CONCESSION AGREEMENT FOR TOM GREEN COUNTY LIBRARY CAFE AND FOOD SERVICES

This Concession Agreement for Tom Green County Library Cafe and Food Services ("Agreement") is made by and between Tom Green County, a legal and political subdivision of the State of Texas, located at 112 West Beauregard, San Angelo, Tom Green County, Texas 76903 ("County") and Ronin Slack, LLC, a domestic limited liability company, whose address is P.O. Box 5873, San Angelo, Texas 76902 ("Concessionaire"), to be entered into to be effective the 1st day of August, 2016.

RECITALS:

WHEREAS, Tom Green County, desires to make available concession services in a designated portion of the Stephens Central Library of the Tom Green County Library System located at 33 West Beauregard, San Angelo, Tom Green County, Texas 76903; and

WHEREAS, County has solicited Requests for Proposals for the management and operation of a coffee shop and food services at the Stephens Central Library of the Tom Green County Library System as evidenced by the Tom Green County Library Cafe Packet Request for Proposals RFP 16-010 dated January 6, 2016; and

WHEREAS, Concessionaire desires to manage and operate a coffee shop and food service to be located at the Stephens Central Library of the Tom Green County Library System, as evidenced by the Concessionaire's Response to the County Request for Proposal dated March 11, 2016; and

WHEREAS, County and Concessionaire have determined the appropriate terms for such services; and

NOW, THEREFORE, in exchange for the mutual covenants and promises set forth herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1.0 DEFINITIONS AND SCOPE OF SERVICES

1.1 County means Tom Green County, a legal and political subdivision of the State of Texas, its elected officials, employees, officers, agents, and legal representatives including the Tom Green County Library System and its board.

1.2 Concessionaire means Ronin Slack, LLC.

1.3 Concessionaire shall perform such services in accordance with the terms and conditions of the Request for Proposals (hereinafter "Specifications") and Concessionaire's Proposal in

response thereto (hereinafter "Proposal"). This Agreement consists of the following documents:

(a) Concession Agreement for Tom Green County Library Cafe and Food Services.

(b) County's Request for Proposal RFP 16-010.

(c) Concessionaire's Response.

In the event there exists a conflict in the interpretation of the agreement of the parties, the documents shall control in the order listed above. These documents shall be referred to collectively as "Agreement Documents."

2.0 TERM OF AGREEMENT

2.1 **Premises.** The food preparation area for food service and serving area situated on the first floor of the Stephens Central Library located at 33 West Beauregard, San Angelo, Tom Green County, Texas 76903 as reflected in Exhibit A attached hereto.

2.2 **Lease Term.** This Agreement shall be effective August 1, 2016 and shall continue through July 31, 2021 (the "initial period").

2.3 **Renewal and Extension.** This Agreement may be renewed and extended for an additional five (5) year period, with the lease term to begin August 1, 2021 and end on July 31, 2026, unless written notice of such intent not to renew is given not later than 90 days prior to the end of the initial period. The consideration, charges and terms for the renewal and extension shall be negotiated by the parties prior to the renewal and extension of the Agreement. This Agreement shall not be renewed and extended if Concessionaire is in default of any term or provision of this Agreement.

3.0 SERVICES

3.1 **Sale of Commodities:**

(a) The hours of operation shall be Monday through Friday, 7:30 a.m. to 9:00 p.m. and Saturday, 9:00 a.m. to 9:00 p.m. except County holidays.

(b) Concessionaire shall keep for sale and supply to the public expresso drinks, coffee, tea, soft drinks, specialty drinks, bottled water, bottled juices, food (fresh pastries, sandwiches, soups, salads and snack foods) and other commodities, for which there is or shall be a reasonable demand.

(c) Concessionaire will not be permitted to sell beer or intoxicating beverages.

(d) Concessionaire will not be permitted to sell any type of tobacco products.

(e) All Federal, State, County, Municipal or other governmental regulations relating to public health and other factors shall apply, and shall be strictly observed by Concessionaire.

(f) No sales with any element of chance shall be made by Concessionaire.

(g) Concessionaire shall not offer for sale any products outside the area designated in Exhibit A without the prior written approval of the Library Director. No solicitation for sales shall take place within the Library.

