

RESOLUTION
AUTHORIZING EXECUTION OF A RESTAURANT MANAGEMENT SERVICES
AGREEMENT WITH PORTER'S PUB PAYROLL PPP, LLC
FOR OPERATIONS AT BOWES CREEK COUNTRY CLUB

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ELGIN, ILLINOIS, that David J. Kaptain, Mayor, and Diane Robertson, City Clerk, be and are hereby authorized and directed to execute a Restaurant Management Services Agreement with Porter's Pub Payroll PPP, LLC, on behalf of the City of Elgin for management of restaurant operations at Bowes Creek Country Club, Elgin, Illinois, a copy of which is attached hereto and made a part hereof by reference.

s/ David J. Kaptain

David J. Kaptain, Mayor

Presented: April 27, 2011

Adopted: April 27, 2011

Vote: Yeas: 7 Nays: 0

Attest:

s/ Diane Robertson

Diane Robertson, City Clerk

RESTAURANT MANAGEMENT SERVICES AGREEMENT

THIS RESTAURANT MANAGEMENT SERVICES AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 27th day of April, 2011, by and between the City of Elgin, an Illinois municipal corporation (hereinafter referred to as the "City"), and Porter's Pub Payroll PPP, LLC, an Illinois limited liability company (hereinafter referred to as "Manager"), on the terms and conditions, and with and subject to the covenants and agreements of the parties, hereinafter set forth.

WITNESSETH:

WHEREAS, City owns and operates a golf course and clubhouse associated therewith, commonly known as Bowes Creek Country Club (hereinafter referred to as "Bowes Creek"); and,

WHEREAS, Manager operates and has provided consultant services to multiple restaurant facilities, which provide dining, catering and other restaurant and bar services for its customers; and,

WHEREAS, City desires that Manager develop, operate, manage and provide certain restaurant, banquet service, full-service bar, concession and on-course beverage services at Bowes Creek, in accordance with the terms and conditions of this Agreement; and,

WHEREAS, Manager desires and is ready, willing and able to establish and provide such services upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby mutually acknowledged, the parties hereto hereby agree as follows:

1. Basic Provisions.

The following are certain provisions that are part of, and, in certain instances, referred to, in subsequent provisions of this Agreement:

City's Name and Address: City of Elgin, 150 Dexter Court, Elgin, IL 60120-5555.

Manager's Name and Address: Porter's Pub Payroll PPP, LLC, 2001 Butterfield Road, Downers Grove, IL 60515

Premises: Certain premises located at Bowes Creek Country Club, 1250 Bowes Creek Boulevard, Elgin, Kane County, Illinois 60124, and consisting of approximately 7500 square feet within the clubhouse, as more particularly identified on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "Premises").

2. Retention of Services; Term; Operating Period.

2.1 Retention of Manager. City hereby retains Manager to develop, operate, manage and provide certain restaurant, banquet service, full-service bar, concession and on-course beverage services at the Premises (such services are hereinafter referred to as the "Food and Beverage Operations") for the purposes and on the terms and conditions set forth in this Agreement, and Manager hereby accepts such hiring on the terms and conditions set forth in this Agreement, provided that Manager shall have no right or authority, express or implied, to commit or otherwise obligate City in any manner whatsoever except to the extent specifically provided for in this Agreement.

2.2 Term. This Agreement shall become effective and binding as of the date first set forth above (the "Effective Date," herein), and shall continue in full force and effect through and including December 31, 2011, unless terminated prior thereto as provided in this Agreement (the "Term," herein). The initial Term of this Agreement shall be automatically extended for an additional two (2) years, through and including December 31, 2013, unless either the City or the Manager notifies the other party in writing of its intention not to extend the Agreement not less than ninety (90) days before the expiration date of the initial Term. Any such extension shall be upon the same terms and conditions as the initial term of the Agreement, except for the proposed budget and amount of the fees for the 2012 Operating Year and the 2013 Operating Year, which shall be renegotiated based upon the available figures for the 2011 Operating Year and subject to written mutual agreement by the parties. At the end of the initial Term, this Agreement shall be automatically renewed for up to five (5) additional three-year terms unless either the City or the Manager notifies the other party in writing of its intention not to renew the Agreement not less than ninety (90) days before the expiration date of the then-current term. Any such additional terms shall be upon the same terms and conditions as the initial term of the Agreement, except for the proposed budget and amount of the fees, which shall be renegotiated based upon the most recently available figures for the prior Operating Year and subject to written mutual agreement by the parties.

2.3 Operating Period. The period during which Manager shall perform the services described herein (the "Operating Period") shall commence on written notice from City to Manager, and shall continue for the remainder of the term of this Agreement, or until this Agreement is terminated prior thereto as provided in this Agreement, whichever is first to occur.

2.4 Operating Year. For the purposes of this Agreement, an "Operating Year" shall run from January 1 of a calendar year to December 31 of the same calendar year, except that the 2011 Operating Year shall run from the Effective Date of this Agreement to December 31, 2011.

3. Compensation.

3.1 Compensation. During the Operating Period, as compensation for Manager's services to be rendered hereunder, Manager shall be paid \$420,000 to manage the Food and Beverage Operations (hereinafter referred to as the "Base Fee"). An initial payment of \$150,000 will be made

by the City to Manager upon the approval and execution of this Agreement by both parties hereto. Subsequent payments shall be made in equal installments of \$33,750 on the first (1st) day of each month beginning May 1, 2011, and for each of the eight (8) succeeding months, with the final payment to occur on December 1, 2011, unless this Agreement is terminated prior thereto in accordance with the provisions of this Agreement. In addition to compensation for Manager's services, the Base Fee includes all payroll, payroll-related expenses and fees, and entertainment expenses, as set forth in Exhibit B, attached hereto and incorporated herein by this reference, under the heading "F&B Labor Expenses."

3.2 Additional Compensation/Penalty – Cost of Goods Sold. As set forth in Exhibit B under the heading "Cost of F&B Goods Sold," the Costs of Goods Sold for the 2011 Operating Period is estimated to be \$286,518. As additional compensation to the Manager, in the event the actual amount of the Costs of Goods Sold is less than the estimated amount of the Costs of Goods Sold (less Food Start Up costs in the amount of \$5000), the Manager shall be entitled to additional compensation as follows:

- a. In the event actual Costs of Goods Sold is between \$261,518 and \$281,518, Manager shall receive a bonus in the amount of fifty percent (50%) of the difference between \$281,518 (said amount being the estimated Cost of Goods Sold, less Food Start Up costs), and the actual Cost of Goods Sold. The maximum bonus to which the Manager would be entitled under this subsection is \$10,000.
- b. In the event that the actual Costs of Goods Sold is less than \$261,518, Manager shall be entitled to receive an additional bonus equal to the difference between the actual amount of the Costs of Goods Sold and \$261,518.

In the event that the actual Costs of Goods Sold incurred after May 1, 2011, exceeds \$286,518 (including Food Start Up costs in the amount of \$5,000), Manager shall be required to pay to the City a penalty in the amount of fifty percent (50%) of the difference between the actual Cost of Goods Sold and \$286,518. The foregoing notwithstanding, the maximum amount for which the Manager would be responsible to pay under this subsection is \$10,000.

Nothing in this Section shall limit or modify Manager's obligation to maintain sufficient inventory, goods and supplies to manage and operate the Food and Beverage Operations in a first-class manner. In the event that the City believes that the Food and Beverage Operations is being adversely affected because the levels of inventory, goods, or supplies levels are not being adequately maintained, the City shall have the right to require Manager to increase such levels, in the City's sole discretion.

3.3 Additional Compensation – Revenues. As set forth in Exhibit B under the heading "F&B Revenue," the parties hereto have estimated total Gross Revenues from the Food and Beverage Operations for the 2011 Operating Period in the amount of \$868,851. The parties agree that any Gross Revenues earned by the Food and Beverage Operations between \$868,851 and \$918,851 will be received and retained by the City to offset utility costs paid by the City. The City shall be entitled to receive and retain the full amount of such excess Gross Revenues (up to \$50,000) regardless of any actual utility costs paid by the City.

In the event that actual Gross Revenues earned by the Food and Beverage Operations exceeds \$918,851, the parties agree that the amount by which the actual Gross Revenues exceeds \$918,851 shall be shared equally by the City and the Manager, with each party to receive fifty percent (50%) of the revenues above \$918,851.

3.4 Gross Revenues. Any Gross Revenues generated, earned, or received from the Food and Beverage Operations shall be retained by and constitute the sole property of the City, subject to any amounts due to Manager pursuant to 3.3 of this Agreement, and Manager shall promptly deposit any such revenues received into an authorized City account in accordance with the terms of this Agreement. For the purposes of this Agreement, the term "Gross Revenues" shall mean all revenues, from whatever source, received by Manager or the City from or in respect of the operation of the Food and Beverage Operations and from any income generating activity associated with the Food and Beverage Operations, including, but not limited to, those items identified in Exhibit B under the heading "F&B Revenue," and shall be determined in accordance with accounting and reporting requirements set forth in Section 8 of this Agreement. Without limiting the foregoing, "Gross Revenues" shall mean all monies or other consideration paid or payable to City or to Manager from all business conducted upon or from the Premises by Manager and all others, and whether such sales be evidenced by cash, check, credit charge account, exchange or otherwise, and shall include, but not be limited to, the amount received from the sale of goods, wares and merchandise and for services performed on or at or originated from the Premises, together with the amount of all orders taken, received or originated at the Premises or sales completed by delivery at the Premises, whether such orders be filled from the Premises or elsewhere. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Manager shall receive payment (whether full or partial) thereof. No deductions of any kind shall be made from Gross Revenues, including but not limited to any uncollected or uncollectible installment or credit accounts, credit card discounts or thefts.

Any provisions of this Agreement to the contrary notwithstanding, Gross Revenues includes only those revenues generated from or in respect to the Food and Beverage Operations, and does not include any other revenues generated with respect to Bowes Creek Country Club, including, but not limited to, the operations of the Bowes Creek golf course and pro shop.

4. Manager's Duties and Authority

4.1 Costs and Budget. During the Operating Period, City shall be solely responsible for all reasonable costs and expenses incurred by Manager pursuant to this Agreement, including all costs and expenses which Manager is authorized to pay on City's behalf under Section 4.10 of this Agreement, provided that such costs and expenses have been approved by the City in accordance with any applicable provisions of this Agreement, and excluding labor and labor-related expenses to be paid by Manager pursuant to this Agreement. In addition, Manager shall bear costs and expenses incurred by personnel not employed exclusively for the Food and Beverage Operations and not employed on-site at the Food and Beverage Operations. City shall deposit into an account such funds, together with Gross Revenues, as are necessary to meet the costs and expenses for which City is responsible hereunder, in accordance with the budget set forth in Exhibit B.

4.2 General Scope of Duties and Authority. During the Operating Period, Manager shall have the authority and responsibility, in conformance with and subject to the limitations on such authority under the terms of this Agreement, for the general management and operation of the Food and Beverage Operations at the Premises, including without limitation the hiring and discharging of all employees, normal purchasing, general pricing and administrative policies, budgeting, accounting procedures, advertising and promotion and other operational matters. Manager agrees to use its best efforts to cause the Food and Beverage Operations to be managed and operated in a first-class manner and in full compliance with all the terms of this Agreement and all applicable laws, regulations and ordinances. The Food and Beverage Operations shall be operated in a manner that is customary and usual for restaurants and food and beverage operations of comparable class and standing with comparable facilities.

4.3 Long-Term Contracts. Manager shall in no event enter into any contract for supplies, or labor or with respect to any other matter relating to the Food and Beverage Operations at the Premises having a term which exceeds one (1) year without specific written consent of City. Manager may not, without City's prior written approval, contract with or purchase from any affiliate of Manager any supplies, services or labor for the Food and Beverage Operations. Manager shall use its best efforts to cause all contracts for supplies, service or labor for the Food and Beverage Operations to be terminable on not more than thirty (30) days notice by City.

4.4 Personnel. During the Operating Period, Manager shall hire, supervise, promote and discharge (as necessary) an executive staff (i.e., the manager, assistant managers) for the Food and Beverage Operations, and shall supervise through such executive staff by way of promulgating guidelines, monitoring employment procedures and practices, and providing such other controls as may be necessary or as City may prescribe, the hiring, supervision, promotion and discharge of all other operating and service personnel for the Food and Beverage Operations (except employees of the City, if any, involved in the Food and Beverage Operations). Manager shall use reasonable care in the selection of qualified, competent and trustworthy employees for the Food and Beverage Operations. City may consult or communicate with Manager at any time regarding Manager's employment practices and personnel selection, and Manager shall ensure that Manager's employment practices, personnel selection, and the conduct of Manager's employees are in compliance with the requirements of this Agreement. Manager will negotiate with any labor union lawfully entitled to represent all or any group of such employees; provided, however, that any collective bargaining agreements or labor contracts resulting therefrom must be approved by City, and Manager shall not be authorized to execute any such agreement or contract. All such employees shall be employees of Manager, and not of City.

4.5 Utilities and Services. City shall be responsible for and promptly pay all charges for general utilities as set forth in Section 16 of this Agreement. The City shall also provide the Food and Beverage Operations with cleaning (including window cleaning), pest control, elevator and boiler maintenance, air conditioning maintenance, master television antennae, or equivalent, service, laundry and dry cleaning service. The Manager shall provide for, on behalf of the City and at City's sole cost and expense, such other services as are customarily provided in connection with the maintenance and operation of a first-class property similar to the Food and Beverage Operations, or

as otherwise directed by City. The City shall provide a City account for any such service providers. All such operational expenses must be approved in advance by the City's Director of Golf Operations, and made in compliance with the City's procurement ordinance.

4.6 Supplies. During the Operating Period, Manager shall cause to be purchased, on behalf of the City and at the City's sole cost and expense, all materials and supplies necessary to carry on the day-to-day operation of the Food and Beverage Operations, or as otherwise directed by the City. The City shall provide a City account for any such vendors. All such purchases must be approved in advance by the City's Director of Golf Operations, and made in compliance with the City's procurement ordinance.

4.7 Repair and Improvements. During the Operating Period, the Manager shall promptly advise the City's Director of Golf Operations of any repairs, replacements, alterations, additions and improvements that are required with respect to the Food and Beverage Operations and any additions thereto, and all furniture, furnishings, equipment and other personal property now or hereafter located thereon or used in connection therewith. At the direction of the City's Director of Golf Services, and subject to the provisions of this Agreement, Manager shall make or cause to be made, on behalf of the City and at the City's sole cost and expense, such required repairs, replacements, alterations, additions or improvements. Except in the case of an emergency pursuant to Section 4.9, all such expenditures must be approved in advance by the City's Director of Golf Operations, and made in compliance with the City's procurement ordinance.

4.8 Collection. During the Operating Period, the Manager shall promptly advise the City's Director of Golf Operations of any vendor, supplier, service provider or contractor that has defaulted or that is in imminent risk of defaulting with respect to any contractual or other legal obligation to the City. The City shall have the right to institute such legal actions or proceedings as may be reasonable or necessary to collect charges, fees or other income arising out of the operation of the Food and Beverage Operations, or to cancel or terminate any contract, agreement, license or lease for breach or default, in the City's sole discretion.

4.9 Emergencies. During the Operating Period, Manager shall do or cause to be done all such acts and things in and about the Food and Beverage Operations as shall be reasonable and/or necessary to manage and operate the Food and Beverage Operations. In the case of an emergency, or unforeseeable shortages of equipment or supplies, or unusual experience with theft or breakage, or if the failure to undertake such action would result in the suspension of operations of the Food and Beverage Operations or would expose City to the imminent danger of liability in an amount in excess of \$2,000.00, Manager shall do or cause to be done such acts or things as are necessary under the circumstances without regard to the limitations set forth in this Agreement, provided that prior to making any expenditures for an emergency situation as described in this Section 4.9 that would otherwise be affected by the budget provisions set forth in this Agreement, Manager shall use its best efforts, under the circumstances, to contact City's Golf Services Director or his designee and obtain prior approval by City of such expenditure. Moreover, in no event shall Manager be authorized to incur any expense (singularly or in the aggregate for any particular matter) in excess of the sum of \$2,000 pursuant to this Section 4.9 unless specifically authorized by City.

