

## NORTH CAROLINA

### A Lease Agreement

This Lease Agreement ("Agreement") is made and entered into this 1st day of May, 2007, by and between the Town of Black Mountain, a municipal corporation situated in Buncombe County, North Carolina, (hereinafter "Town") and CATHY MOYERS (hereinafter "Lessee").

#### **Term of Lease Agreement -Renewal Option/Requirements**

The term of this Agreement shall be for approximately three (3) years, commencing on the 1st day of May 2007 and ended on the 30th day of April 2010 (hereinafter "initial term").

Lessee shall have the option to renew this Agreement for one (1) additional two (2) year period, which period shall commence on the 1<sup>st</sup> day of May 2010 and end on the 30th day of April, 2012 (hereinafter "option period").

In the event that Lessee desires to renew the Agreement with the Town, it must so inform the Town in writing and by certified mail no later than the 31st day of December 2011. So long as Lessee is not in default or breach and the Town finds Lessee's past performance satisfactory and acceptable, this Agreement shall be renewed for an additional two (2) years upon the same terms and conditions contained in this agreement. If Lessee is in default or breach or the Town deems Lessee's past performance unsatisfactory or unacceptable and has informed Lessee in writing of past performance which it deems unsatisfactory or unacceptable, the Town may terminate the renewal option by notice to Lessee in writing and by certified mail no later than the 31st day of December 2011.

The Town and Lessee may renegotiate any provision(s) of this Agreement for the option period prior to renewal. Any such renegotiations for the option period must be concluded prior to December 31, 2011, or all rights of either party to renew this Agreement shall terminate. Notice of intent to renegotiate Agreement provisions must be provided to the other party in writing and by certified mail no later than the 31st day of December 2011. The notice provided should include a list of the provisions that the notifying party desires to renegotiate.

In the event that Lessee fails to provide written notice of the intent to renew, the Town provides notice of the intent to terminate by December 31, 2011 or if the parties fail to renegotiate terms by December 31, 2011, then Lessee's renewal option rights and privileges herein and otherwise arising shall fully and unconditionally terminate and be of no further force or effect as of that date; the Town, thus, shall be free to seek alternative Agreements and/or options in which event Lessee shall still retain the right to submit a new competitive proposal to the Town as any other competitive bidder and to negotiate a new Agreement consistent therewith if selected by the Town subject to the same terms and conditions as any other entity(ies) submitting proposal(s) to the Town.

## **Use of Premises**

Effective May 1, 2007, Lessee shall become the exclusive manager for the 19th Hole Snack Shop located on the Black Mountain Golf Course at 5 Ross Drive and such management right and authority shall continue through and including April 30, 2010. Lessee shall use the Snack Shop solely for the purpose of operating, managing, maintaining, and preserving a concessions facility and shall effectively, timely, efficiently and courteously provide the customary services provided by concessionaires. Lessee shall understand and agree that the primary purpose of the 19th Hole Snack Shop is to cater to golf course patrons and shall be liable for any and all activities on the leased premises.

Lessee shall secure, pay for, be solely responsible for, and at all times hold and maintain current and lawful, any and all federal, state, and local licenses and permits of whatsoever kind or nature, and timely and fully pay any and all sales and excise taxes, required by law for any food, beverage, and other concession sale(s), and operations.

Lessee shall not, at any time, use any part, portion or whole of the Shop for any unlawful purpose, nor in violation of any regulation, rule, or promulgation of any governmental body, nor in any manner as a nuisance.

Lessee shall operate the snack shop in a manner that is open and available to all persons regardless of race, creed, color, national origin, physical handicap, and otherwise in compliance with each and every federal, state, and local discrimination law.

Lessee shall ensure that the Town will have keys or access to each entrance of the Snack Shop. Lessee shall permit any operation assessment team access to the Snack Shop for review, observation or evaluation, as the Town deems necessary.

## **Lease Payments**

Lessee shall be required to pay the lease payment in monthly installments with each month's payment being payable in advance beginning May 1, 2007. Future monthly payments can be paid in advance for any portion of the lease term.