3.2 **Sanitation.** The coffee and food service area will be operated and maintained by Concessionaire in a clean and sanitary condition and in complete compliance with all federal, state and local standards, including, but not limited, the regulations promulgated by the City of San Angelo and those regulations as promulgated and enforced by the City of San Angelo Public Health Department. Concessionaire shall furnish all supplies, materials and supervision necessary to keep the areas assigned in a clean, sanitary and orderly condition at all times and in compliance with the above-listed standards. Sanitation will include all silverware, utensils and equipment needed to prepare and serve the food products.

4.0 **LIMITATIONS**

4.1 All services provided for herein shall take place only at the Stephens Central Library of the Tom Green County Library System located at 33 West Beauregard.

5.0 **COUNTY OBLIGATIONS**

5.1 The County shall provide and be responsible for the following:

(a) Floor space layout for coffee shop and food service area and seating as reflected in Exhibit A attached hereto.

(b) Tables and chairs for the interior seating area.

(c) Bistro tables, chairs and lounge seating for the exterior seating.

(d) 240 v - 100 amp electrical service.

(e) Telephone and data connections in the coffee shop area.

(f) Hot and cold water service.

(g) Exterminate prior to August 1, 2016.

(h) Pest control on a quarterly basis.

(i) Sewer connections, including grease trap.

(j) Dry storage area of 120 square feet located on the third floor.

(k) Sinks.

(l) Utilities shall include water, sewer and electrical service.

(m) Maintain the common area/lobby with these services to be provided at the close of business hours.

6.0 CONCESSIONAIRE OBLIGATIONS

6.1 Concessionaire shall supply all supervision, labor, food , food stuff and supplies necessary and required for the performance of the services set forth within this Agreement.

6.2 Concessionaire shall purchase and pay for food products, food stuff, cleaning supplies, paper products, plastic gloves, head coverings and other materials and items necessary for the delivery of the services as set forth under this Agreement.

6.3 Concessionaire shall provide and be responsible for the following:

(a) All necessary professional commercial grade equipment, including installation, to perform the function of the coffee shop and food service including, but not limited to, beverage equipment, coolers, freezers, dishwashers, and glass display cases.

(b) All necessary utensils, equipment, supplies, appliances, pots and pans necessary for the operation of the coffee shop and food service.

(c) Additional utility services which shall include electrical service, telephone service and related charges, professional fees, and installation for such needs beyond that provided by County.

(d) Signage and menu boards. Design to be approved by the Library Director.

(e) All licenses required by the City of San Angelo Public Health Department and/or other authorities to operate this coffee shop and food service.

(f) Daily removal of trash and food products from the coffee and food service areas to

the trash receptacle (dumpster) located outside of the facility.

(g) During the hours of operation of the concession services, clean the coffee shop, vent hood, food service and common area/lobby. Cleaning shall include the removal of trash and food products, clearing and wiping down the tables, chairs and the sweeping of eating/sitting areas which shall include the common area/lobby.

(h) Security grills, if needed.

(i) Concessionaire shall be responsible for the maintenance of the wall equipment, vent hood, cabinets, counter tops, and other mill work as installed in the coffee shop, foods service area and food preparation area.

(j) Pest control beyond the services provided by the County.

6.4 Concessionaire shall not discriminate against any employee or applicant for employment, and in providing the public service specified in this Agreement, because of sex, race, creed, color, or national origin. Concessionaire shall, in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard to sex, race, creed, color or national origin.

6.5 Concessionaire shall pay all federal withholding and any other appropriate taxes or charges to its employees.

6.6 Concessionaire shall not employ individuals under sixteen (16) years of age. Any individual under eighteen (18) years of age working at the facility shall be under the direct supervision of person over the age of eighteen (18). All employees shall conduct themselves at all times in a manner acceptable to the County. Complaints against any Concessionaire employee shall be directed to the Concessionaire.

6.7 The Concessionaire shall maintain all of the equipment located within the coffee shop and the food service preparation area.

6.8 Concessionaire represents that it and its employees, agents and representatives are fully competent and qualify to perform all services required to be performed under this Agreement. Concessionaire further represents that all services to be performed hereunder shall be of the highest professional quality.

6.9 Repair, replace, and maintain any part of the premises that County is not obligated to repair, replace, or maintain, normal wear excepted.

