

**THIRD AMENDMENT TO
LEASE AGREEMENT**

**BUNKER HILLS GOLF COURSE
RESTAURANT AND CATERING PROVIDER**

THIS THIRD AMENDMENT TO LEASE AGREEMENT ("Third Amendment") made and entered into this 8th day of February, 2012, by and between the City of Coon Rapids, a Minnesota municipal corporation, hereinafter referred to as "City", and Potluck Catering, Inc., d/b/a Town and Country Caterers, a Minnesota corporation, hereinafter referred to as "Tenant."

WITNESSETH:

The City and Tenant entered into a Commercial Lease Agreement dated September 21, 2010 ("the Lease"), concerning the restaurant, banquet facility, and bar and grill portions of the clubhouse at the Bunker Hills Golf Course ("the Golf Course"). The Tenant is now conducting business at the Golf Course doing business as "the Harvest Grill."

The City and Tenant entered into a First Amendment to Commercial Lease Agreement dated December 18, 2011 ("the First Amendment") modifying certain provisions of the Lease related to the impact of the reconstruction of County Road 14/Main Street and the closure of the road as part of that project. The City and Tenant entered into a Second Amendment to Commercial Lease Agreement dated January 17, 2012 ("the Second Amendment") modifying certain provisions of the First Amendment as part of the ongoing negotiations related to the impact of the County Road 14/Main Street road closure.

The City and Tenant have been negotiating in good faith toward a re-structured lease relationship for the 2012 lease year to allow Tenant to remain open and absorb the financial impact of the road closure while maintaining the service level expectations of the City. This Third Amendment seeks to re-confirm the City's and the Tenant's commitment to a successful long-term clubhouse relationship as vital to the public interest in the City of Coon Rapids.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the Lease, is hereby amended as follows:

1. **DEFINITIONS.** All capitalized terms, not otherwise separately defined herein, shall have the meanings ascribed to them in the Lease and/or the First Amendment and/or the Second Amendment.

2. **2012 RENT.** Paragraph 5 of the Lease is hereby modified to reflect that Tenant shall pay to the City 2012 rent in the total amount of \$100,000.00 as follows:

| <u>Due on or Before</u> | <u>Amount</u> |
|-------------------------|---------------|
| February 9, 2012 | (\$35,000.00) |

| | |
|-------------------|---------------------|
| March 1, 2012 | (\$35,000.00) |
| April 1, 2012 | (\$30,000.00) |
| May 1, 2012 | (\$25,000.00) |
| June 1, 2012 | \$10,000.00 |
| July 1, 2012 | \$45,000.00 |
| August 1, 2012 | \$55,000.00 |
| September 1, 2012 | \$45,000.00 |
| October 1, 2012 | \$30,000.00 |
| November 1, 2012 | \$25,000.00 |
| December 1, 2012 | \$0.00 |
| January 1, 2013 | \$15,000.00 |
| TOTAL | \$100,000.00 |

During the months of February, March, April and May of 2012 the schedule reflects a working capital arrangement with payments from the City to Tenant to enable Tenant to continue to operate during the winter months of the road construction activity in a manner acceptable to the City. By separate signature on this Third Amendment Kim Hines and Jason Hines personally guaranty the repayment of any payment from the City to Tenant to secure the amount paid. So long as Tenant pays the monthly rent on or before the date shown above and so long as total rent from Tenant to the City equals at least the amounts shown in the schedule in this paragraph, the City will not take action, legal or otherwise, to collect on the personal guaranty under this paragraph.

3. **ADDITIONAL GROUNDS FOR TENANT'S DEFAULT IN 2012.** The rent schedule in paragraph 2 of this Third Amendment is based on Tenant's final projection of total income in 2012, shown in attached exhibit A3-1. If Tenant fails to pay the monthly rent as scheduled the City may declare a default as described in paragraph 37 of the Lease. In addition, the City may declare Tenant in default and terminate the Lease if Tenant's actual gross revenues or total income, as measured cumulatively by Tenant's monthly sales tax report to the State of Minnesota, are cumulatively less than 80 percent of Tenant's monthly projections as shown in Exhibit A3-1. In such event, the City may proceed with notice of default and terminate the Lease.

4. **2011 RENT ARREARS REPAYMENT.** Tenant currently owes past due rent and utilities to the City in the amount of \$50,791 ("the Delinquency"). The City will defer collection of the delinquency until January 1, 2013, after which Tenant shall re-pay the delinquency on a monthly basis as shown on the amortization schedule attached to this Third Amendment as Exhibit A3-2. However, if Tenant's gross sales or total income, as measured by Tenant's gross receipts reported to the State of Minnesota for sales tax purposes, exceed Tenant's monthly expenses including rent, as measured by the financial reporting requirements in paragraph 9 of this Third Amendment, Tenant shall pay such excess to the City. Any such excess received by the City shall first be credited by the City to the Delinquency and then shall be retained by the City as incentive rent.

5. SECURITY DEPOSIT. Paragraph 9 of the Lease is hereby amended eliminating the additional \$21,000.00 security deposit payment that was due by Tenant on or before January 1, 2012.

6. EQUIPMENT LEASE PAYMENT DEADLINE. Paragraph 2.E. of the First Amendment is hereby amended to provide that Tenant shall have until September 1, 2013 to pay in full all lease-to-own agreements as noted in Exhibit A1-2 to the First Amendment.

