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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.
Town Attorney

Date: January 3, 2018

Re: Lease of Café Support Space to Spot Coffee West Seneca, LLC

Kindly adopt a Resolution authorizing the Supervisor to execute a Lease Agreement with Spot Coffee West Seneca, LLC (the "Tenant") for 647 square feet of café support space located in the Community Center and Library located at 1300 Union Road.

The basic lease terms are as follows: 1.) The Town shall deliver 647 square feet of a "vanilla shell" to be improved solely at the cost of the Tenant without rental abatements; 2.) the base term shall be for ten (10) years; 3.) Rental Payments shall be as follows: a.) Years 1 through 3: \$8,500.00 annually; b.) Years 4 through 6: \$9,350.00 annually; and c.) Years 7 through 10: \$10,285.00 annually.¹

The Lease Agreement shall be subject to the final approval of the Town Attorney as to form.

¹ Rental amounts based upon recommendation of Town's third-party appraiser

2

4

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is entered into between Landlord and Tenant described in the following Basic Lease Information on the date which is set forth in the Basic Lease Information.

Landlord and Tenant agree:

ARTICLE 1.00 BASIC LEASE INFORMATION

1.1 In addition to the terms which are defined elsewhere in this Lease, the following defined terms are used in this Lease:

- (a) Date: March __, 2018
- (b) Tenant: Spot Coffee West Seneca, LLC, dba Spot Coffee Express Café
- (c) Tenant's Address: 225 Delaware Avenue, Suite 2
Buffalo, New York 14207
- (d) Landlord: Town of West Seneca
- (e) Landlord's Address: 1250 Union Road
West Seneca, New York 14224
- (f) Premises: Café and Community Room area located in the West Seneca Community Center and Library (the "Complex") as indicated in Exhibit A, 1300 Union Road, West Seneca, New York 14224, together with the right for use of approximately 150 square feet of dry goods storage area in the Complex and the right for the Tenant's customers to use public seating areas within the Complex and the outdoor patio area, all of which shall be furnished by the Landlord.
- (g) Rentable Area: Approximately 647 square feet of café support space as indicated in Exhibit A along with ingress and egress through the Landlord's lobby.
- (h) Commencement Date: This Lease shall commence ("Lease Commencement Date") on the date which is the earlier of (x) the date upon which the Tenants opens for business or (y) one hundred-twenty (120) days from

the latest to occur of the following events: (i) receipt of Landlord's written approval of the Tenant's building plans and specifications for the Premises (the "Plans"), and (ii) delivery of Premises by Landlord in accordance with the Lease; and (iii) the passage of one (1) week after the actual issuance of a building permit to Tenant by the applicable governmental authorities. Condition (iii) shall only apply provided that Tenant has submitted Plans, which reasonably meet all local, state and federal laws and guidelines for the review and approval of the municipality within two (2) weeks from the date that the Landlord approves in writing such Plans as submitted from the Lessee. Lessee shall submit the plans for the Landlord's review and approval within four (4) weeks from the date that Landlord delivers final base building drawings to Tenant.

- (i) Exclusivity: The Landlord shall not lease or license any portion of the Complex in which the Premises are located to any entity serving coffee or operating as a coffee shop as its primary business.
- (j) Term: Ten (10) years, together with an option to extend this Lease for one (1) additional Term of five (5) years (the "Option Term")
- (k) Rent: Years 1 through 3: \$8,500.00 payable monthly in the amount of \$708.50;
Years 4 through 6: \$9,350.00 payable monthly in the amount of \$779.20; and
Years 7 through 10: \$10,285.00 payable monthly in the amount of \$857.00.
Option Term:
Year 11: \$10,491.00 payable monthly in the amount of \$874.25;
Year 12: \$10,701.00 payable monthly in the amount of \$891.75;
Year 13: \$10,915.00 payable monthly in the amount of \$909.60;
Year 14: \$11,133.00 payable monthly in the amount of \$927.75; and
Year 15: \$11,356.00 payable monthly in the amount of \$946.30.
- (l) Utilities: The Rent shall include the cost of water, HVAC service

and lighting used at the Premises. The Tenant shall pay for electrical service at the Premises for all other uses, which shall be separately metered

(m) Waste Disposal: Tenant shall have the right to use at no cost to the Tenant the existing waste disposal services provided by the Landlord at the Premises.

