportion to the square footage of the Leased Premises remaining after such taking.

Section 4. The Award. All compensation awarded for any taking, whether for the whole or a portion of the Leased Premises, shall be the sole property of the Landlord whether such compensation shall be awarded for diminution in the value of, or loss of, the leasehold or for diminution in the value of, or loss of, the fee in the Leased Premises, or otherwise. The Tenant hereby assigns to the Landlord all of Tenant's right and title to and interest in any and all such compensation. However, the Landlord shall not be entitled to and Tenant shall have the sole right to make its independent claim for and retain any portion of any award made by the appropriating authority directly to Tenant for loss of business, or damage to or depreciation of, and cost of removal of fixtures, equipment, and improvements installed in the Leased Premises by, or at the expense of Tenant, and to any other award made by the appropriating authority directly to Tenant.

Section 5. Release. In the event of any termination of this Lease Agreement as the result of the provisions of this Article XIV, the parties, effective as of such termination, shall be released, each to the other, from all liability and obligations thereafter arising under the lease.

ARTICLE XV - DEFAULT

Section 1. LANDLORD'S Remedies. In the event that:

a. Tenant shall on one or more occasions be in default in the payment of rent or other charges herein required to be paid by Tenant (default herein being defined as payment received by Landlord ten or more days subsequent to the due date), regardless of whether or not such default has occurred on consecutive or non-consecutive months; or

b. Tenant has caused a lien to be filed against the Landlord's property and said lien is not removed within thirty (30) days of recordation thereof; or

c. Tenant shall default in the observance or performance of any of the covenants and agreements required to be performed and observed by Tenant hereunder for a period of thirty (30) days after notice to Tenant in writing of such default (or if such default shall reasonably take more than thirty (30) days to cure, Tenant shall not have commenced the same within the thirty (30) days and diligently prosecuted the same to completion), this includes, but is not limited to, using the Leased Premises in a manner than other than as specified in the recitals and not complying with the Operating Rules and Procedures; or

d. Sixty (60) days have elapsed after the commencement of any proceeding by or against Tenant, whether by the filing of a petition or otherwise, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or future Federal Bankruptcy Act or any other present or future applicable federal, state, or other statute or law, whereby such proceeding shall not have been dismissed (provided, however, that the non-dismissal of any such proceeding shall not be a default hereunder so long as all of Tenant's covenants and obligations hereunder are being performed by or on behalf of Tenant); or

e. If the Leased Premises becomes vacant or deserted for a period of thirty (30) days; or

f. If the Tenant shall attempt to assign or sublet the Leased Premises in violation of the provisions of Article XX, Section 1 herein; then Landlord shall be entitled to its election (unless Tenant shall cure such default prior to such election), to exercise concurrently or successively, any one or more of the following rights:

- i. Terminate this Lease Agreement by giving Tenant notice of termination, in which event this Lease Agreement shall expire and terminate on the date specified in such notice of termination, which the same force and effect as though the date so specified were the date herein originally fixed as the termination date of the term of this Lease Agreement, and all rights of Tenant under this Lease Agreement and in and to the Leased Premises shall expire and terminate, and Tenant shall remain liable for all obligations under this Lease Agreement arising up to the date of such termination, and Tenant shall surrender the Leased Premises to Landlord on the date specified in such notice; or

- ii. Terminate this Lease Agreement as provided herein and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including, without limitation, a sum which, at the date of such termination, represents the then value of the excess, if any, of (a) the rent and all other sums which would have been payable hereunder by Tenant for the period commencing with the day following the date of such termination and ending with the date herein before set for the expiration of the full term hereby granted, over (b) the aggregate reasonable rental value of the Leased Premises for the same period, all of which excess sum shall be deemed immediately due and payable; or
- iii. Without terminating this Lease Agreement, declare immediately due and payable all rent and amounts due and coming due under this Lease Agreement for the entire remaining term hereof, together with all other amounts previously due, at once; provided, however, that such payment shall not be deemed a penalty or liquidated damages but shall merely constitute payment in advance of rent for the remainder of said term; or
- iv. Without terminating this Lease Agreement, and with or without notice to Tenant, Landlord may in its own name but as agent for Tenant enter into and upon and take possession of the Leased Premises or any part thereof, and, at Landlord's option, remove persons and property therefrom, and such property, if any, may be removed and stored in a warehouse or elsewhere at the cost of, and for the account of Tenant, all without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby, and Landlord may rent the Leased Premises or any portion thereof as the agent of Tenant with or without advertisement, and by private negotiations and for any term upon such terms and conditions as Landlord may deem necessary or desirable in order to relet the Leased Premises. Landlord shall in no way be responsible or liable for any rental concessions or any failure to rent the Leased Premises or any part thereof, or for any failure to collect any rent due upon such reletting. Upon such reletting all rentals received by Landlord from such reletting shall be applied: first, to the payment of any indebtedness (other than any rent due hereunder) from Tenant to Landlord; second to the payment of any costs and expenses of such reletting, including, without, limitation, brokerage fees and attorney's fees and costs of alterations and repairs; third, to the payment of rent and other charges then due and unpaid hereunder; and the residue, if any shall be held by Landlord to the extent of and for application in payment of future rent as the same may become due and payable hereunder. In reletting the Leased Premises as aforesaid, Landlord may grant rent concessions and Tenant shall not be credited therefor. If such rentals received from such reletting shall at any time or from time to time be less than sufficient to pay to Landlord the entire sums then due from Tenant hereunder, Tenant shall pay any such deficiency to Landlord. Such deficiency shall, at Landlord's option, be calculated and paid monthly. No such reletting shall be construed as an election by Landlord to terminate this Lease Agreement unless a written notice of such election has been given to Tenant by Landlord. Notwithstanding any such reletting without termination, Landlord may at any time

