STATE OF NORTH CAROLINA

CONCESSION LEASE AGREEMENT

COUNTY OF HENDERSON

THIS CONSESSION LEASE AGREEMENT, made and entered into this, the _____ day of _____, 2025, by and between THE TOWN OF FLETCHER, 300 Old Cane Creek Road, Fletcher, NC 28732, as Lessor (hereinafter referred to as "the Town"), and BAABALS ICE CREAM & COFFEE SHOPPE INC., 25 Fletcher Commercial Drive, Fletcher, NC 28732, as Lessee (hereinafter referred to as "Lessee");

W I T N E S S E T H :

WHEREAS, the Town is the owner of certain Town facilities known as *The Bill Moore Community* Park (hereinafter "Park") and desires to lease the concession building within the Park to the Lessee. Lessee, in turn, desires to lease the concession building from the Town in accordance with the terms and conditions set forth in this Concession Lease Agreement, ("Lease Agreement"); and

WHEREAS, the Town and Lessee agree that it is mutually advantageous to set forth each party's respective obligations and agreements in their entirety in writing in this Lease Agreement.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEMISE OF PREMISES:** The Town agrees to lease to Lessee and Lessee does lease from the Town the Concession Building within the Park located in the Town of Fletcher, North Carolina, (the "Leased Premises"). In addition to the Building, the Town shall allow the Lessee to use the Concession Stand equipment listed in Exhibit A attached hereto and incorporated herein. Lessee agrees to maintain all said equipment in its current condition and return same to the Town in the same or better condition as first leased.

2. **CONDITIONS:** Lessee agrees to lease the Leased Premises subject to the following conditions:

a. The Lessee acknowledges that the Lessee has inspected the Leased Premises and is fully satisfied with the physical condition thereof and agrees to accept the same in its present "AS IS" condition. The Town or any representative of the Town has not made any warranties or representations upon which the Lessee relies with respect to the physical condition of the Leased Premises.

b. The Lessee accepts the Leased Premises subject to such conditions, restrictions, and limitations, if any, that presently appear of record in regard to the Leased Premises.

c. The Lessee accepts the Leased Premises subject to any applicable health, life, safety, fire, or zoning ordinances, codes, or regulations of the Town of Fletcher, State of North Carolina, or any other governmental body now existing or which may exist by reason of any legal authority during the term of this Lease Agreement.

d. Lessee accepts the Leased Premises subject to the proper performance by the Town of all of the terms and conditions contained in this Agreement.

3. TERM: The term if this Lease Agreement commences on the 15th day of April, 2025 and terminates on the 15th day of August, 2025, unless terminated sooner under the provisions of this Lease Agreement.

4, DEPOSIT: Lessee is required to deposit $_____, before any use of the Leased Premises, however, the Town may determine that the Lessee is not required to deposit any sum for the use of the Leased Premises.

5. USE OF PREMISES: Lessee is permitted to use the Leased Premises during the term of this Lease Agreement for the sale of typical concession stand food, items and drinks to the general public.

6. FEE SCHEDULE: Lessee is responsible for paying rental fees to the Town in the amount of Four Hundred Fifty ($450.00) Dollars per month for the rental of the Leased Premises.

7. REPAIR AND MAINTENANCE: The Town and Lessee agree that the Town will be responsible for any and all repair and maintenance of the Park including the Leased Premises.

8. INDEMINIFICATION: Lessee agrees to indemnify and hold harmless the Town from and against all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person or property sustained by anyone arising out of the Lessee's use and occupancy of the Leased Premises. Lessee will, at Lessee's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against the Lessee or in which the Town may be impleaded with others upon any such above-mentioned matters or claims. This indemnification in no way limits the Lessee's obligation to maintain a blanket or other general liability insurance policy for the benefit of the Town. This indemnity and hold harmless provision will include indemnity against all costs, expenses, and liabilities incurred in or

in connection with any such claims or proceedings brought thereon and the defense thereof.

9. LIABILITY INSURANCE: Lessee will, at the Lessee's sole cost and expense, provide and maintain during the term of this Lease Agreement a blanket or general liability insurance policy against claims for personal injury, death, or property damage occurring in connection with the use and occupancy of the Leased Premises by the Lessee, said policy will have limits of no less than One Million Dollars ($1,000,000.00) per occurrence, and Two Million Dollars ($2,000,000.00) in aggregate.

10. PROPERTY DAMAGE INSURANCE: Lessee will, at the Lessee's sole cost and expense, provide and maintain property insurance during the term of this Lease Agreement in an amount sufficient to cover all items of property owned, maintained, or controlled by the Lessee on or within the Leased Premises.

11. REQUIREMENTS FOR INSURANCE: Insurance policies or riders required by this Lease Agreement will be (i) taken out by the Lessee thirty (30) days before the Lessee's use and occupancy of the Leased remises, or at the latest, the Lessee must have a Certificate of Insurance at the time of the Lessee's use and occupancy of the Leased Premises; (ii) maintained with responsible insurance companies organized under the laws of the United States and qualified to do business in the State of North Carolina; (iii) will contain a provision that the insurer will not cancel or revise coverage thereunder without giving written notice to the Lessee as an insured party and to the Town as an additional insured at least thirty (30) days before cancellation or revision becomes effective; (if) will name the Lessee as an insured party and the Town a an additional insured; (v) will be in accordance with specifications approved by the insurance advisor for the Town; and (vi) will be evidenced by a Certificate of Insurance listing the Town as an additional insured, which will be filed with the Town.

