

COMMERCIAL PROPERTY LEASE AGREEMENT BETWEEN THE CITY OF SAN MATEO AND RAFAT HADDAD FOR 3 BEES CAFE OPERATION

This lease ("Lease") is made and entered into this _____, by and between the City of San Mateo ("City"), San Mateo, California, a municipal corporation, and Rafat Haddad, ("Lessee"), collectively the "Parties."

RECITALS

- A. The San Mateo Public Library includes a Cafe space .
- B. City desires to lease the operation of the Cafe to Lessee and, Lessee desires to lease the Cafe space from the City.
- C. The Parties have specified terms and conditions under which the Cafe located in the library facility shall be leased and operated.

Lessee and City agree as follows:

AGREEMENT

1. PREMISES

City hereby Leases to Lessee, and Lessee leases from City, certain real property located in the City of San Mateo, County of San Mateo, State of California, commonly known as the Cafe located at 55 West Third Avenue, San Mateo, California 94403 (the "Premises") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Premises consists of a Public Cafe area 8' x 14' (112 sq. ft.) with a fully constructed Cafe, which includes the Cafe structure itself, a refrigerated display case, back-bar refrigerator, sink, floor drain and consumer condiment area and menu board; and a Commissary Room, 10' x 8'6" (85 sq. ft) for food preparation and distribution that includes a three compartment sink, 6' x 3' x 1' open steel shelving, 2' x 4' stainless steel prep table, glass door refrigerator and a floor drain. City shall provide tables and chairs for a seating area and patio for Lessee's and Library's use. Lessee will provide all required additional fixtures and equipment necessary to operate the Cafe, including, but not limited to: all coffee making supplies and equipment, and all other related furnishings and supplies; all of which shall meet with the City's design approval. An inventory of Fixtures and Equipment is set forth in Exhibit B, which is attached and incorporated by reference.

2. TERM

- 2.1 **Initial Term of Lease.** The initial term of this Lease is for a period of two (2) years, commencing on the 22nd day of November 2022 and terminating on the 21st day of November 2024. Lessee shall, at the expiration of the term of this Lease, or upon its earlier termination, surrender the Premises in its original condition, excepting reasonable wear and tear.

- 2.2 **Renewal.** If during the initial term of this Lease, LESSEE has performed to the City's satisfaction, the CITY shall have the option, if it determines in its sole discretion that LESSEE has satisfied both the performance criteria and the terms of this Lease, to renew this Lease for two (2) additional two (2) year periods.

2.2.1 CITY and LESSEE shall execute an amendment to this Lease reflecting the extension, which shall be executed prior to the expiration of the prior term.

3. RENT

- 3.1 **Base Rent.** Monthly rent payments will be due for months in which the gross sales exceed \$10,000. The rent to be paid by Lessee shall be in the amount of 10% of gross sales paid on a monthly basis and due 31 days after the expiration of each month and shall be paid to: San Mateo Public Library, 55 West Third Avenue, San Mateo, CA 94402. Attn: Library Administrative Office.
- 3.2 **Gross Sales Report.** Lessee shall provide a verifiable gross sales report including separate totals for Cafe and Catering sales on a monthly basis which shall be due with the monthly rent. "Gross Sales" means consideration of any kind including cash receipts, credits, reimbursements, rebates, bartered goods and services from all sources generated at the Premises, including, but not limited to: all receipts from retail sales; all proceeds from the sale of food and drink; catering proceeds; and the actual payments received by Lessee in connection with any advertising. Gross Sales shall not include the following: (i) any tax, fee, assessment or charge collected as payment to any Governmental Authority, whether imposed by present or future federal, state or local law, (iii) any proceeds of the sale of Lessee's furnishing, fixtures and equipment; (v) returns of merchandise by Lessee to manufacturers or shippers for credit, (vi) sums and credits received in settlement of claims for loss of or damage to merchandise.

3.3 **Records and Audits.**

3.3.1 **Records.** Lessee shall install one or more cash registers of a type approved by City, which shall be equipped with a scaled cumulative totaling device and a daily dated continuous, non-reversible duplicate tape on which all Gross Sales shall be recorded and imprinted. Lessee shall maintain and make available within 5 days, true, accurate and complete books, records and accounts of all Gross Sales, including (i) true copies of any sales and other excise tax report; (ii) Federal and State Tax returns; (iii) sales slips and checks; (iv) bank records; (v) cash register tapes; and (vi) sales journals, books of account, general ledgers and purchase journals. Such books, records and accounts shall be maintained in such manner, and include such records, as would be required by a certified public accountant to perform an audit to determine or produce an audited statement of Gross Sales. Lessee shall keep accurate records of all Gross Sales in accordance with recognized accepted standard accounting practices. Lessee shall make available for review by City an itemized statement of Gross Sales for each Lease Year.

