

MMS  
5/29/19

RESOLUTION NO. 2019-80

A RESOLUTION ACCEPTING AND APPROVING A RESTAURANT/CONCESSION AREA LEASE FOR THE WHITE MOUNTAIN GOLF COURSE BETWEEN THE CITY OF ROCK SPRINGS AND JOSHUA GRANT, D/B/A EVE'S, AND AUTHORIZING TIMOTHY A. KAUMO, AS MAYOR OF THE CITY OF ROCK SPRINGS, WYOMING, AND MATTHEW L. MCBURNETT, AS CITY CLERK OF THE CITY OF ROCK SPRINGS, WYOMING, TO EXECUTE SAID LEASE ON BEHALF OF THE CITY.

WHEREAS, the City of Rock Springs owns a restaurant/concession area at the clubhouse at the White Mountain Golf Course at the Paul J. Wataha Recreation Area; and,

WHEREAS, in order to add to the comfort, enjoyment and benefit received by the public in the use of the golf course, it is desirable that appropriate food and drink be made available to the public at reasonable prices; and,

WHEREAS, Joshua Grant, d/b/a Eve's, has presented a Restaurant/Concession Area Lease for operation of said restaurant for the period stated in said lease, attached hereto and by this reference made a part herein; and,

WHEREAS, the Governing Body of the City of Rock Springs has said Lease before it and has given it careful review and consideration; and,

WHEREAS, it is considered that the best interests of said City will be served by the acceptance of said Lease.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROCK SPRINGS, STATE OF WYOMING:

Section 1. That the terms and provisions of the Restaurant/Concession Area Lease for the White Mountain Golf Course for the period stated in the attached lease as submitted by Joshua Grant, d/b/a Eve's, be, and the same is hereby accepted in behalf of said City.

Section 2. That the Mayor of said City be, and he is hereby, authorized, empowered and directed to execute said Restaurant/Concession Area Lease on behalf of said City; and that the City Clerk of said City, be and he is hereby, authorized and directed to attest said Restaurant/Concession Area Lease and to attach to said lease a certified copy of this resolution.

PASSED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
President of the Council

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

**CITY OF ROCK SPRINGS**

**RESTAURANT/CONCESSION AREA LEASE**

**WHITE MOUNTAIN GOLF COURSE**

This restaurant lease is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Rock Springs, a municipal corporation in the State of Wyoming whose address is 212 D Street, Rock Springs, Wyoming 82901 (hereinafter "City"), and Joshua Grant, d/b/a, "Eve's", (hereinafter "Concessionaire")

WHEREAS, the City owns certain real property located within the City of Rock Springs, Sweetwater County, Wyoming otherwise known as the White Mountain Golf Course, and that it desires to enter into an agreement with Concessionaire to operate a restaurant and bar located in the clubhouse upon said real property; and,

WHEREAS, Concessionaire desires to operate a restaurant and bar located at the clubhouse, to serve alcoholic and malt beverages to patrons of the White Mountain Golf Course and members of the general public, and to enter into an agreement to lease the clubhouse from the City for said purposes.

**NOW, THEREFORE, IN SUPPORT OF THEIR MUTUAL COVENANTS, AND IN EXCHANGE FOR VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:**

**1. DEMISE.**

The City, for and in consideration of the covenants and agreements hereinafter contained, does hereby lease the restaurant facility located in the upstairs of the clubhouse, as well as the snack shop area located in the downstairs of the clubhouse, at the White Mountain Golf Course in the City of Rock Springs, Wyoming (hereinafter the "demised premises" or "premises") and does grant a license to operate said premises unto the above named "Concessionaire" for the term hereinafter set forth. The demised premises shall also include the area designated as the White Mountain Golf Course. Concessionaire may use the White Mountain Golf Course for the exclusive purpose of operating a refreshment cart containing alcoholic beverages, which may travel to various locations on said golf course. Operation of the refreshment cart will be subject to any restrictions imposed by City's limited retail liquor license or by Paragraph 3 below.

