

RESOLUTION NO. 113-96

AUTHORIZING A LEASE OF THE CITY PROPERTY AT 2063 SOUTH BROADWAY TO MR. PATRICK KENNEDY AND MR. STEPHEN HOEFER

WHEREAS, the City of Grand Junction is owner of the real property described as the Tiara Rado Golf Course, 2063 South Broadway, Grand Junction, Colorado; and

WHEREAS, Patrick Kennedy, 2296 Arriba Circle, and Stephen Hoefer, 2294 Arriba Circle, Grand Junction, Colorado, or their assigns, desires to lease 1,300 square feet of concession facilities located on the afore described premises for the purposes of fulfilling the needs of golfers for food and beverage service.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute a Lease Agreement with Patrick Kennedy and Stephen Hoefer for the lease of said concession facilities for a term of three years, commencing January 1, 1997, and expiring on December 31, 1999, subject to each and every term and condition of the Lease Agreement.

PASSED and ADOPTED this 4th day of December 1996.

Attest

/s/ Linda Afman
President of the City Council

/s/ Stephanie Nye
City Clerk

AGREEMENT

THIS AGREEMENT, made this 31st day of December, 1996, by and between the CITY OF GRAND JUNCTION, municipal corporation, hereinafter referred to as "CITY" and the Piñon Grill, Inc., a Colorado corporation, hereinafter referred to as "CONCESSIONAIRE."

WITNESSETH:

This agreement contemplates lease of all restaurant, food and beverage service facilities located on the premises of Tiara Rado Golf Course (Tiara Rado) located at 2063 S. Broadway, Grand Junction, Colorado (the "premises" or the "facilities").

The Concessionaire's purpose is to fulfill the food and beverage service needs of patrons of Tiara Rado. Accommodating the patrons of Tiara Rado shall be the Concessionaire's first priority.

I. LEASED PREMISES/UTILITIES/HOURS

- A. The Concessionaire shall have the exclusive right to operate on the Tiara Rado premises food service and vending operations, including but not limited to, food and beverage sales, tobacco and snack food product sales and other machine vended items. There shall be no smoking in any enclosed area. Failure to provide any service provided for herein, or otherwise commercially required or reasonably requested by the City, in a suitable quality, will be considered a breach of this Agreement and the Concessionaire will be considered in default. The facilities outlined in this Agreement shall be exclusively managed and controlled, subject to the limitations herein contained, during the pendency of this agreement by the Concessionaire.
- B. City agrees to lease to Concessionaire the facilities located at Tiara Rado Golf Course, including the clubhouse, restaurant, bar and snack bar facility from January 1, 1997 to December 31, 1999, unless or until the Concessionaire or the City is in breach.
- C. The food service facility shall be open all hours the golf course is open, plus one-half hour past sunset. Special inside and outside gatherings are encouraged. All special events or gatherings shall be scheduled so as not to interfere with golf-related activities. Golf activities shall have first priority to use the clubhouse banquet facilities. The food and beverage service facilities shall be named the Piñon Grill at Tiara Rado.
- D. The City agrees to maintain the electrical, plumbing, sewer, mechanical systems and equipment and the exterior of the building in good repair.
- E. The City shall pay commercial trash removal fees except that Concessionaire shall pay all grease disposal costs.
- F. The Concessionaire shall pay the cost of gas, electric, sewer and water utilities and alarm services for the clubhouse building. Nonpayment of any and all utility charges as they become due shall be a breach of this Agreement. The Concessionaire expressly covenants that if utility

charges, service fees or costs are to be contributed by, and/or other operating arrangements are to be made with, the Golf Pro, the Concessionaire shall make any and all such agreement(s) in writing. Any such writing shall be a legally enforceable contract binding the Concessionaire and the Golf Pro or his successor(s) in interest and shall disclaim and hold harmless the City from all liability and responsibility for utility charges (except trash removal). City agrees its agreement with the Golf Pro shall require pro rata payment of utility services commonly metered through Concessionaire's premises and shall require Golf Pro to use his premises in a manner which will minimize any negative effects on Concessionaire's operations.

G. The Concessionaire shall promptly and timely pay any and all vendors who supply materials, merchandise, food, food stuffs, liquor, wine, beer or other beverages or other goods to the Concessionaire. Nonpayment of any and all vendors or account delinquencies of thirty (30) days or more shall constitute a breach of this Agreement.

