

RESOLUTION NO. 2011- 43

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
APPROVING AN AMENDED AND RESTATED DEFERRED PAYMENT PLAN
AGREEMENT FOR SEWER CAPACITY CHARGES FOR SEASONS PIZZERIA
SPORTS BAR GRILL (563 ROHNERT PARK EXPRESSWAY WEST)**

WHEREAS, the City Council of the City of Rohnert Park (“City”) wishes to support economic development;

WHEREAS, in an effort to achieve the desired goal of economic development, the City Council has adopted Resolution No. 2010-89 approving an Economic Development / Job Creation Program;

WHEREAS, the approved Economic Development / Job Creation Program includes provisions for the City to “be a creative partner” to overcome obstacles or hindrances to the use of land for economic benefit in Rohnert Park;

WHEREAS, Taste Tee LLC, dba Seasons Pizzeria Sports Bar Grill (“Developer”) requested a deferral of a percentage of its Sewer Capacity Charges on the condition of entering into a Deferred Payment Plan Agreement with the City;

WHEREAS, City and Developer entered into that certain Deferred Sewer Capacity Charge Payment Plan Agreement on October 13, 2010 (“Original Agreement”), which satisfied the purpose and intent of Chapter 13.40 of the Rohnert Park Municipal Code; and

WHEREAS, City and Developer now mutually desire to amend the Original Agreement to accomplish the following:

1. Change the term of the Original Agreement from three to five years;
2. Change the number of restaurant seats from 113 to 80;
3. Change the timing of payment installments from bi-monthly to monthly.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AS FOLLOWS:

Section 1. The above recitations are true and correct.

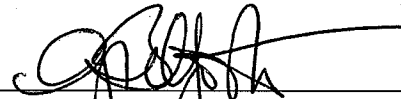
Section 2. Environmental Clearance. The adoption of this Resolution and accompanying Amended and Restated Deferred Sewer Capacity Charge Payment Plan Agreement is exempt from review under the California Environmental Quality Act because the activity in question is not a project as defined under CEQA Guidelines Section 15378 in that there is no potential that the activity will result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Section 3. The City Manager is hereby authorized and directed to take all actions to effectuate the Amended and Restated Deferred Sewer Capacity Charge Payment Plan Agreement for and on behalf of the City of Rohnert Park, including execution if necessary, in substantially

similar form to the agreement attached hereto as Exhibit "A," subject to minor modifications by the City Attorney.

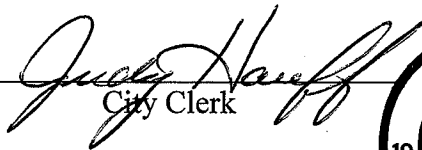
DULY AND REGULARLY ADOPTED this 24th day of May, 2011.

CITY OF ROHNERT PARK



Mayor

ATTEST:



City Clerk



AHANOTU: <u>AYE</u> CALLINAN: <u>AYE</u> MACKENZIE: <u>ABSENT</u> STAFFORD: <u>AYE</u> BELFORTE: <u>AYE</u> AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

Amended and Restated Deferred Sewer Capacity Charge Payment Plan Agreement

Between

the City of Rohnert Park

and

Taste Tee LLC (Developer)

This Amended and Restated Deferred Sewer Capacity Charge Payment Plan Agreement ("Agreement") is entered into by and between the City of Rohnert Park, a Municipal Corporation of the State of California ("City"), and Taste Tee LLC, DBA Seasons Pizzeria Sports Bar Grill ("Developer") on May 24, 2011. This Agreement amends and restates in its entirety the Deferred Sewer Capacity Charge Payment Plan Agreement entered into between the City and Developer on October 13, 2010 ("Original Agreement").

WHEREAS, the City is interested in promoting economic development and in an effort to achieve this desired goal, on August 24, 2010, the City adopted Resolution No. 2010-89 adopting an Economic Development / Job Creation Program ("ED Program");

WHEREAS, the approved ED Program includes provisions for the City to work with the business community to determine how the City might, in some way, "be a creative partner" with businesses to address and overcome major obstacles or hindrances to the use of land for economic benefit in the City of Rohnert Park;

WHEREAS, Rohnert Park Municipal Code ("RPMC") section 13.40.010 establishes a Sewer Capacity Charge applicable to all nonresidential development in the City to pay for improvements to the capacity of the City's sewer collection and pumping facilities and improvements to the subregional treatment, disposal and water recycling system;

WHEREAS, pursuant to RPMC section 13.40.020(C), the Sewer Capacity Charge for nonresidential land use is based upon the daily flow rate in gallons under average dry weather flow conditions, as determined by the City Engineer;

