

## MEMORANDUM

**TO:** **Real Estate & Transportation Committee**  
Commissioner Don Selvage, Chairman  
Commissioner Justin Troller  
Commissioner Phillip Walker

**FROM:** City Attorney's Office

**DATE:** November 7, 2016

**RE:** **Lease Agreement with Black and Brew Coffee House & Bistro II, LLC for a Coffee Shop and Café at the Lakeland Public Library**

Attached hereto for your consideration is a proposed Lease Agreement with Black and Brew Coffee House & Bistro II, LLC (Black & Brew) to operate a coffee shop and café inside the City's Main Public Library (Library) located at 100 Lake Morton Drive. The City's Parks and Recreation Department intends to renovate an interior portion of the library, as well as some of the exterior walkway, to accommodate a coffee shop and café. The addition of a high quality coffee shop and café will materially enhance the experience of library patrons and the public.

In August 2016, the City's Purchasing Department solicited proposals pursuant to Request for Proposal #6225 seeking reliable and qualified individuals and/or companies to operate a coffee shop/café space within the Library to provide coffee beverages and limited food concession services to library users and visitors. Upon review of the proposals, staff selected Black & Brew as the most responsive responsible and qualified vendor able to meet the City's needs in operating a coffee shop and café in the Library.

In order to accommodate the Library's coffee shop and café, renovations will take place pursuant to a separate architectural services proposal which will cover design, development and construction and will be subject to City Commission approval. The coffee shop and café will be located on the east side of the building and will be accessible from the main entry doors of the Library. In order to make space for the coffee shop and café, the Library's Administration offices will be relocated to a non-public space in Technical Services. The coffee shop and café will share the Library's lobby restrooms, along with the addition of one single restroom stall that will be constructed as part of the renovation. An outdoor patio for use by coffee shop and café patrons will also be part of the renovation.

Pursuant to this Lease Agreement, Black & Brew will lease approximately 1,200 sq. ft. of space in the Library for an initial term of three (3) years effective upon City Commission approval. The Lease also contains two (2) additional five (5) year renewal

periods upon mutual written agreement of the parties. During the initial Lease term (Years 1 through 3), Black & Brew will pay the City rent in the amount of \$1.00 per sq. ft., or \$1,200.00 per month, in addition to any applicable sales tax. During any renewal term, rent shall be subject to an annual increase of 3%, or a percentage change in the Consumer Price Index (CPI-U), whichever is greater. However, in no event shall the percentage increase in rent exceed 4% for any renewal period.

The City has agreed to pay for all architectural and construction costs related to renovating the Library space to accommodate the coffee shop and café. While the parties have agreed to work together with regard to the design of the space, the City retains final approval of all design plans, including interior finishes. In addition, the City has agreed to waive Black & Brew's rent during the design/construction phase as well as for the first sixty (60) days that Black & Brew commences operation of its coffee shop and café. The Lease contains a termination for convenience clause that enables the City to terminate the Agreement if the City decides to cease operations at the Library or sell the property by providing Black & Brew with one hundred eighty (180) days prior written notice of the City's intent to terminate.

The Lease Agreement also sets forth responsibilities for Black & Brew as it relates to being required to provide all furniture, appliances and equipment for the coffee shop and café, including payment for any maintenance/repair costs associated with such items. It is recommended the City Commission approve this Agreement with Black & Brew for the operation of a coffee shop and café at the Library.

attachment

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** is made and entered into on this 7th day of November, 2016 by and between the CITY OF LAKE LAND, FLORIDA, a municipal corporation whose address is 228 S. Massachusetts Ave. Lakeland, Florida 33801 (hereinafter "LANDLORD"), and BLACK AND BREW COFFEE HOUSE & BISTRO II, LLC, a Florida limited liability company, whose address is 205 E. Main Street, Lakeland, Florida 33801 (hereinafter "TENANT").