**2. TERM.**

a) This agreement shall commence upon the 5<sup>th</sup> day of June, 2019. Said contract shall expire on 31<sup>st</sup> day of March, 2023, subject to the right of termination by both parties, by providing written notice to the other party no fewer than ninety (90) days prior to terminating this agreement. Concessionaire shall have the first right of refusal to renew this Agreement, however, not less than ninety (90) days prior to the end of the Term hereof, Concessionaire shall give the City notice of its intension to renew. If the City does not receive such notice, the City shall have the right and authority to solicit an alternate Concessionaire.

b) By entering into this Restaurant/Concession Area Lease, the parties mutually acknowledge and agree that the Restaurant/Concession Area Lease entered into by the parties on or about the 7<sup>th</sup> day of February 2019, shall terminate on the day this restaurant/Concession area commences, and that it shall have no further force or legal effect thereafter.

**3. PERMITTED USES.**

Concessionaire shall use and occupy the premises to serve food and beverages, including alcoholic beverages, and for the sale of tobaccos, confections, curios and related items, and for such other lawful purposes as the City may hereinafter or hereafter authorize from time to time in writing. Concessionaire may serve refreshments, including alcoholic beverages, from a cart. Such cart may travel to various locations on the golf course, subject to reasonable restrictions as stated below:

a) That it only be operated on the golf course, not other areas such as ball complex, picnic areas, etc.

b) That the particular type of beverage cart proposed be approved for use as a beverage cart by the City or its representatives.

c) That the beverage cart be inspected by the Golf Course Superintendent or other City representative annually (and anytime the City deems necessary) to be sure it is free of potential gas leaks, oil leaks, etc.

d) That the operators of this cart meet with the Golf Course Superintendent or other City representatives, prior to its operation, for instructions about where this

vehicle is permitted to drive on the facility. This is to be done at the start of each season on an annual basis.

e) That the Concessionaire understands that violations of the above-mentioned stipulations will be sufficient cause to terminate use of this cart.

f) If a mobile cart is not used, then #15 Tee Concession Area must be opened and additional Concession Area must be provided on the Lakes Nine portions of the golf course at a location determined by the Golf Course Superintendent. Concessionaire shall be provided reasonable access to deliver supplies to these concession areas.

#### **4. LIQUOR LICENSE**

The parties hereto acknowledge that the City of Rock Springs is a political subdivision of the State of Wyoming maintaining and operating a golf course with a clubhouse and that it holds a limited retail liquor license under the terms of Wyoming Statute §§ 12-1-101(a)(iii)(G), 12-4-301(e) and 12-5-201(g). By executing this Restaurant/Concession Area Lease, Concessionaire agrees to act as the City's limited agent for purposes of interacting with the State of Wyoming Liquor Division and as the City's subcontractor for the limited purpose of purchasing and selling alcoholic and malt beverages upon the demised premises, under the following terms and conditions:

a) Concessionaire shall collect and pay all taxes due and owing to the State of Wyoming for the sale of alcoholic and malt beverages sold upon the demised premises, and shall indemnify, defend and save harmless the City, its authorized agents and representatives, from any demand by the State of Wyoming for unpaid taxes on such sales.

b) Concessionaire shall only purchase and sell alcoholic and malt beverages in accordance with the statutory and legal requirements attendant to operating under a limited retail liquor license in the State of Wyoming, including, but not limited to, prohibiting and preventing the sale of alcoholic and malt beverages to anyone who is under the age of twenty one (21) years. Concessionaire shall be responsible for formal training of all servers of alcohol through TIPS or a substantially similar training program. Consistent with the terms of Paragraph 8 below, Concessionaire shall indemnify, defend and save harmless the City, its authorized agents and representatives, from any penalties

for violation of any law, ordinance or regulation for negligent acts committed by the Concessionaire or its agents with respect to the dispensing of alcohol to the public.

