Council Meeting of
March 20, 2007

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager: Landlord Consent, Nondisturbance, Recognition, Attornment and Estoppel Agreement for a Sublease by and between Schwartz Investment Company and Peet's Operating Company, INC. DBA Peet's Coffee & Tea

RECOMMENDATION

The City Manager recommends that City Council authorize the Mayor to Execute and the City Clerk to Attest to a Landlord Consent, Nondisturbance, Recognition, Attornment and Estoppel Agreement by the City of Torrance and for the benefit of Peet's Operating Company, Inc and its successors and assigns for a Sublease with the Schwartz Investment Company, Inc., on City-owned property known as Rolling Hills Shopping Center located at the corner of Crenshaw Boulevard and Pacific Coast Highway.

FUNDING

Funding is not required for this item.

BACKGROUND/ANALYSIS

The Master Lease was entered into in October of 1990 and comprises a six acre Lease area. The term of the Agreement is from October 1, 1990 – October 31, 2028 and has one nine-year option to extend. The Master Tenant, Schwartz Investment Company. Inc., has approached the City with a request for approval of the subject document.

The Lease as it is written allows for the City Manager or designee to consent to certain uses, of which the proposed sub-tenant falls into the category of acceptable uses. However, the request for consent is included within the same document as the Nondisturbance, Recognition, Attornment and Estoppel Agreement which must be reviewed and approved by the City Council; therefore, the document is forwarded for your review.

Consent

The proposed sub-tenant will replace the space vacated by Torrance Bakery. The use is a "like use" to what it will replace and is an acceptable use per the Master Lease.

Nondisturbance, Recognition and Attornment Agreement

The Nondisturbance, Recognition and Attornment Agreement states that termination of the Master Lease shall not terminate the sublease and that the sub-tenant shall not be disturbed unless in default of the Master Agreement beyond any cure period.

Also, if the Master Lease is terminated, the agreement states that the sub lessee will be bound to the same terms of their Agreement to a new Master Tenant.

Estoppel Certificate

The Estoppel Certificate states that there are no known defaults, failure of conditions or other matters which may permit termination of the Master Lease. Further it states that the Lease is current.

There are no defaults on the Lease and the payments are current.

Staff recommends approval of the document before you.

Respectfully submitted,

LeROY J. JACKSON

By: _____
Brian K. Sunshine
Assistant to the City Manager

CONCUR:

_____
LeRoy J. Jackson
City Manager

Attachments:

A. Landlord Consent, Nondisturbance, Recognition and Estoppel Agreement
B. Letter of request dated March 7, 2007
C. Peet's Operating Company, Inc., Sub-Lease Agreement

Attachment A

EXHIBIT B

LANDLORD CONSENT, NONDISTURBANCE,

RECOGNITION AND ESTOPPEL AGREEMENT

This Landlord Consent, Nondisturbance, Recognition and Estoppel Agreement (the "Agreement") is made this _____ day of _____, 2007 by the City of Torrance ("Master Landlord") and for the benefit of Peet's Operating Company, Inc. and its successors and assigns ("Subtenant").

RECITALS:

This Agreement is made with reference to the following facts:

A. Master Landlord and Schwartz Investment Company LLC ("Master Tenant") have entered into that certain Ground Lease dated September 21, 1990 (the "Master Lease") concerning the Rolling Hills Plaza Shopping Center in Torrance, California (the "Center").

B. Master Tenant has subleased a portion of the Center (the "Premises") to Subtenant pursuant to that certain Lease dated March 5, 2007 (the "Sublease").

C. Master Landlord wishes to consent to the Sublease and agrees to provide Subtenant with recognition and nondisturbance rights upon any termination of the Master Lease in the manner described in this Agreement.

Accordingly, Master Landlord hereby agrees as follows:

1. Consent. Master Landlord hereby acknowledges that it has read and approved the form of the Sublease and hereby consents to the Sublease and Subtenant's use and occupancy of the Premises therein described.

2. Nondisturbance, Recognition and Attornment. The termination of the Master Lease shall not terminate the Sublease and Master Landlord shall not disturb Sublessee in the possession and use of the Premises unless at the time of termination Sublessee is in default under the Sublease after any required notice and beyond any applicable cure period provided in the Sublease. Upon the occurrence of any termination of the Master Lease, Master Landlord shall, at Sublessee's request, enter into a new lease with Sublessee on the same terms as the Sublease (including, without limitation, any unexercised renewal options). This nondisturbance and recognition applies to any option to extend or renew the Sublease term which is set forth in the Sublease as of the date of this Agreement.

If any termination of the Master Lease should occur, Sublessee shall and hereby does attorn to Master Landlord, as the lessor under the Sublease, and Sublessee shall be bound to Master Landlord under all of the terms, covenants and conditions of the Sublease for the balance of the Sublease term and any extensions or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Sublease, all with the same force and effect as if Master Landlord had been the original lessor under the Sublease, and Master Landlord will be similarly bound to Lessee. This attornment shall be effective and self-operative without the execution of any further instruments.

3. Estoppel. Master Landlord hereby certifies to Subtenant as follows:

(i) To the actual knowledge of Master Landlord, there are no current outstanding notices of any defaults, failure of conditions or other matters, which permit a party to terminate the Master Lease.

(ii) Master Landlord has no actual knowledge that Master Tenant has made any advancements for or on behalf of Master Landlord, and, to Master Landlord's actual knowledge, there are no offsets, deductions, credits against payment of rents or other charges due from Master Tenant under the Lease. To the actual knowledge of Master Landlord, there is no default under the Master Lease on the part of Master Tenant or Master Landlord. Master Landlord is not aware of the existence of any circumstances that would constitute a default under the Master Lease if not cured within the applicable grace period after written notice by either Master Landlord or Master Tenant to the other party.

IN WITNESS WHEREOF, Master Landlord has executed this Agreement as of the day and year first above written.

ATTEST:

_____
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By:_____

CITY OF TORRANCE:

By: _____
Name: _____
Its: _____

Attachment B

Schwartz Investment Company
1736 Westwood Blvd., Suite 100
Los Angeles, California 90024
Telephone 310-441-7170
Fax 310-441-0256

March 7, 2007

City of Torrance

Re: Rolling Hills Plaza – Proposed Lease with Peet's Operating Company, Inc.

Dear Sirs:

Pursuant to our Ground Lease with the City of Torrance for the Rolling Hills Plaza Shopping Center, we must obtain the consent of the City for subleases that could have a term of more than ten years. Attached is a proposed sublease with Peet's Operating Company, Inc., for the operation of a Peet's Coffee & Tea store. This sublease has a potential term of over ten years, and therefore we are asking for the approval of the City to enter into the lease.

As you probably know, Peet's Coffee & Tea is a national company, with over 120 stores all over the United States. Their store will be next to the Whole Foods Market at the Rolling Hills Plaza Shopping Center. Whole Foods and Peet's find that they have a mutually beneficial effect on customers when they are neighbors, and in fact I understand they are next to each other in other locations.

We feel that adding Peet's Coffee and Tea to the Rolling Hills Plaza will be a benefit to the center, and will add another first class tenant. Therefore we ask that you consent to the lease. Please sign and return the Landlord Consent, Nondistrubance, Recognition and Estoppel Agreement which is Exhibit B of the Lease.

As I'm sure you can appreciate, time is of the essence, as the store is now vacant and it is in everyone's best interest to get the tenant in and operating. I respectfully request that you approve the lease at your earliest convenience, and call me so that I can come an pick up the Consent with your signature.

Please feel free to call me if you have any questions.

Very truly yours,

Dick Schwartz

Dick Schwartz

364326.1

Attachment C

RETAIL LEASE
PEET'S OPERATING COMPANY, INC.,
FOR PREMISES AT
TORRANCE, CALIFORNIA

THIS LEASE ("Lease") is made as of the 5 day of March, 2007, by and between Schwartz Investment Company, LLC, a California limited liability company ("Landlord"), and PEET'S OPERATING COMPANY, INC., a Virginia corporation ("Tenant").

ARTICLE 1: PREMISES AND COMMON AREAS

1.1 Premises. The "Premises" consist of that certain retail space containing approximately Three Thousand (3,000) square feet, as shown on Exhibit "A", and commonly known as Rolling Hills Plaza, and located in that certain shopping center ("Shopping Center") on the property located at the northeast corner of Pacific Coast Highway and Crenshaw Boulevard, Torrance, California ("Property"). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, the Premises.