H. The cost of insect and rodent control shall be divided equally between the City, Concessionaire and Golf Pro. Insect and rodent control shall be provided twelve (12) times per year by a licensed contractor of the City's selection.

I. The Concessionaire shall be responsible for all its telephone expenses, charges and fees.

J. The Concessionaire shall be responsible for interior maintenance of all portions of the premises in a first class condition. Maintenance shall include painting walls and ceilings, maintaining carpet and floor coverings and proper maintenance of all fixtures, including tables, chairs and the like. The City and Concessionaire will equally divide the cost of replacement of City-owned floor coverings, window coverings, tables and chairs as required by the normal course of wear and tear occasioned by the food service business. Any and all replacement shall occur only upon the mutual consent and concurrence of the Concessionaire and the City. Such consent and concurrence shall not be unreasonably withheld by either the City or the Concessionaire.

K. The Concessionaire shall maintain, repair and replace all equipment and/or furnishings provided by the Concessionaire under the terms of this Agreement. The Concessionaire acknowledges that the premises and City supplied equipment are in good and satisfactory condition.

L. In the operation of the Agreement, it shall be understood and agreed that the Concessionaire is an independent contractor and not an agent, servant or employee of the City.

II. INSPECTION AND ALTERATION OF PREMISES

A. Concessionaire agrees that the Director of Parks and Recreation, or his duly-authorized agent(s), shall have the right to enter said premises at any reasonable time to inspect same. Costs for additional electrical wiring, outlets, facilities, shelving, fixtures, improvements or installations installed by the Concessionaire shall be the sole responsibility of the Concessionaire and shall be installed to meet current applicable codes. Any and all such installations or improvements shall be done only with the written consent of the City and shall become the property of the City at conclusion or termination of this Agreement.

B. The use of extension cords shall be as limited by fire, building and electrical codes. All signs erected on the premises by the Concessionaire shall conform with applicable codes and shall not be erected or installed until the City has given its approval in writing. All improvements and or renovations including but not limited to paint, floor coverings, window coverings and decorating shall be made only with prior approval of the City. City and Concessionaire agree that the Director of Parks and Recreation or his designee is the party to whom any and all notices required to be given under this Agreement by Concessionaire shall be delivered and the person from whom all City consents shall be obtained.

III. LICENSES, TAXES AND FEES

A. It is further agreed and understood by the parties that certain licenses issued by the City, the County and the State are necessary requirements to Concessionaire's operation. Concessionaire agrees to obtain all necessary licenses at its sole and separate expense and shall maintain same in full force and effect during the term of and under the conditions of this Agreement.

B. The Concessionaire shall obtain and maintain, as a condition of this Agreement, a Hotel/Restaurant liquor license for the clubhouse premises and a 3.2% beer license for the golf course premises. Beer shall be the only alcoholic beverage allowed on the golf course and shall be canned or contained in plastic cups or containers if consumed on the golf course. Concessionaire shall strictly enforce this requirement and shall not serve or dispense beverages in violation of this paragraph and/or applicable law. Such service or the loss of or the failure to renew the Hotel/Restaurant liquor license and/or the beer license shall be deemed a breach of this Agreement. Concessionaire shall adhere to and comply with all liquor, wine and beer laws, codes or regulations of the State of Colorado, Mesa County or other regulatory entities having jurisdiction. Concessionaire shall have and does affirmatively acknowledge its duty to be circumspect and prudent with regard to over-service, underage service and compliance with commercially reasonable alcohol service practices. Concessionaire shall pay all license fees, taxes and all retail sales taxes on the products or services which the Concessionaire provides hereunder, including but not limited to all federal and state payroll and income taxes, including withholding, state and local sales taxes, compensation payments, unemployment insurance, and other taxes with respect to services provided under this Agreement, and all other taxes arising from the Concessionaire's operation.

C. Concessionaire agrees to transfer the liquor licenses at expiration or termination of this Agreement to a new Concessionaire approved by the City or directly to the City, such transfer to be determined at the sole discretion of the City. The City shall have the option of directing the Concessionaire to enter into a management agreement with the City or some third party pending transfer of the liquor license.

