

NORTH CAROLINA

CHEROKEE COUNTY

LEASE AND AGREEMENT

THIS LEASE AND AGREEMENT, made this the ____ day of January, 2018 by and between the CHEROKEE COUNTY, a body politic and a political subdivision of the State of North Carolina, (hereinafter called “the Lessor” or “the County”), and HIWASSEE VALLEY POOL AND WELLNESS CENTER, LLC, a North Carolina limited liability corporation, having its principal office and place of business in Murphy, North Carolina (hereinafter referred to as “the Lessee” or “the Tenant”);

WITNESSETH:

That the Lessor hereby demises and lets, and the Tenant hereby rents and hires, from the said Lessor the following described premises and office space, being and described as the building which houses the Hiwassee Pool and Wellness Center (“the Premises”, “the Pool and Wellness Center” or “the Building” hereinafter), which structure is located on a 2.50 acre tract of property at the intersection of Hiwassee River Avenue and Connahetta Street in Murphy, North Carolina. In addition to the leasing of the Pool and Wellness Center, Lessee shall have the right to use the parking lot adjacent to the Pool and Wellness Center by staff and clients, provided that neither the staff nor the clients of Lessee shall block, impede or interfere with the ingress, egress and regress of others who use the parking lot while using the tennis courts/pickle ball courts.

The Premises being leased to the Tenant is the Hiwassee Pool and Wellness Center building, the Hiwassee Pool and Wellness Center pool (“the Pool” hereinafter) and the dome storage building (“the storage building” hereinafter) adjacent to the Pool and Wellness Center. In addition to the Premises being leased to the Tenant, the County is also leasing certain items of personal property and equipment within the Building

To have and to hold the same and the privileges and appurtenances thereunto appertaining to the said Tenant, and to be used by it, the said Tenant, for the purpose of carrying on and conducting a business of providing an exercising facility and a swimming pool, and for such purposes as are usual and customary in the conduct of such business and for no other purpose or purposes, for the term of two years, beginning on the second day of January, 2018, and ending on the thirty first day of December, 2019.

This Lease shall begin and go into effect on January 2, 2018 regardless of the date(s) said Lease is executed by Lessor and Lessee.

Lessor and Lessee have jointly inspected the demised premises prior to the execution of this Lease and certain parts of the demised premises have been identified by for repair(s). Lessee accepts the demised premises “as is, where is”.

And it is stipulated and agreed that the Tenant shall pay to the Lessor as rental for the premises hereinbefore described for the first fourteen (14) months of term hereinbefore specified the sum of Five Hundred Dollars (\$500.00) each month in advance, on the first day of each and every month of the first year of the term hereinbefore set forth. For the last ten (10) months of the Lease, the Tenant shall pay to Lessor as rental for the premises the sum of Seven Hundred Fifty Dollars (\$750.00) per month. All of the above payments, it is stipulated and agreed, are to be made in lawful money of the United States, to be paid at the office of the Lessor in the County Finance Office, Cherokee County Courthouse, 75 Peachtree Street, Murphy, North Carolina 28906, during normal business hours, on the day due.

And it is further stipulated and agreed that:

1. The Tenant will, without any previous demand therefor, pay the rent at the times and in the manner above provided, and that the Lessor shall have a lien upon all of the property of the Tenant at any time placed in or being situated within the premises hereby leased and as hereinbefore described for the security of the payment of the said rent as the same shall become due as hereinbefore specified, and that in the event of failure on the part of the Tenant to pay said rent in accordance with the terms of this lease and agreement, the Lessor may forthwith take possession of the property hereby leased and foreclose the lien hereby created, as is provided by law for the foreclosure of chattel mortgages or conditional sales of personal property.
2. The Tenant represents and stipulates that the demised premises shall be used carrying on and conducting a business of providing a place for people to exercise and a place for people to swim, and for such lawful purposes as are usual and customary in the conduct of such a business and for no other purpose or purposes.
3. All persons used or utilized by the Tenant as life guards, swimming teachers, trainers, exercise

supervisors or who lead other activities shall be solely the employees of or solely independent contractors of the Tenant and they shall have no employment relationship with or contractual relationship with the Lessor in any way or manner whatsoever.

4. The Tenant shall take good care of the premises hereby leased or demised and the appurtenances thereof, and at the end or other expiration of the terms of this lease shall deliver up said premises in good order or condition, ordinary wear and tear excepted.

5. The Tenant shall not make any alterations, additions or improvements in the premises hereby leased and demised without first obtaining from the Lessor its written consent, and that all alterations, additions or improvements made by the Tenant during the course of its occupancy or the term of his lease shall inure to the benefit of and be the property of the Lessor upon the termination and end of this lease, and such alterations, additions, and improvements shall be surrendered with the premises when the same are surrendered by the Tenant to the Lessor.