1.2 Common Areas. The term "Common Areas" means all areas and facilities outside the Premises and within the exterior boundary line of the Property that are designated by Landlord from time to time for the general and nonexclusive use and convenience of Landlord, Tenant and of any other tenants of the Shopping Center, and their respective agents, employees, suppliers, shippers, customers or invitees (collectively, "Invitees"). The Common Areas include, without limitation, patio areas, parking areas, loading and unloading areas, trash areas, sidewalks, driveways and landscaped areas, restrooms, plazas, service corridors, mechanical and service rooms and other such areas, irrigation systems, Common Areas lighting facilities, fences and gates serving the retail portions of the Shopping Center. Landlord hereby grants to Tenant, for the benefit of Tenant and its Invitees, the nonexclusive right to use the Common Areas, in common with all others entitled to such use, subject to all rights and powers reserved by Landlord under the terms hereof. Without limiting the foregoing, Tenant and its Invitees shall have the right, at no additional cost but subject to the receipt of all necessary governmental approvals, if any, to use the patio areas and, in connection therewith, Tenant shall have the right to furnish such areas with tables, chairs and umbrellas. Landlord shall not make any changes to the Common Areas that would adversely affect Tenant's use thereof or the operation of Tenant's business, or which would adversely impair access to the Premises, visibility of the Premises, the amount and proximity of parking available for Tenant's customers, or ingress to or egress from the Shopping Center. In addition, any change or addition made by Landlord to the Common Areas shall not result in a material increase in Tenant's Share of Expenses, utility charges, Real Property Taxes or insurance costs charged to or incurred by Tenant.

1.3 Master Lease. Landlord is tenant under a lease with the City of Torrance (the "City") pursuant to a Ground Lease dated September 21, 1990 ("Master Lease"). The Master Lease covers the premises and other property in the Shopping Center. The City of Torrance also has a separate ground lease with Rolling Hills Plaza, LLC for the remaining portion of the Shopping Center. Landlord and Tenant acknowledge and agree that notwithstanding the designation of this Lease as a "Lease," it is a "Sublease," "Landlord" is a "Sublandlord," and "Tenant" is a "Subtenant."

This Lease is subject and subordinate to the Master Lease. Landlord covenants and agrees to perform all of Landlord's obligations under the Master Lease. Tenant covenants and agrees to not violate any of the terms, covenants and conditions of the Master Lease, except that Tenant's obligations and covenants to pay fixed minimum rent, additional rent and other charges and the use of the Premises shall be governed solely by this Lease and shall be considered satisfied to the extent and in the amount that rent and other charges are paid hereunder by Tenant to Landlord. Notwithstanding the foregoing, in the event of any conflict between the terms of the Master Lease and the terms of this Lease, Landlord agrees that Tenant shall not be in breach of this Lease as long as Tenant complies with the terms of this Lease. Tenant shall defend, indemnify, and hold Landlord harmless of and from all liability, judgments, costs, expenses, damages, claims and demands, including attorneys' fees arising out of any failure by Tenant to perform any of such obligations under the Master Lease. Landlord shall defend, indemnify and hold Tenant harmless of and from all liability, costs, expenses, charges, claims and demands, including attorneys' fees arising out of any failure by Landlord to perform its obligations under the Master Lease.

1.4 Operation and Easement Agreement. Landlord is the successor to Schwartz Investment Company, a California limited partnership, which is a party to the Operation and Easement Agreement of Rolling Hills Plaza dated October 5, 1990 (the "OEA") by and between Landlord and Rolling Hills Shopping Center, a California limited partnership ("RHSC"), and the City. As used herein the term "Shopping Center" refers only to that portion of the improvements covered by the OEA that are owned by Landlord.

1.5 City Consent. The effectiveness of this Lease is contingent upon Landlord's receipt, at no cost to Tenant, of a consent from the City to this Lease in the form and substance attached hereto as Exhibit B and incorporated herein. In the event Landlord cannot obtain such consent from the City within thirty (30) days of the date of execution of this Lease, Tenant may at any time thereafter (but not after the City may provide such consent) terminate this Lease without liability to Landlord by written notice to Landlord.

ARTICLE 2: TERM

2.1 Term. The "Term" of this Lease shall commence on the date (the "Commencement Date") that is the earlier of (a) the date that is seventy-five days after the later of (i) the date Landlord delivers possession of the

Premises to Tenant and (ii) the date Tenant has obtained all permits necessary for the construction of Tenant's improvements or (b) the date Tenant opens for business, and shall be for one hundred twenty (120) consecutive full calendar months thereafter, unless sooner terminated as provided herein. Notwithstanding the foregoing, in the event the Term should expire pursuant to the operation of the immediately preceding sentence between November 1 and January 31, then the Term shall be extended to expire on the February 1 next occurring. Tenant shall use reasonable efforts to complete the building permit process as soon as reasonably possible. If for any reason Landlord cannot deliver possession of the Premises on or before June 1, 2007, Tenant may elect to terminate this Lease at any time after such date, but prior to the date Landlord delivers possession of the Premises to Tenant, by delivering written notice of its intent to do so to the Landlord, in which event, this Lease shall be terminated and of no further force and effect, effective as of the date of delivery of such notice, and Landlord shall refund sums paid by Tenant to Landlord, and neither party shall have any further rights or obligations hereunder, except for those rights or obligations that survive the termination of this Lease. In the event Tenant elects to terminate this Lease pursuant to this Paragraph 2.1, Landlord shall not be subject to any liability therefor (except to the extent such delay in delivery is due to the negligence or willful misconduct of Landlord or its agents, contractors or employees). From the date on which Landlord delivers possession of the Premises to Tenant in the required condition until the Commencement Date, Tenant's occupancy shall be subject to all provisions of this Lease other than the obligation to pay rent and other charges and provided that such occupancy shall not affect the Commencement Date or the Term.

2.2 Options for Extended Terms. Provided this Lease is in full force and effect, Tenant is not in default past the applicable cure period, and subject to the provisions of this Paragraph, Tenant may extend the Term for two (2) periods of five (5) years each "Extended Term(s)" by giving Landlord notice of its election to extend the Term ("Option Notice") for each respective Extended Term no less than six (6) months prior to the beginning of the applicable Extended Term.

The Extended Terms shall be on the same terms, covenants and conditions as contained in this Lease, except that the Base Rent for the Extended Term(s) shall be adjusted as set forth in Article 3, below. The term "Term" shall include all Extended Terms.

ARTICLE 3: RENT

3.1 Base Rent (Lease Years 1-5). Tenant shall pay to Landlord, commencing on the Commencement Date, "Base Rent" in the amount of Nine Thousand Dollars ($9,000.00) per month, on the first day of each calendar month.

3.2 Predetermined Increases in Base Rent (Lease Years 6-10). On the date that is the fifth (5th) anniversary date of the Commencement Date, the Base Rent shall be increased to an amount equal to Ten Thousand Three Hundred Fifty Dollars ($10,350.00) per month.

3.3 Predetermined Increase in Base Rent for First Extended Term (Lease Years 11-15). In the event Tenant exercises its option for the first Extended Term, the Base Rent for the first Extended Term shall be increased to an amount equal to Eleven Thousand Eight Hundred Eighty Dollars ($11,880.00) per month.

3.4 Predetermined Increase in Base Rent for Second Extended Term (Lease Years 16-20). In the event Tenant exercises its option for the second Extended Term, the Base Rent for the second Extended Term shall be increased to an amount equal to Thirteen Thousand Six Hundred Fifty Dollars ($13,650.00) per month.

3.5 Late Payment. The late payment by Tenant of Base Rent or Tenant's Share of Expenses (defined in Article 4) will cause Landlord to incur additional costs including, without limitation, administration and collection costs, processing and accounting expenses and additional increased debt service. If Landlord has not received any installment of Base Rent or Tenant's Share of Expenses within five (5) days after Tenant's receipt of written notice from Landlord that such payment is past due, Tenant shall immediately pay Landlord a late charge of three percent (3%) of the delinquent amount, which is agreed to represent a reasonable estimate of the costs incurred by Landlord.