(n) Tenant's Buildout: Tenant shall complete all construction and fixturing work as the Tenant's Work Letter (Exhibit C).

(o) Exhibits: The following exhibits are attached to this Lease and are made a part thereof:

Exhibit A: Floor Plan

Exhibit B: Landlord's Work Specifications

Exhibit C: Tenant's Work Letter

ARTICLE 2.00 AGREEMENT

2.1. Landlord leases the Rentable Area to Tenant and Tenant leases the Rentable Area from Landlord, according to this Lease.

ARTICLE 3.00 IMPROVEMENTS

3.1. Landlord shall deliver the Rental Area to the Tenant improved and complete pursuant to the standards and specifications as per the Landlord's Work Specifications attached as Exhibit B to the Lease. Tenant agrees to accept the Rental Area as improved by the Landlord as per Exhibit B, which will be improved by Tenant per the Work Letter attached as Exhibit C to the Lease.

ARTICLE 4.00 TERM, DELIVERY OF POSSESSION; OPTION TERM

4.1 The duration of this Lease will be the Term. The Term will commence on the Commencement Date.

4.2 The Term of this Agreement may be upon the mutual written consent of Landlord and Tenant for the Option Term as set forth in Article 1(k).

ARTICLE 5.00 RENT

5.1 Annual Rent (as set forth above, the "Rent") will be paid monthly (the

“Monthly Payment”) in advance on or before the first day of each calendar month commencing on the Commencement Date without notice or demand and without deduction or set-off whatsoever. Any Monthly Payment will be prorated for any partial month.

ARTICLE 6.00 EXCLUSIVITY

6.1 The Landlord shall not lease or license any portion of the Complex to any entity serving coffee or operating as a coffee shop as its primary business.

ARTICLE 7.00 INSURANCE

7.1 Insurance Coverage. At all times during the Term, Landlord will carry and maintain (a) property insurance covering the Complex and the improvements made by Landlord in the Premises, and (b) public liability and property damage insurance covering the Landlord's interest. At all times during the Term, Tenant will carry and maintain (a) property insurance covering the Tenant's improvements and fixtures, and (b) public liability insurance.

7.2 Waiver of Subrogation. Landlord and Tenant each waive any and all rights to recover against the other, for any loss or damage to such waiving party arising from any cause covered by any insurance required to be carried by such party pursuant to this Article 7.00 or any other insurance actually carried by such party.

ARTICLE 8.00 USE

8.1 The Rental Area will be used for the operation of an upscale cafe with eat-in and take-out services and for uses incidental to such purposes and for no other purposes. Tenant will not do or permit to be done in or about the Rental Area, nor bring to, keep or permit to be brought or kept in the Rental Area, anything which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation, or which may be enacted or promulgated; do or permit anything to be done in or about the Rental Area which will in any way obstruct or interfere with the rights of other tenants or occupants of the Complex or injure or annoy them; use or allow the Rental Area to be used for any immoral, unlawful or objectionable purpose; cause, maintain or permit any nuisance in, on or about the premises or commit or allow to be committed any waste in, on, or about the Rental Area.

ARTICLE 9.00 REQUIREMENTS OF LAW; RISK

9.1 General. Tenant, at its expense, will comply with all applicable governmental laws, orders and regulations, and with any direction of any public officer which may impose any violation, order or duty upon Landlord or Tenant with respect to the Rental Area, or their use or occupancy.

9.2 Certain Insurance Risks. Tenant will not do or permit to be done any act or thing upon the Premises which would (a) jeopardize or be in conflict with property and general liability policies covering the Complex or (b) increase the rate of property and general liability

policies applicable to the Complex to an amount higher than it otherwise would be for its current use; provided, however, this section 9.02 will not prevent Tenant's use of the Rental Area for the purposes stated in Article 8.00.

9.3 Excess Insurance Payments. If, as a result of any act or omission by Tenant or violation of this Lease, the rate property and general liability insurance applicable to the Complex or any other insurance carried by Landlord is higher than it otherwise would have been, Tenant will reimburse Landlord upon demand for the increased cost of Landlord's insurance premiums.

