10/1/15

AGREEMENT OF LEASE

GOLF COURSE FOOD SERVICE

THIS AGREEMENT OF LEASE (hereinafter referred to as this "Lease"), made this 1st day of October, 2015, by and between ROOSEVELT CITY CORPORATION, a municipality, located in Roosevelt City, Duchesne County, State of Utah, hereinafter referred to as "Landlord" or "city"), and The Hideout Steakhouse LLC (hereinafter referred to as "Tenant"),

WHEREAS, Roosevelt City owns and operates a golf course; and

WHEREAS, the golf course includes a facility for the preparation and serving of food; and

WHEREAS, private third parties have provided food services at the golf course in the past under agreements with Roosevelt City; and

WHEREAS, Tenant is in the business of preparing and serving food; and

WHEREAS, Tenant desires to expand its business by serving food at the golf course; and

WHEREAS, Roosevelt City and Tenant desire to join in the execution of this Lease to formalize the tenant occupancy under the terms of this agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual entry into this Lease by the parties hereto, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by each party hereto, Roosevelt City hereby leases to Tenant and Tenant hereby leases from Roosevelt City, in "**AS IS**" condition, the property currently owned by Roosevelt City for preparation and serving of food at the golf course."

UPON THE TERMS AND SUBJECT TO THE CONDITIONS which are hereinafter set forth:

1. **DESCRIPTION OF PREMISES** - Landlord leases to Tenant on the provisions hereinafter set forth, the premises identified as the hard surface flooring area of the golf course clubhouse, including the restrooms, the balcony of the clubhouse and the Pavilion located adjacent to the clubhouse except during tournaments specified herein.

2. **PURPOSE** – The exclusive right to all concessions (preparation, sale and serving of all food and beverages of any kind) at the Roosevelt City Golf Course with exception that the Pavilion shall be available to the city for use by third party catering during the tournaments specifically identified as:
   a. Uintah Basin Medical Center
   b. Duchesne County Children's Justice Center
   c. Utah State University,
   d. Strata Networks

e. American Petroleum Institute

All other tournament sponsors shall negotiate with Tenant to provide services.

3. **TERM** - This Lease will become effective beginning October 1, 2015 and will terminate December 31, 2016 subject to the renewal and termination provisions herein. At the conclusion of the initial term this Lease shall automatically renew, absent written notice from either party thirty (30) days in advance, for one additional twelve (12) month term subject to rent increases as provided herein. There will be no additional automatic renewal periods of this agreement though the parties hereto hope for the relationship to continue in subsequent and different agreements.

4. **COMPENSATION** – Tenant agrees to pay Landlord at **255 South State Street, Roosevelt, Utah 84066** or other place designated, by the Landlord. Upon execution of this agreement Tenant shall pay to Landlord a **$750 security deposit** and an additional **$750 for rent to cover October of 2015**. No rent shall be charged during the months of November or December during the year 2015. Commencing January of 2016 and each month thereafter rent shall be paid at the rate of **$800 per month** subject to all other fees penalties and yearly increases provided herein. Rent payments shall be due and payable on the fifth (5th) day of each month. Rent shall increase three percent (3%) if the renewal provisions herein take effect and shall remain in effect for the entire subsequent renewal period.

5. **LATE CHARGES AND INTEREST** - If rent is not paid by the tenth (10th) day of any calendar month, Tenant shall be required to pay Landlord liquidated damage fee of **$150** in addition to the amount due. Rent payments will not be considered paid in full until all additional charges for late payment are received by Landlord.

   Furthermore, and in addition to any late charges payable pursuant to the provisions of this Section, to the extent that any payment of Rent and/or any other amount payable to Landlord by Tenant pursuant to any provision of this Lease is more than thirty (30) days past due, Tenant shall pay Landlord interest at the rate of eighteen percent (18%) per annum on all such past due amounts.

   Tenant agrees to pay Landlord a twenty five dollar (**$25.00**) charge for each check offered in payment which is returned to Landlord unpaid, for any reason. Rent payments will not be considered paid in full until all additional charges, for returned checks, are received by Landlord. After such check has been returned unpaid, Tenant further agrees to make all future payments by cashiers check or money order only.

