

**ORDINANCE NO. 2012-33-CD**

**AUTHORIZING THE MUNICIPAL MANAGER TO ENTER INTO A LEASE AGREEMENT WITH CATERING ADVENTURES, INC., DBA DESTINY'S CATERING, INC., AND DECLARING AN EMERGENCY**

**WHEREAS**, Council has previously requested proposals for operators of the Village-owned banquet facility; and

**WHEREAS** Council has previously determined that Catering Adventures, Inc., was the preferred provider for said services; and

**WHEREAS**, Council now desires to authorize a formal Lease Agreement with Catering Adventures, Inc.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of Greenhills, Ohio, 6 members elected thereto concurring:

**SECTION 1.**

That the Municipal Manager is hereby authorized to enter into a Lease Agreement with Catering Adventures, Inc., dba Destinys Catering, Inc., substantially in the form of the Lease Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

**SECTION 2.**

That the Municipal Manager is further authorized to execute any and all additional documents necessary to effect the Lease Agreement.

**SECTION 3.**

That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to enter into the Lease Agreement at the earliest possible date.

Passed this 17th day of July 17, 2012.

Glen Drees, MAYOR /s/

Kathryn L. Lives, CLERK OF COUNCIL /s/

**ORDINANCE NO. 2012-33-CD EXHIBIT "A"**

**LEASE AGREEMENT**

This Lease Agreement is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, between the Village of Greenhills (hereinafter "Lessor") and Catering Adventures Inc. dba Destinys Catering, Inc., (hereinafter collectively "Lessee").

**LEASED PREMISES.** In consideration of the rents and covenants hereinafter stipulated to be paid and performed by the Lessee, the Lessor does hereby grant, demise and lease unto the Lessee, the Leased Premises located at 10 Enfield Place, Greenhills, Ohio and more particularly described in the attached Exhibit A (the "Leased Premises"). The Leased Premises shall also include the non-exclusive right to use the entire parking area adjoining the described Leased Premises on the East; provided that such parking area shall also be used by Lessor for parking for the golf course, tennis courts, and swimming pool. The Leased Premises do not include the area presently used by the Lessor and public as a golf course, tennis courts, swimming pool, picnic grounds, or the restroom facilities at the north end of the building next to the picnic grounds.

**TERM.** This lease is for a term of five (5) years commencing August 1, 2012, and ending July 31, 2017, unless extended as provided herein (the "Term"). Provided Lessee has paid all rentals due during the Term and is not otherwise in default of the terms and conditions of this Lease, the Lease shall automatically renew annually on the same terms and conditions as are provided herein, provided that (a) the Lessee gives written notice to the Lessor of his intention to renew, not later than three (3) months prior to the expiration of the Term and (b) provided further that the rent owed for such additional Term shall be the greater of the existing rent provided hereunder or the then existing market rates. Lessor shall provide Lessee with written notice of

any increase in the rent due during any renewal term within thirty (30) days after receipt of Lessor's notice of intent to renew the Lease.

RENT.

The Lessee agrees to pay to the Lessor as rent for the use of said Leased Premises, the following sum of money:

For 2012: \$1,300 per month, plus 10 % of new sales

For 2013: \$1,700 per month, plus 10% of total sales

For 2014: \$2,000 per month, plus 10% of total sales

For 2015: \$2,500 per month, plus 10% of total sales

For 2016: \$3,000 per month, plus 10% of total sales

The monthly rent shall be payable on the first day of each and every month in advance without demand made therefore, commencing on August 1, 2012. An amount equal to 10% of total sales shall be paid monthly on or before the 15th of each month. Documentation to substantiate the amount of total sales shall include Destinys' monthly accountant's sales report. All rents shall be payable to the Village of Greenhills at 11000 Winton Road, Cincinnati, Ohio 45218.