thereafter elect to terminate this Lease Agreement for any such previous default provided the same has not been cured; or

- v. Without liability to Tenant or any other party and without constituting a constructive or actual eviction, suspend or discontinue furnishing or rendering to Tenant any property, material, labor, utilities, or other service, whether Landlord is obligated to furnish or render the same, so long as Tenant is in default under this Lease Agreement; or
- vi. Allow the Leased Premises to remain unoccupied and collect rent from Tenant as it comes due; or
- vii. Foreclose the security interest described herein, including the immediate taking of possession of all property on or in the Leased Premises; or
- viii. Pursue such other remedies as are available at law or equity.

g. Landlord's pursuit of any remedy or remedies, including without limitation, any one or more of the remedies stated herein shall not (1) constitute an election of remedies or preclude pursuit of any other remedy or remedies provided in this Lease Agreement or any other remedy or remedies provided by law or in equity, separately or concurrently or in any combination, or (2) serve as the basis for any claim of constructive eviction, or allow Tenant to withhold any payments under this Lease Agreement.

Section 2. LANDLORD'S Self Help. If Tenant shall default in the performance or observance of any agreement or condition in this Lease Agreement contained on its part to be performed or observed and if the Tenant shall not cure such default within thirty (30) days after notice from Landlord specifying the default (or if such default shall reasonably take more than thirty (30) days to cure, shall diligently prosecuted the same to completion), Landlord may, at its option, without waiving any claim for damages for breach of agreement, at any time thereafter cure such default for the account of Tenant, and any amount paid or contractual liability incurred by Landlord in so doing shall be deemed paid or incurred for the account of Tenant and Tenant agrees to reimburse Landlord therefor and save Landlord harmless therefrom. Provided, however; that Landlord may cure any such default as aforesaid prior to the expiration of said waiting period, without notice to Tenant if any emergency situation exists, or after notice to Tenant, if the curing of such default prior to the expiration of said waiting period is reasonably necessary to protect the Leased Premises or Landlord's interest therein, or to prevent injury or damage to persons or property. If Tenant shall fail to reimburse Landlord upon demand for any amount paid for the account of Tenant hereunder, said amount shall be added to and become due as a part of the next payment of rent due and shall for all purposes be deemed and treated as rent hereunder.

ARTICLE XVI - TERMINATION FOR CONVENIENCE

Section 1. The Tenant has the right to terminate this Lease Agreement for convenience. Sixty (60) days advance written notice must be provided to the Landlord. Rent and other amounts will be due through the end of the calendar month in which the 60th day falls.

ARTICLE XVII - TITLE

Section 1. Subordination. Tenant shall, upon the request of Landlord in writing, subordinate this Lease Agreement to the lien of any present or future institutional mortgage upon the Leased Premises irrespective of the time of execution or the time of recording of any such mortgage.

Tenant agrees that if the mortgagee or any person claiming under the mortgagee shall succeed to the interest of Landlord in this Lease Agreement, Tenant will recognize said mortgagee or person as its Landlord under the terms of this Lease Agreement, provided that said mortgagee or person for the period during which said mortgagee or person respectively shall be in possession of the Leased Premises and thereafter their respective successors in interest shall assume all of the obligations of Landlord hereunder. The word "mortgage", as used herein includes mortgages, deeds of trust, or other similar instruments, and modifications, and extensions thereof. The term "institutional mortgage" as used in this Article XVII means a mortgage securing a loan from a bank (commercial or savings) or trust company, insurance company, or pension trust or any other lender institutional in nature and constituting a lien upon the Leased Premises.

