

83-3

**FIRST AMENDMENT TO LEASE AGREEMENT  
AND SUBLEASE**

THIS AMENDMENT TO LEASE AGREEMENT ("Amendment") of Lease Agreement is made and entered into this 3 day of MAY, 1999, between the CITY OF CORAL GABLES ("Landlord"), a Florida municipal corporation, JUMPIN JAVA, INC., ("Lessee") a Florida corporation whose principal place of business is at 60 Merrick Way, Coral Gables, Florida 33134 and sublease by Lessee to SATCHMO BLUES BAR AND GRILL, INC., ("Sub-Lessee") a Florida corporation, with principal place of business at 60 Merrick Way, Coral Gables, Florida 33134 and with the consent as provided herein by the Landlord, and

**WITNESSETH**

WHEREAS, on the 24<sup>th</sup> day of June, 1997, the Lessee and the Lessor entered into a certain Lease Agreement, attached hereto and incorporated herein as Exhibit "A", for the following described property:

A unit consisting of 3,618 gross square feet of floor space in the shopping and parking facility located at 1 Aragon Avenue Coral Gables, Florida, known as MERRICK PLACE SHOPS AND PARKING (the "Building"),

which Lease Agreement is attached hereto and incorporated herein, except as

modified by the First Amendment To Lease Agreement, and

WHEREAS, pursuant to Article 24 of the Lease, Assignor has requested consent of the Landlord to assign the Lease (Exhibit "A") under the same terms and conditions except as herein amended and modified, and

WHEREAS, in settlement of the it's claims against JUMPIN JAVA, INC., in Case No. 99-4528 CA 8, and pursuant to Resolution No. 29716 passed and adopted on March 30<sup>th</sup>, 1999, the City Commission of the City of Coral Gables has provided it's consent to a Sublease and approved the First Amendment to Lease, as provided herein.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged both as of the Effective Date of the First Amendment to Lease Agreement and Sublease, the City hereby consents to the sublease of the premises referred to in the Lease Agreement by and between the City and Jumpin Java, Inc., subject to the conditions set forth herein, and Jumpin Java, Inc., hereby subleases Lease Agreement to Satchmo Blues Bar And Grill, Inc and City hereby does agree to the First Amendment to Lease and leases to Satchmo Blues Bar and Grill, Inc and Satchmo leases from the City, at the rent and upon the covenants, conditions, limitations and agreements contained in the

Lease Agreement attached hereto and incorporated herein as Exhibit "A", as modified herein in this First Amendment to Lease Agreement, and the parties mutually covenant and agree as follows:

#### FIRST AMENDMENT TO LEASE AGREEMENT

1. Article 1 (D) of the Lease Agreement is amended to include the covered terrace area shown in Exhibit B attached hereto and referenced in Article 8 of the Lease Agreement.
2. Article 3 of the Lease Agreement is amended to provide that the Tenant DBA is hereby revised to read Satchmo Blues Bar & Grill.
3. Article 4 (A) of the Lease Agreement is amended to provide that the use of the premises shall be for "Restaurant, Bar, and Entertainment".
4. Article 4 (C) of the Lease Agreement is amended to provide hours of operation for the tenant from 8:00 am to 2:00 am. However, there shall be no live music after 1:00 am.
5. Article 5 of the Lease Agreement is amended to provide:  
  
(A) Base Rent: Tenant hereby agrees to pay to Landlord, at such place as Landlord may designate in writing, rent for the premises as follows:  
  
\$40,062.00 for Lease Year One, beginning in month 6, payable in equal monthly installments of:\$5,427.00 plus \$1,250.00 for six (6)

months

\$6,677.00 per month due in advance on the first day of each month, without demand.

\$80,124.00 for Lease Year Two payable in equal monthly installments of: \$5,427.00 plus \$1,250.00

\$6,677.00 per month due in advance on the first day of each month, without demand.

\$80,124.00 for Lease Year Three payable in equal monthly installments of: \$5,427.00 plus \$1,250.00

\$6,677.00 per month due in advance on the first day of each month, without demand.

\$80,124.00 for Lease Year Four payable in equal monthly installments of: \$5,427.00 plus \$1,250.00

\$6,677.00 per month due in advance on the first day of each month, without demand.

\$80,124.00 for Lease Year Five payable in equal monthly installments of: \$5,427.00 plus \$1,250.00

\$6,677.00 per month due in advance on the first day of each month, without demand.

