

**AGREEMENT BETWEEN THE CITY OF RAPID CITY AND BARBECSUL, INC.,  
FOR PURCHASE OF THE ASSETS OF THE SANDTRAP GRILL AND BAR**

This Memorandum of Agreement is made by and between the CITY OF RAPID CITY (hereinafter "City"), a South Dakota municipality, of 300 Sixth Street, Rapid City, South Dakota 57701, and the BARBECSUL, INC. (hereinafter "BARBECSUL"), a South Dakota corporation, of 2944 Evergreen Drive, Rapid City, South Dakota 57702.

**W I T N E S S E T H:**

WHEREAS, the City and BARBECSUL have entered into a Golf Course Food and Beverage Concession Agreement, whereby City leases to BARBECSUL certain areas of the Meadowbrook and Executive golf courses for the purpose of providing all food and beverage concessions at said golf courses; and

WHEREAS, the City and BARBECSUL mutually desire to terminate the aforementioned concessions agreement; and

WHEREAS, BARBECSUL desires to sell to City, and City desires to purchase from BARBECSUL, certain equipment located on the leased premises used for the purpose of providing concessions, as identified on the attached Exhibit "A," and

WHEREAS, the parties desire to enter into this Agreement to reduce their mutual agreements to writing.

NOW, THEREFORE, it is agreed as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference as if fully set forth herein as agreements of the parties.
2. Equipment Purchase. Upon the terms and subject to the provisions of this Agreement, City hereby agrees to purchase, and BARBECSUL hereby agrees to sell, transfer and assign to City, free and clear of any and all debts, liabilities, obligations, security interests, mortgages, adverse claims, pledges, liens, charges, defaults, defenses, conditions and encumbrances, all of BARBECSUL's right, title and interest in and to all of the equipment and other assets listed on Exhibit "A," which is attached hereto and by this reference expressly made a part hereof as if fully set forth.
3. Consideration for Equipment Purchase. In exchange for the transfer of the equipment listed in Section 2 above, City agrees to pay BARBECSUL the sum of Thirty-nine Thousand Dollars (\$39,000.00).

4. No Assumption of Debts. City shall not be liable for any debts, liabilities and obligations of BARBECSUL or its officers, directors, or shareholders arising from the conduct and operation of the business prior to Closing. BARBECSUL shall provide City at Closing proof to City's reasonable satisfaction that all debts, liabilities and obligations of BARBECSUL have been fully paid and have been satisfied and discharged.

5. Closing. The closing date for the transactions contemplated by this Agreement shall be held on or before October 30th, 2010, (the "Closing"). The Closing shall be held at a time mutually agreed upon by the parties.

6. Obligations of BARBECSUL at Closing. At the Closing, BARBECSUL shall execute and deliver to City a Bill of Sale for the equipment purchased substantially similar in form to that set forth in Exhibit B attached hereto. BARBECSUL shall also execute and deliver to City such other documents of title as may be necessary to vest title to the equipment purchased in City. BARBECSUL shall also provide a list of any parties or other obligations booked for a time after Closing.

7. Obligations of City at Closing. At the Closing, City shall tender a check for the total purchase price to BARBECSUL.

8. Additional Instruments. At the Closing and as may be required from time to time thereafter, the parties covenant and agree that they shall execute and deliver such further instruments as shall be necessary or convenient to effectuate the transaction contemplated by this Agreement.

9. Termination of Concession Agreement. Upon Closing of this transaction, the Golf Course Food and Beverage Concession Agreement between the parties, which term was to run from January 1, 2009, to March 20, 2013, shall terminate.

10. Malt Beverage and Wine Licenses. BARBECSUL currently holds two Retail (on-off sale) Malt Beverage and one Wine Licenses. Upon closing of this transaction, those licenses will become inactive, and all licenses will expire at the end of their one-year term. The City anticipates applying for its own malt beverage licenses and will have no right of sale under the licenses held by BARBECSUL.

11. Representations and Warranties of BARBECSUL. BARBECSUL represents and warrants to City the following:

- a. BARBECSUL is a corporation duly organized and validly existing under the laws of the State of South Dakota, and has the right, power and authority to enter into this Agreement.
- b. BARBECSUL has good and marketable title to all the equipment, free and clear of any and all debts, liabilities, obligations, security interests, mortgages, adverse claims, pledges, liens, charges, defaults, defenses, conditions and encumbrances.