   Landlord's acceptance of partial payments shall not constitute a waiver of any form and such acceptance shall not prevent full enforcement of any other provision of this agreement.

6. **UTILITIES** - Landlord agrees to pay for the following utilities and services based upon occupancy of the premises: electricity, natural gas, water and sewer. Tenant shall be responsible for telephone, internet and any other "utility" associated with operating costs.

7. **QUIET ENJOYMENT** - Landlord hereby covenants to Tenant that, subject to Tenant's

compliance with the terms and provisions of this Lease, Tenant shall peaceably and quietly hold and enjoy the full possession and use of the Premises described herein during the term of this Lease.

8 **VACATING PREMISES PRIOR TO END OF TERM WITH WRITTEN NOTICE** - If Tenant vacates the premises prior to, or for reasons other than the end of a full term supported by written notice, in accordance with provisions herein, or if at any time during the term of this agreement the property becomes uninhabited for a period of time in excess of thirty (30) consecutive days, rent payments shall continue to be due until the end of the then current term and Landlord may renter and repossess the property along with any and all improvements following written notification of Landlord's intent to do so.

9. **LIMITATIONS OF USE** -

a. **OCCUPANTS** - The premises shall be used solely by Tenant for commercial purposes and shall be occupied only by one company. The following named company, and no others, is contemplated in this agreement, to occupy the premises: **THE HIDEOUT STEAKHOUSE LLC** (a restaurant).
Occupancy of the premises by additional parties is not permitted without prior written consent of the Landlord.

b. **INSURANCE** - Tenant shall not do or permit anything to be done in or about the Premises, nor bring or keep anything therein which will cause a cancellation of any insurance policy covering the Premises, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard form policy of fire insurance unless Tenant provides additional insurance coverage extending protection to cover all risks associated with these articles.

c. **PETS** - Tenant shall not allow pets or animals of any kind inside the subject property; except for service animals.

d. **WASTE, QUIET CONDUCT, ILLEGAL USE** - Tenant shall keep the property free of any and all Nuisances as identified by Roosevelt City Ordinances as amended. Furthermore, Tenant or its guests, invitees, licensee's and its or their equipment shall not unreasonably, taking into consideration the nature of the use, disturb, annoy, endanger or inconvenience neighbors, the Landlord or its agents, or workmen nor violate any law, nor commit or permit waste or nuisance in or about the property. Tenant understands that the possession, or use of any narcotic or illegal drug, is in violation of the terms of this agreement.

e. **ALTERATIONS** - Tenant shall not make any alterations to premises without the prior written consent of Landlord.

f. **SMOKING** - Tenant shall not permit any violation of Federal or State law regarding smoking on the Premises nor shall it allow violation of any Roosevelt City Ordinance at any time.

10. **ACCEPTANCE AND SURRENDER OF PREMISES** - Tenant acknowledges that the property has been inspected and accepts, AS IS, as being in good and sanitary condition and repair. Tenant promises to keep the property in a neat and sanitary condition and to as necessary repair any item, fixture or appurtenances that need service. Tenant acknowledges and agrees that it shall use its best reasonable efforts to refrain from any operation or practice that will injure the premises.
At the termination of this agreement Tenant agrees to surrender the premises in similar clean and satisfactory condition.

11. **FIXTURES AND ALTERATIONS** - Tenant shall not make any physical alteration in the Premises or any of the fixtures located therein or install or cause to be installed any trade fixtures, floor coverings, interior or exterior lighting, plumbing fixtures, shades or awnings or otherwise make any changes or improvements without first obtaining the written consent of Landlord. Any physical change and all rearrangements which are made by Tenant with the approval of Landlord shall be made at Tenant's expense. Upon expiration of this Lease all such alterations, decorations, additions and improvements shall become the property of the Landlord.

12. **SIGNS** - Tenant, at its own cost, may place and maintain a sign advertising Tenant's business on the Premises so long as the sign complies with local ordinances and is agreed to by the Landlord.

13. **RULES AND REGULATIONS** - Tenant agrees to comply with all applicable laws and ordinances including, at its own expense, obtaining all permits and licenses which are required by law or ordinance in connection with the operation of its business. Tenant further agrees that it and any and all employees occupying the premises with it shall abide by all reasonable rules and regulations that Landlord may make from time to time, for the protection, good order, safety or cleanliness of the premises, or for the general welfare of the public.