12. INTOXICATING BEVERAGES: Intoxicating beverages will not be served on or about the Leased Premises.

13. ASSIGNMENT AND SUBLETTING: Lessee may not assign or sublet, or permit this Lease Agreement, in whole or in part, from being assigned or sublet without the Town's written consent. Any attempt to assign this Lease Agreement without such consent will result in this Lease Agreement being null and void. This Lease Agreement may be assigned by the Town at any time. In the event the Town assigns this Lease Agreement, the Town will provide notice of such assignment to the Lessee.

14. DEFAULT: If the Lessee will, at any time, default in the observance of any of the terms, covenants, and conditions of this Lease Agreement, including any exhibits thereto, the Town will immediately notify the Lessee of the Lessee's failure to observe said terms, covenants, and conditions. Upon such notice being given by the Town, this Lease Agreement will wholly cease and terminate and the Lessee will have no rights or interests whatsoever to further use or occupy the Leased Premises. In the

event of any default by the Lessee under the terms of this Lease Agreement, the rent payments required under this Lease Agreement will be due and paid up to the time of the Town's recovery of possession and re-entry upon the Leased Premises.

15. TERMINATION FOR CONVENIENCE: The Town may terminate this Lease Agreement at any time and for any reason upon thirty (30) days prior written notice to the Lessee.

16. SUCCESSORS AND ASSIGNS: This Lease Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties hereto in accordance with the terms and conditions of this Lease Agreement and any statutes, regulations, ordinances, Town code provisions, or applicable Town charter provisions.

17. WRITTEN NOTICE: Written notice to be provided by or between the Town and the Lessee in accordance with this Lease Agreement will be either hand delivered or mailed by certified or registered mail to the following addresses:

If to the Town: Parks and Recreation Department Director
Town of Fletcher
300 Old Cane Creek Road
Fletcher, North Carolina 28732

If to the Lessee: Roy B. Dickerson, III, President/Registered Agent
Baabals Ice Cream & Coffee Shoppe Inc.
25 Fletcher Commercial Drive
Fletcher, NC 28732

18. WAIVER OF DEFAULT: Any waiver by the Town of a default under the provisions of this Lease Agreement by the Lessee will not operate or be construed as a waiver of a subsequent default by the Lessee. No waiver will be valid unless in writing and signed by the Mayor or Town Manager.

19. SEVERABILITY: In the event that a court of competent jurisdiction holds that any term or provision of this Lease Agreement is unenforceable or otherwise invalid, the invalidity does not affect other terms, provisions, or applications of this Lease Agreement that can be given effect without the invalid terms or provisions, and to this end the terms and provisions of this Lease Agreement are severable.

20. ENTIRE AGREEMENT: This Lease Agreement contains the entire and only agreement between the parties and no oral statements or representations or prior written matter not contained in this Lease Agreement will have any force and effect. This Lease Agreement will not be modified in any way except in writing, signed by both parties.

21. GOVERNING LAW: This Lease Agreement will be governed exclusively by the provisions contained in this Lease Agreement and by the laws of the State of North Carolina.

22. FORCE MAJEURE: The Town will not be liable to the Lessee during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to the following: Act of God (e.g. flood, earthquake, wind), fog out, electrical problems, fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials and/or transportation, or a restriction imposed by legislation, an order or a rule or regulation of a governmental entity such as for a pandemic. If such a circumstance occurs, the Town will undertake reasonable action to notify Lessee of the same.

23. RULES OF CONSTRUCTION: The parties acknowledge that they have had the opportunity to review this Lease Agreement, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this instrument will be operative against any party to this Lease Agreement.

IN TESTIMONY WHEREOF, the Town and Lessee have executed this Lease under seal effective the day and year first above written.

LESSOR:

TOWN OF FLETCHER

By: _____(SEAL)
Name: MARK BIBERDORF
Title: Town Manager

ATTEST:

_____
Name: _____
Title: _____

LESSEE:

BAABALS ICE CREAM & COFFEE SHOPPE INC.

By: _____(SEAL)
Name: ROY B. DICKERSON, III
Title: President/Registered Agent

ATTEST:

_____

Name: _____
Title: _____

EXHIBIT A

1. DRINK COOLER – SUMMIT APPLIANCE
2. MICROWAVE – WHIRLPOOL
3. COFFEE MAKER – VEVOR MODEL
4. REFRIGERATOR-FREEZER - VISSANI
5. ICE MAKER – VELIVI BRAND
6. HOT DOG ROLLER INDOOR GRILL – OLDE MIDWAY
7. COUNTERTOP POPCORN MACHINE – PARAGON BRAND
8. TOWER FAN - DREO
9. SNOW CONE MACHINE- VEVOR MODEL
10. FIRST AID KIT - PLUMBFLEX
11. FIRE EXTINGUISHER – KIDDE BRAND