**WHEREAS**, LANDLORD is the owner and operator of that certain municipal facility known as the Lakeland Public Library which is a 39,000 square foot public library located at 100 Lake Morton Drive in Lakeland, Florida; and

**WHEREAS**, the public interest and welfare will be served and the facilities of the Lakeland Public Library will be materially enhanced by providing a high quality coffee shop with café service (hereinafter "coffee shop") to the public patronizing the facilities; and

**WHEREAS**, TENANT is agreeable to providing the services hereunder and does otherwise desire to lease from LANDLORD that portion of the facility as hereinafter more fully described.

**WHEREAS**, the City issued RFP #6225 which awarded to TENANT in accordance with its response and proposal dated August 12, 2016.

**NOW, THEREFORE**, in consideration of the terms and conditions hereinafter set forth, as well as incorporating the above recitals by this reference as if they were set forth below the parties hereto do mutually agree and covenant as follows:

1. DESCRIPTION OF PREMISES

A. LANDLORD leases to TENANT and TENANT rents from LANDLORD, as herein provided, premises located at the Lakeland Public Library within the east side of the library as described more particularly on **Exhibit "A"** (the "Premises") attached hereto and incorporated herein by reference. The leased Premises shall consist of approximately 1,000 to 1,200 square feet of space for the use of a coffee shop with café service.

B. LANDLORD agrees to pay for architectural and construction costs related to the build-out of the leased Premises for the purpose of operating a coffee shop with café service. The parties agree to work together in furtherance of the design of the leased Premises. However, LANDLORD reserves the right to review all design plans and shall have final approval of any such plan, including interior finishes used in the Premises. In addition, LANDLORD shall have sole discretion to determine and approve the total cost expended on architectural design and construction of the Premises.

C. LANDLORD agrees to waive TENANT's rent specified in Section 4 during the design and construction phase of the Premises. In addition, TENANT shall not be required to pay rent upon issuance of a certificate of occupancy and for the first sixty (60) day period immediately thereafter of operation of the coffee shop. The time periods specified herein shall not be extended without the mutual written consent of both parties.

2. TERM

The initial term of this Lease is for a period of three (3) years commencing on November 7, 2016, and continuing through November 6, 2019, unless otherwise cancelled or terminated as provided herein.

3. RENEWAL TERMS

Provided the TENANT is not in default, and upon mutual written agreement of the parties, the TENANT may renew this Lease for two (2) additional terms of five (5) years per term upon similar terms and conditions as stated in this Lease, with the exception of the Rent Amount which shall be adjusted in accordance with Section 4 of this Lease. To indicate its intention to extend this Lease for a renewal term, the TENANT shall provide written notice to the LANDLORD no later than ninety (90) days prior to the expiration of the then current term.

4. RENT

A. As consideration for the Lease herein and for the continued privilege of operating a coffee shop and café in the Leased Premises, TENANT shall pay the LANDLORD as rent the following:

- Initial Term (Year 1 through Year 3): The TENANT shall pay to LANDLORD rent for the Premises, in addition to applicable sales tax and other charges payable by TENANT in accordance with the express terms and conditions set forth in this Agreement, payable in advance on or before the fifth (5<sup>th</sup>) day of each month, an amount of Twelve Hundred Dollars and 00/100 (\$1,200.00) per month. In the event

the area of the leased Premises is less than 1,200 square feet, rent shall be calculated at a rate of One Dollar and 00/100 (\$1.00) per square foot times the number of square feet, the sum of which shall be due monthly as specified above, for the leased Premises. In no event shall the total amount of rent exceed Twelve Hundred and 00/100 (\$1,200.00) per month during the initial three (3) year term of the Agreement.

- Thereafter, during any renewal term as described in Section 3, the rent shall increase three percent (3%) annually or by the percentage change in the CPI-U, whichever is greater, over the prior year's rental amount. However, in no event shall rent increase more than four percent (4%) on an annual basis during any renewal term.