9.4 Hazards. Tenant agrees that it will not create or permit the creation of any fire, explosive or environmental hazard or damage on or about the Rental Area, Premises or the Complex, and further agrees to reimburse the Landlord for any expense or damage resulting directly or indirectly from any violation of this paragraph. This paragraph shall not prohibit the storage and disposal of chemicals, hazardous or inflammable materials used in the Tenant's ordinary course of business provided that Tenant's means of storing and disposing of such items and use thereof shall not damage the Premises, shall conform to the applicable provisions of all rules, regulations, laws, ordinances and requirements of all governmental agencies and the Board of Fire Underwriters or similar agencies having jurisdiction of the Premises, and that due care and precaution will be taken in the handling and use of such chemical, hazardous or inflammable materials.

ARTICLE 10.00 CLEANING; WASTE

10.1 Landlord agrees to provide cleaning services for the common areas of the Complex. Tenant shall be responsible for the cleaning of the Premises. Tenant shall have the right to use at no cost to the Tenant the existing waste disposal services provided by the Landlord at the Premises.

ARTICLE 11.00 ASSIGNMENT AND SUBLETTING

11.1 General. Except as otherwise expressly permitted herein, Tenant may not assign, mortgage or encumber this Lease, nor sublease or permit the Premises or any part of the Premises to be used or occupied by others, without the prior written consent of Landlord in each instance. No permitted subtenant will assign or encumber its sublease or further sublease all or any portion of its subleased space, or otherwise permit the subleased space or any part of its subleased space to be used or occupied by others, without Landlord's prior written consent.

11.2 Permitted Sublease. Notwithstanding anything stated to the contrary herein, it is expressly agreed and acknowledged that during the term of the Lease or any extension thereof that Tenant may sublet the Premises to any franchisee that it deems necessary or appropriate, in its sole direction, without the written consent of Landlord. As a courtesy to Landlord, Tenant will provide notice to Landlord in the event of a sublease to a franchisee. Notwithstanding any permitted assignment to any franchisee or otherwise, Tenant acknowledges and agrees that it shall remain liable for all payment and performance obligations set forth in this Lease.

11.3 Request for Permission. If Tenant requests the Landlord's consent to an assignment or subletting, Tenant shall submit to Landlord at least thirty (30) days prior to the effective date of the proposed assignment or sublease, a copy of the proposed assignment or sublease and information regarding the nature, character and references of the business of the proposed assignee or subtenant. Landlord shall then have the option, to be exercised within twenty (20) days from the submission of the materials designated in the previous sentence, to cancel the Lease as of the effective date of the proposed assignment or sublease. If the Landlord shall not exercise its option within the time set forth above, its consent to the proposed assignment or subletting shall not be unreasonably withheld.

ARTICLE 12.00 RULES AND REGULATIONS

12.1 Tenant and its employees, agents, licensees and visitors will at all times observe faithfully, and comply strictly with, the rules and regulations as established by Landlord. Landlord may from time to time amend, delete or modify existing rules and regulations, or adopt new rules and regulations for the use, safety, cleanliness and care of the Premises and the Complex. In the event of any breach of any rules or regulations or any amendments or additions to such rules and regulations, Landlord will have all remedies, which this Lease provides for default by Tenant. In the event of any conflict between the provisions of this Lease and the rules and regulations, the provisions of this Lease will govern.

ARTICLE 13.00 COMMON AREAS; LANDLORD RESERVATION

13.1 Common Areas. As used in this Lease, the term "common areas" means without limitation, parking areas, landscaped areas, lobby, bathrooms, and all other areas and facilities in the Complex which are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant with other occupants of the Complex and its respective employees, invitees, licensees or other visitors. Landlord grants Tenant, its employees, invitees, licensees and other visitors a non-exclusive license for the Term to use common areas in common with others entitled to use the common areas including, without limitation, Landlord and other tenants of the Complex and their respective employees, invitees, licensees and visitors, and other persons authorized by Landlord, subject to the terms and conditions of this Lease. The Landlord shall have the right to:

- (a) Temporarily close any of the common areas for maintenance, alteration or improvement purposes;
- (b) Change the size, use, shape or nature of any such common areas, provided such changes do not deprive Tenant of the substantial benefit and enjoyment of the Premises.

ARTICLE 14.00 RESERVED

ARTICLE 15.00 TENANT'S REPAIRS

15.1 Tenant shall, at its sole expense, be responsible for the cost of maintaining the Premises in a good, orderly and safe condition and state of repair, and any damage to the

Premises, the Complex or any appurtenances thereto caused by the misuse or negligence of Tenant, its employees or invitees. Tenant shall also be responsible for the cost of replacement of all broken glass with glass of the same size and quality of that broken. Tenant shall not be entitled to any partial or total abatement of rent for periods during which repairs are required to be made, whether such repairs are the responsibility of Landlord or Tenant.