In the event that the Lessee terminates the lease agreement prior to the end of the first three year lease term or during the additional two year term if it exercises its right to extend the lease, it may do so by giving the Town ninety (90) days' written notice of its intent to terminate the lease and Lessee will be required to make the monthly rental payments to the Town through April of the following year in which it terminates the lease. If the notice of intent to terminate the lease is given less than ninety (90) days prior to the end of April, it must continue to make the monthly rental payments until such time as the Town secures a new lessee for the facility or takes over management of the business on a permanent basis. If Lessee terminates the lease, it must have all of its goods and equipment removed from the premises by the end of the day upon which it ceases to operate its business under the lease.

## **Receipts**

Lessee will retain all receipts from the operation of the 19th Hole Snack Shop.

In the event of a scheduled tournament when the golf course is closed to non-tournament patrons and food is provided by someone other than the 19th Hole Snack Shop, the Town will pay the Lessee two dollars (\$2.00) per tournament participant as compensation.

## **Utility Charges**

Lessee shall contract for and timely pay any and all charges arising from utilities servicing the Snack Shop.

## **Taxes -Licenses, Permits, and Other Fees**

Lessee shall timely pay any and all taxes of whatsoever kind, nature, or character that may be lawfully levied upon or charged against Lessee or upon Lessee's operation hereunder.

Lessee shall pay all licenses and permit fees necessary or required by law for the conduct of its operation hereunder.

## **Liens**

Lessee shall, at all times, keep the Snack Shop free and clear of any and all mechanic's, material men's, and other liens and encumbrances of whatsoever kind or nature arising out of or in connection with any work or labor done, services performed, or materials, supplies or appliances used or furnished for or in connection with any operations of Lessee, any alteration, improvement, or repairs or additions which Lessee may make, permit, or cause to be made, or for any work or construction, by, for, or permitted by Lessee on or about the Snack Shop, or for any obligation of whatsoever kind or nature incurred by Lessee. Lessee shall at all times promptly and fully pay and discharge any and all claims on which any such lien or encumbrance may, is, or could be based, and hereby indemnifies the Town and the Golf Course from and against all such liens, claims of liens, claims, suits, and other proceedings pertaining thereto. In the event Lessee contests any charge or claim, Lessee may provide a bond or title insurance insuring over the claim on terms and in amounts acceptable to the Town.

This section does not apply to liens which may arise directly from improvements or repairs made to the Snack Shop by the Town.

## **Town's Capital Improvements**

The Town has the right to make whatever capital improvements it deems necessary or desirable upon the Snack Shop at any time without expense to Lessee. These improvements shall be planned and completed so as to minimize the effect on the normal operation of the Snack Shop.

- (a) Before making any such improvements, the Town shall meet with Lessee to discuss the effect of such undertaking upon Lessee's operation of the Snack Shop.
- (b) In the event that the Town determines that the Town's improvement undertaking might substantially affect Lessee's operation of the Snack Shop or this Agreement, the Town and Lessee shall negotiate what, if any modifications of the Agreement, or operations may be necessary as a result of such capital improvement(s).
- (c) The parties expressly understand and hereby acknowledge that Lessee shall not be relieved of any of its obligations under this agreement, nor shall the Town be liable to Lessee for any interruptions of, costs, or any other direct or consequential damage(s) to, any part, portion, or whole of Lessee's operation under this Agreement which may or do directly or indirectly arise or result from the Town's undertaking of any capital improvement(s) to the Golf Course or Snack Shop.

The Town agrees to give reasonable advance notice to Lessee of the commencement date and time, if known to the Town, of any major capital improvement, which the Town intends to make to the Golf Course or Snack Shop.

## **Town's Equipment and Furniture**

Lessee shall have the right to use and operate, during the term of this Agreement, any equipment or furniture owned by the Town. Lessee shall inspect the Snack Shop prior to the commencement of the initial term and provide the Town with a complete inventory of the furniture and equipment found at the Snack Shop. Lessee shall submit to the Town an inventory list of non-consumable items valued at fifty dollars (\$50.00) or more as required by the Town.

The Town shall have no obligation to repair or replace such equipment or furniture during the term of this Agreement and may remove such equipment and furniture from the shop at the expiration of the initial term. Lessee shall maintain and replace this equipment as needed for the term of the lease. Any additional equipment furnished by the Lessee will remain the property of the Lessee, except that any equipment acquired by the Lessee to replace equipment furnished by the Town at the beginning of the lease term shall become the property of the Town.

