



## DRAFT Exhibit A

### COFFEE SHOP/CAFE LEASE AGREEMENT PARK CITY LIBRARY

This Agreement is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2017, by and between **PARK CITY MUNICIPAL CORPORATION** (hereinafter "City") and \_\_\_\_\_ (hereinafter "Concessionaire").

#### WITNESSETH:

WHEREAS, the City owns a building known as the Park City Library located at 1255 Park Avenue, Park City, UT 84060, [hereinafter "Library"] which is open and available to the residents and visitors of Park City for public use; and

WHEREAS, the City desires to have at the library food and beverage refreshments available to the users of the library and members of the community; and

WHEREAS, Concessionaire desires to sell food and beverage refreshments at the library; and

WHEREAS, Concessionaire agrees to conduct said food and beverage refreshment business in a professional manner pursuant to the terms and conditions herein set forth,

**NOW, THEREFORE**, in consideration of the covenants and agreements of the respective parties herein contained, the parties hereto do hereby agree as follows:

1. **Description of Concession.** During the term of the Lease Agreement, the Concessionaire will be granted the right, at the library, in the location described below, to operate a food and beverage concession business, serving food and beverages to patrons of said library and members of the community. Food preparation shall be off site. The Library Director reviews and approves menu and pricing. The concessionaire will also have the opportunity to provide wholesale coffee beans for two City facilities, Public Works and City Hall buildings.

(a) Concessionaire is permitted to be open during private Santy rentals.

(b) Any lessor of 3rd floor/ Santy auditorium is allowed to preclude outside food and beverage at their discretion during their rentals.

(c) Concessionaire shall not offer fresh or bagged popcorn. (d) Concessionaire is permitted to be open during private rentals of non-exclusive areas described in Section 2 herein during typical library hours (M-F: 10:00 a.m.-9:00 p.m.; Sat: 10:00 a.m.-6:00 p.m.; Sun: 1:00 p.m.-5:00 p.m.) and as referenced herein in Section 17. The Library Director may restrict operation during private rentals of non-exclusive use areas when the library is typically closed.

(d) The Concessionaire is allowed to be open outside of typical library hours. Hours expected to be open are 7:00 a.m. to 6:00 p.m. Monday to Friday and 8:00 a.m. to 6:00 p.m. Saturday and Sunday. Modifications to this will need to be affirmed by City Council and approved by the Library Director.

(e) The Concessionaire will need to be able and competent in securing the building before and after library hours including setting and turning off the alarm system.

2. **Property.** The property hereby leased is the main floor coffee shop/café space, located at the library, 1255 Park Avenue, Park City, Utah, (the “Premises”), including exclusive use of the coffee shop (285 square feet), and non-exclusive use of decks (1,350 square feet) and restrooms (460 square feet) contains a total of 2,095square feet of restaurant space, as further described in Exhibit “A” attached hereto and made a part hereof.

3. **Term.** The term of this Agreement shall be for a period of three (3) years.

4. **Rent** – *To be determined based on Proposals and City Council approval*

(a) **Late Fee.** The City will charge Concessionaire a late fee of Twenty Five Dollars (\$25.00) for every five (5) days rent is late.

(b) **Security Deposit.** Before occupying the leased premises the Concessionaire must make a damage deposit *to be determined based on Proposals and City Council approval* \_\_\_\_\_ . Concessionaire will leave Premises in same or better condition than the “as-is” condition. Damage deposit may be used for any damages. If rent is more

than thirty (30) days late, Concessionaire will be in default of this Lease Agreement and will vacate Premises within ten (10) days, subject to City Council discretion.

(c) **Rent Commencement Date.** This Lease Agreement shall commence on \_\_\_\_\_, and the term of the Lease Agreement shall begin on that date.

(d) **Financials.** Concessionaire agrees to keep accurate books and records of expenditures related to its operation. The City or its independent auditor reserves the right to conduct its own annual audit of books and records at reasonable times and places during ordinary business hours. Concessionaire agrees to turn in all IRS forms, updated business plans, and other similar financial information by April 1 of each year if requested by City. At minimum, Concessionaire shall submit a monthly gross sales report with rent payment.

5. **Authorized Use.** Concessionaire may sell beer and wine, provided that Concessionaire secures proper licenses and complies with all federal, State, and municipal laws and ordinances. Sales or service of beer or any other alcoholic beverage is governed by Paragraph 26 below.