ARTICLE 16.00 ALTERATIONS

16.1 Tenant agrees not to make any alterations, additions or improvements (collectively "Alterations") including but not limited to the Tenant's Work Letter to the Rental Area or any part thereof, or remove any part thereof, or disfigure them in any way, or to suffer or allow any of the same to be done, without the prior written consent of Landlord obtained in each and every case. Landlord may at any time make Alterations in or additions to, improvements on, and repairs to the Premises, or the whole or any part of the Complex, and for such purposes Landlord, its agents and employees, shall at all times have access to, from and through the Premises; provided, however, that such access or the making of such alterations, improvements and repairs shall not unreasonably interfere with the conduct of Tenant's business. Landlord shall not be liable to Tenant for any loss, injury, inconvenience or damage caused hereby, directly or indirectly, except if due to the negligence of Landlord, nor shall Tenant be entitled to any abatement of rent by reason thereof. Except in the case of emergencies, Landlord will give Tenant reasonable notice that it intends to enter the Premises and will minimize the interference with Tenant's business. Landlord will be liable for any damage to Tenant's property caused by Landlord.

In the event that Landlord consents to any Alterations they shall be made at Tenant's sole expense, and Tenant shall, before making any such Alterations, obtain all applicable government and municipal approvals, permits and/or licenses (including but not limited to building permits, variances, historic preservation agency approvals and permits, and other governmental approvals) (collectively, "Government Approvals") that are required by applicable law to enable Tenant legally to construct any such Alterations; and shall deliver promptly duplicates of all such permits, approvals and certificates to Landlord. Tenant agrees to carry, or to cause its contractor and subcontractors to carry, such workers' compensation, general liability, personal and property damage insurance as Landlord may require, which insurance shall name Landlord as an additional insured on a primary and non-contributory basis. Promptly upon completion of the Initial Tenant Improvements, Tenant shall provide Landlord with a complete set of as-built drawings and copies of the applicable approvals.

Notwithstanding anything to the contrary in this Lease, to the fullest extent permitted by Law, Tenant agrees to defend, indemnify and hold Landlord harmless from and against all losses expenses, costs (including reasonable attorneys' fees), claims, fines, penalties, suits, causes of action and damages, including, without limitation, personal injury, property damage or death (collectively, "Claims"), arising from or connected with any Alterations or other work done by Tenant or any contractor or subcontractor retained by or on behalf of Tenant, regardless of whether such Alteration or other work was performed with Landlord's consent, except to the extent that any such Claims was caused by the negligence or intentional misconduct of Landlord.

ARTICLE 17.00 MECHANICS' LIENS

17.1 Tenant will pay or cause to be paid all costs and charges for work done by Tenant or caused to be done by Tenant in or to the Premises. Tenant will indemnify Landlord against, and hold Landlord, the Rental Area, Premises and the Complex free, clear and harmless of and from, all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work by or on behalf of Tenant. If any such lien, at any time is filed against the Landlord, funds of the Landlord, Premises, or any part of the Complex, Tenant will cause such lien to be discharged of record within thirty (30) days after the filing of such lien. If Tenant fails to pay any charge for which a mechanics' lien has been filed, and has not discharged same of record as described above, Landlord may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Tenant to Landlord. Failure to make payment as required in this Article within ten (10) days of demand from the Landlord shall constitute an Event of Default and treated as though included in Article 26.00 of this Agreement. Nothing contained in this Lease will be deemed the consent or agreement of Landlord to subject Landlord's interest in the project to liability under any mechanics' or other lien law.

ARTICLE 18.00 END OF TERM

18.1 At the end of this Lease, Tenant will promptly quit and surrender the Premises broom-clean, in good order and repair, ordinary wear and tear excepted. Tenant will fully repair any damage occasioned by the removal of any trade fixtures, equipment, furniture, alterations, additions or improvements. All trade fixtures, equipment, furniture, inventory, effects, alterations, additions and improvements not so removed will be deemed conclusively to have been abandoned and may be disposed of by Landlord.