6.10 Repair any damage to the premises caused by Concessionaire.

6.11 Submit in writing to County any request for repairs, replacement, and maintenance that are the obligations of County.

6.12 Compliance with all codes as promulgated by the City of San Angelo including but not limited to fire codes and health and safety codes.

6.13 Continuously and in good faith conduct the type of business for which the premises are leased in an efficient and reputable manner so as to produce the maximum amount of gross sales.

7.0 MISCELLANEOUS

7.1 **Signs.** All signage shall be in compliance with all applicable rules and regulations as may be promulgated by the County or appropriate agency. All signage located within the facility shall be approved by the Library Director.

7.2 **Supervision.** The County shall have the right to supervise the manner of exercising the privilege hereby granted and the conduct of Concessionaire. Repeated complaints or misconduct by Concessionaire or its employees may be grounds for termination of this Agreement.

7.3 **Hours.** Concessionaire shall provide concession services Monday through Friday, 7:30 a.m. to 9:00 p.m. and Saturday, 9:00 a.m. to 9:00 p.m. The hours of operation of the concession facilities may be modified upon written agreement of the parties.

7.4 **Alterations.** It is specifically understood that any changes, modifications, upgrades, alterations or renovations within any of the Concessionaire's area (including painting) shall not be done by Concessionaire without the County's prior written approval.

7.5 **As Is.** Accept the premises in its present condition "AS IS," the premises being currently suitable for the permitted use.

8.0 PAYMENT/RENT PROVISION

8.1 The Concessionaire shall pay rent to County on a monthly basis as follows:

For the period beginning August 1, 2016 through July 31, 2021, Concessionaire shall pay to the County a monthly fee of $200.00. The initial payment of $200.00 shall be paid on or before August 1, 2016. The monthly fee shall be payable on or before the 10th day of each succeeding month thereafter.

8.2 **Place of Payment**. All such payments shall be made at the Tom Green County Treasurer's Office located at 112 West Beauregard, San Angelo, Texas, or at such other place as the

County may from time to time designate by written notice to Concessionaire.

8.3 **Record.** Concessionaire shall keep a permanent, accurate set of books and records of all sales of products available for County's inspection. The books and records shall be maintained for a period of three (3) years after termination or expiration of this Agreement.

8.4 **Payment Late Charge.** Concessionaire shall pay a late charge of five percent (5%) of any rent or obligation not received by County by the 10th day of the month in which the rent obligation is due to County.

8.5 **Audit.** County shall have the right to inspect audit, copy and examine all books and records of Concessionaire pertaining to all sales under this Agreement. Concessionaire shall maintain all books and records pertaining to sales for a period of three years after termination or expiration of this Agreement. Concessionaire shall provide to County the books, records and other documents relating to sales of Concessionaire as requested within twenty (20) days of receipt of County's written notice.

9.0 **ENTIRE AGREEMENT**

9.1 This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties with respect to this subject matter.

10.0 **ASSIGNMENT**

10.1. Concessionaire shall not sublet or assign this Agreement to any other persons, entities, or any privileges conveyed herein without County's prior written consent.

11.0 **AMENDMENT**

11.1 This Agreement may be amended by the mutual written agreement of the parties.

12.0 **GOVERNING LAW**

12.1 This Agreement and its interpretation and any disputes relating thereto, arising out of or connected with this Agreement, shall be governed by the laws of the State of Texas, without regard to its conflicts of law provisions. Any dispute relating to, arising out of, or connected with this Agreement shall be filed and maintained in San Angelo, Tom Green County, Texas, in the State Courts located in San Angelo, Tom Green County, Texas. For purposes of this Agreement, venue shall be in Tom Green County, Texas.

13.0 LEGAL CONSTRUCTION

13.1 In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect any other provisions and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

14.0 ATTORNEY'S FEES

14.1 If either party retains an attorney to enforce this Agreement or its terms, the prevailing party is entitled to recover reasonable and necessary attorney's fees, court costs and expenses associated with the litigation.

15.0 LIMITATION OF WARRANTIES

15.1 There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this Agreement, and there are no warranties that extend beyond those expressly stated in this Agreement.

