

Concession Agreement Cedar Hills Grill

This Concession Agreement (“AGREEMENT”) is made and entered into this 26th day of March 2015 by and between the CITY OF CEDAR HILLS, a Utah municipal corporation (“CITY”), as landlord; and Elev8 Cafe, LLC, a Utah limited liability company, (“TENANT”).

DEFINITIONS:

THE GRILL. The Cedar Hills Grill is located at 10640 N Clubhouse Drive Cedar Hills, Utah. Leased areas of THE GRILL defined in Exhibit C.

CONTRACT TERM. The LEASE YEAR which is currently under contract.

LEASE TERM. The term of this lease shall commence annually on January 1st, and shall continue through December 31 of the current calendar year.

LEASED PREMISES. The area within the GRILL described as the current dining area, kitchen and prep storage area as per Exhibit C.

RENEWAL LEASE YEAR. The twelve (12) month period extending from January 1 until December 31 of each calendar year.

WHEREAS; CITY is the owner of the Cedar Hills Grill and is desirous of leasing a portion of the Grill as a restaurant/café for serving refreshments and food items, and TENANT is desirous of leasing the premises.

NOW THEREFORE; for good and valuable consideration, including the mutual covenants set forth in this

Agreement, CITY and TENANT hereby mutually agree as follows:

1. **PURPOSE.** TENANT leases the LEASED PREMISES under this AGREEMENT for the purpose of operating and maintaining a restaurant facility, catering facility, or café to serve customers of the Cedar Hills Recreation Center and the public generally. TENANT’S use of the LEASED PREMISES shall be consistent with this purpose and the policies of CITY as adopted from time to time.
2. **LEASE.** CITY agrees to lease to TENANT, and TENANT agrees to lease from CITY, the Leased Premises according to the terms and conditions of this Agreement, including those set forth in the attached Exhibit A – General Terms and conditions, which are incorporated in this AGREEMENT by reference. LEASE shall only apply to TENANT listed above. No lease transfer, assignment, alienation, or sub-lease shall be permitted.
3. **RENEWAL.** CITY, at its sole discretion, may allow TENANT to renew this agreement for an additional LEASE YEAR. It shall be understood that the CONTRACT affords a minimum of three (3) successive LEASE TERMS. Additional LEASE TERMS shall be reviewed and negotiated by CITY. All terms and conditions of this AGREEMENT apply during the RENEWAL TERM. TENANT may apply for lease renewal by serving a written notice of TENANT’S intent to

renew on or before 60 days prior to the date of the RENEWAL TERM. CITY, at its sole discretion, may allow an additional grace period for written notice of intent to renew of up to 30 days.

4. ALTERATIONS. Any alterations or improvements to LEASED PREMISES, including signage, are subject to CITY'S prior written approval, including required permits and inspections. Upon termination of the lease, all such alterations and improvements shall become part of the LEASED PREMISES; provided that, if CITY directs TENANT to remove any removable fixtures or furniture provided by TENANT, TENANT will do so and will repair any damage to the LEASED PREMISES caused by such removal.
5. MAINTENANCE BY CITY. CITY shall be responsible to maintain the exterior and all non-leased portions of THE GRILL. CITY shall repair or replace, as necessary, all paint, carpet, and electrical fixtures within the LEASED PREMISES, except to the extent such items are damaged as a result of TENANT'S negligence. CITY shall provide exterior garbage pick-up service.
6. MAINTENANCE BY TENANT. TENANT shall maintain all of the LEASED PREMISES, in a clean, sightly, and healthy condition. At the end of the LEASE TERM, TENANT shall return the LEASED PREMISES to CITY in the same, or improved, condition as at the beginning of the LEASE TERM, reasonable wear and tear excepted.
7. UTILITIES. CITY shall assume responsibility for operation of and pay all utilities for electric, water, and natural gas. TENANT shall pay for phone line, cable and alarm system for TENANT occupied space. TENANT may use existing alarm system and CITY provider. If tenant uses alternate alarm company, access will be granted to CITY.
8. INSPECTION. CITY shall be allowed by TENANT to inspect the LEASED PREMISES at any time upon reasonable request. CITY assumes no responsibility or liability for inspecting or not inspecting the LEASED PREMISES.
9. INSURANCE, LICENSES AND PERMITS. TENANT shall carry insurance in a form acceptable to CITY, including (a) general liability insurance with combined single limits of not less than \$1,000,000 per occurrence and in the aggregate; (b) dram shop liability insurance with combined single limits of \$1,000,000 per occurrence and in the aggregate; and (c) workers' compensation insurance. TENANT is responsible for obtaining all licenses and permits necessary to do business in the City, County and State, notwithstanding the City shall not unnecessarily withhold any licenses or permits. All insurance policies purchased and maintained under this lease shall name CITY, its officers, employees, Mayor, and Council as additional insured's and shall provide for notice to be given to CITY at least 15 calendar days prior to termination or cancellation of any such policy. Upon request, TENANT shall provide CITY a certificate of insurance evidencing that all insurance policies required under this lease are in place.