4.10 Funds and Payment. With the exception of the amounts given to the Manager as its Base Fee in accordance with Section 3.1 of this Agreement, during the Operating Period Manager shall deposit in such depository or depositories approved by City in an account in City's name, all monies furnished by City pursuant to Section 4.1 of this Agreement or otherwise, and all monies received by Manager for and on behalf of City, including, but not limited to, Gross Revenues (as defined in this Agreement), and to disburse and pay the same on behalf of and in the name of City in such amounts and at such times as the same are required to be made in connection with the ownership, maintenance and operation of the Food and Beverage Operations for:

- a. All taxes, assessments and charges of every kind, nature and description levied or assessed against the Food and Beverage Operations, including sales taxes, at least five (5) days before the same become delinquent, unless payment thereof is being contested by City, and City has, by notice hereunder, advised Manager not less than ten (10) days prior to the date on which such taxes, assessments or charge are payable of such contest and has directed Manager not to make such contested payment.
- b. All costs and expenses of maintaining and operating the Food and Beverage Operations authorized under the terms of this Agreement including, without limitation:
 1. The costs and expenses of utilities, services and concessions of the Food and Beverage Operations, except for those costs or expenses to be paid directly by the City pursuant to Section 16;
 2. The cost of all purchases of food, beverages, materials and supplies incurred in the day-to-day operation of the Food and Beverage Operations;
 3. The costs and expenses for the repairs, maintenance, alterations and additions to the Food and Beverage Operations and all furniture, furnishings, equipment and other personal property of the Food and Beverage Operations;
 4. Out-of-pocket expenses incurred by Manager for or in connection with the Food and Beverage Operations, but only to the extent specifically preapproved by City;
 5. License and permit fees;
 6. Any other costs or expenses authorized by City hereunder or otherwise authorized by City in writing.
- c. To the extent available or at the direction of City, Manager shall distribute to City such funds as City shall request in writing.
- d. Any payments made by Manager pursuant to subsections a through c herein shall be made on behalf of the City and at the City's sole cost and expense, must be authorized in advance by the City's Director of Golf Services in accordance with the terms of this Agreement, and made in compliance with the City's procurement ordinance.

In accordance with Section 3.1, Manager shall pay, at its sole cost and expense, the salaries, wages, other compensation including, without limitation, withholding and payroll taxes, FICA, unemployment insurance premiums, worker's compensation premiums, pension fund contributions and other fringe benefits and payroll-related expenses of the executive staff and all other operating and service personnel of the Food and Beverage Operations (other than any employees of the City), as well as any entertainment expenses. Expenses paid for wages or salaries of employees of Manager must be specifically allocable to work on-site at the Food and Beverage Operations unless approved in writing by the City.

4.11 Professional Services. City shall not be responsible for the costs and expenses of accountants, lawyers or other professionals retained by Manager to assist Manager in the general conduct of Manager's business. In the event the Manager determines that it is necessary or advisable to retain an account, lawyer or other professional in connection with the operation of the Food and Beverage Operations, Manager shall advise the City's Director of Golf Services of the Manager's determination with respect to the same. Manager may not retain any accountant, lawyer or other professional in connection with the performance of its duties hereunder without having first obtained the written approval of City.

4.12 Loans. Manager shall not have the authority to borrow any money on behalf of City or to obligate City with respect to any loan.

4.13 Compliance with Official Orders. Manager shall take such action as may be necessary to comply promptly with any and all orders or requirements of which Manager has been notified, of which it is aware, or of which it should have reason to know, which in any manner affects the Food and Beverage Operations, placed thereon by any federal, state, regional, county, or municipal authority having jurisdiction over City, Manager, or the Food and Beverage Operations. Manager, however, shall not take any action under this Section so long as City is contesting, or City has affirmed City's intention to contest any such order or requirement. Manager shall promptly, and in no event later than seventy-two (72) hours from the time of their receipt, notify City of all such orders and notices of requirement, and of any other notices, summons, or similar documents alleging liability or responsibility of City.

4.14 Limitation on Expenses. Any provision in this Agreement to the contrary notwithstanding, no expense (singularly or in the aggregate for any particular matter) shall be incurred by Manager in excess of the sum of \$2,000 unless specifically authorized by City in writing.

5. Conduct of Business and Use of Premises by Manager.

5.1 Use and Occupancy. Manager shall have the right, privilege and obligation to continuously and uninterruptedly use and occupy the Premises in accordance with the provisions of this Agreement, solely for the purposes of developing and providing restaurant, banquet service, full-service bar, concession and on-course beverage service through Porter's Pub at Bowes Creek Country Club, and for no other purposes whatsoever.

5.2 Use of Porter's Pub Name; Reliance on Manager. Manager's business in the Premises shall be conducted under the common name of Porter's Pub. Manager shall not use or permit the Premises to be used under any other trade name without City's written consent. Manager acknowledges and hereby agrees that the identity, skill, experience and reputation of Manager, the specific character of Manager's business, the anticipated use of the Premises, potential for receipt of Gross Revenue, and the relationship between such use and other uses within Bowes Creek Country Club were all relied upon by City and served as significant and material inducements contributing to City's decision to entering into this Agreement with Manager. Any change in the character of Manager's business, trade name or use without City's written consent shall constitute a material breach under this Agreement.

5.3 Menus. Manager shall provide all menus. The initial menu shall be mutually agreed upon by Manager and City's Director of Golf Operations. Menus shall be of excellent quality and sufficient in number to meet peak period demands. Changes to the menus or to pricing shall be mutually agreed upon by Manager and City's Director of Golf Operations. Sampling shall be required for all new menu items and approved by City's Director of Golf Operations. In the event City's Director of Golf Operations, in his or her sole opinion, determines that any item or service displayed, offered for sale or sold by Manager is objectionable, Manager shall, upon written notice from City's Director of Golf Operations, immediately remove such item or service from display and from its inventory and Manager agrees that it shall not thereafter display, offer for sale, or sell such item or service.

5.4 Advertising. Manager shall not offer for sale or advertise any item, product, service or thing which is not available within the Premises. This paragraph is not intended to limit or disallow Manager from advertising Manager's products or services available at Bowes Creek Country Club, as provided herein.

5.5 Ingress and Egress. Manager or Manager's agents shall have the non-exclusive right of ingress and egress from the Premises at all reasonable times.

5.6 Access. Manager shall have access to all Bowes Creek's refrigerators, freezers, ovens, coolers and employee spaces as may be deemed necessary by City's Director of Golf Operations. Manager shall hold City harmless from and against any suits, causes of action, claims for damages, or other liability arising out of or in connection with any injury to any person or property as a result of Manager's use of such refrigerators, freezers, coolers, ovens and employee spaces. All such fixtures and equipment shall remain the property of the City, and shall not be removed from, and shall remain with, the Premises following the expiration or termination of this Agreement.

5.7 Staff and Supplies. Manager shall make adequate provisions for all staff and operational supplies necessary to manage and operate Porter's Pub as a full-service bar, restaurant, banquet facility, concession operations and on-course beverage service established within the Bowes Creek Country Club property. The beginning inventory level of tables, equipment, silverware, flatware, glassware, cookware and utensils will be supplied by City. The inventory shall be maintained by Manager, replacing any items that are damaged or lost, in accordance with Section 4.6

of this Agreement. All such inventory, whether originally provided or replaced by Manager, shall remain the property of the City, and shall not be removed from, and shall remain with, the Premises following the expiration or termination of this Agreement. Manager shall acquire such additional, linens, plates, centerpieces and other accoutrements as may be reasonably required from time-to-time, in accordance with Section 4.6 of this Agreement.

5.8 Hours of Service. City has established minimum hours of service for each operational area, based upon business volume and customer service needs. Manager shall be continuously and uninterruptedly open for business and provide all services and sales activities as required by the Agreement at such minimum hours unless prior arrangements are made with and approved in writing by City's Director of Golf Operations or his appointed designee. The minimum hours of operation shall be as follows:

Prime Season. The Clubhouse shall be open from April 1 to September 30 with seven (7) days per week operation and full food and beverage service. The Restaurant shall be open from 11:00 a.m. through 9:00 p.m. for lunch and dinner service. The Turn Stand shall be open from 7:00 a.m. through 6:00 p.m., unless weather warrants closure, as determined by the Director of Golf Operations. Beverage cart service will be required from May 15 through September 15, and will be provided for such hours as determined by the City's Director of Golf Operations.

Shoulder Season. The Clubhouse will have reduced hours of operation in the months of March and October, with seven (7) days per week operation as the facility gears up or slows down, respectively. The Restaurant shall be open from 11:00 a.m. through 3:00 p.m. for lunch on Monday through Thursday. The Restaurant shall be open from 11:00 a.m. through 9:00 p.m. for lunch and dinner service on Friday and Saturday. The Turn Stand shall be closed. Beverage cart service will be required as agreed upon by City's Director of Golf Operations and Manager. Modifications to this schedule will be made for banquets only.

Off Season. The Clubhouse will have limited hours of operation from November 1 through February 28, with reduced service days. The Restaurant shall be closed Saturday through Monday, and shall be open from 11:00 a.m. through 3:00 p.m. for lunch on Tuesday through Friday. The Turn Stand shall be closed.

Hours of operation of the bar may extend until 2:00 a.m., as per local municipal codes and the City's liquor license.

5.9 Manager shall be required, in each of the individual locations which comprise the Premises, to prominently post in an area visible to employees and the public the most current copy of Manager's hours of operation.

6. Operational Standards.

6.1 Adherence to Standards. Manager, its employees, agents, and servants shall at all times observe, obey and adhere to all the standards, rules, regulations and procedures that may from

time to time be promulgated by City. Manager shall also submit to City a copy of any customer service, operations or organizational standards, rules, regulations and procedures that may from time to time be promulgated by Manager, and shall ensure continuous adherence to Manager's own standards in addition to City's standards as set forth herein. Further, Manager, its employees, agents and servants shall comply with all with all applicable federal, state, city and other requirements of law, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. Without limiting the foregoing, Manager hereby certifies, represents and warrants to the City that all Manager's employees and/or agents who will be providing products and/or services with respect to this Agreement shall be legal residents of the United States. Manager shall also at its expense secure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided for in this Agreement. The City shall have the right to audit any records in the possession or control of the Manager to determine Manager's compliance with the provisions of this paragraph. In the event the City proceeds with such an audit, the Manager shall make available to the City the Manager's relevant records at no cost to the City. City's Director of Golf Operations, in his or her sole opinion, shall have the right to determine Manager's compliance with all operational standards, rules, regulations or procedures.

6.2 Care of Premises. Manager shall keep the Premises (including the service areas adjacent to the Premises, windows, and signs) orderly, neat, safe, and clean. The kitchen, bar and all food-related facilities shall be cleaned and disinfected by Manager's staff at such levels as required by applicable codes and as deemed necessary by City's Director of Golf Operations. The City shall provide basic janitorial services to the common areas of the Premises.

6.3 Testing and Inspection by City. Manager hereby acknowledges and agrees that City may monitor, test or inspect Manager's services at any time through the use of its own direct review and/or the use of third parties and/or by other reasonable means that do not unduly interfere with Manager's business.

6.4 Manager Conduct of Business. Manager shall operate its business in the Premises so as to maximize the Gross Revenues produced by such operations, and shall maintain an adequate staff of employees and maintain in the Premises at all times a stock of merchandise as is reasonably designed to produce the maximum return to City and will tend to assure City a return of the greatest possible amount of Gross Revenues.

6.5 Entertainment Systems. No radio, television, antenna, aerial or other similar device shall be installed without first obtaining in each instance City's Director of Golf Operations' written consent. Any radio, television, antenna, aerial or other similar device, so installed without such prior written consent shall be subject to removal and/or forfeiture without notice at any time. The cost of said removal shall be borne by Manager. No loudspeakers, televisions, phonographs, radios, or other devices shall be used in a manner so as to be heard or seen outside the Premises without the prior written consent of City's Director of Golf Operations.

6.6 Delivery. All loading and unloading of goods, the delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be done only at such time, in the

areas, and through the routes designated for such purposes by City. Manager shall be required to make significant efforts to avoid using the public areas for large quantity deliveries during peak periods. Manager shall ensure that any items being transported within Bowes Creek are handled with care in a manner that ensures that items are safely packaged within appropriate containers.

6.7 Plumbing Facilities. The plumbing facilities in the Premises shall not be used for any purpose other than that which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision, wherever such occurs, shall be borne by Manager.

6.8 Method of Payment. Manager shall accept and honor U.S. currency, major companies' travelers-type checks and at least the following three major credit cards: American Express, Visa and MasterCard, for any purchase.

6.9 Point of Sale Devices. City will provide a Point of Sale System (Data Wave–Aloha) for use in the Food and Beverage Operations. Manager shall install and use, or cause to be installed and used at the Premises, said point of sale system and such cash registers, sales slips, invoicing machines and other automatic accounting equipment or devices required to properly and accurately record the Gross Revenues on all sales, by type and location, services, and other business transactions made by Manager under this Agreement all of which are in conformance of Bowes Creek Country Club specifications. All transactions recorded on these devices shall be visibly displayed so that the amount recorded can be viewed by customers from a reasonable distance. All persons handling sales shall promptly recover said sales (cash or credit) in cash registers and other electronic or mechanical devices and shall not delay or “gang” register or record such sales.

6.10 Level of Service. Manager shall conduct its operations in a first-class manner in accordance with the highest standards. Manager shall conduct its operation to provide prompt and timely service. Manager shall maintain the Premises and conduct its operations at all times in a safe, clean, orderly and inviting condition, to the satisfaction of City's Director of Golf Operations. Manager shall not create any nuisance, annoy, or be offensive or disturbing to others.

6.11 Management. The Food and Beverage Operations shall be supervised at all times by an active, qualified, competent manager or a qualified assistant manager in the manager's absence. The manager or qualified assistant manager shall be available at the Premises during Manager's hours of operation. Said manager shall have full authority to make day-to-day business decisions on behalf of Manager with respect to the Premises and shall be responsible for ordering and receiving merchandise, maintaining merchandise and supplies, and supervising sales personnel and other personnel employed in the business of Manager, represent Manager in dealings with City, and coordinate all concession activities with City. Manager shall also designate such manager or qualified assistant manager to attend a weekly golf managers' meeting. The Manager and such persons employed or designated by Manager to manage or supervise the Food and Beverage Operations shall report directly to the City's Director of Golf Operations.

6.12 Staffing Levels. Manager shall recruit, train, supervise, direct and deploy the number of representatives, agents and employees, collectively referred to as “personnel,” necessary to

promptly provide services to all customers and to meet all of the requirements of this Agreement. Manager shall be continuously responsible for actively managing personnel levels to ensure that changes in passenger activity, due to schedule changes, load factor changes or flight delays are adequately accommodated through increased levels of personnel. Upon City's Director of Golf Operations' or his or her designee's reasonable request, Manager shall remove any employee, agents, partner or assign from the building and not allow that person to again serve without the written approval of City's Director of Golf Operations or his or her designee.