Section 2. Quiet Enjoyment. Landlord covenants and agrees that upon Tenant paying the rent and observing and performing all of the terms, covenants, and conditions on Tenant's part to be observed and performing hereunder, that Tenant may peaceably and quietly have, hold, occupy, and enjoy the Leased Premises in accordance with the terms of this Lease Agreement without hindrance or molestation from Landlord or any persons lawfully claiming through Landlord.

Section 3. Zoning and Good Title. Landlord warrants and represents, upon which warranty and representation Tenant has relied in the execution of this Lease Agreement, that Landlord is the owner of the Leased Premises, in fee simple absolute, free and clear of all encumbrances, except for the easements, covenants, and restrictions of record as of the date of this Lease Agreement. Such exceptions shall not impede or interfere with the quiet use and enjoyment of the Leased Premises by Tenant. Landlord further warrants and covenants that this Lease Agreement is and shall be a first lien on the Leased Premises, subject only to any mortgage to which this Lease Agreement is subordinate or may become subordinate pursuant to an agreement executed by Tenant, and to such encumbrances as shall be caused by the acts or omissions of Tenant; that Landlord has full right and lawful authority to execute this Lease Agreement for the term, in the manner, and upon the condition and provisions herein contained; that there is no legal impediment to the use of the Leased Premises as set out herein; that the Leased Premises are not subject to any easements, restrictions, zoning ordinances, or similar governmental regulations which prevent their use as set out herein; that the Leased Premises presently are zoned for the use contemplated herein and throughout the term of this lease may continue to be so used therefor by virtue of said zoning, under the doctrine of "non-conforming use", or valid and binding decision of appropriate authority, except, however, that said representation and warranty by Landlord shall not be applicable in the event that Tenant's act or omission shall invalidate the application of said zoning, the doctrine of "non-conforming use", or the valid and binding decision of the appropriate authority.

ARTICLE XVIII - HOLDING OVER/WAIVER/DISPUTES/NOTICE

Section 1. Holding Over. In the event that Tenant or anyone claiming under Tenant shall continue occupancy of the Leased Premises after the expiration of the term of this Lease Agreement or any renewal or extension thereof without any agreement in writing between Landlord and Tenant with respect thereto, such occupancy shall not be deemed to extend or renew the term of the Lease Agreement, but such occupancy shall continue as a tenancy at will, from month to month, upon the covenants, provisions, and conditions herein contained. The rent shall be the rent in effect during the term of this Lease Agreement as extended or renewed, prorated, and payable for the period of such occupancy.

Section 2. Waivers. Failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Lease Agreement shall be deemed a waiver of a breach of any other provision of this Lease Agreement or a consent to any subsequent breach of the same or any other provision. If any action by either party shall require the consent or approval of the other party, the other party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease Agreement or by operation of law, either at law or in equity, upon any breach, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with each other, and no one of them, whether exercised by said party or not, shall be deemed to be an exclusion of any other; and any two or more or all of such rights and remedies may be exercised at the same time.

Section 3. Disputes. It is agreed that, if at any time a dispute shall arise as to any amount or sum of money to be paid by one party to the other under the provisions hereof, the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of the said party to institute suit for the recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease. If at any time a dispute shall arise between the parties hereto as to any work to be performed by either of them under the provisions hereof, the party against whom the obligation to perform the work is asserted may perform such work and pay the costs thereof "under protest" and the performance of such work shall in no event be regarded as a voluntary performance and shall survive the right on the part of the said party to institute suit for the recovery of the costs of such work. If it shall be adjudged that there was no legal obligation on the part of the said party to perform the same or any part thereof, said party shall be entitled to recover the costs of such work or the cost of so much thereof as said party was not legally required to perform under provisions of this Lease and the amount so paid by Tenant may be withheld or deducted by Tenant from any rents herein reserved.

Section 4. Notices. All notices and other communications authorized or required hereunder shall be in writing and shall be given by mailing the same by certified mail, return receipt requested, postage prepaid, and any such notice or other communication shall be deemed to have been given when received by the party to whom such notice or other communication shall be addressed. If intended for Landlord the same will be mailed to the address herein above set forth or such other address as Landlord may hereafter designate by notice to Tenant, and if intended for Tenant, the same shall be mailed to Tenant at the address herein above set forth, or such other address or address as Tenant may hereafter designate by notice to Landlord.