6. Except as hereinafter set forth, during the term of this Lease or any extension thereof, the Lessor shall be responsible to maintain, repair or replace the following: the outside walls of the Building; the outside windows of the Building; the outside doors of the Building; the roof of the Building; the Building's outside HVAC unit(s); the outside walls and/or roof of the dome storage building; any Ethernet wiring within the interior or exterior walls; any security alarm wiring within the exterior or interior walls; the plumbing, wiring and cable(s) within the exterior and interior walls.

However if the damage or destruction to the outside walls of the Building, or to the windows of the Building, or to the outside doors of the Building, or to the roof of the Building, or to the Building's outside HVAC unit(s), or to the outside walls, or to the plumbing, wiring, Ethernet wiring, alarms or wiring for any alarm, and cable within the exterior and interior walls, and/or roof of the dome storage building is caused by the deliberate act or by the neglect act of the Tenant or any of Tenant's clients, then the Tenant shall be wholly and completely responsible for said repairs or replacements to the item or items damaged or destroyed.

7. During the term of this Lease or any extension thereof, the Lessor shall maintain ownership of the pool dome, all chairs, tables, benches and office furniture; all computer equipment now in use in the operation of the Center; all cash registers; all equipment used in the snack bar or concession stand; all exercise equipment or machines; and any and all other personal property within the Pool and Wells Center whether specifically set forth herein. Subject to Paragraph 8 the Lessee shall be permitted to use said items in the operation of the Pool and Wellness Center.

All computer equipment in the Pool and Wellness Center owned by the County but which will be operated by Tenant shall be removed from the County-operated internet and email system effective the first day of this Lease. At the end of this Lease or any extension thereof, all computer equipment shall be returned to the Tenant in good repair, ordinary wear and tear excepted.

If Tenant replaces the computer equipment during the term of this Lease or any extension thereof, any computer equipment so purchased by Tenant shall be Tenant's property and the computer equipment now in use shall be promptly returned to the Lessor.

8. During the term of this Lease or any extension thereof, the Lessee shall be responsible to maintain, repair or replace the following: HVAC interior air filters; the pool dome; the pool heaters; the floor coverings within the Building; the doors within the Building; all interior door handles; all interior light fixtures; all interior light bulbs; all electrical wall plates; all electrical switches; all cable or plugin wall plates; all Ethernet wall plates; any bathroom fixtures including mirrors, benches or chairs, commodes, shower heads and shower handles, shower curtains, shower curtain rods, sinks and sink faucets and sink handles, all water supply pipes from the wall to the fixture; all chairs, tables, benches and office furniture; interior security alarms, all business machines (i.e. cash registers, adding machines, calculators) now in use in the operation of the Center, all computer equipment now in use in the operation of the Center; all exterior tables, chairs, umbrellas or other item used poolside; all equipment used in the snack bar or concession stand; and all exercise equipment or machines.

9. During the term of this Lease or any extension thereof, if any exercise equipment or exercise machines need to be repaired or replaced by reason of ordinary wear and tear or is damaged by accident, negligence and the costs of repair exceeds 50%, the Tenant may repair or replace said exercise equipment or exercise machine at his own expense and the repaired exercise equipment or exercise machine will thereafter be the property of the Tenant. If the cost of repair to the exercise equipment or exercise machine is less than 50%, the repaired exercise equipment or exercise machine shall remain the property of the Lessor.

The Tenant shall give prompt notice to the Lessor of any exercise equipment or exercise machines which require repairs or replacement so Tenant may have the opportunity to inspect said items. If the Lessor does not inspect the exercise equipment or exercise machines which requires repair or replacement within three (3) of being notified, Tenant may proceed to repair or replace said exercise equipment or exercise machines without further notice to the Lessor.

Any repaired exercise equipment or exercise machines replaced by Tenant pursuant to Paragraph 9 and any new exercise equipment or exercise machines purchased by Tenant during the term of the Lease shall be the property of the Tenant.

10. During the term of this Lease or any extension thereof, the Lessor shall be responsible for: the maintenance, upkeep, and repairs to the parking lot around the Building; and the fence which surrounds the pool.

11. The Tenant, at its own cost and expense, shall comply with all rules, regulations and requirements of the State, County and City Governments or of the Government of the United State or any of the departments or bureaus thereof applicable to the leased or demised premises for the prevention or abatement of nuisances or other grievances arising out of the manner of the occupancy of said premises during said term.