14. **ENTRY BY LANDLORD** - The golf course, including the clubhouse, has been and will continue to be shared by the Landlord and multiple contractors and/or leasees. Many, if not all, locations of the described premises are open and are not separated from other portions of the clubhouse and/or golf course by walls, fencing, railings etc. Given the "open" nature of the premises Landlord may enter at any time without notice and Tenant may incidentally enter areas

not described in the leased area herein. Both parties agree to be respectful of the others space and possessions and to do nothing that interferes with or interrupts the others quite enjoyment of their respective portions of the property. Landlord is permitted to make any alteration, repairs and maintenance that in Landlord's judgment are necessary. If the work performed requires that Tenant temporarily vacate the premises, then Tenant shall vacate for this temporary period.

5. **ASSIGNMENT OR SUBLETTING** - Tenant shall not assign this lease, or any interest herein, nor sublet said premises or any part thereof without the prior written consent of Landlord, and any attempted assignment, or subletting, without written consent of the Landlord, shall be null and void.

16. **WAIVER** - Landlord's failure to require strict compliance with any condition of this agreement, or to exercise any right provided herein, shall not be deemed a waiver by Landlord of such condition or right and shall not be construed to be a continuing waiver of any subsequent breach.

17. **TIME IS OF THE ESSENCE** - Tenant shall abide by all provisions set forth, in this lease agreement, forthwith. No additional time will be granted for compliance without the express consent of the Landlord.

18. **NOTICE** - Notice upon Tenant shall be served as provided by law. Notice upon Landlord shall be served upon the City Recorder at **255 South State Street, Roosevelt, Utah 84066,** pursuant to all provisions of Utah state law pertinent to service of a municipality.

19. **NON-LIABILITY OF OWNER FOR DAMAGE** - Tenant shall defend, indemnify, and hold harmless Landlord from any and all actual or alleged claims, demands, causes of action, liability, loss, damage and/or injury (to property or persons, including without limitation wrongful death), whether brought by an individual or other entity, or imposed by a court of law or by administrative action of any federal, state, or local governmental body or agency, arising out of Tenant's or Tenant's guests, invitee's or licensee's use of the premises regardless of whether said use is allowed under this agreement or otherwise. This indemnification applies to and includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and any reimbursements to Landlord for all legal expenses and costs incurred by it.

Tenant agrees that this indemnification and hold harmless clause shall apply to, without limitation:

a. The death or injury of any person, including Tenant.

b. Damage to or destruction of any property, including property owned by Tenant or

any person who is an employee or agent of Tenant, where such death, injury or damage is allegedly caused by some act or omissions of Tenant, whether negligent or intentional, on said premises or due to an act by a person on or about said premises as a guest, licensee, or invitee of the Tenant.

c. Damage to or destruction of any property, including property owned by Landlord, a third party contractor with Landlord or a third party leasee of Landlord or any person who is an employee or agent of the preceding entities, where such death, injury or damage is allegedly caused by some act or omissions of Tenant, whether negligent or intentional, on said premises or due to an act by a person on or about said premises as a guest, licensee, or invitee of the Tenant.

20. **ATTORNEYS FEES AND CHARGES** - Tenant shall indemnify Landlord for all legal fees associated with this agreement. If any legal action or proceeding may be brought by either party to enforce any part of this agreement, the prevailing party shall recover in addition to all other relief, reasonable attorneys' fees and costs.

21. **SEVERABILITY** - If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

22. **JOINT AND SEVERAL LIABILITY** - Each person or entity executing this lease as "Tenant(s)" is jointly and severally, liable hereunder and is required to perform in full all obligations imposed on Tenant in this lease.

23. **NO PARTNERSHIP** - Landlord does not, as a result of entering into this Lease, in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business, or otherwise a member of a joint enterprise with Tenant. Tenant shall pay all applicable income, withholding, sales, business and other taxes, as well as any unemployment taxes or workers compensation premiums as required by law.

24. **LEASE EXPIRATION** - This lease shall expire upon the occurrence of the conditions described herein.