10. TERMINATION FOR CONVENIENCE. CITY AND TENANT may, at their exclusive option, terminate this agreement for convenience by providing notice to the other party no less than sixty (60) days prior to the end of the LEASE TERM + extensions.
11. TERMINATION FOR CAUSE. CITY may, at its sole option, terminate this agreement for cause in the case of TENANT'S failure to perform any of its obligations under this AGREEMENT, or for misconduct by the TENANT or any of its officers or agents. TENANT understands and acknowledges that by leasing from the CITY that in the eyes of the public the conduct of the TENANT will reflect on the CITY and the TENANT agrees to hold all of its officers, employees and agents to the highest standards of conduct and ethics. The CITY may, at its sole option, terminate this agreement for cause in the event the City Council finds that the conduct of the TENANT or any of its officers or agents reflects poorly on the CITY. CITY shall provide TENANT written notice of the default and TENANT shall have 15 calendar days to respond to CITY'S notice and resolve all noticed issues. If TENANT fails to remedy noticed issues within 15 calendar days, CITY shall be entitled to terminate this agreement, enter and repossess the LEASED PREMISES, and pursue any other remedy available under this AGREEMENT, at law, or in equity.
12. RENT AND MONTHLY GROSS RECEIPTS REPORT. TENANT shall pay rent monthly, in arrears, to CITY at the agreed upon rate. TENANT shall pay \$600.00 per month plus, 5% (five percent) of monthly gross revenues for all concession, grill, and catering sales originating at CITY'S facility. A minimum total payment of \$15,360 shall be remitted annually (\$1,280 monthly) and shall be received by CITY on or before January 5 after the end of each LEASE TERM. Proprietary sales and revenue receipts shall not be made public. The rent shall be documented on a gross fees report which shall accompany the payment. Rent shall be due on or before the fifth day of the month. Rent shall be subject to review on an annual basis. TENANT shall pay CITY a late fee of ten percent (10%) of any rent payment that is not made within five (5) business days after it is due. As a portion of rent payment, the TENANT shall be recognized as a sponsor for the CITY's annual celebration, and shall include vendor booth space.
13. TAXES. TENANT shall pay all taxes on personal property and improvements located on said premises, the premises herein licensed, and all sales and other taxes, including but not limited to possessory interest tax levied against the operation of said business or other taxes assessed to them. By executing this agreement and accepting the benefits thereof, a property interest may be created known as a "possessory interest" and such property interest may be subject to property taxation. TENANT, as the party in whom the possessory interest is vested, may be subject to the payment of property taxes levied upon such interest.
14. ANNUAL REVIEW. At the end of the contract period (December 31 annually), CITY may perform a review of TENANT's gross receipts for the year. TENANT shall provide all information requisite for the timely completion of the review. Notwithstanding the annual review, the CITY may review monthly gross receipts as it deems necessary and said review shall be during regular business hours.