**5. RULES OF OPERATION.**

The Concessionaire agrees to abide by the following basic rules of operation:

a) The Concessionaire shall provide quality service at all times and shall attempt to meet seasonal fluctuations in public demand, including but not limited to providing food and beverage service within the clubhouse restaurant area for golf course related events during the golf season, provided the City is notified of proposed hours of operation in advance and subject to any and all reasonable orders, rules and regulations concerning the conduct, operation and management of the restaurant.

b) All food prepared on the leased premises shall be served on the leased premises, except that catering may be allowed if, in the opinion of the City, it will not hinder or interfere with the service to the restaurant patrons, and to the extent that Concessionaire may serve food in areas of the White Mountain Golf Course as directed by and with the written approval of the City.

c) The downstairs snack shop is to be opened 30 minutes prior to first scheduled tee time and remain open 30 minutes past the last scheduled tee time of the day, throughout the year. When the restaurant is closed to the public, the snack shop downstairs must remain open until sunset. The mobile cart or #15 Tee and Lakes Nine Concession Areas must be opened one hour after the first scheduled tee time of the day and remain open until 30 minutes past the last scheduled tee time of the day – with a “last call for refreshments” being provided to all golfers during the last hour of operation. Tee times are as follows:

April - 9:00 a.m.	September - 8:00 a.m.
May - 8:00 a.m.	October - 9:00 a.m.
June, July, August - 7:00 a.m.	

**6. FEES.**

a) Concessionaire for and in consideration of the granting of this restaurant lease and the performance by the City of the covenants and agreements herein provided to be performed by it, hereby covenants and agrees to pay Two Thousand Dollars and No/100 (\$2,000) per month for the desired premises beginning July 1, 2019, and continuing on the 1<sup>st</sup> day of every month thru March 31, 2020. From April 1, 2020, thru

March 31, 2021, on the 1<sup>st</sup> day of every month the rent will be Two Thousand Five Hundred Dollars and No/100 (\$2,500) per month. From April 1, 2021 thru March 31, 2023 on the 1<sup>st</sup> day of every month the rent will be Three Thousand Dollars and No/100 (\$3,000) per month.

b) Concessionaire agrees to deposit with the City, Five Thousand Two Hundred Fifty Dollars and No/100 (\$5,250.00) which shall be held in an interest bearing account which shall accrue interest at a rate of 2.5% per annum. Said deposit amount shall be used to ensure timely payment of amounts specified herein and such deposit or a portion thereof shall be forfeited to the City in an amount equal to any delinquency.

c) All fee payments for each month shall be due and owing on the 1<sup>st</sup> day of the month. The appropriate monthly fee shall be paid promptly and in full by the 10<sup>th</sup> day of each month in the office of the City Clerk, City of Rock Springs, 212 D Street, Rock Springs, Wyoming, 82901.

**7. FEES WHEN PREMISES UNTENANTABLE.**

a) Concessionaire shall not be obligated to operate the demised premises or to pay the required fees therefore during any time when all of the demised premises shall be untenable through no fault or negligence of the Concessionaire, its employees and agents.

b) In the event the demised premises are partially untenable through no fault or negligence of Concessionaire, its employees and agents, the Concessionaire shall not be obligated to operate such part of the demised premises and the monthly fee shall be proportionately and equitably abated. In the event that the upstairs of the clubhouse or downstairs snack shop shall be closed for any period of time by any order or direction of the City of Rock Springs or any other governmental authority or agency, or by any order or direction of any court of competent jurisdiction, the rental fee shall abate for the period of such closing.

**8. RISKS.**

Concessionaire shall assume all risks incident to or in connection with its business to be conducted hereunder and shall be solely responsible for all accidents or injuries of whatever nature or kind to persons or property caused by its operations at said upstairs clubhouse, and shall indemnify, defend and save harmless the City, its authorized agents

and representatives, from any penalties for violation of any law, ordinance or regulation affecting its operations, and from any and all claims, suits, losses, damages or injuries to persons or property of whatsoever kind or nature arising directly or indirectly out of the operation of such business, or resulting from the carelessness, negligence or improper conduct of the Concessionaire or any of its agents or employees, patrons, customers, or invitees.

