

ATTACHMENT E

Brewpoint Coffee Presentation and Concessionaire Approval

Melissa Villaneuva will present her vision for the Library café. Melissa is the owner of Brewpoint Coffee in Elmhurst. She has a thriving business with local name recognition and a substantial customer following.

I sent the concessionaire agreement that we have with More than Mocha to our lawyers to review and amend. Attached is the amended version.

THEREFORE BE IT RESOLVED that the Board of Trustees of the Elmhurst Public Library votes to approve the concessionaire agreement with Brewpoint Coffee for a three year term as outlined in the agreement.

**ELMHURST PUBLIC LIBRARY  
CONCESSIONAIRE AGREEMENT**

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the ELMHURST PUBLIC LIBRARY, a City Library ("Library") and, \_\_\_\_\_ ("Concessionaire").

**WHEREAS**, the Library desires to make available coffee, pastries, and related products and services for the use and convenience of patrons of the Elmhurst Public Library, located at 125 S. Prospect Avenue, and for the general public; and

**WHEREAS**, the Concessionaire is willing and able to provide such services pursuant to the terms and conditions of this License Agreement, including any attachments, appendices, addendums and exhibits that may be incorporated herein and made a part hereof.

**NOW THEREFORE**, the Library and Concessionaire agree as follows: In consideration of the payments hereinafter provided for, the keeping and performance of the covenants and agreements by the Concessionaire hereinafter set forth, the Library hereby grants to said Concessionaire the privilege to operate a coffee concession at the Elmhurst Public Library located in the County of DuPage, City of Elmhurst, State of Illinois ~~which is shown on Exhibits "A" and "B" of this Agreement which are attached hereto and hereby fully incorporated herein~~. The Concessionaire has visited the facilities, and has had access to and has negotiated with various Library officials and representatives, and accepts the terms and conditions of this Agreement.

**1. DEFINITIONS**

The following terms, as used in this Agreement, are defined as follows:

(A) "Concessionaire" - The entity to which the Library has granted the license and privilege to operate the Concession on, at and from the Premises, subject to the terms, conditions and covenants herein. This term also includes the agents, employees or assignees of said Concessionaire. It is understood, acknowledged and agreed by the parties hereto that the relationship of Concessionaire to the Library arising out of this Agreement shall be that of an independent contractor and that there is no relationship of principal and agent between the Concessionaire and the Library, and that this Agreement shall not be construed in any way as creating the relationship of agency, partnership or joint venture between the

parties hereto. Neither Concessionaire nor any employee or agent of Concessionaire is an employee or agent of the Library.

- (B) "Concession" - The license and privilege granted pursuant to this Agreement by the Library to the Concessionaire to serve coffee, pastries and related products approved by the Library, to the general public and Library patrons at or from the Premises.
- (C) "Library Building" - The areas set out in Exhibits "A" and "B" of this Agreement that are designated as the Library, such Exhibits attached hereto and incorporated herein.
- (D) "Premises" - The concession area located in the Library Building and designated as such in Exhibits "A" and "B".

## 2. PURPOSE

- (A) It is the intent of this Agreement to provide for a concession operation upon the Premises covered by this Agreement with only such exceptions and limitations as may be specifically noted herein.
- (B) In interpreting this Agreement, words describing materials or work that have a well-known technical or trade meaning, unless otherwise specified herein, shall be construed in accordance with such well known meaning recognized by the trade.
- (C) This grant is of a bare license only for the use of the Premises for the Concession purpose above, and Concessionaire shall have no rights as a tenant or lessee by law, equity, or otherwise, in the Premises or any other part of the Library Building.

## 3. TERM OF AGREEMENT

- (A) The initial term of this Agreement shall be from \_\_\_\_\_, when the Library shall make available the ~~the~~ Premises to Concessionaire in a condition suitable for the Concessionaire's Concession business operation, through \_\_\_\_\_, ~~unless renewed for one additional three (3) year term,~~ or unless terminated earlier, as provided for herein. The Concessionaire agrees to begin operations no less than 60 days from the date of this Agreement.
- (B) Nothing in this Agreement precludes the parties from negotiating an

extension of this Agreement for one additional three (3) year term, -beyond the initial term ending date. The Library shall endeavor to give written notice to Concessionaire on or before \_\_\_\_\_ of its intent to renew this Agreement for an additional three (3) years or its intent to terminate same. The Concessionaire shall give written notice to the Library of its desire to renew or terminate this Agreement on or before \_\_\_\_\_. Termination will occur on \_\_\_\_\_, or the renewal term shall begin on \_\_\_\_\_, as the case might be, provided the parties reach an agreement as set forth below.