\$72,624.00 for Lease Year Six payable in equal monthly installments of: \$5,427.00 plus \$1,250.00 for six (6) months and five percent of gross monthly sales over \$65,000.00 per month.

\$6,677.00 per month due in advance on the first day of each month, without demand, plus percentage rent for the first six (6) months, thereafter, \$5,427.00 per month due in advance on the first day of each month, without demand, plus percentage rent.

\$65,124.00 for Lease Year Seven payable in equal monthly installments of: \$ 5,427.00

\$ 5,427.00 per month due in advance on the first day of each month, without demand, plus percentage rent.

\$ 65,124.00 for Lease Year Eight payable in equal monthly installments of: \$ 5,427.00

\$ 5,427.00 per month due in advance on the first day of each month, without demand, plus percentage rent.

\$ 65,124.00 for Lease Year Nine payable in equal monthly installments of: \$ 5,427.00

\$ 5,427.00 per month due in advance on the first day of each month, without demand, plus percentage rent.

\$ 65,124.00 for Lease Year Ten payable in equal monthly  
installments of: \$ 5,427.00

\$ 5,427.00 per month due in advance on the first day of each  
month, without demand, plus percentage rent.

\$ 65,124.00 for Lease Year Eleven payable in equal monthly  
installments of: \$ 5,427.00

\$ 5,427.00 per month due in advance on the first day of each  
month, without demand, plus percentage rent.

#### (B) PERCENTAGE RENT

Anything herein contained to the contrary notwithstanding, beginning Lease Year Six (6) and for each Lease Year thereafter during the Lease Term (including any renewals thereof), Tenant shall pay monthly Base Rent and percentage rent ("Percentage Rent") which shall be in the amount equal to five percent (5%) of the amount by which Tenant's "Gross receipts" (as hereinafter defined) for such period which exceeds the "Volume Allowance" (as hereinafter defined).

The Volume Allowance for the Lease Term shall be as follows:

1. In years six (6) through ten (10), Sixty Five Thousand Dollars

per month (\$65,000 per month); AND

2. Percentage Rent shall become due and payable thirty (30) days after the last day of each month during the term of this Lease.

The amount of the payment of Percentage Rent, if any, shall be an amount equal to Five Percent (5%) of the amount by which Gross Receipts for the applicable month exceeding the Volume Allowance.

Within thirty (30) days after the end of each month during the Lease Term, Tenant shall submit to Landlord an accurate, unaudited, written statement signed by Tenant or on its behalf by a duly authorized officer or representative, showing full amount of Tenant's Gross Receipts derived from the restaurant operated at the Premises during the previous month, together with a copy of Tenant's monthly sales reports which Tenant submits to the Sales Tax Revenue Department of the State of Florida.

Within ninety (90) days after the end of each Lease Year, commencing with the first Lease Year, Tenant shall submit to Landlord a complete statement certified by an independent

certified public accountant and also certified by Tenant or on its behalf by a duly authorized officer or representative, showing accurately and in reasonable detail the full amount of the Gross Receipts for each month during the immediately preceding Lease Year.

The term "Gross Receipts" as used herein is hereby defined to mean gross receipts of Tenant and of all licensees, concessionaires and tenants of Tenant, from all business conducted upon or from the Premises and/or the Terrace Area, whether such receipts be obtained at the Premises or elsewhere, and whether such business be conducted by Tenant or by any licensees, concessionaires or tenants of Tenant, and whether such receipts be evidenced by cash, check, credit, charge account, exchange or otherwise, and shall include, but not be limited to, the amounts received from the sale of food, beverages (alcoholic and non-alcoholic), goods, wares and merchandise and for services performed, together with the amounts of all orders taken, received or filled from the Premises or elsewhere and whether such receipts. Excluded from the

definition of Gross Receipts shall be (i) all sales tax charged to customers; (ii) checks or credit card invoices which are dishonored and returned to Tenant; provided, however, that if collections is subsequently made, the amount of such collection, net of collection costs, shall be included in the Gross Receipts for the Lease Year in which collection is actually made; (iii) sales of fixtures or equipment used in the Premises, not made in the ordinary course of business; (iv) insurance proceeds received with respect to claims for damaged, stolen or vandalized merchandise, or proceeds of damaged merchandise to salvage operators; and (v) deductions and service charges made by or for credit card or charge card companies.