B. Late installments or rent not received within ten (10) days past the date due shall bear a late payment fee of five percent (5%).

C. Security Deposit: A security deposit in the amount Twelve Hundred and 00/100 (\$1,200.00) be required upon execution of this Agreement.

## 5. FACILITIES, HOURS OF OPERATION AND SERVICES

A. TENANT agrees to maintain at all times a high quality coffee shop and café for the purpose of providing a coffee shop with consistently high quality beverage and food service to the general public and to library patrons. All operations shall be in strict conformity with all applicable laws, regulations and ordinances. TENANT shall be required to obtain all necessary licenses as may be required by federal, state and local government laws or regulations. This provision shall be deemed to be a material provision of this Lease.

TENANT agrees to utilize the Premises in a manner that will not interfere with the normal day to day operations of the Lakeland Public Library.

In addition, TENANT shall provide quality customer service to the public and address concerns and/or issues raised by the public in a timely manner arising out of or relating to coffee shop or café products and/or operations.

B. HOURS OF OPERATION

The coffee shop shall be operated during the hours set forth in the following schedule below:

Monday through Friday	7am to 8pm
Saturday	8am to 8pm
Sunday	Closed

Any changes to the above-specified hours of operation shall be agreed upon by the City of Lakeland's Parks and Recreation Director or authorize designee and the TENANT's representative.

6. UTILITIES

A. TENANT agrees to obtain any and all necessary services not provided by the LANDLORD and pay any and all fees, deposits, charges or other assessments for such utilities. TENANT shall be responsible for removal of all garbage and waste from the Premises and depositing said garbage and waste into the garbage receptacles provided by the LANDLORD and located outside of the Leased Premises.

B. LANDLORD agrees to pay for telephone, electric, water, wastewater, and garbage utility service for the Premises. LANDLORD agrees to provide free internet service (Wi-Fi) for patrons of the coffee shop. LANDLORD also agrees to provide necessary data

jacks in the wall and ceiling of the Premises. In addition, LANDLORD will supply a dry storage area and necessary hot/cold water connections and sinks.

7. FURNITURE, APPLIANCES AND EQUIPMENT

TENANT shall provide all furniture, appliances and equipment during any term of this Agreement. For purposes of this Agreement, furniture shall include all interior and exterior tables and chairs for use in the coffee shop and the patio area of the Premises.

For purposes of this Agreement appliances and/or equipment shall include: Reach-in Refrigeration, Reach-in Freezer, Blenders, Espresso Machine, Turbochef High Speed Oven, Convection Oven, Coffee Brewers, Coffee Grinder, Ice Machine, Soup Warmer, Point of Sale System, Prep Tables and Shelving.

TENANT shall be responsible for any maintenance, repair and/or replacement costs associated with the above-specified furniture, appliances and equipment.

8. INSURANCE

Throughout the term of this Agreement and including any renewals thereof, TENANT shall, at its sole cost and expense, maintain insurance in accordance with LANDLORD'S requirements as more specifically set forth in **Exhibit "B"**, attached hereto and incorporated herein by reference.

9. RIGHT OF ENTRY

LANDLORD, or his designee, shall be permitted to enter the premises at reasonable times to examine same or to make such emergency repairs therein as shall be deemed



necessary by LANDLORD or to otherwise make such inspections and examinations as deemed necessary by LANDLORD.

10. INDEMNITY

TENANT does hereby covenant and agree to indemnify, defend, and save harmless the LANDLORD, its appointed Boards, authorities and Commissions, elected officials, officers and employees, individually and collectively, from all fines, suits, claims, demands or action of any kind and nature arising by reason of any and all of TENANT'S activities hereunder. TENANT does hereby agree to and does assume all the risks in the operation of its business hereunder, and shall be solely responsible and answerable for any and all accidents or injuries to persons or property, without regard to the limits of liability insurance coverage required above. TENANT shall not at any time act or purport to act as agent of LANDLORD or any of its officers or agents.