6.13 Personnel. Manager shall ensure that all personnel utilized in its Premises shall conform to the following:

- a. All personnel employed by Manager shall be neat, clean and courteous at all times. City shall provide and maintain uniforms for all employees.
- b. Manager shall insure that employees working at Bowes Creek Country Club report to work and remain drug-free during all work hours.
- c. All Manager's employees shall be subject to criminal background checks performed by the Illinois State Police at Manager's cost and effort. Should the Manager desire to hire or employ any employee or prospective employee having a criminal record, such hiring or employment shall be subject to the sole discretion of City's Director of Golf Operations.
- d. No loud, boisterous or otherwise improper actions or language shall be permitted while on or about Bowes Creek Country Club.
- e. All personnel shall be attentive to customer needs, display a positive attitude and refrain from discussing personal issues/problems within the sales areas of the Premises.
- f. All personnel shall know and utilize practices of good customer service, including the following: (1) assisting customers with purchase decisions; (2) identify product alternatives; (3) possess and display good product knowledge; and (4) utilize appropriate suggestive selling.
- g. All personnel shall provide warm, friendly, smiling, prompt and courteous service.
- h. All necessary personnel shall be proficient with and trained in the required operations of all equipment and devices used in the Premises to facilitate sales (i.e. point of sale devices, credit card transaction equipment, etc.).
- i. All personnel shall be familiar with all applicable policies of this Agreement, Bowes Creek and Manager.

- j. All personnel engaged in sales activities shall speak and comprehend English at a level appropriate to their duties.

6.14 Customer Complaints. Manager shall be required to respond to any complaints in writing within ten (10) days of receipt, with a good faith effort to explain, resolve or rectify the corresponding problem. Manager shall provide City with a copy of any complaint received the same day it is received by Manager, and shall provide City with a copy of the written response the same day it is sent. Complaints received by City shall be forwarded to Manager, who shall respond utilizing the above procedure.

6.15 Pricing. Manager acknowledges by its entering into this Agreement City's desire and obligation to provide the public with a mix of high-quality products and a high-level of public service at prices comparable to off-site locations from Bowes Creek Country Club. The increase of any items' or services' price by Manager without the prior written consent of City's Director of Golf Operations shall be deemed a material breach of this Agreement.

6.16 Product. All items sold or offered at the Premises shall be first quality and conform to all applicable regulations. Manager shall at all times maintain the degree of quality and quantity for all items offered for sale comparable to items offered for sale at similar restaurants in the area commonly referred to as the "Fox Valley." The quality, quantity and specifications of all items shall at all times be subject to the review and approval of City's Director of Golf Operations. Manager shall restore products and/or specifications to City's Director of Golf Operations' reasonable satisfaction within ten (10) days of such notice.

6.17 Interference with Systems. Manager shall not do, or permit, anything which may interfere with the effectiveness of utility, heating, communication, ventilation or air-conditioning systems, or portions thereof, on or adjoining the Premises (including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto), or overload any floor in the Premises.

6.18 Unauthorized Locks. Manager shall not place, or suffer to be placed, any additional lock of any kind upon any window or interior or exterior door in the Premises, or make any change in any existing door or window lock or the mechanism thereof. Manager shall pay City, on demand, the cost for replacement thereof, and the cost of re-keying any such locks.

6.19 Loitering. Manager shall not permit undue loitering on or about the Premises.

7. Discharge of Manager's Duties.

7.1 No Partnership. In the performance of its duties and responsibilities hereunder, Manager shall be and shall act solely as an independent contractor and nothing in this Agreement shall constitute or be construed to appoint or constitute Manager as an agent for City for any purpose, since it is expressly covenanted that the provisions herein relating to Manager are nothing more than agreements for rendering of services by Manager. Manager and City shall not be construed as joint venturers or partners of each other and Manager shall not have the power to bind or obligate City,

except as set forth in this Agreement. All debts and liabilities, excluding labor and labor related expenses to be paid by the Manager pursuant to this Agreement, incurred by Manager on behalf of City in the course of the management and operation of the Food and Beverage Operations pursuant to and in compliance with this Agreement shall, only to the extent authorized hereunder, be the debts and obligations of City. To the extent such debts and liabilities are not authorized hereunder, Manager shall be solely liable therefore.

7.2 Control. City hereby agrees that during the Operating Period Manager shall have primary control of the day-to-day operation of the Food and Beverage Operations; provided that City may be actively involved in the planning, development and execution of marketing, advertising and sales programs and activities, and further subject to the provisions of this Agreement to the contrary.

7.3 Good Faith. Manager shall exercise its best efforts not to expend more than a reasonable sum of money for any goods purchased or service engaged on behalf of City with respect to the Food and Beverage Operations and, subject to provisions of Section 4.9 of this Agreement regarding emergencies, shall use its best efforts not to expend on behalf of City any amount in excess of that approved in writing by City. Manager shall discharge its duties hereunder in good faith to maximize profits for the Food and Beverage Operations.

7.4 No Interest in Food and Beverage Operations. Except as expressly provided for herein, the interest of Manager hereunder shall not be considered an interest in the Food and Beverage Operations or any part thereof, and Manager's use, possession and management of the Food and Beverage Operations shall at all times be on behalf of City.

7.5 Access for City. City shall at all times have access to the Food and Beverage Operations and shall be entitled to receive copies of keys, combinations, phone numbers and similar items used in the occupancy and operation of the Food and Beverage Operations.

7.6 Emergency Call-Out. Manager shall designate and provide complete contact information for an employee to be included on a list of persons to be contacted in the event that an emergency situation or other situation requiring attention occurs at the Premises outside of the Food and Beverage Operations hours of operations. Such employee contact information must include a telephone number by which the employee may be reached on a twenty-four (24) hour basis, and such employee must be equipped with complete access to the Food and Beverage Operations' Premises.

8. Accounting and Right to Inspect Records.

8.1 Monthly Reports. Beginning Commencing on the Effective Date of this Agreement, and continuing until and including the month immediately following the termination or expiration of this Agreement, on or before the twentieth (20th) calendar day of each calendar month, without prior demand, Manager shall prepare and furnish to City reports setting forth the monthly payroll expenses from the Food and Beverage Operations for such prior month. Such reports shall be in a form acceptable to the City, and shall be accompanied by a statement of Manager that, to the best of its knowledge, the information contained in such statement is true, accurate and complete.

8.2 Records. Manager shall maintain and keep, for and on behalf of the City, pertinent original and duplicate records generated from the Food and Beverage Operations, and to provide the same to the City. Pertinent original records shall include, but not be limited to, the following: (a) point of sale systems records; (b) cash register tapes, including tapes from temporary registers; (c) serially numbered sales slips; (d) such other sales records that would normally be examined by an independent accountant pursuant to accepted accounting standards in performing an audit of Manager's Gross Revenues; (e) employee time records; (f) records of payments made pursuant to this Agreement.

8.3 Annual Report. The City shall furnish a written report to Manager listing the profit and loss statement from the Food and Beverage Operations, including all of the Gross Revenues, Cost of Goods Sold, Labor Expenses, and Operating Expenses, during the preceding Operating Year. This report shall also compute total compensation due to City and Manager based upon such accounting information during the preceding Operating Year. Such report shall be completed within sixty (60) calendar days after the end of the Operating Year, and shall be furnished prior to payment of any additional compensation to Manager for any Operating Year pursuant to Sections 3.2 and 3.3.

8.5 Additional Reports. Manager shall cooperate in providing the information required by the City's accountants in preparing audited financial statements for the City, and such information as may be required to monitor payments of employment taxes, unemployment taxes, and worker's compensation payments. Manager also shall provide to City such additional reports, records and documents relating to the Food and Beverage Operations as City may reasonably request from time to time, and shall comply with such reasonable instructions as may be given to it by City from time to time concerning the specific form or content of all such reports, records or documents.

8.6 Other Reports of Manager. Manager shall, within thirty (30) days of preparation thereof, provide City with any copies of any financial statements, quarterly or annual shareholder reports, internal or external audit reports or any other publications of Manager relating to Manager's operation of the Premises.

9. Alterations; Manager and City Alterations.

9.1 Manager may make repairs and improvements to the Premises only with prior written approval of City, subject to Bowes Creek Country Club's standards and all building, health, fire, and other applicable codes, ordinances, rules and regulations. All alterations, decorations, additions, and improvements made by Manager shall be deemed to have attached to the Premises and to have become the property of City upon such attachment, and upon expiration of this Agreement, Manager shall not remove any of such alterations, decorations, additions, and improvements. Prior to commencing any renovation work approved by City, Manager shall procure certificates of insurance from all contractors and subcontractors showing general liability and worker's compensation coverage and naming City as an additional insured. Manager shall in any event be responsible for repairing any damage caused to the Premises by virtue of any unauthorized alteration, addition, or improvement installed by or on behalf of Manager. Manager shall not remove or demolish, in whole or in part, any fixed improvements upon the Premises without the prior written consent of City.

10. Signs

10.1 Manager agrees not to use any advertising media without first receiving written approval from City. The parties agree that there exists at Bowes Creek Country Club exterior and interior signage advertising Porter's Pub. No other exterior or interior signage shall be permitted without prior written approval of the City's Director of Golf Operations. All such signage shall be professionally designed and prepared, and no hand-lettered or hand-modified signs shall be permitted without the prior written approval of City's Director of Golf Operations. All signs shall be accurate, showcase a cross section of product and be visible. Such signage shall assist and complement the overall effective and creative merchandising and marketing of the permitted merchandise. Director of Golf Operations and Manager further agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter, or other thing, as may be approved, in good condition and repair at all times. Any repairs to existing signage shall be provided for pursuant to Section 4.7 of this Agreement.

10.2 All displays, posters, computer or TV projections, and sounds in the Premises shall reflect good taste, be professionally developed and presented in such a manner as not to be offensive to the general public and be of such high caliber so as to reflect the dignity of Bowes Creek Country Club and the services provided to the public by City. All reasonable complaints from the public to City, or from City, will be forwarded to Manager in writing. Manager shall remedy such offensive items within two (2) calendar days of receipt of said complaints.

10.3 City shall have the right to use Porter's Pub's name, logos and trademarks in the marketing of services.

11. Maintenance and Repair of Premises.

11.1 Manager shall maintain and repair the Premises in accordance with the requirements set forth in this Section 11. Unless otherwise provided for in this Agreement, any maintenance and repair required by this Section 11 shall be at the sole cost and expense of the City. All such maintenance and repair expenses must be approved in advance by the City's Director of Golf Operations, and made in compliance with the City's procurement ordinance.

11.2 Manager shall keep and maintain the Premises in a clean, sanitary, and safe condition in accordance with the laws of the State of Illinois and in accordance with all directions, rules, and regulations of the health officer, fire marshal, building inspector, or other proper officials of the governmental agencies having jurisdiction, and Manager shall comply with all requirements of law, ordinance, and otherwise, affecting the Premises. City agrees to provide janitorial services for the common areas and the other areas of Bowes Creek.

11.3 Manager shall use such pest extermination contractor as City may direct and at such intervals as City may require.

11.4 Manager shall ensure that all personnel conform to personal hygiene and product-handling requirements established by Manager, City or applicable laws, rules, regulations and ordinances.

11.5 Manager agrees to keep and maintain, in good working order, and make necessary repairs, which repairs shall include all necessary replacements, capital expenditures and compliance with all laws now or hereafter adopted, the Premises and every part thereof and any and all appurtenances thereto wherever located, any equipment provided for under this Agreement, and all other work, improvements and repairs and replacements, renewals and restorations, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, provided, however, that any such repairs, replacements or expenditures shall be made with the approval of the City in accordance with Section 4.7.

11.6 City and its agents shall have the right to inspect the Premises during the hours of operation and/or at any time in case of emergency, to determine whether Manager has complied with and is complying with the terms and conditions of this Agreement. City may, at its sole discretion, require Manager to effect repairs at the Premises in accordance with Section 4.7. The City shall further have the right to perform any maintenance, repairs and replacements to the Premises.

11.7 Manager shall keep the Premises and all other parts of Bowes Creek free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by or for the City, and agrees to bond against or discharge any mechanic's or materialmen's lien within ten (10) days. Manager shall reimburse City for any and all costs and expenses which may be incurred by City by reason of the filing of any such liens and/or the removal of same, such reimbursement to be made within ten (10) days after receipt by Manager from City of a statement setting forth the amount of such costs and expenses.

11.8 City shall maintain fire extinguishers and other fire protection devices as may be required from time to time by any agency having jurisdiction thereof and the insurance underwriters insuring the Building. Manager agrees to comply with any and all requirements of the insurance underwriters insuring the Premises.

12. Use of Golf Course.

12.1 City shall provide Manager annually with up to thirty (30) complimentary rounds of golf to be used at Manager's discretion, the days and times of such use subject to approval by City's Director of Golf Operations. Manager and the Director of Golf Operations will be entitled to a food allowance or house account to be used with the approval of the Director of Golf Operations at the Director of Golf Operations' discretion to promote City's business.

13. Hazardous Materials.

13.1 Manager covenants and agrees that it shall not receive, use, store, maintain, discharge or operate, whether intentionally or unintentionally, any material or merchandise that is toxic, explosive, highly flammable or classified by law as hazardous, on the Premises or Bowes Creek in violation of any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses or permits of any governmental authorities. Manager shall immediately notify City if Manager learns of any noncompliance or of any facts that could give rise to a claim of noncompliance with such laws or rules and regulations promulgated thereunder. Manager shall indemnify, defend, and hold harmless City from and against any and all claims, damages, costs, losses and liabilities arising during or after the term as a result of or arising from: (a) a breach by Manager of its obligations contained in this Paragraph; (b) any release of Hazardous Substance from, in, on or about the Premises or Bowes Creek caused by any act or omission of Manager, its members, officers, agents, servants, employees and customers or, (c) the existence of any Hazardous Materials within the interior portions of the Premises. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

14. Insurance.

14.1 Insurance During the Life of this Agreement. During the term of this Agreement, Manager shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company (ies) either (i) admitted by the Illinois Insurance Commissioner to do business in the State of Illinois and rated not less than "A-VII" in Best's Insurance Rating Guide; (ii) authorized by City's Fiscal Services Director. The following policies of insurance are required:

- a. Commercial General Liability. Commercial general liability insurance which shall include premises liability, contractual, products and completed operations coverage, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence.
- b. Worker's Compensation. As required by Illinois law. In addition, employer's liability insurance shall be provided with limits of \$100,000 per accident, and \$100,000 per employee for disease with a minimum policy limit of \$500,000 for disease.

14.2 Proof of Insurance. The above-described policies of insurance shall be endorsed to provide an unrestricted thirty (30) day written notice in favor of City, of policy cancellation, change or reduction of coverage, except for the Workers' Compensation policy which shall provide a ten (10) day written notice of such cancellation, change or reduction of coverage. In the event any worker's compensation policies are due to expire during the term of this Agreement, Manager shall provide a new certificate evidencing renewal of such policy(ies).

14.3 The General Liability insurance policy shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as named insured.

14.4 Failure to Maintain Insurance. If at any time during the life of the Agreement or any extension Manager fails to maintain the required insurance in full force and effect, City may, but is not required to, obtain and maintain insurance for protection of its own interests, and all premiums paid or payable by City therefore shall be owed to the City by Manager, and the City shall be entitled to deduct the amount of any such premiums from any amount due and owing Manager under this Agreement.

14.5 Manager shall not do or permit any act or thing upon the Premises which will invalidate, suspend or increase the rate of any insurance policy carried by City covering the Premises, or the buildings in which the same are located or Bowes Creek, or which, in the opinion of City, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement.

14.6 Each party hereto shall give to the other prompt and timely written notice of any claim made or suit instituted coming to its knowledge which in any way directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

14.7 City Insurance. The City currently maintains property insurance on a citywide basis for its facilities, including facilities on the Premises. The City shall, at its sole cost and expense, maintain liability insurance covering its ownership and activities on property, and shall list the Manager as an additional insured. For this purpose, it shall be acceptable for the City to provide the necessary coverage through the City's self-insurance program, an intergovernmental risk management pool or other methods. Throughout the Term of this Agreement, the City shall maintain such property and liability insurance on City facilities, including the Premises, as the City determines is fiscally responsible to maintain.