**9. INDEMNITY INSURANCE.**

Concessionaire, at its expense, shall keep in force, during the term of this lease, insurance, issued by responsible insurance companies and in a form acceptable to the City, for protection of the City and the Concessionaire against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to or recovered from either the Concessionaire or City, by reason of damage to the property of, injury to or death of any person or persons on account of any matter or thing which may occur on the demised premises. Said insurance policy or policies shall be in the amount of no less than One Million Dollars (\$1,000,000.00) for general liability and One Million Dollars (\$1,000,000.00) for liquor liability. Concessionaire shall provide the City with a certificate or certificates of insurance naming the City of Rock Springs as an additional insured party.

**10. FIRE INSURANCE.**

Each party hereto shall keep its interest in the demised premises, the buildings in which the demised premises are located and its property located within or about the demised premises, insured at its own expense against fire, extended coverage, and such other risks as it may choose, by policies issued by responsible insurance companies and in form acceptable to the City.

**11. INSURANCE POLICIES.**

The original of all insurance policies required to be carried by Concessionaire pursuant to this Agreement shall be submitted to the City on request at all reasonable hours for its inspection and certificates of such insurance shall be delivered to the City Clerk from time to time as such policies are written, and all such certificates shall contain a provision that the respective insurers will not cancel such insurance coverage required under this lease without first giving twenty (20) days prior written notice to the City. At



all times that Concessionaire is operating any of its restaurant operations hereunder, it shall maintain in full force and effect valid insurance policies of the kind and in the amounts and with the type of companies required by this lease. All insurance policies required to be furnished by Concessionaire hereunder may be blanket policies covering the demised premises and other properties and premises owned and operated by Concessionaire.

**12. TAXES, COMPENSATION INSURANCE, LICENSES.**

a) Concessionaire shall pay promptly all taxes and excise license fees of whatever nature, applicable to this operation and take out and keep current all licenses, municipal, state or federal, required for the conduct of the business, and further shall not permit any of said taxes, excise or license fees to become delinquent.

b) Concessionaire further shall at all times maintain adequate Worker's Compensation through the Wyoming State Worker's Compensation Fund, and further shall not permit any of said taxes, excise or license fees to become delinquent.

c) Concessionaire further shall at all times maintain adequate Worker's Compensation through the Wyoming State Worker's Compensation Fund, insuring the payment of compensation for all employees engaged in the operation of said restaurant.

d) Concessionaire also shall not permit any mechanic's or materialman's or any other lien to be imposed upon the property hereinabove described or any part or parcel thereof by reason of any work or labor performed or materials furnished by any mechanic or materialman to said restaurant or upon or regarding said property or said restaurant herein granted.

e) Concessionaire shall furnish the City, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment of Social Security Withholding, Sales, Unemployment Compensation and all taxes and fees above referred to and showing that the said Worker's Compensation Contributions and all required licenses are in good standing.

f) Concessionaire shall pay promptly when due, all bills, debts and obligations incurred in connection with the operation of said restaurant and not permit same to become delinquent and suffer no lien, mortgage, judgment, execution or

adjudication in bankruptcy which will in any way impair the rights of the City under this Lease.

**13. UTILITIES.**

The Concessionaire shall pay for and provide at its own expense telephone, television, and radio services. The City shall pay for electricity, natural gas, water and sewer services.

**14. MAINTENANCE /EQUIPMENT AND REPAIR.**

a) The City shall, at all times, maintain in good order and repair, all City-owned facilities, buildings, equipment, furnishings, furniture and fixtures.

b) The City shall bear the responsibility at its expense for arranging all necessary inspections and/or testing of all City-owned facilities, buildings, equipment, furnishings, furniture and fixtures.

c) The City and the Concessionaire shall, at the time of the making of the inventory list specified in Paragraph 22 hereof, identify any items relating to the City-owned facilities, buildings, equipment, furnishings, furniture and fixtures which are not in good order and/or require maintenance or repair. Items requiring repair and/or maintenance at the time of the inventory list, but not readily apparent or reasonably discoverable at the time of the making of the list, shall be repaired by the City as soon as practicable following their discovery. The City shall see that any necessary repairs or maintenance is accomplished as soon thereafter as practicable.

