

**DEED FOR LICENCE TO OPERATE COFFEE CART
AT BURWOOD LIBRARY AND COMMUNITY HUB**

PARTIES:

BURWOOD COUNCIL

AND

**Houston Dearn O'Connor
Solicitors
Suite 3.03, Level 3
29 George Street
BURWOOD NSW 2134
Ref: 21/097**

THIS DEED dated

2022

PARTIES: **BURWOOD COUNCIL**
2 Conder Street
Burwood NSW 2134

AND

DEFINITIONS:

Area means the area at the front of the BLCH being the shaded area shown on Drawing A.

BLCH means the Burwood Library and Community Hub building located at the corner of Railway Parade and Conder Street, Burwood New South Wales.

Coffee Cart means the X-line coffee/cookie cart manufactured by Carts Australia.

Commencing
Date:

Council means Burwood Council.

Drawing A means the drawing attached to the deed and marked with the letter "A."

Equipment includes Coffee Cart, outdoor tables and outdoor chairs.

Food and
Beverage
Services includes the provision of pre-packaged food, including pastries and sandwiches, and coffee, tea, and other hot and cold beverages.

GST: has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Hours of
Operation: means:

Land means the land wholly contained within folio identifier 15/832440 and known as 2 Conder Street, Burwood.

Licence means the licence granted pursuant to this deed.

Operator means _____.

Term means a period of Eight (8) months from the Commencing Date to the Terminating Date.

Terminating Date: means _____.

INTRODUCTION

- A. Council is the registered proprietor of the Land.
- B. Council has agreed to grant to the Operator an exclusive licence to operate a café cart providing food and beverage services to members of the public in the forecourt of the Burwood Library and Community Hub on the terms and conditions of this deed.

IT IS AGREED

- 1. Council grants and the Operator accepts an exclusive licence to use the Area for the purpose of providing Food and Beverage Services to members of the public on the terms and conditions specified in this deed.
- 2.1 The Operator agrees to pay to Council a licence fee of \$_____ (exclusive of GST) for the 8 month period, payable in advance by equal monthly instalments of \$_____ (exclusive of GST) commencing on _____ 2022.
- 2.2 The Operator shall pay the monthly instalments of the licence fee by direct deposit into the bank account as directed by the Council from time to time and such payment shall be made when the funds are received by Council by deposit into its nominated account.
- 2.3 If the Operator breaches clause 2.1 and payment of the monthly licence fee instalment is more than 14 days overdue then the Council may serve a notice of breach on the Operator demanding payment of all arrears of the licence fee within 14 days of the date of that notice and such time shall be of the essence.
- 3 Deleted
- 4.1 In consideration for payment of the licence fee, the Council will provide the Equipment for the exclusive use of the Operator in connection with the provision of the Food and Beverage Service to members of the public.
- 4.2 Council will, at its own expense, maintain the Coffee Cart and keep it in good working order.
- 4.3 For avoidance of doubt, Council's obligations under clause 5.2 include an obligation to maintain the refrigeration unit and the food display unit which are components of the Coffee Cart.
- 5.1 Council shall retain all interest and title in each item of the Equipment.

- 5.2 Council will provide recycling bin and general waste bin for the use of the Operator in the operation of the Coffee Cart and provision of Food and Beverage Service.
- 5.3 Council will collect and empty the recycling bin and general waste bin used by the Operator.
- 6.1 The Operator shall not part with possession of any item of the Equipment except as permitted under this deed or with the prior written consent of the Council.
- 6.2 The Operator warrants that it shall not convey or purport to convey any interest in any item of the Equipment to secure its performance of an obligation owed to a third party, including the repayment of moneys, or permit a third party to register a security interest over any item of the Equipment.
- 6.3 The Operator shall indemnify and keep indemnified Council for all damages, costs and expenses, including legal fees, incurred or arising as a consequence of the Operator failing to comply with clause 6 of this deed.
- 6.4 The obligations of the Operator under clause 6 are essential terms of this deed.
7. The Operator must deliver the Food and Beverage Services during the Hours of Operation.
8. The Operator warrants it has expertise or previous experience:
 - (a) in the management and operation of a viable café, coffee cart or similar hospitality establishment; and
 - (b) in the provision of coffee, tea, and other hot and cold beverages for sale to the public; and
 - (c) in the provision of pre-packaged food, including pastries and sandwiches, for sale to the public.
9. The Operator shall provide at the request of Council:
 - (a) written evidence that it and each of its employees have received formal training on safe food handling practices by furnishing a certificate issued by NSW Food Authority or reputable and approved training provider; or
 - (b) written evidence that such of its employees who have not received formal training as described in (a) above, are enrolled in and will complete such training within three months of the date of this deed or the commencement date of their employment whichever event occurs last.
10. The Operator must:
 - (a) only use the Area for the purpose of providing the Food and Beverage Services to the public; and