- (C) Approval of the three (3) year renewal shall be subject to the sole discretion of the Library and the Library's sole determination of satisfactory performance by the Concessionaire of the terms and conditions of this Agreement, as well as the mutual agreement between the parties regarding the Monthly Concession Fee. If the parties are unable to mutually agree upon these terms within thirty (30) days after notices of intent have been sent, then the Library in its sole discretion shall have the right to terminate this Agreement after the initial term of the Agreement and to immediately request proposals for a new eConcessionaire at the Premises or to terminate the eConcession and use the Premises for other purposes.

#### 4. SCOPE OF WORK

- (A) The scope of work to be performed under this Agreement is the furnishing of a top quality Concession operation for the sale and service of the highest quality coffee, pastries and Library approved related items to the general public and the patrons of the Library. ~~The Concessionaire shall comply with the guidelines and standards that are contained in Exhibit "C", which is hereby attached hereto and fully incorporated herein.~~
- (B) The privilege granted by the Agreement shall be exclusive to Concessionaire for the sale of all coffee, pastries and Library approved related items on the Premises. The Library reserves the right to conduct or operate other concessions upon the Premises which do not compete with Concessionaire. Any privilege not specifically granted to the Concessionaire herein is retained by the Library.
- (C) The Concessionaire will:
- (i) Fully carry out all activities and Pprovide all coffee, pastries, and Library approved related products and services available on the Premises; as required by and limited by this Agreement.

- Concessionaire's provision of coffee, pastries and related Library approved products shall be consistently high in quality and shall at all times be sanitary, orderly and sufficient to meet public demand;
- (ii) Employ, train, and manage all personnel required to properly operate and maintain the Concession and the Concession equipment in a clean, orderly and inviting condition reasonably satisfactory to the Library Director. At all times during the Agreement term, Concessionaire shall maintain the Premises and all personal property located therein in a clean, neat, orderly, and safe condition, including all fixtures for customer's convenience, and including without limitation, collection and proper disposition of trash in receptacles. Concessionaire shall employ at its own cost and expense, a sufficient number of qualified personnel, and agrees that the services provided by such personnel to the public shall be provided in a courteous, businesslike and efficient manner;
  - (iii) Obtain the licenses, permits, and certificates required to operate the Concession. Concessionaire represents and warrants that it is familiar with and shall specifically comply with any and all requirements for operation of its establishment, as defined in the applicable statutes, codes, ordinances and regulations of the City of Elmhurst, County of DuPage and State of Illinois. Concessionaire shall abide by the laws of the United States, State of Illinois, and all applicable Library codes, ordinances and regulations. Concessionaire agrees to adhere to all Federal, State and Local laws, rules and regulations that may pertain to the Food Service Industry, including but not limited to, paying for all necessary licenses, permits and inspections;
  - (iv) Equip the Premises and operate the Premises ~~in compliance with the provisions provided in Exhibit "C"~~. The Library reserves the right of approval for all equipment and furnishings brought into the Library by Concessionaire.
  - (v) Concessionaire agrees to comply and to cause its employees to comply fully with the Federal Equal Employment Opportunities Act and the Illinois Human Rights Act, Americans with Disabilities Act and all applicable rules and regulations promulgated thereunder and all amendments made thereto, and Concessionaire represents, certifies and agrees that no person shall be denied or refused service or other full or equal use of Concessionaire's services, or denied employment opportunity by Concessionaire on the basis of race, creed, color, religion, sex, national origin or ancestry, age, disability unrelated to ability, marital status, or unfavorable discharge from military service.