7. PERSONAL PROPERTY TAX PAYMENT AND REIMBURSEMENT. Beginning February 9, 2012 Tenant will pay \$5,000 per month to the City and the City shall hold said amount to reimburse Tenant for Tenant's personal property tax account required in paragraph 22 of the Lease. Tenant will pay its personal property taxes to Anoka County when due. Upon proof from Anoka County that Tenant has paid its personal property taxes, the City will reimburse Tenant the amount held by the City pursuant to this paragraph. It is expressly understood by the City and Tenant that the amount held by the City may be less than Tenant's personal property tax obligation. Nothing contained in this paragraph is intended to waive any rights the City may have if Tenant fails to make Tenant's personal property tax payment when due.

8. BANQUET/EVENT ESCROW. Upon execution of this Third Amendment, Tenant will escrow with the City all deposits received for events held at the Premises. The escrowed funds will be held by the City for the benefit of the event. The funds for a specific event will have been deemed earned by Tenant upon completion of the event. On the first of each month, Tenant will provide the City with an accounting of deposits held including the event date, the estimated number of participants and the name and address of the person paying the deposit. By the 10th of each month Tenant will pay to the City the net event escrow funds, or the City will reimburse Tenant for the net event deposits earned, to maintain the escrow amount as reported. Additionally, Tenant shall provide the City with current deposit fee schedules. It is understood that the deposits remain the property of the person paying the deposit unless the event has been completed and the funds for the event have been released by the City. It is also understood and agreed by Tenant that in the event the Lease is terminated for any reason the owner of the deposit may choose to either hold their event at Bunker Hills or request a refund of the deposit by the City. If the owner of the event chooses to hold the event at Bunker Hills the Tenant hereby waives any contractual right to the deposit or the event.

9. CITY CONSULTANT. The City may enter into a contract with a consultant experienced in the operational and financial management of a destination restaurant to advise the City during the 2012 lease year. The purpose of the consultant will be to advise the City on Tenant's operations and ensure that Tenant is meeting its operational and financial obligations to the City. Tenant and Tenant's on-site manager shall meet with the consultant on a monthly basis. Tenant will fully cooperate with the consultant to review the operation of the restaurant and will provide the City and the consultant with monthly financial statements for Tenant's operation, including monthly balance sheets, revenues and expenses, and any other financial information deemed necessary by the City, in a format acceptable to the City. The City and/or the consultant may request additional information or clarification from Tenant if the City or the consultant believes, in the City's or consultant's discretion, that discrepancies or irregularities

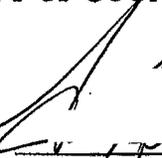
appear in the information provided by Tenant. If the City determines that discrepancies or irregularities exist, and the City reasonably determines that Tenant purposefully created the discrepancies or irregularities to avoid paying the rent, the delinquency, or incentive rent as described in this Third Amendment, the City may terminate the lease.

10. **BUILDING SIGNAGE.** During the construction of the clubhouse the City contracted and paid for signage on the facility. This signage includes face plates with "the Harvest Grill" name and logo. The signage will be owned by the City. If the face plates require maintenance during the term of the Lease or any extension, or if they are replaced, the Tenant shall be responsible for the costs of maintenance or replacement.

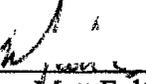
11. **FULL FORCE AND EFFECT.** Except as expressly amended by the provisions of this Third Amendment, the terms and conditions contained in the Lease, the First Amendment and the Second Amendment shall continue to govern the rights and obligations of the parties and the Lease shall remain in full force and effect until and unless expressly modified by the parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment as of the day and year above written.

CITY OF COON RAPIDS

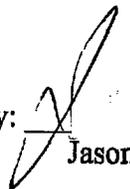
By: 

Tim Howe, Mayor

By: 

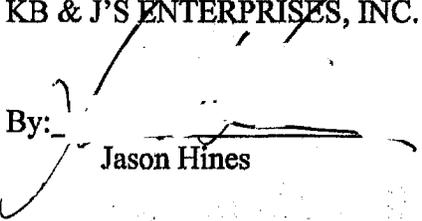
Matt Fulton, City Manager

POTLUCK CATERING, INC.

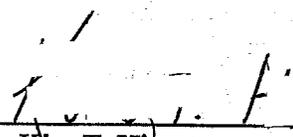
By: 

Jason Hines, Owner and Operator

KB & J'S ENTERPRISES, INC.

By: 

Jason Hines

By: 
Kim T. Hines

CONTINUING PERSONAL GUARANTY

As additional inducement for the City to enter into this Third Amendment, the undersigned jointly and severally and unconditionally guarantees that the Tenant will make all payments and meet any and all debts, liabilities, and obligations of every nature or form, now existing or hereafter arising or acquired under this Third Amendment, the Second Amendment, the First Amendment, and the Lease fully and promptly. If the Tenant defaults, the undersigned will immediately be responsible for and pay all sums due under the terms of the Lease, the First Amendment, the Second Amendment, and this Third Amendment, and all amounts payable under the equipment leases. If it is necessary for the City to proceed legally to enforce this Guaranty, the undersigned expressly consents to the jurisdiction of the State of Minnesota, Tenth Judicial District, with venue in Anoka County and to pay all costs, including reasonable attorneys fees incurred in enforcement of this guaranty and waives any right to a jury trial. It is not necessary for the City to proceed against the Tenant before enforcing this guaranty.

Kim T. Hines
Name of Guarantor

X 
Signature

2-8-12
Dated

Jason Hines
Name of Guarantor

X 
Signature

2-8-12
Dated