- (b) have in place and keep in place all necessary permits, registrations, licences, approvals or consents required for the delivery of the Food and Beverage Services to the public or to comply with any provision of this deed.
11. The Operator shall be solely responsible:
- (a) the supply, provision, storage, and refrigeration (as required) of all consumable items, including food stuffs and beverages, necessary for the delivery of the Food and Beverage Services;
 - (b) for the provision, maintenance, installation, replacement, and security of any point of sale system, including cash registers and secure storage units for the holding of money or other valuable items;
 - (c) for the provision, maintenance and replacement of all crockery and cutlery necessary for the delivery for the Food and Beverage Services;
 - (d) for the provision, maintenance and replacement of all kitchen utensils necessary for the delivery of Food and Beverage Services;
 - (e) all breakages of any of the items referred in clauses (b) to (d) above.
12. The Operator shall:
- (a) operate the café cart in a proper and businesslike manner in the delivery of the Food and Beverage Service;
 - (b) follow and implement safe food handling practices in the delivery of the Food and Beverage Service;
 - (c) be responsible for setting up the Equipment for each day of trading;
 - (d) be responsible for packing up of the Equipment at the end of each day of trading; and
 - (e) securely store the Equipment when not in use.
13. The Operator shall:
- (a) keep the Area clean and tidy;
 - (b) clean up any spillage or breakage in the Area promptly;
 - (c) put in place procedures and display notices to warn any person of any hazard in the Area, including but not limited to spillage, breakage, wet surface or hot surface; and

- (d) not do anything that might invalidate or void any insurance policy in the name of the Council covering the Area, including any property or person on the Area from time to time, or that might increase the insurance premium, unless the Council consents in which case the Operator must pay the increased premium.
14. The Operator shall:
- (a) clean the Equipment daily and at other times as required;
 - (b) maintain the Equipment in good working order or condition, subject to fair wear and tear;
 - (c) comply with all manufacturer's recommendations or instructions for the use of the Coffee Cart, including periodic servicing; and
 - (d) notify the Council immediately if any item of the Equipment is broken, faulty, malfunctioning or poses a risk of injury to any person using or coming into contact such item.
15. In the event Operator gives a notice under clause 14(d), then Council must arrange to promptly replace the broken, faulty, malfunctioning or specified item of the Equipment.
- 16.1 The Operator must not erect any signage, hoarding, or notice without the prior written consent of the Council.
- 16.2 The Operator must not erect any barrier, fence or rope on the Area without the prior written consent of the Council.
- 17.1 On or before the date of this deed, the Operator shall:
- (a) pay to Council a deposit equal to one monthly instalments of the licence fee inclusive of GST which sum shall be refunded to the Operator on the termination of this Licence provided that Council shall be entitled to deduct from the said sum or apply the same towards the satisfaction of any amount that may be payable to the Council as a result of any breach by the Operator of any of the terms or conditions of this deed and provided further that such deduction shall not be deemed to waive the Operator's breach; or
 - (b) deliver to Council a guarantee by a bank trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the Council (unlimited as to time) in a form acceptable to the Council and for an amount equivalent to one monthly instalment of the licence fee inclusive of GST and:
 - (i) Council is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the Operator to the Council under this deed;
 - (ii) the Operator agrees to vary the amount of the guarantee immediately upon each licence fee review so that the amount at all times represents the

equivalent of three monthly instalments of the then current annual licence fee; and

- (iii) the Council will deliver the guarantee (or so much of it as is then held by the Council) to the Operator on the Terminating Date of this Licence provided the Operator does not hold over, or the date on which the Operator has no further obligations under this Licence or at law, whichever is the later date.

17.2 If Council makes a deduction from the security deposit or calls on the bank guarantee, or the licence fee is increased then no later than seven (7) days after Council gives the Operator a notice for payment of an additional security deposit or delivery of a replacement or additional bank guarantee so the amount held as security or guaranteed is the amount equivalent to three monthly installments of the licence fee plus GST then the Operator must comply with the terms of such notice.

17.3 The Operator's obligations under this clause 17 are essential terms of this deed.

18.1 On the date of this deed and at all times, the Operator must have in place and keep in place the following policies of insurance with an insurance company approved by Council:

- (a) in respect of public liability or risk for an amount of not less than \$20 million dollars (\$20,000,000.00); and
- (b) workers compensation for any employees or deemed employees of the Operator within the meaning of the workers compensation law.

18.2 On or before the date of this deed and each anniversary thereafter, the Operator shall provide to Council a certificate of currency for each policy of insurance referred to in the preceding clause.

18.3 The obligations of the Operator under clause 18 are essential terms of this deed.

19.1 Council shall provide to the Operator:

- (a) exclusive use of designated power and water connections to the Area;
- (b) use of a drainage point within or convenient to the Area;
- (c) access to electrical main system; and
- (d) access to the main water system;

and the locations of such drainage, access and connection points are shown in Drawing A.

19.2 Council will pay the charges for electricity and water usage by the Operator in the operation of the Coffee Cart and in the provision of the Food and Beverage Services.