ARTICLE XIX - PROPERTY DAMAGE

Section 1. Loss and Damage. Notwithstanding any contrary provisions of this Lease Agreement, Landlord shall not be responsible for any loss of or damage to property of Tenant or of others located on the Leased Premises; except where caused by the willful act or omission or negligence of Landlord, or Landlord's agents, employees or contractors.

Section 2. Force Majeure. In the event that Landlord or Tenant shall be delayed or hindered in or prevented from the performance of any act other than Tenant's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war, or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the forgoing, lack of funds shall not be deemed to be caused beyond control of either party.

ARTICLE XX- MISCELLANEOUS

Section 1. Assignment and Subletting. No portion of the Leased Premises may be assigned or sub-leased without the written consent of the Landlord. Any subleasing must be in conformance with the process established by and using the documents provided by the Landlord. Landlord has the authority, at its sole discretion, to assign, sublease, or license the property.

Section 2. Fixtures. All personal property, furnishings, and equipment presently and all other trade fixtures installed in or hereafter by or at the expense of Tenant and all additions and/or improvements, exclusive of structural, mechanical, electrical, and plumbing, affixed to the Leased Premises and used in the operation of the Tenant's business made to, in, or on the Leased Premises by and at the expense of Tenant and susceptible of being removed from the Leased Premises without damage, unless such damage be repaired by Tenant, shall remain the property of Tenant and Tenant may, but shall not be obligated to, remove the same or any part thereof at any time or times during the term hereof, provided that Tenant, at its sole cost and expense, shall make any repairs occasioned by such removal.

Section 3. Estoppel Certificates. At any time and from time to time, Landlord and Tenant each agree, upon request in writing from the other, to execute, acknowledge and deliver to the other or to any person designated by the other a statement in writing certifying that the Lease Agreement

is unmodified and is full force and effect, or if there have been modifications, that the same is in full force and effect as modified (stating the modifications), that the other party is not in default in the performance of its covenants hereunder, or if there have been such defaults, specifying the same, and the dates to which the rent and other charges have been paid.

Section 4. Invalidity of Particular Provision. If any term or provision of this Lease Agreement or the application hereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Lease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 5. Captions and Definitions of Parties. The captions of the Articles and Sections of this Lease Agreement are for convenience only and are not a part of this Lease Agreement and do not in any way limit or amplify the terms and provisions of this Lease Agreement. The word "Landlord" and the pronouns referring thereto, shall mean, where the context so admits or requires, the persons, firm, or corporation named herein as Landlord or the mortgagee in possession at any time, of the land and building comprising the Leased Premises. If there is more than one Landlord, the covenants of Landlord shall be joint and several obligations of each of them, and if Landlord is a partnership, the covenants of Landlord shall be the joint and several obligations of each of the partners and the obligations of the firm. Any pronoun shall be read in the singular or plural and in such gender as the context may require. Except as in this Lease Agreement otherwise provided, the terms and provisions of this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of a joint venture between the two parties hereto, it being understood and agreed that neither any provision contained herein, nor any acts of the parties hereto, shall be create any relationship between the parties hereto other than the relationship of the landlord and tenant.

Section 6. Brokerage. No party has acted as, by or through a broker in the effectuation of this Agreement, except as set out hereinafter.

Section 7. Entire Agreement. This instrument contains the entire and only agreement between the parties, and no oral statements or representation or prior written matter not contained in this instrument shall have any force and effect. This Lease Agreement shall not be modified in any way except by a written amendment executed by both parties.

Section 8. Governing Law. All matters pertaining to this agreement (including its interpretation, application, validity, performance, and breach), shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Virginia. The parties herein waive trial by jury and agree to submit to the personal jurisdiction and venue of a state court of subject matter jurisdiction located in City of Alexandria, Commonwealth of Virginia.

Section 9. Common Areas. The balance of the floor area not leased to other tenants shall be deemed “common area” and shall remain under the control and operation of the Landlord. Landlord shall grant to the Tenant, its agents, customers, and all invitees, including members of the general public, the non-exclusive right, in common with the Landlord and all others to whom the Landlord has or may grant rights, to use such common areas, subject to such reasonable restrictions as the Landlord shall from time to time specify in writing. Without limiting the generality of the foregoing, Landlord guarantees to the Tenant, its agents, customers, and all invitees and the general public access to the Leased Premises via common areas without application of any fee or charge during all normal working hours. Except as otherwise provided, Tenant shall refrain from blocking, displaying art work or other materials, or interfering with the common areas and shall operate within the Leased Premises.

Section 10. Building Security. Landlord shall be responsible for all building security including the maintenance of the security systems for the building. Landlord shall permit the Tenant access to the Leased Premises outside of working normal hours and will provide such security passes as are necessary for the Tenant to enter the building outside of normal working hours and within the timeframe established for access by the Tenants to the building as established by the Landlord.