IV. EMPLOYEES OF CONCESSIONAIRE

A. In the operation of this facility, Concessionaire will need to employ certain personnel. It is agreed and understood that any person or persons employed by the Concessionaire shall be employees of Concessionaire and not the City. The Concessionaire assumes full responsibility for the action(s) of such personnel while performing service(s) pursuant to this Agreement and shall

be solely responsible for supervision, payment of wages or salary, withholding and income taxes, social security taxes and unemployment insurance, as required by law. Concessionaire further agrees that Worker's Compensation insurance shall be provided for said employee(s) in conformity with the Colorado Revised Statutes and that a certificate of Worker's Compensation Insurance evidencing continuous coverage shall be filed with the City Risk Manager.

B. The Concessionaire and each of its agents and employee(s) shall at all times provide courteous service to customer(s). Concessionaire shall employ, train and deploy employees in optimum numbers who are proficient, productive and courteous to patrons. Concessionaire shall furnish all necessary qualified supervision for the performance of food and beverage service and agrees to maintain highly competent management staff at all times.

V. INSURANCE

A. Concessionaire agrees to procure and maintain in full force and effect, at Concessionaire's sole expense, a commercial general liability insurance policy and a liquor liability insurance policy naming the City of Grand Junction, its agents, servants, employees and elected and appointed officials as additional named insureds. These insurance policies shall reflect minimum coverage's in the following amounts:

COVERAGE

Injury or death	\$1,000,000
Property damage	\$1,000,000
Product liability	\$1,000,000
Liquor liability	\$1,000,000

B. A certificate evidencing such insurance policy coverages shall be provided to the Risk Manager of the City and shall have a provision that any and all of the same shall not expire or be canceled or terminated without first giving written notification thereof to the Risk Manager of the City thirty (30) days prior to termination, expiration or cancellation. A renewal policy shall be delivered to the City at least fourteen (14) days prior to a policy's expiration, except for policy(ies) in effect upon termination of this Agreement. Failure to maintain such insurance coverage's shall be deemed breach of this Agreement.

C. Concessionaire shall furnish fire and theft insurance for Concessionaire-owned material, supplies and equipment. City will not be responsible for any loss of, or damage to, or replacement of material, supplies and equipment of Concessionaire due to theft, natural disasters or other events beyond the control of the City. If City property, materials, supplies or equipment are damaged by acts or omissions of Concessionaire, agent(s), or employee(s) of Concessionaire, Concessionaire shall be responsible for the depreciated cost of replacement, whether replaced by the City or not. City-owned material(s), supplies and equipment are insured against fire and theft for acts not occasioned by Concessionaire, agents or employees of Concessionaire.

VI. WAIVER OF SUBROGATION

Concessionaire, its agent(s), employee(s) and insurers hereby release the City, its officers, employees, agents assigns (“City”) from any and all liability or responsibility, including anyone claiming through or under City by way of subrogation or otherwise, for any loss or damage which Concessionaire, its agents or insurers may sustain incidental to or in any way related to Concessionaire’s operation under this contract, except for loss or damage due to breach of this Agreement by the City or due to the City’s gross negligence or willful or wanton conduct.

VII. LIABILITY AND INDEMNIFICATION

The Concessionaire shall indemnify and hold harmless the City against all action(s), claim(s), proceeding(s), demand(s), loss(es), cost(s), damage(s) and expense(s) whatsoever which may be brought against or suffered by the City or which it may sustain, pay or incur, by reason of, or on account of any injury, illness or death of persons and/or damage to property arising out of, or incidental to, the Concessionaire’s provision of food and or beverage service(s) herein provided and or any negligence, act of omission or commission, by Concessionaire’s employee(s), licensee(s) or invitee(s). The Concessionaire’s agreement to indemnify and or hold harmless shall survive termination, expiration or cancellation of this Agreement and/or termination or expiration of any or all insurance coverages required hereunder.

VIII. STANDARDS OF PERFORMANCE

A. Providing quality food and beverage service to Tiara Rado Golf Course patrons and invitees shall be the Concessionaire’s top priority. The Concessionaire shall organize, operate and manage efficiently the food and beverage operations to provide high quality food, beverage and vending services in a clean, attractive and pleasant environment. To that end the Concessionaire shall be bound to and obligated to perform under this Agreement together with the terms of the Request for Proposals and Concessionaire’s response thereto, all of which are incorporated herein by his reference as if fully set forth.