ARTICLE 4: COMMON AREA EXPENSES

4.1 Tenant's Share of Expenses. Tenant shall pay to Landlord Tenant's Share of Expenses, which shall be equal to three and 66/100ths percent (3.66 %) of the Common Area Expenses and Real Property Taxes, as defined below. Tenant's Share of Expenses shall be calculated by dividing the total square footage of the Premises by the total square footage of the Shopping Center (whether or not leased) and expressing the fraction as a percentage.

4.2 Common Area Expenses. "Common Area Expenses" shall include all "Common Area Costs" charged to Landlord for the Shopping Center under the OEA plus a management fee to Landlord not to exceed ten percent (10%) of Common Area Costs charged to Landlord under the OEA. Notwithstanding the foregoing. Common Area Expenses shall not include any cost to maintain or repair any awnings, roof, roof membrane or foundation for any structure covered by the OEA.

4.3 Real Property Taxes. "Real Property Taxes" include (i) any form of ad valorem real property estate tax or general or special assessment on the land and/or the Shopping Center, (ii) any license fee, gross receipts or commercial rental tax, improvement or maintenance bond or assessment, excise tax, housing, or sewer charge, or other tax, fee or exaction imposed on the Shopping Center, Landlord's right to receive rent or derive other income therefrom, or Landlord's business of leasing the Premises or any other space in the Shopping Center, and (iii) any tax, fee, levy assessment, exaction, expense or charge in lieu of the above.

Real Property Taxes shall not include (i) any real property taxes attributed to other tenants' tenant improvements, (ii) any penalties or interest on Real Property Taxes, (iii) any income, franchise, inheritance, estate or similar taxes, and (iv) any increase in Real Property Taxes resulting from the sale or other transfer of all or a portion of Landlord's interest in the Shopping Center, the Premises or any portion thereof.

4.4 Payment of Expenses. From and after the Commencement Date, Tenant shall pay as an estimate of Tenant's Share of Expenses and Tenant's Share of Real Property Taxes an additional payment of twelve percent (12%) of Base Rent then in effect per month, subject to reconciliation as described below.

Within ninety (90) days after the end of each calendar year, Landlord shall give to Tenant a statement of the Tenant's Share of Expenses for such calendar year certified by Landlord. If such statement shows an amount owing by Tenant that is less than the estimated payments for such calendar year previously made by Tenant, Landlord shall promptly refund to Tenant the excess amount that Tenant paid. If such statement shows an amount owing by Tenant that is more than the estimated payments for such calendar year previously made by Tenant, Tenant shall pay the deficiency to Landlord within fifteen (15) days after delivery of such statement. Failure by Landlord to give any notice or statement to Tenant under this Paragraph 4.4 shall not constitute a waiver of Landlord's right to receive and Tenant's obligation to pay Tenant's Share of Expenses.

Upon written request by Tenant, Landlord shall promptly provide Tenant with appropriate documentation (e.g. bills, invoices, payment stubs, etc.) evidencing the Common Area Expenses, taxes and insurance premiums charged by Landlord during any particular lease year. Landlord shall keep and maintain in its offices full, complete and accurate books of account and records solely of the Common Area Expenses for the Shopping Center in accordance with standard accounting practices, which books and records shall be open for review by Tenant or Tenant's representative during normal business hours. Tenant shall only request to review such records if Tenant has first requested backup documentation for the Common Area Expenses and Tenant disputes some or all of the Common Area Expenses after such review. Landlord shall not include any other operations in such accounts and records other than those from or on the Shopping Center. In the event Tenant's review of such books and records shows that the Common Area Expenses for the calendar year reviewed are less than reported, Landlord shall pay the amount of the overpayment to Tenant within thirty (30) days of written demand. Likewise, if such Common Area Expenses for the calendar year reviewed are greater than reported, Tenant shall pay Landlord the amount of any underpayment within thirty (30) days. If such review shows that Landlord has overstated Common Area Expenses by more than five percent (5%), and such overstatement resulted in an overpayment of Common Area Expenses, then Landlord shall pay to Tenant, upon demand, the reasonable cost of such examination and/or audit, in addition to the overpayment of Common Area Expenses. In all other cases, Tenant shall bear the cost of the examination or audit.

ARTICLE 5: OTHER TAXES

Tenant shall pay prior to delinquency all taxes assessed against trade fixtures, furnishings, equipment and all other personal property of Tenant. In addition, Tenant shall pay to Landlord the reasonable attorneys' and experts' fees and expenses and court costs and other expenses incurred by Landlord in connection with proceedings requested by Tenant to contest, determine or reduce Real Property Taxes, whether successful or not. When possible, Tenant shall cause its trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant's personal property hereunder within fifteen (15) days after receipt of a written statement setting forth the taxes applicable to Tenant's personal property.

ARTICLE 6: USE

6.1 Use. Tenant shall be permitted to use the Premises for the retail sale of coffee beans and tea, plus home brewing, grinding and serving equipment along with the retail sale of beverages (e.g. drip coffee, espresso based coffee drinks, hot chocolate, tea, juice and soft drinks) and fresh baked goods, bagels, chocolates and other candies, and other incidental items normally offered for sale in a specialty coffee store, and any other retail uses as shall not, in the reasonable opinion of Landlord, conflict with other tenancies or diminish the value or appearance of the Shopping Center.

Tenant shall, at Tenant's expense, promptly comply with all applicable statutes, ordinances, rules, regulations and orders of every applicable governmental jurisdiction in connection with Tenant's specific use of the Premises and all requirements of any fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect. Tenant shall not use, or permit the use of, the Premises or Common Areas for any illegal or immoral purpose or in any manner that will tend to create waste or a nuisance. Landlord hereby acknowledges that the normal odors associated with a retail coffee store, and Tenant's customary retail operation in particular shall not be deemed objectionable or a nuisance, and will not be violative of this Article. Tenant shall not permit the Premises to be used for any purpose or in any manner, other than Tenant's customary business operation, which would render the insurance thereon void or the insurance risk more hazardous or result in any loss or reduction of insurance benefit for Landlord.

6.2 Restrictions on Use. Tenant will not use or suffer or permit any person or persons to use the Premises or any part thereof for conducting therein a second-hand store, auction, distress or fire sale or bankruptcy or going-out-of-business sale. During the Term, Tenant shall keep the Premises and every part thereof, in a clean and wholesome condition. Landlord hereby acknowledges that the normal odors associated with a retail coffee store, and Tenant's customary retail operation in particular, shall not be deemed objectionable or a nuisance and will not be violative of this paragraph. Tenant may not display or sell merchandise or allow carts, portable signs,

devices or any other objects to be stored, or to remain, outside the exterior walls and permanent doorways of the Premises. Tenant shall not place or authorize to have placed or affixed handbills or other advertising material in the Shopping Center. No advertising or entertainment medium shall be utilized by Tenant which can be heard or experienced outside the Premises including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions, without the prior express written approval of Landlord in each case which shall not be unreasonably withheld.

6.3 Exclusive Use. Landlord and Landlord's affiliates shall not lease a space within the Shopping Center or any additions to the Shopping Center (which additions for purposes of this Paragraph 6.3 shall be included within the term "Shopping Center") during the Term or any Extended Term or Extended Terms, or allow any tenant of the Shopping Center to assign or sublease a space within the Shopping Center, to a party who shall use such space for the sale of coffee beans, tea leaves, and/or coffee beverages (the "Exclusive Use")other than the sale of coffee beverages that are incidental to such party's primary use. The foregoing exclusive use provision shall not apply to Whole Foods or any other tenant of the Shopping Center where the Exclusive Use is less than five percent (5%) of its gross sales. Tenant acknowledges that Landlord does not control approximately five-sixths (5/6ths) of the improvements governed by the OEA and Landlord cannot control the tenant mix in those portions of the improvements governed by the OEA not owned or controlled by Landlord.

6.4 Vacation of Premises. In the event Tenant shall cease permanently business operations and vacate the Premises for a period of one hundred twenty (120) days or more, Landlord may by written notice (the "Recapture Notice") terminate this Lease on the terms and subject to the conditions set forth in this Paragraph 6.4. Upon receipt of a Recapture Notice, Tenant may within thirty (30) days elect to reoccupy the Premises and reopen its business in which event the Recapture Notice shall be null and void. In the event Tenant does not elect to recommence business operations, this Lease shall terminate on a date thirty (30) days after delivery of the Recapture Notice on which date Tenant's obligations to pay Base Rent, Tenant's Share of Expenses and other monetary obligations of Tenant under this Lease shall cease. Tenant's obligation to pay for expenses and other monetary obligations prior to expiration of the Term shall survive the expiration of the Term.