Tenant covenants and agrees that the business of Tenant and of any sub-lessee, licensee or concessionaire upon the Premises shall be operated so that a duplicate cash register tape, reflecting all sales, shall be issued with each sale or transaction, whether in cash, credit or exchange. Tenant shall keep at all times during the term hereof, at Premises or at the general office of Tenant, full, complete and accurate books of account and

records in accordance with generally accepted accounting practices with respect to all operations of the business to be conducted in or from the Premises, including the recording of Gross Receipts and the receipt of all merchandise into and the delivery of all merchandise from the Premises during the term hereof, and shall retain such books and records, as well as all contracts, vouchers, checks, inventory records and other documents and papers in any way relating to the operation of such business, for at least two (2) years from the end of the Lease Year to which they are applicable, or, if an audit is required or a controversy should arise between the parties hereto regarding the rent payable hereunder, until such audit or controversy is terminated. Such books and records shall at all reasonable times during the retention period above referred to be opened to the inspection of Landlord or its duly authorized representatives, who shall have full and free access to the same and the right to require of Tenant, its agents and employees, such information or explanation with respect to the same as may be necessary for a proper examination thereof. If it is

determined that the actual Gross Receipts for any period covered by the statements required hereunder shall exceed the amount thereof shown in said statement by two percent (2%) or more, Tenant shall pay all the expenses incurred in determining the actual gross receipts for such period.

(C) Additional Rents as Repayment of Past Rent Due: Tenant shall pay each month an additional amount of \$1,250.00 for a period of sixty months, commencing six months following the assignment, to satisfy prior tenant's outstanding rent obligations owed to Landlord.

(D) Taxes on Rent: Tenant shall also pay, as additional rent, all sales or use or excise tax imposed, levied or assessed against the rent or any other charge or payment required hereby any governmental authority having jurisdiction there over, even though the taxing statute ordinance may purport to impose such sales tax against the Landlord. The payment of sales tax shall be made by Tenant on a monthly basis. All rent shall be paid without abatement, set off, or deduction.

Tenant shall provide City proof of payment of all Sales, Use or Excise Taxes upon written request by the Landlord.

(E) Ad Valorem Tax: Tenant shall pay all Ad Valorem Tax in connection

with the leased premises.

(F) Operating Expense Reimbursement: Tenant will not be required to pay operating expenses during the initial term of this lease.

(G) Service Charge: If any installment of Base Rent or additional rent provided for in this Lease, or any part thereof, is not paid by the due date, it shall be subject to a service charge of one and one-half percent (1 ½%) of the unpaid rent due for each month of fraction thereof (or such lesser percentage as may be the maximum amount permitted by law) until paid.

6. Article 23 of the Lease Agreement is amended to provide that in addition to the Insurance requirements of Article 23, Tenant shall obtain insurance for liquor liability as required by City's Risk Management Department.
7. That Jumpin Java, Inc., transfers its interest in security deposit in the amount of \$6,331.15 , and referred to in the Lease Agreement to Satchmo Blues Bar and Grill, Inc, said sums being subject to the same terms of the Lease Agreement.
8. Article 36 of the Lease Agreement is amended to provide that notice as to Satchmo Blues Bar and Grill, Inc shall be:

C/o Mozart Stube

325 Alcazar Avenue

Coral Gables, Florida 33134

9. Exhibit "C" of the Lease Agreement is amended to provide that the Landlord's work has been accepted as completed or excused by the Tenant-Satchmo Blues Bar and Grill, Inc.

#### SUBLEASE OF LEASE AGREEMENT

Lessee, JUMPIN JAVA, INC., a Florida Corporation, in consideration of the sum of \$10.00 in lawful money and other good and valuable consideration to it in hand paid by, Sublessee, SATCHMO BLUES BAR AND GRILL, INC., the receipt and sufficiency of which is acknowledged, hereby subleases unto Sublessee, its successors and assigns, all right, title, and interest of Sublessor, to the extent thereof, in and to all assignable and/or transferable lease provisions attached hereto as Exhibit "A", and except as modified hereinabove, to have and to hold the same unto Sublessee, it's successors and assigns, from and after (Sublease Date).