LANDLORD does hereby covenant and agree to indemnify, defend, and save harmless the TENANT, its Managers, Members, officers and employees, individually and collectively, from all fines, suits, claims, demands or action of any kind and nature arising by reason of any and all of LANDLORD's activities which are unrelated to the TENANT'S operation of its business. Any indemnity by the herein shall be limited by the sovereign immunity monetary limitations as contained in Section 768.28 of the Florida Statutes, as may be amended from time to time.

The indemnity herein is absolute and complete and includes the recovery of reasonable attorney's fees by the prevailing party for any actions arising thereunder. To the

extent this Indemnification conflicts with any provision of applicable law, regulation or statute, this indemnification shall be deemed to be amended in such a manner as to be consistent with such law, regulation or statute.

11. ASSIGNABILITY

This Lease will be only assignable with the prior written consent of the LANDLORD. The LANDLORD shall be authorized to review the viability of any assignment, including, but not necessarily limited to the financial stability of an Assignee. LANDLORD retains sole discretion and final approval of any party seeking to assume the Lease as part of the overall review process. It is mutually acknowledged by the parties that the LANDLORD is entering into this Lease in reliance upon the individual TENANT herein and as such, the Lease is personal in nature.

12. ENFORCEMENT OF AGREEMENT

In the event any action, suit or other proceeding is brought to collect the rent due or to become due hereunder, or any portion thereof, or to take possession of said Premises or to enforce compliance with this Lease, or for failure to observe any of the covenants of this Lease, the prevailing party shall be entitled to reasonable attorney's fees.

13. TERMINATION AND DEFAULT

A. Upon the expiration or sooner termination of this Lease, the TENANT shall return to the LANDLORD the Premises hereby leased in as good condition as they are on the date of the signing of this Lease, reasonable wear and tear or loss or damage by fire, lightning, windstorm or acts of God excepted.

B. In the event that fire damage or damage by other casualty of fifty (50%) or more of the value of the improvements on said Premises is sustained at any time, the LANDLORD shall have the option to:

(1) Terminate this Lease, in which event the rent payable by TENANT shall abate and the prepaid portion thereof refunded; or

(2) Repair said damage within a reasonable time at the LANDLORD'S expense, in which event the rent payable by TENANT shall abate for so long a time as, and only in the event that said Leased Premises are in an untenable condition as a result of such damage.

In the event that fire damage or damage by other casualty of less than fifty percent (50%) of the value of the improvements on said Premises is sustained at any time, LANDLORD shall repair said damage within a reasonable time at the LANDLORD'S expense, in which event the rent payable by TENANT shall abate for so long a time as, and only in the event that said Leased Premises are in a compromised, but usable condition as a result of such damage. During the period from the occurrence of said casualty until LANDLORD'S repairs are completed, the Rental shall be reduced and abated in proportion to the amount of Gross Rentable Area of the Premises which is compromised and unusable as a result of such casualty.

C. Should the TENANT default in the payment of the rent or the performance of any of the promises, covenants or agreements herein made, or fail to provide services, products and other items of property quality as reasonably determined by LANDLORD,

LANDLORD may, at its option, after giving the TENANT ten (10) days written notice to cure and Tenant's failure to do so, declare all future payments hereunder immediately due and payable and may, at its option, exercise any one or more of the following remedies:

(1) The LANDLORD may terminate this Lease by giving to the TENANT one hundred eighty (180) days written notice of the LANDLORD'S intention to do so, in which event the term of this Lease shall end and all right, title and interest of the TENANT hereunder shall expire on the date stated in such notice; or

(2) The LANDLORD may terminate the right of the TENANT to possession of the Premises or any portion thereof by giving written notice to the TENANT that the TENANT'S right of possession shall end on the date stated in such notice, which shall not be less than thirty (30) days after the date of the notice by the LANDLORD of its intention to so terminate the right of possession; or

(3) The LANDLORD may enforce the provisions of this Lease and may enforce and protect the right of the LANDLORD hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy.