16.0 ABANDONED PROPERTY

16.1 County may retain, destroy, or dispose of any property left on the premises at the end of the Agreement.

17.0 NOTICE

17.1 Any notice, demand, or request required by or made pursuant to this Agreement shall be deemed properly made if made in writing and delivered by hand delivery, facsimile and confirmed by first class mail, postage prepaid, or deposited in the United States Mail, postage prepaid, addressed to the respective representative and to the respective addresses set forth below. The notice shall be effective on the date of receipt, unless stated otherwise therein.

IF TO CONCESSIONAIRE:

Name:	Charles Clifford Slack
Title:	Managing Member
Address:	P.O. Box 5873
	San Angelo, Texas 76901
Telephone:	(325) 374-0037
Email:	sushislack22@gmail.com

IF TO COUNTY:

Name:	Jill Donegan
Title:	Library Director
Address:	33 West Beauregard
	San Angelo, Texas 76903-5832
Telephone:	(325) 655-7321
Facsimile:	(325) 659-4027
Email:	Jill.Donegan@co.tom-green.tx.us

The parties may change the address where or the individual to whom notice is to be given by providing written notice of such change pursuant to this section. Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of Concessionaire and County.

18.0 RELATIONSHIP OF PARTIES

18.1 **Independent Contractor.** Concessionaire undertakes performance of the work as an independent contractor. Nothing herein shall create a relationship of employer and employee, joint venture or partnership between County and Concessionaire, its agents, representatives, employees or subcontractors, for any purpose whatsoever. Nothing herein shall create a relationship of principal and agent between County and Concessionaire, its agents, employees, representatives, or subcontractors. Neither party shall have the authority to bind or obligate the other in any manner as a result of the relationship created hereby.

18.2 **Control and Supervision.** County shall not have the right to control the manner(s) or prescribe the method(s) by which Concessionaire performs its obligation under this Agreement. Concessionaire shall be wholly responsible for supervision in the method of performance. Concessionaire is entirely and solely responsible for its acts and the acts of its agents, employees, representatives and subcontractors engaged in the performance of the services as set forth within this agreement.

18.3 **Employees.** Concessionaire's personnel shall be and remain solely the employees of Concessionaire, and at no time or in any manner shall Concessionaire's personnel, employees, agents, representatives or subcontractors be considered as or deemed to be employees of County.

18.4 **Violations.** In case any employee of Concessionaire is found willfully violating any law, rule, regulation or the terms of this Agreement, or becomes objectionable and offensive to the good order and use of said facility, the Concessionaire shall be required to remove said person from their employment.

19.0 INDEMNIFICATION

19.1 **Concessionaire covenants and warrants that it will protect, defend, and hold harmless the county, its employees, elected officials, agents and legal representatives (collectively "County") from any and all third party claims, suits, demands, and liability of every kind, including all expenses of litigation, court costs, and attorneys fees, relating in any way to damages (bodily injury, death and damage to property),claims or fines arising by reason of or in connection with concessionaire's actual or alleged negligence or other actionable performance or omission of concessionaire in connection with or during the performance of the duties under this agreement. Concessionaire further covenants and agrees to protect, defend, indemnify, and hold harmless county from all claims, allegations, fines, demands, and damages relating in any way to the actual or alleged joint or concurrent negligence of county and concessionaire, whether concessionaire is immune from liability or not.**

It is the expressed intention of the parties hereto that the indemnity provided herein is an agreement by concessionaire to indemnify and protect county from the county's own negligence where said negligence is an alleged or actual concurrent proximate cause of any alleged third-party harm.

The indemnity provision provided herein shall have no application to any claim or demand where bodily injury, death or damage results only from the sole negligence of county unmixed with any fault or responsibility of concessionaire.