25. **USE OF PREMISES** – The property shall be used for the preparation, serving and consumption of food and beverages and socialization incidental to those activities. Tenant shall not at any time during the Term, use, or permit the use of the property for any other purpose.

26. **MAINTENANCE** – Tenant agrees to maintain this facility during the term of this agreement, including utilities, repairs, maintenance, and any other work necessary to keep the facility

inhabitable. Tenant further agrees to maintain the exterior of the building in an attractive condition. If at any time during this agreement, the Roosevelt City Council, by majority vote, declares the property to be a hazard or if the property deteriorates to the point that it detracts from the beauty of the surrounding area as determined by a majority vote of the Roosevelt City Council, Tenant agrees to remedy such concerns within sixty (60) days after receiving written notice to do so by Landlord.

a. **PLUMBING** - Plumbing drains that become blocked shall be unclogged at the expense of Tenant.

b. **SMOKE ALARMS** - Tenant understands and agrees to test smoke alarms once per week to check performance and to be responsible for replacing batteries, if applicable, in smoke alarms as needed throughout the duration of occupancy. Tenant agrees not to disable or in any way cause the alarm not to function as it is designed to function. Tenant shall indemnify and hold Landlord and the property of Landlord, including said premises and the building, free and harmless from any and all liability, claims, or loss arising from the negligence of Tenant to check and test smoke alarm on a regular basis. Tenant also agrees to contact the Landlord immediately, without delay, should a smoke alarm need to be installed, replaced or repaired at any time during the occupancy of premises.

27. **INSURANCE** – Tenant shall at his expense, obtain and maintain during the term of this lease and any extension thereof, an appropriate policy of public liability insurance with minimum limits of $500,000 per person and $1,000,000 total personal injury and $500,000 and $1,000,000 property damage. Said insurance policy must name the City as additional insured. Tenant's failure to maintain said policy shall be a material breach of this agreement and shall also be a complete waiver of Tenant's right to seek damages against Landlord. Tenant may maintain any additional property insurance policy it wishes to cover any losses sustained to Tenant's property. It is acknowledged that Landlord does not maintain this insurance to cover property damage or loss caused by fire, theft, rain, water overflow/leakage, acts of God, and/or any other causes to Tenant's property. It is acknowledged that Landlord is not liable for these occurrences. It is acknowledged that Tenant's insurance policy shall solely indemnify Tenant for any losses sustained. Tenant's failure to maintain said policy shall be a complete waiver of Tenant's right to seek damages against Landlord for the above stated losses.

28. **RELEASE AND WAIVER OF SUBROGATION** – Tenant agrees to release Landlord from any and all claims with respect to any loss covered (or which should have been covered) by the insurance outlined herein. For purposes of this Section, all deductibles shall be considered insured losses. Tenant further agrees that its respective insurance company shall have no right of subrogation against Landlord. Landlord shall have no responsibility or liability for any loss of or damage to improvements, furniture, fixtures, equipment or other property of Tenant, unless caused by Landlord's negligence or willful misconduct. With the exception of Landlord's negligence or willful misconduct, Tenant agrees that Landlord shall not be liable to Tenant or those claiming under Tenant for injury, death or damage or loss occasioned by the acts or

omissions of any third party or the condition of the Premises, the acts or omissions of any other person present at the Facility, whether or not such persons are present with the knowledge or consent of the Landlord. This release and waiver remains effective despite a failure on Tenant's part to acquire or maintain insurance as required herein.

29. **ENTIRE AGREEMENT** – The foregoing agreement constitutes the entire agreement between the parties and supersedes any oral or written representations or agreements that may have been made by either party. Further, Tenant represents that Tenant has relied solely on Tenant's judgment in entering into this agreement. Tenant acknowledges having been advised to consult with independent legal counsel before entering into this agreement and has either followed or decided to waive such representation and advice. Tenant acknowledges that Tenant has read and understood this agreement and has been furnished a duplicate original.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

ROOSEVELT CITY CORPORATION

Vaun D. Ryan

Vaun D. Ryan, Mayor

ATTEST:

Carolyn Wilcken

Carolyn Wilcken, Recorder

TENANT:

THE HIDEOUT STEAKHOUSE LLC

its PAUL WOLSEY