- Concessionaire agrees to operate the Premises as a public facility and in a non-discriminatory manner ~~and in compliance with the guidelines and standards contained in Exhibit "C"; and~~
- (vi) Promote and market the Concession to the general public, provided however that no sign, advertisement, display, notice, or other lettering shall be exhibited or affixed to any part of the Premises without the Library's prior written approval. The Library does not, by virtue of such approval, support or endorse the products offered by the Concessionaire. The name of the Concession business, if any, will be determined by the Concessionaire subject to final written approval by the Library; and
  - ~~(vii) Concessionaire shall maintain itself in good standing to do business under the~~ Concessionaire shall maintain itself in good standing to do business under the laws of the State of Illinois.

## 5. USE OF PREMISES

- (A) Concessionaire shall have the privilege of using the Premises for the sole purpose of the sale of coffee, pastries, and Library approved related products, ~~and the serving of same subject to the standards and guidelines set out in Exhibit "C" of this Agreement.~~ Concessionaire shall not use or permit the Premises to be used for any purpose that is prohibited by any law of the State of Illinois or the City of Elmhurst. The Premises shall not be sublet in whole or in part.
- (B) Entertainment of any nature, including but not limited to background music and DSL or cable installation is prohibited.
- (C) Concessionaire shall maintain all signs or advertisements approved by the Library in good and attractive condition at the Concessionaire's expense.

## 6. RESTRICTIONS ON USE OF PREMISES

- (A) Concessionaire shall not:
  - (i) Permit any unlawful practice to be carried on or committed on the Premises;
  - (ii) Make any use or allow the Premises to be used in any manner or for any purpose that might invalidate or increase the rate of insurance maintained by the Library; including storage or use or permitting to be kept or used on the Premises any inflammable fluids, toxic materials, or substance of any nature reasonably deemed dangerous by the Library or the Library's insurance carriers without obtaining prior written consent of the Library, except for small quantities of

- [commercially available](#) cleaning products;
- (iii) Use the Premises for any purpose that creates a nuisance or injures the reputation of the Premises or the Library;
- (iv) Permit any odors to emanate from the Premises in violation of any local, state, or federal law;
- (v) Use any portion of the Premises for storage or other purposes except as is necessary and required with its use specified in this Agreement;
- (vi) Permit tobacco products to be used by any person in, on, or at the Premises which location has been designated in whole as "smoke free" by City Ordinance; [Concessionaire shall not sell or permit to be sold, used or brought upon the Premises under Concessionaire's reasonable control any intoxicating or alcoholic beverages;](#)
- (vii) Conduct, or allow to be conducted, gambling on site;
- (viii) Concessionaire shall not place or permit any sign, advertisement, display, notice, or other lettering permitted by the City of Elmhurst to be exhibited or affixed to any part of the Premises without the Library's prior written approval; and
- (ix) Display, sell or offer for sale books, magazines, periodicals, or other printed matter, and/or photographs, films, motion pictures, video cassettes, DVDs, tapes or other forms of visual or audio representations.

## 7. IMPROVEMENTS

The Library maintains the right to modify or alter the improvements of the Premises at any time and in any manner. Concessionaire shall make no improvements or alterations to the Premises without prior written approval of the Library; PROVIDED HOWEVER, THAT CONCESSIONAIRE MAY MAKE CORRECTIONS NECESSARY TO PREVENT IMMINENT INJURY TO PERSONS OR PROPERTY. [All changes shall be the property of the Concessionaire at all times, except that title to any fixtures and modifications that are built into or permanently fastened to the walls, floors, electrical or plumbing infrastructure of the Premises shall pass to the Library at the termination of this Agreement whether by expiration or pursuant to any of the provisions of this Agreement, without any payment from the Library to the Concessionaire for such fixtures. Upon the Agreement termination, the Concessionaire may remove all non-fixture items and all other furniture and/or equipment not belonging to the Library.](#)

## 8. MAINTENANCE

All maintenance and repairs to the Premises including plumbing, water lines, and

sewer lines shall be the responsibility of the Library; provided however, that any maintenance and repairs, regardless of cost, necessitated by the negligent or intentional acts of the Concessionaire, ~~shall be the sole responsibility of the Concessionaire. Concessionaire shall further be responsible for maintenance as described in Exhibit "C".~~