WHEREAS, timing of payment of Sewer Capacity Charges can be an obstacle to development of new restaurants;

WHEREAS, one alternative payment mechanism, which can be utilized when there is a development with a need for a new or increased permanent sewer capacity, is a deferred payment plan, which would be memorialized in a written agreement;

WHEREAS, to support economic development within the City, City and Developer entered into the Original Agreement, which among other things, deferred payment of the Developer's sewer capacity charges over a three-year period;

WHEREAS, after entering into the Original Agreement, Developer opened an 80-seat restaurant located at 563 Rohnert Park Expressway West, Rohnert Park, California which is sited on a portion of assessor's parcel number 143-391-048 (the "Project"), the requisite sewer

capacity for which is 1,600 gallons-per-day with a corresponding Sewer Capacity Charge of Eighty-Six Thousand Four Hundred Dollars and Zero Cents (\$86,400.00); and

WHEREAS, City and Developer now mutually desire to amend the Original Agreement to change (i) the term of the Original Agreement from three to five years; (ii) the number of restaurant seats from 113 to 80; and (iii) the timing of payment installments from bi-monthly to monthly.

NOW, THEREFORE, in consideration of the mutual consideration contained in this Agreement and subject to the terms and conditions as stated, it is understood and agreed by the parties as follows:

AGREEMENT

1. Payment Plan Terms.

The Project requires 1,600 gallons-per-day of Sewer Capacity for 80 seats. The Sewer Capacity Charge for 1,600 gallons per day is Eighty-Six Thousand Four Hundred Dollars and Zero Cents (\$86,400.00). Developer (i) made a down payment of Twelve Thousand Two Hundred Four Dollars and Zero Cents (\$12,204.00) on October 13, 2010, (ii) made an additional payment of Two Thousand Three Hundred Ninety-Four Dollars and Sixty-Three Cents (\$2,394.63) for December 2010, (iii) received a credit of Four Thousand Three Hundred Twenty-One Dollars and Eighty-One Cents (\$4,321.81) for original sewer capacity, and (iv) made an additional payment of One Thousand One Hundred Twenty-Four Dollars and Zero Cents (\$1,124.00) in May, 2011. Developer will provide a Promissory Note to the City for the remaining balance due of Sixty-Six Thousand Three Hundred Fifty-Five Dollars and Fifty-Six Cents (\$66,355.56), to be paid in sixty (60) monthly installments of One Thousand Two Hundred Seventy-One Dollars and Eighty-One Cents (\$1,271.81) each, commencing June 1, 2011, which payments are inclusive of principal and interest at the rate of five percent (5.0%) per annum (the "Note"), the form of which is attached to this Agreement as **Exhibit 1**.

2. Purpose of Payment Plan.

Developer is constructing a restaurant on the Property with capacity of 80 seats. The current sewer generation rate for this use is 20 gallons per seat, for a total sewer capacity need of 1,600 gallons.

3. Payments Begin.

Monthly payments shall be paid on the first of each month commencing on June 1, 2011, and shall continue in accordance with the terms and conditions of the Note.

4. Provisional Capacity Rights.

Upon receipt of valid payment, including clearance of checks or wire transfers with appropriate bank, sewer capacity rights will provisionally accrue to the Project at the rate of one (1) gallon per Fifty-Four Dollars and zero cents (\$54.00), not including any interest, per the terms of this agreement. In no case shall the Project accrue more than 1,600 gallons of sewer capacity for payments made to satisfy the obligations of this Agreement. Notwithstanding the above, in the event of default of any required payments under the Note, the Project will not be

deemed to have accrued any sewer capacity rights and any provisionally accrued sewer capacity rights will be deemed revoked.

5. Disconnection/Termination of Service for lack of payment.

In addition to any other remedy in law or equity, including all remedies provided under Title 13 of the Rohnert Park Municipal Code, Developer agrees that, notwithstanding any other right at law and in consideration of not requiring a specific security interest to protect the loan, if all utility charges are not paid within fifteen (15) calendar days of payment due date published on bill, or if Developer is in default per Section 11 of this Agreement, all City-provided utilities to the Property, including water and sewer service, may be disconnected.

6. Prepayment.

The Developers may, at any time, at their option and from time to time, prepay the Note in part or in whole without premium or penalty. Any partial prepayment shall be applied to the outstanding principal and not to the installment next due under the terms of the Note.

7. Prohibition Against Assignment or Change in Ownership of Developer Without Prior Consent of City.

The qualifications and identity of Developer are of particular concern to the City in entering into this Agreement. Therefore, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, and there shall be no change in more than fifty-one percent (51%) of the ownership interests in the Developer, except as expressly set forth herein. Developer shall not assign or permit the assignment of all or any of its rights or duties under this Agreement, or permit a change in more than fifty-one percent (51%) of its ownership interests, without the prior written approval of the City, which consent shall be in the City's sole discretion and shall require that any approved successor specifically agree in writing to be bound by the provisions of this Agreement.