3.3.2 **Audits.** Once every 12 months City may perform an audit of Lessee's

Gross Sales records for the Premises. City shall provide twenty days advance written notice of such audit. All audits shall be performed during City's usual business hours and without interference with the conduct of business at the place where the audit is made. City shall provide Lessee with a copy of the audit. If the audit reveals that Gross Sales were under reported by more than five percent in Lessee's annual Gross Sales statement, then Lessee shall pay to City the reasonable cost of such audit; otherwise, City shall pay all cost of such audit. In addition, Lessee shall immediately pay to City any additional Percentage Rent owed based on the audited Gross Sales figure. City's audit shall be conclusive and binding upon Lessee unless, within 30 days after receipt of the audit, Lessee shall notify City in writing that it disputes the findings of City's audit. If such dispute shall not be settled by written agreement within 30 days after Lessee's notice of dispute is received by City, then City and Lessee shall select an independent certified public accountant licensed to practice in California and qualified to mediate the disagreement. If the dispute is determined in City's favor, Lessee shall forthwith pay an additional Percentage Rent due to City. Until said final determination is made, Lessee need not make any disputed Percentage Rent payments to Landlord; however, Lessee shall pay City all undisputed amounts when due, including interest. The Lessee's monthly, quarterly and annual statement of Gross Sales and any audit thereof shall be treated as confidential to the extent permitted by the state Public Records Act.

- 3.4 **Late Charge.** Lessee acknowledges that late payment by Lessee to City of rent will cause City to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing, accounting and late charges that may be imposed on City. Therefore, if City does not receive any installment of rent due from Lessee within fifteen days after the due date, Lessee shall pay to City an additional sum of ten percent (10%) of the overdue rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs City will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent City from exercising any of its other rights and remedies.
- 3.5 **Security Deposit.** Lessee shall provide City with a \$2,000 security deposit at the time of lease execution. Should Lessee fail to proceed with the lease based upon Lessee's own default after lease execution, then no part of the deposit shall be refunded. Upon opening for business, \$1,000 of the security deposit shall be refunded to Lessee.
- 3.6 **Failure.** Rental payments and all other charges or obligations not paid within ten days after the date due shall bear a late charge as described above. In addition, on all amounts unpaid for more than 30 days from the due date, interest shall accrue from the due date until it is received at the rate of one and one-half percent (1 1/2 %) per month. Failure by Lessee to pay rent or charges when due, or to comply with any other condition, shall terminate this Lease at the option of City. In such event, upon written notice to quit or surrender the Premises, City

may enter and retain possession of the Premises, exclude Lessee, and re-let the Premises. Should City enter the Premises as stated, Lessee shall be held liable as follows:

- 3.6.1 For all installments of rent and other charges when the Premises remain vacant, for the remainder of the term of the Lease. Such installments and charges shall be payable as they become due.
- 3.6.2 For all expenses which City may incur for re-letting the Premises.
- 3.6.3 For any deficiency in the installments on any Lease, or Leases, made by City for Lessee of the Premises during the term of this Lease. Any deficiency in installments shall be paid as it falls due.

4. USE

4.1 **Permitted Uses.** Premises will be used for a Cafe featuring fresh brewed coffee, specialty coffee, tea, non-alcoholic beverages, pre-made sandwiches and salads, baked goods and fresh fruit. Special attention should be given to including healthy menu items as recommended by the President's Council on Fitness, Sports and Nutrition (fitness.gov). Lessee shall make its best effort to provide foods prepared as freshly as possible and whenever possible prepared fresh daily. Lessee will provide City with a main menu for City's written approval, which is attached as Exhibit C and incorporated by reference. Lessee may vary menu to include daily specials.

4.2 **Prohibited Uses.** Lessee shall not: use Premises for any purpose not expressly permitted in this Lease; create, cause, maintain or permit any nuisance or waste in, on or about the Premises or permit or allow the Premises to be used for any unlawful or immoral purpose; do or permit to be done anything in any manner which unreasonably disturbs Library users, including causing any unreasonable odors or noise to emanate from the Premises; use Premises in a manner that increases the risk of fire, cost of fire insurance or improvements thereon; place any sign or placard in or on the Premises without City's prior written approval; store any bicycles or other means of transportation anywhere on the Premises; utilize the Premises for any offsite catering unrelated to the City, unless the food is to be served at a City function and at a City facility; install new locks on any doors (but may request a change of locks from the City); use the image of the Premises, the name of City or any other identifying sign or symbol associated with the Premises or City to undertake any action or representation other than those specifically assigned to Lessee under this Lease, without City's prior written approval; remodel or make any interior renovation or any major changes to the Premises or remove any objects, which are not the property of Lessee without the prior written consent of City; sell, dispense or allow alcohol to be consumed on the Premises.