## 9. EQUIPMENT

The Library and the Concessionaire shall each have their respective responsibilities to provide and maintain equipment. ~~Concessionaire shall be responsible for all necessary professional equipment, including the installation, to perform the function of the coffee area.~~

~~The Library will provide the following equipment:~~

- ~~\* Floor space for vending and seating~~
- ~~\* Tables and chairs for the seating area. The seating area will be available to all library patrons even if they have not purchased items from the cafe.~~
- ~~\* ~~Painted gypsum board walls~~ Wall surface to meet DuPage County Health Dept. requirements.~~
- ~~\* 220 V circuits for brewers and espresso machine. 120v AC electrical service with outlets for ~~coffeemaker, espresso machine, microwave and cash register~~ additional equipment.~~
- ~~\* Voice and data connections at vending area.~~
- ~~\* Hot and cold domestic water service with 140-degree water available.~~
- ~~\* Basic sewer service connections~~
- ~~\* Service bar~~
- ~~\* ~~Countertops in rear and along one side wall~~~~
- ~~\* ~~Double~~ Triple sink plus separate handwashing sink.~~
- ~~\* Under counter refrigerator and ~~dishwasher~~ freezer; ice machine~~
- ~~\* ~~Trash cans and waste disposal dumpster service~~~~
- ~~\* Use of janitor's mop closet in vestibule.~~
- ~~\* General cleaning of the lobby every day after closing.~~

~~The Concessionaire will provide the following equipment:~~

- ~~\* All necessary professional equipment, including installation, to perform the function of the coffee area including, but not limited to, beverage equipment, microwave, and glass display cases~~

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- ~~\* Signage and menu boards, which are subject to approval. Interior signage will be limited to the vending area. No exterior signage will be allowed.~~
- ~~\* Commercial quality paper/plastic ware and other utensils required for the serving and consumption of the menu items.~~
- ~~\*Cleaning of the coffee service area.  
as set forth and described in Exhibit "C".~~

#### 10. UTILITIES

All utilities provided to the Premises, with the exception of electricity, shall be at no cost to the Concessionaire. The Concessionaire shall be responsible for the prompt payment of any monies due and owing for the amount of electricity used on the Premises. A telephone jack has been installed on the Premises, and the Concessionaire shall be responsible for the prompt payment of any charges associated with the connection and use of that line. Said telephone line is to be separate from the phone system used by the Library.

#### 11. OTHER OPERATIONS AND ACTIVITIES

The Concessionaire shall conduct its Concession without infringing on the rights of others, or interfering in the operation of the Library. It shall not engage in any business to sell any commodity upon, in, or around the Premises other than as expressly set out in this Agreement. The Concessionaire shall cooperate so as not to interfere with the holding or carrying on of any event or activity in or upon the Library Building, and shall not create unreasonable noise or annoyance to those participating in or attending such events, or using the Library.

#### 12. HOURS OF OPERATION

Monday through Friday the Concessionaire shall operate between the hours of 9:00 a.m. and 8:00 p.m. On Saturday, Concessionaire shall operate between the hours of 9:00 a.m. and 5:00 p.m. On Sunday, Concessionaire shall operate between the hours of 1:00 p.m. and 5:00 p.m. The Concessionaire shall not operate during any other hours, nor on ~~days that are official Library holidays, as listed as Holidays for the Library in Exhibit "C"~~, except as may be mutually agreed upon by the parties in writing. Should the Library not be operating at one of the above referenced times due to factors beyond the Library's control such as a snow storm, power outage, and the like, the Concessionaire shall not operate and shall not be entitled to a reduction or abatement of any fees listed under Section 16 entitled "Payments." In the event of emergency closings and evacuations, the Concessionaire customers and staff shall comply with the Library's policies and procedures. Concessionaire is

[responsible to notify the Library Director or her assistant in the event the Concessionaire needs to close.](#)