At the termination or expiration of this Agreement, Lessee shall return all such equipment and furniture to the Town in as good or better condition than the equipment and furniture was at the beginning of the Agreement, reasonable wear and tear excepted.

## **Insurance**

The Town shall obtain and at all times maintain, solely at its own expense, sufficient and appropriate fire, casualty, and extended insurance coverage on all facilities, structures, and improvements of whatsoever kind or nature upon the Snack Shop in an amount equal to their replacement value.

The Town shall also obtain and at all times maintain, solely at its own expense, sufficient and appropriate fire, casualty, and extended coverage on all personal property. Such coverage shall be written on a replacement value basis.

Lessee shall also obtain and at all times maintain, solely at its own expense, the following coverage:

- (a) Worker's' Compensation and employer's liability covering the statutory liability of Lessee in the operation of the Snack Shop in an amount not less than One Hundred Thousand Dollars (\$100,000.00).
- (b) General liability coverage including personal injury and contractual liability with a combined single limit of not less than One Million Dollars (\$1,000,000.00) naming the Town and Lessee as the insured under Lessee's policy(ies). Such policy shall include operations protection, blanket contractual liability coverage for all written contracts, independent contractors protection, liquor liability to the extent liquor is expensed, personal injury coverage, sixty (60) day notice of cancellation or nonrenewable.
- (c) Renter's insurance coverage to cover any personal property or equipment on the premises in an amount satisfactory to the Town.

Lessee shall provide Town with certificates of insurance on or before March 1 each year of the initial term or option period, which verifies the existence of the insurance required hereunder.

## **Compliance with Laws**

Lessee shall, at all times, comply with any and all applicable rules, regulations, laws, codes, ordinances, statutes and orders of each and every governmental authority, federal, state or local, lawfully exercising authority over the Snack Shop or over the operation(s) carried out thereon by Lessee.

In addition, Lessee shall, solely at its own expense, timely take any and all such actions as may be necessary for the protection of the health, safety, or welfare of the public.

### **Personnel of Lessee**

Lessee shall, at all times and solely at its own expense, retain and provide sufficient and competent employees to adequately manage, operate, and maintain the Snack Shop and operations, and shall pay, and be solely responsible for, any and all such employee salaries, wages, other compensation and benefits, including, but not limited to, federal, state and local income taxes and withholdings, social security and related amounts. Such employees retained by Lessee shall not be, and shall not be considered, employees of the Town.

### **Hours of Operation**

The Snack Shop shall annually be open to and available for use by the public every day from approximately dawn to dusk at specific times set by the Town and Lessee, weather permitting. Lessee shall conspicuously and adequately post the hours of operation upon the Snack Shop.

Other changes to the starting and closing dates or times may be proposed by Lessee in writing and are subject to the consideration, review, and prior written approval of the Town which approval shall not be unreasonably withheld.

### **Defaults -Breach**

Any or all of the following shall be considered events of default or breach of this Agreement:

By Lessee:

- (1) If Lessee fails to pay any of the amounts due or fails to pay any such amount(s) when due or provide information to the Town, when, how, and as required in this Agreement, and any such default continues unremedied for a period of five (5) days after written notice of such default or failure to perform has been mailed to Lessee, or
- (2) If Lessee fails to perform or observe any other covenant, obligation, promise, agreement, commitment, or condition contained in this Agreement, and any such default continues unremedied for a period of forty-five (45) days after written notice of such default or failure to perform has been mailed to Lessee, except that such forty-five (45) day period shall be automatically extended for an additional period of time necessary to cure each default if such default is curable but can not be cured within such forty-five (45) day period and provided Lessee is diligently pursuing such cure; or