6. **Payment of Taxes and Other Assessments.** Concessionaire shall pay all taxes and other assessments for its business during the term of this Lease Agreement. Concessionaire shall pay all sales or other taxes assessed on the operation of the concession business.

7. **Utility Services.** City shall be responsible to provide most utilities including, but not limited to, natural gas, electricity, sewer, and water for the Premises. Cable and telephone will not be provided. Concessionaire shall make provisions for their own telephone, cable, and internet service. City shall deduct from rent \$50/month to reimburse phone and internet service only. That reimbursement is factored into the agreed upon monthly rent of xxx.

8. **Use of Premises/Catering/Programming.** The Premises shall be used only for the purpose of a coffee shop. Outside food service or catering services outside of the library building are not permitted. Programming – The Concessionaire is allowed to create or host their own programming with the goal of driving more community participation and engagement.

Concessionaire shall have any non-library programming that they host including, but not limited to events, classes, seminars, promotional ideas, forums, etc. approved, in writing, by the Library Director prior to conducting the activity. Concessionaire shall not program full length independent, documentary and foreign films that compete with the Park City Film Series program.

The Library will provide informal notice to Concessionaire of their intended programming of non-exclusive areas.

**9. Licensing.** The City and Concessionaire may also participate in other joint marketing efforts with the prior agreement of each. Concessionaire is responsible for obtaining all necessary licenses for its operation, including a Park City business license. Any private use that would close the Coffee Shop to the public requires prior approval by the Library Director.

10. **Care and Repair of Premises by Concessionaire.** Concessionaire has inspected the Premises and accepts it “as is” and as acceptable for the purpose of this Lease Agreement. The Concessionaire will not permit the use of the Premise in violation of any State law or County or municipal ordinance or regulation applicable thereto. Concessionaire, with the consent of the City but at the Concessionaire’s own cost and expense and in good workman like manner, make such alterations or improvements to the Premises, excluding Common Areas, as Concessionaire may require for the conduct of its business without, however, materially altering the basic character of this structure or improvements, or weakening the structure of the Premises. Any permanent alterations or improvements to the Premises shall become the property of the City upon expiration or termination of this Lease Agreement

(a) Concessionaire shall have sole responsibility for maintaining and repairing all restaurant and kitchen equipment and facilities, including all sinks, microwaves, freezers, and refrigerators. All coffee shop/café equipment that the City owns maybe used by the Concessionaire on an “as is” basis and the City makes no claim of its condition or life span.

11. **Maintenance.** The City shall be responsible for all structural maintenance of the Premises, including the roof, foundation, structural members, and exterior wall surfaces.

Concessionaire shall be responsible for all interior maintenance, including mechanical and electrical fixtures, lighting fixtures, janitorial service including trash and mopping resulting from the Concessionaire's use, and glass maintenance (both cleaning and replacement in the event of damage) which is within the exclusive use areas of Premises or solely serves the Premises. The City shall be responsible for mechanical systems which serve portions of the building other than, or in addition to the Concessionaire's space, as reasonably necessary to maintain the structure and to service common utility facilities.

12. **Access to other space.** Concessionaire shall not interfere with the access to other spaces within the building or obstruct the entrances to those spaces in any way. The City shall have access through Concessionaire's space as reasonably necessary to maintain the structure and to service common utility facilities. The City shall have the right to inspect the Premises at any time, with or without notice.

13. **Signs.** All exterior signs require affirmation from City Council prior to final approval. All signs must meet criteria of the City's Sign Code. The following restrictions apply to exterior building signs:

- a) Patio Window Signs - No window signs on patio windows or any other part of the patio or patio furniture;
- b) Front Door Window Signs- Concessionaire will be able to replace existing front door window vinyl signs for coffee vendor. They can customize the specific hours. No other sizes or font allowed. Vendor will be able to state either their business name or website in 1' letters to replace existing at the bottom. Vendor will be able to add their logo below their name or website. Logo Sign not to exceed 4.25"x 5.5".