ARTICLE 7: UTILITIES

Tenant shall pay the charges (together with any taxes and surcharges thereon) for all water, gas, heat, light, power, telephone and other utilities and services furnished to the Premises used by Tenant directly to the providing utility company. The Premises shall be separately metered or sub-metered at Landlord's cost.

ARTICLE 8: MAINTENANCE AND REPAIR

8.1 Tenant's Obligations. Subject to Landlord's obligations set forth in Paragraph 8.2, below, Tenant, at Tenant's expense, shall maintain the Premises and every part thereof in good order and repair, including, without limitation, all plumbing, electrical, lighting and heating, ventilating and air conditioning facilities and equipment located within the Premises, all fixtures, personal property, interior walls and interior surfaces of exterior walls, ceilings, windows, doors, plate glass and skylights located within the Premises, storefronts, store windows and Tenant's signs, all subject to reasonable wear and tear, and Landlord's failure to perform its obligations, and with damage by fire, casualty and taking being governed by the applicable provisions of the Lease. Notwithstanding the foregoing, Landlord shall replace, at Landlord's sole cost and expense, the heating, ventilating and air conditioning system if the system servicing the Premises in Lease Years 2 and 3 cannot be brought into full operating condition through repairs made by Tenant. Tenant shall not be required to make any structural or non-structural improvements, changes, alterations or modifications to the Premises to comply with the Laws defined in Paragraph 8.2, below, unless required by a governmental authority by reason of Tenant's specific use of the Premises. If Tenant fails to perform Tenant's obligations under this Paragraph 8.1, and Tenant does not commence such performance within thirty (30) days after written notice from Landlord, Landlord may enter upon the Premises after five (5) days' prior written notice to Tenant and perform such obligations on Tenant's behalf; the reasonable cost thereof, together with interest thereon at the Interest Rate, shall be due and payable as additional rent to Landlord with Tenant's next due installment of Base Rent.

8.2 Landlord's Obligations. Landlord shall maintain in good condition and repair, at Landlord's sole cost and expense, the foundations, exterior walls, structural portions and roof of the Premises and all other buildings in the Shopping Center. Landlord further agrees that in the event the balance of the improvements covered by the OEA and not owned by Landlord are not being maintained in the manner required by the OEA, Landlord will take reasonable steps to pursue its rights and remedies under the OEA at no cost to Tenant. In addition, Landlord shall maintain in good condition and repair all of the Common Areas, the cost of which Landlord may charge a portion thereof to Tenant pursuant to Paragraph 4, above. Landlord shall not be required to maintain, repair or replace windows, doors or plate glass of the Premises. Notwithstanding Tenant's obligations described in Paragraph 8.1, Landlord hereby warrants that all utility and mechanical systems servicing the Premises are in good condition and repair as of the Commencement Date, and agrees to maintain, service and replace, all such systems for one (1) year from the Commencement Date. Landlord shall have no obligation to make repairs under this Paragraph 8.2 until a reasonable time after receipt of written notice from Tenant of the need for such repairs, except if such repair is an emergency, in which event Landlord shall commence such repairs immediately upon receipt of notice. If Landlord fails to perform Landlord's obligations under this Paragraph 8.2, and Landlord does not commence such performance within thirty (30) days after written notice from Tenant and diligently prosecute such repairs to its completion, Tenant may perform such obligations on Landlord's behalf and the reasonable cost thereof, together with interest thereon at the Interest Rate, shall be deducted by Tenant from Tenant's next due installment of Base Rent. If the cost of such repair performed by Tenant on behalf of Landlord exceeds the next due installment of Base Rent, Landlord shall reimburse Tenant for any amount in excess of the Base Rent next due no later than the date such installment of Base Rent is due.

If any standard, code, rule, statute, regulation, law or order now existing or hereafter enacted (collectively "Laws") is imposed or enforced on Landlord, Tenant, the Premises or the Shopping Center by any federal, state, regional or local governmental authority or public agency, then Landlord agrees, at Landlord's sole cost and expense, to comply promptly with such Laws and to pay all costs incurred thereby, including without limitation the costs of any alterations or improvements to the Premises that may be required thereunder and any and all costs of defense, unless the requirement of compliance is caused by Tenant's specific use of the Premises or Tenant's specific tenant improvements. Without limiting the generality of the foregoing, if any governmental authority should require (a) that a structural, health or life safety improvement be made to the Shopping Center, the Common Areas or the Premises, (b) the Shopping Center, Common Area or the Premises be structurally upgraded, (c) access be modified to the Shopping Center, the Common Areas or the Premises, or (d) asbestos be removed from the Premises, the Common Areas or the Shopping Center, and such measures are imposed as a general requirement applicable to the Shopping Center and/or all tenants (rather than as a condition to Tenant's specific use or alteration of the Premises), such work shall be performed by and at the sole cost of Landlord. No cost described herein shall be included in Common Area Expense.

ARTICLE 9: HAZARDOUS MATERIALS

9.1 Tenant's Obligations. Tenant shall not cause or permit the presence, use, generation, release, discharge, storage, disposal or transportation of any "Hazardous Materials" on, under, in about to or from the Premises, the Common Areas and/or the Shopping Center; provided that the presence or use of Hazardous Materials (a) in products required for the prudent and ordinary management and operation of the Premises as a retail coffee store and (b) held and used in accordance with (i) all applicable federal, state or local laws, regulations or orders, (ii) guidelines issued by any national or regional board of insurance underwriters, and (iii) prudent standards of practice shall not be deemed in violation of this provision. For purposes of this Lease, "Hazardous Materials" shall mean any hazardous or toxic substances, materials or waste, pollutants or contaminants, as defined, listed or regulated by any federal, state, county or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) petroleum products or by-products, (iii) asbestos and (iv) polychlorinated biphenyls.

Tenant shall indemnify, defend and hold harmless Landlord and its agents and employees from and against any and all losses, claims, actions, damages, penalties, fines, liabilities and expenses of any and every kind whatsoever including without limitation, attorneys' and experts' fees and expenses, and the costs of cleanup, remediation, removal and restoration (collectively, "Environmental Liabilities") paid, incurred or suffered by, or asserted against, Landlord and/or its employees, agents, successors and assigns, as a result of any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, release or disposal on, under or from the Premises, Common Areas or the Shopping Center or the improvements thereon, of any Hazardous Material ("Hazardous Material Event") to the extent same is caused by or on behalf of Tenant, its agents, contractors and employees from and after the time Tenant is given legal possession of the Premises. This indemnification shall survive the termination of this Lease.

9.2 Landlord's Obligations. Landlord represents and warrants that Landlord has not received written notice from any public agency that knowledge Hazardous Materials exist on, in, under or about the Premises, the Common Areas or the Shopping Center as of the date of full execution of this Lease in violation of environmental laws.

Landlord shall indemnify, defend and hold harmless Tenant, its agents and each of their employees from and against any Environmental Liabilities paid, incurred or suffered by, or asserted against, Tenant and/or its employees, agents, successors and assigns, to the extent same results from any claim, demand or judicial or administrative action by any person or entity (including governmental or private entities) for, with respect to, or as a direct or indirect result of, a Hazardous Material Event occurring prior to Landlord's delivery of the Premises to Tenant, or Landlord's or Landlord's agents', employees' or contractors' breach of any environmental regulation to which Landlord or any portion of the Shopping Center is subject to, either prior to or during the term of this Lease. This indemnification shall survive the termination of this Lease.

ARTICLE 10: INITIAL CONSTRUCTION; ALTERATIONS

10.1 Landlord Construction of Shopping Center; Landlord's Work. Landlord shall deliver the Premises to Tenant in "as-is" condition, free from all Hazardous Materials, furniture, fixtures and equipment (except for any existing sinks) that may exist prior to the date of the execution of this Lease. If Tenant finds Hazardous Materials during the course of constructing Tenant's improvements, Tenant shall notify Landlord. Landlord has the option of removing the Hazardous Materials or reimbursing Tenant for the cost incurred by Tenant to remediate or remove such Hazardous Materials.