- (3) If Lessee makes an assignment of its property for the benefit of creditors;  
or
- (4) If Lessee petitions any court to be adjudged a bankrupt or seeks any other debtor judicial relief; or
- (5) If a petition in bankruptcy is filed in any court against Lessee; or
- (6) If Lessee is judicially determined to be insolvent; or
- (7) If Lessee is adjudged a bankrupt; or
- (8) If a receiver or other officer is appointed to take charge of the whole or any part of Lessee's property or to wind up or liquidate its affairs, or
- (9) If Lessee seeks a reorganization under any of the terms of the Federal Bankruptcy Code, as amended, or under any other federal or state debtor or insolvency laws; or
- (10) If Lessee admits in writing its inability to pay its debts as they become due; or
- (11) If any final judgment in excess of Twenty-five Thousand Dollars (\$25,000.00) is rendered against Lessee and remains unsatisfied for a period of thirty (30) days from the date on which it shall become final and Lessee fails to deliver to Town a bond or other security in a form, content and amount satisfactory to Town guaranteeing the payment of such judgment; or
- (12) If Lessee abandons any part, portion, or whole of the Snack Shop or related operations; or
- (13) If a member of management of Lessee is indicted for criminal activity related to the management of the Shop.

In the event of any or all such defaults or breaches by Lessee, the Town may, at its option and in addition to any and all other rights and remedies which it may have at law, in equity, or elsewhere under this Agreement against the Lessee including, but not limited to, expressly the specific enforcement hereof, have the accumulative right to forthwith terminate this Agreement and any and all rights, titles, and interests of whatsoever kind or nature of Lessee hereunder. However, the Town's cancellation of this Agreement shall not constitute nor shall it be construed to constitute either a cancellation or waiver by the Town of the remainder of the total amounts payable to the Town by Lessee, or for any damages or losses for the unexpired portion of the agreement which may be sustained by the Town on account of such default, breach, assignment, insolvency, adjudication, failure to perform or other default or breach by

Lessee as provided herein or elsewhere in this Agreement, including any and all expenses incurred by the Town in exercising its rights under this Agreement, or for any other direct and indirect, actual, and consequential damages or losses which the Town may sustain or incur.

### **Assignment of Lease Agreement**

Lessee shall not mortgage, hypothecate, pledge or otherwise encumber or assign either this Agreement, nor any obligations set forth herein. Lessee shall not sublet or sublease the Snack Shop, in whole or in part without the prior written consent of the Town.

The rights and privileges provided for and granted by this Agreement shall not be transferred or assigned by either party without written consent of the other. The rights and privileges granted hereunder shall terminate upon assignment by Lessee for the benefit of creditors or issuance of any garnishment against it for any claim, lien, suit or judgment or otherwise, not dissolved, released, satisfied or set aside within sixty (60) days thereafter, the Town shall have the right to terminate this Agreement on not less than sixty (60) days' written notice.

### **Modification and Termination of Agreement**

This Agreement may be modified or amended only upon the mutual agreement of the parties. However, such modification or amendment must be in writing, dated, and signed by representatives of both parties sufficiently authorized to execute same.

Any unforeseen circumstance(s), problem(s), dispute(s), disagreement(s), or question(s) regarding the role of either party under this Agreement, or pertaining to or arising from the use and/or operation of the Snack Shop, and related operations, that is/are not addressed by the express terms of this Agreement may be subject to further negotiation(s) between the parties consistent with the paragraph above, and only in the event that the Town consents to such further negotiation(s).

This Agreement may be terminated at any time upon the mutual written agreement of the parties consistent with the above paragraphs.

### **Additional Obligations**

Lessee shall, at all times, solely at its own expense, and without any cost to the Town, take any and all actions as may be necessary or desirable for the protection of the health, safety, and welfare of the general public. Lessee shall be responsible for

cleaning and maintaining the snack shop, including the restrooms, in a healthy and safe manner.

Lessee and its officers, directors, employees, agents, representatives, and contractees shall, at all times, treat the general public with the utmost of courtesy, respect, and consideration.

The Town reserves the right to check the identification of persons of questionable age who are dispensing and/or consuming alcohol and is obligated to close the Snack Shop for any sales immediately upon determination of any Alcoholic Beverage Control (ABC) violation until such time that the violation(s) are corrected. Upon a second ABC violation, the Lessee will be given a two (2) week notice to vacate the premises, beer sales will be suspended, and the Lessee will be required to pay rent through February or for ninety (90) days following the suspension of beer sales and business, whichever shall be longer.