**13. PERMITS AND LICENSES**

The Concessionaire shall procure, supply, and post, at its own expense, in visible places upon the Premises, all permits and licenses necessary for the operation of the Concession. In addition, Concessionaire shall pay, at its own expense, all taxes assessed or levied against its business and merchandise and all real estate taxes, if any, or other charges applicable to or assessed, against the Concessionaire, the Premises, the business conducted thereon, and the improvements placed thereon for the term of this Agreement even though such taxes or charges may not become due and payable until after the expiration or termination of this license Agreement and, accordingly, the Concessionaire obligations under this section shall survive expiration or termination of this Agreement. If Library shall terminate this Agreement during the term hereof for any reason, the general taxes for the year in which the Concession is so terminated shall be prorated from January 1<sup>st</sup> to the date on which Concessionaire shall deliver possession of the premises to the Library. If Concessionaire shall terminate this Agreement during the term hereof for any reason, the general taxes for the full year in which the Agreement is so terminated shall be paid by the Concessionaire. Final tax payments will be computed on the latest ascertainable tax information.

If any such taxes or charges shall have been paid by the Library, Concessionaire agrees to reimburse the Library within twenty (20) days after presentation of a bill therefore with appropriate prorations as may be applicable. In default of such reimbursements, all sums so paid by Concessionaire shall be deemed an addition to the Base Concession Fee and recoverable as such.

**14. FAILURE TO MEET STANDARDS AND GUIDELINES**

If the services being performed by the Concessionaire do not, in the opinion of the Library, meet the standards and guidelines as set forth in this Agreement, the Library shall notify the Concessionaire of any such violations in writing sent to \_\_\_\_\_ . Failure to cure the written violations within thirty (30) days of the mailing of notification shall be deemed a default.

**15. ACCESS AND INSPECTION**

A representative of the Library may enter the Premises at any reasonable time for the purpose of inspecting same. [The Concessionaire shall permit the Library or its representatives access to the Premises and will provide the Library with keys or](#)

[combinations for entryways](#). Any entry onto or inspection of the Premises by the Library pursuant to this section shall not constitute interference with the operations of the Concessionaire and no abatement of any payments due under this Agreement shall be allowed; provided, however, the scope and length of the inspection shall be reasonable.

## 16. PAYMENTS

(A) Concession Fee: Concessionaire shall pay to the Library a ~~M~~monthly ~~C~~concession ~~F~~fee of \$100 commencing ~~on~~ \_\_\_\_\_ and on the first of the month thereafter as long as this Agreement remains in effect. This fee shall be paid to the Library each month without notice or demand and without deduction or offset, at the address specified for the Library in the Section of this Agreement entitled "Notices", or at any other such place as the Library shall designate.

(B) Late Payment: If Concessionaire is delinquent for twenty (20) days or longer in paying any amounts owed to the Library under the Agreement, Concessionaire shall pay a late fee to the Library equal to 1.5% of the sum of the Monthly Concession Fee, accrued monthly until the payment is made in full. Failure to make any payment owed to the Library pursuant to this Agreement for a period of more than sixty (60) days shall result in an automatic termination of this Agreement.

## 17. AUTHORITY OF DOCUMENTS

To the extent that this document is in conflict with any of the terms contained in the attachments, exhibits, addendums, or any other document that has been incorporated hereto or made a part of this Agreement, the language, terms and conditions in this document shall control.

## 18. OTHER PAYMENT OBLIGATIONS

(A) [Concessionaire shall make all necessary applications for a federal identification tax number, state sales tax number and a payroll tax number; and file all tax returns as required by law.](#) The Concessionaire shall promptly pay all taxes and fees of whatever nature, applicable to the operation of the Concession, and shall maintain all licenses, municipal, state or federal, required for the conduct of business, and shall not permit any of said taxes or fees to become delinquent. The Concessionaire shall pay promptly when due all bills, debts, and obligations, including, but not limited to, charges for electricity as set out herein, as well as charges for telephone service and all other costs and expenses related to the operation of the Concession, and shall not permit same to become delinquent or

suffer any lien, mortgage, judgment, execution, or adjudication in bankruptcy which will in any way impair the rights of the Library under this Agreement. All such costs and expenses are to be borne by the Concessionaire. The filing of any lien, mortgage or other encumbrance on title to the Library Building or any portion thereof shall be deemed a default by Concessionaire and the Library, upon written notice to Concessionaire, shall have the right, to terminate this Agreement as a consequence thereof.