15. CONCESSION RIGHTS. Except as otherwise provided in this AGREEMENT, TENANT shall have exclusive rights to the receipts from all food and/or beverage concessions, excluding vending machines located on the premises of the recreation center and golf course properties during the TERM. TENANT shall have the exclusive right to sell food and beverages on the golf course, excluding catered events and vending machine sales, subject to CITY'S rules and regulations and the terms and conditions of this AGREEMENT. TENANT shall be afforded the opportunity to be included on the CITY's Preferred Catering List, to submit a proposal for catering events such as, golf tournaments and CITY events. Tenant may not serve alcohol on the premises, except for catered events, with proper licensing.
16. BUSINESS HOURS. TENANT agrees that the LEASED PREMISES shall be open for business during days mutually agreed upon with the City Manager, including but not limited to all days of the week and holidays.
17. WAGES AND PAYROLL ACCOUNTING. TENANT is responsible for paying all employee wages, benefits, taxes and government accounting for operations of the LEASED PREMISES. To the extent reasonably practicable, TENANT shall maintain books of account for the Grill in accordance with generally accepted accounting principle and practices, consistently applied. The books shall reflect all café transactions, and be appropriate and adequate for the Grill's business.
18. PURCHASING. TENANT is solely responsible for all purchasing and accounting for TENANT'S business conducted on the LEASED PREMISES.
19. EQUIPMENT. CITY hereby leases the equipment described in the attached Exhibit B for use by TENANT on the LEASED PREMISES during the LEASE TERM consistent with this AGREEMENT. TENANT shall maintain the equipment in a clean and orderly condition; CITY shall be responsible to repair and /or replace the equipment as necessary during the LEASE TERM unless it is damaged as a result of the negligence of TENANT, its agents, employees, or customers. At the end of the LEASE TERM, TENANT shall return the equipment to CITY in its original condition, reasonable wear and tear excepted. In addition to the items in Exhibit B, TENANT may have use of the concessions cart. Responsibility for maintenance of the concessions cart is the same as required for items on Exhibit B.
20. SIGNS AND ADVERTISEMENTS. No signs of any kind shall be displayed unless approved by the CITY, who may require removal or refurbishment of any sign previously approved. TENANT shall not permit vendors to display wares inside or outside the building or on said property unless written permission is secured from the CITY and such permission shall be subject to revocation at any time. In each separate facility licensed hereunder, a sign shall be posted in a prominent place, stating that the TENANT is operated under a Concession Agreement issued by the CITY. TENANT shall bear the cost of all signage and alterations of signage identified in this agreement. CITY will negotiate with TENANT to install on-premise and off-site signs for advertising purposes.

21. JOINT AND SEVERAL LIABILITY; BINDING EFFECT. The persons signing below as TENANT shall be jointly and severally liable for all obligations of TENANT under this AGREEMENT. The covenants and conditions herein contained shall apply to and bind the heirs, successors in interest, executors, administrators and assigns of the parties hereto.

22. NOTICE. All official notice shall be hand delivered, send by certified mail, or email as follows:

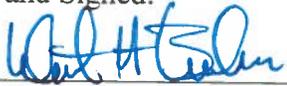
TO CITY:

David H. Bunker, City Manager
10246 N Canyon Road
Cedar Hills, UT 84062
dbunker@cedarhills.org

TO TENANT:

And

Agreed and Signed:

By: 
Title: City Manager, City of Cedar Hills

Date: 4/2/15

By: 
Title: Manager, Elev8 Cafe, LLC

Date: 4/2/15

EXHIBIT A to Concession Agreement

GENERAL TERMS AND CONDITIONS

1. **CLEANING DEPOSIT:** TENANT will pay a one-time cleaning deposit of \$300.00 to be held by CITY until such time as the AGREEMENT terminates and LEASED PREMISES are found to be clean and orderly. CITY may apply the cleaning deposit toward any damage caused by TENANT'S default of this AGREEMENT.
2. **SANITATION:** TENANT shall clean all food preparation equipment daily. Walls, ceilings, and floors shall be kept free of grease and dirt and shall be cleaned regularly. Windows shall be washed regularly. Counter tops and tables shall be kept clean and dry at all times. TENANT will be responsible to have the hoods cleaned at least every 6 months. TENANT will be responsible for proper cleaning and maintaining any and all grease traps and separator and shall properly dispose of grease products from business operations at LEASED PREMISES.

No offensive matter or refuse or substance constituting an unnecessary, unreasonable or unlawful fire hazard, or material detrimental to the public health, shall be permitted or remain on the concession premises and within distance of fifty (50) feet thereof, and TENANT shall prevent any accumulation thereof from occurring. TENANT shall see that the items above are collected as often as necessary, and in no case less than twice a week, and shall pay all charges which may be made for the removal thereof.

TENANT will provide annual proof of compliance with state and local health and safety requirements, including food handlers permits etc.

3. **CONDITION OF OCCUPANCY:** Upon occupancy, TENANT accepts, for all purposes, the LEASED PREMISES in their then present physical condition. TENANT shall make all improvements to the LEASED PREMISES necessary to perform its obligations under this lease; provided, that all such improvements shall require CITY'S prior written approval, including permitting and inspections. TENANT shall operate the café concession and golf course concession so as not to interfere with the public use of the LEASED PREMISES, the GRILL, or the Cedar Hills Golf Club generally.
4. **TENANT AS INDEPENDENT CONTRACTOR:** TENANT shall be an independent contractor, and as such, has no authority, express or implied, to bind CITY to any agreements, settlements, liability, or understanding whatsoever, and agrees not to represent itself as an agent of CITY, except as herein expressly allowed. Persons employed by CITY and acting under the direction of CITY shall not be deemed to be employees or agents of TENANT. TENANT shall abide by all policies of CITY with respect to independent contractors as shall be adopted from time to time.