- c. No creditor of BARBECSUL will have any claim against City on account of any debt, liability or obligation of BARBECSUL incurred or accrued prior to the date of the Closing.
- d. At all times preceding closing, BARBECSUL will conduct and carry on concessions in ordinary and regular course of business consistent with past practices.
- e. BARBECSUL will maintain in full force and effect all insurance coverage required by the lease and relating to the assets to be purchased.

12. Representations and Warranties of City. City represents and warrants to BARBECSUL the following:

- a. City is a political subdivision of the State of South Dakota, duly organized and validly existing under the laws of the State of South Dakota.
- b. Execution of this Agreement by City has been duly authorized by all necessary action required for such authorization.
- c. All payments due by BARBECSUL under the Concession Agreement have been paid through September of 2010.
- d. There are no outstanding gas fuel charges for the beverage cart as of October 1, 2010.

13. Rent. If Closing occurs prior to October 30, 2010, or in any case other than on the last day of any month, BARBECSUL's rent to City, as payable under the Concession Agreement, shall be prorated to the date of Closing of this transaction.

14. Utilities. Currently, utilities for Meadowbrook and Executive are shared between the parties based upon formulas contained in the Concessions Agreement, with the exception of phone and cable TV service. Upon Closing, City shall become solely responsible for payment of all utilities, and will be responsible for obtaining its own phone and cable TV service. If Closing does not occur at the end of a billing cycle of a utility provider, all utility bills shall be prorated to the date of Closing.

15. "Sandtrap" name. BARBECSUL shall keep all rights to the name "Sandtrap," and the use thereof, as that name was used in its business of providing concessions, and City agrees not to use "Sandtrap" in any concession operations it undertakes following the Closing of this Agreement without express written permission by BARBECSUL or its successor.

16. Risk of Loss. The risk of any loss, damage or destruction of the equipment purchased shall be borne by BARBECSUL at all times prior to the actual Closing of the transaction contemplated by this Agreement, and shall be borne by City following Closing.

17. Employment Relationships. This Agreement does not create an employment or agency relationship between the City and BARBECSUL or any of BARBECSUL's officers, directors, shareholders, agents or employees. No officers, directors, shareholders, agents or employees of BARBECSUL shall become an employee of the City by virtue of this Agreement.

18. Survival of Representations and Warranties. All of the representations and warranties of the parties contained in this Agreement shall survive the date of this Agreement.

19. Waivers. The failure by one party to require performance of any provision herein shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

20. Time of Essence. Time is of the essence of this Agreement.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all prior negotiations, agreements and understandings, whether oral or written.

22. Amendments. This Agreement may only be amended by a written document duly executed by all parties.

23. Counterparts. This Agreement may be executed in counterparts; each such counterpart shall be deemed an original and when taken together with other signed counterparts, shall constitute one Agreement.

24. Severability. If any provision of this Agreement is held unenforceable by a court of competent jurisdiction, such holding shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

25. Construction. This Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement

26. Headings. The headings and numbering of the different paragraphs of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of each provision.

27. Governing Law and Venue. This Agreement shall be interpreted under the laws of the State of South Dakota. Any litigation under this Agreement shall be resolved in the circuit court of Pennington County, State of South Dakota.

*[Signature pages follow separately]*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF RAPID CITY**

\_\_\_\_\_  
Alan Hanks, Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

State of South Dakota        )  
  ) ss.  
County of Pennington        )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer, personally appeared Alan Hanks and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they, as such Mayor and Finance Officer, being authorized so to do, executed the foregoing Memorandum of Agreement for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

(seal)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_

Dated this 4 day of OCT, 2010.

**BARBECSUL, Inc.**

By *[Signature]*  
Arthur J. Barrett, President

State of South Dakota     )  
  ) ss.  
County of Pennington     )

On this the 4<sup>th</sup> day of October, 2010, before me, the undersigned officer personally appeared ARTHUR J. BARRETT, who acknowledged himself to be the President of BARBECSUL, INC., and that he, as such President, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of BARBECSUL, INC. by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Lana K. Jensen*

Notary Public, South Dakota  
My Commission Expires: 8-21-2013

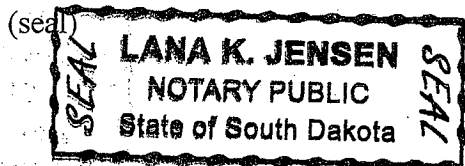


EXHIBIT A

**Assets**

<u>Item</u>	<u>Item</u>
EZ Go Beverage Cart	Bar Mats
Club Car Beverage Cart	Storage Racks
Chill Chamber	Utility Carts
Positouch Computer Register	Manual Portion Scale
Vizio TV	Busser Tubs
Sharp TV	Coffee Warmers
Sharp TV	High Chairs
Toshiba TV	Salt and Pepper Shakers
Slicer	Sugar Caddys
Microwave	Coffee Pots
Conveyor Toaster Oven	Wine Glasses
Menu Covers	Wine Glass Rack
Dinner Plates	Water Pitchers
Salad Plates	Beer Cooler Bags
Soup Bowls	Condiment Dispenser
Soup Cups	Beer Glasses
Silverware	Various Pots and Pans
Steak Knives	Various Kitchen Utensils
Bread and Butter Plates	Various 8, 4 & 2-qt storage buckets/lids
Creamer Dishes	Beer Pitchers
Coffee Cups	Umbrellas
Coffee Carafe	Floor Sweepers
Hot Tea Pitchers	Vacuum
Recycle Bins	Cleaning Tools
Jelly Caddys	Open Sign
Plastic Drinking Glasses	Outdoor Gas Grill
Trays and Baskets	Soup Station
Silverware Trays	Ice Scoops

EXHIBIT B

**BILL OF SALE**

FOR VALUE RECEIVED, BARBECSUL, Inc., a South Dakota corporation, ("Seller"), does hereby sell, transfer, convey and assign to the CITY OF RAPID CITY, a South Dakota municipality ("Buyer"), its successor and assigns, all of its right, title and interest in and to the following equipment and assets:

<u>Item</u>	<u>Item</u>
EZ Go Beverage Cart	Bar Mats
Club Car Beverage Cart	Storage Racks
Chill Chamber	Utility Carts
Positouch Computer Register	Manual Portion Scale
Vizio TV	Busser Tubs
Sharp TV	Coffee Warmers
Sharp TV	High Chairs
Toshiba TV	Salt and Pepper Shakers
Slicer	Sugar Caddys
Microwave	Coffee Pots
Conveyor Toaster Oven	Wine Glasses
Menu Covers	Wine Glass Rack
Dinner Plates	Water Pitchers
Salad Plates	Beer Cooler Bags
Soup Bowls	Condiment Dispenser
Soup Cups	Beer Glasses
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Coffee Carafe	Floor Sweepers
Hot Tea Pitchers	Vacuum
Recycle Bins	Cleaning Tools
Jelly Caddys	Open Sign
Plastic Drinking Glasses	Outdoor Gas Grill
Trays and Baskets	Soup Station
Silverware Trays	Ice Scoops

All of the above-listed assets are transferred to Buyer, its successors and assigns, to have and to hold to and for its own use and benefit forever.

Seller covenants with Buyer, its successors and assigns, that Seller is the lawful owner of the listed equipment and assets and has right to sell them.



This Bill of Sale and Assignment is being delivered pursuant to, and is subject to the terms of, the Agreement Between the City of Rapid City and BARBECSUL, Inc., for the Purchase of the Assets of the Sandtrap Grill and Bar.

IN WITNESS WHEREOF, the undersigned have executed this Bill of Sale on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**BARBECSUL, Inc.**

By \_\_\_\_\_  
Arthur J. Barrett, President

State of South Dakota     )  
  ) ss.  
County of Pennington     )

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned officer personally appeared ARTHUR J. BARRETT, who acknowledged himself to be the President of BARBECSUL, INC., and that he, as such President, being authorized so to do, executed the foregoing Agreement for the purposes therein contained by signing the name of BARBECSUL, INC. by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(seal)

\_\_\_\_\_  
Notary Public, South Dakota  
My Commission Expires: \_\_\_\_\_