

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: JUNE 21, 2018

AGENDA ITEM NUMBER: 18

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND DUNCAN THOMAS PRIEST II D/B/A COFFEE PARK, FOR LEASE OF COUNTY OWNED PROPERTY LOCATED IN THE FORSYTH COUNTY CENTRAL LIBRARY AT 660 WEST FIFTH STREET, WINSTON-SALEM, N.C. PURSUANT TO THE PROVISIONS OF N.C.G.S. 160A-272 (GENERAL SERVICES DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE: *Dudley Watts Sr/ams*
COUNTY MANAGER

DATE: June 19, 2018

RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND DUNCAN THOMAS PRIEST II D/B/A COFFEE PARK FOR LEASE OF COUNTY OWNED PROPERTY LOCATED IN THE FORSYTH COUNTY CENTRAL LIBRARY AT 660 WEST FIFTH STREET, WINSTON-SALEM, N.C. PURSUANT TO THE PROVISIONS OF N.C.G.S. 160A-272 (GENERAL SERVICES DEPARTMENT)

WHEREAS, Forsyth County owns real property located at 660 West Fifth Street, Winston-Salem, N.C. in which it intends to execute a two-year lease of 285 square feet of commissary space and equipment located on the first floor of the Forsyth County Central Library at a rate of 5% gross sales payable in monthly installments, not to exceed \$1,000.00 in any one month; and

WHEREAS, Duncan Thomas Priest II d/b/a Coffee Park desires to execute a two-year lease agreement with Forsyth County; and

WHEREAS, pursuant to the provisions of N.C.G.S. 160A-272, a thirty-day notice has been given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the Forsyth County Board of Commissioners' intent to authorize the lease or rental at its June 21, 2018 regular meeting; and

WHEREAS, the above-described property will not be needed by Forsyth County for any County purpose during the term of the proposed lease; and

NOW, THEREFORE, BE IT RESOLVED by the Forsyth County Board of Commissioners that the above-described property will not be needed by Forsyth County during the term of the proposed lease.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute the above-described Lease Agreement, on behalf of Forsyth County, with Duncan Thomas Priest II d/b/a Coffee Park, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The proposed Lease Agreement is attached hereto and incorporated herein by reference.

Adopted this 21st day of June 2018.

LEASE AGREEMENT

THIS AGREEMENT, made and entered into on July 1, 2018, by and between Forsyth County ("Landlord"), a political subdivision of the State of North Carolina, and Duncan Thomas Priest II dba Coffee Park ("Tenant"), a North Carolina licensed business;

For the purpose and subject to the terms and conditions hereinafter set forth, the parties agree that Landlord shall lease to Tenant the properties hereinafter set forth.

1. PREMISES

Landlord, for and in consideration of the rents, conditions, and consideration hereinafter mentioned, provided for and covenanted to be paid, kept and performed by Tenant, leases to Tenant approximately two hundred eighty-five (285) square feet of area within the Central Library Building located at 660 West Fifth Street, Winston-Salem, North Carolina, as shown in Exhibit A, attached hereto and incorporated herein by reference (hereinafter called the "Premises").

As part of the Premises, the County will provide the following equipment for Tenant's use during the course of this Agreement: a service counter, refrigerated display units, a 240 volt outlet, storage cabinets, sink, work area, and storage room with a refrigerator. Tenant accepts the conditions of the Premises AS-IS.

2. TERM

The Tenant shall have and hold the Premises for a term of two years beginning on July 1, 2018, and ending on June 30, 2020, unless sooner terminated as hereinafter provided. Notwithstanding anything to the contrary herein, either party may terminate the Agreement, for any reason or for no reason, by providing written notice of at least 30 days.

3. RENTAL

Tenant agrees to pay Landlord without demand, deduction or set off, a monthly rental for the Premises of 5% of his Gross Sales but not to exceed \$1,000 in any month. Rental shall be due the first day of each month. Tenant will send with his monthly rental payment cash register tapes and sales and revenue reports along with any other reports requested by the County as verification of its monthly sales.