Landlord hereby warrants that the Premises, when completed and delivered to Tenant, and the Shopping Center, upon Tenant's opening for business, shall comply with all applicable federal, state and local codes, ordinances and regulations affecting the Premises, including but not limited to the Americans with Disabilities Act and Title 24 of Code of California Regulations. Landlord shall pay any increased cost incurred by Tenant to install its initial tenant improvements that may be caused by any violation of code or law that may exist as of the date Landlord delivers possession of the Premises to Tenant. Tenant shall provide Landlord with at least five (5) days advance notice prior to incurring any such additional cost.

10.2 Alterations by Tenant. Tenant shall not make any structural or exterior alterations, additions or improvements to the Premises (hereinafter collectively referred to as "Alterations") without Landlord's

prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant shall present any proposed Alterations to Landlord in writing accompanied by detailed proposed plans. Landlord's approval shall be deemed conditioned upon Tenant's acquiring all proper permits for the Alterations from the appropriate governmental agencies, if necessary, and complying with all conditions of the permits. Landlord may, at any time, require Tenant, at Tenant's expense, to remove immediately any or all Alterations made by Tenant without Landlord's prior approval and to restore the Premises to their condition prior to the making of such unauthorized Alterations.

10.3 Tenant Improvement Allowance. Landlord shall provide Tenant with a cash "Tenant Improvement Allowance" in the amount of Fifty Thousand Dollars ($50,000). Landlord shall have the option of paying the half of the Tenant Improvement Allowance on or before the Commencement Date, and the second half of the Tenant Improvement Allowance within thirty (30) days after the later of (a) the date of Tenant's opening for business and (b) Tenant's delivery to Landlord of Lien Releases from Tenant's contractors who provided services for Tenant on the Premises; provided that the entire Tenant Improvement Allowance shall be paid no later thirty (30) days from the Commencement Date. In the event Landlord does not pay Tenant the Tenant Improvement Allowance in full within thirty (30) days after the date it is due, Tenant may offset such amount together with interest thereon at the Interest Rate, against the Base Rent next becoming due under this Lease.

ARTICLE 11: MECHANICS' LIENS

Tenant shall give Landlord at least ten (10) days' written notice prior to the commencement of any work in the Premises or the delivery of materials to the Premises for use in Alterations or repairs. Landlord shall have the right to post notices of non-responsibility on the Premises. If any mechanics' or other liens to be filed against the Premises or against Tenant's leasehold interest therein by reason of labor or materials furnished to the Premises at Tenant's instance or request, Tenant shall, within ten (10) days after demand by Landlord, cause any such lien filed against the Premises to be discharged of record, or post a bond therefor. Tenant shall indemnify, hold harmless and defend Landlord from and against all claims, suits, costs, expenses, judgments and losses (including, without limitation, reasonable attorney's and experts' fees and costs) arising out of any such lien which is not removed or bonded within the specified period.

ARTICLE 12: DAMAGE AND DESTRUCTION

12.1 Damage and Destruction. Subject to the provisions of this Article 12, if the Premises or any part of the Shopping Center is damaged, in whole or in part, by fire or other casualty (collectively, "Casualty"), Landlord shall repair, rebuild or restore (collectively, "Restore") the Premises and/or the Shopping Center, at Landlord's sole cost and expense, to substantially the same condition that existed immediately prior to such Casualty. Tenant's obligation to pay Rent, Tenant's Share of Expenses, Real Property Taxes, insurance premiums and other charges, if any, shall be abated in proportion to the degree to which Tenant's use of the Premises is impaired. Tenant shall Restore Tenant's improvements and trade fixtures to substantially the same condition as they were immediately prior to the Casualty.

If (a) the Premises are rendered substantially untenantable by fire or other casualty or (b) fifty percent (50%) or more of the square footage of rentable space in the Shopping Center is rendered substantially untenantable by a Casualty, then Landlord shall deliver to Tenant within thirty (30) days after the Casualty (the "Certification Date"), Landlord's architect's certification as to the period of time that will be required to Restore the Premises and/or the Shopping Center (based on work days of normal working hours). Notwithstanding anything to the contrary set forth in this Lease, if Landlord's architect certifies that the Premises or the Shopping Center cannot be repaired within two hundred ten (210) working days (commencing with the date of the Casualty), then either Landlord or Tenant may elect to terminate this Lease by giving the other party written notice of such decision within thirty (30) days after receipt of Landlord's architect's certificate; provided however that Landlord may not terminate this Lease pursuant to damage or destruction described in (b) above if the Premises cannot be Restored within such two hundred ten (210) day period. Upon the termination of this Lease by either party pursuant to this provision, the Term of this Lease shall expire upon the third (3rd) day after such notice is received, and Tenant shall vacate the Premises and surrender the Premises to Landlord. If neither party elects to terminate this Lease within the time period provided, this Lease shall continue in full force and effect, and Landlord shall restore the Premises as promptly as possible at Landlord's sole cost and expense.

12.2 Certification Process. If Landlord's architect fails to render the required certification within the time period provided, Tenant shall provide Landlord with written notice of Landlord's failure to provide such certification, and Landlord shall have an additional fifteen (15) day period ("Certification Cure Period") to provide Landlord's architect's certification of the Restoration period. In the event Landlord's architect fails to render the required certification prior to the expiration of the Certification Cure Period, Tenant may elect to either terminate this Lease, or retain an architect licensed in California ("Tenant's Architect"), at Landlord's sole cost, to render its opinion as to the period of time Tenant's Architect reasonably believes it shall take Landlord to Restore the Premises, and/or Shopping Center. If Tenant elects to retain Tenant's Architect, Tenant shall notify Landlord of Tenant's decision within five (5) days following the expiration of the Certification Cure Period, and Tenant's Architect shall render its opinion within thirty (30) days following the expiration of the Certification Cure Period.

If Tenant elects to retain Tenant's Architect as provided in the preceding paragraph, one of the following provisions shall apply:

(a) If Tenant's Architect does not render its opinion within the thirty (30) day period referenced in this Paragraph, or if Tenant's Architect renders its opinion within the thirty (30) day period and

the opinion is that the Casualty can be Restored within two hundred ten (210) days, then this Lease shall remain effective in accordance with its terms, subject to the last paragraph of this Paragraph 12.2; or

(b) If Tenant's Architect renders its opinion within the thirty (30) day period and its opinion is that the Casualty cannot be Restored within two hundred ten (210) days, then either party shall have the election to terminate this Lease within thirty (30) days following receipt of Tenant's Architect's opinion, in which event this Lease shall terminate and the parties shall be relieved of further obligations except for those obligations that survive the termination or expiration of this Lease. This Lease shall remain effective in accordance with its terms if Tenant or Landlord do not elect to terminate this Lease as provided in this Paragraph, subject to the last paragraph of this Paragraph 12.2.

If Landlord's Architect renders its opinion regarding the amount of time it will take Landlord to Restore the Premises and/or the Shopping Center on or before the expiration of the Certification Cure Period, and if Tenant does not agree with Landlord's architect's opinion regarding the required Restoration period, Tenant may designate a Tenant's Architect, at Tenant's sole cost and expense, to render a separate opinion. If such opinion differs from Landlord's architects opinion, Landlord and Tenant's architects jointly shall appoint a third architect whose opinion regarding the required period for reconstruction shall be binding. Upon the termination of this Lease under the foregoing conditions, Tenant's liability for Base Rent, Tenant's Share of Expenses, Real Property Taxes, insurance and any other charges hereunder shall cease as of the day following the casualty.

If Landlord is obligated or elects to Restore the Premises and/or the Shopping Center as provided in this Article 12, but does not commence such Restoration within sixty (60) days after the Casualty or complete construction within two hundred ten (210) days after the Casualty and has not proceeded in good faith and in a commercially reasonable manner to conduct the Restoration, Tenant may, at Tenant's option, terminate the Lease by providing Landlord with written notice of Tenant's election to do so at any time prior to the commencement or completion (as applicable) of such Restoration, in which event the Lease shall terminate as of the date of such termination. This remedy is not exclusive of any other remedy Tenant may possess at law, in equity or under the Lease.