15. Liability and Indemnity.

15.1 To the fullest extent permitted by law, Manager agrees to indemnify, defend and hold harmless City, its officials, officers, employees, boards and commissions from and against any and all claims, suits, judgments, costs, fines, fees, expenses, penalties, damages, or other relief, including attorneys' fees, of any kind and nature arising out of or resulting from or through or alleged to arise out of any reckless or negligent acts or omissions of Manager and/or of Manager's officials, officers, employees or agents in connection with the operation of the Food and Beverage Operations at the Premises and/or in the performance of this Agreement. In the event of any action against City, its officials, officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of City's choosing.

15.2 City shall not be liable for, and is hereby released from, all liability to Manager, Manager's insurance carrier(s), or any person claiming under or through Manager, for any loss or damage to Manager's business or any loss of income therefrom or for damage to the goods, wares,

merchandise or other property located in, upon or about the Premises, whether belonging to Manager or any other person; nor shall City be liable for injury to Manager or Manager's employees, agents, contractors, subcontractors, customers, or invitees caused by fire, steam, electricity, gas, water, rain, leakage, breakage, obstruction, pipe defects, sprinkler, wires, appliances, plumbing, air conditioning, lighting fixtures, or any other cause, arising on the Premises. Manager shall be solely responsible for the safety and security of the Premises and the safety and security of all equipment, supplies, and commodities used or sold by Manager. Manager also covenants and agrees that City shall not be liable for damages arising from any act or neglect on the part of any third parties.

15.3 Manager agrees that City's liability under this Agreement shall be limited to the payment of the Base Fee that has accrued on a pro-rata basis up to the date of any event or occurrence giving rise to the City's liability. In no event shall City be liable for any other monetary damages, including, but not limited to, compensatory, consequential or incidental damages or attorney's fees, arising from or in any way related to any breach or other violation of the terms of this Agreement.

15.4 The provisions of this Section 15 shall survive any termination and/or expiration of this Agreement.

16. Utilities.

16.1 City shall be solely responsible for and promptly pay all charges for electricity service, water and sewer service, natural gas service, voice over internet phone service, internet access, trash removal service, and any other utility used upon or furnished to the Premises, subject to the City's right to offset and be reimbursed said costs from Gross Revenues as set forth in Section 3.3 herein. City does not warrant that any of the connections for services and utilities will be free from interruption, but City will take reasonable steps to restore service if interrupted. Interruption of services or utilities shall not be deemed an eviction and shall not excuse performance of any of Manager's obligations under this Agreement, nor shall it render City liable for damages. Manager agrees to utilize prudent energy management to the satisfaction of the Director of Golf Operations.

16.2 Manager shall be responsible for the proper disposal of all refuse and waste materials created by its operations. Waste receptacles shall conform and blend with interior design of Bowes Creek at the Premises. City shall dispose of all refuse when placed in designated receptacles at no charge to Manager. Manager shall regularly monitor these areas for cleanliness and trash removal during the day/event.

16.3 Non-interference with utilities. Manager shall do nothing, and shall permit nothing to be done, that may interfere with the utilities at Bowes Creek, including by way of example and without limitation such water, gas, heat, electricity, sewer, phone and internet service, trash removal and any other utility used upon or furnished to the Premises. Manager's duty under this section includes, but is not limited to, preventing grease and oils from entering waste lines, drains, and sewers.

17. Assignment, Delegation and Change of Ownership.

17.1 This Agreement and the rights and privileges contained herein are personal to Manager and Manager agrees that it shall not assign, mortgage, pledge, delegate, or transfer this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part, or permit the use of the Premises by another, or in any manner encumber the Premises or any part thereof, without obtaining in advance the written consent of City, which may be withheld for any reason whatsoever. It is understood and agreed that City's consent hereunder (and wherever else in this Agreement required, unless specifically provided to the contrary) may be for any reason whatsoever or for no reason, notwithstanding any statutory or other provisions of law to the contrary.

18. Waste and Nuisance.

18.1 Manager shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of surrounding properties. Manager shall not use or permit to be used any medium that might constitute a nuisance, such as loudspeakers, sound amplifiers, phonographs, radios, televisions, or any other sound-producing device which will carry sound outside the Premises.

19. Damage or Destruction of Premises.

19.1 In the event the Premises shall be rendered unoccupiable by fire, explosion or other casualty, City may, at its sole option, terminate this Agreement or repair the Premises within sixty (60) days. If City does not repair the Premises within said time, or the building on the Premises shall have been wholly destroyed, then this Agreement shall cease and determine without further liability between the parties hereto.

20. Compliance.

20.1 Manager, its officers, agents, servants, employees, contractors, licensees, and any other person over which Manager has the right to exercise control shall comply with all present and future laws, ordinances, orders, directives, codes, rules, regulations, and directives of, or imposed by, the federal, state, and local governmental agencies, including those of City, which may be applicable to Manager's operations at Bowes Creek, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wages, workplace safety, and legal status of employees.

20.2 Manager shall pay on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes and fees that are now or may hereafter be levied, charged and or assessed upon Manager, or upon Manager's business conducted at Bowes Creek, or upon Manager's interest hereunder, or upon any of Manager's property used in connection therewith, including possessory interest as and when such be applicable to Manager. Manager agrees

to protect and hold harmless City and the Premises and any and all improvements located therein or thereon and any and all facilities and fixtures appurtenant thereto and any and all other property located therein or thereon and any and all of Manager's interest in or to said Premises, improvements, appurtenant facilities, fixtures or other property, from any and all such taxes and assessments, including any and all interest, penalties and other expenses which may be imposed thereby or result therefrom, and from any lien therefore or sale or other proceedings to enforce payment thereof. Nothing in this paragraph shall be deemed to limit any of Manager's rights to appeal any such levies or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority making such levies or assessments.

20.3 Manager agrees to pay , at its sole cost and expense, and hereby guarantees payment of, all lawful fines and penalties as may be assessed against the Manager by the City, Federal, State or local agencies, or against City for violations of federal, state or local laws, ordinances, rulings or regulations caused by Manager or its officers, agents, servants, employees, contractors, licensees, or any other person over which Manager has the right to exercise control within the earlier of delinquency or thirty (30) calendar days of written notice of such fines or penalties.

20.4 City shall obtain, pay for and continuously maintain current all licenses and permits necessary or required by all applicable Federal, State, county or local laws, regulations, rules, ordinances, codes, standards, orders, licenses or permits for the conduct of the permitted activities hereunder; provided, however, that the City shall be responsible for obtaining the appropriate liquor license pursuant to Section 20.5. Manager shall ensure that any such required items are displayed prominently and/or in conformance with applicable guidelines.

20.5 Liquor License. The City shall be responsible for obtaining the appropriate liquor license and complying with all local and state requirements with respect to the same. All servers provided by Manager shall be TIPS or BASSETT certified as may be required by law and at City's discretion. Training for all servers shall be required at Manager's sole cost and expense. The cost of any training materials shall be paid by Manager.

20.6 If applicable, Manager shall provide City with a copy of any health inspection report within twenty-four (24) hours after Manager receives such report. If a health inspection does not result in a report, Manager shall submit a written summary of the nature and findings of such inspection as they were communicated to Manager. Manager shall also provide City with any required corrective actions and timeframes for each corrective action to be continuously implemented.

21. Termination by Manager.

21.1 Manager may terminate this Agreement by giving a thirty (30) calendar day written notice to City of its intent to do so, should any one or more of the following events occur, provided, however, that Manager shall remain liable for all obligations accrued under this Agreement through the effective date of termination:

- a. The breach by City in the performance of any material covenant of this Agreement required to be performed by City and the failure of City to commence to remedy such breach for a period of thirty (30) calendar days after receipt of written notice of such breach by Manager.

22. Termination by City.

22.1 In addition to all other remedies otherwise available to City at law or in equity, City may terminate this Agreement or may, without terminating this Agreement, take possession of the Premises and assume the operations of the Food and Beverage Operations by giving a thirty (30) calendar day written notice of its intent to do so to Manager, should any one or more of the following events occur:

- a. Manager fails to cooperate with any inspection of payroll records by City and/or fails to maintain its books and records as required hereunder;
- b. Except as otherwise permitted in this Agreement, a majority of the ownership interest of Manager is transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm or corporation without the written consent of City;
- c. Except as otherwise permitted in this Agreement, Manager becomes, without the prior written approval of City, a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution;
- d. Manager shall breach, materially breach, default under and/or neglect or fail to perform and observe any promise, covenant or condition set forth in this Agreement within thirty (30) days after the giving of written notice of such failure by City to Manager, except where fulfillment of such obligation requires activity over a period of time and Manager has commenced to perform whatever may be required to remedy such failure within thirty (30) calendar days after giving of such written notice and continues such performance without interruption; or,
- e. The services provided by Manager pursuant to this Agreement shall deteriorate to the point which, in the sole opinion of City, materially and adversely affects the operation of the Food and Beverage Operations or substantially impairs the good will or reputation of Porter's Pub or Bowes Creek, except where fulfillment of such obligation requires activity over a period of time and Manager has commenced to perform whatever may be required to remedy such failure within ten (10) calendar days after giving of such written notice and continues such performance without interruption to the satisfaction of the City.

22.2 In addition to all other remedies otherwise available to City at law or in equity, City may immediately terminate this Agreement or may, without terminating this Agreement, take

immediate possession of the Premises and assume the operations of the Food and Beverage Operations by giving written notice of its intent to do so to Manager, upon the occurrence of any one or more of the following:

- a. Manager fails to provide and maintain insurance as required in accordance with this Agreement;
- b. Manager permits to continue, for a period of three (3) days after receipt of written notice from the City or other agency having jurisdiction, the existence of unsanitary conditions or practices in or about the Premises; provided however, if the unsanitary condition is such as to require replacement, repair or construction, Manager shall have a reasonable time in which to correct, but must begin action on the matter immediately upon receipt of said notice;
- c. Manager abandons, deserts, vacates or discontinues its operation of the business herein authorized from the Premises for a period of three (3) calendar days without prior written consent of City; or
- d. A petition is filed by or against Manager for relief under the bankruptcy laws, or Manager shall make an assignment for the benefit of creditors, or if a receiver of any property of Manager be appointed in any action, suit, or proceeding by or against Manager, or if Manager shall admit that it is insolvent, or it is generally not paying its debts as such debts become due, or if the interest of Manager in the premises shall be sold under execution or other legal process;
- e. This Agreement or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Manager, or are taken upon or subject to any attachment at the instance of any creditor or claimant against Manager, and the attachment is not discharged or disposed of within fifteen (15) days after its levy;
- f. Manager is dissolved.

22.3 Upon termination by City, City may reassign the rights and obligations under this Agreement or any part thereof to be operated by one or more sub-operators or any other party acceptable to City, at such rentals, fees and charges and upon such other terms and conditions as City, in its sole discretion, may deem advisable.

22.4 In the event City, without terminating this Agreement, re-enters and regains or resumes possession of the Premises and operations of the Food and Beverage Operations, Manager shall have no further right to perform under the Agreement, but all of the obligations of Manager hereunder shall survive and shall remain in full force and effect for the full term of this Agreement.

22.5 Bankruptcy. If City shall not be permitted to terminate this Agreement as hereinabove provided because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("Bankruptcy Code"), then Manager or any trustee for Manager agrees to promptly, within

no more than sixty (60) days upon request by City to the Bankruptcy Court, assume or reject this Agreement. In such event, Manager or any trustee for Manager may only assume this Agreement if (a) it cures and provides adequate assurance that the trustee will promptly cure any default hereunder, (b) compensates or provides adequate assurances that the trustee or Manager will promptly compensate City for any actual pecuniary loss to City resulting from Manager's default, and (c) provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Agreement to be performed by Manager. In no event after the assumption of this Agreement shall any then-existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set herein.

22.6 Upon the occurrence of an event of default, City shall have the right to terminate the Agreement and shall be entitled to possession of the Premises and commence operations of the Food and Beverage Operations. City may make its election to terminate known to Manager by delivery of a notice of termination. Such termination shall be immediately effective unless otherwise provided in this Agreement, and City shall be entitled to forthwith recover possession of the Premises of the Food and Beverage Operations, but such termination shall not terminate Manager's liabilities hereunder. Manager waives all notice in connection with such termination, including by way of illustration, but not limitation, notice of intent to terminate, demand for possession or payment, and notice of re-entry. Notwithstanding anything herein to the contrary, City may, without demand or notice, re-enter and take possession of the Premises or any part of the Premises, repossess the same, expel Manager and those claiming through or under Manager, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of amounts payable under this Agreement or as a result of any preceding breach of covenants or conditions.

22.8 Cure of Defaults. Upon default with respect to any provision of this Agreement, the non-defaulting party may choose to allow the defaulting party an opportunity to cure the default, in accordance with the provisions of this paragraph. The non-defaulting party shall provide written notice of the default to such other party, who shall then have thirty (30) days to correct the default, or to commence corrective action in the event that such default cannot be corrected within thirty (30) days, whereby such corrections shall be completed within a reasonable time thereafter. In the event that such default is not cured, the non-defaulting party may then immediately terminate this Agreement without further liability. The remedy in this paragraph is cumulative, and shall not be exclusive of or otherwise prejudice the right to pursue any other rights, remedies and benefits allowed by law.

22.10 Right of Termination. In addition to any other termination rights provided for in this Agreement, this Agreement may be terminated at the convenience of City, without cause, upon one hundred eighty (180) days written notice to Manager, without further liability.

22.11 Remedies are Cumulative. City's rights, remedies, and benefits provided by this Agreement shall be cumulative, and shall not be exclusive of any other rights, remedies and benefits allowed by law.

23. Surrender of Premises.

23.1 Condition on Surrender. At the expiration or earlier termination of this Agreement, Manager shall quit and surrender up the Premises to City, peaceably, quietly and broom clean and in the same condition as existed at the commencement of the Operating Period, or hereinafter improved by Manager, reasonable wear and tear and insured casualty excepted. In the event that Manager shall fail to remove any personal property on or before the termination (whether by expiration of the Term, cancellation, forfeiture, or otherwise, whichever first occurs) of this Agreement, at the sole option of City, (i) said personal property may be stored at a public warehouse or elsewhere at Manager's sole cost and expense; or (ii) title to such personal property shall vest in City, free and clear of all claims to or against them by Manager or any third person, at no cost to City. In such event City shall not be responsible for any losses related to such personal property, and City may sell or otherwise dispose of such items.

24. Nondiscrimination and Sexual Harassment.

24.1 Manager covenants and agrees that no person shall be unlawfully discriminated against in the use and operation of the Premises pursuant to this Agreement.

24.2 Nondiscrimination.

- a. Manager, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree that (1) no person, on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements and the furnishing of services, no person on the grounds of race, color, creed, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- b. That in the event of breach of any of the above nondiscrimination covenants, the City shall have the right to terminate this Agreement and re-enter and repossess said Premises, and hold the same as if said Agreement had never been made or issued and no reimbursement shall be made to Manager.
- c. The Manager shall furnish its accommodations and/or services and operate the Food and Beverages Operation on a fair, equal, and nondiscriminatory basis to all users thereof, and it shall charge fair, reasonable, and nondiscriminatory prices for each unit of services provided.

24.3 Sexual Harassment Policy. As a condition of this Agreement, the Manager shall have a written sexual harassment policy that includes, at a minimum, the following information:

- a. The illegality of sexual harassment;
- b. The definition of sexual harassment under state law;
- c. A description of sexual harassment, utilizing examples;
- d. The vendor's internal complaint process including penalties;
- e. The legal recourse, investigative and complaint process available through the Illinois Human Rights Commission;
- f. Directions on how to contact the department and commission;
- g. Protection against retaliation as provided by section 6-101 of the Human Rights Act.