8. Time Frame.

Time is of the essence of this Agreement.

9. Equal Employment Opportunity.

- a. The Developer, its contractors and agents will not discriminate against any employee or person engaged in this project because of their race, religion, color, sex, or national origin;
- b. The Developer shall post in conspicuous places on the Property site notices setting forth the provisions of this non-discrimination clause;
- c. Violation of these provisions shall be cause to terminate this Agreement; and
- d. None of the terms of this provision shall be used to preclude the City from pursuing other remedies available under law or equity for non-compliance with the terms of this Agreement.

10. Disclaimer of Relationship.

The City and Developer agree and acknowledge that nothing contained in this Agreement or any act of the City employees, agents or officers or of the Developer shall be deemed or construed by any of the parties to this Agreement, or by third persons, to create any relationship of any third-party beneficiary, or of principal and agent, or of limited or general partnership, or of joint venture, or of any association or joint relationship.

11. Events of Default.

Any of the following events shall constitute an event of default:

- a. Failure to make payment of the principal or any interest on the Note when due and as the same shall become due and payable;
- b. Failure to perform any obligation contained in this Agreement;
- c. Making a presentation or warranty with regard to the subject of this Agreement that is false or misleading in a material respect;
- d. If the Developer shall:
 - i. Admit in writing their inability to pay their debts as they come due;
 - ii. File a petition in bankruptcy, or a petition to take advantage of any insolvency act or a petition seeking reorganization;
 - iii. Make an assignment for the benefits of their creditors;
 - iv. Consent to the appointment of a receiver of themselves, or of the whole or any substantial part of their Property; or
 - v. On a petition in bankruptcy or insolvency or seeking reorganization filed against themselves, acquiesce in such filing, fail to have the action discharged within ninety (90) days of such filing, be adjudicated bankrupt, or become subject to a receiver; and
- e. Developer assigns or permits the assignment of all or any of its rights or duties under this Agreement, or permits a change in more than fifty-one percent (51%) of its ownership interests, without the prior written approval of the City.

12. Remedies Upon Default.

- a. Automatic Acceleration. In the case of the occurrence of an event of default under paragraph 11 above, the Note shall automatically, without notice to the Developers or any other person, forthwith become due and payable in full, together with interest accrued thereon;
- b. Option Acceleration. In the case of the occurrence of any other event of default and the continuance thereof for more than thirty (30) consecutive days after delivery to the Developers of a written notice issued by the City specifying such

event of default and required it be remedied, the City may, by written notice to Developer, declare the principal and accrued interest on the Note and all obligations of the Developers hereunder to be forthwith due and payable. Any written notice shall be deemed delivered when deposited in the U.S. mail; and

- c. Immediate disconnection/termination of utility service as provided for in paragraph 5, above.

13. Notices.

All notices, consents, demands, and other communications hereunder shall be deemed to have been given when personally delivered, mailed by registered or certified mail, postage prepaid or sent by telegram, addressed:

- a. If to Developer:

Managing Member
Taste Tee LLC, DBA Seasons Pizzeria Sports Bar Grill
563 Rohnert Park Expressway West
Rohnert Park, California 94928; and

Glenn M. Cybulski
Agent for Service of Process
Taste Tee LLC
303 Orchard Lane
Penngrove, CA 94951.

- b. If to the City:

City Manager
Rohnert Park City Hall
130 Avram Avenue
Rohnert Park, California 94928.

14. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and assigns, and beneficiaries.

15. Governing Law.

This Agreement is executed, and is to be performed, in the State of California and shall be governed by the laws of the State of California.

16. Severability.

If any term contained in this Agreement or in the Note shall be invalid and unenforceable, the remainder of this Agreement and the Note shall not be affected thereby.

17. Attorneys' Fees.

If either party to this Agreement shall bring any action against the other arising out of this Agreement or the exhibit(s) hereto, the prevailing party shall be entitled to recover a reasonable sum for attorneys' fees and costs in such action.

18. Venue.

In the event a claim or action is filed in connection with this Agreement, the parties agree that the proper venue for any such proceeding shall be in the Superior Court of the County of Sonoma, California.

IN WITNESS WHEREOF, the parties have executed this instrument as of the date written above.