d) Any items determined to be in need of repair within thirty (30) days from the date of opening of the upstairs shall be repaired at the expense of the City.

e) Any items determined to be in need of repair in the downstairs portion of the restaurant facility within thirty (30) days of its opening shall also be repaired at the expense of the City.

f) If a need for repairs is identified after thirty days from the time of opening of either the upstairs or the downstairs, the Concessionaire must pay the cost if it is less than Two Hundred Fifty Dollars (\$250.00), pursuant to Paragraph 15 of this agreement. All maintenance, repairs and equipment replacement at the Concessionaire's expense will be subject to general inspection by the City to ensure a continuing quality of maintenance and repairs to appearance and physical condition of the demised premises

commensurated with maintenance, repairs, health, and safety standards established by the Health Department of the City and State of Wyoming.

**15. MAINTENANCE REQUIRED BY CITY.**

Except as otherwise provided, and consistent with the provisions set for in Paragraph 14 hereof, the City shall, at all times, maintain in good order and repair, all service facilities owned by it, such facilities being defined as heating, air conditioning, water, gas, electrical, sewage, ventilation, fire protection, sprinkler and similar such systems, excepting minor maintenance thereof and minor repairs thereto costing less than Two Hundred Fifty Dollars (\$250.00), which said minor maintenance and repair shall be the responsibility of the Concessionaire. In the event that the costs of such maintenance and repair exceeds Two Hundred Fifty Dollars (\$250.00), the City shall be responsible for such additional sums, provided that such maintenance or repairs are not occasioned by the negligence or misconduct of the Concessionaire as set forth in Paragraph 13 herein. In addition, the City shall have the right to improve or replace or alter any and all existing and future service facilities and their tubes, pipes, lines, mains, wires, conduits, and equipment on or about the premises and to enter upon the said premises at all reasonable times, and upon reasonable notice, to make such improvements, replacements, and alterations as may, in the opinion of the City, be deemed necessary or advisable and, from time to time, to construct or install over, on, in or under the premises new such systems and their tubes, pipes, lines, mains, wires, conduits and equipment; PROVIDED HOWEVER, that the same shall be done so as to interfere as little as reasonably possible with the Concessionaire's operations. Nothing herein contained shall be construed so as to impose upon the City any obligation to so improve, replace or alter said service facilities nor to impose any liability for doing so or failing to do so. City agrees to make improvements or alterations and to provide equipment referred to in Exhibit "A", and furthermore agrees to use its best efforts to make such improvements or alterations as expeditiously as possible.

**16. CUSTODIAL AND ALTERATIONS.**

a) Concessionaire, at its own expense, shall install and maintain cooking and serving ware and related necessary items in the kitchen, dining room and dispensing room. The Concessionaire may redecorate and alter the premises as it deems fit, subject

to prior written approval of the City. Furnishings, equipment and decorations which, due to ordinary wear and tear, become worn beyond the point of repair or otherwise require replacement, shall be replaced by the City and at the City's discretion. Such furnishings, equipment and decorations as are found by the City, to be obsolete or unnecessary for the efficient operation of the Concessionaire's business, shall not be replaced by the City. When the City finds it appropriate to replace furnishings, equipment or decorations, the City is free to select any make, model or brand of item which the City feels would be sufficiently adaptable for the purpose for which it is to be used. All alterations and decorations shall be in conformity with the general architectural and design criteria of the premises.

b) Concessionaire's obligation hereunder shall include (without limiting the generality of the foregoing), furnishing all necessary custodial, janitorial, and general housekeeping services and materials (such as tools, sanitary supplies, light bulbs, soaps and cleaning compounds); window washing, cleaning of restrooms; maintaining all areas in the demised premises free of trash, papers, glass, cans, rubbish or debris and providing suitable containers therefore; and, any and all similar, such general custodial, janitorial and housekeeping services. In the event that said premises and all of said property shall not be kept by Concessionaire as herein required, the City may enter said premises (without such entering causing or constituting a termination of this lease or an interference with the possession of the demised premises by Concessionaire) and may cure the default of Concessionaire. Should such event occur, Concessionaire agrees to pay the City, in addition to the fees hereby reserved, all reasonable costs and expenses incurred by the City in curing such default.