No political activities shall be conducted on the premises and no materials may be posted or distributed on the premises which are related to politics, public office or political campaigns with the implied or actual consent or encouragement of the Lessee, its employees or agents. This will not impose on the Lessee any obligation to monitor or control the private conversations of patrons.

Lessee shall provide annually to Town for approval, a menu of items to be offered at the Snack Shop.

The Town will require an annual health inspection.

This Agreement shall be binding upon the parties hereto, their respective heirs, devisees, personal representatives, successors, and assigns applicable laws so permit.

Neither this Agreement nor any part, portion, obligation, condition, covenant, section, term or provision herein can be varied, amended, or waived by any oral representations or promise(s) of any agent or other person or party hereto; any such variance, amendment, or waive shall be in writing and signed by the duly authorized agent(s) of the parties hereto.

No waiver by the Town or Lessee or any breach of any provision of this Agreement shall be deemed for any purpose to be a waiver of any breach of any other provision hereof, or of any continuing or subsequent breach of the same provision.

Each right of the parties hereto is accumulative and is in addition to each and every other legal right, which the party may have in the event of any default or breach of the other.

In the event that any part, portion, section, provision, covenant, obligation, promise or condition contained in this Agreement is held to be invalid by a final judgment of any court of competent jurisdiction, the invalidity of same shall not in any manner affect any

other part, portion, section, provision, covenant, obligation, promise or condition contained in this Agreement.

Whenever an act, under this Agreement, is to be performed by the Town, the same may be performed by the Town's elected or appointed officials, employees, contractees, agents or representatives, whenever the context and applicable law so permit.

Upon rightful termination or expiration of this Agreement, each and every one of Lessee's legal and equitable rights, titles, and interests of whatsoever kind or nature to the Snack Shop, personal property, and equipment of Town shall fully terminate, cease, and be of no further force or effect.

The performance of each and every one of that party's obligations set forth in this Agreement shall be solely at that party's cost and expense and at no cost, fee, or expense whatsoever to the other party, unless a particular section or provision of this Agreement specifically provides otherwise, in which event the party's cost, fee, or expense shall not exceed that provided in such specific section or provision.

This Agreement shall be construed and applied, and Lessee shall abide by, construe, and apply this Agreement, so as to best effectuate and facilitate the Town's ongoing responsibility and intent to provide to the general public the highest quality golfing services, golf course, premises, facilities, and related operations possible at the lowest cost; to preserve, protect, and enhance same; and to afford the greatest possible protection and benefit to the Town, the Golf Course, the facilities, the courses, related operations, and the taxpayers.

Time is of the essence in the performance of this Agreement and every part, portion, provision, obligation, covenant, and promise contained herein.

Performance by either party hereunder, including the payment of monies, shall abate if, due to natural disasters, strikes, lockouts, wars, civil unrest, or other acts of nature beyond the control of either party, result in an impossibility of performance.

This agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

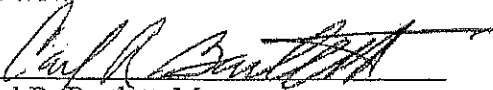
Lessee shall vacate the Golf Course upon termination of this agreement.

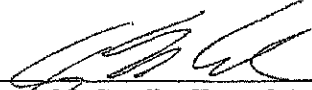
**Execution of Agreement**

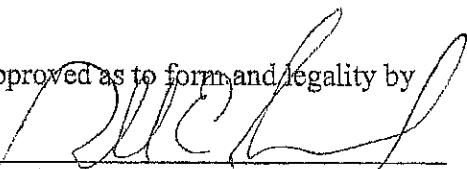
In witness whereof, the parties hereto have caused this lease agreement to be executed in duplicate by their respective proper officials, duly attested, and their respective common seals to be hereto affixed, this the day and year first above written.

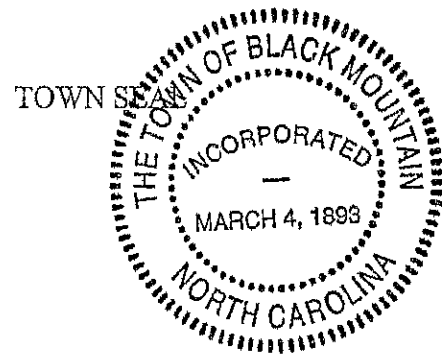
Dated and executed at Black Mountain, North Carolina, this 16<sup>th</sup> day of April, 2007.