ARTICLE 19.00 RESERVED

ARTICLE 20.00 DAMAGE AND DESTRUCTION

20.1 If the Rentable Area, Premises or the Complex are damaged by fire or other casualty, Landlord will repair the damage with reasonable diligence. In the event of fire or other casualty this Lease will continue in full force and effect except that Rent will be abated on a pro rata basis from the date of the fire or other casualty until the date of the completion of such repairs based on the area of the Premises of which use Tenant is deprived during the repair period. If the damage to the Premises is to the extent that it, or the conduct of repairs thereto, substantially interferes with Tenant's use of the Rentable Area, then the rent will be abated completely instead of just in proportion to the area affected.

20.2 If the Premises or the Complex are damaged by fire or other casualty to an extent which may not be repaired within one hundred eighty (180) days, as determined by Landlord, then (i) Landlord may cancel this Lease as of the date of such damage by written notice given to Tenant, or (i) Tenant may cancel this Lease as of the date of such damage by written notice given to Landlord within ten (10) days after Landlord's delivery of a notice that the repairs cannot be made within such one hundred eighty (180) day period.

ARTICLE 21.00 SUBORDINATION

21.1 This Lease and Tenant's rights under this Lease are subject and subordinate to any ground or underlying lease, mortgage or deed of trust together with any renewals, extensions, modifications, consolidations and replacements thereof, now or hereafter affecting or placed, charged or enforced against the Premises or the Complex, or any interest of Landlord to them, or Landlord's interest in this Lease and the leasehold estate created by this Lease (except to the extent any such instrument will expressly provide that this Lease is superior to such instrument). This provision will be self-operative and no further instrument of subordination will be required in order to effect it. Nevertheless, Tenant will execute, acknowledge and deliver to Landlord, at any time and from time to time, within ten (10) days demand by Landlord, such documents as may be requested by Landlord, any ground or underlying lessor, or any mortgagee, to confirm or effect any such subordination.

21.2 Attornment. Tenant agrees that in the event that any holder of any ground or underlying lease, mortgage or deed of trust succeeds to Landlord's interest in the Premises, Tenant will attorn to such successor in interest without change in the terms or provisions of this Lease.

ARTICLE 22.00 ENTRY BY LANDLORD

22.1 Landlord, its agents, employees and contractors may enter the Premises at any time in response to an emergency and otherwise at reasonable hours on prior notice to (a) inspect the same, (b) exhibit the same to prospective purchasers, lenders or tenants, (c) determine whether Tenant is complying with all its obligations in this Lease, (d) supply any service to be provided by Landlord to Tenant according to this Lease, (e) post notice on non-responsibility or similar matters, or (f) make repairs required of Landlord under the terms of this Lease or repairs to any adjoining space or utility services or make repairs, alterations or improvements to any other portion of the Complex; provided, however, all such work will be done so as to cause as little interference to Tenant as reasonably possible. Tenant waives any claim against Landlord, its agents, employees or contractors for damages for: any injury or inconveniences to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by such entry.

ARTICLE 23.00 INDEMNIFICATION, WAIVER AND RELEASE

23.1 Mutual Indemnification. Tenant will indemnify and hold harmless Landlord, its employees and agents from and against any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from this Lease and/or the use or occupancy or manner of use or occupancy of the Premises or the Complex by Tenant or any person claiming under Tenant or the contractors, agents, employees, invitees or visitors of Tenant or any such person, except to the extent such costs, damages, claims, liabilities or expenses arise out of the negligent acts or omissions or intentional misconduct of Landlord or its agents, employees, contractors, guests or invitees. If

any action or proceeding is brought against Landlord or its employees by reason of any such claim for which Tenant has indemnified Landlord, Tenant, upon notice from Landlord, will defend the same at Tenant's expense with counsel reasonably satisfactory to Landlord.

Landlord will indemnify and hold harmless Tenant, its employees and agents from and against any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), liabilities, judgments, and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from this Lease and/or the use or manner of use of the Premises or the Complex by Landlord or any person claiming under Landlord or the contractors, agents, employees, invitees or visitors of Landlord or any such person, except to the extent such costs, damages, claims, liabilities or expenses arise out of the negligent acts or omissions or intentional misconduct of Tenant or its agents, employees, contractors, guests or invitees. If any action or proceeding is brought against Tenant or its employees by reason of any such claim for which Landlord has indemnified Tenant, Landlord, upon notice from Tenant, will defend the same at Landlord's expense with counsel reasonably satisfactory to Tenant.