12.3 Waiver of Statutory Provisions. The provisions of this Lease, constitutes an express agreement between Landlord and Tenant that applies in the event of any casualty to the Premises or Shopping Center. Tenant, therefore, fully waives the provisions of any statutes or regulations, including California Civil Code Sections 1932(2) and 1933(4) for any rights or obligations concerning Casualty.

ARTICLE 13: LIABILITY AND INSURANCE

13.1 Indemnity. Tenant agrees to indemnify, defend and hold Landlord and Landlord's agents, contractors and employees harmless from and against all losses, claims, suits, judgments, liabilities, damages, costs and expenses (collectively, "Liabilities"), to the extent same arise out of Tenant's use of the Premises or any beach of or any default in the performance of Tenant's obligations under this Lease or any negligent act or omission of Tenant, or any of Tenant's officers, directors, employees or agents; except to the extent such Liabilities are caused or contributed to by the negligence or willful acts or omissions of Landlord, its agents, contractors or employees.

13.2 Insurance to be Maintained by Tenant. Tenant shall, at Tenant's expense, obtain and keep in force during the Term:

(a) General Liability. A policy of commercial general liability insurance having a limit of not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) aggregate, and the policy shall name Landlord as an additional insured (but only with respect to the negligence of Tenant, and not with respect to the acts or omissions of Landlord).

(b) Worker's Compensation and Employers' Liability. Workers' compensation insurance having limits not less than those required by statute and covering all persons employed by Tenant in the conduct of its operations on the Premises, and employer's liability insurance coverage in the amount of at least One Million Dollars ($1,000,000).

(c) Property Insurance. "All risk" property insurance covering Tenant against damage to or loss of any personal property, fixtures, and equipment of Tenant, and providing for waiver of subrogation by Tenant's insurer against Landlord and coverage for the full replacement cost of such property.

Insurance required to be maintained by Tenant hereunder shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least A: VIII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide." Tenant shall deliver to Landlord certificates of such insurance no later than seven (7) days prior to the Commencement Date (or the date of possession of the Premises if earlier). Tenant shall, at least thirty (30) days prior to the expiration of such policies, furnish Landlord with certificates of renewal or "binders" thereof.

13.3 Insurance Maintained by Landlord. Landlord shall obtain and keep in force (i) commercial general liability insurance having a limit of not less than One Million Dollars ($1,000,000) per occurrence and Three Million Dollars ($3,000,000) aggregate, and the policy shall name Tenant as an additional insured; and (b) "all risk" property insurance covering loss or damage to the Premises and the Shopping Center, but not Tenant's personal property, fixtures, equipment, in an amount equal to the full replacement value thereof.

Insurance required to be maintained by Landlord hereunder shall be written by companies licensed to do business in the state in which the Premises are located and having a "General Policyholders Rating" of at least A: VIII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of "Best's Insurance Guide." Upon request, Landlord shall deliver to Tenant proof of Landlord's insurance. If Tenant provides Landlord with written notice that Tenant has obtained actual knowledge that insurance policies required to be maintained under the OEA are not being maintained, Landlord agrees to exert commercially reasonable efforts to enforce the insurance requirements of the OEA.

13.4 Waiver of Subrogation. Landlord and Tenant hereby release the other and waive any rights each may have against the other in connection with any of the damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Shopping Center or its contents, arising from covered causes of loss for which property insurance is carried or required to be carried pursuant to this Lease. Each party on behalf of their respective insurance companies insuring their respective property against any such loss, waive any right of subrogation that it may have against the other party.

13.5 Survival of Obligations. The obligations of Tenant under this Article 13 shall survive the termination of this Lease with respect to any event giving rise to liability that occurs prior to such termination.

ARTICLE 14: CONDEMNATION

If the Premises, or the Shopping Center, or any portion of either or both, are taken under the power of eminent domain or are sold under the threat of the exercise of said power (all of which are herein called "Condemnation"), this Lease shall terminate as to any part of the Premises taken as of the date the condemning authority takes title or possession, whichever occurs first, and shall remain in effect as to portion of the Premises remaining, except that the then current monthly Base Rent and any charges based on the area of the Premises shall be reduced in the proportion that the area of the Premises taken bears to the area of the total Premises before the Condemnation. In the event of a partial Condemnation, Landlord shall, at Landlord's expense, restore the Premises to a complete unit of like quality and character, except as to size, as existed prior to the date on which the condemning authority took possession. Any award under the Condemnation shall be the property of Landlord; provided, however, that Tenant shall be entitled to any award for loss of or damage to Tenant's goodwill, trade fixtures and removable personal property, the unamortized portion of any leasehold improvements paid for by Tenant, and any relocation award. Tenant hereby waives any right to claim and to receive from the condemning authority or from Landlord any award for severance damages or for the value of the unexpired portion of the Term as respects the portion of the Premises taken.

Notwithstanding the above, if any portion of the Premises is taken and the remaining portion of the Premises is not reasonably suitable for Tenant's continued operation of its business, Tenant may elect to terminate this Lease by providing written notice to Landlord within fifteen (15) days after the date the condemning authority takes title or possession, whichever occurs first, and this Lease then will terminate as of the date of the Condemnation.

ARTICLE 15: ASSIGNMENT AND SUBLETTING

Tenant shall not assign or encumber or otherwise transfer its interest in this Lease in whole or part or sublet all or a portion of the Premises, whether voluntarily, involuntarily, directly, indirectly or by operation of law, without Landlord's prior written consent, which shall not be unreasonably withheld, delayed or conditioned. (The term "Transfer" means any such assignment, encumbrance, transfer or subletting). Tenant shall give Landlord at least thirty (30) days' written notice of any proposed Transfer.

Any purported Transfer in violation of this Article 15 shall be void. No Transfer, even with Landlord's written consent thereto, shall release Tenant from its duty to pay the Rent and to perform all obligations under this Lease. Landlord's consent to one Transfer, or Landlord's acceptance of performance of this Lease by any purported assignee or subtenant, shall not be deemed to constitute its consent to any other purported Transfer, or a waiver of Landlord's rights hereunder.

For purposes of this Article 15, a merger, consolidation, reorganization or similar transaction with a related or unrelated entity, or a Transfer to a parent, controlled subsidiary, or related entity, or an intra-family stock assignment or any stock assignment to an employee of Tenant, or any other assignment to a corporation or entity which assumes Tenant's obligations and either controls or is controlled by or under common control with Tenant or acquires a substantial portion of the assets of Tenant or the sale of all or substantially all of the stock or assets of Tenant in a single or series of related transactions, shall not constitute a Transfer hereunder and shall not require Landlord's consent.

Notwithstanding any provision of this Lease to the contrary, it is agreed that a sale of stock of the Tenant in a public offering or in any stock transaction conducted through a national stock exchange or over the counter transaction, or any private placement or offering, shall not constitute a Transfer hereunder, and shall not require the consent of Landlord.

ARTICLE 16: DEFAULT AND REMEDIES

16.1 Default. The occurrence of any one or more of the following events shall constitute a material default of this Lease by Tenant:

(a) The abandonment of the Premises by Tenant;

(b) The failure by Tenant to make any payment of Rent or any other monetary amount required to be made by Tenant hereunder, as, where and when due, which failure continues for a period of five (5) days after Tenant's receipt of written notice from Landlord; or

(c) Except as otherwise provided in this Lease, the failure by Tenant to observe or perform any of Tenant's obligations under this Lease, other than described in paragraph (b) above, where such failure shall continue for a period of thirty (30) days after delivery of written notice of demand therefor from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default thereof if Tenant, in good faith, has commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

16.2 Remedies. In the event of a material default by Tenant, Landlord may, at any time thereafter until the default is cured, with or without notice or demand and without limiting Landlord in the exercise of any other right or remedy:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant the sum of all amounts set forth in California Civil Code Section 1951.2, including without limitation, the worth at the time of award of the amount by which all unpaid rent for the balance of the Term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, and all other damages incurred by Landlord by reason of Tenant's default. The "worth at the time of award" shall be computed in the manner provided in California Civil Code Section 1951.2(b) or its successor statute. For the purpose of determining unpaid rent under this Paragraph, the rent reserved in this Lease shall be deemed to be the sum of all items defined as Rent in Article 3.