5. DUTIES OF LESSEE

5.1 Management of Cafe. Lessee shall manage the Cafe and all operations therein.

5.2 Hours of Operation. The Cafe shall operate during Library hours, and must be open every day the Library is open. The lessee will determine a set Cafe operating schedule that will be subject to Library approval. The Library's hours of operation are as follows:

10 AM – 8 PM	Monday -Thursday
10 AM – 5 PM	Friday and Saturday
1 PM – 5 PM	Sunday

The Cafe will close at such times as the library is not open to the public. Any changes to the hours shall be subject to prior Library approval, which shall not be unreasonably withheld.

5.3 Maintenance. Lessee shall protect and maintain the Premises. Lessee shall assume responsibility for the guarding and safekeeping of all of the City property located at the Premises.

5.4 Rules. Lessee will abide by the rules of operational conduct that are consistent with Library operational procedures as provided in Exhibit E.

5.5 Use of Cafe Space. Lessee shall use the Cafe space and Commissary Room for food preparation and the Cafe space for food consumption or sale. Any changes to Cafe space are subject to City's prior written approval.

5.6 Cafe Name. The name of the cafe shall be the choice of the Lessee subject to approval by the City, which shall not be unreasonably withheld.

5.7 Lessee shall hire an adequate number of persons in order to provide food services in a prompt and timely manner under this Lease and agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

5.8 Payment of Lessee's Employees; Status of Lessee. Lessee shall pay all persons hired as required by law including but not limited to income tax withholding and social security payments. Neither Lessee nor any employee of Lessee shall be considered an employee of City and nothing herein shall be construed to make Lessee or Lessee's employee(s) and agent or employee of City while operating under this Lease.

5.9 Price of Food. All food sold shall be sold at reasonable prices as determined by Lessee, and in consultation with the City. In no instance shall food prices exceed those charged by comparable, retail non-subsidized coffee vendors.

5.10 Quality of Food. All food and presentation shall be high quality comparable to or exceeding that of other retail, non-subsidized Cafes. Food shall meet or exceed the following standards:

- 5.10.1 Coffee should be ground on demand from whole beans from a quality roaster, competitive in quality with the best roasters in the Bay Area for a balance of flavor, body, aroma and acidity. Beans for espresso should be appropriate for industry-recognized professional espresso use.
- 5.10.2 Retail whole bean coffee should be valve packaged and should be sold within two months.
- 5.10.3 Opened packages of coffee beans should be used within 10 days.
- 5.10.4 Butter, milk, and milk products shall be USDA Grade "A" and kept refrigerated.
- 5.10.5 Pastries and all baked goods shall be fresh daily from a quality bakery. Whole fruit should be fresh, clean and attractively displayed.
- 5.10.6 Pre-prepared and/or packaged foods shall display an expiration and/or packaging date, and in no instance shall such foods be offered for sale after the stated expiration date.
- 5.11 Cleanliness of Premises. The highest standard of cleanliness and sanitation on the Premises and in the course of food preparation shall be maintained without exception. Display cases shall be clean and free of crumbs and signage and menu boards shall be professional in appearance.
- 5.12 Cross Contamination. Every effort shall be made to avoid cross contamination of foods and food borne illness. Employees with any communicable disease shall not work in areas where contamination can occur. Lessee shall maintain at least one employee trained in the avoidance of cross contamination as required by law. Lessee shall maintain and prepare food in a manner and at appropriate temperatures that meet or exceed County Health or other relevant food preparation and storage guidelines.
- 5.13 Refrigeration. Lessee shall monitor refrigerators and freezers and periodically, no less than once per week measure the temperature within each refrigerator or freezer to determine if appropriate temperatures are being maintained. Lessee shall adjust all refrigerators and freezers to maintain adequate temperature. In the event that any refrigerator or freezer cannot maintain an adequate temperature level, the City shall be informed immediately, and the unit shall be taken out of service.
- 5.14 Equipment Maintenance. Lessee shall clean all equipment daily and perform routine maintenance upon all City and Lessee equipment. Lessee shall inform City within 24-hours of discovering any broken or malfunctioning equipment.
- 5.15 Equipment Repair and Replacement. If any equipment furnished by the City, listed in Section 1, Premises, fails to operate properly, Lessee shall notify City and attempt to have the equipment repaired. The cost to repair the equipment shall be paid by the City except for the repair to equipment caused by any act, omission or negligence of Lessee or its responsible employees,

agents, or sub-Lessees, in which case the Lessee shall be solely responsible for the cost of repair.