- 20.1 The licence fee and other moneys payable under this Licence by the Operator have been calculated without regard to GST.
- 20.2 The Operator must pay to Council an amount which is payable by the Council for GST as a consequence of any supply made by the Council to the Operator under this deed, such payment on account of GST to be made by the Operator at the same time as payment is made for the relevant supply.
- 20.3 If at any time an adjustment is made as between the Council and the relevant taxing authority of an amount paid on account of GST on any supply made by the Council to the Operator under this licence, a corresponding adjustment must be made as between the Council and the Operator and any payments required to give effect to the adjustment must be made.
- 20.4 No later than 14 days after the date of payment of any GST the Council must provide to the Operator a tax invoice complying with any legislation under which GST is imposed.
- 20.5 The Operator will pay on demand to the Council any interest or penalties incurred by the Council as a result of the Operator's failure to make a payment under clause 20.2.
- 21.1 On the expiration of the Term, if the Operator continues to operate the café cart in the Area then:
- (a) it will do so on a month-to-month basis on the terms of this Licence Agreement except as to the Term and Option Licence; and
 - (b) a party may terminate the month-to-month licence agreement by giving the other party one month's written notice.
- 21.2 On the termination or surrender of this Licence agreement, then the Operator must return immediately to Council the Equipment in good and usable condition, subject to fair wear and tear.
22. This licence may not be assigned or sublicensed.
23. The essential terms of this deed are:
- (a) the obligation to pay the licence fee (clause 2);
 - (b) the obligation to pay any other moneys under this deed (clause 20);
 - (c) the obligation to have in place all insurances required under this deed (clause 18);
 - (d) no assignment (clause 23);
 - (e) security deposit/bank guarantee (clause 17);

- (f) use of Area (clause 10);
 - (g) hours of operation (clause 7); and
 - (h) no security interest (clause 6).
- 24.1 If the Operator breaches an essential term of this licence agreement then Council may terminate this Licence on fourteen days written notice to the Operator.
- 24.2 If either party has a right to terminate this Licence then it is agreed fourteen days notice shall be sufficient notice.
25. The Operator uses the Area at its own risk and releases to the full extent permitted by law the Council, its officers, agents, employees, or contractors, in the absence of any negligent act or omission or willful default on their part, from all claims and demands of every kind resulting from any loss, accident, damage, injury, or death or breach of any public health, food or environmental law, and the Operator agrees the Council shall not be responsible or liable for any loss of or damage to fixtures or personal property of the Operator.
26. The Operator indemnifies the Council against:
- (a) all actions, suits, demands, claims, costs and expenses for which the Council is liable in relation to any death, personal injury or property damage caused or contributed to by any act or failure to act or neglect of the Operator or its servants or agents or because of the use or misuse of the Area or Equipment by the Operator, its servants and agent; and
 - (b) all loss and damage caused or contributed to by the Operator, its servants or agents to the Equipment or Area.
27. The Operator must pay all duty (including fines, interest or penalties) in respect of this deed.
28. A notice must be given in writing and can be delivered personally, sent by pre-paid mail to the party's address specified in this deed or sent by facsimile or email to the number or email address noted in this deed.
- 29.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 29.2 The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.
- 29.3 The variation or waiver of a provision of this deed or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.
- 30.1 This deed is governed by the laws of New South Wales.

- 30.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
31. Each party will, from time to time, do all things including executing all documents necessary to give full effect to this deed.
32. This deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of this deed will be the date on which it is executed by the last party.
33. In relation to its subject matter, this deed is the whole agreement between the parties and supersedes all oral and written communications by or on behalf of any of the parties.
- 34.1 In entering into this deed, each party:
- (a) has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this deed made by any person; and
 - (b) has relied entirely on its own enquiries in relation to the subject matter of this deed.
- 34.2 This clause 35 does not apply to warranties or representations contained in this deed.
35. Any part of this deed found to be invalid or unenforceable, is severed and the remainder of the deed remains in full force and effect.
36. Redevelopment
- (a) If the Council wants to demolish, substantially repair, renovate, extend or reconstruct the BLCH building adjoining the Area and decides to terminate this Licence as a result of such work, the Council must provide the Operator with:
 - (i) sufficient details of the proposed works to indicate a genuine proposal to carry them out within a reasonably practicable time after this Licence is to be terminated; and
 - (ii) at least three (3) months, written notice of termination.
 - (b) After the Council has given written notice of termination under this clause the Operator may terminate this Licence at any time within three (3) months before the termination date in the Council's notice by giving the Council not less than fourteen (14) days written notice of termination.
37. Nothing in this deed merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

EXECUTED AS A DEED.

EXECUTED on behalf of **BURWOOD COUNCIL** by its General Manager in accordance with section 377 of the *Local Government Act 1993*:

.....
Signature of Witness

.....
Signature of General Manager

.....
Name of Witness

SIGNED, SEALED & DELIVERED by _____ in the presence of the witness:

.....
Signature of witness

.....
Signature of party

.....
Name of Witness

.....

.....
Address of witness