(4) If the LANDLORD exercises either of the remedies provided for in subparagraphs (1) or (2), the LANDLORD may then or at any time re-enter the Premises in accordance with Florida law.

(5) If the LANDLORD terminates the TENANT'S right of possession pursuant to subparagraph (2), the LANDLORD may re-enter the premises or any portion

thereof and take possession of all or any portion thereof, may move any portion of the TENANT'S property thereon which the LANDLORD elects to so do, and may sublet or relate the Premises or any part thereof from time to time for all or any part of the unexpired part of the then term hereof, or for a longer period, and the LANDLORD may collect the rents from such relating or subletting and apply same first to the payment of the rents payable hereunder and in the event that the proceeds from such relating or subletting are not sufficient to pay in full the foregoing, the TENANT shall remain and be liable therefor. The TENANT promises and agrees to pay the amount of such deficiency from time to time and the LANDLORD may at any time and from time to time sue and recover judgment for any such deficiency or deficiencies.

D. Termination for convenience: Either party may terminate this Agreement for convenience as provided below:

(1) TENANT may terminate this Lease by giving to the LANDLORD one hundred eighty (180) days written notice of TENANT'S intention to do so, in which event the term of this Lease shall end and all right, title and interest of the TENANT hereunder shall expire on the date stated in such notice. During the termination period, the exclusive rights of the TENANT to provide beverage and food on the Premises shall become non-exclusive and rent shall not abate during the termination period. At the end of said termination period, each party's obligations to the other party under this Lease shall terminate.

(2) In the event LANDLORD intends to cease operations at the Lakeland Public Library or intends to sell the property, TENANT shall be provided no less than one

hundred eighty (180) days' notice prior to cessation of such operations for any reason. During the termination period, the exclusive right of the TENANT to provide beverage and food on the Premises shall remain exclusive and rent shall abate during the termination period. At the end of said termination period, each party's obligations to the other party under this Lease shall terminate. The parties shall treat any such event as a LANDLORD'S termination for convenience.

14. RETURN OF PROPERTY

Upon termination of this Agreement, through expiration or otherwise, TENANT shall remove all furniture, appliances and equipment owned by the TENANT on the Premises. If TENANT fails to remove any such furniture, appliances and equipment from the Premises in a reasonable time, the LANDLORD shall have the right to remove such items from the Premises for disposal, sale or otherwise.

15. PUBLIC USE OF THE LAKELAND PUBLIC LIBRARY

A. The TENANT, for itself, its successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree that: 1) No person on the grounds or race, color, sex or national origin shall be excluded from participating in, denied the benefits of or be otherwise subjected to discrimination in the use of said facilities; 2) In the furnishing of service thereon, no person on the grounds of race, color, sex or national origin shall be excluded from participating in, denied the benefits of or be otherwise subjected to discrimination; and 3) The TENANT shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department

of Transportation, Subtitle A, Office of the Secretary, part 21, entitled *Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964*, and as said regulations may be amended.

In the event of breach of any of these nondiscrimination covenants, the LANDLORD shall have the right to immediately terminate the Lease and to re-enter and repossess said Premises and the facilities thereon, and hold the same as if said Lease had not been made or issued. This provision shall not be effective until the procedures provided in Title 49, Code of Federal Regulations, Part 21, are followed and completed, including any right of appeal.

B. TENANT agrees to utilize the Premises in such a manner as to not interfere with the normal day-to-day operations of the Lakeland Public Library.

16. NON-WAIVER

No waiver by the LANDLORD of any of the terms, covenants or conditions hereof to be performed, kept or observed by TENANT shall be construed to be, or act as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained. Acceptance of the rent by the LANDLORD for any period or periods after a default of any of the terms, conditions and covenants herein contained shall not be deemed a waiver of any right on the part of the LANDLORD to terminate this Lease for failure by TENANT to perform, keep or observe any of the terms, covenants or conditions of this Agreement.

17. MAINTENANCE OF PREMISES AND FIXTURES

LANDLORD agrees to maintain the air conditioning systems, electrical, ductwork and sprinklers related thereto, and LANDLORD owned fixtures and pipes and conduits of the Premises, in good repair. The LANDLORD agrees to maintain and repair all doors, including locks or casements, and windows whether deemed to be in the interior or exterior of the Premises, all at LANDLORD'S expense. LANDLORD agrees to keep the exterior of the building in good repair, including repair and maintenance of the roof and the structural soundness of the foundation, exterior walls, paving and curbing and any other repairs and maintenance not specifically the obligation of the TENANT.

TENANT agrees to keep the interior of the Premises, including personal property, furnishings and fixtures, in good repair and in a neat and clean appearance. TENANT shall be responsible for the cleanliness of the Premises, including all outdoor patio furniture.

TENANT shall be responsible for pest control in the leased Premises and janitorial service, on a daily basis.

Patrons of the library and TENANT'S customers will share use of the lobby restroom facilities. LANDLORD agrees to maintain the restrooms during the library's hours of operation. In the event the hours of the coffee shop are earlier or later than the library's hours of operation, then TENANT agrees to ensure the restrooms are appropriately stocked with paper products and soap if a custodian or janitor is not on site. In addition, if TENANT operates on a holiday that LANDLORD recognizes for closure, TENANT shall maintain and ensure that restrooms are clean and in proper working order.



The TENANT shall perform no repairs, additions, including rewiring to electrical, plumbing, etc., without prior written consent of LANDLORD. TENANT shall not have access to nor permit any repairmen access to any mechanical equipment without prior written consent of LANDLORD.

TENANT shall make no structural changes, nor any plumbing or electrical changes without prior written consent of the LANDLORD. If said consent is granted, TENANT shall obtain all permits required by law regarding such change. Any structural improvements provided by TENANT hereunder shall, at the expiration of this Lease, become the property of LANDLORD.

18. TAXES

TENANT shall pay to LANDLORD, in addition to the rent due hereunder, the TENANT'S share of taxes and assessments which may be levied against the Premises and personal property taxes levied on any of the equipment or fixtures for the taxable year 2017 and thereafter during this Lease. Upon receipt by the City of the annual tax bill, the tax applicable to the Premises or Personal Property shall be determined and an invoice provided to the TENANT. The ad valorem taxes and personal property taxes, which shall be characterized as rent, shall be due at the same time that the next payment of rent shall be due.

19. SIGNS

TENANT may furnish and install exterior signage at TENANT's expense, with the prior written consent of LANDLORD, which shall not be unreasonably withheld, and

provided that TENANT complies with all existing City of Lakeland rules, regulations, ordinances and/or applicable provisions of the City of Lakeland Land Development Code as it relates to signage requirements. In addition, TENANT shall be permitted to install interior signage in the Lakeland Public Library's lobby and foyer area upon prior written consent by the LANDLORD as it relates to the design and size of the signage.

20. NOTICE

Notice to the LANDLORD shall be sufficient if either mailed by first class mail, postage prepaid, addressed to Director of Parks and Recreation, City of Lakeland 228 S. Massachusetts Ave., Lakeland, Florida 33801 or delivered at such address, and notice to TENANT named herein shall be sufficient if either mailed by first class mail, to TENANT addressed to Attn: Chris McArthur, Black & Brew Coffee House & Bistro, Inc., 205 E. Main Street, Lakeland, Florida 33801, or delivered at such address. Either party may change its address at which notice is to be mailed or delivered by giving written notice of such change of address to the other party in the manner provided in this section.

21. VENUE

This Lease shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any action brought to enforce or interpret this Agreement or to remove TENANT from the Premises shall be Polk County, Florida, or other U.S. District Court for the Middle District of Florida.

22. ENTIRETY OF AGREEMENT

This Lease shall be binding upon and inure to the benefit of the parties and their respective successor and assigns to the extent assignment is permitted. This Lease constitutes the entire agreement between the parties and there are no other agreements, written or verbal, except as set forth herein.

**IN WITNESS WHEREOF**, the parties hereto have entered into this Lease Agreement on the date and year first written above.

Signed, sealed and delivered  
in the presence of:

**BLACK AND BREW COFFEE HOUSE &  
BISTRO II, LLC a Florida limited liability  
company**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Witness

**CITY OF LAKELAND, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
R. Howard Wiggs  
Mayor

By: \_\_\_\_\_  
Kelly S. Koos  
City Clerk

(Seal)

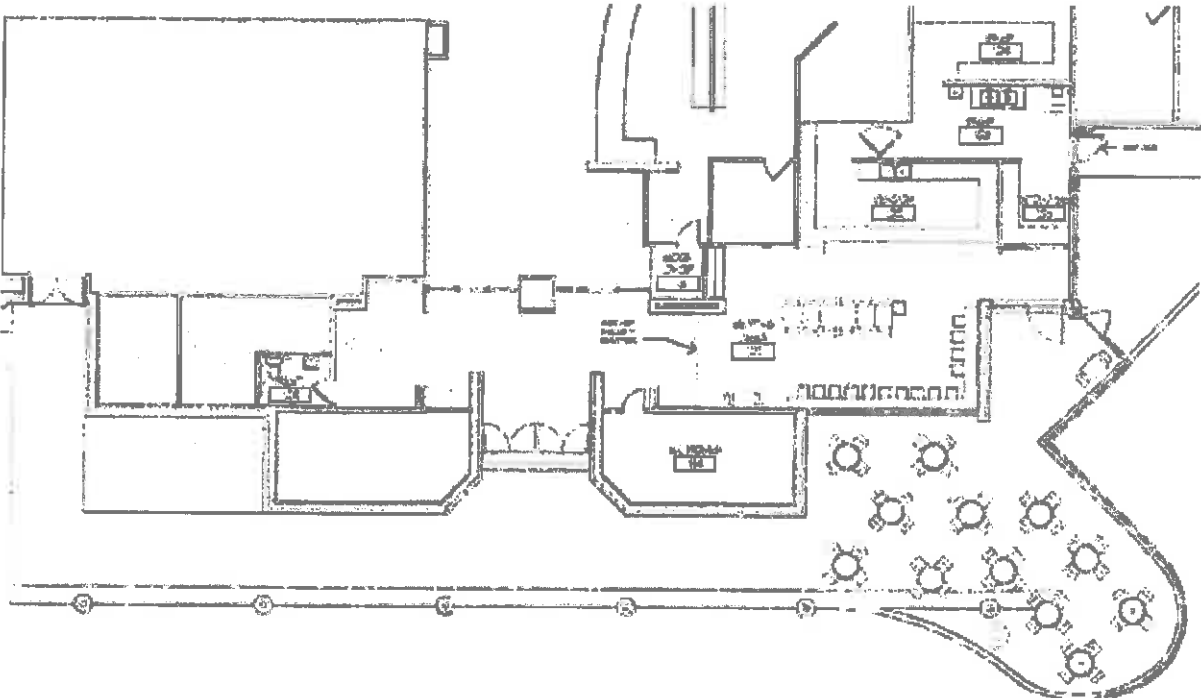
Approved as to form and correctness:

\_\_\_\_\_  
Timothy J. McCausland, City Attorney

**EXHIBIT "A"**

**DESCRIPTION OF LEASED PREMISES**

Proposed Area within the Lakeland Public Library



**EXHIBIT "B"**  
**INSURANCE REQUIREMENTS**

## **INSURANCE REQUIREMENTS**

### **RFP Library Coffee Shop/Cafe**

#### **STATEMENT OF PURPOSE**

The City of Lakeland (the "City") from time to time enters into agreements, leases and other contracts with Other Parties (as hereinafter defined).

Such Agreements shall contain at a minimum risk management/insurance terms to protect the City's interests and to minimize its potential liabilities. Accordingly, the following minimum requirements shall apply:

#### **CITY DEFINED**

The term City (wherever it may appear) is defined to mean the City of Lakeland itself, its Commission, employees, volunteers, representatives and agents.

#### **OTHER PARTY DEFINED**

The term Other Party (wherever it may appear) is defined to mean the other person or entity which is the counter-party to the Agreement with the City and any of such Other Party's subsidiaries, affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

#### **LOSS CONTROL/SAFETY**

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall comply with all laws, rules, regulations or ordinances related to safety and health, and shall make special effort to anticipate and detect hazardous conditions and shall take such precautionary and prompt action where loss control/safety measures should reasonably be expected.

The City may order work to be stopped at any time, without liability, if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage, or failure to stop, will not shift responsibility for any damages from the Other Party to the City.

#### **INSURANCE - BASIC COVERAGES REQUIRED**

The Other Party shall procure and maintain the following described insurance, except for coverage specifically waived by the City of Lakeland, on policies and with insurers acceptable to the City, and insurers with AM Best ratings of no less than A.

These insurance requirements shall in no way limit the liability of the Other Party. The City does not represent these minimum insurance requirements to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

"Except for workers' compensation and professional liability, the Other Party's insurance policies shall be endorsed to name the City of Lakeland as additional insured. It is agreed that the Other Party's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by The City of Lakeland for liability arising out of the operations of this agreement."

#### **INSURANCE – BASIC COVERAGES REQUIRED**

Except for workers compensation, the Other Party waives its right of recovery against the City, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the City and may be disapproved by the City. They shall be reduced or eliminated at the option of the City. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the City shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the City of Lakeland, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract, or lease.



**Commercial General Liability:** This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the Other Party and the additional insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the Other Party's employees or damage to property of the City or others arising out of any act or omission of the Other Party or its agents, employees, or Subcontractors and to be inclusive of property damage resulting from explosion, collapse or underground (xcu) exposures. This policy shall also include protection against claims insured by usual personal injury liability coverage, and to insure the contractual liability assumed by the Other Party under the article entitled **INDEMNIFICATION**, and "**Products and Completed Operations**" coverage.

The Other Party is required to continue to purchase products and completed operations coverage for a minimum of three years beyond the City's acceptance of renovation or construction properties.

The liability limits shall not be less than:

<b>Bodily Injury and</b>	<b>\$1,000,000</b>
<b>Property Damage</b>	<b>Single limit each occurrence</b>

**Business Automobile Liability:** Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

The liability limits shall not be less than:

<b>Bodily Injury and</b>	<b>\$300,000</b>
<b>Property Damage</b>	<b>Single limit each occurrence</b>

**Workers' Compensation:** Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable). If exempt from Worker's Compensation coverage, as defined in Florida Statute 440, the Other Party will provide a copy of State Workers' Compensation exemption.

All subcontractors shall be required to maintain Worker's Compensation.

The Other Party shall also purchase any other coverage required by law for the benefit of employees.

#### **EVIDENCE/CERTIFICATES OF INSURANCE**

Required insurance shall be documented in Certificates of Insurance which provide that the City shall be notified at least 30 days in advance of cancellation, nonrenewable, or adverse change.

New Certificates of Insurance are to be provided to the City at least 15 days prior to coverage renewals.

If requested by the City, the Other Party shall furnish complete copies of the Other Party's insurance policies, forms and endorsements.

For Commercial General Liability coverage the Other Party shall, at the option of the City, provide an indication of the amounts of claims payments or reserves chargeable to the aggregate amount of liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the City, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.