23.2 Waivers and Release. Except for any damage or injury to person or property on the Premises which is caused by the negligence or intentional misconduct of Landlord or its agents, employees, contractors, guests or invitees, Tenant covenants and agrees that Landlord and its employees will not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage (including consequential damages) to persons, property or Tenant's business.

ARTICLE 24.00 QUIET ENJOYMENT

Landlord covenants and agrees with Tenant that so long as Tenant pays the Rent and observes and performs all the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises subject to all terms and conditions herein.

ARTICLE 25.00 RESERVED

ARTICLE 26.00 DEFAULT

26.1 Events of Default. The following events are referred to collectively as "Events of Defaults", or individually as an "Event of Default":

- (a) Tenant defaults in the due and punctual payment of Rent, and such default continues for fifteen (15) days after notice from Landlord;
- (b) Tenant vacates or abandons the Premises;
- (c) This Lease or the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Tenant;

- (d) Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or admits the material allegations of any such petition by answer or otherwise, or is dissolved or makes an assignment for the benefit of creditors;
- (e) Involuntary proceedings under any such bankruptcy law or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of the property of Tenant, and such proceeding is not dismissed or such receivership or trusteeship vacated within thirty (30) days after such institution or appointment;
- (f) Tenant fails to take possession of the Premises on the Commencement Date, except if this happens through no fault of his own; or
- (g) Tenant breaches any of the other material agreements, terms, covenants or conditions which this Lease requires Tenant to perform, and such breach continues for a period of thirty (30) days after notice from Landlord to Tenant; or is such breach cannot be cured reasonably within such thirty (30) day period and Tenant fails to commence and proceed diligently to cure such breach within a reasonable time period.

26.2 Landlord's Remedies. If any one or more Events of Default set forth in Section 26.01 occur then Landlord has the right, at its election;

- (a) To give Tenant written notice of Landlord's intention to terminate this Lease on the earliest date permitted by law or on any later date specified in such notice, in which case Tenant's right to possession of the Premises will cease and this Lease will be terminated, except as to Tenant's liability as hereinafter provided; or
- (b) Without terminating this Lease, to re-enter and take possession of the Premises and remove Tenant and those claiming through or under Tenant (and remove the effects of both or either), by legal proceedings or otherwise using such force or such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of a n y manner of trespass, and without prejudice to any remedies for arrears of rent or other amounts payable under this Lease; or
- (c) To cure any Event of Default and to charge Tenant for the cost of effecting such cure, including, without limitation, reasonable attorneys' fees and interest on the amount so advanced at the rate of 9% per annum provided that Landlord will have no obligation to cure any such Event of Default of Tenant.

26.3 Continuing Liability After Termination or Repossession. In the event that Landlord terminates this Lease as permitted in subsection (a) of Section 26.2, or elects to take possession as provided in subsection (b) of Section 26.2, Tenant will pay to Landlord: (a)

Monthly Rent and other **sums** as provided in this Lease, which would be payable under this Lease if such termination or repossession had not occurred, less (b) the net proceeds, if any, of any reletting of the Premises after deducting all Landlord's reasonable expenses in **connection** with such reletting, including, without limitation, all repossession costs, brokerage, commissions, reasonable attorneys' fees, expenses of employees, alterations and repair costs and expenses of preparation for such reletting. Landlord's obligation to re-let shall be to list Premises "for lease" with a commercial real estate broker in Erie County, New York within sixty (60) days of retaking possession. If, in connection with any reletting, the new lease term extends beyond the Term of this Lease had it not been terminated, or the premises covered by such new lease includes other premises not part of the Premises, a fair apportionment of the rent received from such reletting and the expenses incurred in connection with such reletting as provided in this Section will be made in determining the net proceeds from such reletting, and any rent concessions will be equally apportioned over the term of the new lease. Landlord shall not be liable or responsible for any failure to re-let the Premises or for any failure to collect any rent due upon such reletting. Tenant will pay such Rent and other sums to Landlord monthly on the day on which the Monthly Rent would have been payable under this Lease if possession had not been retaken. In the event that Landlord receives more rent in reletting the Premises than the Rent the Tenant was obligated to pay under this Lease, Landlord shall be entitled to such excess.

26.4 Waiver of Right of Redemption. Tenant hereby waives any right of redemption it may have in the event Landlord exercise its rights under **Section 26.2**.