25. Miscellaneous.

25.1 Nonwaiver of Rights. No failure by either party to insist upon strict compliance of any obligation of the other party under this Agreement or to exercise any right, power or remedy of a breach thereof, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Agreement. No waiver of breach by City or Manager of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other parties, and the consent or approval by City to or of any act by Manager requiring City's consent or approval shall not be deemed a waiver of City's consent or approval to or of any subsequent similar act by Manager. No breach of a covenant, term, condition, or provision of this Agreement shall be deemed to have been waived by City, unless such waiver (i) is in writing signed by City, (ii) identifies the breach, and (iii) expressly states that it is a waiver of the identified breach.

25.2 Notice. Any notice, demand, request, consent, approval, or other instrument which may be or is required to be given under this Agreement shall be in writing and shall be sent by overnight courier or United States certified mail return receipt requested, postage prepaid, and shall be addressed to the addresses and persons set forth hereunder:

To City:

City Manager
City of Elgin
150 Dexter Court
Elgin, IL 60120-5555

To Manager:

Porter's Pub Payroll PPP, LLC
c/o Joe Carlucci, President
Carlucci Hospitality
2001 Butterfield Road
Downers Grove, IL 60515

With a copy to:

With a copy to:

Corporation Counsel
City of Elgin
150 Dexter Court
Elgin, IL 60120-5555

25.3 Captions. The headings of the several articles and paragraphs of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

25.4 Severability. The terms of this Agreement shall be severable. If any provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be void, invalid or otherwise unenforceable for any reason, the remainder of this Agreement shall not be affected thereby and each provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law, and the remaining provisions of this Agreement shall be interpreted so as to nearly as possible conform to the intent of the parties as indicated in this Agreement.

25.5 Waiver of Claims. Manager hereby waives any claim against City and its directors, officers, agents, or employees for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the same or any part thereof from being carried out.

25.6 Right to Develop Bowes Creek. It is covenanted and agreed that City reserves the right to further develop or improve Bowes Creek regardless of the desires or views of Manager and without interference or hindrance.

25.7 Incorporation of Exhibits. All exhibits, documents and instruments referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement. It is specifically agreed that any or all Exhibits may be modified and substituted in accordance with the provisions of this Agreement without formal amendment hereto.

25.8 Incorporation of Required Provisions. The parties incorporate herein by this reference all provisions lawfully required to be contained herein by any governmental body or agency.

25.9 Relationship of Parties. Nothing contained herein shall be deemed or construed by City or Manager, or by any other parties, as creating the relationship of employer and employee, principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. City and Manager shall understand and agree that neither the method of computation of compensation, nor any other provision contained herein, nor any acts of City and Manager creates a relationship other than the relationship of Manager as permitted of City. No manager, chef, staff

member, employee or any other individual associated with Manager shall be deemed or construed as an employee of City.

25.10 Non-liability of Agents or Employees. No director, officer, agent, or employee of City or Manager shall be charged personally or held contractually liable by or to the other party under the provisions of this Agreement or because of any breach thereof or because of its or their execution or attempted execution.

25.11 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

25.12 Time of Essence. Time is expressed to be of the essence in this Agreement.

25.13 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

25.14 Force Majeure. Except for the payment of any fee or charge required by this Agreement, neither City nor Manager shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party or persons or entities for whose acts or omissions that party is responsible under this Agreement or applicable law, including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its own power to control, provided that, should said cause(s) continue for a period beyond six (6) months, such shall be a grounds for termination by either party in the manner provided in this Agreement.

25.15 Representative of City. The Elgin City Manager, or his/her representative, shall be designated as the official representative of City in all matters pertaining to this Agreement. To the extent expressly authorized by City Council, the Elgin City Manager, or his/her representative, shall have the right and authority to act on behalf of City with respect to all action required of City in this Agreement.

25.16 Governing Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any disputes relating to this Agreement or the interpretation thereof must be resolved in accordance with the laws of Illinois. Manager and City agree that any legal or equitable action for claims, debts, or obligations arising out of or to enforce the terms of this Agreement shall be brought by Manager or City in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois and that such court shall have personal jurisdiction over the parties and venue of the action shall be appropriate in each such court.

25.17 Writing Required. This Agreement may not be amended or otherwise modified in any way whatsoever, except in writing approved by City Council and signed by the parties' authorized agents.

25.18 Rights Cumulative. Each right of the parties hereto is cumulative and in addition to each of the other legal rights that a party may have in law or equity.

25.19 Sub-agreements. Manager hereby assures that it shall include all of the terms, conditions, covenants and other obligations contained herein in any and all agreements and contracts or sub-agreements and subcontracts entered into by it under which Manager grants a right or privilege to any person, firm or corporation to render accommodations and/or services within or for the Premises. Manager shall require that any document so entered into is subordinate in all terms to this Agreement. The voluntary or other surrender of this Agreement by Manager or a mutual termination hereof, or a termination by City, or an automatic termination, or termination by a court of competent jurisdiction, or any other termination hereof shall not work a merger, and shall, at the option of City, terminate any or all existing sub-agreements or subcontracts, or may, at the option of City, operate as an assignment to City of any or all such sub-agreements or subcontracts

25.20 Inspection of Records. Manager shall provide all information and reports and shall permit access to and audit of its books, record, accounts and other sources of information and its facilities as may be determined by City to be pertinent to ascertain compliance with this Agreement for the term of this agreement and three (3) years thereafter. Where any information required of Manager is in the exclusive possession of another who fails or refuses to furnish this information, Manager shall so certify to City and shall set forth what efforts it has made to obtain the information. This paragraph shall survive termination of the Agreement.

25.21 Precedence of Document. In the event of any conflict between this Agreement and any exhibit or attachment hereto, the terms and conditions of the Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties provided for within the Agreement shall be null and void.

25.22 Recording. Manager shall not record this Agreement without the consent of City, which may be withheld for any reason whatsoever, in City's absolute discretion.

25.23 No Encumbrance to Title. Manager shall not do any act which shall in any way encumber the title of City in and to the Premises or the improvements, nor shall the interest or estate of City in the Premises or the improvements be in any way subject to any claim by way of lien, mortgage or encumbrance, whether by operation of law or by virtue of any express or implied contract by Manager.

25.24 Estoppel. The parties agree that they shall rely solely upon the terms of this Agreement to govern their relationship. They further agree that reliance upon any representation, act, or omission outside the terms of this Agreement shall be deemed unreasonable, and shall not establish any rights or obligations on the part of either party.

25.25 Eminent Domain. If the whole of the Premises, or any portion thereof shall be taken by any public authority under the power of eminent domain, or by deed in lieu thereof, then the term

of this Agreement shall cease as of the day possession shall be taken by such public authority without further liability to either party. If less than the whole of the Premises shall be taken under eminent domain, City shall have the right either to terminate this Agreement and declare same void, or require Manager to continue in the performance of this Agreement if such can reasonably be accomplished. City shall notify Manager in writing within twenty (20) days after such taking of City's intention. All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the Premises, shall belong to and be the property of City. The Manager may pursue its own claims for damages with the appropriate government authority so long as same does not interfere with, or in any manner diminish, the award of City.

25.26 Joint and Collective Work Product. The language of this Agreement is the result of discussion and negotiation between the parties, each of which has read and understands each provision of this Agreement. This Agreement is and shall be deemed and construed to be a joint and collective work product of the City and Manager, and as such, this Agreement shall not be construed against any other party as the otherwise purported drafter of the same by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in the terms or provisions contained herein.

25.27 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, intended or otherwise.

26. Entire Agreement.

26.1 This Agreement and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, and understandings between City and Manager concerning the Premises; that there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than are herein set forth; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other writing or parol agreement with the other party being expressly waived. No alteration, amendment, change, or addition to this Agreement shall be binding upon City or Manager unless reduced to writing and signed by the party to be charged.

IN WITNESS WHEREOF, the City of Elgin and Porter's Pub Payroll PPP, LLC, have signed this Agreement as of the day and year first above written.

PORTER'S PUB PAYROLL PPP, LLC

By: _____

Joe Carlucci

4/11/11

CITY OF ELGIN

By: _____

Mayor

Attest:

City Clerk

Exhibit A
Plan Depicting Assigned Premises/Location of Food and Beverage Operations
(TO BE INSERTED)

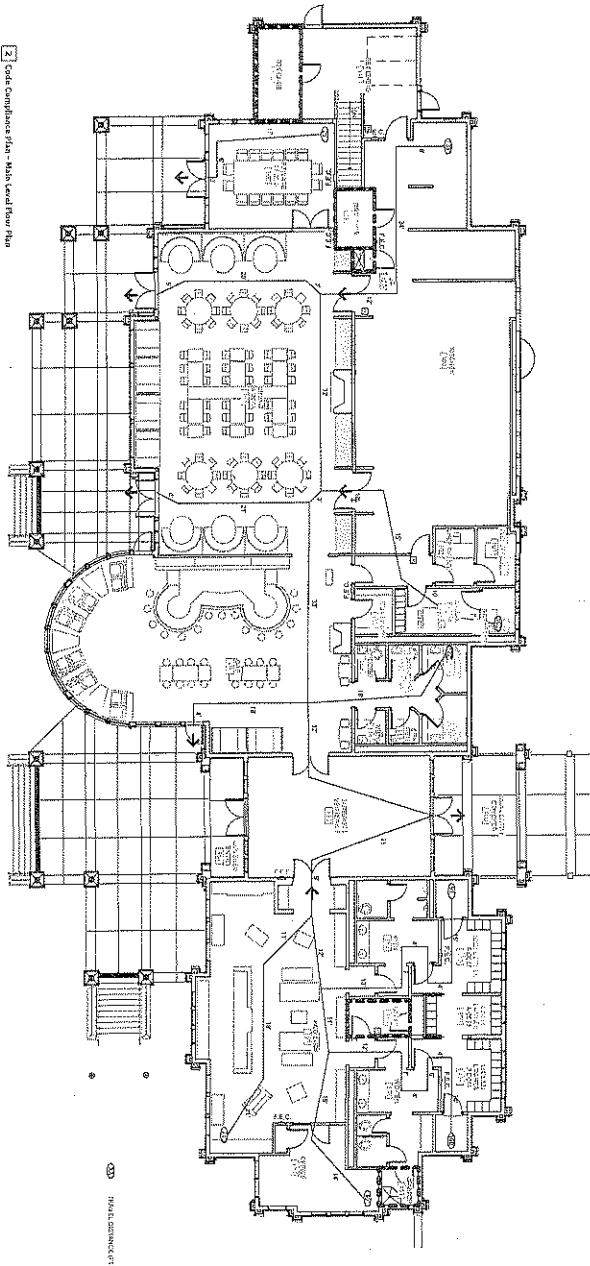
12/2/2004 2:10:40 PM

HIGHLIGHT
IS DESIGNATED
AS FOOD + BEVERAGE
AREA.

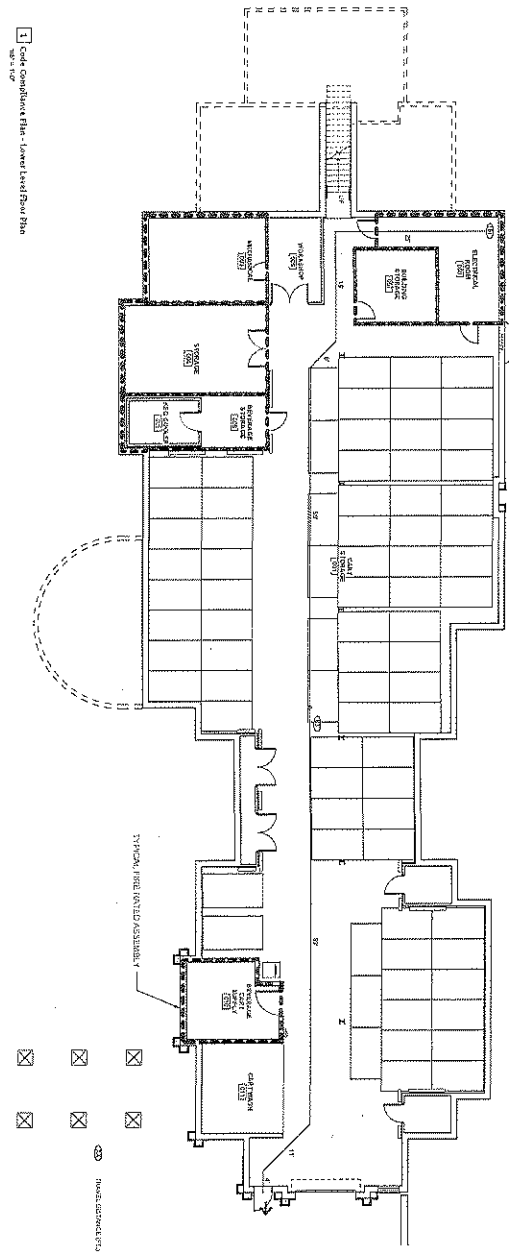
Occupancy Table
Scale: 1/8" = 1'-0"

Room Name	Room No.	Area (sq. ft.)	Occupancy	Exit
Reception/Entrance	100	300	1	0
Bar/Lounge	101	300	1	0
Bar/Lounge	102	300	1	0
Bar/Lounge	103	300	1	0
Bar/Lounge	104	300	1	0
Bar/Lounge	105	300	1	0
Bar/Lounge	106	300	1	0
Bar/Lounge	107	300	1	0
Bar/Lounge	108	300	1	0
Bar/Lounge	109	300	1	0
Bar/Lounge	110	300	1	0
Bar/Lounge	111	300	1	0
Bar/Lounge	112	300	1	0
Bar/Lounge	113	300	1	0
Bar/Lounge	114	300	1	0
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Bar/Lounge	294	300	1	0
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Bar/Lounge	297	300	1	0
Bar/Lounge	298	300	1	0
Bar/Lounge	299	300	1	0
Bar/Lounge	300	300	1	0

Code Compliance Plan - Main Level Floor Plan
Scale: 1/8" = 1'-0"



Code Compliance Plan - Lower Level Floor Plan
Scale: 1/8" = 1'-0"



G0.1

PHN Architects
100 Tower Square, Suite D
Westborough, MA 01581
508.865.4444
www.phnarchitects.com

City of Elgin/ Toll Brothers
Bowes Creek Country Club
1250 Bowes Creek Boulevard
Elgin, IL 60123

Exhibit B
2011 Budget/Pro Forma
(TO BE INSERTED)

Exhibit B
 Carlucci dba PPP LLC
 2 Year Business
 Proforma

Proforma			
	Year 2011 (May 1- Dec 31)	Year 2012	Year 2013
F&B REVENUE			
Food Sales	185,714	232,143	290,179
A La Carte Service	262,857	328,571	410,714
Beer/Liquor/Wine	350,000	472,500	637,875
State Sales Tax Charges	50,280	80,074	103,755
Entertainment if desired	0	20,000	20,000
TOTAL F&B REVENUE	848,851	1,133,288	1,462,522
COST OF F&B GOODS SOLD			
Food Sales - (35%)	65,000	81,250	101,563
A La Carte Food Sales (35%)	92,000	115,000	143,750
Beer/Liquor/Wine (30%) includes start up	105,000	141,750	191,363
Misc Service Charges/Dry Goods/Delivery Fees	19,518	19,518	19,518
Food Start Up	5,000	0	0
Total Cost of Goods Sold	286,518	357,518	456,193
F&B GROSS MARGIN	562,333	775,770	1,006,329

Exhibit B
Carlucci dba PPP LLC
2 Year Business
Proforma

	May 1- Dec 31 (38 weeks)	Full Season	Full Season + 3%
F&B LABOR EXPENSES			
Manager/ Overhead			
Overhead	42,480	98,145	109,200
Manager	45,600	62,400	73,008
Assistant Manager	24,107	32,989	38,597
Night Managers(2)			
Hostess 1	10,640	14,560	17,035
Hostess 2	7,980	10,920	12,776
Chef (1)	29,230	39,998	46,798
Cooks (4)			
Sous	15,344	20,998	24,567
Line Cook Am	10,944	14,976	17,522
Line Cook PM	10,944	14,976	17,522
Bartenders (4)			
Bart 1	9,975	13,650	15,971
Bart 2	7,752	10,608	12,411
Bart 3	5,928	8,112	9,491
Bart 4	4,332	5,928	6,936
Service Personnel (inc. Beverage Car)			
Wait (6 slots)	31,037	42,471	49,691
Busser (4 slots)	23,028	31,512	36,869
Runners (2 slots)	5,700	7,800	9,126
Beverage Cart/Turn Grille 4 slots	14,860	20,335	23,791
Dishwashers			
Dish 1	7,524	10,296	12,046
Dish 2	5,016	6,864	8,031
Dish 3	4,076	5,577	6,525
Employment Expenses (25% of Wages) (includes FICA, INS., UNEMPLOYMENT & WORKER'S COMP.)	68,504	93,742	109,679
Employment Expenses for TIPS	15,000	20,000	25,000
Entertainment Acts	20,000	20,000	20,000
TOTAL LABOR	420,000	606,857	702,593

Exhibit B
 Carlucci dba PPP LLC
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 Proforma

F&B OPERATING EXPENSES			
Advertising	28,000	28,000	28,000
Bank/Fiscal Fees	12,190	12,190	12,190
China/Glass/Silver	2,500	2,500	2,500
Decorations	2,000	2,000	2,000
Dues	1,350	1,350	1,350
Equipment Rental	4,000	4,000	4,000
Equipment Repairs	1,800	1,800	1,800
Janitorial	2,000	2,000	2,000
Licenses/Fees	1,000	1,000	1,000
Linen	15,000	15,000	15,000
Miscellaneous/Dishwasher/Ice Machines	10,000	10,000	10,000
Office Supplies	2,500	2,500	2,500
Plants/Flowers	1,200	1,200	1,200
Printing/Stationery	1,800	1,800	1,800
Sales Tax Disbursement	53,493	80,074	103,755
Uniforms	3,500	3,500	3,500
TOTAL F&B OPERATING EXPENSES	142,333	168,914	192,595
TOTAL F&B EXPENSES	562,333	775,771	895,188
F&B OPERATING PROFIT	0	0	111,142

AGENDA ITEM: **B**

MEETING DATE: April 13, 2011

ITEM:

RFP 11-021, Porter's Pub Food and Beverage Service Agreement
(\$420,000)

OBJECTIVE:

Hire a qualified food vendor to operate Porter's Pub, which is a key element in the successful operation of Bowes Creek Country Club

RECOMMENDATION:

Approve the agreement with Carlucci Hospitality for food and beverage service for Porter's Pub in the amount of \$420,000

BACKGROUND

In September of 2009, the city entered into an agreement with Twelfth Night Catering LLC to operate Porter's Pub at Bowes Creek Country Club. At the time, Brian Jason, owner of Twelfth Night Catering, also operated the Walleye Grill in Huntley and the Barley House in Algonquin. Although Twelfth Night Catering performed certain procedures well in the operation of Porter's Pub, it became apparent they were under resourced as staffing levels fell, marketing ceased and they failed to make payments to their vendors and the city.

After discussions with the operator failed to result in the required payments to the city, the contract was terminated. About this same time it was learned that the Walleye Grill had terminated its agreement with Mr. Jason as well. On January 3, 2011, Mr. Jason was sent a letter terminating his lease agreement with the city. Since that time Porter's Pub has been closed leaving Bowes Creek Country Club without a vendor

OPERATIONAL ANALYSIS

The operation of Porter's Pub has a direct impact on the success of Bowes Creek Country Club. Simply put, Bowes Creek Country Club cannot be successful without a high quality restaurant operator. Bowes Creek Country Club does not need to derive substantial revenue from Porter's Pub, but it does need Porter's Pub to support the "member for a day" experience. Both the golf and the food and beverage services need to be similar to what a golfer would experience at a

FINANCIAL ANALYSIS

The proposed agreement with Carlucci Hospitality for food and beverage service for Porter's Pub is \$420,000. The initial term of this agreement expires December 31, 2011. Subsequent to this time, the agreement will be restructured in a manner that allows this business to be a self-sustaining operation.

As attachment B details, total expected revenue and expense budgets for the restaurant operation equal \$848,851. Realization of these revenues and expenses would result in a breakeven position for the golf course. The upfront expenses associated with the execution of this contract will be funded by a transfer from the Recreation Fund thus averting the need for a General Fund subsidy. The Recreation Fund will be reimbursed as revenues from the restaurant operations are received.

BUDGET IMPACT

FUND(S)	ACCOUNT(S)	PROJECT #(S)	AMOUNT BUDGETED	AMOUNT AVAILABLE
Golf	540-5807-775.30-99	N/A	\$446,600	\$424,378

LEGAL IMPACT

A RFP was posted in the *Courier News* and on the city's website on March 7, 2011. A response was received on March 25, 2011 from Carlucci Hospitality, which was the only response to the RFP.

ALTERNATIVES

The city council could choose not to approve the recommended agreement with Carlucci Hospitality. Consequently, Bowes Creek Country Club would not have a restaurant operating at the start of golf season in a few weeks.

NEXT STEPS

1. Execute all documents associated with the agreement
2. Work with Carlucci Hospitality Group's subsidiary, Porter's Pub Payroll PPP LLC, to prepare for the reopening of Porter's Pub prior to the start of the golf season



Attachment A

Outline for Porters Pub Service Contract

1. Attachment A outlines a baseline budget and will be referred to as it relates to the requirements of the contractor to fulfill its financial obligations to the City.
2. Carlucci Hospitality will be paid \$420,000 to manage Porters Pub food and beverage operations through December 31, 2011. For this fee, they will be responsible for the hiring, training and general service of the bar, restaurant, on course and turn grille at Bowes Creek CC. This amount includes payroll, payroll related expenses, and management fee. The contract will have a two year option at the discretion of Carlucci Hospitality with negotiations based on the results of the 2011 season. At the end of that period, a second three year term will be available with negotiations available based on cost of living expenses and updated proforma information. For this fee, they will be responsible for the hiring, training and general service of the bar, restaurant, on course and turn grille at Bowes Creek CC.
3. The above payment will be paid over 10 months. The first payment of \$150,000 will be made by the city on April 15 and the remainder will be paid in equal installments of \$33,750.00 on the 1st of the next 8 successive months.
4. All revenues generated by Porters Pub will be received and accounted for by the city. Both the city and the contractor will have access to the reporting by a contractor determined point of sale system. Any tips not distributed will be credited back to the contractor for distribution to their employees at 100% received. This system will be purchased by the City and serviced by independent provider of equipment and software.
5. Gross revenues earned between \$868,851 and \$918,851 will be received by the City and applied as rental fee to offset utility costs. Revenues generated above this threshold will be shared equally between the City and Carlucci Hospitality.
6. Carlucci Hospitality will provide all labor and management oversight for the food and beverage operation. Monthly payroll report will be provided by the contractor to the city which details the accounting of the benefits and tips. Further, Carlucci Hospitality will provide a food and beverage representative to the weekly golf managers meeting. This individual will report to the Director of Golf and provide food and beverage coordination with events as necessary.
7. The City will pay for the Cost of Goods Sold estimated to be \$286,518. The contractor will be responsible for maintaining COGS thresholds in areas of A La Carte, Banquet Food Sales and Beverage services. The overall COGS threshold will be 35% for food and 30% for Beverages. Savings determined will be shared equally between the City and the contractor up to a bonus of \$10,000 each for total COGS between \$281,518 and \$261,518 not including food start up of \$5000. A Second Tier will be established for COGS below \$261,518. If costs of supplies are reduced below this threshold, the contractor will receive a bonus equal to the savings. If COGS targets are not met, a penalty will be assessed equal to 50% of the amount exceeding the desired percentages.
8. The Contractor will manage an allowance of \$217,400 for operational expenses. All expenses must be approved by the Director of Golf Operations. All vendors and licenses will be set up as a City account and purchases made in compliance to the city procurement ordinance.

The above items would be integrated to the agreement developed by the City Counsel.

Carlucci dba PPP LLC
2 Year Business
Proforma

F&B LABOR EXPENSES	May 1- Dec 31 (38 weeks)	Full Season	Full Season + 3%
Manager/ Overhead			
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Entertainment Acts	20,000	20,000	20,000
TOTAL LABOR	420,000	606,857	702,593

RESTAURANT MANAGEMENT SERVICES AGREEMENT

THIS RESTAURANT MANAGEMENT SERVICES AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this _____ day of _____, 2011, by and between the City of Elgin, an Illinois municipal corporation (hereinafter referred to as the "City"), and Porter's Pub Payroll PPP, LLC, an Illinois limited liability company (hereinafter referred to as "Manager"), on the terms and conditions, and with and subject to the covenants and agreements of the parties, hereinafter set forth.

WITNESSETH:

WHEREAS, City owns and operates a golf course and clubhouse associated therewith, commonly known as Bowes Creek Country Club (hereinafter referred to as "Bowes Creek"); and,

WHEREAS, Manager operates and has provided consultant services to multiple restaurant facilities, which provide dining, catering and other restaurant and bar services for its customers; and,

WHEREAS, City desires that Manager develop, operate, manage and provide certain restaurant, banquet service, full-service bar, concession and on-course beverage services at Bowes Creek, in accordance with the terms and conditions of this Agreement; and,

WHEREAS, Manager desires and is ready, willing and able to establish and provide such services upon the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby mutually acknowledged, the parties hereto hereby agree as follows:

1. Basic Provisions.

The following are certain provisions that are part of, and, in certain instances, referred to, in subsequent provisions of this Agreement:

City's Name and Address: City of Elgin, 150 Dexter Court, Elgin, IL 60120-5555.

Manager's Name and Address: Porter's Pub Payroll PPP, LLC, 2001 Butterfield Road, Downers Grove, IL 60515

Premises: Certain premises located at Bowes Creek Country Club, 1250 Bowes Creek Boulevard, Elgin, Kane County, Illinois 60124, and consisting of approximately 7500 square feet within the clubhouse, as more particularly identified on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter referred to as the "Premises").

3. Compensation.

3.1 Compensation. During the Operating Period, as compensation for Manager's services to be rendered hereunder, Manager shall be paid \$420,000 to manage the Food and Beverage Operations (hereinafter referred to as the "Base Fee"). An initial payment of \$150,000 will be made by the City to Manager upon the approval and execution of this Agreement by both parties hereto. Subsequent payments shall be made in equal installments of \$33,750 on the first (1st) day of each month beginning May 1, 2011, and for each of the eight (8) succeeding months, with the final payment to occur on December 1, 2011, unless this Agreement is terminated prior thereto in accordance with the provisions of this Agreement. In addition to compensation for Manager's services, the Base Fee includes all payroll, payroll-related expenses and fees, and entertainment expenses, as set forth in Exhibit B, attached hereto and incorporated herein by this reference, under the heading "F&B Labor Expenses."

3.2 Additional Compensation/Penalty – Cost of Goods Sold. As set forth in Exhibit B under the heading "Cost of F&B Goods Sold," the Costs of Goods Sold for the 2011 Operating Period is estimated to be \$286,518. As additional compensation to the Manager, in the event the actual amount of the Costs of Goods Sold is less than the estimated amount of the Costs of Goods Sold (less Food Start Up costs in the amount of \$5000), the Manager shall be entitled to additional compensation as follows:

- a. In the event actual Costs of Goods Sold is between \$261,518 and \$281,518, Manager shall receive a bonus in the amount of fifty percent (50%) of the difference between \$281,518 (said amount being the estimated Cost of Goods Sold, less Food Start Up costs), and the actual Cost of Goods Sold. The maximum bonus to which the Manager would be entitled under this subsection is \$10,000.
- b. In the event that the actual Costs of Goods Sold is less than \$261,518, Manager shall be entitled to receive an additional bonus equal to the difference between the actual amount of the Costs of Goods Sold and \$261,518.

In the event that the actual Costs of Goods Sold exceeds \$286,518 (including Food Start Up costs in the amount of \$5,000), Manager shall be required to pay to the City a penalty in the amount of fifty percent (50%) of the difference between the actual Cost of Goods Sold and \$286,518.

Nothing in this Section shall limit or modify Manager's obligation to maintain sufficient inventory, goods and supplies to manage and operate the Food and Beverage Operations in a first-class manner. In the event that the City believes that the Food and Beverage Operations is being adversely affected because the levels of inventory, goods, or supplies levels are not being adequately maintained, the City shall have the right to require Manager to increase such levels, in the City's sole discretion.

3.3 Additional Compensation – Revenues. As set forth in Exhibit B under the heading "F&B Revenue," the parties hereto have estimated total Gross Revenues from the Food and

4.2 Long-Term Contracts. Manager shall in no event enter into any contract for supplies, or labor or with respect to any other matter relating to the Food and Beverage Operations at the Premises having a term which exceeds one (1) year without specific written consent of City. Manager may not, without City's prior written approval, contract with or purchase from any affiliate of Manager any supplies, services or labor for the Food and Beverage Operations. Manager shall use its best efforts to cause all contracts for supplies, service or labor for the Food and Beverage Operations to be terminable on not more than thirty (30) days notice by City.

4.3 Personnel. During the Operating Period, Manager shall hire, supervise, promote and discharge (as necessary) an executive staff (i.e., the manager, assistant managers) for the Food and Beverage Operations, and shall supervise through such executive staff by way of promulgating guidelines, monitoring employment procedures and practices, and providing such other controls as may be necessary or as City may prescribe, the hiring, supervision, promotion and discharge of all other operating and service personnel for the Food and Beverage Operations (except employees of the City, if any, involved in the Food and Beverage Operations). Manager shall use reasonable care in the selection of qualified, competent and trustworthy employees for the Food and Beverage Operations. City may consult or communicate with Manager at any time regarding Manager's employment practices and personnel selection. City shall have the opportunity to interview all employees prior to hiring or placement in the Food and Beverage Operations and City shall have the right to direct the termination of any Food and Beverage Operations personnel. Manager will negotiate with any labor union lawfully entitled to represent all or any group of such employees; provided, however, that any collective bargaining agreements or labor contracts resulting therefrom must be approved by City, and Manager shall not be authorized to execute any such agreement or contract. All such employees shall be employees of Manager, not of City. Upon no less than thirty (30) days advance notice from City to Manager, City may direct Manager to cause some or all of such employees to become employees of City or its designee. Manager shall use its best efforts to effectuate such result and shall fully cooperate with City or its designee in such transition.

4.4 Utilities and Services. City shall be responsible for and promptly pay all charges for water, gas, heat, electricity, sewer, phone service, trash removal and any other utility used upon or furnished to the Premises, subject to the right of the City to offset and be reimbursed the costs of such utilities from the Gross Revenues of the Food and Beverage Operations as set forth in Section 3.3 herein. City does not warrant that any of the connections for services and utilities will be free from interruption, but City will take reasonable steps to restore service if interrupted. Interruption of services or utilities shall not excuse performance of any of Manager's obligations under this Agreement, nor shall it render City liable for damages.

During the Operating Period, Manager, in the name of City, shall enter into contracts and/or agreements to provide the Food and Beverage Operations with cleaning (including window cleaning), pest control, elevator and boiler maintenance, air conditioning maintenance, master television antennae, or equivalent, service, laundry and dry cleaning service, and any other services as are customarily provided in connection with the maintenance and operation of a first-class property similar to the Food and Beverage Operations, or as otherwise directed by City. The City shall provide a City account for any such service providers. All such operational expenses must be approved in advance by the City's Director of Golf Operations, and made in compliance with the

- a. All taxes, assessments and charges of every kind, nature and description levied or assessed against the Food and Beverage Operations, including sales taxes, at least five (5) days before the same become delinquent, unless payment thereof is being contested by City, and City has, by notice hereunder, advised Manager not less than ten (10) days prior to the date on which such taxes, assessments or charge are payable of such contest and has directed Manager not to make such contested payment.
- b. All costs and expenses of maintaining and operating the Food and Beverage Operations authorized under the terms of this Agreement including, without limitation:
 1. The costs and expenses of utilities, services and concessions of the Food and Beverage Operations, except for those costs or expenses to be paid directly by the City pursuant to Section 4.4;
 2. The cost of all purchases of food, beverages, materials and supplies incurred in the day-to-day operation of the Food and Beverage Operations;
 3. The costs and expenses for the repairs, maintenance, alterations and additions to the Food and Beverage Operations and all furniture, furnishings, equipment and other personal property of the Food and Beverage Operations;
 4. Out-of-pocket expenses incurred by Manager for or in connection with the Food and Beverage Operations, but only to the extent specifically preapproved by City;
 5. License and permit fees;
 6. Any other costs or expenses authorized by City hereunder or otherwise authorized by City in writing.
- c. To the extent available or at the direction of City, Manager shall distribute to City such funds as City shall request in writing.

In accordance with Section 3.1, Manager shall pay, at its sole cost and expense, the salaries, wages, other compensation including, without limitation, withholding and payroll taxes, FICA, unemployment insurance premiums, worker's compensation premiums, pension fund contributions and other fringe benefits and payroll-related expenses of the executive staff and all other operating and service personnel of the Food and Beverage Operations (other than any employees of the City). Expenses paid for wages or salaries of employees of Manager must be specifically allocable to work on-site at the Food and Beverage Operations unless approved in writing by the City.

4.10 Costs and Budget. During the Operating Period, City shall be solely responsible for all reasonable costs and expenses incurred by Manager pursuant to this Agreement, including all costs and expenses which Manager is authorized to pay on City's behalf under Section 4.9 of this Agreement, provided that such costs and expenses have been approved by the City in accordance with any applicable provisions of this Agreement, and excluding labor and labor-related expenses to

Club were all relied upon by City and served as significant and material inducements contributing to City's decision to entering into this Agreement with Manager. Any change in the character of Manager's business, trade name or use without City's written consent shall constitute a material breach under this Agreement.

5.3 Menus. Manager shall provide all menus. The initial menu shall be mutually agreed upon by Manager and City's Golf Operations Director. Menus shall be of excellent quality and sufficient in number to meet peak period demands. Changes to the menus or to pricing shall be mutually agreed upon by Manager and City's Golf Operations Director. Sampling shall be required for all new menu items and approved by City's Golf Operations Director. In the event City's Golf Operations Director, in his or her sole opinion, determines that any item or service displayed, offered for sale or sold by Manager is objectionable, Manager shall, upon written notice from City's Golf Operations Director, immediately remove such item or service from display and from its inventory and Manager agrees that it shall not thereafter display, offer for sale, or sell such item or service.

5.4 Advertising. Manager shall not offer for sale or advertise any item, product, service or thing which is not available within the Premises. This paragraph is not intended to limit or disallow Manager from advertising Manager's products or services available at Bowes Creek Country Club, as provided herein.

5.5 Ingress and Egress. Manager or Manager's agents shall have the non-exclusive right of ingress and egress from the Premises at all reasonable times.

5.6 Access. Manager shall have access to all Bowes Creek's refrigerators, freezers, ovens, coolers and employee spaces as may be deemed necessary by City's Golf Operations Director. Manager shall hold City harmless from and against any suits, causes of action, claims for damages, or other liability arising out of or in connection with any injury to any person or property as a result of Manager's use of such refrigerators, freezers, coolers, ovens and employee spaces. All such fixtures and equipment shall remain the property of the City, and shall not be removed from, and shall remain with, the Premises following the expiration or termination of this Agreement.

5.7 Staff and Supplies. Manager shall make adequate provisions for all staff and operational supplies necessary to manage and operate Porter's Pub as a full-service bar, restaurant, banquet facility, concession operations and on-course beverage service established within the Bowes Creek Country Club property. The beginning inventory level of tables, equipment, silverware, flatware, glassware, cookware and utensils will be supplied by City. The inventory shall be maintained by Manager, replacing any items that are damaged or lost. All such inventory, whether originally provided or replaced by Manager, shall remain the property of the City, and shall not be removed from, and shall remain with, the Premises following the expiration or termination of this Agreement. Manager shall provide additional servers, linens, plates, centerpieces and other accoutrements as may be reasonably required from time-to-time. Such additional servers and materials shall be included in any "per plate" price.

5.8 Costs of Utilities and Services. All labor and labor-related expenses, as provided for in this Agreement, shall be provided by Manager at Manager's sole cost and expense. Provisions for

6. Operational Standards.

6.1 Adherence to Standards. Manager, its employees, agents, and servants shall at all times observe, obey and adhere to all the standards, rules, regulations and procedures that may from time to time be promulgated by City. Manager shall also submit to City a copy of any customer service, operations or organizational standards, rules, regulations and procedures that may from time to time be promulgated by Manager, and shall ensure continuous adherence to Manager's own standards in addition to City's standards as set forth herein. Further, Manager, its employees, agents and servants shall comply with all with all applicable federal, state, city and other requirements of law, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wage, workplace safety and legal status of employees. Without limiting the foregoing, Manager hereby certifies, represents and warrants to the City that all Manager's employees and/or agents who will be providing products and/or services with respect to this Agreement shall be legal residents of the United States. Manager shall also at its expense secure all permits and licenses, pay all charges and fees and give all notices necessary and incident to the due and lawful prosecution of the work, and/or the products and/or services to be provided for in this Agreement. The City shall have the right to audit any records in the possession or control of the Manager to determine Manager's compliance with the provisions of this paragraph. In the event the City proceeds with such an audit, the Manager shall make available to the City the Manager's relevant records at no cost to the City. City's Golf Operations Director, in his or her sole opinion, shall have the right to determine Manager's compliance with all operational standards, rules, regulations or procedures.

6.2 Care of Premises. Manager shall keep the Premises (including the service areas adjacent to the Premises, windows, and signs) orderly, neat, safe, and clean. The kitchen, bar and all food-related facilities shall be cleaned and disinfected by Manager's staff at such levels as required by applicable codes and as deemed necessary by City's Golf Operations Director. The City shall provide basic janitorial services to the common areas of the Premises.

6.3 Testing and Inspection by City. Manager hereby acknowledges and agrees that City may monitor, test or inspect Manager's services at any time through the use of its own direct review and/or the use of third parties and/or by other reasonable means that do not unduly interfere with Manager's business.

6.4 Manager Conduct of Business. Manager shall operate its business in the Premises so as to maximize the Gross Revenues produced by such operations, and shall maintain an adequate staff of employees and maintain in the Premises at all times a stock of merchandise as is reasonably designed to produce the maximum return to City and will tend to assure City a return of the greatest possible amount of Gross Revenues.

6.5 Entertainment Systems. No radio, television, antenna, aerial or other similar device shall be installed without first obtaining in each instance City's Golf Operations Director's written consent. Any radio, television, antenna, aerial or other similar device, so installed without such prior written consent shall be subject to removal and/or forfeiture without notice at any time. The cost of

6.12 Staffing Levels. Manager shall recruit, train, supervise, direct and deploy the number of representatives, agents and employees, collectively referred to as "personnel," necessary to promptly provide services to all customers and to meet all of the requirements of this Agreement. Manager shall be continuously responsible for actively managing personnel levels to ensure that changes in passenger activity, due to schedule changes, load factor changes or flight delays are adequately accommodated through increased levels of personnel. Upon City's Golf Operations Director's or his or her designee's reasonable request, Manager shall remove any employee, agents, partner or assign from the building and not allow that person to again serve without the written approval of City's Golf Operations Director or his or her designee.

6.13 Personnel. Manager shall ensure that all personnel utilized in its Premises shall conform to the following:

- a. All personnel employed by Manager shall be neat, clean and courteous at all times. Manager shall provide and maintain uniforms for all employees.
- b. Manager shall insure that employees working at Bowes Creek Country Club report to work and remain drug-free during all work hours.
- c. All Manager's employees shall be subject to criminal background checks performed Illinois State Police at Manager's cost and effort. Manager's hiring of any employee or prospective employee having a criminal record shall be subject to the sole discretion of City's Golf Operations Director.
- d. No loud, boisterous or otherwise improper actions or language shall be permitted while on or about Bowes Creek Country Club.
- e. All personnel shall be attentive to customer needs, display a positive attitude and refrain from discussing personal issues/problems within the sales areas of the Premises.
- f. All personnel shall know and utilize practices of good customer service, including the following: (1) assisting customers with purchase decisions; (2) identify product alternatives; (3) possess and display good product knowledge; and (4) utilize appropriate suggestive selling.
- g. All personnel shall provide warm, friendly, smiling, prompt and courteous service.
- h. All necessary personnel shall be proficient with and trained in the required operations of all equipment and devices used in the Premises to facilitate sales (i.e. point of sale devices, credit card transaction equipment, etc.).
- i. All personnel shall be familiar with all applicable policies of this Agreement, Bowes Creek and Manager.

venturers or partners of each other and Manager shall not have the power to bind or obligate City, except as set forth in this Agreement. All debts and liabilities, excluding labor and labor related expenses to be paid by the Manager pursuant to this Agreement, incurred by Manager on behalf of City in the course of the management and operation of the Food and Beverage Operations pursuant to and in compliance with this Agreement shall, only to the extent authorized hereunder, be the debts and obligations of City. To the extent such debts and liabilities are not authorized hereunder, Manager shall be solely liable therefore.

7.2 Control. City hereby agrees that during the Operating Period Manager shall have primary control of the day-to-day operation of the Food and Beverage Operations; provided that City may be actively involved in the planning, development and execution of marketing, advertising and sales programs and activities, and further subject to the provisions of this Agreement to the contrary.

7.3 Good Faith. Manager shall exercise its best efforts not to expend more than a reasonable sum of money for any goods purchased or service engaged on behalf of City with respect to the Food and Beverage Operations and, subject to provisions of Section 4.8 of this Agreement regarding emergencies, shall use its best efforts not to expend on behalf of City any amount in excess of that approved in writing by City. Manager shall discharge its duties hereunder in good faith to maximize profits for the Food and Beverage Operations.

7.4 No Interest in Food and Beverage Operations. Except as expressly provided for herein, the interest of Manager hereunder shall not be considered an interest in the Food and Beverage Operations or any part thereof, and Manager's use, possession and management of the Food and Beverage Operations shall at all times be on behalf of City.

7.5 Access for City. City shall at all times have access to the Food and Beverage Operations and shall be entitled to receive copies of keys, combinations, phone numbers and similar items used in the occupancy and operation of the Food and Beverage Operations.

8. Accounting and Right to Inspect Records.

8.1 Monthly Reports. Beginning on the second month of the Term of this Agreement, and continuing until and including the month immediately following the termination or expiration of this Agreement, on or before the twentieth (20th) calendar day of each calendar month, without prior demand, Manager shall prepare and furnish to City reports setting forth the profit and loss statement for such prior month. Such reports shall, at a minimum, reflect total Gross Revenues, Gross Revenues by category (e.g., food, alcoholic beverages, etc.), Cost of Goods Sold, Labor Expenses, and Operating Expenses, in accordance with the categories set forth in Exhibit B. Such reports shall be in a form acceptable to the City, and shall be accompanied by a statement of Manager that, to the best of its knowledge, the information contained in such statement is true, accurate and complete.

8.2 Records. Manager shall maintain and keep, for and on behalf of the City, full and accurate books and pertinent original and duplicate records showing all of the profits and losses from the Food and Beverage Operations, to include the Gross Revenues, Cost of Goods Sold, Labor

documents relating to the Food and Beverage Operations as City may reasonably request from time to time, and shall comply with such reasonable instructions as may be given to it by City from time to time concerning the specific form or content of all such reports, records or documents. Such additional reports, records and documents may include, but not be limited to, a complete inventory of equipment, furniture and other personal property located at the Premises, salary schedules, and service contracts.

8.6 Other Reports of Manager. Manager shall, within thirty (30) days of preparation thereof, provide City with any copies of any financial statements, quarterly or annual shareholder reports, internal or external audit reports or any other publications of Manager relating to Manager's operation of the Premises.

9. Alterations; Manager and City Alterations.

9.1 Manager may make repairs and improvements to the Premises only with prior written approval of City, subject to Bowes Creek Country Club's standards and all building, health, fire, and other applicable codes, ordinances, rules and regulations. All alterations, decorations, additions, and improvements made by Manager shall be deemed to have attached to the Premises and to have become the property of City upon such attachment, and upon expiration of this Agreement, Manager shall not remove any of such alterations, decorations, additions, and improvements. Prior to commencing any renovation work approved by City, Manager shall procure certificates of insurance from all contractors and subcontractors showing general liability and worker's compensation coverage and naming City as an additional insured. Manager shall in any event be responsible for repairing any damage caused to the Premises by virtue of any unauthorized alteration, addition, or improvement installed by or on behalf of Manager. Manager shall not remove or demolish, in whole or in part, any fixed improvements upon the Premises without the prior written consent of City.

9.2 At the expiration of the term of this Agreement, for all of the Premises, the Net Book Value of Manager's Fixed Improvements shall be \$0.00.

10. Signs

10.1 Manager agrees not to use any advertising media without first receiving written approval from City. All signage shall be professionally prepared and Manager further agrees to maintain any such sign, awning, canopy, decoration, lettering, advertising matter, or other thing, as may be approved, in good condition and repair at all times. All signs shall be accurate, showcase a cross section of product and be visible. All interior store signage shall require the prior written approval of City's Golf Operations Director prior to installation. Such signage shall assist and complement the overall effective and creative merchandising and marketing of the permitted merchandise. All signage shall be professionally designed and no hand-lettered or hand-modified signs shall be permitted without the prior written approval of City's Golf Operations Director.

10.2 All displays, posters, computer or TV projections, and sounds in the Premises shall

the City, and agrees to bond against or discharge any mechanic's or materialmen's lien within ten (10) days. Manager shall reimburse City for any and all costs and expenses which may be incurred by City by reason of the filing of any such liens and/or the removal of same, such reimbursement to be made within ten (10) days after receipt by Manager from City of a statement setting forth the amount of such costs and expenses.

11.7 Manager shall maintain fire extinguishers and other fire protection devices as may be required from time to time by any agency having jurisdiction thereof and the insurance underwriters insuring the Building. Manager further agrees to comply with any and all requirements of the insurance underwriters insuring the Premises.

12. Use of Golf Course.

12.1 City shall provide Manager annually with up to thirty (30) complimentary rounds of golf to be used at Manager's discretion, the days and times of such use subject to approval by City's Golf Operations Director. Manager will be entitled to a food allowance or house account to be used at the Golf Operations Director's discretion to promote City's business.

