

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

CONCESSIONAIRE AGREEMENT

This Concessionaire Agreement (hereinafter "Agreement"), is made this ____ day of _____, 2017, by and between the TOWN OF HUNTERSVILLE, a North Carolina municipal corporation (hereinafter "Town"), for the benefit of the Huntersville Family Fitness and Aquatics, and SUMMIT COFFEE ROASTING COMPANY, LLC a North Carolina Limited Liability Company (hereinafter "Summit Coffee").

WITNESSETH:

WHEREAS, Town operates a center known as the Huntersville Family Fitness and Aquatics ("HFFA") which is located at 11725 Verhoeff Drive, Huntersville, NC (the "Facility"); and

WHEREAS, Summit Coffee desires to operate concessionaire services from a certain area within HFFA to provide a menu of food and beverage consistent with a health and fitness club to the patrons of the Facility; and

WHEREAS, Town and Summit Coffee wish to enter into an agreement to address the terms and conditions.

NOW, THEREFORE, for valuable consideration, Town and Summit Coffee agree as follows:

1. Space/Area. The area within HFFA to be designated space for Summit Coffee is the café area located at the main entrance, which is approximately 400 square feet, and a portion of the kitchen located on the west side of the building near the outdoor swimming pool, which shall be shared with HFFA. A diagram giving the location of the café area and kitchen is attached hereto as Exhibit A, and incorporated herein by reference.
2. Term. The term of this Agreement shall begin on October 2, 2017, and end at 12:01 a.m., on October 1, 2020, unless terminated earlier pursuant to the terms of the Agreement. Upon such termination, Summit Coffee shall remove its personal property from the Facility. Any such property which remains after thirty (30) days from the end of the Agreement without the consent of Town shall become property of the Town.
3. Fees. Summit Coffee shall pay to Town on the 1st day of each month the following amounts during the term of this Agreement:
 - a. First six (6) months: \$0.00
 - b. Month Seven (7) through Twelve (12) \$900, or five percent (5%) of Total Sales, whichever is Greater, but not to exceed \$2,000

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| c. Month thirteen (13) through Twenty-four (24) | \$900, or five percent (5%) of Total Sales, whichever is greater. but not to exceed \$3,000 |
| d. Month Twenty-five (25) through Thirty-six (36) | \$900, or five percent (5%) of Total Sales, whichever is greater. |

The percentage of sales shall be based upon the Total Sales of the immediately preceding month.

4. Security Deposit. Summit Coffee shall pay to Town as a security deposit in the amount of \$900.00, at the time of signing of this Agreement. Upon termination of this Agreement for any reason, Town may withhold from Summit Coffee any amounts necessary to cure any previous default and/or make such repairs and maintenance as was the obligation of Summit Coffee of this Agreement upon termination. The balance, if any, shall be returned to Summit Coffee within thirty (30) days of termination.
5. Hours of Operation. Summit Coffee agrees to be staffed and operational during the duration of all economic impact/special events, and to be staffed and open for general operation consistent with the schedule listed below, but which schedule may be changed or varied by mutual consent of the parties:
 - a. Monday through Thursday: 6:00 a.m. to 8:30 p.m.
 - b. Friday: 6:00 a.m. to 7:30 p.m.
 - c. Saturday: 8:00 a.m. to 4:00 p.m.
 - d. Sunday: 11:00 a.m. to 4:00 p.m.
6. Use of Space/Area. Summit Coffee shall use the space solely for the purposes as a concessionaire of food and beverage consistent with a health and fitness club. The use of the kitchen space shall be used only in conjunction with preparation of food products to be consumed at HFFA. Any use other than that described without the express written consent of Town (which shall not be reasonably withheld) shall be deemed a default in this Agreement and entitle Town to pursue all remedies it has in the event of default.
7. Signage. One (1) exterior sign may be erected at the expense of Summit Coffee shall be in compliance with the Town of Huntersville sign ordinance, and shall not require the removal or relocation of any existing signage. The Town has final approval of its location and size. The Town agrees to provide a temporary interior sign stating "Under Construction, Summit Coffee Coming Soon", and shall post in the café area. Summit Coffee agrees to provide, at its cost, a sample menu to which can be posted at the entrance of the Facility during the construction period only.
8. Exclusivity. Town will not enter into agreements with any other food service provider, and Summit Coffee shall have a right of first refusal for the sale of food products within the facility, except that:

- a. Town reserves the right to provide or sell water.
 - b. Town reserves the right to partner with a "Prepared Food Vendor" for the purpose of weekly meal drop-off/pick-up.
 - c. Town reserves the right to use a small agreed upon space in the kitchen area, and specifically in existing refrigeration units for refrigeration needs.
 - d. Any existing agreements for provision of food and beverage sales shall remain in effect for the duration of that agreement.
9. Right of Entry. Town hereby reserves the right to enter the space(s) during reasonable hours of operation for the purpose of inspecting, and/or making major repairs as the Town may deem appropriate. Summit Coffee acknowledges and understands that in the case of an emergency, the Town may need to enter the space at any hour to cause repairs to be made to preserve or prevent further damage from occurring to the premises, and the Summit Coffee agrees to cooperate reasonably with the Town in the event of any such emergency.
10. Insurance. Summit Coffee shall maintain, at its expense, general liability insurance and workers compensation insurance at all times for their benefit and protection.
11. Damage or Destruction. In the event of damage or destruction of the Facility, or space, so that Summit Coffee cannot continue operation of such concessionaire services, Town may terminate this Agreement as of the date of the damage or destruction and any pre-paid rent for the period after termination shall be returned to Summit Coffee. In no event shall Town be required to rebuild or repair the damage.
12. Maintenance, Alterations and Modifications of Café Area. Summit Coffee will upfit and remodel the café area to be aesthetically consistent with its branding. Any alterations or modifications to the café area, shall be with prior written consent of Town, and such alternations or modifications shall be at the sole expense of Summit Coffee, which shall not permit any lien for labor and materials to attach to the premises. Summit Coffee shall be responsible for general maintenance and care of the café area and the portion of the shared kitchen space.
13. Equipment Maintenance. Town currently has equipment in the café area and kitchen areas to which Summit Coffee shall have use of. Should the equipment need to be replaced or routinely serviced during the term of this Agreement the cost of doing so will be incurred by Summit. Any replacement of existing major equipment or fixtures shall require the prior consent of Town except in emergency situation.
14. Indemnity. Summit Coffee will indemnify and hold harmless the Town for any loss, claim, suit, or damages (including reasonable attorney fees) proximately caused by the negligent or willful conduct of its employees, members and invitees.
15. Assignment, Subletting. Summit Coffee shall not assign this Agreement, or sublet the space in which it rents without the prior consent of Town.
16. Event of Default. The happening of any of the following shall constitute and Event of Default on the part of Summit Coffee during the term of this Agreement: (a) failure to

pay the monthly payments to Town when due; (b) any non-monetary violation of this Agreement after thirty (30) day notice to Summit Coffee. Upon the occurrence of an Event of Default which remains uncured, Town shall have all remedies available to it, including terminating this Agreement, regaining full possession of the space and area, and maintaining an action to recover unpaid monies or other amounts due it. Summit Coffee shall not be held in default for vacating the Premises before the end of the term under this Agreement, and rents paid will be prorated for the month in which the Summit Coffee vacates the premises. Town shall not be held in default for requesting the vacating of the space and area by Summit Coffee before the end of the term under this Agreement, and monies paid will be prorated for the month in which the Summit Coffee vacates the premises.

17. Return of Premises Upon Termination. Upon termination of this Agreement, whether at end of term or otherwise, Summit Coffee shall return the Premises to Town in a good condition as at the inception, reasonable wear and tear excepted. The space and café area shall be in a clean, vacant condition and all personal property of Summit Coffee shall have been removed, and keys returned. Equipment and fixtures provided by Town, or any replacement thereof, shall be retained by Town unless otherwise agreed by the parties.

18. Controlling Law, Forum. This Agreement shall be controlled and interpreted by the laws of the State of North Carolina. The sole venue for the resolution of any dispute hereunder shall be a State or Federal court sitting in Mecklenburg County, North Carolina.

IN WITNESS THEREOF, the parties have executed this Agreement by authority duly given as of the date first above written.

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ATTEST:

TOWN OF HUNTERSVILLE

Janet Pierson, Town Clerk

By: _____
Gerald D. Vincent, Town Manager

(SEAL)

THIS INSTRUMENT HAS BEEN PREAUDITED IN THE
MANNER REQUIRED BY THE LOCAL GOVERNMENT
BUDGET AND FISCAL CONTROL ACT:

Jackie Huffman, Finance Director

APPROVED AS TO FORM:

Robert B. Blythe, Town Attorney

**SUMMIT COFFEE ROASTING
COMPANY, LLC**

By: _____
Printed Name: _____

Its: _____
(Title)

EMERGENCY FIRE EXIT ROUTE

CHILD WATCH

 FIRE ALARM PULLS

Kitchen Area

CAFE AREA