4. LATE CHARGES

If rent payment is not postmarked or hand delivered within 15 days after it becomes due, Tenant shall pay Landlord, as additional rental, a late charge equal to five percent (5%) of the overdue amount, plus any actual bank fees incurred for resumed or dishonored checks. The parties agree that such a late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment.

5. UTILITIES

Landlord shall be responsible for providing electric, water, stormwater, sewer, and gas service to the Premises. Tenant shall be responsible for providing its own telephone, computer and internet service.

6. USE OF PREMISES

The Premises shall be used solely for the purpose of operating a commissary at the Forsyth County Central Library in accordance with a resolution approved by the Forsyth County Board of Commissioners at its March 13th, 2017 monthly meeting. The Premises shall not be used for any illegal purposes, housing of staff or clientele, or in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on the Premises. Additionally, no food shall be prepared on Premises and all deliveries to the Premises will be received from the basement parking area and elevator bank. Deliveries are to be received in a manner that does not disturb or hinder Landlord's operation of the building as a Public Library. In the event Tenant's use of the Premises results in an increase in the rate of insurance on the Premises, Tenant shall pay to Landlord, upon demand and as additional rental, the amount of any such increase. This Lease shall be terminated immediately if the Premises are no longer used for the purpose set forth herein.

The Hours of Operation for the Commissary shall be:

Monday	9am – 7pm
Tuesday	9am – 7pm
Wednesday	9am – 7pm
Thursday	9am – 6pm
Friday	9am – 6pm
Saturday	10am – 4pm
Sunday	Closed

Tenant shall have the ability to changes the above Hours of Operation upon approval from the Forsyth County Library director or their designee.

7. INDEMNITY; INSURANCE

Tenant agrees to and hereby does indemnify and hold Landlord harmless against all claims for damages to persons or property by reason of Tenant's use or occupancy of the Premises, and all expenses incurred by Landlord because thereof, including attorney's fees and court costs. Supplementing the foregoing and in addition thereto, Tenant shall during the term of this Lease and any extension or renewal thereof, and at Tenant's expense, maintain in full force the following insurance coverage:

A. Commercial General Liability Insurance. The Tenant shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than three times the occurrence limit. Such insurance shall:

1. Include the County, its officials, officers, and employees as additional insureds with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insureds.
2. Be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers, and employees.

The requirements of this section may be satisfied by a combination of self-insurance and Excess Liability insurance.

B. Commercial Property Insurance. The Landlord is responsible for maintaining property insurance for the building located at 660 West Fifth Street. The Tenant is solely responsible for maintaining insurance coverage for any improvements made to the building by the Tenant and any business personal property of the Tenant. In no event will the Landlord be required to repair or replace any improvements or personal property owned by the Tenant, its employees, or contractors.

C. Other Insurance Requirements. The Tenant shall:

1. Furnish the County with properly executed certificates of insurance which shall clearly evidence all insurance required in this section.
2. Provide certified copies of endorsements and policies, if requested by the County, in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
4. Maintain such insurance from the time the lease commences until the lease is terminated.
5. Place such insurance with insurers authorized to do business in North Carolina and having A. M. Best Company ratings of not less than A: VII. Any alternatives to this requirement shall require written approval of the County's Risk Manager.

D. The Tenant understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

8. SERVICES BY LANDLORD

Landlord agrees to keep in good repair the Premises, except repairs rendered necessary by the negligence or intentional wrongful acts of Tenant, its agents, employees or invitees. Landlord shall provide reasonable building maintenance services, provided that Landlord shall not maintain any property belonging to Tenant or provided or altered by Tenant. Landlord agrees to repair and replace any County-owned equipment during the term of the Lease so long as the damage was not caused by Tenant's misuse, negligence or willful wrongdoing or those of its customers. Landlord, in its sole discretion, will select replacement appliances and equipment. Landlord shall not be responsible for any consequential damages to Tenant's business due to failure of equipment or delay in repairing equipment or Premises. Landlord shall maintain the grounds surrounding the building, including paving, the mowing of the grass, care of shrubs, general landscaping and snow removal as scheduled by Landlord. Landlord shall provide routine housekeeping services for the Premises, provided, however, that Landlord is not responsible for any damage to the Premises by Tenant. Tenant shall be responsible for employee safety. Tenant shall promptly report in writing to Landlord any defective condition known to it which Landlord is required to repair.