**17. OWNERSHIP OF FURNISHINGS AND EQUIPMENT.**

Property of the Concessionaire and such additional property the Concessionaire may purchase to replace worn out City equipment and furnishings shall remain the property of the Concessionaire. Concessionaire shall obtain approval of the Director of the Parks and Recreation Department before replacing any City property with purchased property.

**18. SALES FIXTURES--VENDING MACHINES.**

The Concessionaire may install within the area granted in this lease appropriate fixtures in conformance with the décor of the established premises for the sale of gifts, novelties, cigars, candy, newspapers and kindred articles and may also install coin-operated cigarette and pop vending machines, all subject to approval of the City.

**19. OPERATIONS AND PERSONNEL.**

a) The Concessionaire shall provide for the public on the demised premises food, drink and service of the highest standard and quality, equivalent in cost to that generally furnished to the public at similar establishments of comparable size, scope and location.

b) The Concessionaire shall give personal supervision and direction to the operation of the restaurant and, when absent, keep competent personnel in charge. Concessionaire shall employ experienced and courteous help, and outfit them in appropriate and attractive attire.

**20. ADVERTISING AND PROMOTION.**

This restaurant license is conditioned upon the Concessionaire instituting and continuing throughout the term of this license, an active, dynamic and pleasing campaign of promotion and advertising. Failure of the Concessionaire to do so, or failure to accept reasonable suggestions for improvement from the City, shall be grounds for cancellation of this restaurant license by the City.

**21. ASSIGNMENT AND SUBCONTRACTORS.**

The Concessionaire shall not assign nor sublet nor hypothecate nor otherwise encumber any property hereby granted nor subcontract the performance of its obligations hereunder without the prior written consent of the City. In the event the City grants such written consent, the Concessionaire shall be as fully responsible to the City for the acts and omissions of its assigns and subcontractors and other persons either directly or indirectly associated with or employed by them, as it is for its own acts and omissions. Nothing contained herein shall create any contractual relation between any subcontractor hired by the Concessionaire and the City, nor shall any subcontractor acquire the status of assignee, sublessee, or sub-licensee under this license, absent the written consent of the City first had and obtained. Should Concessionaire enter into any agreement with a third

party in which Concessionaire assigns or subcontracts its obligations herein, Concessionaire must prohibit the third party from entering into any additional assignments or subcontracts.

**22. INVENTORY.**

As soon as practicable, but in any event within thirty (30) days after the execution of this license, the City and the Concessionaire, by their respective authorized representatives, shall make and verify a detailed inventory list of all fixtures, equipment and property of the City located in or on the premises included in this license. At certain times as deemed necessary by the City, the City and the Concessionaire, or through their respective authorized representatives, may conduct additional inventories which shall be checked against said detailed inventory list.

**23. PATENTS AND TRADEMARKS.**

The Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in anywise connected with this restaurant. The Concessionaire agrees to save and hold the City, its officers, employees, agents and representatives, free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of the Concessionaire under or in anywise connected with this restaurant.

**24. SIGNS.**

Concessionaire shall not attach, affix or permit to be attached or affixed upon the inside or outside of the demised premises, without the consent in writing of the City, first had and obtained, any flags, placards, signs, poles, wires, aerials, antennae or other devices. Hours of operation must be posted, visible from the outside, to the public, in the downstairs snack shop and the upstairs restaurant.