- c) Monument Sign on Park Avenue - The City Council has directed staff to pursue changes to the Sign Code to allow a monument sign on Park Avenue, located approximately in red circle below. The final location and design to be affirmed by City Council. If approved by the Planning Commission, the City will include on the sign a specific, branded sign for each tenant in the building, including the concessionaire not to exceed 8" x 72" or 4 square feet. The sign shall conform to the Park City Sign Ordinance on date it is installed. City to pursue in good faith best efforts to have the sign approved by February 14, 2018, and installed by July 1, 2018. The following rendering is a concept only, scale, details, letter height, size, font, lighting, etc. to be finalized by City Council:





14. **Insurance and Indemnity.** The Concessionaire shall indemnify and hold the City and its agents, employees, and officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the City arising out of, in connection with, or incident to the execution of this Lease Agreement and/or the Concessionaire's defective performance or failure to perform any aspect of this Lease Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the City, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Concessionaire; and provided further, that nothing herein shall require the Concessionaire to hold harmless or defend the City, its agents, employees and/or officers from any claims arising from the sole negligence of the City, its agents, employees, and/or officers. The Concessionaire expressly agrees that the indemnification provided herein constitutes the Concessionaire's limited waiver of immunity as an employer under Utah Code Section 34A-2-105; provided, however, this waiver shall apply only to the extent an employee of Concessionaire claims or recovers compensation from the City for a loss or injury that Concessionaire would be obligated to indemnify the City for under this Lease Agreement. This limited waiver has been mutually negotiated by the parties, and is expressly made effective only for the purposes of this Lease Agreement. The provisions of this section shall survive the expiration or termination of this Lease Agreement. No liability shall attach to the City by reason of entering into this Lease Agreement except as expressly provided herein.

The Concessionaire shall provide a Certificate of Insurance evidencing:

- A. General Liability insurance written on an occurrence basis with limits no less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence and Three Million Dollars (\$3,000,000.00) aggregate for personal injury, bodily injury, and property damage.

The Service Provider shall increase the limits of such insurance to at least the amount of the Limitation of Judgments described in Section 63-30d-604 of the Governmental Immunity Act of Utah, as calculated by the state risk manager every two years and stated in Utah Admin. Code R37-4-3.

- B. Workers Compensation insurance limits written as follows:

Bodily Injury by Accident \$500,000.00 each accident;

Bodily Injury by Disease \$500,000.00 each employee, \$500,000.00 policy limit.

- C. The City shall be named as an additional insured on the insurance policies, with respect to work performed by or on behalf of the Concessionaire and a copy of the endorsement naming the City as an additional insured shall be attached to the certificate of insurance. The certificate of insurance shall warrant that the City shall receive thirty (30) days' advance notice of cancellation. The City reserves the right to request certified copies of any required policies.

- D. The Concessionaire's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15. **City Liable Only for Negligence and Intentional Acts.** Except where caused by City's negligence or intentional act, City shall not be liable for any failure of water supply, natural gas supply, or electrical supply; or for any injury or damage to persons or property caused by gasoline, oil, steam, gas or electricity; or hurricane, tornado, flood, wind or similar storms or



disturbances; or water, rain or snow which may leak or flow from the street, sewer, gas mains, or any subsurface area or from any part of the building or buildings or for an interference with light.

16. **Nondiscrimination.** Concessionaire agrees not to discriminate against anyone on the basis of race, color, national origin, age, sex or handicap in its hiring practices, services or operation of its business hereunder.

17. **Waiver of Covenants.** It is agreed that the waiver of any of the covenants of this concession agreement by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or any provisions herein contained.

18. **Dates and Hours of Operation.** The Concessionaire will have the coffee shop/cafe open for business to the public during the days the library is open to the public and during the Sundance Film Festival, unless a sublease or private function is approved by the City as provided in Section 1. The Concessionaire hours are described in Section 1(c) and (d) of this lease.

19. **Type of Operation.** Concessionaire agrees to maintain and operate the coffee shop/cafe in a first-class manner and will keep the premises in a safe, clean, orderly and inviting condition at all times. The coffee shop/cafe is to be operated as a convenience to the library patrons; therefore, all food, drinks, beverages, confections, and other items sold or kept for sale at the coffee shop/cafe will be of high quality. All food and merchandise kept for sale will be subject to inspection by the City. The service will be prompt, sanitary, courteous, and efficient.

20. **Concessionaire's Employees.** During hours of operation, the Concessionaire will agree to retain an active, qualified, competent, and experienced employee at the coffee shop/cafe to supervise the concession operations. The Concessionaire agrees to be an equal opportunity employer and will hire qualified employees without regard to religion, creed, color, sex, age, national origin, or handicap status. The employee must be authorized to represent and act on behalf of the Concessionaire.

The Concessionaire's employees will be clean, courteous, efficient, and neat in appearance. The Concessionaire will not continue to employ any person or persons, in or about the

Premises who shall use improper language or act in a loud, boisterous, or otherwise improper manner.