B. As an express condition of this Agreement, the City requires the Concessionaire to have and provide adequate capitalization to operate the facility at the expected level of excellence. To ensure adequate ability to perform, Concessionaire shall agree and allow the City to conduct routine credit and financial background checks of the personal, business or corporate finances of the Concessionaire and of the principles of Concessionaire. If each or any of such inquiries disclose, insufficient capitalization or outstanding judgment(s), liabilities or delinquencies which may impair or prevent the proper operation of the facility, the City may declare this Agreement breached, void and of no effect.

C. Concessionaire hereunder shall provide initial capitalization of \$20,000.00 and shall maintain a net worth of no less than \$8,000.00, as determined by generally accepted accounting principles (as opposed to generally accepted tax accounting principles). The City may, in writing, accept smaller amounts of capitalization and net worth if Concessionaire shows reasonable cause therefor. The Concessionaire shall maintain the equipment and assets in good and serviceable condition.

D. Concessionaire's responsibility shall include but not be limited to the following as costs and requirements of operation:

Purchasing all inventory and supplies required for its food service operation;

Routine cleaning of the food preparation areas and floors, storage areas and counter tops, including but not necessarily limited to cleaning all hoods four times per year;

Supplying and laundering of kitchen and banquet linen including but not limited to uniforms, aprons, cleaning cloths, table cloths, napkins, *etc.*;

Purchasing replacement small wares as necessary including but not necessarily limited to china, glassware, flatware, cooking utensils and sundry items. Any and all replacement shall be deemed a cost of Concessionaire's operation;

Installing, servicing and maintaining vending machines in good repair at such locations as may be agreed upon and keeping the machines adequately supplied with merchandise;

Keeping all leased premises, including patio and service areas, clean and sanitary in conformance with the guidelines in Appendix A, attached hereto and incorporated by reference. The City shall provide paper and soap products for restrooms, but the Concessionaire shall be responsible for restroom cleaning and restocking;

Transportation of all waste materials, including grease, from the food/beverage areas to the garbage pick-up area in a manner designated by the City and health/restaurant codes. The Concessionaire shall not discharge any grease into the building drains but shall keep grease in proper containers for disposal by the Concessionaire. If the Concessionaire fails to comply with this provision, any cost, charge or expense involved in opening, cleaning or repairing drains necessitated by such failure shall be paid by the Concessionaire;

Maintain all food service equipment (both City provided and Concessionaire provided) in good repair. Concessionaire shall be responsible for repair and/or replacement of City provided equipment used in the fulfillment of this Agreement, normal wear and tear excepted;

Provide beverage sales on the golf course as deemed appropriate by the Parks and Recreation Director or designee.

E. The Concessionaire shall plan and prepare imaginative menus with an adequate variety of products, in consultation with the City's designated representative, and in accordance with City specifications. Only food and beverages that are of the best quality shall be purchased and served by Concessionaire. Upon delivery all merchandise shall be checked for quality and shall be stored in proper areas in sanitary containers which are dated for effective rotation of stock on a first-in, first-out basis.

F. The City may require the Concessionaire to sell items which the City reasonably deems necessary to the operation of the food service and vending facilities. The City may limit or require the discontinuance of the sale of products which the City reasonably deems not in the best interest of the operation of the food, beverage or vending services.

G. The City reserves the right to reasonably regulate the prices charged by the Concessionaire. The Concessionaire shall provide a price list for all items it proposes to sell. Each January during the term hereof, the City's designated representative and the Concessionaire shall review pricing structures and may, by agreement and for good cause, alter prices of items offered for sale.

H. At the City's option a survey of facility users by the City or an independent contractor may be conducted to determine Concessionaire's performance. Facility users will be surveyed to determine if they are "very satisfied," "satisfied," "dissatisfied," or "very dissatisfied" with the Concessionaire's operation. The acceptable performance standard shall be 75% of facility users "satisfied" or "very satisfied" with the food and beverage concession. A rating below 75% satisfaction may be considered by the City as grounds for declaring the Concessionaire in breach of this Agreement. If a user survey results in less than 75% customer satisfaction, the Concessionaire may contract and pay for a second survey to be performed by an independent third party agreed to by the City and the Concessionaire. All costs of this second survey shall be at the Concessionaire's sole expense. If the results of the second survey show customer satisfaction to be 75% or above the "satisfied" level, Concessionaire will be deemed to have met a standard of acceptable performance.