**25. DEFAULTS.**

In any of the following events the City, at any time hereafter, shall have the right at the City's election immediately to terminate this lease and agreement:

a) Failure to Pay Fees: In the event Concessionaire shall fail to pay the fees in the amounts and at the times and in the manner herein provided and such failure shall

continue for ten (10) days after written notice thereof shall have been given to Concessionaire;

b) Violation of Covenant: In the event Concessionaire shall fail to keep and perform or shall violate the terms, covenants and conditions of this lease and agreement on its part to be kept and performed, and Concessionaire shall not have cured or corrected such failure or violation within fifteen (15) days after written notice thereof shall have been given to Concessionaire;

c) Insolvency: If Concessionaire shall make an assignment for the benefit of creditors, or shall file a petition in bankruptcy or shall be adjudged a bankrupt, or the interest of Concessionaire under this lease shall be levied upon and sold upon execution or shall be operation of law become vested in another person, firm or corporation because of the insolvency of Concessionaire; or in the event that a receiver or trustee shall be appointed for Concessionaire or the interest of Concessionaire under this lease;

d) Abandonment: In the event Concessionaire shall vacate or abandon said premises, or shall permit the same to remain vacant or unoccupied without the consent of the City first had and obtained;

e) Impossibility: If continued performance of this agreement is rendered impossible by virtue of acts of God, accidents, weather and conditions arising therefrom, strikes, boycotts, lockouts, and other labor troubles, riot, fire, earthquake, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and conditions arising therefrom, the exercise of paramount power by the federal government, either through the taking of the demised premises or the imposition of regulations restricting the conduct of business therein, acts of enemies, sabotage, interference, restriction, limitation, or prevention by legislation, regulation, decree, order or request of any federal, state, county or local government or any instrumentality or agency thereof, including any court of competent jurisdiction, inability to secure labor or adequate supplies or materials, products or merchandise or any other delay or contingency beyond the reasonable control of the City or Concessionaire.

## 26. REMEDIES.

a) Repossession by City: Upon the occurrence of any one or more of the events of default specified in Section 25 hereof Concessionaire's right to possession of the demised premises shall terminate and Concessionaire shall surrender possession thereof immediately. In such event, Concessionaire hereby grants to the City full and free license to enter into and upon said premises, or any part thereof, to take possession thereof with or without process of law, and to expel and remove Concessionaire or any other person who may be occupying the said premises, or any part thereof, and the City may use such force in and about expelling and removing Concessionaire and said other person as may reasonably be necessary; and the City may repossess itself of the said premises as of its former estate, but said entry of said premises shall not constitute a trespass or forcible entry or detainer, nor shall it cause forfeiture of fees due by virtue hereof, nor a waiver of any covenant, agreement or promise in said lease contained, to be performed by Concessionaire. Concessionaire shall make no claim of any kind against the City, its agents and representatives by reason of such termination or any act incident thereto.

b) Damages: In addition to terminating this lease and agreement the City may sue for and recover all damages and fees accrued or accruing under this lease and agreement or arising out of any breach thereof.

c) Other Remedies: The City may, if it so elects, pursue any other remedies provided by law for the breach of this lease and agreement or any of its terms, covenants, conditions or stipulations. No right or remedy herein conferred upon or reserved to the City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or at equity or by statute.

## **27. REMOVAL OF PROPERTY.**

a) Upon termination of this lease for whatever reason the City shall have the right to seize and hold the property of the Concessionaire until Concessionaire satisfies any fees, charges, losses, costs, damages and claims due the City hereunder. Any and all such property which may be seized by the City pursuant to the provisions hereof or of law, may be handled, removed, or stored at the sole risk, cost, and expense of the Concessionaire, and the City shall in no event be responsible for the value, preservation



or safekeeping thereof. Concessionaire shall pay to the City upon demand any and all expenses incurred in the removal of said property and all storage charges against such property. In the event all such fees, charges, losses, costs, damages and claims due to the City remain unpaid for a period of sixty (60) days from the date of termination, the City shall have the right to convert to its own use the property of the Concessionaire in its possession or control or to sell same and retain the proceeds thereof for satisfaction of its claims against Concessionaire.

b) Upon satisfaction of all such fees, charges, losses, costs, damages and claims due the City, or if none such exist upon termination, the Concessionaire may remove or take possession of his property, provided that if in removing Concessionaire's personal property, fixtures, and equipment any damage to the premises results, Concessionaire will repair same in a proper and satisfactory manner at its own expense.