9. REPAIRS BY TENANT

Tenant accepts the Premises in their present condition and as suited for the uses intended by Tenant. Tenant agrees to return the Premises to the Landlord at the expiration or prior termination of this Lease, in as good condition and repair as when first received, natural wear and tear, damage by storm, fire, lightning, earthquake or other casualty alone excepted. Tenant, Tenant's employees, agents, contractors or subcontractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Tenant shall indemnify and hold Landlord harmless from any liability, claim, demand or cause of action arising on account of Tenant's breach of the provisions of this paragraph.

Tenant will be responsible for providing any required equipment not provided by Landlord as specified in Section 1. Tenant, at its sole cost and expense, will repair or replace the equipment provided by his business. Tenant will also be responsible for providing daily housekeeping and trash disposal services to the leased Premises.

10. ALTERATIONS

Tenant shall not make any alterations, additions, or improvements to the Premises without the Landlord's Representative, the General Services Director's, prior written consent. Tenant shall promptly remove any alterations, additions, or improvements constructed in violation of this Paragraph upon Landlord's Representative, the General Services Director's, written request. All approved alterations, additions, and improvements will be accomplished in a good and workmanlike manner, in conformity with all applicable laws and regulations, and by a contractor approved by Landlord's Representative, the General Services Director, free of any liens or encumbrances. Landlord's Representative, the General Services Director, may require Tenant to remove any alterations, additions or improvements (whether or not made with Landlord's consent) at the termination of the Lease and to restore the Premises to its prior condition, all at Tenant's expense. All alterations, additions and improvements which Landlord's Representative, the General Services Director has not required Tenant to remove shall become Landlord's property and shall be surrendered to Landlord upon the termination of this Lease, except that Tenant may remove any of Tenant's machinery or equipment which can be removed without material damage to the Premises. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any such machinery or equipment.

11. REMOVAL OF FIXTURES

Tenant may (if not in default hereunder) prior to the expiration of this Lease, or any extension or renewal thereof, remove all fixtures and equipment which it has placed in the Premises, provided Tenant repairs all damage to the Premises caused by such removal.

12. DESTRUCTION OF OR DAMAGE TO PREMISES

If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If the Premises are damaged but not wholly destroyed by any such casualties, rental shall abate in such proportion as effective use of the Premises has been affected and Landlord shall restore Premises to substantially the same condition as before damage as speedily as is practicable, whereupon full rental shall recommence. Tenant is responsible for insuring its personal property stored on the Premises, and Landlord shall not be responsible for any damage or loss to Tenant's property.

13. GOVERNMENTAL ORDERS

Tenant agrees, at its own expense, to comply promptly with all requirements of any legally constituted public authority made necessary by reason of Tenant's occupancy of the Premises. Landlord agrees to comply promptly with any such requirements if not made necessary by reason of Tenant's occupancy.

14. CONDEMNATION

If the whole of the Premises, or such portion thereof as will make the Premises unusable for the purposes herein leased, is condemned by any legally constituted authority for any public use or purpose, then in either of said events the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemner. It is further understood and agreed (30 days written notice) by giving written notice to Tenant and upon such termination shall be entitled to recover from Tenant damages as may be permitted under applicable law; or (b) if the Event of Default involves any matter other than those set forth in item (a) of this paragraph, Landlord may terminate this Lease by giving written notice to Tenant and, upon such termination, shall be entitled to recover from the Tenant damages in an amount equal to all rental which is due and all rental which would otherwise have become due throughout the remaining term of this Lease, or any renewal or extension thereof (as if this Lease had not been terminated); or (c) upon any Event of Default (if Tenant has failed to cure such default after 30 days written notice), Landlord may, without terminating this Lease, re-let the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Landlord deems proper, with Tenant being liable to Landlords for the deficiency, if any, between Tenant's rent hereunder and the price obtained by Landlord on reletting, provided however, that Landlord shall not be considered to be under any duty by reason of this provision to take any action to mitigate damages by reason of Tenant's default. In the event Landlord hires an attorney to enforce its rights upon default, Tenant shall in addition be liable for reasonable attorney's fees and all costs of collection.

