

**Mason Parks & Recreation Department
Use Agreement**

This Use Agreement is entered into, by and between the City of Mason Parks and Recreation Department (hereafter referred to as "Department") and Homemade Dreams Coffee House, LLC (hereafter referred to as "Contractor") on this 26 day of January, 2007.

1. The Contractor shall provide the following services for the Department: Full service food & beverage concessions & catering operations at the Mason Community Center Café, 6050 Mason-Montgomery Rd., Mason, OH 45040.
2. Term
 - A. Except as otherwise provided hereunder, the term of this Agreement shall begin upon the execution of this Agreement (the "Effective Date") and continue until the last scheduled performance provided by the Contractor, not to exceed five years from said Effective Date.
 - B. The Contractor shall have five additional one-year options to renew this agreement at the end of the initial term of five years. To exercise these options to renew, Contractor shall notify the Department of its intention to exercise the option by giving written notice at least three months prior to the expiration of the initial term or each subsequent extension.
3. Default, Cure, and Termination
 - A. Either party shall have the right to terminate this Agreement for cause, subject to the remedy and cure provisions of this Section.
 - B. For purposes of this Section, "cause" shall be defined as, but not limited to, any of the following: Substantial breach of obligation by either party (waiver of one breach shall not eliminate the obligation); Contractor operating in an unprofessional and/or unsafe manner; the Community Center environment changing such that it is no longer feasible to operate a café; or the Contractor's performance under this agreement is deemed unsatisfactory to the Department.
 - C. Any party exercising the option to terminate the Agreement for cause shall give written notice to the other party specifying the nature of the default. The Defaulting Party shall have sixty (60) days to cure such default.
 - D. If, after the allowable cure period, the Defaulting Party has failed to cure the default, the other party may, at any time thereafter and without any further notice, terminate this Agreement.
 - E. Notices under this Section and any other provision of this Agreement shall be sent to the following addresses:

For Contractor:
Kristen Nolan
President
Homemade Dreams Coffee House, LLC
6377 Tracy Place
Mason, Ohio, 45040

For Department:
City Managers Office
City of Mason
6000 Mason-Montgomery Road
Mason, OH 45040

For District:
Mason School District
Attn: Asst. Superintendent of Operations
211 North East St.
Mason, OH 45040

4. Concessions Fees

- A. The Contractor and Department agree that concession fees will be set at 15% (fifteen percent) of gross concession revenues, after applicable sales taxes are paid by the Contractor. Fees shall be paid to the Department.
- B. The Contractor and Department agree that city – sponsored catering services paid to the Contractor will be excepted from the 15% concession fees.
- C. The Department will be supplied a monthly statement including a detailed list containing revenues by date and location.
- D. All concession fees will be paid in full by the Contractor to the Department by the fifteenth (15th) of the month following the month in which the revenue was received.
- E. Payment shall be made to:
City of Mason Parks & Recreation
Attn: Finance Clerk
6050 Mason-Montgomery Rd.
Mason, OH 45040

5. Utilities

- A. The Department assumes responsibility for all utilities (electric, gas, water, sewer, and trash service) for approved locations as part of this agreement.

- B. Internet service shall be provided by Contractor such that its wired and wireless networks shall be physically and logically separate from the Department's.
- C. The City will provide a trash dumpster on the exterior fenced area of the community center in the fenced area outside of the room identified as "E111 Receiving" (also identified on Attachment A).

6. Assignment or Subletting

- A. Contractor may not, without the written consent of the Department and the Mason School District (hereafter titled "District") assign or encumber this agreement or its rights hereunder. Contractor may not, without the written consent of the Department and the District, sublet all or any part of the Café or provided storage areas at any time during the term of this Lease.

7. Construction/Building Maintenance

- A. Before implementation, the Department and District must first review and approve in writing any capital improvements, changes to structure and/or furnishings or casework, or any work that will affect the structure or physical being of the building; including cost. If said work exceeds \$25,000 the work must be bid by the District. The Contractor assumes all costs associated with any of the listed actions for the duration of the agreement and all extensions. A credit valued at fifty percent (50%) of said work will be granted to the Contractor by the Department, to be applied equally to the first twelve (12) Concessions Fee payments due the Department immediately following the completion of work. All fixtures permanently attached by Contractor to the building, removal of which would cause significant harm to its structure or physical being, become property of the District, regardless of any cancellation or extension of this agreement. All other fixtures installed by Contractor, hereby referred to as Contractor's fixtures, may be removed at the Contractor's option at any time.
- B. The Department and District assume all responsibility for costs associated with the upkeep and maintenance of the structure, physical being of the building, or delivery of utility services. The Contractor assumes responsibility for the upkeep and maintenance of all fixtures installed by Contractor.
- C. Before any work can begin the Department and the District must be presented, in a reasonable time period prior to requested work date, complete architectural plans, materials list, equipment list, and any other documentation deemed necessary by the Department and/or District to review requested work.