- 5.16 Refuse. Lessee shall properly and promptly place all garbage, refuse, compostables and recyclables in the appropriate containers.
- 5.17 Uniforms/Clothing. Lessee and all employees shall wear clean, professional, and safe clothing at all times.
- 5.18 Quality of Service. The Library has high standards for excellent customer service and it is expected that service from all Cafe staff should be timely, attentive, courteous and friendly.
- 5.19 Service to All. Every Cafe patron shall be served without regard to race, gender or ethnicity.
- 5.20 Custodial Services. Lessee will provide basic custodial services for the Cafe and interior and exterior tables, chairs, and floor of the Premises. Lessee shall be responsible for all clean-up relating to its business. Tables shall be clean and cleared at all times when not in use. Spills on floors and tables in Cafe area and Terrace shall be cleaned when they occur.
- 5.21 Failure to Comply. Failure to comply with any of the Duties can result in a fine of \$50 per violation if such violations persist, or continue to occur within seven (7) days of receiving a written notice ("Failure to Comply Notice") of such violation from the City. Should a violation persist, or similar violations continue to occur after written notice of a Failure to Comply has been issued, then Lessee shall be deemed in Default.

6. CITY'S DUTIES

- 6.1 Vendor is Exclusive Food Provider. Lessee has the exclusive right and privilege to operate the Cafe within San Mateo Main Library and to sell and dispense food within the Premises. Notwithstanding this right, City may: install or place vending machines in staff areas; and to contract for or allow third parties to contract for catering to be conducted in any part of the San Mateo Public library. City will not promote the usage of other caterers or food operators and will include Lessee's catering menu in City's marketing information as it relates to renting the conference facilities or renting or using the Library where food and beverages will be served. City will not allow other vendors to sell food or beverage on site, except in the event of a 'user' who rents or otherwise is allowed to use conference room facilities.
- 6.2 Utilities. City is responsible for the following utilities associated with the operation of the Premises: water, sewer, electricity, garbage pickup and disposal.
- 6.3 Telephone Expenses. A telephone jack will be installed in the Cafe area. Vendor is responsible for hook-up and ongoing line charges.

- 6.4 Computer Expenses. The City will not set up or manage the computer/network system for the Lessee. The Lessee will be responsible for all computer hardware/software acquisition, installation, maintenance and removal.
- 6.5 Repairs. City shall have no obligation to repair and maintain the Premises or its Improvements and facilities, except that City will maintain and repair supporting structural, water, plumbing and power which supplies the operation of the Premises and is responsible for actual damage to equipment or loss of supplies. Lessee expressly waives the benefit of any statute now or hereinafter in effect, which would otherwise afford Lessee the right to make repairs at City's expense or to terminate this Lease because of City's failure to keep Premises in good order, condition and repair.

7. CITY'S ACCESS

7.1 Access for Inspection. City and City's agents may enter the Premises at reasonable times, upon not less than 48 hours prior written notice to Lessee, to inspect it, show it to prospective lessees, and make such alterations, repairs, improvements or additions to the Premises as City may deem necessary provided, however, that all such work shall be done promptly and entries shall cause as little interference to Lessee as possible. City may at any time during the last 120 days of the term place on or about the Premises any ordinary "For Lease" signs, all without rebate of rent or liability to Lessee.

7.2 No Warranty. Neither the City nor any employees or agents of the City have made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding Occupational Safety and Health Act compliance, the legal use and adaptability of the Premises and compliance with all applicable laws and regulations.

7.3 Security Measures. City may require Lessee to install and use a reasonable security system, device, operation or plan to protect the Premises. Should City, in its sole discretion, require Lessee to install such a security system, Lessee agrees to bear the sole cost and expense of its installation and implementation. Lessee shall obtain City's prior approval before installing or implementing any security system, device, operation or plan.

8. HAZARDOUS MATERIALS

8.1 Compliance with Laws. Lessee shall not cause or permit any hazardous material (as defined in state law) to be brought upon, kept or used in or about the Premises.

9. TAXES

9.1 Revenue and Taxation Code. Pursuant to Revenue and Taxation Code of California, section 1076, notice is hereby given that Lessee is responsible for any possessory interest taxes that may be imposed as a result of, or related to, this Agreement.

Upon submission of proof of payment, Lessee may deduct any annual possessory interest tax payment in an amount exceeding \$500 from rent paid to City in subsequent month(s) until fully reimbursed.

10. HOLD HARMLESS INDEMNIFICATION

10.1 Indemnification. Lessee agrees to protect, defend, hold harmless and indemnify City, its officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage arising from Lessee's activities pursuant to this Lease, including all costs and reasonable attorney's fees, excepting claims resulting from the City's sole negligence or willful misconduct. Lessee shall give City immediate notice of any claim or liability hereby indemnified against.

10.2 Waiver of Claims. Lessee waives any claims against City for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises, unless caused by City's active negligence or willful misconduct.

11. INSURANCE

Lessee, at its sole cost and expense shall purchase and maintain in full force and effect during the term of this Lease, insurance coverage in an amount(s) and in a form acceptable to City as set forth in Exhibit D attached and incorporated by reference. Said policies shall be maintained with respect to Lessee's employees, if any, and all vehicles operated on the Premises. The policies shall include the required endorsements, certificates of insurance and coverage verifications as described in Exhibit D. Lessee also agrees to secure renter's liability insurance.