13. Hazardous Materials.

13.1 Manager covenants and agrees that it shall not receive, use, store, maintain, discharge or operate, whether intentionally or unintentionally, any material or merchandise that is toxic, explosive, highly flammable or classified by law as hazardous, on the Premises or Bowes Creek in violation of any applicable federal, state, county or local statutes, laws, regulations, rules, ordinances, codes, standards, orders, licenses or permits of any governmental authorities. Manager shall immediately notify City if Manager learns of any noncompliance or of any facts that could give rise to a claim of noncompliance with such laws or rules and regulations promulgated thereunder. Manager shall indemnify, defend, and hold harmless City from and against any and all claims, damages, costs, losses and liabilities arising during or after the term as a result of or arising from: (a) a breach by Manager of its obligations contained in this Paragraph; (b) any release of Hazardous Substance from, in, on or about the Premises or Bowes Creek caused by any act or omission of Manager, its members, officers, agents, servants, employees and customers or, (c) the existence of any Hazardous Materials within the interior portions of the Premises. The obligations of this paragraph shall survive the expiration or termination of this Agreement.

14. Insurance.

14.1 Insurance During the Life of this Agreement. During the term of this Agreement, Manager shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company (ies) either (i) admitted by the Illinois Insurance Commissioner to do business in the State of Illinois and rated not less than "A-VII" in Best's Insurance Rating Guide; (ii) authorized by City's Fiscal Services Director. The following policies of

or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

14.7 City Insurance. The City currently maintains property insurance on a citywide basis for its facilities, including facilities on the Premises. The City shall, at its sole cost and expense, maintain liability insurance covering its ownership and activities on property, and shall list the Manager as an additional insured. For this purpose, it shall be acceptable for the City to provide the necessary coverage through the City's self-insurance program, an intergovernmental risk management pool or other methods. Throughout the Term of this Agreement, the City shall maintain such property and liability insurance on City facilities, including the Premises, as the City determines is fiscally responsible to maintain.

15. Liability and Indemnity.

15.1 To the fullest extent permitted by law, Manager agrees to indemnify, defend and hold harmless City, its officials, officers, employees, boards and commissions from and against any and all claims, suits, judgments, costs, fines, fees, expenses, penalties, damages, or other relief, including attorneys' fees, of any kind and nature arising out of or resulting from or through or alleged to arise out of any reckless or negligent acts or omissions of Manager and/or of Manager's officials, officers, employees or agents in connection with the operation of the Food and Beverage Operations at the Premises and/or in the performance of this Agreement. In the event of any action against City, its officials, officers, employees, agents, boards or commissions covered by the foregoing duty to indemnify, defend and hold harmless, such action shall be defended by legal counsel of City's choosing.

15.2 City shall not be liable for, and is hereby released from, all liability to Manager, Manager's insurance carrier(s), or any person claiming under or through Manager, for any loss or damage to Manager's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property located in, upon or about the Premises, whether belonging to Manager or any other person; nor shall City be liable for injury to Manager or Manager's employees, agents, contractors, subcontractors, customers, or invitees caused by fire, steam, electricity, gas, water, rain, leakage, breakage, obstruction, pipe defects, sprinkler, wires, appliances, plumbing, air conditioning, lighting fixtures, or any other cause, arising on the Premises. Manager shall be solely responsible for the safety and security of the Premises and the safety and security of all equipment, supplies, and commodities used or sold by Manager. Manager also covenants and agrees that City shall not be liable for damages arising from any act or neglect on the part of any third parties.

15.3 Manager agrees that City's liability under this Agreement shall be limited to the payment of the Base Fee that has accrued on a pro-rata basis up to the date of any event or occurrence giving rise to the City's liability. In no event shall City be liable for any other monetary damages, including, but not limited to, compensatory, consequential or incidental damages or attorney's fees, arising from or in any way related to any breach or other violation of the terms of this Agreement.

loudspeakers, sound amplifiers, phonographs, radios, televisions, or any other sound-producing device which will carry sound outside the Premises.

19. Damage or Destruction of Premises.

19.1 In the event the Premises shall be rendered unoccupiable by fire, explosion or other casualty, City may, at its sole option, terminate this Agreement or repair the Premises within sixty (60) days. If City does not repair the Premises within said time, or the building on the Premises shall have been wholly destroyed, then this Agreement shall cease and determine without further liability between the parties hereto.

20. Compliance.

20.1 Manager, its officers, agents, servants, employees, contractors, licensees, and any other person over which Manager has the right to exercise control shall comply with all present and future laws, ordinances, orders, directives, codes, rules, regulations, and directives of, or imposed by, the federal, state, and local governmental agencies, including those of City, which may be applicable to Manager's operations at Bowes Creek, including, but not limited to, any applicable requirements regarding prevailing wages, minimum wages, workplace safety, and legal status of employees.

20.2 Manager shall pay on or before their respective due dates, to the appropriate collecting authority, all federal, state, and local taxes and fees that are now or may hereafter be levied, charged and or assessed upon Manager, or upon Manager's business conducted at Bowes Creek, or upon Manager's interest hereunder, or upon any of Manager's property used in connection therewith, including possessory interest as and when such be applicable to Manager. Manager agrees to protect and hold harmless City and the Premises and any and all improvements located therein or thereon and any and all facilities and fixtures appurtenant thereto and any and all other property located therein or thereon and any and all of Manager's interest in or to said Premises, improvements, appurtenant facilities, fixtures or other property, from any and all such taxes and assessments, including any and all interest, penalties and other expenses which may be imposed thereby or result therefrom, and from any lien therefore or sale or other proceedings to enforce payment thereof. Nothing in this paragraph shall be deemed to limit any of Manager's rights to appeal any such levies or assessments in accordance with the rules, regulations, laws, statutes, or ordinances governing the appeal process of the taxing authority making such levies or assessments.

20.3 Manager agrees to pay, at its sole cost and expense, and hereby guarantees payment of, all lawful fines and penalties as may be assessed against the Manager by the City, Federal, State or local agencies, or against City for violations of federal, state or local laws, ordinances, rulings or regulations caused by Manager or its officers, agents, servants, employees, contractors, licensees, or any other person over which Manager has the right to exercise control within the earlier of delinquency or thirty (30) calendar days of written notice of such fines or penalties.

- b. Except as otherwise permitted in this Agreement, a majority of the ownership interest of Manager is transferred, passes to or devolves upon, by operation of law or otherwise, to any other person, firm or corporation without the written consent of City;
- c. Except as otherwise permitted in this Agreement, Manager becomes, without the prior written approval of City, a successor or merged corporation in a merger, a constituent corporation in a consolidation, or a corporation in dissolution;
- d. Manager shall breach, materially breach, default under and/or neglect or fail to perform and observe any promise, covenant or condition set forth in this Agreement within thirty (30) days after the giving of written notice of such failure by City to Manager, except where fulfillment of such obligation requires activity over a period of time and Manager has commenced to perform whatever may be required to remedy such failure within thirty (30) calendar days after giving of such written notice and continues such performance without interruption; or,
- e. The services provided by Manager pursuant to this Agreement shall deteriorate to the point which, in the sole opinion of City, materially and adversely affects the operation of the Food and Beverage Operations or substantially impairs the good will or reputation of Porter's Pub or Bowes Creek, except where fulfillment of such obligation requires activity over a period of time and Manager has commenced to perform whatever may be required to remedy such failure within ten (10) calendar days after giving of such written notice and continues such performance without interruption to the satisfaction of the City.

22.2 In addition to all other remedies otherwise available to City at law or in equity, City may immediately terminate this Agreement or may, without terminating this Agreement, take immediate possession of the Premises and assume the operations of the Food and Beverage Operations by giving written notice of its intent to do so to Manager, upon the occurrence of any one or more of the following:

- a. Manager fails to make payments when due under this Agreement, or to provide and maintain insurance as required in accordance with this Agreement;
- b. Any lien is filed against the Premises arising by or through Manager or because of any act or omission of Manager and such lien is not removed, enjoined or a bond for satisfaction of such lien is not posted within sixty (60) calendar days after Manager receives notice of the filing thereof;
- c. Manager permits to continue, for a period of three (3) days after receipt of written notice from the City or other agency having jurisdiction, the existence of unsanitary conditions or practices in or about the Premises; provided however, if the unsanitary condition is such as to require replacement, repair or construction, Manager shall

22.6 Upon the occurrence of an event of default, City shall have the right to terminate the Agreement and shall be entitled to possession of the Premises and commence operations of the Food and Beverage Operations. City may make its election to terminate known to Manager by delivery of a notice of termination. Such termination shall be immediately effective unless otherwise provided in this Agreement, and City shall be entitled to forthwith recover possession of the Premises of the Food and Beverage Operations, but such termination shall not terminate Manager's liabilities hereunder. Manager waives all notice in connection with such termination, including by way of illustration, but not limitation, notice of intent to terminate, demand for possession or payment, and notice of re-entry. Notwithstanding anything herein to the contrary, City may, without demand or notice, re-enter and take possession of the Premises or any part of the Premises, repossess the same, expel Manager and those claiming through or under Manager, and remove the effects of both or either, using such force for such purposes as may be necessary, without being liable for prosecution, without being deemed guilty of any manner of trespass, and without prejudice to any remedies for arrears of amounts payable under this Agreement or as a result of any preceding breach of covenants or conditions.

22.8 Cure of Defaults. Upon default with respect to any provision of this Agreement, the non-defaulting party may choose to allow the defaulting party an opportunity to cure the default, in accordance with the provisions of this paragraph. The non-defaulting party shall provide written notice of the default to such other party, who shall then have thirty (30) days to correct the default, or to commence corrective action in the event that such default cannot be corrected within thirty (30) days, whereby such corrections shall be completed within a reasonable time thereafter. In the event that such default is not cured, the non-defaulting party may then immediately terminate this Agreement without further liability. The remedy in this paragraph is cumulative, and shall not be exclusive of or otherwise prejudice the right to pursue any other rights, remedies and benefits allowed by law.

22.10 Right of Termination. In addition to any other termination rights provided for in this Agreement, this Agreement may be terminated at the convenience of City, without cause, upon one hundred eighty (180) days written notice to Manager, without further liability.

22.11 Remedies are Cumulative. City's rights, remedies, and benefits provided by this Agreement shall be cumulative, and shall not be exclusive of any other rights, remedies and benefits allowed by law.

23. Surrender of Premises.

23.1 Condition on Surrender. At the expiration or earlier termination of this Agreement, Manager shall quit and surrender up the Premises to City, peaceably, quietly and broom clean and in the same condition as existed at the commencement of the Operating Period, or hereinafter improved by Manager, reasonable wear and tear and insured casualty excepted. In the event that Manager shall fail to remove any personal property on or before the termination (whether by expiration of the Term, cancellation, forfeiture, or otherwise, whichever first occurs) of this Agreement, at the sole option of City, (i) said personal property may be stored at a public warehouse or elsewhere at Manager's sole

- f. Directions on how to contact the department and commission;
- g. Protection against retaliation as provided by section 6-101 of the Human Rights Act.

25. Miscellaneous.

25.1 Nonwaiver of Rights. No failure by either party to insist upon strict compliance of any obligation of the other party under this Agreement or to exercise any right, power or remedy of a breach thereof, irrespective of the length of time for which such failure continues (except in cases where this Agreement expressly limits the time for exercising rights or remedies arising out of a breach), shall constitute a waiver of such breach or of that party's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Agreement. No waiver of breach by City or Manager of any of the terms, covenants, and conditions hereof to be performed, kept, and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent breach of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other parties, and the consent or approval by City to or of any act by Manager requiring City's consent or approval shall not be deemed a waiver of City's consent or approval to or of any subsequent similar act by Manager. No breach of a covenant, term, condition, or provision of this Agreement shall be deemed to have been waived by City, unless such waiver (i) is in writing signed by City, (ii) identifies the breach, and (iii) expressly states that it is a waiver of the identified breach.

25.2 Notice. Any notice, demand, request, consent, approval, or other instrument which may be or is required to be given under this Agreement shall be in writing and shall be sent by overnight courier or United States certified mail return receipt requested, postage prepaid, and shall be addressed to the addresses and persons set forth hereunder:

To City:

City Manager
City of Elgin
150 Dexter Court
Elgin, IL 60120-5555

With a copy to:

Corporation Counsel
City of Elgin
150 Dexter Court
Elgin, IL 60120-5555

To Manager:

Porter's Pub Payroll PPP, LLC
c/o Joe Carlucci, President
Carlucci Hospitality
2001 Butterfield Road
Downers Grove, IL 60515

With a copy to:

25.11 Successors and Assigns Bound. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, where permitted by this Agreement.

25.12 Time of Essence. Time is expressed to be of the essence in this Agreement.

25.13 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

25.14 Force Majeure. Except for the payment of any fee or charge required by this Agreement, neither City nor Manager shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that party or persons or entities for whose acts or omissions that party is responsible under this Agreement or applicable law, including, without limitation, strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such party is not responsible or which is not in its own power to control, provided that, should said cause(s) continue for a period beyond six (6) months, such shall be a grounds for termination by either party in the manner provided in this Agreement.

25.15 Representative of City. The Elgin City Manager, or his/her representative, shall be designated as the official representative of City in all matters pertaining to this Agreement. To the extent expressly authorized by City Council, the Elgin City Manager, or his/her representative, shall have the right and authority to act on behalf of City with respect to all action required of City in this Agreement.

25.16 Governing Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any disputes relating to this Agreement or the interpretation thereof must be resolved in accordance with the laws of Illinois. Manager and City agree that any legal or equitable action for claims, debts, or obligations arising out of or to enforce the terms of this Agreement shall be brought by Manager or City in the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois and that such court shall have personal jurisdiction over the parties and venue of the action shall be appropriate in each such court.

25.17 Writing Required. This Agreement may not be amended or otherwise modified in any way whatsoever, except in writing approved by City Council and signed by the parties' authorized agents.

25.18 Rights Cumulative. Each right of the parties hereto is cumulative and in addition to each of the other legal rights that a party may have in law or equity.

25.19 Sub-agreements. Manager hereby assures that it shall include all of the terms, conditions, covenants and other obligations contained herein in any and all agreements and contracts or sub-agreements and subcontracts entered into by it under which Manager grants a right or privilege to any person, firm or corporation to render accommodations and/or services within or for

may pursue its own claims for damages with the appropriate government authority so long as same does not interfere with, or in any manner diminish, the award of City.

25.26 Joint and Collective Work Product. The language of this Agreement is the result of discussion and negotiation between the parties, each of which has read and understands each provision of this Agreement. This Agreement is and shall be deemed and construed to be a joint and collective work product of the City and Manager, and as such, this Agreement shall not be construed against any other party as the otherwise purported drafter of the same by any court of competent jurisdiction in order to resolve any inconsistency, ambiguity, vagueness or conflict, if any, in the terms or provisions contained herein.

25.27 Third Party Beneficiaries. There are no third party beneficiaries to this Agreement, intended or otherwise.

26. Entire Agreement.

26.1 This Agreement and the Exhibits attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions, and understandings between City and Manager concerning the Premises; that there are no covenants, promises, agreements, conditions, or understandings, either oral or written, between them other than are herein set forth; and that no claim or liability shall arise for any representations or promises not expressly stated in this Agreement. Any other writing or parol agreement with the other party being expressly waived. No alteration, amendment, change, or addition to this Agreement shall be binding upon City or Manager unless reduced to writing and signed by the party to be charged.

Exhibit A
Plan Depicting Assigned Premises/Location of Food and Beverage Operations
(TO BE INSERTED)



DATE: April 29, 2011

TO: Michael Lehman, Golf Services Manager

FROM: Jennifer Quinton, Deputy City Clerk

SUBJECT: Resolution No. 11-69, Adopted at the April 27, 2011, Council Meeting

Enclosed you will find the agreement listed below. Please distribute this agreement to the other party and keep a copy for your records if you wish. If you have any questions please feel free to contact our office 847-931-5660 and we will do our best to assist you. Thank you.

- Agreement with Porter's Pub Payroll PPP, LLC for Operations at Bowes Creek Country Club