CONDITION OF PREMISE. Upon taking possession of the Leased Premises, Lessee accepts same in its existing condition. Lessee's taking of the Leased Premises shall be conclusive evidence that Lessee accepts such property "**AS IS.**"

UTILITIES. The Lessee shall pay for all utilities, including but not limited to gas and electricity used in said Leased Premises. Water and sewer shall be paid for by the Lessor, as long as Lessee does not increase its use of water and sewer above the current average of \$1,300 every three (3) months.. Lessee shall pay the cost of any increased usage payable immediately upon receipt of invoice.

TAXES & ASSESSMENTS. Lessee shall be responsible for any real estate taxes and assessments levied or charged against the Leased Premises for the term of this Lease or any renewal or holdover term. In the event any such taxes or assessments levied or charged against the Leased Premises changes significantly during the term of this Lease or any subsequent renewals, both parties agree to consider the impact of this increase on Destinys' monthly expenses and possibly renegotiate the rent due. Lessee also agrees, as a condition of this Lease Agreement, to file promptly when due all Village required income tax returns and to pay Village income taxes on the operations of the business at the Leased Premises. Lessor can declare any failure to file such returns and/or pay the associated taxes an event of default.

USE.

The Lessee agrees to operate the Leased Premises as a banquet business and in a manner which will not disturb the peace and tranquility of the community. Lessee shall make no changes in the use of the Leased Premises without the prior written approval of Lessor.

The Leased Premises shall never be used by patrons of the Lessee or any organization to which Lessee shall permit the use of said Leased Premises for any unlawful purpose or any other purpose which would result in the creation of any noises or conduct which would be likely to disturb any person in the vicinity of Leased Premises.

Lessee agrees not to suffer any acts of omission or commission on the Leased Premises or to bring or keep anything therein which is illegal or, in the Lessor's opinion, is dangerous or hazardous, or will, in any way, increase the rate of fire insurance on said building or on the contents thereof, or conflict with the terms of any insurance policy upon said building or any part hereof, or with any of the rules and ordinances of the Board of Health.

In the event the Lessee receives any orders from any public agency of the State, City, County or United States Government or by the insurers or by the Ohio Inspection Bureau, requiring compliance with any such orders or regulations of such agencies or companies, the Lessee agrees to comply with such orders and regulations, not later than thirty (30) days after receipt of notice thereof.

LAWS AND REGULATIONS. Lessee agrees to comply with all laws and regulations applicable to the use of said Leased Premises, including but not limited to fire and health and liquor regulations and any requirements of any company which insures said Leased Premises against fire or other risk.

MAINTENANCE. Lessee agrees to maintain, at its expense, said Leased Premises and the equipment therein in the same condition they are at the time of the commencement of this Lease, including but not limited to, all interior and exterior repairs, including windows and door glass, electric and plumbing in a good and workable condition. However, except as provided hereafter the Lessor agrees to pay for the cost of maintaining air conditioning and heating systems; electric to, but not including, the power boxes; sewer and water mains running to and from the structure; the water heater; roof; gutters; chimney; and all exterior painting; provided that in the event that the Lessee causes the damage or condition requiring repair or maintenance, Lessee shall be responsible for and pay for such maintenance or repair. Additionally, Lessor agrees to remove snow from the driveway easement and the parking lot at the same time as snow is removed from Greenhills' streets.

Lessee agrees to maintain the interior and exterior of the Leased Premises in a clean and orderly condition at all times.

Lessor shall have the right to inspect the Leased Premises without notice at all reasonable times, including but not limited to, all hours Lessee is open to the public.

If Lessee fails to perform required maintenance or repairs and Lessor gives written notice to Lessee of needed maintenance or repairs, after the expiration of five (5) days after such notice, Lessor may enter the Leased Premises and make such repairs or maintenance and invoice Lessee for its costs and expenses. Such invoice shall be due upon receipt.

Nothing in this paragraph 9 shall be construed to impose any obligation on Lessor to perform, or require to be performed Lessee's maintenance or repair obligations.

IMPROVEMENTS OR ALTERATIONS. Lessee agrees to make no changes, alterations or additions to the Leased Premises, nor attach or affix any articles thereto, without first obtaining Lessors written consent. All alterations, additions or improvements, which may be made by either of the parties hereto, upon the Leased Premises, except trade fixtures or office equipment installed by Lessee, shall not be thereafter removed, but shall become the property of the Lessor. Any damage to the Leased Premises, resulting from the removal of trade fixtures, shall be repaired by Lessee. Lessee shall permit all reasonable access to Lessor, its agents or contractors, for any alterations, additions or improvements by Lessor.

INSURANCE. Lessee agrees to purchase and maintain policies of insurance as follows:

Comprehensive General Liability and property damage liability in a company acceptable to the Lessor in combined limits of One Million Five Hundred Thousand (\$1,500,000.00) Dollars for death or injury to each person and not less than One Million Five Hundred Thousand (\$1,500,000.00) Dollars for each occurrence, and Liquor Liability Insurance in the amount of Five Hundred Thousand (\$500,000.00) Dollars.

Both the Lessor and the Lessee shall be named as the insured parties in said policies.

Lessee shall furnish the Lessor with a certificate of such insurance issued by the insurer or insurers, containing a provision that in the event, for any reason, the insurer(s) intend to cancel such insurance, the insurer(s) will give the Lessor a written notice of its intention to cancel such policy or policies not less than thirty (30) days prior to the effective date of such cancellation.

Each party shall look first to any insurance in its favor before making any claim against the other party; and each party shall obtain, for each policy of such insurance, provisions permitting waiver of any claim against the other party for loss or damage within The scope of such insurance, and each party, to such extent permitted, for itself and its insurers, waives all such insured claims against the other party.

INDEMNITY. The Lessee agrees to indemnify and save harmless the Lessor from all fines, suits, proceedings, claims, demands, damages, expenses and actions of any kind or nature of anyone whosoever, including attorney fees arising or growing out of or in any way connected with the occupation or use of said Leased Premises or by reason of any breach, violation or non-performance of any covenant or condition hereof on the part of the Lessee. No compensation or claim will be allowed by Lessor by reason of inconvenience or annoyance arising from the necessity of constructing, repairing, altering or improving any portion of the Lessor's building, however, the necessity therefor may occur, excepting only the rental adjustments as provided herein in the event Lessor exercises his option to repair damage by fire or other casualty as hereinafter provided.

It is understood, that except as otherwise provided in this Lease, the Lessee will have sole and exclusive control of the Leased Premises described herein during the period of this Lease and that the Lessee shall be solely responsible for the condition thereof and assumes full responsibility therefor to the Lessor and all persons using said Leased Premises for any purpose, although the Lessor shall have the right to enter upon said Leased Premises for the purpose of determining the Lessee's compliance with the provisions of this Lease and to enter the Leased Premises during the last six (6) months of the term, for the purpose of exhibiting said Leased Premises to prospective tenants or purchasers,

DAMAGE. If the Leased Premises shall be damaged by fire or other casualty, so as to be partially or wholly unfit for occupancy, and if said Leased Premises in the opinion of the Lessor can be repaired within four (4) months after said damage, the Lessor shall at its option either cancel this Lease or proceed promptly to cause the Leased Premises to be repaired, in which case this Lease shall not terminate, but shall remain in full force and effect except that the rent shall be subject to equitable adjustment in proportion to the unusable space since the damage. Lessor shall notify Lessee of its decision to cancel the Lease or repair the Leased Premises within thirty (30) days of the fire or other casualty. If the lease is not canceled, during the period of repairs, rentals due hereunder shall be abated for such period and portion of the Leased Premises as are unsuitable for use from such causes until the Leased Premises are again in useable condition. In the event the Leased Premises or any part thereof is damaged or destroyed by any cause attributable, directly or indirectly, to Lessee's act or inaction, there shall be no abatement or reduction of rental.

LIQUOR PERMIT. Lessee acknowledges that Lessor is, or will be, the holder of valid D5 and D6 liquor permits for the Leased Premises. Lessee shall be permitted to operate a

business under said liquor permits pursuant to the terms of a separately executed Management Agreement 9, a draft of which is attached hereto as Attachment A. Lessee further agrees that any breach of the terms of the Management Agreement shall constitute a breach of this Lease and shall be considered an Event of Default subject to the provisions of Section 17 of this Lease. Lessee further acknowledges that the termination of this Lease, for any reason whatsoever, shall also constitute termination of the liquor permit Management Agreement.

MORTGAGE. This lease shall be subject to and subordinate at all times to the lien of any mortgages or other encumbrances on or hereafter placed on the Leased Premises without the necessity of any further instrument to effectuate such subordination, but Lessee agrees to execute and deliver upon demand such further instrument evidencing such subordination or other encumbrances as shall be desired by Lessor and Lessee hereby appoints Lessor attorney-in-fact to execute and deliver any such instrument in the name of the Lessee.

ASSIGNMENT OR SUBLETTING. This Lease may not be assigned nor the Leased Premises sublet without the prior written consent of the Lessor.

DEFAULT. If the Lessee fails to pay said rent within ten (10) days after the same becomes due and payable and without demand therefor, or fails to promptly perform any of the other agreements or covenants of the Lease, Lessee shall be in default ("Event(s) of Default"). Upon the occurrence of any Event of Default and at anytime thereafter, Lessor without any further notice may exercise any one or more of the following remedies:

Declare all unpaid rentals and other amounts due and to become due under this Lease to be immediately due and payable;

Take possession of the Leased Premises and for such purpose enter into the Leased Premises, Lessee hereby waiving all further rights to possession and all claims for injuries suffered through or lost cause by such repossession;

Use, hold, sell, lease or otherwise dispose of the Leased Premises or any part thereof without affecting the obligations of Lessee under this Lease;

Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof;

Terminate this Lease; provided, however, that a termination hereunder will be effective only upon written notice of termination by Lessor to Lessee; and

Exercise any and all rights accruing to Lessor under any applicable law upon a default by a Lessee.

Such termination shall be effective immediately upon the receipt by the Lessee of a written notice of termination from the Lessor and the Lessor shall thereupon have the right to enter upon the Leased Premises for all purposes and to remove any of property of the Lessee therein and to give possession of said Leased Premises to any other person or organization for any purpose, including occupancy as a tenant or to repair, alter, or demolish said Leased Premises. No such termination of this Lease nor taking or recovering possession of the Leased Premises, shall deprive Lessor of any remedies or action against Lessee for the rent due or which may thereafter accrue or become due or for damages for the breach of any covenant herein contained, nor shall the bringing or failure to bring any such action for rent, or breach of covenant nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach, be construed as a waiver of the right to insist upon the forfeiture and to obtain possession in the manner herein provided.

The failure of the Lessor to exercise the right of termination as to any one or more of such acts of commission or omission shall not constitute a waiver of the right to terminate the Lease for any other or subsequent breach of the conditions thereof by the Lessee.

COVENANTS OF THE LESSEE. The Lessee for himself and itself, their heirs, executors, administrators and assigns, do hereby covenant and agree with the Lessor, the Village of Greenhills, that Lessee will pay said rents in the manner aforesaid unless said Leased Premises shall be destroyed or rendered untenable by fire or unavoidable accident, in which event the rent shall be adjusted as provided in this Lease; that Lessee will keep the Leased Premises clean and will not store refuse, trash or hazardous materials on the Leased Premises; that Lessee will not use said Leased Premises or any part thereof in violation of any law relating to intoxicating liquors or otherwise; that Lessee will not do or suffer any waste therein., nor use said Leased Premises for any unlawful purposes, nor assign this Lease, nor underlet said Leased Premises nor any part thereof, without the written consent of the Lessor and that at the end of said term or thereof, Lessee will deliver up said Leased Premises in as good order and condition as they now are, or maybe put by said Lessor or said Lessee, any unavoidable casualty, condemnation or appropriation excepted; and farther, that for said rents to be paid by said Lessee, a lien is hereby reserved upon the Leased Premises hereby leased, and the interest of said Lessee in and to the same, in favor of the Lessor, prior and preferable to any and all other liens thereupon whatsoever.