12. DAMAGE, DESTRUCTION AND TERMINATION

12.1 If the Premises are damaged by fire, earthquake, act of God, the elements or other casualty, and in City's opinion (a) such repairs can be made within 120 days from the date of occurrence, and (b) insurance proceeds sufficient to pay the repair cost are available, City shall repair the same, and this Lease shall remain in full force and effect except that an abatement of rent shall be allowed Lessee for such part of the Premises as shall be rendered unusable by Lessee in the conduct of its business during the time such part is damaged.

12.2 If in City's opinion, (a) such repairs cannot be made within 120 days or (b) insurance proceeds sufficient to pay for such work are not available, City may elect, upon notice to Lessee within 30 days after the date of such fire or other casualty, to repair or restore the damage, in which case this Lease shall continue in full force and effect, but the rent shall be partially abated as hereinabove provided. If City does not so elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty. If City does not elect to terminate this Lease, or is not eligible to do so, City shall give Lessee written notice thereof within 30 days following the casualty. If the repairs are not made within 120 days, Tenant shall have the right to terminate this Lease.

12.3 Waiver. City and Lessee waive the provisions of any statutes that relate to termination of Leases when Leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

13. DEFAULTS; REMEDIES

13.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default or breach of this Lease by Lessee:

13.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code §1951.3;

13.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of ten (10) business days after mailing by City of written notice thereof from City to Lessee. In the event City serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

13.1.3 Failure by Lessee in any material respect to observe or perform any of the Duties enumerated in Section 5 "Duties of Lessee" where such failure shall continue, or similar failures continue to occur after written notice of a Failure to Comply is mailed from City to Lessee.

13.1.4 Lessee's failure in any material respect to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee where such failure shall continue for a period of 30 days after written notice thereof is mailed from City to Lessee; provided, however, that if the nature of Lessee's default is such that more than 30 days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said 30 day period and thereafter diligently prosecutes such cure to completion;

13.1.5 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within 30 days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises, or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days.

13.2 Remedies. In the event of any material default or breach by Lessee, City may at any time thereafter, following any notice required by statute, and without limiting City in the exercise of any right or remedy which City may have by reason of such default or breach:

13.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to City. In such event, City shall be entitled to recover from Lessee all damages incurred by City by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Premises and Improvements, expenses of re-letting, including necessary renovation and alteration of the Premises and Improvements, reasonable attorney's fees, the value at the time of the termination of the unpaid rent that had been earned at the time of termination of this Lease.

13.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, City shall be entitled to enforce all of City's rights and remedies under this Lease, including the right to recover rent as it becomes due hereunder.

13.2.3 Pursue any other remedy now or hereafter available to City under the laws or judicial decisions of the State of California.

13.3 No Relief from Forfeiture After Default Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure §§1174 and 1179, and any other present or future law, in the event Lessee is evicted or City otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

14 TERMINATION PROVISIONS

14.1 Either party, for breach of the Lease may terminate this Lease, in writing, upon 30 calendar days notice. Upon termination, Lessee agrees to vacate the Premises before 5:00 p.m. on the 30th calendar day following notice.

14.2 Fixtures. Upon termination of the Lease, City or subsequent Lessee will have the option to buy any equipment and fixtures owned by Lessee from the Lessee at the fair market value of the items at the Premises; if City declines option, Lessee may hold a Public Auction at the Premises to sell all equipment and fixtures located in the Premises. An inventory of Lessee's Fixtures and Equipment is attached to this lease as Exhibit B.

15 DISPUTE RESOLUTION

15.1 Unless otherwise agreed, any controversies between Lessee and City regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within 30 days of service of a written request by one Party to the other Party.

15.2 The Parties will agree on a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation by

amending this Lease.

15.3 The costs of mediation shall be borne by the Parties equally.

15.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

16 PAYMENTS/PARTIAL PAYMENTS

City may apply any payment received from Lessee at any time against any obligation due and owing by Lessee under this Lease, regardless of any statement appearing on or referred to in any remittance from Lessee or any prior application of such payments. Acceptance by City of a partial payment of rent or other charges shall not be considered or construed to waive any right of or affect any notice of legal proceedings, unless both Parties shall agree otherwise in writing. The receipt by City of a partial payment of any amount due to City endorsed as payment in full will be deemed to be a partial payment only, and any endorsements or statements on the check or any letter accompanying the check shall not be deemed an accord and satisfaction, and, notwithstanding said endorsements, City may accept and deposit said check without prejudice to its right to recover the balance. Lessee's obligation (without prior notice or demands) to pay rent and all other amounts due hereunder shall be absolute and unconditional, and not subject to any abatement, set off, defense, recoupment or reduction.

17. NON-DISCRIMINATION

Lessee covenants that it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity pursuant to this Agreement.

18. INDEPENDENT CONTRACTOR

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of City or San Mateo Public Library.

19. CONFLICT OF INTEREST

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this agreement.