19.2 **Release. Concessionaire, its successors, and assigns hereby release, relinquish, and discharge the county, its successors, assigns, employees, elected officials, agents, legal representatives, and its former, present and future agents, employees and elected officials and legal representatives from any liability arising out of the sole or concurrent negligence of county for any injury, including death or damage to persons or property, where such damage is sustained in connection with or arising out of the work and services performed in connection with this agreement.**

20.0 INSURANCE

20.1 Concessionaire shall obtain and maintain in effect during the term of this Agreement, insurance coverage as set forth and shall furnish certificates of insurance naming the County as an additional insured, in duplicate form, prior to the beginning of the Agreement period. County shall be named as an additional insured on Comprehensive General Liability policy and shall be primary to any other insurance. All such insurance shall be carried by Concessionaire with an insurance company or companies authorized to do business in the State of Texas. Concessionaire's insurance policies shall be written for not less than limits of liability as follows:

a. Comprehensive General Liability:

1. General Aggregate per Location: $1,000,000.00

2. Products and Completed Operations Aggregate per Location: $1,000,000.00

3. Each Occurrence: $1,000,000.00

4. Personal and Advertising Injury: $1,000,000.00

5. Fire Damage: $1,000,000.00

b. Workers' Compensation and Employer's Liability Insurance:

1. Workers' Compensation: Statutory Benefits

2. Employers' Liability: $100,000.00

20.2 All of the insurance required to be carried by Concessionaire hereunder shall be by policies which shall require on their face, or by endorsement, that the insurance carrier waives any rights of subrogation against the County, and that it shall give thirty (30) days' written notice to the County before they may be canceled or materially changed. Within such thirty (30) day period Concessionaire, covenants that it will provide other suitable policies in lieu of those about to be cancelled or materially changed so as to maintain in effect the coverage required under provisions hereof. Failure or refusal of the Concessionaire to obtain and keep in force the above-required insurance coverage shall authorize the County, at its option, to immediately terminate this Agreement.

20.3 If any part of the work is sublet, similar insurance shall be provided by or in behalf of the subcontractor to cover their operations, and evidence of such insurance, satisfactory to the County, shall be furnished by Concessionaire. In the event a subcontractor is unable to furnish insurance in the limits required under this Agreement, Concessionaire shall endorse the subcontractor as an additional insured on its policies.

20.4 Concessionaire shall furnish the County with certificates of insurance issued by the insurer within fifteen (15) days of the execution of this Agreement. Concessionaire shall provide the County with certificates of insurance on an annual basis thirty (30) days prior to the anniversary date.

21.0 WAIVER

21.1 No waiver of any provision of this Agreement shall be of any force or effect unless such waiver is in writing, expressly stating to be a waiver of specified provision of this Agreement

and is signed by the parties to be bound thereby. Either party's waiver of any breach of failure to enforce any of the provisions of this Agreement, at any time, shall not in any way limit or weigh that party's right thereafter to enforce or compel strict compliance with this Agreement or any portion or provision or right under this Agreement.

22.0 **DEFAULT**

22.1 If Concessionaire should default in the payment of any compensation or of any other sum provided for under this Agreement, as the same becomes due and payable, or breach of any provisions, delegations or terms of this Agreement, should any execution be issued against Concessionaire, bankruptcy proceedings be begun by or against Concessionaire, or an assignment be made by Concessionaire for the benefit for creditors, then and in any such case all payments for the balance of the term shall, at the option of the County, at once become due and payable as if by the terms of this Agreement it were all payable in advance; or at the County's option this Agreement shall become null and void.

23.0 **TERMINATION**

23.1 Either party may terminate this Agreement during the Lease Term and subsequent renewal and extension period, with or without cause, at any time after ninety (90) days written notice to the other party.

23.2 It is understood and agreed that Concessionaire shall vacate the premises without delay upon ten (10) days notice in writing by the County in the event this Agreement is for any reason canceled, and at the termination of this Agreement, and in case the Concessionaire fails to vacate the premises upon said notice of cancellation or termination of this Agreement, the County shall not be responsible for any damage that might occur to said Concessionaire by virtue of the County forcibly entering and dispossessing the said Concessionaire, and without prejudice to any remedies which might otherwise be used for possession or for arrears of payments.

23.3 Concessionaire shall vacate the premises upon termination of this Agreement.

EXECUTED to be effective the 1st day of August, 2016.

TOM GREEN COUNTY, TEXAS

By: _____

Stephen C. Floyd, County Judge, acting in his official capacity and not individually

Date: 6-28-16.

