

ORDINANCE NO. 2009 - 113

AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST ADDENDUM TO THE MASON PARKS & RECREATION DEPARTMENT USE AGREEMENT WITH HOMEMADE DREAMS COFFEEHOUSE, LLC, AND DECLARING AN EMERGENCY

WHEREAS, pursuant to an agreement with the City of Mason, Homemade Dreams Coffeehouse, LLC, operates the café in the Mason Community Center; and

WHEREAS, as a result of the Mason Community Center Expansion Project and in an effort to ensure the success of the Mason Community Center Café, it is in the best interest of the City of Mason to enter into the First Addendum to the Mason Parks & Recreation Department Use Agreement with Homemade Dreams Coffeehouse, LLC; and

WHEREAS, pursuant to Ordinance No. 2009-98, the City Manager has previously been authorized to enter into discussions as would be necessary with Homemade Dreams Coffeehouse to promote the success of the Community Center and the Community Center Café.

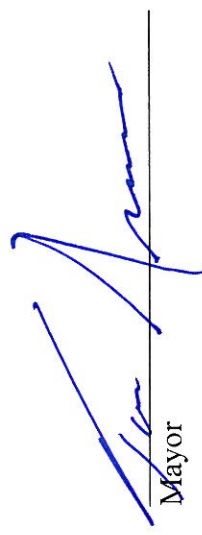
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. That the City Manager is hereby authorized on behalf of the City of Mason to enter into the First Addendum to the Mason Parks & Recreation Department Use Agreement substantially in the form as that attached hereto as Exhibit "A" and incorporated herein by reference.

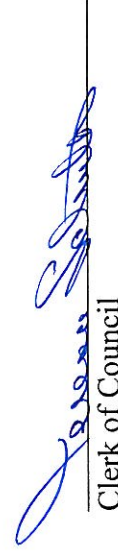
Section 2. That the Finance Director is hereby authorized to make all required payments pursuant to the terms of the First Addendum to the Mason Parks & Recreation Department Use Agreement with Homemade Dreams Coffeehouse, LLC.

Section 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to enter into the First Addendum at the earliest possible date.

Passed this 12th day of October 2009.


Mayor

Attest:


Clerk of Council

FIRST ADDENDUM TO MASON PARKS & RECREATION DEPARTMENT
USE AGREEMENT

This First Addendum (the "Addendum") to the Mason Parks & Recreation Department Use Agreement between this City of Mason ("City") and Homemade Dreams Coffee House, LLC ("Contractor") is hereby entered into this ____ day of _____, 2009.

WITNESSETH:

WHEREAS, the Department and the Contractor have previously entered into a Use Agreement dated January 26, 2007 regarding the operation of the Mason Community Center Café; and

WHEREAS, due to the expansion project associated with the Mason Community Center, the parties have agreed to make certain amendments to the terms of said Use Agreement.

NOW, THEREFORE, based on the mutual covenants contained below and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Use Agreement obligates Contractor to pay the City 15% of gross concession revenues at the Café at the Community Center, after applicable sales taxes are paid and city-sponsored catering services are paid to Contractor. The City agrees to waive the payment of these concession revenues for 2007, 2008, 2009, 2010, including any and all past due amounts.
2. A separate use agreement obligates Contractor to pay the City 15% of gross concession revenues after applicable sales taxes are paid for concessions at the Lou Eves Municipal Pool and the Corwin Nixon Park concessions. The City Agrees to waive payment of the past due amount of \$5660.65 for 2008. The City further agrees to waive the payment of these concession revenues for 2009.
3. The City agrees to compensate Contractor in the amount of \$600.00 per day for each day that the Café is required to be closed due to the Community Center expansion project. Such closure shall also include any day that any major component of the Community Center is closed. For purposes of this Addendum, the field house, the gymnasium, the pool, and the fitness floor each independently shall be considered major components of the Community Center. The City further agrees to compensate Contractor for two prior days of closure that occurred during the past move to the temporary Café location in a total amount of \$1200.00.
4. The City and Contractor also agree to enter into a Joint Marketing Program for a period beginning September 1, 2009, and ending on the date of the formal Grand Opening of the expanded Mason Community Center, which is tentatively scheduled for September of 2010. As part of the Joint Marketing Program, the City shall make a monthly payment of \$6000.00 to Contractor. In exchange for said payment, Contractor will provide various promotional opportunities focusing on the Café and the Mason Community Center. For illustration purposes

only, such promotional opportunities may include, but are not limited to, providing gift certificates, coupons, food and beverage specials, or other similar activities focused on promoting the Café and the Mason Community Center. The parties agree to meet on a monthly basis to determine a joint marketing plan for each month of this agreement.

5. Beginning November 1, 2009, and ending on the date of the formal Grand Opening of the expanded Mason Community Center, the City agrees to pay to Contractor a monthly catering retainer in the amount of \$1500.00. Contractor agrees to track the City's use of catering services on a monthly basis. To the extent that the City's catering use is less than the monthly retainer, Contractor shall be entitled to retain the difference. Contractor agrees to provide an invoice for any City catering use in excess of the monthly catering retainer.

6. The original Use Agreement did not contemplate Contractor using City facilities to operate a wholesale baking business separate from Café operations. The City agrees to allow Contractor to operate its wholesale baking business using City facilities. In return, Contractor agrees to pay the City 15% of the gross wholesale baking business revenues after applicable sales taxes are paid. The City further agrees to waive all fees associated with the wholesale baking business through December 31, 2010.

7. Contractor acknowledges that the City is constructing a new Café space as part of the Community Center expansion project. Contractor further acknowledges that it shall not have the right to make any capital improvements to the new Café space and that it shall not permanently attach any fixtures to the building without the prior authorization and approval of the City. Upon termination or expiration of the Agreement, Contractor agrees to surrender the new Café space in the same condition as when Contractor first occupies the area, excepting normal wear and tear and any modification made by or approved by the City.

8. Contractor agrees to provide separate monthly financial reports to the City, broken down by location and business component (i.e. café, wholesale baking operation, pool concessions, park concessions) indicating at a minimum all revenues and expenditures for each location/business component. Said financial reports shall not include personal financial information of Contractor's owners and/or proprietors.

9. Any and all provisions of the original Use Agreement not expressly superseded by this Addendum shall remain in full force and effect.

Remainder of this page intentionally left blank. Signatures on following page.

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

HOMEMADE DREAMS COFFEE HOUSE, LLC:

Kristen Nolan
President

CITY OF MASON, OHIO:

Eric Hansen
City Manager

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