26.5 Cumulative Remedies. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or any one or more of the rights or remedies at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All costs incurred by Landlord in collecting any amounts and damages owing by Tenant pursuant to the provisions of this Lease or to enforce any provision of this Lease, including reasonable attorneys' fees from the date any such matter is turned over to an attorney, whether or not one or more actions are commenced by Landlord, will also be recoverable by Landlord from Tenant.

ARTICLE 27.00 MISCELLANEOUS

27.1 Joint and Several Liability. If Tenant is composed of more than one signatory to this Lease, each signatory will be jointly and severally liable with each other signatory for payment and performance according to this Lease

27.2 Time of the Essence. Time is of the essence of each and every provision of this Lease.

27.3 Short-Form Lease/Memorandum of Lease. Landlord and Tenant agree not to record this Lease, but each party agrees, upon request by the other, to execute a short-form lease or a memorandum of lease (as appropriate for the jurisdiction in which the Premises is located) in a form to be mutually agreed.

27.4 No Waiver. The waiver by Landlord of any agreement, condition or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision contained in this Lease, nor will any custom or practice which may grow up between the parties in the administration of the terms of this Lease be constructed to waive or to lessen the right of the Landlord to insist upon the performance by Tenant in strict accordance with the terms of this Lease. The subsequent acceptance of Rent by Landlord will not be deemed to be a waiver of any preceding breach by Tenant or any agreement, condition or provision of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the same time of acceptance of such Rent.

27.5 Limitation on Recourse. Tenant specifically agrees to look solely to Landlord's interest in the Complex for the recovery of any judgments from Landlord. Landlord (and its officers, directors and employees) will not be personally liable for any such judgments. The provisions contained in the preceding sentences are not intended to, and will not, limit any right that Tenant might otherwise have to obtain injunctive relief against Landlord.

27.6 Estoppel Certificates. At any time and from time to time but within ten (10) Days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord, a certificate certifying such matters as may be reasonably requested by Landlord with respect to this Lease and the performance of Landlord and Tenant's obligations hereunder. Any such certificate may be relied upon by any prospective purchaser or existing or prospective mortgagee or beneficiary under any deed of trust of the Complex.

27.7 Waiver of Jury Trial. Landlord and Tenant by this Section 27.7 waive trial by jury in any action, proceeding or counterclaim brought by either of the parties to this Lease against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any other claims (except claims for personal injury or property damage).

27.8 Notices. Any notice, request, demand, consent approval or other communication required or permitted under this Lease must be in writing and will be deemed to have been given when deposited in any depository regularly maintained by the United States Postal Service, postage prepaid, certified mail, return receipt requested, addressed to the party for whom it is intended at its address set forth in Article 1.00. Either Landlord or Tenant may add additional addresses or change its address for purposes of receipt of any such communication by giving ten (10) days prior written notice of such change to the other party in the manner prescribed in this section 27.8.

27.9 Severability. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected by such finding.

27.10 Written Amendment Required. No amendment, alteration, modification or addition to the Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant.

27.11 Entire Agreement. No promises or representations, except as contained in

this Lease, have been made to Tenant respecting the condition of the Premises or the manner of operating the Complex.

27.12 Captions. The captions of the various Articles and Sections of the Lease are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

27.13 Authority. Both Landlord and Tenant and the parties executing this Lease on behalf of Landlord and Tenant, in each instance, represent to each other that the other party is authorized to do so by requisite action of the board of directors, or partners, or members as the case may be, and agree upon request to deliver to the other party a resolution or similar document to that effect.

27.14 Brokerage. Landlord and Tenant acknowledge that neither party retained the services of a brokerage company in the procurement of this Lease and that there are no commissions owed to any such entity.

27.15 Governing Law. This Lease will be governed by and construed in accordance with the laws of the State of New York.

27.16 Force Majeure. Landlord will have no liability to Tenant, nor will Tenant have any right to terminate this Lease or abate Rent or assert a claim of partial or total actual or constructive eviction, because of Landlord's failure to perform any of its obligations in the Lease if the failure is due to reasons beyond Landlord's reasonable control. If Landlord fails to perform its obligations because of any reasons beyond Landlord's reasonable control, the period for Tenant's performance will be extended day for day for the duration of the cause of Landlord's failure.