ATTEST:

Elizabeth McGill, County Clerk

CONCESSIONAIRE

Ronin Slack, LLC

By: _____
Charles Clifford Slack, Managing Member

Date: 7/6/2016

APPROVED AND AGREED:

TOM GREEN COUNTY LIBRARY SYSTEM

By: _____
Jill Donegan, Library Director

Date: 7/6/16

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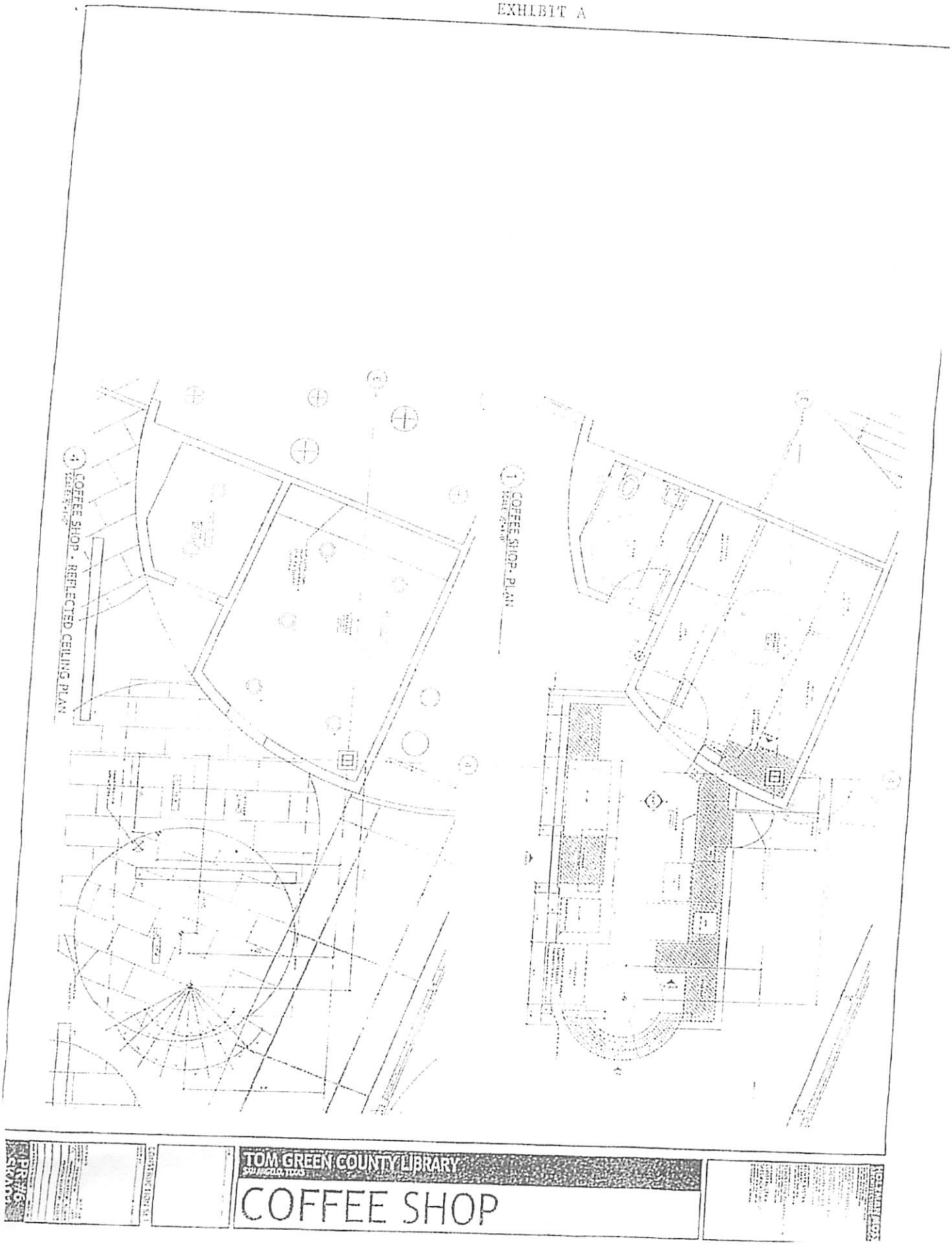
EXHIBIT A


COFFEE SHOP - PLAN
COFFEE SHOP - REFLECTED CEILING PLAN
TOM GREEN COUNTY LIBRARY
SAN ANGELO, TEXAS
COFFEE SHOP