12. The Tenant, at its own cost and expense, shall be solely responsible for the costs and expenses of any business licenses or business permits Tenant needs in order to operate the Pool and Wellness Center or any activity associated with or which takes place within the Center or the pool.

14. The Tenant agrees that the Lessor and its agent or other representative shall have the right to enter upon the premises hereby leased or demised, or any part thereof, at all reasonable hours for the purpose of examining the same.

15. (a) In the operation of the Pool and Wellness Center, the County holds an account line item referred to as Deferred Revenue, which are prepaid membership fees heretofore paid by members of the Hiwassee Valley Pool and Wellness Center. In order to account for the Deferred Revenue with Tenant, the Lessor and Tenant shall agree upon the value of the Deferred Revenue as of December 31, 2017. The balance of funds of Deferred Revenue shall be divided into amounts received during the month of December 2017 and amounts received prior to December 2017. The Deferred Revenue amounts received during the month December 2017 will be distributed to the Tenant in the month of January 2018. The Tenant agrees to provide all membership services associated with these Deferred Revenue funds. The Deferred Revenue amounts received prior to the month of December 2017 shall be paid to Tenant on a monthly basis as earned by Tenant until all funds of Deferred Revenue are paid in full. In no event shall the amounts paid to Tenant exceed the balance of Deferred Revenue as of December 31, 2017.

(b) In the operation of the Pool and Wellness Center, the County holds an inventory in Merchandise, Smoothie Bar, and Snack Bar items. The Lessor and Tenant shall agree upon the value of all merchandise, smoothie bar and the snack bar inventories as of December 31, 2017 and that value shall be deducted from the Deferred Revenue balance (Item 1 above) as of December 31, 2017. The balance of funds of Deferred Revenue less Merchandise, Smoothie Bar, and Snack Bar inventories shall thereafter be paid to Tenant on a monthly basis as earned by Tenant until all funds of Deferred Revenue are paid in full but in no event shall the amount paid to Tenant exceed the balance of Deferred Revenue as of December 31, 2017.

(c) Any equipment or inventory in the smoothie bar owned by a vendor shall remain the property of that vendor. Any equipment or inventory in the smoothie bar owned by the County shall remain the property of the County.

16. The Tenant shall not assign this agreement nor sublet the Premises or any part of the Premises without the Lessor's consent in writing. The Tenant shall not occupy or use or permit or suffer to be occupied or used the Premises hereby leased or demised for any business or purpose deemed disreputable in any manner, or extra-hazardous on account of fire, or for any purpose or purposes other than the purpose or purposes designated above. Any levy or sale by way of lawful execution or other legal process or any transfer or sale in bankruptcy or insolvency or under compulsory procedure of law related to Lessee shall be deemed an assignment within the meaning and terms of this lease.

17. If the premises hereby leased or demised shall become vacant during the term hereinbefore provided at any time when rent shall be or become due and unpaid hereunder, the Lessor or its legally authorized representative may re-enter the premises either by force or otherwise without being liable for prosecution therefor and relet the said premises as the agent or representative of the said Tenant.

18. In case of any damage or injury to the glass in or to the glass windows of the said leased or demised premises, said damage or injury being caused by the carelessness, negligence, or

improper conduct on the part of the said Tenant, its agents, employees, customers, clients or representatives, then the Tenant shall cause the said damage or injury to be repaired at its own cost and expense.

19. If, during the term of this lease or any extension thereof, the demised premises shall be or become damaged by fire or by the elements, such damage shall be repaired by the Lessor, unless the damage to said premises hereby leased or demised be so great that the same cannot be repaired with reasonable diligence so as to be fit for occupancy within 120 days from the date of the damage, when, in such event, the rent herein provided to be paid for said premises shall abate and be suspended for a period from the date of the damage to the premises hereby leased until the date when the said premises are so repaired as to be fit and ready for occupancy by the Tenant, and in such event the tenancy of the premises hereby leased or demised shall not be terminated but shall remain in force and effect under and by virtue of the terms and conditions of this lease, unless the damage done to the premises hereby leased shall be so great as to make it impossible to repair the premises within a period of 120 days, in which case the Tenant shall have the option of vacating the premises hereby leased or demised and of bringing to an end and termination this agreement and lease, provided however, that the said Tenant shall not have such option and shall not be allowed to be relieved from the obligations of this agreement and lease if the damage done to the premises shall in anywise be caused by the contributory negligence or act of the Tenant or its agents or employees.

If the damage or destruction occurs during the Renewal Period, the Lessor shall rebuild the demised premises if damage incurred amounts to 50% or less of the then replacement cost of the structure, or Lessor shall have the option to terminate this Lease, exercised by notice to Lessee given not more than 30 days from the date of such damage, if such damage exceeds 50% of the then replacement cost of the structure.