Notwithstanding any provision of this AGREEMENT to the contrary, the transactions contemplated under this AGREEMENT shall not be considered a partnership, joint venture, or other similar association between the parties.

5. SUB-LEASES / CONTRACTORS: TENANT will not be allowed to sublease the LEASED PREMISES or delegate to any party any of TENANT'S responsibilities under this AGREEMENT.
6. EQUAL OPPORTUNITY: TENANT agrees to abide by all applicable federal, state, and local laws prohibiting discrimination against employees or customers.
7. INDEMNITY: TENANT agrees to indemnify, save harmless, and release CITY, its officers, agents, volunteers, and employees from and against any and all loss, damages, injury, liability, suits and proceedings arising out of the performance of this AGREEMENT or that are caused in whole or in part by any act of omission TENANT, its officers agents, volunteers, licensees, invitees, customers, or employees, except for claims arising from CITY'S sole negligence.
8. COMPLIANCE WITH LAWS: TENANT shall comply with all federal, state, county and municipal laws, ordinances or regulations that are applicable to the area of operation authorized by this AGREEMENT. Specifically, TENANT and employees with conform to Health Department regulations regarding Food Handler Permits, and with licensing for alcohol (Beer License), together with all other Public Health and Safety requirements.
9. SAFETY: TENANT shall keep the LEASED PREMISES in a clean, safe and orderly condition, and shall immediately notify CITY of any unsafe condition or practice on the LEASED PREMISES. TENANT shall not introduce, use or permit to be used in the LEASED PREMISES any hazardous materials.
10. SEVERALABILITY: The provisions of this AGREEMENT are severable, such that if any provision is invalid, unenforceable, or waived, the remaining provisions shall remain in full force to the extent possible.
11. RENEGOTIATION OR MODIFICATION: This AGREEMENT may only be changed by written amendment, executed by the parties hereto, and attached to the original signed copy of the AGREEMENT.
12. ASSIGNMENT: TENANT shall not assign or otherwise transfer this AGREEMENT or any use, right, duty or interest arising from this AGREEMENT.
13. ENTIRE AGREEMENT: This document, including any attached exhibits, constitutes the entire agreement between CITY and TENANT. All other agreements, promises and representations with respect thereto, other than those contained herein, are expressly revoked.
14. USE OF LEASED PREMESIS FOR CITY PURPOSES: CITY may use the LEASED PREMESIS for CITY'S business meetings at any time after normal business hours. Use of the LEASED PREMISES during business hours must be approved by TENANT. Any food or beverage for these meetings during business hours must be purchased through TENANT unless otherwise agreed upon by TENANT. For after business hour meetings, purchase of food and beverage from TENANT would be preferred, but is not mandatory.

15. SEPARATION OF LEASED PREMESIS: All areas outside the LEASED PREMESIS shall only be occupied by TENANT'S customers with permission of the CITY, including but not limited to the pro shop area, the event center, recreational rooms, conference rooms, the grounds, and the golf course. Pro shop and recreation activities may vary; TENANT may be required to keep bathrooms accessible.
16. TENANT CODE OF CONDUCT: TENANT shall provide CITY with its written Code of Conduct and Ethics Policy that is acceptable to CITY. TENANT shall require all officers, agents, and employees to receive and agree to abide by this policy. Failure of TENANT to enforce its Code of Conduct and Ethics Policy may be considered a breach of this AGREEMENT and may result in TENANT being subject to termination for cause.

EXHIBIT B to Concession Agreement
Equipment List

| Manufacturer | Item |
|------------------------|------------------------------|
| Saturn | Grill |
| Master Built | Walk in Fridge |
| Saturn | Undercounter Freezer |
| Continental | Undercounter Fridge |
| Saturn | Freezer |
| Dean | (2) Fryers |
| Hoshizaki | Counter Ice Machine |
| Saturn | Sandwich Refrigerator |
| Bloomfield | Coffee Maker |
| Amana | Microwave |
| Ansul System | Hood and Vent |
| 9 Tables | Inside |
| 36 Chairs | Inside |
| Radiant Systems | Cash Register |
| Prodigy | Backup Ice Machine |
| Equipex | Salamander |

EXHIBIT C to Concession Agreement
Grill Lease Area