- (B) The Library shall pay promptly all bills, debts, obligations and fees of whatever nature applicable to its operation of the Library in general, including but not limited to its portion of the utility services provided to Concessionaire hereunder and shall not permit the same to become delinquent and suffer any lien, mortgage, judgment, execution or adjudication in bankruptcy which will in any way impair the privileges extended to the Concessionaire under this Agreement.

## **19. INDEMNIFICATION**

- (A) The Concessionaire agrees to indemnify and hold harmless the City of Elmhurst and the Elmhurst Public Library, their officers, employees, insurers, Library Trustees, and self-insurance pool, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of Concessionaire's operation of the Concession, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Concessionaire, any subcontractor of the Concessionaire, any subcontractor of the Concessionaire for whom Concessionaire is liable, or any officer, director, shareholder, member, employee, representative, or agent of the Concessionaire, or which arise out of any workers' compensation claim of any employee of the Concessionaire or of any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, respond to, and to provide defense for and defend with legal counsel approved by the Library Board, against any such liability, claims or demands at the sole expense of the Concessionaire, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, regardless of whether any such liability, claims, or demands alleged are groundless, false, or fraudulent.

(B) The Library agrees to indemnify and hold harmless the Concessionaire, its officers and employees, from and against all liability, claims, and demands on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Library, any subcontractor of the Library for whom Library is liable, or any officer, employee, representative, or agent of the Library, or which arise out of any workers' compensation claim of any employee of the Library or of any employee of any subcontractor of the Library. The Library agrees to investigate, respond to, and defend against any such liability, claims or demands at the sole expense of the Library, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, regardless of whether any such liability, claims, or demands alleged are groundless, false, or fraudulent.

## **20. ATTORNEYS FEES**

If any action is brought to recover any monies on account of any Event of Default or other breach of this Agreement, or for the recovery of the possession of the Premises, or otherwise, the prevailing party shall be entitled to recover from the other party, as part of prevailing party's costs, reasonable attorneys' fees, the amount of which shall be fixed by the court and shall be made a part of any judgment.

## **21. INSURANCE; INDEMNIFICATION**

The Library shall carry property and casualty insurance in amounts as it sees fit. The Concessionaire shall secure and maintain at least two million dollars (\$2,000,000.00) in liability insurance coverage with the Library, the City of Elmhurst, their agents, officials and employees named as additional insureds on a primary non-contributory basis. Concessionaire will also carry business personal property insurance covering all equipment and inventory and workers' compensation insurance as required by law. The aforesaid insurance coverage shall be issued by companies licensed to do business in Illinois and acceptable to the Library Board. Concessionaire will provide to the Library certificates of insurance for all applicable policies. Concessionaire will indemnify and hold Library harmless as set forth in Section 19 hereof and such obligation shall not be limited by insurance coverage limits. The Library shall not be responsible for theft, damage, or loss of property.

## **22. NON DISCRIMINATION**

- (A) The Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability national origin or on any other basis prohibited by state or federal laws. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessionaire agrees to post as required by law, all notices to employees setting forth the provisions of the Equal Opportunity Laws and other laws relating to rights of employees.
- (B) Concessionaire shall not discriminate against any customer, guest, library patron, employee or visitor because of race, color, religion, age, sex, disability national origin or on any other basis prohibited by state or federal laws and shall treat all persons with dignity and respect. Failure to comply with this paragraph shall be an event of default.