Section 11. Survival. Tenant’s obligations contained in this Lease Agreement shall survive the termination or expiration of this Lease Agreement.

Section 12. Operating Rules and Procedures. The Operating Rules and Procedures are incorporated herein by reference. Landlord may amend the Operating Rules and Procedures from time to time at its sole discretion. Such amendments shall then become part of the Lease Agreement and will be considered incorporated herein by reference. Regardless of the required hours listed in the Operating Rules and Procedures, Tenant is required to be open every hour the Torpedo Factory Art Center is open to the public, aside from special events outside of regular open hours.

Section 13. Dining Area. Tenant has the right to allow its customers to use the space directly next to Studio 9 (approximately 172 square feet) as a dining area with bistro style chairs and tables provided and maintained by the Landlord.

Section 14. Tenant Obligations. During the term of the Lease Agreement, Tenant represents, covenants, and agrees that it shall operate the café subject to the following standards and conditions:

- (a) Tenant will insure that the café is adequately staffed and open for business at all times the TFAC is open.
- (b) If the Tenant desires a new build-out of the Leased Premise, Tenant shall be responsible for build-out and the furnishing of the Leased Premises and dining area, including such things as additional electrical and plumbing as needed, additional water heating, a three-compartment sink, a display case, an espresso machine, coffee brewing equipment, tables and chairs, Turbo Chef.
 - i. Tenant shall obtain prior written permission from the Landlord for any build-out or other alterations or renovations or construction at/ to the Leased Premise.

- ii. Any build-out or other alterations to the Leased Premises as set forth in section(ii) above shall be completed within one (1) month.
 - iii. Tenant shall obtain all certificates, permits, licenses, and other authorization of governmental bodies or authorities which are necessary to permit the construction of the improvements on the Leased Premises and shall keep the same in full force and effect at Tenant's cost.
 - iv. Tenant shall negotiate, let and supervise all contracts for the furnishing of services, labor, and materials for the construction of the improvements on the Leased Premises at its cost. All such contracts shall require the contracting partying to guarantee performance and all workmanship and materials installed by it for a period of one (1) year following the date of completion of construction. Tenant shall cause all contracts to be fully and completely performed in a good and workmanlike manner, all to the effect that the improvements shall be fully and completely constructed and installed in accordance with good engineering and construction practice.
 - v. During the course of construction, Tenant shall, and its cost, keep in full force and effect a policy of builder's risk and liability insurance in a sum equal, from time to time, to three (3) times the amount expended for construction of the improvements. All risk of loss or damage to the improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Tenant.
 - vi. Upon completion of construction, Tenant shall, at its cost, obtain an occupancy permit and all other permits or licenses necessary for the occupancy of the improvements and the operation of the same as set out herein and shall keep the same in force.
 - vii. Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the improvements of the demised premises and for the payment of all costs associated therewith. Landlord shall be under no duty to investigate or verify Tenant's compliance with the provisions herein. Moreover, neither Tenant nor any third party may construe the permission granted Tenant hereunder to create any responsibility on the part of the Landlord to pay for any improvements, alterations or repairs occasioned by the Tenant. The Tenant shall keep the property free and clear of all liens arising out of any construction performed at the Tenant's request and, should the Tenant fail to do so, or to have any liens removed from the property within fourteen (14) days of notification to do so by the Landlord, in addition to all other remedies available to the Landlord, the Tenant shall indemnify and hold the Landlord harmless for all costs and expenses, including attorney's fees, occasioned by the Landlord in having said lien removed from the property; and such costs and expenses shall be billed to the Tenant monthly and shall be payable by the Tenant with that month's regular monthly rental as additional reimbursable expenses to the Landlord by the Tenant.
- (c) Tenant shall obtain the approval of the Landlord with respect to any signage or graphics it proposes using related to the café.

- (d) Tenant shall abide by all government rules and regulations governing operations of a café and restaurant.
- (e) Tenant is responsible for insuring that the Leased Premises and dining area are maintained in good repair, in a clean and orderly manner, and that refuse is disposed of promptly and to building standards.
- (f) With respect to special equipment, Article VII, Section 3 applies.

[SIGNATURES ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement the day and year first above written or have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized.

Signed, sealed and delivered in the presence of:

LANDLORD: CITY OF ALEXANDRIA, a municipal corporation of Virginia

by: _____

Date: _____

Address: City of Alexandria
301 King Street
Alexandria, Virginia 22314

TENANT(S):

by: _____

Date: _____

Address: _____