18. EXTERIOR SIGNS

Tenant shall place no signs upon the outside walls or roof of the Premises, except with the express written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs and Tenant shall be responsible to Landlord for any damage caused by installation, use or maintenance of said signs, and all damage incident to removal thereof.

19. PARKING

Tenant shall be entitled to use parking spaces as available and as assigned by Landlord in the lots serving the Premises.

20. LANDLORD'S ENTRY OF PREMISES

Landlord may advertise the Premises For Rent or For Sale. Landlord may enter the Premises at any time necessary and at reasonable hours to exhibit the Premises to

prospective purchasers or tenants, to inspect the Premises and to make repairs required of Landlord or to provide services under the terms hereof or to make repairs to Landlord's adjoining property, if any.

21. EFFECT OF TERMINATION OF LEASE

No termination of this Lease prior to the normal ending thereof, by lapse of time or otherwise, shall affect Landlord's right to collect rent for the period prior to termination thereof.

22. MORTGAGEE'S RIGHTS

Tenant's rights shall be subject to any bona fide mortgage, deed of trust or other security interest which is now or may hereafter be placed upon the Premises by Landlord. Tenant shall, if requested by Landlord, execute a separate agreement reflecting such subordination, and shall be obligated to execute such documentation as may facilitate Landlord's sale or refinancing of the Premises, including, but not limited to estoppel certificates, subordination or attornment agreements.

23. QUIET ENJOYMENT

So long as Tenant observes and performs the covenants and agreements contained herein, it shall at all times during the Lease term peacefully and quietly have and enjoy possession of the Premises, but always subject to the terms hereof. Notwithstanding anything to the contrary herein, in the event Landlord shall sell or otherwise transfer its interest in the Premises, Tenant agrees to attorn to any new owner or interest holder and shall, if requested by Landlord, execute a separate agreement reflecting such attornment, provided that said agreement requires the new owner or interest holder to recognize its obligations and Tenant's rights hereunder.

24. HOLDING OVER

If Tenant remains in possession of the Premises after expiration of the term hereof, with Landlord's Representative, the County Manager's, acquiescence and without any express agreement of the parties, Tenant shall be a tenant at will at the rental rate which is in effect at end of this Lease and there shall be no renewal of this Lease by operation of law. If Tenant remains in possession of the Premises after expiration of the term hereof without Landlord's Representative, the County Manager's, acquiescence, Tenant shall be a tenant at sufferance and commencing on the fraction thereof during which Tenant so remains in possession of the premises, be twice the monthly rental otherwise payable under Paragraph 3 above.

25. RIGHTS CUMULATIVE

All rights, powers and privileges conferred hereunder upon parties hereto shall be cumulative and not restrictive of those given by law.

26. WAIVER OF RIGHTS

No failure of Landlord or Tenant to exercise any power given hereunder or to insist upon strict compliance of its obligations hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's or Tenant's right to demand exact compliance with the terms hereof.

27. ENVIRONMENTAL LAWS

Tenant shall be liable for all environmental damage, liability or cost, including reasonable attorney's fees, arising out of Tenant's use of the Premises and shall defend and hold Landlord harmless from any claims or actions relating to environmental damage, spills, exposure or other effects caused by Tenant within the Premises. Tenant shall comply with all federal, state, and local laws, ordinances, and regulations. Tenant shall not bring onto the Premises any Hazardous Materials without the prior written approval by Landlord's Representative, the General Services Director. Any approval must be preceded by submission to Landlord's Representative, the General Services Director, of appropriate Material Safety Data Sheets (MSDS Sheets). In the event of approval by Landlord's Representative, the General Services Director, Tenant covenants that it comply with all requirements of any constituted public authority and all federal, state, and local codes, statutes, rules and regulations, and laws, whether now in force or hereafter adopted relating to Tenant's use of the Premises, or relating to the storage, use, disposal, processing, distribution, shipping or sales of any hazardous, flammable, toxic or dangerous materials, waste or substance, the presence of which is regulated by a federal, state, or local law, ruling, rule or regulation (hereafter collectively referred to as "Hazardous Materials"); (2) comply with any reasonable recommendations by the insurance carrier of either Landlord or Tenant relating to the use by Tenant on the Premises of such Hazardous Materials; (3) refrain from unlawfully disposing of or allowing the disposal of any Hazardous Materials upon, within, about or under the Premises; and (4) remove all Hazardous Materials from the Premises, either after their use by Tenant or upon the expiration or earlier termination of this Lease, in compliance with all applicable laws.