Said Lessor covenants and agrees with the Lessee, that said Lessee paying the rents and observing and keeping the covenants of this Lease on its part to be kept, shall lawfully, peaceably and quietly hold, occupy, and enjoy said Leased Premises, during said term and any renewal thereof, without any let, hindrance, ejection or molestation by said Lessor.

LATE RENT PAYMENT. If any rental payment shall be received by Lessor after the date on which it is due, Lessee shall be liable for a charge of Twenty-Five Dollars (\$25.00) per day.

NOTICE. Any notice from the Lessor to the Lessee shall be effective when in writing and-received by the Lessee personally or left at the Leased Premises. Any notice from the Lessee to the Lessor shall be effective when in writing and received by the Municipal Manager of the Village of Greenhills.

HOLDOVER BY LESSEE. The failure of Lessee to surrender the demised Leased Premises on the date provided herein for the termination of the lease term or renewal period, and the subsequent holding over by Lessee, with or without the consent of Lessor, shall result in the creation of a tenancy from month-to-month at the rental amount then in effect, payable on the 1st day of each month during the month-to-month tenancy. This provision does not give Lessee any right to held over at the expiration of the term or renewal period. All other terms and conditions of this Lease shall remain in full force during any month-to-month tenancy hereunder.

TERMINATION. Either Lessor or Lessee may terminate this Lease in 9ts absolute discretion and for its own convenience upon 180 days prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed duplicates hereof this \_\_\_\_\_day of \_\_\_\_\_, 2012.

Signed and acknowledged  
in the presence of:

\_\_\_\_\_

LESSOR:

VILLAGE OF GREENHILLS

By: \_\_\_\_\_  
Evonne Kovach, Municipal Manager

LESSEE:

CATERING ADVENTURES, INC.

By: \_\_\_\_\_  
Its President

DESTINY'S CATERING INC.:

By: \_\_\_\_\_  
Its President

\_\_\_\_\_

\_\_\_\_\_

STATE OF OHIO                    )  
  ) ss.  
COUNTY OF HAMILTON    )

BE IT REMEMBERED, that on the \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, in and for said county, the foregoing lease was acknowledged by EVONNE KOVACH, Municipal Manager of Greenhills, Ohio, an Ohio Municipal Corporation, on behalf of the Village of Greenhills.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) ss.  
COUNTY OF HAMILTON    )

BE IT REMEMBERED, that on the \_\_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public, in and for said county, the foregoing lease was acknowledged by \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) ss.  
COUNTY OF HAMILTON    )

BE IT REMEMBERED, that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public, in and for said county, the foregoing lease was acknowledged by \_\_\_\_\_, individually.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

\_\_\_\_\_  
Notary Public

Exhibit A

Legal Description

Situated in the Village of Greenhills, Hamilton County, Ohio and being more particularly described as follows:

Beginning at the intersection of the northerly line of John Molloy Lane and the easterly line of Enfield Street; thence South  $85^{\circ} 47' 53''$  East along said northerly line of John Molloy Lane, 256.77 feet, thence North  $4^{\circ} 12' 07''$  East, 104.00 feet; thence south  $85^{\circ} 47' 53''$  East, 50.00 feet to the REAL PLACE OF BEGINNING for the herein described tract; thence north  $4^{\circ} 12' 07''$  East, 53.00 feet; thence South  $85^{\circ} 47' 53''$  East, 37.00 feet; thence North  $4^{\circ} 12' 07''$  East, 142.00 feet; thence South  $85^{\circ} 47' 53''$  East, 94.00 feet; thence South  $4^{\circ} 12' 07''$  West, 153.00 feet; thence North  $85^{\circ} 47' 53''$  West, 85.00 feet; thence South  $4^{\circ} 12' 07''$  West, 42.00 feet; thence North  $85^{\circ} 47' 53''$  West, 46.00 feet to the place of beginning.

Together with an easement for ingress and egress over the existing roadway between Enfield Street and the above described real estate.

## MANAGEMENT AGREEMENT

**THIS MANAGEMENT AGREEMENT** (the "Agreement") is entered into effective as of the \_\_\_\_ day of April, 2012 (the "Effective Date"), by and between **S.J.S Catering, Inc.**, an Ohio corporation (the "Owner"), and **Village of Greenhills**, an Ohio municipal corporation (the "Manager"), who agree as follows:

**WHEREAS**, Manager is acquiring certain assets of Owner used or useful in connection with the ownership and operation of the banquet facility located at 10 Enfield Place, Greenhills, Ohio 45218 (the "Business"); and

**WHEREAS**, the parties desire that the Business be operated and managed by Manager, from the date hereof until approval is obtained from the Division of Liquor Control of the Ohio Department of Commerce to the transfer of the D5 and D6 liquor permits related to the Business, being Permit No. \_\_\_\_\_ (the "Liquor Permit").

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

Employment of Manager. Owner hereby engages Manager as the sole and exclusive manager of all operations and aspects of the Business, and Manager hereby accepts such engagement, subject to the terms and conditions set forth herein. In connection with such duties, Owner authorizes Manager to operate the Business under the Liquor Permit.

Term. The term of this Agreement shall commence upon the execution hereof and shall terminate upon the issuance of the Liquor Permit in the name of Manager by the Division of Liquor Control of the Ohio Department of Commerce.

Duties of Manager. During the term of this Agreement and subject to the terms and conditions contained herein, Manager shall have the exclusive responsibility for, and the right to manage, all aspects of the operation of the Business.

Compensation of Manager. All revenue and expense of, and any assets arising and liabilities incurred in connection with, the Business during the term of this Agreement shall be solely for the account of Manager. Accordingly, Manager shall (a) be entitled to all revenues produced by the Business, (b) be responsible for any loss or shortfall as a result of the performance of the Business during the term of this Agreement, and (c) not be obligated to Owner for any income produced as a result of the operation of the Business. Notwithstanding the foregoing, Owner shall remain liable for the renewal fee due on or about June 1, 2012 to the Ohio Division of Liquor Control and any fees or expenses of the Business prior to the Effective Date.

Indemnification. Owner shall defend, indemnify and hold Manager harmless from any and all liability, losses or claims of whatever nature or kind related to or arising out of the

Business prior the term of this Agreement, including, but not limited to any alleged violation of any liquor laws or regulations.

Representations of Owner. Owner hereby warrants and represents that it has submitted all tax returns and paid all taxes due for operation of the Business as of the date of this Agreement and/or entered into payment plans with the Ohio Department of Taxation for the payment of such taxes. Should any taxes or fees be due and required to be paid to effectuate the transfer of the Permit, Owner shall promptly pay any such taxes or fees and/or negotiate a payment plan for same.

Independent Contractor. Owner and Manager are independent contractors and neither party may bind the other or shall be liable for the acts of the other party.

Severability. Any provisions of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the rest of this Agreement.

Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Ohio.

Further Assurances. Each party shall cooperate and take such actions as are reasonably necessary to facilitate transfer of the Permit to Manager and to obtain the prompt approval thereof by the Division of Liquor Control of the Ohio Department of Commerce including, but not limited to, executing any documents or forms necessary for the application or transfer and preparing and filing any tax returns necessary for processing and/or approval of the transfer.

**EXECUTED** by the parties' duly authorized representatives effective on the date first above written.

OWNER:

**S.J.S CATERING, INC.**

By: \_\_\_\_\_  
Steven Shamsi, Its President

MANAGER:

**VILLAGE OF GREENHILLS**

By: \_\_\_\_\_  
Evonne Kovach, Municipal Manager