27.17 Late Payments. Any payment of Rent, including and any additional rent which is not received within fifteen (15) days after it is due will be subject to a late charge equal to five percent (5%) of the unpaid payment. This amount is in compensation of Landlord's additional cost of processing late payments. In addition, any Rent which is not paid when due will accrue interest at a late rate charge of 9% per annum from the date on which it was due until the date on which it is paid in full.

27.18 Landlord's Fees. Whenever Tenant requests Landlord to take any action or give any consent required or permitted under Article 11.00 of this Lease, Tenant will reimburse Landlord for all of Landlord's reasonable costs incurred in reviewing the proposed action or consent, including, without limitation, reasonable attorney's within ten (10) days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

27.19 Binding Effect. The covenants, conditions and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributes, executors, administrators, successors, and except as otherwise

provided in the Lease, their assigns.

27.20 Signs and Exterior Projections. The Tenant agrees not to expose, place, use or keep any display, advertisement, sign or projection of any kind in the front of the Premises, except with the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Upon the written submission by the Tenant to the Landlord for its consent as provided for in this section, the Landlord shall provide its written response no later than fifteen (15) days from the date of such submission. If the Landlord fails to respond in writing to the Tenant within the fifteen (15) day period set forth above, the requested consent by the Tenant shall be automatically deemed approved. The Tenant shall use only such window shades and awnings in the windows of the Premises as shall be approved and permitted in writing. Notwithstanding the foregoing, Tenant shall be permitted to utilize the suite entrance signage and signage affixed to the the Complex subject to Landlord's reasonable approval, and obtaining any government approvals as follows: (i) Spot logo signage on the pylon sign provided by the Landlord at the street entrance of the Complex; (ii) artistically created stain glass Spot logos to be place at either end of the main internal hallway of the Complex, and (iii) a Spot logo sign at the actual internal entrance of the Premises

27.21 Counterparts. The parties may execute this Lease in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. For all purposes, a facsimile or other electronic version (e.g., a .pdf) of this executed Lease is deemed to be an original.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above.

LANDLORD: TOWN OF WEST SENECA (OR DESIGNATED ENTITY)

By: _____
Sheila M. Meegan, Supervisor

TENANT: SPOT COFFEE WEST SENECA, LLC,
dba SPOT COFFEE EXPRESS CAFÉ

By: _____
Anton Ayoub, Manager

STATE OF NEW YORK)
COUNTY OF ERIE) ss:

On the ___ day of February, 2018 before me personally appeared Sheila M. Meegan, being the Supervisor of the Town of West Seneca, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by her executed to be her free act and deed in his capacity as Supervisor of said Town of West Seneca and she did identify herself by providing a current New York State driver's license.

Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE)ss:

On the __ day of February, 2018 before me personally appeared Anton Ayoub, being the Manager of Spot Coffee West Seneca, LLC d/b/a Spot Coffee Express Cafe, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed in his capacity as Manager of said Spot Coffee West Seneca, LLC d/b/a Spot Coffee Express Cafe and he did identify himself by providing a current driver's license.

Notary Public

EXHIBIT A

Floor Plan

EXHIBIT B

Landlord's Work Specifications

1. Provide open, dry - walled and fully demised space for Tenant comprising of minimally finished interior with ceilings, lighting, plumbing and cooling (HVAC), unpainted interior walls and electrical outlets;
2. Provide a sewer line within the premises for the Tenant to connect to;
3. Provide HVAC to the premises (HVAC distribution network within the premises is Tenant's responsibility and at Tenant's cost;
4. Provide hot and cold water lines within the premises of sufficient capacity for Tenant's intended use;
5. Provide main electric service panel of 400 amp/208v/3 phase; co-ordinate location as per Tenant's plans;
6. Provide fire alarm and sprinkler system as per code.

EXHIBIT C

Tenant's Work Letter

The Tenant shall provide all materials and work other than Landlord's Work necessary so that the premises shall be fully completed for opening and for the conduct of business by the Tenant as follows:

1. Framing /Metal Studs/ Decorative Ceilings
2. Floor and wall finishes
3. Millwork for service and other counters
4. Painting
5. HVAC distribution
6. Food service and food preparation equipment
7. Electrical hook-up of equipment
8. Plumbing hook-up of equipment

The landlord acknowledges that the Tenant requires a heat removal exhaust fan and hood. Furthermore, Tenant may design and construct a glass window intended for added visibility at the wall of the hallway of the Complex.

EXHIBIT A