21. **Laws, Ordinances, Etc.** The Concessionaire will obey all the laws, ordinances, regulations, and rules of the federal, State, County and municipal governments which may be applicable to its operations. The Concessionaire will further agree to follow recommendations of the County Board of Health.

22. **Garbage Disposal.** The Concessionaire will provide and use suitable covered receptacles for all garbage, trash, and other refuse on or in connection with the coffee shop/cafe. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, on or about the library or surrounding premises, will not be permitted and must be removed daily to designated dumpster. When public trash receptacles become full, concessionaire will empty these into designated dumpsters.

23. **Political Activity Prohibited.** None of the funds, materials, property, or services provided directly or indirectly under the Lease Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

24. **Improvements.** The City will provide infrastructure to operate a coffee concession including but not limited to counters, millwork, storage, sink, plumbing, electrical and other utility connections. City will not provide specialty equipment or machines such as refrigerators or coffee machines, with exception of a Leader CBK 48" Refrigerated Bakery Display Case, Counter Height). The café will not have a commercial kitchen. There is not a drain line, floor drain or running water at or under the front counter tops. Running water and a 3 sink can be found in the back of house/storage area. Immediate drainage to an espresso machine will need to be held in a temporary catch basin prior to being disposed of in the back sink. City to provide a one-time budget of \$10,000 for furniture and other fixtures and equipment. The Library Director must approve all purchase and will make all purchases. Any furniture, fixtures and equipment will remain property of City. The budget shall not be used for any advertising or marketing, paint, signage or special flooring other than outlined above.

25. **Termination.** Either party may terminate this Agreement with 60 day written notice to the other for any reason. However, notice may not be given before four months from the execution of this Agreement.

26. **Alcoholic Beverages.** Concessionaire may sell beer or wine for functions and special events in the non-library, community spaces and outdoor patio, as described on Exhibit “A” attached hereto and made a part hereof, unless private lessor for 3<sup>rd</sup> Floor or Santy precludes per Section 1. Additionally, Concessionaire must comply with all federal, State, and municipal laws and ordinances relating to alcoholic beverages, beer, or liquor. Prior to any beer, wine, or liquor sales, Concessionaire must obtain the appropriate Park City license(s) and provide proof of the required Dramshop coverage.

27. **Party at Fault.** In the event either party shall enforce the terms of this Lease Agreement by suit or otherwise, the party found to be at fault by a court of competent jurisdiction shall pay the costs and expenses of the prevailing party, including reasonable attorney's fees.

28. **Failure to Perform Covenant.** Any failure on the part of either party to this Lease Agreement to perform any obligation hereunder, and any delay in doing an act required hereby shall be excused if such failure or delay is caused by any strike, lockout, governmental restriction, or act of God, or any similar cause beyond the control of the parties so failing to perform.

29. **No Assignment or Sublet.** The covenants and agreements contained within this Lease Agreement shall apply to the benefit of and be binding upon the parties hereto and shall not be assigned.

30. **Sublease.** Concessionaire shall not sublease Premises.

31. **Time.** Time is of the essence of this Lease Agreement and every term, covenant, and condition herein contained.

32. **Paragraph Headings.** The paragraph headings as to the contents of particular paragraphs herein are inset only for convenience and are in no way to be construed as part of such paragraphs or as a limitation in the scope of the particular paragraph to which they refer.

33. **Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing by United States mail, postage prepaid and

registered and addressed to the below-listed address of the party or to such other address as the parties may from time to time designate in writing.

As to City:

Park City Municipal Corp.  
City Attorney  
P O Box 1480  
Park City UT 84060

As to Concessionaire:

\_\_\_\_\_  
\_\_\_\_\_

34. **Independent Contractor Relationship.**

A. The parties intend that an independent Concessionaire/City relationship will be created by this Lease Agreement. No agent, employee, or representative of the Concessionaire shall be deemed to be an employee, agent, or representative of the City for any purpose, and the employees of the Concessionaire are not entitled to any of the benefits the City provides for its employees. The Concessionaire will be solely and entirely responsible for its acts and for the acts of its agents, employees, or representatives during the performance of this Lease Agreement.

B. In the performance of the services herein contemplated, the Concessionaire is an independent contractor with the authority to control and direct the performance of the details of the coffee shop/cafe; however, the service and products contemplated herein must meet the approval of the City and shall be subject to the City's general rights of inspection and review to secure the satisfactory fulfillment thereof.