20. ASSIGNMENT AND SUBLETTING

City's Consent Required. Lessee may not assign this Lease or sublet or encumber the

Premises, or allow or permit any other person(s) to occupy or use the Premises, without the prior written consent of City, which shall not be unreasonably withheld. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by City to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease.

21. LIENS

Lessee agrees at its sole cost and expense to keep the Property free and clear of any and all claims, levies, liens, encumbrances, or attachments.

22. HOLDOVER/EXTENSION

After the term has expired, and until the Parties execute a written extension to the Lease, or Lessee surrenders the Premises to the City, this Lease shall continue on a month-to-month basis subject to all terms and conditions of this Lease. The rent under a month to month tenancy shall increase to 15% of gross sales.

23. VACATING

Upon termination of the tenancy, Lessee shall completely vacate the Premises by 5 p.m. on the day of termination, including the removal of any and all of its property. Before departure, Lessee shall return keys and City property to City in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow City to inspect the Premises to verify the condition of the Premises and its contents.

24. ABANDONMENT

Lessee's absence from the Premises for fourteen (14) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Premises. Such abandonment will be deemed cause for immediate termination after five (5) days written notice. City shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to City.

25. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent

to City addressed as follows:
City of San Mateo
San Mateo Public Library
Attention: James Moore
55 West Third Avenue
San Mateo, CA 94402

and to Lessee addressed as follows:

Rafat Haddad
3 Bees Coffee
224 E. Third Avenue
San Mateo, CA 94401

Notices may be served upon Lessee in person, or by first class mail, or by certified mail to Lessee whether or not said mailing is accepted by Lessee. The above addresses shall be used for service of process.

26. TIME

Time shall be of the essence in this Lease.

27. MISREPRESENTATIONS

Any statements submitted to City in the *Vendors Written Proposal* by Lessee are considered inducements to execute this Lease. Misrepresentations shall entitle City to terminate this Lease at any time.

28. REMEDIES OF CITY

In addition to any other remedy provided herein, City shall have all remedies provided by law and equity.

29. SERVICE CHARGE

A service charge of twenty dollars (\$20.00) will be made for each check that must be resubmitted for payment.

30. SIGNING AUTHORITY

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

31. CAPTIONS

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

32. **SURRENDER OF LEASE NOT MERGER**

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of City, terminate all or any existing leases or sub-tenancies, or may, at the option of City, operate as an assignment to it of any and all such leases or sub-tenancies.

33. **INTEGRATED DOCUMENT**

This Lease, including any exhibits attached hereto, embodies the entire agreement between City and Lessee and its terms and conditions. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of City prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City. This Lease may be modified only by a written amendment duly executed by the Parties to this Lease.

34. **WAIVER**

Waiver by City of one or more conditions of performance or any breach or condition under this Lease shall not be construed as a waiver(s) of any other condition of performance or subsequent breaches or conditions. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The City's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which City may have, shall not be construed as a waiver.

35. **INTERPRETATIONS**

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

36. **SEVERABILITY CLAUSE**

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected.

37. **GOVERNING LAW**

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

38. VENUE

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the State courts of the County of San Mateo.

39. COMPLIANCE WITH LAWS

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease, including all applicable laws, ordinances, codes and regulations pertaining to the storage, handling, preparation and service of food.