**28. ACCESS.**

Concessionaire shall allow the City, its officers, agents or employees free access to the demised premises for the purpose of examining the same to ascertain if they are in a safe, sanitary and sightly condition and good repair, to make repairs, renewals or restorations to the extent required to be made by the City under other sections of this lease and near the end of the term hereof to exhibit the same to prospective tenants.

**29. WAIVER OF DEFAULT.**

The acceptance of fees by the City whether in a single instance or repeatedly, after it falls due, or after knowledge of any breach hereof, or the giving or making of any notice or demand, whether according to any statutory provision or not, or any act or series of acts except an express waiver in writing, shall not be construed as a waiver of the City's right to act or of any other right hereby given the City, or as an election not to proceed under the provisions of this lease.

**30. ADDRESSES.**

In every case where, under the provisions of this lease, it shall be necessary or desirable for the Concessionaire to give or to serve upon the City any notice or demand, it shall be sufficient to send a written or printed copy of said notice or demand by registered mail, postage prepaid, addressed as follows: City Clerk, City of Rock Springs, 212 "D" Street, Rock Springs, Wyoming 82901.

**31. MISCELLANEOUS.**

It is mutually understood and agreed that nothing contained in this lease is intended to, or shall be construed, as, in anywise creating or establishing the relationship of co-partners or joint ventures between the parties hereto or as constituting the Concessionaire as the agent or representative of the City for any purpose or in any manner whatsoever.

**32. INUREMENT.**

This instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, loyal representatives and assigns. This paragraph shall not be deemed to authorize Concessionaire to make an assignment of its interest herein except as hereinabove expressly provided for.

**33. CONTINGENCIES.**

It is understood and agreed by the parties hereto that Concessionaire's obligations to perform hereinunder are made wholly contingent and conditional upon its ability to make application for and receive a Restaurant Liquor License from the City of Rock Springs. Concessionaire shall, contemporaneously with the execution of this Restaurant Lease, file an application with the City of Rock Springs to receive a Restaurant Liquor License, to be operated on the leased premises. In the event the Concessionaire's application for the Restaurant Liquor License is rejected by the Governing Body of the City of Rock Springs, the obligations of both Concessionaire and City hereunder shall cease and terminate.

**34. DESCRIPTIVE HEADINGS FOR CONVENIENCE ONLY.**

The descriptive headings appearing upon this instrument are for convenience only, and are not to be construed either as a part of the terms and conditions hereof, or as any interpretation thereof.

**35. SEVERABILITY.**

Any word, line, sentence, paragraph, terms or provision of this lease found to be in any manner unlawful or invalid shall not invalidate this instrument. Any unlawful or invalid word, line, sentence, paragraph, term or provision shall be deemed separate and apart from the rest of this Agreement and stricken herefrom. All remaining words, lines

sentences, paragraphs, terms and provisions shall remain in full force and effect as though the stricken portions has never appeared herein.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed in duplicate originals the date and year first above written.

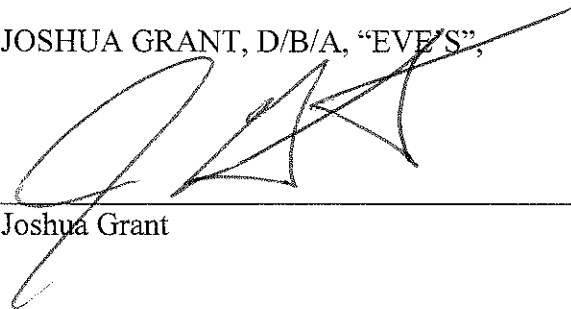
CITY OF ROCK SPRINGS,

By: \_\_\_\_\_  
Timothy A. Kaumo, Mayor

Attest:

\_\_\_\_\_  
City Clerk

JOSHUA GRANT, D/B/A, "EVE/S",

By:  \_\_\_\_\_  
Joshua Grant