IX. EQUIPMENT, FURNITURE AND FIXTURES

City-provided equipment is described in Exhibit A, attached hereto and incorporated by reference. The Concessionaire shall provide any and all other equipment required for operation of a full service food and beverage facility. The Concessionaire-provided equipment is described in Exhibit B, attached hereto and incorporated by reference. If the Concessionaire deletes or adds to this equipment, this information must be submitted to the City.

X. TERMINATION

A. The Concessionaire must be able at all times to meet the standard of 75% customer satisfaction as determined by the user survey explained in paragraph VIII (H).

B. In the event that compensation provided for is in arrears, or if Concessionaire is in default of any covenant, term or agreement as herein provided, the City shall give the Concessionaire a written notice specifying the default. In the event Concessionaire fails to remedy and cure said default within ten (10) calendar days from mailing of such written notice, the City shall be entitled to declare this lease and agreement terminated and may immediately reoccupy the premises with or without process of law using such reasonable force as may be necessary without being liable to prosecution for damages therefor. In the event of repeated default by Concessionaire, the City may declare this lease and agreement terminated and may reoccupy as provided. Repeated default(s) shall be defined as three (3) notices of violation within a twelve (12) month period. Concessionaire covenants and agrees to surrender and deliver up said premises peaceably to the

City upon expiration or termination. Any notice provided for herein may be mailed or may be served upon the Concessionaire by delivering a copy thereof to it in person or by leaving it with any person employed by the Concessionaire at the concession.

C. Any notice or communication of default shall be deemed made if personally served or received by Certified mail at:

CITY OF GRAND JUNCTION

Attn: Director of Parks and Recreation

250 North 5th Street, Grand Junction, CO 81501-2668

CONCESSIONAIRE

2063 South Broadway, Grand Junction, CO 81503

The City or Concessionaire may from time to time change the above address upon written notice to the other.

D. In the event of litigation hereunder, the prevailing party shall be entitled to recover its reasonable attorney's fees in addition to all other damages or remedies authorized by law.

E. Upon termination or expiration of this Agreement, Concessionaire agrees to return all equipment and supplies furnished by the City. Said equipment and supplies shall be in as good condition as originally furnished, ordinary wear excepted.

F. Notwithstanding any provision to the contrary, upon termination by the City for default by Concessionaire, Concessionaire's duties to indemnify and hold harmless the City shall continue and survive.

G. Upon termination or expiration of this Agreement, for any reason, all installed equipment purchased by the Concessionaire becomes the property of the City. The City agrees to pay Concessionaire depreciated fair market value for this equipment if the City desires to retain said equipment. Any equipment the City does not want will remain the property of the Concessionaire and will be removed at no expense to the City. Value of Concessionaire's equipment shall be determined by an independent third party appraiser if the parties disagree. Cost of appraisal shall be the City's sole responsibility.

H. This Agreement may be terminated by the City if either or both of the liquor and/or beer licenses obtained by Concessionaire are revoked or suspended or proceeded against by the local licensing authority and/or the State of Colorado.

I. Any failure by the City to give Concessionaire any notice hereunder in a timely manner, *e.g.* a notice of breach or default, shall not be deemed to waive the City's right to do so thereafter.

XI. ASSIGNING OR SUBLETTING PROHIBITED

Concessionaire shall have no right to assign, sell, transfer or in any way convey any of the rights or obligations attached or arising hereunder. Further, the portion of this Agreement relating to the granting of this concession is a personal service agreement and the parties agree and understand that the Concessionaire shall not assign or in any way divest itself of any of the duties or responsibilities provided herein.

XII. PATENTS, TRADEMARKS, ETC.

Concessionaire represents that it is the owner of and fully authorized to use any and all services, processes, machines, articles, names, or slogans used by it in its operation under or in any way connected with this concession. Concessionaire agrees to save and hold the City, its officers, employees, agents, and representatives free and harmless from any loss, liability, expense, or claim for damages in connection with any actual or alleged infringement of any patent, trademark, or copyright or unfair competition arising out of the operations of this concession or in any way connected to this concession. The City shall at no cost agree to any and all right, title and interest Concessionaire has or may have to the name "the Piñon Grill at Tiara Rado."