20. The Lessor shall carry fire, windstorm, and extended coverage insurance insuring the structure and/or personal property owned by the Lessor in such amount as the Lessor shall deem appropriate, but in an amount not less than the insurable value of the structure. Lessee acknowledges that it has no rights or interest, regarding such insurance or the proceeds derived therefrom, which proceeds shall belong solely to the Lessor; provided, however, that the Lessor agrees that in the event of damage to the structure caused by fire or storm or other loss which is covered by such insurance, such insurance proceeds attributable to such loss shall be used to repair and/or reconstruct the structure.

21. The Lessee shall carry insurance against fire and other risk upon Lessee's personal property and contents located in or about the demised premises and such improvements made by Lessee which are not intended to and do not, in fact, become fixtures of the leased property. The Lessor acknowledges that it has no rights or interest regarding such insurance or proceeds derived therefrom, which shall solely belong to Lessee. The Lessee shall maintain general liability insurance for a minimum of **One Million Dollars (\$1,000,000.00)** for bodily injury and **One Million Dollars (\$1,000,000.00)** for property damage, and such other insurance as appropriate to insure its interest. Lessee shall present insurance certificates naming Lessor as additional insured thereon, to meet the minimum limits required by Lessor. Tenant's liability insurance shall specifically cover the activities related to the operation of a pool including special events including practices by any aquatic club or school and/or swim meets by using the pool for a

swim meet competition.

Tenant shall provide the Lessor with a copy of a valid liability insurance policy and certificate of insurance on or before January 2, 2018. Any liability insurance policy shall list Cherokee County as an additional insured at no cost to the County. Any liability insurance policy shall also provide that if said liability insurance policy is cancelled or reduced in coverage for any reason, the insurance carrier shall promptly notify the County of said cancellation or reduction in coverage. Failure of Tenant to maintain liability insurance as set forth herein shall be considered a material breach of this Lease and shall be grounds for the Lessor to declare this Lease null and void and to take appropriate steps to take possession of the Premises.

22. The Lessor hereby assumes obligation for and shall be responsible to keep the building, the fixtures (inside and outside), the roof and the heat pump in good repair and in good working order during the term of this Lease or any extension or renewal thereof. In the event the Lessee needs to make repairs beyond ordinary and routine maintenance, the Lessee shall give Lessor prompt notice of any defect(s) and/or repair(s) prior to commencing any repairs or replacements. In performing any repair(s) or replacement(s), the Lessee: (a) shall obtain any and all necessary building or other required permit(s) before commencing said repair(s) or replacement(s); and (b) shall follow standard construction practices in making said repair(s) or replacement(s).

23. Connections for water, sewer and electrical power for the use of the occupants of the leased premises are already in place for the use of the Tenant during the term of this Lease.

(a) Lessee shall be solely responsible for making arrangements to open the proper and appropriate accounts for water, sewer, electric, cable television, satellite television, internet service and such other utilities as Lessee may use or want to use in its business operations.

(b) Lessee shall be solely responsible for paying all billings and fees incurred by Lessee for water, sewer, electric, cable television, satellite television, internet service and such other utilities as Lessee may incur in Lessee's use of the demised premises in its business operations.

(c) Lessee shall take care and shall insure that all billings and fees incurred by Lessee for water, sewer, electric, cable television, satellite television, internet service and such other utilities as Lessee may incur in Lessee's use of the demised premises in its business operations shall be paid in full on or before the termination of this Lease or any extension thereof.

24. That the Lessor hereby agrees that the Tenant, upon paying the rent as hereinbefore stipulated and performing all of the stipulations, agreements, and covenants, shall and my peaceably and quietly have, hold, and enjoy said premises during said term, free from the adverse claims of any person, firm, or corporation. The Lessee shall pay all county and/or town taxes and assessments that shall be lawfully levied upon the Lessee's personal property used or located in or about the demised premises.

25. That if there be any default made in the stipulations, agreements, and covenants herein contained, and if the Tenant fails to comply with all the provisions of this agreement and lease, then it shall be lawful for the Lessor to re-enter the premises hereby leased or demised, to repossess and take possession of the same, and to use, enjoy, or relet the same as if this agreement or lease had not been entered into.

26. That Lessee shall have the right to enter the demised premises prior to the effective date of

this Lease for the purpose of preparing the structure for use by the Lessee pursuant to this Lease. Lessee shall also have the right to erect appropriate sign(s) informing the public about the Lessee's business including the Lessee's name, Lessee's type of business, hours of operation and the date Lessee will open for business. Lessee's sign(s) shall be in compliance with all applicable state, county or town laws, statutes, ordinances and regulating related to the placement and maintenance of business signs.