- D. Before any work can begin the Department and the District must be presented, in a reasonable time period prior to requested work date, a complete list of all contractors and sub-contractors scheduled to complete the requested work. The Department and District reserve the right to request references and perform reference checks on all contractors and sub-contractors and may require background checks, at the Department or Districts cost, of contractors, sub-contractor, or any of their employees.
- E. The Department and District must be named as additional insureds on all liability insurance policies associated with the requested construction and must be provided copies of certificates of liability prior to any approved work beginning.
- F. The Department and District reserve the right, if necessary, to determine times work will be allowed. Said work must be performed in a manner that least impacts operations of the Mason Community Center.
- G. The Contractor assumes all responsibility for acquiring and paying the necessary fees for permits required to complete any of the requested and approved work.

8. Equipment Usage & Repairs

- A. The Department will provide some existing equipment for the use of the Contractor at each location for the length of the awarded agreement and any extension thereof. Ownership of said equipment will reside with the Department at the end of any awarded agreement and all extensions.
- B. Before implementation, the Department and District must approve any changes to existing equipment, service to existing equipment, or addition of new equipment. The City assumes all maintenance costs associated with city-provided equipment for the first year of this agreement; any costs associated with said equipment will be shared 50% City and 50% Contractor for the balance of the initial term of this Agreement and any approved extensions of this Agreement. The Contractor may remove any equipment it installs as Contractor's fixtures and will be solely responsible for its maintenance for the duration of the Agreement and all extensions.
- C. If new equipment is added and causes changes to the structure and or utility service of any listed site, the Contractor agrees that said added equipment and/or utility service becomes property of the District at the end of the initial term of this Agreement or any extension thereof, unless the parties otherwise agree in writing.

9. Storage/Office Areas and Delivery's

- A. In addition to existing storage spaces in the Café service area and kitchen areas (identified on Attachment A) the department agrees to provide the storage space identified as Room “E116A” (also identified on Attachment A) for storage of Contractor’s necessary supplies for operations. Any shelving or storage units must be provided by the Contractor which shall be considered Contractor’s fixtures.
- B. Any additional storage spaces will be negotiated on an as needed basis and must be reviewed annually. This review will be completed by June 30th of each year of the period of the initial contract or any extensions of said contract.
- C. The City agrees to provide an open desk working space, upon reasonable request, for the contractor’s use for general office work. The contractor agrees that phone, computer, and other office equipment usage is not included as part of this work space and that the work space maybe shared with city employees.
- D. The City agrees, upon reasonable request, to provide temporary private meeting space in room “E125 Conference Room” (also identified on Attachment A) to the contractor for business meetings.
- E. The Contractor will be allowed to receive deliveries of supplies needed for café operations at the room identified as “E111 Receiving” (also identified on Attachment A).

10. Keys

- A. The following areas will be rekeyed, at the Departments expense: room E116A, all entry doors into kitchen area (three units). The department will provide two keys to the contractor for use; any additional keys or requests for additional keys will be at the contractor’s expense, not to exceed five keys to be issued at any one time. Any request to rekey these areas by the Contractor will be performed by the District at the Contractors expense. The Department Facilities Manager will also hold a key and the District will hold an additional key to these areas.

11. Access

- A. The Contractor will be provided with means to access the building before normal operating hours by means of prox card access, not to exceed two cards as issued by the District. Times of access will be negotiated annually between the Contractor, Department, and District by June 21st of each year for the following 12 months. This review will be completed by June 30th of each year of the period of the initial contract or any extensions of said contract.