(b) Maintain Tenant's right to possession in which case this Lease shall continue in effect whether or not Tenant shall have vacated or abandoned the Premises, in which event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease, including the right to recover the Rent as it becomes due hereunder. The Landlord has the remedy described in California Civil Code Section 1951.4. (Landlord may continue Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has the right to sublet or assign subject only to reasonable limitations). Acts of maintenance or preservation or efforts to relet the Premises shall not constitute a termination of Tenant's right to possession or an acceptance by Landlord of Tenant's surrender of the Premises, unless written notice of termination or acceptance of surrender is given by Landlord to Tenant.

(c) Cure any material default by Tenant at Tenant's expense. Tenant shall, upon demand, immediately reimburse Landlord for the reasonable cost of such cure plus interest at the Interest Rate from the date of the expenditure therefor by Landlord until such reimbursement is received by Landlord.

(d) Pursue any other legal or equitable remedy now or hereafter available to Landlord.

16.3 Landlord's Default. If Landlord shall be in default under any of its obligations pursuant to this Lease and the default shall continue for thirty (30) days after notice of the default from Tenant (or shorter period required by Paragraph 8.2, above), Tenant shall have the right, but not the obligation, to cure the default, in which event Landlord shall pay to Tenant upon demand, the reasonable cost thereof (to the extent those costs would not have been borne by Tenant under other provisions of this Lease) plus interest from the date of demand at the Interest Rate. If Landlord fails to reimburse Tenant for such costs upon demand, Tenant may elect to deduct such costs from Tenant's next due installment(s) of Base Rent. If, however, the default is not susceptible of being cured within a period of thirty (30) days (or shorter period required by Paragraph 8.2, above), then as long as Landlord shall commence the curing thereof within that time period and is proceeding with due diligence to cure the default, Tenant shall not have the right to cure such default.

ARTICLE 17: LANDLORD'S ENTRY

Landlord shall have the right to enter the Premises upon twenty four (24) hours prior notice during normal business hours for the purpose of inspecting the same, showing the same to prospective purchasers and lenders, performing any of Landlord's obligations or exercising any of Landlord's rights hereunder, provided Landlord shall use reasonable efforts to minimize interference with the Tenant's use of the Premises.

ARTICLE 18: QUIET ENJOYMENT

Provided Tenant is not in default under this Lease beyond applicable grace periods, Tenant shall have quiet possession of the Premises for the entire Term hereof, subject to all of the provisions of this Lease.

ARTICLE 19: TENANT HOLDOVER AND SURRENDER

19.1 Tenant Holdover. If Tenant, without Landlord's written consent, remains in possession of all or part of the Premises after termination or expiration of this Lease, such occupancy shall be construed to be a tenancy from month-to-month at a monthly rent which shall be equal to one hundred twenty five percent (125%) of the monthly Base Rent payable during the last month of the Term, and shall otherwise be on the terms and conditions of this Lease. Acceptance by Landlord of Rent after such termination or expiration shall not result in any other tenancy or any renewal of this Lease or extension of the Term.

19.2 Surrender of Premises to Landlord. At the expiration of the Term or earlier termination of this Lease, Tenant shall surrender the Premises in broom clean condition, reasonable wear and tear, and damage due to Landlord's acts or omissions excepted (and with fire, casualty and taking being governed by the applicable provisions of this Lease), and shall deliver all keys to the Premises to Landlord. Before surrendering the Premises, Tenant shall, at Tenant's sole cost and expense, remove all of its personal property, trade fixtures, furniture, cabinets, counters, equipment and signs and shall repair any damage caused by such property or the removal thereof. If Tenant fails to remove its personal property, fixtures, furniture, cabinets, counters, equipment and signs within ten (10) days the expiration of this Lease, the same shall be deemed abandoned and shall become the property of Landlord.

19.3 Surrender of Lease not a Merger. A surrender of this Lease by Tenant, a cancellation of this Lease by mutual agreement between Landlord and Tenant, or a termination of this Lease for any reason prior to the expiration of the Term shall not automatically work a merger of any then existing sublease. After such a surrender, cancellation or termination, Landlord may terminate any or all then existing subtenancies, and/or treat such surrender, cancellation or termination as effecting an assignment to Landlord of any of all existing subtenancies.

ARTICLE 20: SUBORDINATION AND NON-DISTURBANCE

20.1 Subordination. This Lease shall be subject and subordinate to all ground leases and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Shopping Center or Landlord's interest or estate therein, without the necessity of Tenant executing further instruments to effect such subordination, provided that, in the event of termination of any ground lease or foreclosure of any mortgage or deed of trust or any other action or proceeding to enforce same, this Lease shall not be terminated or foreclosed nor shall the rights and possession of Tenant hereunder be disturbed if Tenant shall not then be in default (past the applicable cure period) hereunder. In such event, Tenant shall so attorn to the landlord of any such underlying lease or to such mortgagee or beneficiary. Tenant agrees to execute, acknowledge and deliver, within twenty (20) days of Landlord's request therefor, any and all other instruments or documents evidencing such subordination which, from time to time, may be reasonably necessary.

20.2 Subordination; Attornment. Landlord represents to Tenant that as of the date of execution of this Lease that Landlord's interest in the Shopping Center is not encumbered by a deed of trust or mortgage. Upon written request of Landlord, or any first mortgagee, first deed of trust beneficiary of Landlord, or lessor of Landlord, Tenant shall, in writing, subordinate its rights hereunder to the lien of the first mortgage, first deed of trust, or the interest of any lease in which Landlord is lessee, and to all advances made or hereafter to be made upon the security therefore; provided, however, prior to executing any such subordination agreement, Tenant shall have the right (as a condition to such subordination) to obtain from any lender or lessor of Landlord requesting such subordination, an agreement in writing providing that, as long as Tenant is not in default hereunder, this Lease shall remain in full force and effect for the full term hereof. The holder of any security interest may, upon written notice to Tenant, elect to have this Lease prior to such security interest regardless of the time of the granting or recording of such security interest.

In the event of any foreclosure sale, transfer in lieu of foreclosure or termination of the Lease in which Landlord is lessee, Tenant shall attorn to purchaser, transferee or lessor as the case may be, and recognize such party as Landlord under this Lease, provided such party acquires and accepts the Premises subject to this Lease.

ARTICLE 21: TRANSFER OF LANDLORD'S INTEREST

In the event of a transfer of Landlord's title or interest in the Shopping Center, Common Areas or the improvements thereon, then from and after the date of such transfer, Landlord herein named (or, in case of any subsequent transfers, the then grantor) shall be relieved of all liability with respect to Landlord's obligation thereafter to be performed (but not liability arising prior to such transfer), provided that such transferee of Landlord's interest in the Lease shall assume, in writing, all such obligations.

ARTICLE 22: ESTOPPEL CERTIFICATE

Within fifteen (15) days after written demand by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a written statement (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord, or, if any, specifying such defaults as are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises or Shopping Center. Upon Tenant's request, Landlord shall execute and deliver a similar statement to Tenant.

ARTICLE 23: MISCELLANEOUS

23.1 Interest Rate. All amounts of money payable hereunder, if not paid when due, shall bear interest at the Interest Rate. For unpaid installments of Base Rent and Tenant's Share of Expenses, the Interest Rate will be payable from the first day of the calendar month after such payment is due until such payment is made. In all other cases, the Interest Rate will be payable from the due date until the overdue amount is paid. The term "Interest Rate" means an annual rate equal to ten percent (10%).

23.2 Attorneys' Fees. If either party shall bring an action or proceeding against the other party to enforce the terms of this Lease or to declare their respective rights hereunder, the losing party shall pay the reasonable attorneys' and experts' fees and expenses and court cost of the party prevailing in such action, proceeding, or trial or appeal thereof.

23.3 Brokers. Landlord and Tenant each represents and warrants to the other that no person is entitled to a broker's commission or finder's fee in connection with this Lease except The Clover Company ("Broker"). Landlord shall pay to Broker a leasing commission pursuant to separate agreement. Landlord and Tenant each agree to indemnify, defend and hold the other party harmless from and against any claims and suits made by any other broker, agent or other person claiming a commission or other form of compensation against the other party by virtue of having dealt with Landlord or Tenant, respectively, with regard to this Lease. The provisions of this Article shall survive the termination of this Lease.