Sublessee, in accepting this sublease hereby acknowledges Lessee's obligations and assumes Lessee's obligations of performance contained in the Lease Agreement as amended herein and as attached hereto as Exhibit "A", to be performed from and after the Sublease and will diligently and in good faith perform Lessee's obligations in accordance with all of the terms, covenants, and conditions contained in the Lease Agreement as amended herein, as modified by this First Amendment to Lease

Agreement, with respect to obligations of Lessor's accruing or arising from and after the Sublease Date, all as if Sublessee was an original party to the Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Sublease of Lease Agreement and First Amendment to Lease Agreement to be executed by their duly authorized officers on \_\_\_\_\_, 1999, but intending the original Lease to be binding from June 24, 1997.

*As to the City of Coral Gables*

CITY OF CORAL GABLES (Seal)

ATTEST:

By: *Virginia L. Paul*  
Virginia L. Paul  
City Clerk

By: *H.C. Eads, Jr.*  
H.C. Eads, Jr.  
City Manager

APPROVED AS TO FORM:

By: *Elizabeth M. Hernandez*  
Elizabeth M. Hernandez  
City Attorney

STATE OF FLORIDA )

:SS:

COUNTRY OF MIAMI-DADE)

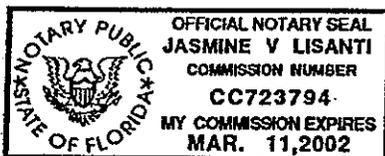
Acknowledgment of City of Coral Gables

BEFORE ME, the undersigned authority, this day personally appeared H.C. EADS, JR., and VIRGINIA L. PAUL, City Manager and City Clerk, respectively of the City of Coral Gables, a municipal corporation of the State of Florida, who did acknowledge to and before me, that they executed the above and foregoing instrument for the uses and purposes therein expressed, with due authority in that behalf.

WITNESS my hand and official seal this 3rd Day of May, 1999.

*Jasmine V. Lisanti*  
Notary Public

My Commission Expires:



*As to Jumpin Java, Inc.:*

JUMPIN JAVA, INC.  
a Florida Corporation,

By: *A. Hosiyan*  
President

ATTEST:

\_\_\_\_\_  
Secretary

(Affix Seal)

ACKNOWLEDGMENT

The undersigned hereby acknowledges its obligations in accordance with the terms and provisions of the Lease Agreement as modified by this First Amendment to Lease Agreement and Sublease.

By: *A. Hosiyan*  
As President

STATE OF FLORIDA)  
: SS:  
COUNTY OF MIAMI-DADE)

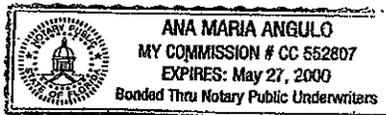
Acknowledgment of Jumpin Java, Inc.

BEFORE ME, personally appeared *Ari Hosiyan*, and *[Signature]* ~~President and~~ Secretary, respectively, of JUMPIN JAVA, INC., a Florida Corporation, to me, personally known to me to be persons described herein or having produced \_\_\_\_\_ as identification, and who executed the foregoing instrument and they acknowledged to and before me that they executed the same for the purposes therein expressed, with due authority from said Florida Corporation.

WITNESS my hand and official seal this 3 Day of May, 1999.

*[Signature]*  
Notary Public

My Commission expires:



*As to Satchmo Blues Bar and Grill, Inc.:*

SATCHMO BLUES BAR AND GRILL, INC., a Florida Corporation

By: Harold Newweg  
President

ATTEST:  
Harold Newweg  
Secretary

(Affix Seal)

ACKNOWLEDGMENT

The undersigned hereby acknowledges its obligations in accordance with the terms and provisions of the Lease Agreement as modified by this First Amendment to Lease Agreement and Sublease.

By: Harold Newweg  
As President

STATE OF FLORIDA)

SS.:

COUNTY OF MIAMI-DADE)

Acknowledgment of Satchmo Blues Bar and Grill, Inc.

BEFORE ME, personally appeared, Harold Newweg, and Harold Newweg President and Secretary, respectively, of SATCHMO BLUES BAR AND GRILL, INC., a Florida corporation, to me well known and known to me to be the persons described herein, or who have produced FL drivers license # N200-320-58-45-0 as identification, and who executed the foregoing instrument and they acknowledged to and before me that they executed the same for the purposes therein expressed, with due authority from said corporation.

WITNESS my hand and official seal this 4<sup>th</sup> Day of May, 1999.

Teresita Obeso  
Notary Public

My Commission expires:

