

## LICENSE AGREEMENT

AGREEMENT this \_\_\_\_\_ day of August, 2017 by and between the **CITY OF WHITE PLAINS**, a New York Municipal Corporation with offices at 255 Main Street, White Plains, NY 10601 (the "City") and **P.H.D. HOLDING CORP. d/b/a EVERYDAY HEALTHY CAFE**, a New York Business Corporation with offices at 52 Gedney Way, White Plains, NY 10605 ("Licensee")

WHEREAS, the Library operates at a City owned premises known as the Library Building; and

WHEREAS, the City through the Library issued a request for proposals for the operation and maintenance of a food concession and refreshments café at the Library Building; and

WHEREAS, Licensee has responded to the request for proposals and the City has found the Licensee's proposal to be that which will best serve the needs of the City and Library.

NOW, THEREFORE, in consideration of the covenants, conditions and obligations reserved and contained in this Agreement on the part of the City and Licensee to be respectively paid, kept, observed and performed, the parties mutually agree as follows:

### **Section 1. Definitions.**

Terms used but not defined herein shall have the meanings assigned to them in this Agreement. Unless the context shall otherwise require, capitalized terms herein have the meanings given to them below:

- 1.1. "Cafe" means an area of approximate size of \_\_\_\_ square feet located in the area of the Library Building shown and designated on Schedule "A" attached hereto and made a part of this Agreement.
- 1.2. "City" means the City of White Plains, NY
- 1.3. "Commencement Date" means the date this Agreement has been fully executed and a counterpart delivered to all parties.
- 1.4. "Expiration Date" means September \_\_\_\_\_, 2022.
- 1.5. "Extension Term" means a term ending five (5) years after the Expiration Date.

1.6. "Fee Commencement Date" means the first day of the month following the later of (a) the date of issuance of a certificate of occupancy or temporary certificate of occupancy for the Cafe or (b) the date that the Café opens for business.

1.7. "Governmental Requirements" means federal, State and local laws, rules, regulations and ordinances and orders and judgments of judicial authorities of competent jurisdiction (unless compliance with any such order or judgment is not required until the same becomes final and non-appealable).

1.8. "Library" means the White Plains Public Library.

1.9. "Library Building" means the building and grounds owned by the City of White Plains and operated by the Library which is located at 100 Martine Avenue, White Plains, New York 10604 which building has the designation of Section 175.75, Block 5, Lot 1.

1.10. "Library Director" means the Director of the White Plains Public Library.

1.11. "License Fee" means the annual license fee payable for each License Year pursuant to this Agreement.

1.12. "License Fee Payment" means the monthly portion of the License Fee paid pursuant to this Agreement.

1.13. "Licensed Premises" means the Cafe.

1.14. "License Year" means a twelve (12) month period starting on the Fee Commencement Date and each twelve (12) month period commencing on the anniversary of the Fee Commencement Date.

1.15. "Licensee" means P.H.D. Holding Corp. d/b/a Everyday Healthy Café which corporation may use the name "Everyday Healthy Cafe" for the Cafe or another assumed name or d/b/a for the Cafe provided that such other assumed name or d/b/a is approved by the Library, such approval not to be unreasonably withheld, and thereafter such assumed name shall be filed as required by law.

1.16. "Lien" means any interest in property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and included but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanic's, materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property.

1.17. "Person" means an individual, a corporation, a partnership, an association, a joint stock

company, a trust, any unincorporated organization, a governmental body, political subdivision, municipality or authority or any other group or entity.

**1.18.** “Plans and Specifications” means the final construction Plans and Specifications for the Cafe, if any, as they may be amended from time to time, upon which building permits will be issued by the City Department of Buildings, if required, to complete the construction of the Cafe in conformance with the terms of this Agreement.

**1.19.** “State” means the State of New York.

**1.20.** “Term” means the period commencing on the Commencement Date and ending on the Expiration Date.

## **Section 2. Licensed Premises and Use.**

**2.1.** The City hereby grants an exclusive license to Licensee to maintain and operate the Cafe as a food and refreshment café at the Library Building (the “Exclusive Use”), subject to the terms and conditions of this Agreement. Said Exclusive Use shall also include an exclusive license to maintain and operate café kiosks and vending machines at the Library Building, provided, however, that no such kiosk or vending machine shall be installed or operated without the prior written consent of the City for each such kiosk or vending machine.

**2.2.** This License is exclusive to Licensee, and Licensee specifically agrees not to let or grant any other party the use of the Licensed Premises for the Exclusive Use or any other business, nor shall the City or Library grant any other party a license to operate a similar use or to construct any similar cafe or any other improvements similar to the Cafe within the Library Building or within 50 feet of the Library Building. Notwithstanding the foregoing, Licensee may, from time to time and subject to the prior written approval of the Library Director, use the Cafe for activities or events so long as such activities and events are compatible with and do not interfere with the uses of the Library.

## **Section 3. Term and Extension Term.**

**3.1.** The Term of this Agreement shall be from the Commencement Date to the Expiration Date as those terms are defined in this Agreement.

**3.2.** The Licensee shall have the option to extend this Agreement for an Extension Term upon such terms and conditions as may be agreed to between the parties. The Licensee shall exercise the option to extend by sending written notice thereof to the City by not later than 180 days prior to the Expiration Date.

**Section 4. License Fee.**

4.1. The Licensee Fee to be paid to the City during each License Year shall be as set forth in the attached Schedule "B".

4.2. Licensee shall pay the License Fee to the City in monthly installments, payable in accordance with the attached Schedule "B". Each such installment shall be referred to herein as a License Fee Payment.

4.3. The Licensee Fee shall commence to be payable as of the Fee Commencement Date. The Fee Commencement Date shall not be later than 60 days after the issuance of the certificate of occupancy or temporary certificate of occupancy.

4.4. All payments to be made pursuant to this Agreement shall be made by check, electronic payment or wire transfer in the then legal currency of the United States as directed by the City.

**Section 5. Equipment and Construction of Improvements.**

5.1. The City shall design and construct the Cafe and the adjoining common areas and provide the work and improvements described in the attached Schedule "D". The Licensee hereby approves the plans and/or specifications attached or referenced in attached Schedule "D".

5.2. All work shall be performed in a professional manner so as to provide safe, usable and durable venues for the intended recreational activities.

5.3. All construction shall be in accordance with applicable building, fire, health and safety codes. Licensee shall, at its own expense, apply for and obtain all required permits, approvals, certificates and inspections prior to constructing or opening any portion of the Cafe for use and shall, during the term of this Agreement, continue to maintain all permits, certificates and approvals required by any law, ordinance, rule or regulation of any level of government. This includes, but is not limited to: all Governmental Requirements now or hereafter affecting the Cafe, Licensee's business, or any activity or condition on or about the Cafe.

5.4. The City shall provide and install the appliances, equipment, counters, shelving and furnishings (the "Equipment") described in the attached Schedule "D". Such Equipment may be used by the Licensee. The Licensee shall be responsible for the installation of all other appliances, fixtures and equipment required to operate the Cafe. The Licensee shall be responsible for any maintenance, service and cleaning of the Café and Equipment.

**5.7. Non-discrimination.**

At all times during the performance of its work under this Agreement, Licensee shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status.

**Section 6. Operation and Management of Cafe.**

**6.1.** Licensee shall maintain and operate the Cafe as a food and refreshment establishment. Licensee shall obtain and maintain all required permits and certifications required for the operation of the Café, including, but not limited to, Westchester County Department of Health permits.

**6.2.** The Cafe shall be open for business during all hours that the Library is open to the public for normal operations. Notwithstanding the foregoing, Licensee may close at its discretion, for national holidays, “bad weather” days, casualty, force majeure, restoration or refurbishment of improvements. Further, Licensee may elect to close all or a portion of the Cafe if it would be unsafe to the public to open. However, if there is a snow or ice emergency, Licensee shall not open or close without reasonable consent of the City.

**6.3.** Licensee shall adequately staff the Cafe at all times and shall designate an onsite management person for contact by the City and Library. The City and Library shall be provided with a telephone number at which a responsible individual can be contacted for emergencies twenty four (24) hours per day, seven (7) days per week.

**6.4.** All lights at the Cafe, except for security, emergency and work lights, shall be extinguished within one hour after the Cafe is closed for business each night.

**6.5. Control of Conduct:** Licensee agrees to take all reasonable appropriate measures to remove individuals from the Café who conduct themselves in a manner which is dangerous or unduly disturbing to others. Licensee shall refrain from conducting any business or activity which is dangerous or unduly disturbing to others. Licensee shall refrain from conducting any business or activity which is not legal at the Cafe and any illegal use of the Cafe is hereby prohibited. Licensee shall not be responsible for the behavior of its employees, invitees, customers, or contractors when such persons are not at the Cafe.

**6.6. Prohibited Items:** In no event shall Licensee sell or offer for sale tobacco items at the Cafe. Licensee shall not sell or offer for sale alcoholic beverages or food at the Cafe without prior approval by the Library Director, such approval not to be unreasonably withheld, conditioned or delayed. Any goods offered for sale at the Cafe shall be subject to the approval of the Library Director, such approval not to be unreasonably withheld, conditioned or delayed. The foregoing notwithstanding, Licensee may install vending machines at the Cafe without further approval. The Library hereby approves the sale of the food and/or beverages listed on attached Schedule “F”.

**Section 7. Maintenance.**

**7.1.** Licensee agrees to keep the Cafe clean and free of debris and refuse. Licensee shall, on a regular basis, clean and inspect the entire Cafe for debris and trash and collect same for proper disposal. Licensee shall place all of its trash into the respective recycling and garbage containers in a location reasonably designated by the City. The City shall be responsible for and pay any costs of the removal and/emptying of said recycling and garbage containers. **THE LICENSEE SHALL BE RESPONSIBLE FOR THE COLLECTION AND SAFE AND LEGAL DISPOSAL OF ALL USED/WASTE COOKING OIL, IF ANY.**

**7.2.** Licensee shall maintain the Cafe and all equipment in a condition which is attractive, clean, safe and usable for its intended purposes during the entire term of this Agreement.

**7.3.** If, after notice from the City or Library, Licensee fails to maintain or repair any part of the Cafe and such condition is dangerous to the public, including appliances, fixtures or equipment thereon, the City may, but shall not be obligated to enter upon Library Building and/or the Cafe to perform such maintenance or repair and Licensee agrees to pay the reasonable costs to the City within ten (10) days after receipt of a written demand for said payment. Upon the expiration or other termination of this License, Licensee will surrender the Cafe to the City in substantially the same condition as it was at the time of the commencement of this License, subject to reasonable wear and tear, provided however that Licensee shall have no obligation to remove any of the permanent improvements or equipment installed by the City as listed in Schedule D.

**7.4.** Licensee acknowledges that certain parts of Library Building, including the Cafe, and parking garage, may be temporarily closed by the City or Library due to snow or weather conditions.

**Section 8.** (intentionally omitted)

**Section 9. Security.**

**9.1.** Prior to the Rent Commencement Date the Licensee shall provide deposit or bond in the amount of \$3,000.00 as security to ensure the faithful performance of the terms and conditions of this Agreement (the "Security Deposit"). In the event of a default by Licensee in any condition of this Agreement the City may, in its sole discretion, use the Security Deposit to remedy such default, and/or pay its expenses in remedying such default, including reasonable attorneys' fees (all after the expiration of any applicable notice and cure periods provided for herein) without relieving Licensee of its obligations herein. The Security Deposit shall be held by the City until the expiration or termination for this Agreement, unless otherwise utilized pursuant to the provisions of this Agreement.

**9.2.** Within thirty (30) days after the termination or expiration of this Agreement and the

payment by Licensee of all License Fee Payments required pursuant to this Agreement, any portion of the Security Deposit or interest not used by the City to remedy a default or pay the expense of remedying a default by Licensee shall be returned to Licensee with such interest as may have accrued.

**Section 10. No Joint Venture.**

It is specifically understood by and between the parties hereto that this Agreement does not constitute a joint venture and that Licensee shall remain solely liable for any damages arising out of its or its agents or employees' conduct with respect to the operations at the Cafe.

**Section 11. Utilities.**

**11.1.** The Library shall pay the cost of all utilities for the Café, provided that the cost and amount of such utilities services is reasonable and customary for such use. The City makes no representations as to the availability of utilities at the Library Building or for the Cafe. The City and Library shall not be responsible for any interruption in utility service unless caused by the City or Library's act, error or omission.

**11.2.** In the event that additional gas and electric service is required by the Cafe, the City shall use best efforts to assist the Licensee with the applications to and approvals by Con Edison or such other supplier of the utilities for additional gas and electric service for the Cafe, provided, however, that the cost of installation and use of such additional service shall be at the sole cost and expense of the Licensee.

**Section 12. Taxes.**

Licensee shall be responsible for paying all sales, income and other taxes due and owing as a result of the operation of or at the Cafe, including real estate taxes on the Cafe if imposed. Notwithstanding the foregoing, the parties acknowledge that the Library Building is owned by the City and is generally exempt from the assessment of real estate taxes.

**Section 13. No Assignment or Liens.**

Except as provided herein, Licensee shall not assign, mortgage or pledge this License nor let or underlet the whole or any part of the Cafe without reasonable consent of the City. Except as provided herein, Licensee shall not grant or permit any lien to be placed upon the Cafe or Library Building which is not discharged or bonded. Licensee shall provide the City with discharges for any and all liens which may be levied against the Cafe or Library Building. Licensee shall use reasonable commercial efforts to discharge such liens within thirty (30)

business days of receipt of lien by Licensee. Notwithstanding the foregoing, Licensee may, solely for the purpose of constructing the Improvements, pledge this License Agreement as security for a loan from a financial institution (which shall, for the purpose of this paragraph, be a banking institution licensed to do business in the State of New York). It is expressly understood that any such financing shall be solely to fund the original construction of the improvements or to refinance any sum remaining unpaid under such original financing and for no other purpose without reasonable consent of the City. In the event Licensee pledges this License Agreement, the interests of such financial institution shall be subordinate to any rights or interests of the City, except to the extent the financial institution seeks a security interest in personal property and fixtures of Licensee in which case such security interest shall be superior to the City's security interest in the improvements, personal property and fixtures of Licensee. The City shall execute any documentation required by a lender to evidence such security interests provided such documentation is reasonably acceptable to the City. Unless otherwise agreed among the lender, the City and Licensee, the City shall have no obligation to give any notice to such financial institution in order to exercise any of its rights under this License Agreement, however, the City agrees to make reasonable efforts to provide the financial institution with reasonable notice of an event of default, provided the City has been given prior written notice of the name and address of such financial institution. Any agreement with a financial institution which has a security interest in the Cafe, shall provide for notice to the City of any event of default by Licensee under its agreement with such financial institution. The City agrees to cooperate with reasonable requests of the financial institution, in providing for financing as set forth herein, as long as such cooperation shall not in any way materially diminish the City's rights under this Agreement or its interests in the Cafe.

**Section 14. Parking and Sidewalks.**

**14.1.** Parking shall be available to employees and patrons of the Cafe in the parking garages serving Library Building. The City shall repair and maintain said parking garages in first class condition, including the removal of snow, ice and debris from said parking garages. The Licensee shall notify the City Parking Department of any snow or ice condition or other required repairs to said parking garages which have not been remedied within a reasonable time.

**14.2.** The City shall be responsible for replacing, repaving, repairing and maintaining all sidewalks and pathways within, adjacent or near the Library and the Licensed Premises.

**Section 15.** (intentionally omitted)

**Section 16. Alteration of the Library Building.**

So long as it is compatible with and does not adversely affect Licensee's Exclusive Use and possession of the Café, the City reserves the right to:



**16.1.** diminish the use of all or a portion of the Library Building, so long as the services required to be provided to Licensee under this Agreement by the City shall not be diminished and the City can perform its obligations under this Agreement;

**16.2.** change the use of all or a portion of Library Building provided the City can still perform its obligations under this Agreement;

**16.3.** non-materially alter and/or relocate vehicular and pedestrian access and egress to the Cafe provided the City continues to provide the parking and there remains reasonably sufficient access to the Cafe;

**16.4.** lease or license all or a portion of Library Building not used or possessed by Licensee hereunder to another for any use permitted by City ordinance, except for use as a food and/or beverage concession at the Library Building during the term of this Agreement; and

**16.5.** otherwise use, alter, reconstruct or reconfigure all or a portion of Library Building not used or possessed by Licensee hereunder in any manner it shall reasonably determine; provided, however, that

**16.6.** vehicular and pedestrian access and egress to the Cafe and Licensee's use of the Cafe shall, except during construction periods, be maintained at a level substantially equal to or greater than that provided on the Fee Commencement Date; and

**16.7.** The City shall minimize any interference with or restriction on Licensee's Exclusive Use and possession of the Cafe as a result of any action described in Sections 16.1 through 16.5 above. If the City fails to comply with the provisions of Section 16.4 above, then Licensee, besides its rights under this Agreement and the law, may, after written notice, either **(a)** reduce its License Fee Payments by fifty percent (50%) until the competing use has been eliminated by the City, or **(b)** terminate this Agreement on thirty (30) days written notice.

## **Section 17. Licensee Defaults and City Remedies.**

**17.1.** If **(a)** Licensee files a petition of bankruptcy, makes an assignment for the benefit of creditors, if Licensee is adjudicated bankrupt or insolvent, or if Licensee files any petition or institutes any proceeding under any insolvency or bankruptcy legislation seeking to effect a reorganization or a composition, or **(b)** if a receiver or trustee of the Licensee or Café is appointed, or **(c)** if the estate created by this Agreement is taken or assigned in execution or by any process of law and the Licensee defaults in the payment of the License Fee, or any part thereof, and such default shall continue for fifteen (15) days after receipt by Licensee of notice or demand therefore, or **(d)** any License Fee Payment is in arrears or unpaid within fifteen (15) days after receipt by Licensee of notice or demand therefore, or **(e)** if a breach or non-performance of any of the other covenants or obligations contained in this Agreement

on the part of Licensee has not been rectified within fifteen (15) days of written notice to Licensee(or where such default cannot reasonably be rectified within fifteen (15) days, such additional time as may be reasonably required to remedy such default), then, and in any such case, the City may at its option declare the Term ended and this Agreement terminated in accordance with Section 17.2 below.

**17.2.** This Agreement and the Term and rights hereby granted are subject to the limitation that, whenever any of the conditions specified in subsections (a)-(e) of Section 17.1 above occur, each of which shall hereinafter be deemed a "Licensee's Default", then in any such event, the City may give to Licensee notice of intention to terminate this Agreement at the expiration of three (3) days from the date of the service of such notice of intention, and upon the expiration of said three (3) days, this Agreement shall terminate with the same effect as if that day were the Expiration Date, but Licensee shall remain liable for damages as provided in this Agreement.

**17.3.** (intentionally omitted)

**17.3.1.** Upon the occurrence of any Licensee's Default, the City may serve notice on Licensee in accordance with Section 17.2 above that the Agreement and any and all other rights of Licensee hereunder shall cease on the date specified in such notice and on the specified date this Agreement shall cease and expire as fully and with the same effect as if that date were the Expiration Date.

**17.3.2.** Without terminating this Agreement in case of a Licensee's Default or if this Agreement shall be terminated for Licensee's Default as provided herein, the City may cause Licensee to be removed from the Cafe and re-enter the Cafe in accordance with legal process, including an eviction proceeding (or, in the event of a Default based upon abandonment of the Cafe by Licensee, if such abandonment has continued for ninety (90) days or more, without legal process and using such reasonable force as may be necessary). In the event of Licensee's Default, without terminating this Agreement, Licensee shall continue to be liable for all License Fee Payments and other charges accruing or coming due under this Agreement.

**17.3.3.** In the event of a Licensee's Default or if the City shall terminate this Agreement as provided in this Section, the following shall apply:

**17.3.3.1.** All License Fee Payments due from Licensee to the City shall thereupon become due and shall be paid up to the time of re-entry, dispossession or expiration, together with reasonable costs and expenses (including, without limitation, reasonable attorney's fees) of the City.

**17.3.3.2.** The City shall use its best efforts to relet or license the Cafe or any part thereof for a term or terms which may at City's option be less than or exceed the period which would otherwise have constituted the balance of the Term and may grant such concessions in reletting or licensing as the City, in the exercise of its reasonable business judgment, deems desirable. In connection with such reletting or licensing, Licensee shall be liable for all costs of the reletting or licensing, including, without limitation, concessions, commissions, reasonable

attorney's fees and alteration and remodeling costs. Licensee shall not be entitled to any surplus accruing as a result of any such reletting or licensing; and

**17.3.3.3.** If the City shall have terminated this Agreement, Licensee shall also be liable to the City for all damages provided for in law and under this Agreement resulting from Licensee's breach including, without limitation, the difference between the aggregate License Fees reserved under the terms of this Agreement for the balance of the Term together with all other sums payable hereunder as License Fees for the balance of the Term and the value of any License Fees received from any new licensee or tenant for the balance of the Term.

**17.4.** City and Licensee hereby waive all right to trial by jury in any claim, action proceeding or counterclaim by either the City or Licensee against each other or any matter arising out of or in any way connected with this Agreement, the relationship of the City and Licensee, and/or Licensee's use or occupancy of the Cafe.

**17.5.** In addition to the above, the City shall have any and all other rights provided a landlord under law or equity for breach of a lease or tenancy by a tenant.

## **Section 18. Signs.**

**18.1.** Licensee may not erect or place any exterior signs upon any structure at Library Building or upon the exterior of the Library Building unless Licensee has obtained the prior written consent of the City and has obtained permits, if any, required for the erection of such signs.

**18.2.** Licensee may erect or place interior signs at the Library Building and the Cafe, the size, appearance and location of which shall be subject to the City's approval, which approval shall not be unreasonably withheld, or, at Licensee's election, the City may place such sign or signs on the Cafe at Licensee's cost. All such work to erect and place the sign or signs shall be performed in compliance with all Laws and by reputable contractors carrying such insurance as required by Laws and as reasonably required by the City. Approval by the City shall not constitute approval for purposes of complying with Laws and compliance with Laws and obtaining all necessary permits and approvals shall be Licensee's responsibility. In the event of the installation of any sign by Licensee in violation of the foregoing, the City may remove same without liability and may charge the expense incurred by such removal to Licensee.

## **Section 19. Holding Over.**

If at the expiration of the Term, Licensee continues to holdover at the Cafe, Licensee shall pay as License Fee the amounts specified in this Agreement except that the License Fee shall be **(a)** one and half times one twelfth of the last annual License Fee Payment set forth

in this Agreement for the first thirty (30) days that Licensee holds-over and thereafter, **(b)** two times one twelfth of the last annual License Fee Payment set forth in this Agreement, and in all cases shall be further subject to all of the other terms of this Agreement insofar as the same are applicable to a month-to-month tenancy. In addition to the foregoing, Licensee shall pay to City all damages and expenses sustained by City on account thereof, including without limitation, any claims made by any succeeding Licensee or prospective Licensee based upon such hold-over. The foregoing provisions shall not serve as permission for Licensee to hold-over, nor serve to extend the Term and the City shall have the right at any time thereafter to enter and possess the Cafe and remove all property and persons therefrom in accordance with legal process. The foregoing provisions shall survive the expiration or earlier termination of this Agreement.

## **Section 20. Insurance.**

**20.1.** Licensee shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers licensed in the State of New York and rated "A - VII " or better by A. M. Best and reasonably satisfactory to the City:

**20.1.1.** "All risk" property insurance which shall be primary on Licensee's personal property located in the Cafe in an amount adequate to cover their replacement cost;

**20.1.2.** Comprehensive Commercial General Liability Insurance written on an occurrence basis including, but not limited to, coverage for bodily injury, personal injury, broad form property damage, products and completed operations, and contractual liability with liability limits not less than \$2,000,000, which can be met with a \$1,000,000.00 primary and a \$2,000,000.00 umbrella coverage policy, combined single limit for each occurrence, or such greater commercially reasonable amount as may be determined by the City;

**20.1.3.** New York State Workers' Compensation and Employers Liability insurance with minimum limits of liability in accordance with applicable state law in the case of Workers' Compensation and with minimum limits of \$1,000,000 in the case of Employers Liability insurance, or such greater commercially reasonable amount as may be determined by the City; and

**20.1.4.** New York State Disability Benefits coverage in accordance with statutory requirements.

**20.2.** On or before the Commencement Date, Licensee shall furnish to the City certificates of insurance evidencing the aforesaid insurance coverage, including naming the City and Library, as additional insured on Licensee's comprehensive general liability policy. The comprehensive general liability policy shall include insurance for contractual liability. Licensee shall furnish renewal certificates to the City at least thirty (30) days prior to the expiration date of such insurance policies showing the above coverage to be in full force and effect.

**20.3.** All such insurance shall provide that it cannot be canceled except upon ten (10) days prior written notice to the City. Licensee shall comply with all rules and directives of any insurance board, company or agency determining rates of hazard coverage for the Cafe, including but not limited to the installation of any equipment and/or the correction of any condition necessary to prevent any increase in such rates.

**20.4.** The City and Licensee each agree that neither the City nor Licensee will have any claim against the other for any loss, damage or injury which is covered by insurance carried by either party and for which recovery from such insurer is made, notwithstanding the negligence of either party in causing the loss. This release shall be valid only if the insurance policy in question permits waiver of subrogation or if the insurer agrees in writing that such waiver of subrogation will not affect coverage under said policy. Each party agrees to use its best efforts to obtain such a waiver from its insurer if the policy does not expressly permit a waiver of subrogation.

**20.5.** Except for claims arising from the gross negligence, intentional acts or willful misconduct of the City or Library, its agents or employees, Licensee waives all claims against the City and Library for injury or death to persons, damage to property or to any other interest of Licensee sustained by Licensee, or by any party claiming through Licensee or the City or Library that occurs at the Cafe, resulting from: (i) any occurrence in or upon the Cafe or resulting from or consequential to the use of the Cafe, (ii) wind, rain, snow, ice, flooding, freezing, fire, explosion, earthquake, excessive heat or cold, or other casualty, (iii) the operating and mechanical systems or equipment of the Cafe being defective, or failing, and (iv) vandalism, malicious mischief, theft or other acts or omissions of any other parties including without limitation, the Licensee's contractors and invitees at the Cafe. Licensee agrees that Licensee's personal property loss risks shall be borne by its insurance, and Licensee agrees to look solely to and seek recovery only from its insurance carriers in the event of such losses. For purposes hereof, any deductible amount shall be treated as though it were recoverable under such policies.

**20.6.** The City, in its exercise of reasonable business judgment, may from time to time during the term of this Agreement reasonably increase and/or modify the nature and limits of insurance required under this Section provided such increases shall only occur twice during the Term and twice during the Extension Term.

**Section 21.** (intentionally omitted)

**Section 22. Assignment or Subletting.**

**22.1.** Licensee, for itself, its heirs, distributees, executors, administrators, legal representatives, successors, and assigns, covenants that it will not assign, mortgage, or encumber this Agreement, nor sublet the Cafe, whether by operation of law or otherwise, without the prior written consent of the City in each instance, which consent shall be in the

City's sole discretion. If said assignment is required by any Licensee loan in the normal course of servicing any loan encumbering the Cafe, Licensed Premises or the Licensee's rights under this Agreement, the City shall, upon reasonable notice, provide its consent. Any assignment or sublease in violation of this Section shall be void. If this Agreement is assigned, or if the Cafe or any part of the Cafe is subleased by anyone other than Licensee, except as otherwise permitted by this Agreement, the City may, after Licensee's Default, collect License Fee Payments from the assignee or sublessee and apply the amount collected to License Fee Payments. No improper or prohibited assignment or sublet, or collection will be deemed **(a)** a waiver of the provisions of this Section; **(b)** the acceptance of the assignee or sublessee; or **(c)** a release of Licensee from the further performance by Licensee of its covenants contained in this Agreement and Licensee shall remain primarily liable thereunder. The consent by the City to an assignment or sublease will not be construed to relieve Licensee from obtaining the City's prior written consent in writing to any further assignment or sublease. No permitted assignee or sublessee may assign or encumber its sublease or assignment or further sublease or assign all or any portion of its subleased space, or otherwise permit the subleased space or any part of its subleased space to be used or occupied by others, without the City's prior written consent, obtained in accordance with the terms of this Section in each instance.

**22.2.** Notwithstanding the foregoing, if this Agreement is in full force and effect and there is no Licensee's Default of its obligations hereunder, this Agreement may be: **(a)** assigned to an "Affiliate" of Licensee ( an Affiliate being a person or entity having not more than a 50% interest in the Licensee, **(b)** a legal successor of Licensee, or **(c)** any entity resulting from a merger or consolidation with Licensee; provided that **(y)** Licensee promptly provides the City with a fully executed copy of such assignment or sublease, and **(z)** the transfer is for a good business purpose and is not principally for the purpose of transferring the interest created hereby; and, in the event of an assignment, the tangible net worth of the assignee after the assignment is at least equal to or in excess of the tangible net worth of Licensee immediately prior to such assignment. Further, principals of Licensee may transfer his/her respective interests in Licensee to their immediate family members (or trusts or other entities for the benefit of such immediate family members), employees or to any affiliate without requiring consent or notice.

**22.3.** The transfer of more than a majority of the issued and outstanding capital stock of Licensee, or a majority of the total interest in any other legal entity (partnership, joint venture, limited liability company, etc.) by Licensee, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, will be deemed an assignment of this Agreement requiring the City's consent in each instance. The transfer of outstanding capital stock of Licensee will not include any sale of such stock by persons other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, effected through the "over-the-counter market" or through any recognized stock exchange.

**22.4.** Licensee agrees to pay to the City reasonable counsel fees incurred by the City in connection with any proposed assignment of Licensee's interest in this Agreement or any proposed subletting of the Cafe or any part thereof (including, without limitation, the

preparation and/or review of any and all documents in connection with any rights under this Section).

**Section 23. Damage and Destruction.**

**23.1.** If the Cafe or any part thereof shall be damaged by fire or other casualty, Licensee shall give immediate notice thereof to the City and this Agreement shall continue in full force and effect except as hereinafter set forth.

**23.2.** If the Cafe is partially damaged or rendered partially unusable by fire or other casualty but a majority of the Cafe can still be used for its intended purpose and access or parking has not been materially affected, the damages thereto shall be repaired by and at the expense of the Licensee and the License Fee Payment shall still be due and payable. Licensee shall procure insurance to ensure such payments.

**23.3.** Unless this Agreement is terminated as provided herein, if the Cafe is materially damaged or rendered wholly unusable by fire or other casualty, then the Cafe shall be repaired and restored by and at the expense of the Licensee and the License Payment shall still be due and payable subject to the City's right to consent or elect not to restore the same as hereinafter provided. In the event the Cafe is to be rebuilt, the City will be responsible to promptly replace and/or repair as necessary, all improvements and facilities which are the City's responsibility under this Agreement. Notwithstanding anything to the contrary and subject to Section 23.4, if the Cafe is materially damaged or access to the Cafe is impeded, so that in Licensee's reasonable opinion, such damage cannot be repaired within ninety (90) days of the date of such damage or the damage occurs in the last six (6) months of the Term, then Licensee may terminate this Agreement upon thirty (30) days written notice. In the event of such termination, Licensee shall have no obligation to re-build or replace the Cafe.

**23.4.** If the Cafe is rendered wholly unusable (whether or not the Cafe is damaged in whole or in part) and/or if the Library Building shall be so damaged that City shall decide to demolish the improvements and abandon Library Building, then, in any of such events, either City or Licensee may elect to terminate this Agreement by written notice to the other party, given within 90 days after such fire or casualty specifying a date for the expiration of the Agreement, which date shall not be more than 60 days after the giving of such notice, and upon the date specified in such notice the term of this Agreement shall expire as fully and completely as if such date were the date set forth above for the termination of this Agreement and Licensee shall forthwith quit, surrender and vacate the Cafe without prejudice however, to the City's rights and remedies against Licensee under the Agreement provisions in effect prior to such termination, and any License Fee Payment owing shall be paid up to such date and any payments of License Fee Payment made by Licensee which were on account of any period subsequent to such date shall be returned to Licensee.

**23.5.** Unless the City or Licensee shall serve a termination notice as provided for herein, Licensee shall make the repairs and restorations to the Cafe under the conditions of this Section, with all reasonable expedition and subject to delays due to adjustment of insurance claims, labor troubles and causes beyond the Licensee's control. After any such casualty, Licensee shall cooperate with the City's restoration by removing from the Cafe as promptly as reasonably possible, all of Licensee's salvageable inventory and removable equipment, furniture, and other property. In the event that License Fee Payments have been abated in accordance with any provision of this Agreement, Licensee's liability for License Fee Payments shall resume five (5) days after written notice from City that the Cafe is substantially ready for Licensee's occupancy.

**23.6.** Nothing contained herein above shall relieve Licensee from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such insurance is in force and collectible and to the extent permitted by law, the City and Licensee each hereby release and waive all right of recovery against the other or any one claiming through or under each of them by way of subrogation or otherwise. The foregoing release and waiver shall be in force only if both releasor's insurance policies contain a clause providing that such a release or waiver not invalidate the insurance and also, provided that such a policy can be obtained without additional premiums. Licensee acknowledges that the City will not carry insurance on Licensee's furniture and/or furnishings or any fixtures or equipment, improvements, or appurtenances removable by Licensee and agrees that City will not be obligated to repair any damage thereto or replace the same.

**23.7.** Licensee hereby waives the provisions of Section 227 of the Real Property Law and agrees that the provisions of this Section shall govern and control in lieu thereof.

**23.8.** Any such repair or replacement and any alteration of the Cafe shall be in substantial conformity with the plans and specifications for the Cafe, subject to any modifications thereto required by Governmental Requirements and any other modifications thereto approved by the City.

#### **Section 24. Indemnification.**

To the fullest extent permitted by law and from the Commencement Date, Licensee agrees to indemnify and save the City harmless from and against any and all claims and demands (except resulting from the acts, omission or negligence of the City or its officers, servants, or employees) for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly in, on or about Library Building or the Cafe or any part thereof or arising directly or indirectly, from any act, omission or negligence of the Licensee, subleases, licensees, servants, agents, employees or contractors, and from and against any and all reasonable costs, expenses and liabilities incurred in connection with any such claim or proceeding brought thereon.



Licensee shall, at its own cost and expense, defend any and all suits or acts (just or unjust) which may be brought against the City or in which the City may be impleaded with any other or others upon such above mentioned matter, claim or claims.

## **Section 25. Hazardous Materials.**

The term "Hazardous Materials" for purposes hereof shall mean any chemical, substance, materials or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, materials or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of a materials safety data sheet ("MSDS"). Licensee shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Materials except those substances customarily used for the intended purpose hereunder or office purposes (not including the storage or warehousing of Hazardous Materials) and used in accordance with applicable law. To the extent Licensee has actual knowledge or notice, Licensee shall promptly notify the City of: **(a)** any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority, **(b)** any demands or claims made or threatened by any party relating to any loss or injury, **(c)** any release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Materials on or from the Cafe or in violation of this Agreement, and **(d)** any matters where Licensee is required by Law to give a notice to any governmental or regulatory authority respecting any Hazardous Materials at the Cafe. The City shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Cafe initiated in connection with any environmental, health or safety law. At such times as the City may reasonably request but not more than once a year, Licensee shall provide the City with a written list, certified to be true and complete, identifying any Hazardous Materials then used, stored, or maintained upon the Cafe, the use and approximate quantity of each such materials, a copy of any MSDS issued by the manufacturer therefor, and such other information as the City may reasonably require or as may be required by Law. The City represents, that as of the date hereof, **(x)** there have been no Hazardous Materials identified on the Licensed Premises, **(y)** there have been no any demands or claims made or threatened by any party relating to any loss or injury with respect to Hazardous Materials, and **(z)** no notice has been received from any governmental authority concerning Hazardous Materials on the Licensed Premises.

## **Section 26. Repairs and Maintenance.**

**26.1.** Except as otherwise provided in this Agreement, the Licensee shall undertake and is responsible for all repairs and maintenance of the Cafe.

**26.2.** Licensee shall be responsible for all damage or injury to the Cafe or any other part

of Library Building and the systems and equipment thereof, whether requiring structural or nonstructural repairs, caused by or resulting from carelessness, omission, neglect or improper conduct of Licensee, Licensee's sublessees, agents, employees, invitees or licensees, or which arise out of any work, labor, service or equipment done for or supplied to Licensee or any sublessee arising out of the installation, use or operation of the Cafe or equipment of Licensee or any sublessees. Licensee shall repair all damage to Library Building and the Cafe caused by Licensee moving of its fixtures, furniture and equipment. All other necessary repairs in or to Library Building, the Cafe or the systems thereof shall be performed by the Licensee in accordance with this Agreement. The City shall maintain Library Building in good working order and repair including the exterior and the structural portions thereof. Licensee agrees to give prompt notice under the circumstances of any defective condition in Library Building or the Cafe for which the City may be responsible hereunder. Except as provided herein, there shall be no allowance to Licensee for diminution of License Fee Payment value and no liability on the part of the City by reason of inconvenience, annoyance or injury to business arising from the City or others making repairs, alterations, additions or improvements in or to any portion of Library Building or the Cafe or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that Licensee shall not be entitled to any setoff or reduction of License Fee Payment by reason of any failure of the City to comply with the covenants of this or any other article of this Agreement. Licensee agrees that Licensee's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The provisions of this Section shall not apply in the case of fire or other casualty which are dealt with by other Sections of this Agreement.

## **Section 27. Compliance with Laws, Ordinances, etc.**

**27.1.** Throughout the Term of this Agreement, Licensee, at Licensee's sole cost and expense, shall promptly remove or cause to be removed any violation issued against Licensee or the City resulting from Licensee's act or omission in Licensee's use of the Cafe for which Licensee has been given written notice. Licensee shall promptly comply or cause to be complied with all Laws, and all ordinances, orders, rules, regulations and requirements of any national or local Board of Fire Underwriters, or any other body exercising functions similar to these of any of the foregoing, which may be applicable to the Cafe or any part thereof, or to the specific manner of use of the Cafe unless such compliance is the responsibility of the City in accordance with this Agreement.

## **27.2. Rules and Regulations.**

Licensee and Licensee's servants, employees, agents, visitors, and licensees shall observe faithfully, and comply strictly with, the Rules and Regulations and such other and further reasonable Rules and Regulations as the City may from time to time adopt for which the Licensee has notice. Notice of any rules or regulations or amendments thereto shall be given in such manner as the City may elect. Nothing in this Agreement contained shall be construed to impose upon the City any duty or obligation to enforce the Rules and Regulations

or terms, covenants or conditions in any other agreement, as against any other tenants or licensees and the City shall not be liable to Licensee for violation of the same by any other tenants or licensees, or their servants, employees, or agents.

**Section 28. Access to Cafe.**

**28.1.** The City hereby grants Licensee a right of access to the Café twenty-four (24) hours per day, seven (7) days per week during the Term for purposes of operating, maintaining and supplying the Café. Such access shall be by doors or entrances as may be approved by the City.

**28.2.** The City, or its agents or designees, shall have the right to enter upon the Cafe at all reasonable hours and times upon reasonable notice **(a)** to inspect the same, **(b)** for any purpose permitted under this Agreement, or **(c)** for any lawful purpose.

**Section 29. Miscellaneous Matters.**

**29.1.** The whole agreement between the parties is set forth in this Agreement, and Licensee shall accept the Cafe after examining them. No representations, warranties or conditions have been made other than those expressed or implied herein, and no Agreement collateral hereto will be binding unless made in writing and signed by the party to be bound. No act or omission of either party is to be construed as a waiver of any term of, or right under, this Agreement by that party.

**29.2** (intentionally omitted)

**29.3. Notices.** Any notice, demand, or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and either delivered personally or mailed by certified or registered mail, postage prepaid, return receipt requested or nationally recognized overnight courier, to the other party, and, except as to bills, statements or invoices, to their respective counsel, named below, addressed as follows:

to Licensee at:

PHD Holding Corp. D/B/A Everyday Healthy Café  
52 Gedney Way  
White Plains, NY 10605  
Attn: Peter Herrero

and to the City at:

White Plains Public Library  
100 Martine Avenue  
White Plains, NY 10601  
Attn: Library Director

and

City of White Plains Law Department  
255 Main Street  
White Plains, NY 10601  
Attn: Corporation Counsel,

or at such other address as any party shall have given notice of as provided above to the other party. Any such notice, demand or other communication shall be deemed given upon receipt or refusal of delivery, provided that properly mailed service shall be considered received five (5) days after the mailing thereof.

**29.4.** This Agreement is to be binding upon, and to the benefit of, the parties and any successors and assigns of the parties subject to the assignment provisions above.

**29.5.** If the singular or the neuter pronoun is used, the plural or the masculine or feminine is to be construed wherever the circumstances so require. All exhibits attached to this Agreement are a part hereof and are incorporated herein by reference and all provisions of such exhibits shall constitute promises and covenants of this Agreement. The captions and headings used in this Agreement are for convenience only and in no way define or limit the scope, interpretation or content of this Agreement.

**29.6.** This Agreement shall be governed by the laws of the State of New York and without regard for its choice of laws principles. Any action to enforce or interpret the provision of this Agreement will be commenced only in a court of competent jurisdiction located within the County of Westchester, State of New York. If any term or provision of this Agreement shall, to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and the balance of the terms and provisions shall be valid and enforceable to the fullest extent, either hereunder or as permitted by Law. Service of Process in a summary proceeding may be served by first class certified mail or in person at the address set forth in Section 29.3. Service shall be deemed to give in persona jurisdiction and Licensee agrees that any award to the City in a summary proceeding shall include all the City's costs and the City's reasonable attorneys' fees in connection with prosecuting such proceeding.

**29.7.** Notwithstanding anything to the contrary set forth in this Agreement, if any maintenance, repair or other expenditure by the City is due to Licensee's use of the Cafe in a manner contrary to this Agreement or there is a Licensee's Default of any of its

obligations hereunder, the City shall have the right but not the obligation to perform same and charge the cost thereof to Licensee.

**29.8.** This Agreement shall not be binding unless and until it has been executed and delivered, together with all monies then due, by all parties hereto.

**29.9.** As used in this Agreement: (a) the term "Law" or "Laws" shall mean all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedents in the state in which the Cafe is located and decisions of federal courts applying the Laws of such state.

**29.10.** Nothing contained in this Agreement shall be construed by the parties hereto, or by any third party, as constituting the parties as principal and agent, partners or joint venturers, nor shall anything herein render either party liable for the debts and obligations of any other party, it being understood and agreed that the only relationship between the City and Licensee is equivalent to that of landlord and tenant.

**29.11.** Neither party, without the consent of the other, will execute or record this Agreement or a summary or memorandum of this Agreement.

**29.12.** Failure of the City to insist upon strict compliance by Licensee of any condition or provision of this Agreement shall not be deemed a waiver by the City of that condition. No waiver shall be effective against the City unless in writing and signed by the City. Similarly, this Agreement cannot be amended except by a writing signed by the City and Licensee. Neither a failure by the City to exercise any of its options hereunder, nor failure to enforce its rights or seek its remedies upon any default, nor the acceptance by the City of any License Fee Payment accruing before or after any default, shall effect or constitute a waiver of the City's right to exercise such option, to enforce such right, or to seek such remedy with respect to that default or to any prior or subsequent default. The remedies provided in this Agreement shall be cumulative and shall not in any way abridge, modify or preclude any other rights or remedies to which the City is entitled either at law or in equity

**29.13.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**29.14.** This Agreement is offered to Licensee for signature with the express understanding that it shall not be binding upon the City unless and until the City shall have executed and delivered a fully executed copy to Licensee.

**29.15.** Licensee shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere other tenants, licensees or occupants of Library Building or adjacent or neighboring properties.

**29.16.** On the last day or sooner termination of the Term of this Agreement, Licensee shall quit and surrender the Cafe unto the City and all fixtures and improvements then located thereon, in good order, condition and repair (reasonable wear and tear excepted) and free and clear of all lettings and occupancies and free and clear of all other liens and encumbrances, other than those, if any, provided for and/or permitted hereunder. Upon such expiration or sooner termination of the Term hereof title to all structures, fixtures and Licensee Alterations then thereon shall automatically vest in the City as its property absolutely and forever.

**29.17.** The City and Licensee represent and warrant to each other that no broker, agent, commissioned salesperson, or other person has represented the either party in the negotiations for and procurement of this Agreement. The parties agree to indemnify and hold the other harmless from any and all claims, suits, or judgments (including, without limitation, reasonable attorneys' fees and court costs) for compensation of any kind which arise out of any broker claiming to have dealt with said party.

**Section 30. Covenants.**

**30.1.** Licensee's Covenants Licensee covenants and warrants to the City that Licensee has full right and power to execute and perform this Agreement, is a corporation formed and existing under the laws of the State of New York and is authorized to do business in the State of New York, and the individual signing this Agreement has full power and authorization to do so and to bind Licensee.

**30.2.** City's Covenants The City covenants with Licensee that the City has full right and power to execute and perform this Agreement, is a municipal corporation formed and existing under the laws of the State of New York and the individual signing this Agreement has full power and authorization to do so and to bind the City.

IN WITNESS OF THE ABOVE, the parties have executed this Agreement as of the date set out on the first page of this Agreement.

CITY:  
**CITY OF WHITE PLAINS**

LICENSEE:  
**P.H.D. HOLDING CORP. d/b/a  
EVERYDAY HEALTHY CAFE**

BY: \_\_\_\_\_  
Name: Thomas Roach  
Title: Mayor  
Date:

BY: \_\_\_\_\_  
Name: Peter Herrero, Jr.  
Title:  
Date:



**SCHEDULE "A"**

( intentionally omitted)

**SCHEDULE "B"**

**LICENSE FEES**

	<u>Base License Fee (annual)</u>	<u>Base License Fee Payment (monthly)</u>
License Year 1 (2017 - 2018)	\$ 6,000.00	\$ 500.00
License Year 2 (2018 - 2019)	\$ 6,180.00*	\$ 515.00
License Year 3 (2019 - 2020)	\$ 6,427.00**	\$ 536.00
License Year 4 (2020 - 2021)	\$ 6,620.00***	\$ 552.00
License Year 5 (starting 2021)	\$ 6,620.00	\$ 552.00

In addition, Licensee shall pay the City 4% of the gross revenue of the Café and vending machines per month over the amounts set forth below, said amount to be paid within 10 days after the end of each month:

License Year 1 (2017 - 2018)	\$ 45,000.00
License Year 2 (2018 - 2019)	\$ 46,350.00*
License Year 3 (2019 - 2020)	\$ 48,205.00**
License Year 4 (2020 - 2021)	\$ 49,650.00***
License Year 5 (starting 2021)	\$ 49,650.00.

\* 3% increase

\*\* 4% increase

\*\*\* 3% increase



**SCHEDULE "C"**

( intentionally omitted)

**SCHEDULE "D"**

**EQUIPMENT**

**The City shall purchase and install at its own expense the following listed equipment (or equal in the City's sole discretion) at the Café, which equipment shall remain the property of the City and may be NOT be removed by the Licensee at the expiration or termination of this Agreement:**

Electronic Register  
Bunn Dual SH DBC SST Coffee Makers  
Bunn Coffee Grinder G9- 2T DBC SST  
Electronic Coffee Machine S5 EK TA La Spaziale  
Coffee Grinder E6 OD COMPAK  
Cabinet Ethos EH700 S - EH800 S Refrigeration (2)  
Under counter TRU TUC- 48-LP Refrigeration

**The Licensee shall purchase and install at its own expense the following listed equipment, which equipment shall remain the property of the Licensee and may be removed by the Licensee at the expiration or termination of this Agreement:**

E22M33 Convection Oven  
Ice Machine  
Roll-in Two Door Refrigerator - STR2RR1-25  
Outdoor furniture ( subject to the prior written approval by the City of the design, style , model number and color of such outdoor furniture and the locations thereof, such approval not to be unreasonably withheld)

**SCHEDULE "E"**

**SCHEDULE FOR OPERATION**

The hours of operation during which the Cafe shall be open for business shall be during all hours that the Library is open to the public for normal operations. The Licensee may request in writing to the Library Director that the hours of operation of the Café be modified on a temporary basis. Such request may be approved by the Library Director in his reasonable discretion. The approval of such request by the Library Director shall be in writing to the Licensee.

**SCHEDULE "F"**

**FOOD OR BEVERAGES APPROVED TO BE SOLD AT CAFE**

AS DESCRIBED IN ATTACHED NOVEMBER 22, 2016 PROPOSAL FROM LICENSEE and in the Request fo Proposals as follows:

Cafe: Summary of Responsibilities

- - Provide food and refreshment services in accordance with quality standards as may be approved or determined at the sole discretion of the City in conformance with generally accepted professional standards.
- - Provide Library patrons with high quality food and non-alcoholic beverage services on a daily basis, at reasonable prices, all prices subject to the prior approval of the City.
- - Provide food and beverage services in a professional, clean and efficient manner, and in compliance with all Department of Health standards.
- - Provide adequate, trained staff to manage the operation and provide excellent service to patrons.
- - Provide courteous and efficient service emphasizing customer satisfaction in a full-service environment by minimizing waiting times for food and beverages