23.4 Notices. All notices shall be in writing and shall be deemed to have been given when delivered personally, or by facsimile (with confirmation of receipt), twenty four (24) hours after deposited with an overnight courier service for next day delivery or three (3) days after deposited in the United States mail, registered or certified, postage prepaid, and addressed as follows:

To Landlord:

Schwartz Investment Company, LLC
1736 Westwood Blvd., #100
Los Angeles, CA 90024
Attn: Richard Schwartz

To Tenant:

Peet's Coffee & Tea
1400 Park Avenue
Emeryville, CA 94608-3520
Attn: Accounting

With a copy to:

Peet's Coffee & Tea
1400 Park Avenue
Emeryville, CA 94608-3520
Attn: Legal Department

Either party may change the address for notices or Landlord may change the address for payments by giving the other party notice to that effect.

23.5 No Waiver. No waiver by either party hereunder of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision, nor shall any custom or practice which may develop between Landlord and Tenant in the administration of this Lease be construed to waive or to lessen the right of Landlord or Tenant to insist upon the performance by Landlord or Tenant in strict accordance with this Lease. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent act by Tenant. The acceptance of Rent hereunder by Landlord shall not be deemed a waiver of any preceding breach by Tenant of any provision hereof, other than the failure of Tenant to pay the particular payment of Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

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

23.7 Time of Essence. Time is of the essence with respect to the obligations to be performed under this Lease.

23.8 Incorporation of Prior Agreements; Amendments; Counterparts. All Exhibits attached to this Lease are hereby incorporated herein by reference. This Lease and all Exhibits hereto contain all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified only by written instrument signed by the parties. This Lease may be signed in identical counterparts.

23.9 Binding Effect. This Lease shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

23.10 Choice of Law. This Lease shall be governed by the laws of California.

23.11 Captions. The captions in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

23.12 Recording. Neither party hereunder shall record this Lease or a memorandum or "short form" thereof, without the prior written approval of the other party.

23.13 No Partnership. Neither the execution and delivery of this Lease, nor any provision contained herein shall be construed to create any relationship between Landlord and Tenant of partnership, joint venture, or joint enterprise.

23.14 Authority; Joint and Several Liability. Tenant represents and warrants that each individual executing this Lease on behalf of Tenant is duly authorized to execute and deliver this Lease on behalf of Tenant, and that such execution is binding upon Tenant. Landlord represents and warrants to Tenant that the individuals executing this Lease on behalf of Landlord are duly authorized to execute this Lease on behalf of Landlord and that such execution is binding upon all parties holding an ownership interest in the Shopping Center.

23.15 Signs. Tenant shall have the right, at Tenant's sole cost and expense, to install its customary sign package, including its customary lettering, logo and colors, on the exterior of the Premises, subject to (a) all applicable governmental limitations and restrictions and (b) Landlord's consent, which shall not be unreasonably withheld, delayed or conditioned. Tenant shall not be required to install new exterior signs if Landlord changes its sign criteria. Landlord shall use its best efforts to provide Tenant a panel on the Shopping Center's monument/pylon sign, in the event an existing tenant should leave, except, however, that any tenants renting larger premises shall have priority for first usage of any available monument/pylon assignee space. Tenant shall pay for its own panels in connection therewith.

23.16 Parking: Tenant and its customers and employees shall possess the right to park in all parking areas now or hereafter located on the Property subject only to such reasonable and non-discriminatory rules as Landlord may promulgate. Landlord shall use its best efforts to provide a minimum of three (3) twenty (20) minute short term parking spaces immediately in front of the Premises. Tenant shall require its employees to park either in the multi-level parking structure in front of the Premises, or in back of the Premises, but shall prohibit its employees from parking in the open parking spaces in front of the Premises so that such spaces may be used by customers at the Shopping Center.

ARTICLE 24: PERMIT CONTINGENCY

If Tenant is unable to secure (without incurring any extraordinary expense) any occupancy permit, use permit, project permit, or any other permits or variances that Tenant may need to construct Tenant's improvements, or to open and to operate its business as permitted by this Lease, Tenant shall have the option to terminate this Lease by providing written notice to Landlord, in which event, this Lease shall be terminated and of no further force and effect, as of the date of delivery of such notice, and Landlord shall refund sums paid by Tenant to Landlord, and neither party shall have any further rights or obligations hereunder.

Tenant covenants and agrees to use reasonable efforts and commercially reasonable means to obtain any and all permits and variances necessary to construct tenant improvements, and to open and to operate Tenant's business on the Premises.

IN WITNESS WHEREOF, the parties have executed this Lease in duplicate as of the date first set forth above.

LANDLORD:

SCHWARTZ INVESTMENT COMPANY, LLC,
a California limited liability company

By: Richard Schwartz
Title: Manager

TENANT:

PEET'S OPERATING COMPANY, INC.,
a Virginia corporation

By: Jim Cawley
Title: CFO

Jim Gumi
V.P. Operations

EXHIBIT A

DESCRIPTION OF THE PREMISES

EXHIBIT B

LANDLORD CONSENT, NONDISTURBANCE,

RECOGNITION AND ESTOPPEL AGREEMENT

This Landlord Consent, Nondisturbance, Recognition and Estoppel Agreement (the "Agreement") is made this _____ day of _____, 2007 by the City of Torrance ("Master Landlord") and for the benefit of Peet's Operating Company, Inc. and its successors and assigns ("Subtenant").

RECITALS:

This Agreement is made with reference to the following facts:

A. Master Landlord and Schwartz Investment Company LLC ("Master Tenant") have entered into that certain Ground Lease dated September 21, 1990 (the "Master Lease") concerning the Rolling Hills Plaza Shopping Center in Torrance, California (the "Center").

B. Master Tenant has subleased a portion of the Center (the "Premises") to Subtenant pursuant to that certain Lease dated March 5, 2007 (the "Sublease").

C. Master Landlord wishes to consent to the Sublease and agrees to provide Subtenant with recognition and nondisturbance rights upon any termination of the Master Lease in the manner described in this Agreement.

Accordingly, Master Landlord hereby agrees as follows:

1. Consent. Master Landlord hereby acknowledges that it has read and approved the form of the Sublease and hereby consents to the Sublease and Subtenant's use and occupancy of the Premises therein described.

2. Nondisturbance, Recognition and Attornment. The termination of the Master Lease shall not terminate the Sublease and Master Landlord shall not disturb Sublessee in the possession and use of the Premises unless at the time of termination Sublessee is in default under the Sublease after any required notice and beyond any applicable cure period provided in the Sublease. Upon the occurrence of any termination of the Master Lease, Master Landlord shall, at Sublessee's request, enter into a new lease with Sublessee on the same terms as the Sublease (including, without limitation, any unexercised renewal options). This nondisturbance and recognition applies to any option to extend or renew the Sublease term which is set forth in the Sublease as of the date of this Agreement.

If any termination of the Master Lease should occur, Sublessee shall and hereby does attorn to Master Landlord, as the lessor under the Sublease, and Sublessee shall be bound to Master Landlord under all of the terms, covenants and conditions of the Sublease for the balance of the Sublease term and any extensions or renewals of it which may then or later be in effect under any validly exercised extension or renewal option contained in the Sublease, all with the same force and effect as if Master Landlord had been the original lessor under the Sublease, and Master Landlord will be similarly bound to Lessee. This attornment shall be effective and self-operative without the execution of any further instruments.

3. Estoppel. Master Landlord hereby certifies to Subtenant as follows:

(i) To the actual knowledge of Master Landlord, there are no current outstanding notices of any defaults, failure of conditions or other matters, which permit a party to terminate the Master Lease.

(ii) Master Landlord has no actual knowledge that Master Tenant has made any advancements for or on behalf of Master Landlord, and, to Master Landlord's actual knowledge, there are no offsets, deductions, credits against payment of rents or other charges due from Master Tenant under the Lease. To the actual knowledge of Master Landlord, there is no default under the Master Lease on the part of Master Tenant or Master Landlord. Master Landlord is not aware of the existence of any circumstances that would constitute a default under the Master Lease if not cured within the applicable grace period after written notice by either Master Landlord or Master Tenant to the other party.

IN WITNESS WHEREOF, Master Landlord has executed this Agreement as of the day and year first above written.

CITY OF TORRANCE:

By: _____
Name: _____
Its: _____