27. Lessor shall have the right to remove any of Lessor's records and property and fixtures which are not subject to this Lease which may be stored in the demised premises within a reasonable time after the Lessee enters the demised premises pursuant to Paragraph 16, above. Lessor in removing any property or records pursuant to this paragraph shall not interfere with any work being performed by Lessee in its preparations to open its business.

28. That this Lease as set forth herein contains the entire and complete agreement of the parties, and may be amended or modified only by written instrument which sets forth such amendment or modification and which is signed by all parties hereto.

29. That this Lease shall be deemed to have been entered into in the State of North Carolina, and its interpretation and construction, and the remedies for its enforcement or breach are to be applied pursuant to and in accordance with the laws of the State of North Carolina without reference to any rules or conflict of laws.

30. (a) In the event that any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, unless the absence of the invalidated provision(s) adversely affect the substantive right of the Parties.

(b) The waiver by either Party hereto of any right hereunder, or of a material breach by the other Party, shall not be deemed a waiver of any other right hereunder or of any other material breach by said other Party whether of a similar nature or otherwise.

31. In the event that Lessee shall have fully complied with all the terms and conditions of the Lease during the initial term of this Lease, Lessee shall notify the Lessor that Tenant wishes to renew this Lease for an additional term of two (2) years. Any renewal of this Lease shall be upon such terms and conditions as the Lessor and tenant may agree. Any renewal of this Lease shall be deemed to be a new Lease and shall be in writing containing such terms and conditions as the Lessor and tenant may agree to and signed by the parties.

32. Notice of the Lessee's desire to renew this Lease for the second term of two years shall be made to Lessor not less than one hundred twenty (120) days prior to expiration of this initial two Lease Agreement. Said notice of the Lessee's intention to renew this Lease for the second year shall be made in writing to Lessor at: County Manager, Cherokee County Courthouse, 75 Peachtree Street, Murphy, North Carolina 28906.

33. Any notice required to be made to either party to this Lease may be waived in the sole discretion of the party entitled to said notice.

34. Any written notices to be made to or provided to the Lessor shall be made to Lessor at the following address: County Manager, Cherokee County Courthouse, 75 Peachtree Street, Murphy, North Carolina 28906.

Any written notices to be made to or provided to the Tenant shall be made to Lessee at the following address: _____

Lessor and Lessee shall provide prompt notice to the other party of any change of their individual addresses.

35. The tenant shall display signs in a prominent place in the lobby of the Premises and on the wall of the Premises which is visible to persons using the Pool indicating the Premises are operated by the Hiwassee Valley Pool and Wellness Center, LLC, Ralph Robinson, Manager.

36. That it is further understood and agreed that the stipulations, agreements, and covenants herein contained are binding upon the parties hereto and their respective successors, heirs and assigns.

In Testimony whereof, each of said parties has caused these presents to be signed in its corporate name by its president and attested by its secretary and its corporate seal to be hereunto affixed, the day and year first above written; this contract being executed in duplicate originals, one of which is retained by each of the parties.

LESSEE:
HIWASSEE VALLEY POOL AND WELLNESS
CENTER, LLC

By: _____
President

(Corporate Seal)

Attest:

Secretary

LESSOR:
County of Cherokee

By: Randy Wiggins, County Manager
of the County of Cherokee

(Corporate Seal)

Attest:

Maria Hass, Clerk to the Cherokee County
Board of Commissioners

(Notary acknowledgements attached.)

STATE OF NORTH CAROLINA
COUNTY OF _____

**NOTARIAL
SEAL-STAMP**

I, _____, a Notary Public of the County and State aforesaid, certify that _____, personally came before me this day and acknowledged that he is the Secretary of HIWASSEE VALLEY POOL AND WELLNESS CENTER, LLC, a North Carolina corporation, and that the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by _____ as its Secretary.

WITNESS my hand and official stamp or seal, this the _____ day of January, 2018.

Notary Public

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF CHEROKEE

**NOTARIAL
SEAL-STAMP**

I, _____, a Notary Public of the County and State aforesaid, certify that MARIA HASS, personally came before me this day and acknowledged that RANDY WIGGINS is the County Manager of the County of Cherokee, State of North Carolina and that the foregoing instrument was signed in its name by its County Manager, sealed with its County seal and attested by MARIA HASS as its Clerk.

WITNESS my hand and official stamp or seal, this the _____ day of January, 2018.

Notary Public

My Commission Expires: _____