12. The Contractor agrees to follow these Department guidelines:

- A. The Contractor agrees to be subject to a criminal background check paid for and performed by the Department.
- B. Vending machines are located in locations throughout areas of the Parks & Recreation Department. These vending machines shall not be relocated without prior approval of the Department. The vending machines shall not be considered a part of this Agreement.
- C. Unless otherwise noted the Contractor will be responsible for supplying all supplies and materials necessary for its operations. All such supplies should be appropriate to the operations and are subject to approval by the Department.
- D. Concession operational closures or cancellations will be done by the Department for inclement weather reasons, holidays, and any other reasonable circumstance as judged by the Department. The Department will make all reasonable efforts to notify the Contractor of any operational closures.
- E. The Department must approve any change of scheduled operating hours before the change is made except as allowed above in instances of closures or cancellations.
- F. The City has a standing beverage agreement with Coca-Cola, and all beverage resale items sold by the Contractor pursuant to this agreement with the City must be purchased from Tri-State Coca-Cola as part of the agreement. The Contractor shall purchase the product under the City's agreement and will be responsible for paying Tri-State Coca-Cola for product. The Contractor has no rights to any sponsorships and/or reimbursements made to the City by Tri-State Coca-Cola as part of the existing agreement between Tri-State Coca-Cola and the City of Mason. If the City of Mason changes beverage vendors the Contractor must change to the City's vendor at the same time as to all future purchases. Contractor may continue to sell Coca-Cola products held in inventory at the time of changeover until said inventory is gone.
- G. Alcoholic beverages are not allowed to be possessed or sold in any parks & recreation facility and will not be considered as part of this contract.
- H. If changeover to a new Contractor is required, it must be completed within fourteen days after the date of the execution of the changeover contract. Changeover is to include at a minimum the same number of locations presently covered under this Agreement. Upgrades of equipment and /or menus may be required if needed after review with the Contractor.
- I. The Department hereby grants to Contractor the exclusive right to advertise concession products at the Department locations at the

Contractor's sole expense. The Contractor assumes all cost for any advertising efforts undertaken. All parties will mutually agree on the size, design, content, and location of any Contractor and/or product signage.

- J. The Department will grant to the Contractor the exclusive concession operations at the named Department locations, with the exception of Department or city sponsored special events.
- K. The Contractor will be solely responsible for collecting all applicable sales tax and distributing said tax to the proper taxing authorities.
- L. The Contractor assumes responsibility for purchasing of all cleaning supplies, product, approved signage, and any other operational items necessary for the operation of awarded concession locations.
- M. The Contractor must provide adequate trained staff for the operation of each awarded location. The Contractor assumes responsibility for all payroll obligations and must obey all local, state, and federal employment laws that are applicable.
- N. The Contractor must maintain the awarded locations in a clean and safe manner. The Department reserves the right to inspect operations at anytime, without notice, and ask for corrective actions to be implemented immediately for any sub-standard items found.
- O. The Contractor must coordinate and receive any necessary health inspections and maintain the county health license under the Contractor's name. In addition, any food-handling or other certifications necessary for operations become the responsibility of the Contractor. The Contractor will provide copies to the City upon request. In addition, said certificates must be displayed in a mutually agreed upon area within public view.
- P. The Contractor must provide proof and maintain annual liability coverage that names the City of Mason and the Mason School District as additional insureds and shall indemnify, hold harmless and defend, if without fault, the City of Mason, Ohio, its elected and appointed officials, all employees, agents, all boards, commissions, and all volunteers against any and all liability, loss, costs, damages, expenses, claims or actions, including any attorney fees which the City of Mason, Ohio, its officers, employees, agents, all boards, commissions, and volunteers may incur or be required to pay, arising out of or by any act or omission on the part of the Contractor, while occupying any City of Mason facility/property during the terms of this Agreement and all extensions.
- Q. The Contractor must also sign a release and indemnity agreement provided by the Department that is given in consideration of the use of certain facilities owned by the City of Mason and the Mason School District and shall include any and all expenses incurred by the City of Mason, if

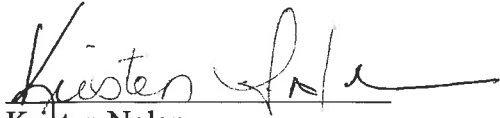
without fault, as a result of any such liability claims, actions, demands, and/or judgments, etc., including but not limited to attorney's fees and any costs associated herewith.