CITY OF SAN MATEO
SAN MATEO, CALIFORNIA
a municipal corporation

ATTEST

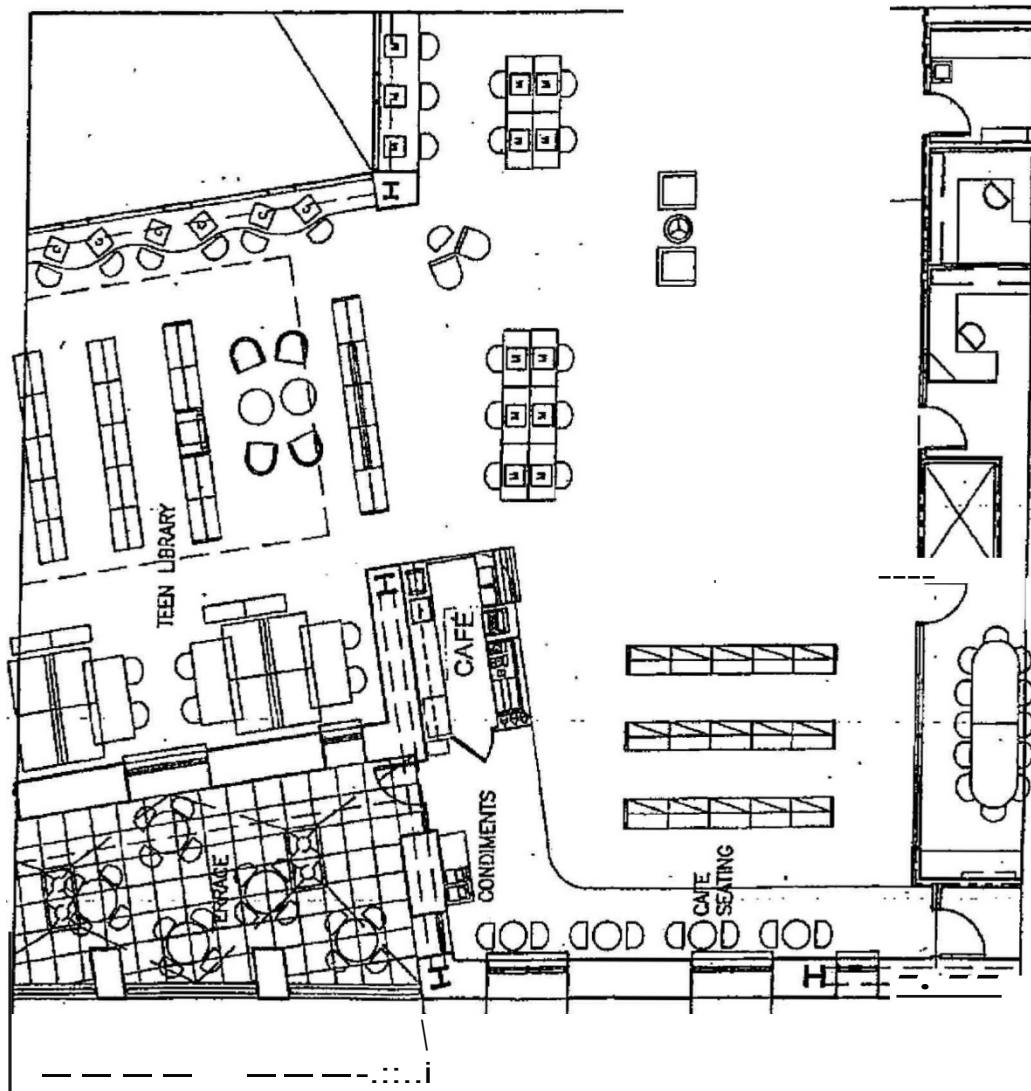
By: _____
James Moore
City Librarian

Patrice Olds, City Clerk

LESSEE:

Rafat Haddad

COMMERCIAL PREMISES LEASE AGREEMENT
BY AND BETWEEN
CITY OF SAN MATEO
AND
RAFAT HADDAD
EXHIBIT A
SITE PLAN OF SUBJECT PREMISES



COMMERCIAL PREMISES LEASE AGREEMENT
BY AND BETWEEN
CITY OF SAN MATEO
AND
RAFAT HADDAD

EXHIBIT B

STANDARD INSURANCE REQUIREMENTS

Insurance Requirements for Lessee:

Lessee shall purchase and maintain the insurance policies set forth below on all of its operations under this Lease at its sole cost and expense. Such policies shall be maintained for the full term of this Lease and the related warranty period (if applicable). For purposes of the insurance policies required under this Lease, the term "City" shall include the duly elected or appointed officers, employees, and agents of the City of San Mateo, California, individually or collectively.

1. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

a. COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$2,000,000 each occurrence (combined single limit);
\$2,000,000 for personal injury;
\$2,000,000 general aggregate applying separately to this Property
\$1,000,000 fire

b. BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than one million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage.

c. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC/EL"). (A Workers' Compensation Policy is required only if Lessee has employees or volunteers.)

These policies shall include at least the following coverage's and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of California; and
2. Employer's liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million

(\$1,000,000) dollars each employee BI by disease.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTION.**

Any deductibles and/or self insured retention's which apply to any of the insurance policies referred to above shall be declared in writing by Lessee and approved by the City before work is begun pursuant to this Lease. At the option of the City, Lessee shall either reduce or eliminate such deductibles or self-insured retention's or provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. Additional Insureds. The City of San Mateo, its elected and appointed officials and employees and agents are hereby added as additional insureds in respect to liability arising out of the Lessee's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, 1985 Edition, or insurer's equivalent (CGL);
- b. Primary Insurance. This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- c. Notice of Cancellation. No cancellation shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days notice for non-payment of premium (CGL, BAL, WC/EI & PL).

4. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Lessee to immediately cease all activities with respect to this Lease if the City determines that Lessee fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Lease. Any delays or expense caused due to stopping of work and change of insurance shall be considered Lessee's delay and expense. At the City's discretion, under conditions of lapse, City may purchase appropriate insurance and charge all costs related to such policy to Lessee.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance, on an Accord form, and implementing endorsements shall be provided to City by each of Lessee's insurance companies as evidence of the stipulated coverages prior to commencement of this Lease, and annually thereafter at least ten (10) days prior to termination of existing coverage for the term of this Lease. City receives the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Lease at any time. All of the insurance companies providing insurance for Lessee shall have, and provide evidence of, a Best Rating Service rate of uA VI" or above.