**23. TERMINATION**

- (A) This Agreement may be terminated by either party for any reason or no reason by giving a ninety (90) day written notice to the other party sent to the address listed herein under Section 30 entitled "Notices", or to any other person or address as specified provided notice thereof is served as set forth in Section 30.
- (B) This Agreement may be terminated by the Concessionaire, and the Concessionaire may be entitled to an abatement or reduction of Concession Fee and the Concessionaire may be entitled to quit all or any part of the Premises or be released from any obligations hereunder upon thirty (30) days prior written notice for the following reasons:
  - (i) Damage to all or a substantial part of the Premises not caused by Concessionaire;
  - (ii) Condemnation or other taking of all or a substantial part of the Premises;
  - (iii) Any limitation or prevention of, or any interference with, any use or possession of all or a substantial part of the Premises by the Library;
  - (iv) Force majeure causing an inability to perform, due to factors beyond Concessionaire's control such as acts of God, flood, war, riot, fire, explosion, strikes, or acts of government which last for a period greater than one hundred eighty (180) days;
  - (v) Any final order or judgment by any court, administrative agency or other governmental authority requiring such; or

- (vi) Any material breach by the Library as stated herein provided that the Library is given a period of thirty (30) days following the mailing or delivery of the written notice to cure same.
- (C) This Agreement may be terminated by the Library upon thirty days' notice if any of the following occurs:
- (i) Concessionaire fails to make any payment when due of the Concession Fee; provided, however, Concessionaire shall have a grace period of thirty (30) consecutive days within which to make such payment to the Library;
  - (ii) Any material breach of the terms and conditions of this Agreement or the occurrence of an event of default;
  - (iii) Concessionaire, while in possession of the Premises, files a petition for bankruptcy or insolvency or for reorganization under the Bankruptcy Act, or voluntarily takes advantage of such Act by answer or otherwise, or makes an assignment for the benefit of creditors; or
  - (iv) If proceedings are instituted against Concessionaire under any bankruptcy or insolvency law or if a receiver or trustee is appointed for all or substantially all of Concessionaire's property, and such proceedings or receivership or trusteeship are not vacated or dismissed within thirty (30) days after such institution or appointment.

If any of the foregoing events occur, the Library may, as the non-breaching party, enter the Premises, remove any personal property, and store such property in a public warehouse or elsewhere at the cost of Concessionaire.

#### **24. DELIVERY AFTER TERMINATION**

Concessionaire will deliver the Premises and all Library-owned equipment thereon, if any, to the Library at the termination of this Agreement in as good condition and state of repair as when received, except for ordinary wear and tear, or loss and damage not otherwise caused by Concessionaire. Upon termination of the Agreement by its expiration or otherwise, the Concessionaire shall promptly remove, at its own expense, its property from the Premises and the Library Building, all such property not removed within thirty (30) days after this Agreement has been terminated shall thereupon become the sole and exclusive property of the Library.

**25. CUMULATIVE RIGHTS**

No right or remedy is intended to be exclusive of any other right or remedy and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity. The failure of either party to insist at any time upon the strict performance of any covenant or to exercise any right contained in this Agreement shall not be construed as a future waiver. The Library's receipt of any Concession Fees with knowledge of the breach of any covenant contained in this Agreement shall not be deemed a waiver of such breach. Neither party shall be deemed to have made any waiver of this or any provision of this Agreement unless expressed in writing and signed by such party. [The waiver by the Library of any breach, default, or noncompliance by the Concessionaire under any provision of this Agreement shall not be deemed to constitute a waiver of such provision for any subsequent breach, default or non-compliance on the part of the Concessionaire, of the same or any other provision. The acceptance of any payment by the Library, shall not be deemed to constitute a waiver of any prior occurring breach or default by Concessionaire of any provision of the Agreement regardless of the Library's knowledge of such breach or default at the time of its acceptance of such payment.](#)

**26. VENUE AND GOVERNING LAW**

Venue for any and all legal action regarding this Agreement shall lie in the Circuit Court for the 18<sup>th</sup> Judicial Circuit, DuPage County, Illinois, and to all courts to which appeals may be taken therefrom. This Agreement shall be governed by the laws of the State of Illinois, and the Ordinances of the City of Elmhurst. Concessionaire agrees that if personal service on Concessionaire cannot be reasonably accomplished, any and all notices, pleadings, and process may be made by serving two (2) copies of the same upon the Illinois Secretary of State, State Capitol, Springfield, Illinois and by mailing by return mail an additional copy of the same to Concessionaire at the address shown in Section labeled "Notices" herein; that said service shall be considered as valid personal service and judgment may be taken



if, within the time prescribed by Illinois law and Supreme Court Rules, appearance, pleading, or answer is not made.