28. TIME OF ESSENCE

Time is of the essence in this Lease.

29. ABANDONMENT

Tenant shall not abandon the Premises at any time during the Lease term. If Tenant shall abandon the Premises or be dispossessed by process of law, any personal property belonging to Tenant and left on the Premises shall, at the option of Landlord, be deemed abandoned, and available to Landlord to use or

sell to offset any rent due or any expenses incurred by removing same and restoring the Premises.

30. DEFINITIONS

"Landlord" as used in this Lease shall include the undersigned, its representatives, assigns, and successors in title to the Premises. "Tenant" shall include the undersigned and its representatives, assigns and successors, and if this Lease shall be validly assigned or sublet, shall include also Tenant's assignees or sublease as to the Premises covered by such assignment or sublease. "Landlord" and "Tenant", include male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties.

31. NOTICES

All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by U.S. certified mail, return receipt requested, postage prepaid. Notices to Tenant shall be delivered or sent to the following address:

Duncan Thomas Priest II
dba Coffee Park
1206 Reynolda Road
Winston-Salem, NC 27104

Notice to Landlord shall be delivered or sent to the following address:

Dudley Watts
County Manager
Forsyth County Government Center
201 N. Chestnut St.
Winston-Salem, NC 27101

With a copy to:

Kirby J. Robinson
Property Manager
Forsyth County Government Center
201 N. Chestnut St.
Winston-Salem, NC 27101

All notices shall be effective upon delivery. Any party may change its notice address upon written notice to the other parties, given as provided herein.

32. ENTIRE AGREEMENT

This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein shall be of any force or effect. This Lease may not be modified except by a writing signed by all the parties hereto.

33. AUTHORIZED LEASE EXECUTION

Each individual executing this Lease as director, officer, partner, member or agent of a corporation, limited liability company, or partnership represents and warrants that he/she is duly authorized to execute and deliver this Lease on behalf of such corporation, limited liability company, or partnership.

34. TRANSFER OF LANDLORD'S INTEREST

In the event of the sale, assignment or transfer by Landlord of its interest in the Premises or in this Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord under this Lease, Landlord shall thereupon be released and discharged from all its covenants and obligations under this Lease, except those obligations that have accrued prior such sale, assignment or transfer. Landlord's assignment of this Lease, or of any or all of its rights in this Lease, shall not affect Tenant's obligations hereunder, and Tenant shall attorn and look to the assignee as Landlord, provided Tenant has first received written notice of the assignment of Landlord's interest.

35. MEMORANDUM OF LEASE

Upon request by either Landlord or Tenant, the parties hereto shall execute a short form lease (Memorandum of Lease) in recordable form, setting forth such provisions hereof (other than the amount of Base Monthly Rent and other sums due) as either party may wish to incorporate. The cost of recording such Memorandum of Lease shall be borne by the party requesting execution of same.

36. GOVERNING LAW

This Agreement is governed by the laws of North Carolina, except that provisions relating to conflict of laws shall not apply.

37. EXHIBITS

Exhibit A, a drawing that shows the Premises described in Section I hereinabove, is incorporated herein by reference. **If there is any discrepancy between the Exhibits and any other provision of this Agreement, such other provision of this Agreement shall govern.**

IN WITNESS WHEREOF, Landlord and Tenant have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

By: _____
County Manager

ATTEST:

Clerk to the Board

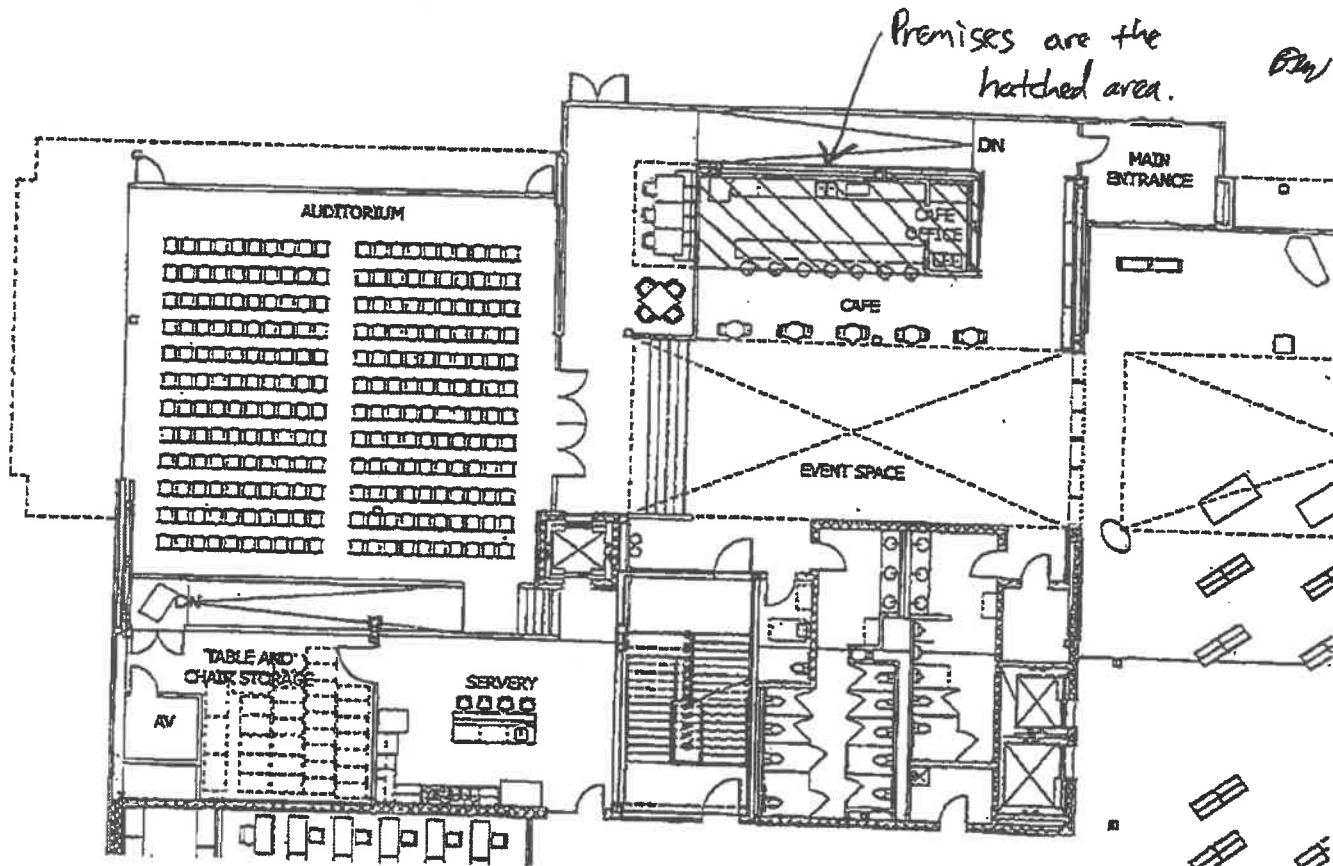
(SEAL)

**DUNCAN THOMAS PRIEST II,
dba COFFEE PARK**

By: _____

Tax ID #: _____

EXHIBIT A



March 20, 2015

Forsyth County Central Library
ENLARGED FIRST FLOOR PLAN



RATIO