35. **Prohibited Interest.** No member, officer, or employee of the City shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

36. **Severability.**

A. If, for any reason, any part, term, or provision of this Agreement is held by a court of the United States or any state thereof to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Utah, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform in such statutory provisions.

37. **Entire Agreement.** This Lease Agreement constitutes the entire and only agreement between the parties with respect to this concession and it cannot be altered except by written instrument, signed by both parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Lease Agreement on the day and year first above-written.

**PARK CITY MUNICIPAL CORPORATION**

\_\_\_\_\_  
Jack Thomas, Mayor

Attest:

\_\_\_\_\_  
Michelle Kellogg, City Recorder

Approved as to form:

\_\_\_\_\_  
Polly Samuels McLean, Assistant City Attorney

\_\_\_\_\_  
Concessionaire

STATE OF UTAH )

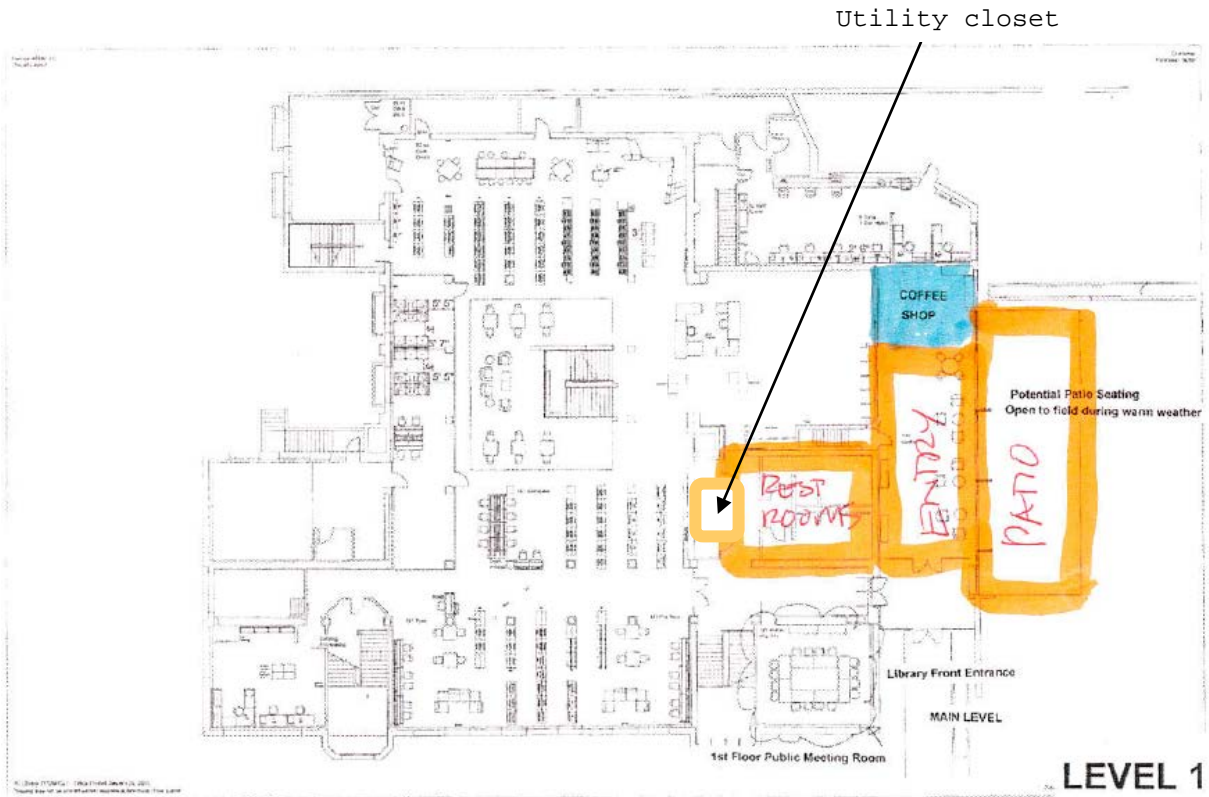
) ss.

COUNTY OF SUMMIT )

On this      day of                      , 2017 before me, the undersigned notary public, personally appeared \_\_\_\_\_, personally known to me/proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same.

\_\_\_\_\_  
Notary Public  
My commission expires:

# Exhibit A – Leased Spaces



- EXCLUSIVE



- Non EXCLUSIVE