**27. LICENSE AGREEMENT**

For the purposes of defining Concessionaire's relationship with Library and the nature of this Agreement, it is understood and agreed that this is a License Agreement, and not a lease, notwithstanding any terms, conditions, restrictions or covenants contained herein that may appear to the contrary. Concessionaire is a Licensee only and nothing herein contained shall constitute or designate the Concessionaire or any of its employees or agents as agents or employees of the Library, nor shall Concessionaire be deemed to be engaged in a partnership or joint venture with the Library nor a tenant of the Library. The Concessionaire understands and agrees that Concessionaire nor any of Concessionaire's employees or agents is not entitled to nor shall receive any Library benefits, including vacation, worker's compensation, sick pay or any other benefits from Library.

**28. ASSIGNMENT**

Neither Concessionaire, nor Concessionaire's successors or assigns, shall assign this Agreement, in whole or in part, nor shall this Agreement be assigned or transferred by operation of law, or otherwise, without the prior consent in writing of the Library in each instance. The sale or transfer of a controlling interest, or any interest in excess of twenty-five percent (25%) of the capital shares of Concessionaire or its assigns, or any merger which effects a similar transfer of a controlling interest in Concessionaire or its assigns, shall be deemed to be an assignment of this Agreement. If this Agreement is assigned or transferred, or the Premises are occupied by anyone other than the Concessionaire, the Library may, after default by Concessionaire, collect Concession Fees from the assignee, transferee, or occupant, and apply the net amount collected to the Concession Fees reserved herein, but no such assignment, transfer, occupancy or collection shall be deemed a waiver of any agreement, term, covenant or condition of this Agreement, or the acceptance of the assignee, transferee, or occupant, or a release of Concessionaire from the performance or further performance by Concessionaire of the agreements, terms, covenants and conditions hereof, and the party originally constituting the Concessionaire under this Agreement shall continue to be liable under this Agreement in accordance with all the terms, covenants, and conditions of this Agreement. The consent by the Library to an assignment or transfer shall not in any way be construed to relieve Concessionaire from obtaining the express consent in writing of the Library to any subsequent or further assignment or transfer.

**29. MODIFICATION**

All of the representations and obligations of the parties are contained herein. No modification, waiver, or amendment of this Agreement, or any of its terms, shall be binding upon the library unless such are in writing and signed by a duly authorized officer of the Library.

### 30. NOTICES

(A) All notices, demands and communications hereunder shall be personally served or given by certified or registered mail or via trackable overnight courier, and

\_\_\_\_\_ (i) If intended for Library, shall be addressed to Library at:

Elmhurst Public Library  
Attn: Library Director  
125 S. Prospect Avenue  
Elmhurst, Illinois 60126

With a copy to:

\_\_\_\_\_ Dennis G. Walsh  
\_\_\_\_\_ Klein, Thorpe & Jenkins, Ltd.  
\_\_\_\_\_ 20 N. Wacker Drive – Suite 1600  
\_\_\_\_\_ Chicago, Illinois 60606

\_\_\_\_\_ (ii) If intended for Concessionaire, shall be addressed to:

or to such other persons or addresses provided notice thereof is served as provided in this Section.

(B) Any notice given by mail shall be deemed delivered when sent by certified mail or via trackable overnight courier, addressed as above, with postage or fees prepaid, or when served personally at the applicable address.

### 31. CAPTIONS AND PARAGRAPH HEADINGS

The captions and paragraph headings are for convenience only and shall not be used in construing this Agreement.

### 32. ENTIRE AGREEMENT

This is the entire agreement between the parties and there are no other terms, obligations, covenants, representations, statements, or conditions, oral or written, of any kind whatsoever. Any agreement hereafter made shall be ineffective to

change, modify, discharge or effect an abandonment of this writing.

**33. SEVERABILITY**

If any clause or provision of this Agreement is declared illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby. It is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

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

Signature

\_\_\_\_\_  
Print Name

Elmhurst Public Library  
\_\_\_\_\_, President

Signature

\_\_\_\_\_

Print Name

Attest By: \_\_\_\_\_, Secretary

Signature

\_\_\_\_\_

Print Name