The Certificate of Insurance and coverage verification and all other notices related to cancellation shall be mailed to:

City of San Mateo
Office of the City Clerk
330 W 20th Avenue
San Mateo, CA 94403

COMMERCIAL PREMISES LEASE AGREEMENT
BY AND BETWEEN
CITY OF SAN MATEO
AND
RAFAT HADDAD

EXHIBIT C

RULES AND REGULATIONS

1. All areas of the San Mateo Public Library not leased shall not be obstructed by Lessee or used by it for any purpose other than for ingress or egress from the Premises, except that lessee shall have the right to use the indoor and outdoor eating areas. City shall in all cases retain the right to control and prevent access to the Premises of all persons whose presence in the judgment of the City would be prejudicial to the safety, character, reputation and interests of the Library, provided that nothing herein contained shall be construed to prevent such access to persons with whom Lessee normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Lessee shall not go upon the roof of the building.
2. The Premises shall not be used for lodging or sleeping.
3. City will furnish Lessee with two (2) keys and three (3) card keys to the Premises, free of charge. No additional locking devices shall be installed without the prior written consent of the City. City may make reasonable charge to lessee for any additional lock or any bolt installed on any door of the Premises without the prior written consent of the City. Lessee shall in each case furnish City with a key for any such lock. Lessee, upon the termination of its tenancy, shall deliver to the Landlord all keys to doors in the Building and the Premises that shall have been furnished to Lessee.
4. In case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in the City's opinion, City reserved the right to prevent access to the Premises during continuance of same by such action as City may deem appropriate, including closing entrances to the Building. Lessee's rent shall be abated during such periods of closure.
5. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed; no foreign substance of any kind whatsoever shall be deposited therein and any repairs of damage resulting to same from lessee's misuse shall be paid by Lessee.
6. Except with the prior consent of City, Lessee shall not sell, or permit the sale from the Premises of, or use or permit the use of any Common Area adjacent to the Premises for the sale of newspapers, magazines, periodicals, theatre tickets or any other goods, merchandise or service, nor shall lessee carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises be used for manufacturing of any kind, or for any business activity other than specifically provided for in the Lease.
7. Lessee shall not install any radio or television antenna, loudspeaker or other device on

the roof or exterior walls of the Building.

8. Lessee shall not use in any space, or in the Common Areas of the Building, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as City may approve.
9. Lessee shall store all its trash and garbage within the Premises until daily removal of same by the Library's custodians to the dumpster provided by City for disposal thereof. No material shall be placed in the Building trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Mateo without being in violation of any law or ordinance governing such disposal. Lessee shall sort trash into provided receptacles for garbage, mixed recyclables, and compostables.
10. All loading and unloading of merchandise, supplies, materials, garbage and refuse and delivery of same to the Premises shall be made only through such entryways and elevators and at such times as City shall designate. In its use of the loading areas on the first floor, Lessee shall not obstruct or permit the obstruction of said loading areas, and at no time shall Lessee park vehicles therein except for loading and unloading.
11. Canvassing, soliciting, peddling or distribution of handbills or any other written material in the Building is prohibited and lessee shall cooperate to prevent same.
12. Lessee shall not permit the use of the operation of any coin operated machines on the Premises, including, without limitation, vending machines, video games, pinball machines, or pay telephones without the prior written consent of City.
13. City may direct the use of all pest extermination and scavenger contractors at such intervals as City may require.
14. The requirements of Lessee will be attended to only upon application by telephone or in person at the Library Administration Office. Employees of City shall not perform any work or do anything outside of their regular duties.
15. City may waive any one or more of these Rules and Regulations for the benefit of any particular Lessee or Lessees, but no such waiver by City shall be construed as a waiver of these Rules and Regulations in favor of any other Lessee or Lessees, nor prevent City from thereafter enforcing any such Rules and Regulations against any or all Lessees of the Building.
16. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any lease of Premises in the Library.
17. City reserves the right to make such other reasonable rules and regulations as in its judgment may, from time to time, be needed for the safety, care, and cleanliness of the Library, and for the preservation of good order therein provided that any such rules shall not materially impair Lessee's rights in the Premises or increase any burdens upon Lessee in connection therewith.
18. Lessee shall have the right to connect the telephone system in the Premises to the telephone cable distribution system serving the Library at the location of the telephone cable terminal on the floor on which the Premises are situated, provided that no

connection shall be made and no work otherwise affecting the telephone cable terminal or distribution system shall be undertaken without reasonable prior notice to, and approval of, the City. City shall have responsibility for maintenance of the telephone distribution system and may require supervision of the connection by City, and may impose such other reasonable conditions as may be necessary to protect the telephone cable terminal or distribution system. Any damage to the telephone cable terminal or distribution system caused by the act or omission of Lessee shall be repaired at expense of Lessee.