- R. The Department reserves the right to perform Contractor and/or participant evaluations and/or surveys for future management purposes as long as such evaluations do not unreasonably interfere with the operation of the business.
 - S. The Department also reserves the right to request the removal of any of products offered by the Contractor for resale.
 - T. The Department also must approve all menus and prices and any adjustments or changes to menus or prices.
 - U. The Contractor will be responsible for all normal operating maintenance and cleaning of all machinery, stocking of product, and collection of monies for products offered. Contractor and the Department will share responsibility for all expenses incurred in the maintenance of equipment used in concession operations as previously addressed herein.
13. It is understood and acknowledged that the Contractor is an independent contractor of the Department and is not an employee or agent of the City of Mason or the Mason School District. Contractor shall pay and report all taxes applicable to independent contractors, including, without limitation, Federal, State, and Local taxes, social security taxes and unemployment insurance. Contractor shall not be entitled to participate in any benefits offered by the City of Mason or the Mason School District to its employees, including but not limited to any health or disability benefits, retirement benefits or other benefits to which the employees of the City of Mason should be entitled.
14. Contractor agrees to abide by present rules and regulations and future rules and regulations of the City of Mason Parks and Recreation Department and the City of Mason and the Mason School District.
15. The parties to this Use Agreement understand and affirm that it is entered into for mutual benefit and consequently, any subsequent requests, negotiations, decisions, and determinations by either or both parties will be guided by that purpose and are to be subject to objective standards of fairness, reasonableness, and reciprocal support.

Remainder of page intentionally left blank; signatures to follow.

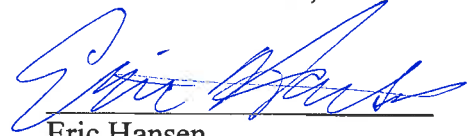
IN WITNESS WHEREOF, the parties have caused this Agreement to be effective and executed as of the date first written above.

HOMEMADE DREAMS COFFEE HOUSE, LLC:

A handwritten signature in black ink, appearing to read "Kristen Nolan", written over a horizontal line.

Kristen Nolan
President

CITY OF MASON, OHIO:

A handwritten signature in blue ink, appearing to read "Eric Hansen", written over a horizontal line.

Eric Hansen
City Manager

295708.1

PERSONAL PROPERTY TAX AFFIDAVIT

STATE OF OHIO)
) SS; 032 46 2586
COUNTY OF WARREN)

KRISTEN A. NOLAN being duly cautioned and sworn, states as follows:

1. 1. That he/she is PRESIDENT
(Title)
of HOMEMADE DREAMS COFFEE HOUSE LLC
(Name of Contracting Party)

2. 2. That HOMEMADE DREAMS COFFEE HOUSE LLC is not presently charged with any delinquent
(Name of Contracting Party)
personal property taxes on the general tax list of personal property of Warren County.

-OR-

1. 1. That _____ is charged with delinquent personal property tax on
(Name of Contracting Party)
the general tax list of personal property of Warren County. The amount of delinquent personal property tax due and unpaid including any due and unpaid penalty and interest is:

\$ _____.

Further, affiant states not, Kristen A. Nolan
Affiant

Sworn to and subscribed in my presence this 26th day of January, 2009.



KENDRA L. TAYLOR
Notary Public, State of Ohio
WARREN COUNTY
My Comm. Expires June 30, 2010

Kendra L. Taylor
Notary Public Kendra L. Taylor

This instrument was prepared by: BRIAN NOLAN

Note to Fiscal Office: If any personal property taxes are delinquent, you must send a copy of this statement to the County Treasurer within 30 days of the date it is submitted.

Warning: MAKING A FALSE STATEMENT ON THIS AFFIDAVIT MAY BE PUNISHABLE BY A FINE AND/OR IMPRISONMENT.

STATE ISSUED LICENSE

In accordance with division (2)(a) of section 2909.32 of the Ohio Revised Code

DECLARATION REGARDING MATERIAL ASSISTANCE/NONASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME NOLAN		FIRST NAME KRISTEN		MIDDLE INITIAL A
HOME ADDRESS 6377 TRACY PLACE				
CITY MASON	STATE OH	ZIP 45040	COUNTY WARREN	
HOME PHONE (513) 573-9455		WORK PHONE (513) 378-8849		

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME HOMEMADE DREAMS COFFEE HOUSE LLC				
BUSINESS ADDRESS 6377 TRACY PLACE				
CITY MASON	STATE OH	ZIP 45040	COUNTY WARREN	
PHONE NUMBER (513) 378-8849				

DECLARATION

In accordance with division (A)(2)(b) of section 2909.32 of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

- Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No
- Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

STATE ISSUED LICENSE - CONTINUED

3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List?
 Yes No

6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism?
 Yes No

In the event of a denial of licensure due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced on page 1 of this declaration.

x Kristen J. [Signature]
Signature

1/15/07
Date