TOWN:

  
\_\_\_\_\_  
Carl R. Bartlett, Mayor  
Town of Black Mountain

  
\_\_\_\_\_  
Anthony N. Caudle, Town Manager  
Town of Black Mountain

Approved as to form and legality by  
  
\_\_\_\_\_  
Ronald Sneed, Town Attorney



LESSEE:

  
\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

BID OPENING  
MARCH 16, 2007  
10:00 AM  
BLACK MOUNTAIN TOWN HALL

Bid opening was held on Friday, March 16, 2007 at the Black Mountain Town Hall for the Snack Shop Lease for the Black Mountain Golf Course.

ATTENDANCE:

1. DAVID BALLARD
2. Bo FERGUSON
3. LuAnn BRYAN
4. Sherry Williams
5. \_\_\_\_\_

The following bids were opened on Friday, March 16, 2007 at 10:00 a.m. as follows:

1. By: CATHY MOYERS Amount \$ 400<sup>00</sup>
2. By: \_\_\_\_\_ Amount \$ \_\_\_\_\_
3. By: \_\_\_\_\_ Amount \$ \_\_\_\_\_
4. By: \_\_\_\_\_ Amount \$ \_\_\_\_\_
5. By: \_\_\_\_\_ Amount \$ \_\_\_\_\_

The bids will be reviewed and a recommendation will be submitted to the Town Manager.

  
\_\_\_\_\_  
David Ballard, Golf Pro

**CATHY MOYERS**

***I would like to bid \$400.00 per month on the 19<sup>th</sup> Hole  
Snack Shop at Black Mountain Golf Course.***

***Enclosed you will find a copy of my menu and resume.  
If you have any comments or questions please feel free to  
Contact me.***

**CONTACT NUMBERS:**

**Home----828-686-1796**

**Cell-----828-231-4394**

**Thank You**

***Cathy Z. Moyers***

## **19<sup>th</sup> HOLE SNACK SHOP**

### **BREAKFAST**

***Sausage Biscuit***

***Bacon Biscuit***

***Egg Biscuit***

***Bacon Egg & Cheese Biscuit***

***Ham Biscuit***

### **LUNCH**

***Hamburgers***

***Hot Dog's***

***Chicken Salad***

***Tuna Salad***

***BBQ***

***FF***

### **SNACKS**

***Crackers***

***Chips***

***Granola Bars***

***Candy Bars***

### **BEVERAGES**

***Pepsi, Diet Pepsi, Dr Pepper***

***Sweetened or Unsweetened Tea***

***Coffee***

***Orange Juice***

***Bottled Water***

***Gatorade***

***Beer***

**ITEM'S WILL BE ADDED ON REQUEST**

# **RESUME**

**Cathy Young Moyers  
20 Beech Glen Drive  
Black Mountain, N. C. 28711  
(828) 686-1796**

**OBJECTIVE:** To secure a position with a company where I can utilize my skills and expertise in establishing a harmonious work environment creating a “can do” workforce specializing in customer satisfaction.

## **2003 – 2006 Café Cathy’s, Owner & President**

Responsible for operation of the restaurant including ordering supplies, accounts payable and receivable, food preparation, customer service, answering phones, and taking orders. This also included supervision of hourly positions, wage packages, safety inspections, state and federal program compliance, security, workers compensation, training requirements, and social employee activities. Sold business.

## **1975 – 2002 The Breakfast Shop, Owner & President**

Responsible for the total operation of the business which included advertising, staffing, order all supplies, scheduling, food preparation and presentation, customer service, menu organization, public relations, payroll, safety, state and federal program compliance, security, worker’s compensation, training, accounts payable and receivable and all other duties necessary to maintain a successful business.

## **1970 – 1972 JC Penny, Customer Service Manager**

Responsible for all customer satisfaction, appliance repairs, security, cash register operation, and supervised a staff of four. Moved to start my own business.

## **GENERAL INFORMATION:**

- 1 Chamber of Commerce, Black Mountain

## **EDUCATION:**

- 1 High School – East Yancy High School
- 2 Western Carolina University

## **REFERENCES FURNISHED UPON REQUEST**