DATED: _____

DEVELOPER:

By: _____
Glenn M. Cybulski
Managing Member
Taste Tee LLC d/b/a Seasons Pizzeria
Sports Bar Grill

DATED: _____

CITY OF ROHNERT PARK:

By: _____
Gabriel Gonzalez
City Manager

APPROVED AS TO FORM AND CONTENT:

DATED: _____

By: _____
Michelle Marchetta Kenyon
City Attorney

EXHIBIT 1

PROMISSORY NOTE

City of Rohnert Park, California

\$66,355.56

May 24, 2011

For valid consideration duly received and hereby acknowledged, the undersigned Taste Tee LLC, DBA Seasons Pizzeria Sports Bar Grill ("Maker"), promises and agrees to pay to the order of the City of Rohnert Park, 130 Avram Avenue, Rohnert Park, California 94928, or holder ("City"), in lawful money of the United States of America, the principal sum of SIXTY-SIX THOUSAND THREE HUNDRED FIFTY-FIVE DOLLARS AND FIFTY-SIX CENTS (\$66,355.56), to be paid in sixty (60) monthly payments of ONE THOUSAND TWO HUNDRED SEVENTY-ONE DOLLARS AND EIGHTY-ONE CENTS (\$1,271.81) each commencing June 1, 2011, which payments are inclusive of principal and interest at the rate of five percent (5.0%) per annum, in accordance with the terms the Amended and Restated Deferred Sewer Capacity Charge Payment Plan Agreement Between the City of Rohnert Park And Taste Tee LLC dated May 24, 2011, ("Agreement"), which is incorporated herein in full by reference. The payment schedule for this Promissory Note is attached herewith.

Unless otherwise specified in writing by the City, all payments on this Promissory Note shall be paid to the City, by check, made payable to the order of the City of Rohnert Park, 130 Avram Avenue, Rohnert Park, California 94928.

Should default be made in payment of the principal or interest, the whole sum of principal and interest shall, at the option of the holder of this note, become immediately due as provided in the Agreement. Whether or not suit is filed, Maker agrees to pay all attorneys' fees, costs of collection, costs, and expenses incurred by the City in connection with the enforcement or collection of this Promissory Note.

This Promissory Note has been executed and delivered in and shall be construed in accordance with and governed by the laws of the State of California and of the United States of America.

Executed as of the date first written above.

**TASTE TEE LLC DBA SEASONS
PIZZERIA SPORTS BAR GRILL**

By: _____
Glenn M. Cybulski
Its: Managing Member

EXHIBIT 1

Payment Schedule for Promissory Note

Payment Due Date	Payment Amount	Payment Due Date	Payment Amount
6/1/2011	\$1,271.81	12/1/2013	\$1,271.81
7/1/2011	\$1,271.81	1/1/2014	\$1,271.81
8/1/2011	\$1,271.81	2/1/2014	\$1,271.81
9/1/2011	\$1,271.81	3/1/2014	\$1,271.81
10/1/2011	\$1,271.81	4/1/2014	\$1,271.81
11/1/2011	\$1,271.81	5/1/2014	\$1,271.81
12/1/2011	\$1,271.81	6/1/2014	\$1,271.81
1/1/2012	\$1,271.81	7/1/2014	\$1,271.81
2/1/2012	\$1,271.81	8/1/2014	\$1,271.81
3/1/2012	\$1,271.81	9/1/2014	\$1,271.81
4/1/2012	\$1,271.81	10/1/2014	\$1,271.81
5/1/2012	\$1,271.81	11/1/2014	\$1,271.81
6/1/2012	\$1,271.81	12/1/2014	\$1,271.81
7/1/2012	\$1,271.81	1/1/2015	\$1,271.81
8/1/2012	\$1,271.81	2/1/2015	\$1,271.81
9/1/2012	\$1,271.81	3/1/2015	\$1,271.81
10/1/2012	\$1,271.81	4/1/2015	\$1,271.81
11/1/2012	\$1,271.81	5/1/2015	\$1,271.81
12/1/2012	\$1,271.81	6/1/2015	\$1,271.81
1/1/2013	\$1,271.81	7/1/2015	\$1,271.81
2/1/2013	\$1,271.81	8/1/2015	\$1,271.81
3/1/2013	\$1,271.81	9/1/2015	\$1,271.81
4/1/2013	\$1,271.81	10/1/2015	\$1,271.81
5/1/2013	\$1,271.81	11/1/2015	\$1,271.81
6/1/2013	\$1,271.81	12/1/2015	\$1,271.81
7/1/2013	\$1,271.81	1/1/2016	\$1,271.81
8/1/2013	\$1,271.81	2/1/2016	\$1,271.81
9/1/2013	\$1,271.81	3/1/2016	\$1,271.81
10/1/2013	\$1,271.81	4/1/2016	\$1,271.81
11/1/2013	\$1,271.81	5/1/2016	\$1,271.81