XIII. SUSPENSION OF OPERATIONS

If the concession facilities are closed for a period in excess of three (3) days due to no fault of the Concessionaire for reasons such as fire or natural disaster, the monthly rent payments to the City shall be suspended on the third day of closure but shall recommence when reopened. In the event of a closure in excess of fourteen (14) consecutive days, the City may require that Concessionaire will operate out of a temporary facility and provide minimum food and beverage service. Operation of such temporary facility shall be at the Concessionaire's sole expense. The Concessionaire shall be responsible for the cost and availability of utility services for such temporary facility. The Concessionaire may choose not to install the utilities and may terminate the Agreement if the cost of installation is, in the Concessionaire's sole discretion and determination, prohibitive. City shall receive compensation of 5% of gross sales during temporary operations.

XIV. COMPENSATION TO CITY

A. In consideration of the lease of the afore-described premises and the grant to Concessionaire, the Concessionaire shall pay the City according to the following schedule:

01/01/97 to 12/31/99 \$500.00 per month, plus 5% of monthly gross sales

B. The Concessionaire shall make payments monthly in accordance with a schedule agreed to by the Concessionaire and the Director of Parks and Recreation or his designee. Gross sales tabulation reports shall be submitted with payments. Payments shall be made not later than the 7th day of the month following the month of calculation.

C. For the purpose of this Agreement, gross sales shall be defined as the total amount of money or the equivalent thereof in kind received by the Concessionaire in exchange for the goods or services rendered by Concessionaire at the premises (clubhouse and golf course). Gross receipts shall also include any and all monies received from the operation of any vending machines owned by Concessionaire or leased by Concessionaire from third parties. Concessionaire agrees that it shall keep a true and accurate account of all monies received pursuant to this Agreement and deliver the required monthly financial report to the City Parks and Recreation Director.

D. At the conclusion of the term of this Agreement (12/31/99) the Concessionaire has the option conditioned on full and faithful performance of and under this agreement, to renew the Agreement for two years at \$600.00 per month plus 5% of monthly gross sales. If Concessionaire opts to renew, any subsequent extension or renewal of this Agreement, if any, shall be subject to the approval by the then seated City Council.

XV. FINANCIAL REPORTING

A. Once each calendar year beginning January of 1998, Concessionaire shall furnish to the City a complete profit and loss statement, prepared on the accrual basis, utilizing generally accepted accounting principles, for all food, beverage, vending activities and sales of goods. The format of these statements should generally follow that outlined in Schedule A, hereto attached and incorporated by reference.

B. Concessionaire shall keep proper, adequate and accurate books and records, prepared in accordance with an accounting system satisfactory to the City, of all business and transactions engaged in under this Agreement. Such records shall include, without limitation, the daily receipts (including cash register tapes), daily sales and business done by the Concessionaire in, on, from or through the premises. The Concessionaire shall preserve and make available for audit and examination by the City such books and records, as well as a copy of all business and sales tax returns to be filed with Mesa County and the State of Colorado. Audits may be conducted by the City upon three (3) days written notice at any time, but said audit(s) shall not be required unduly or excessively, and in no event shall exceed one (1) per month.

XVI. BANKRUPTCY, REORGANIZATION

This Agreement, and all rights of Concessionaire hereunder, shall terminate if:

A. Concessionaire, while in possession of the premises, files a petition in bankruptcy, or insolvency, or for reorganization under the Bankruptcy Code, or voluntarily takes advantage of any such filing by answer or otherwise, or makes an assignment for the benefit of creditors; or

B. Involuntary proceedings under any bankruptcy law or insolvency act are instituted against Concessionaire, or if a receiver or trustee is appointed of all, or substantially all, of the property of Concessionaire, and such proceedings are not dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment.

XVII. EQUAL OPPORTUNITY

The Concessionaire agrees not to exclude anyone from participation in or deny anyone any benefits of Concessionaire's services, or otherwise subject anyone to discrimination because of the person's race, sex, color, religion, national origin or physical handicap. Concessionaire warrants that all applicable local, state and federal laws relating to employment practices will be complied with.

XVIII. ATTACHMENTS

Attached and incorporated herein:

Appendix A	Cleanliness Guidelines
Exhibit A	Equipment provided by the City
Exhibit B	Equipment provided by the Concessionaire
Schedule A	Financial format for optional submittal purposes - food, beverage and vending sales.

XIX. OTHER

A. In the event of any dispute arising hereunder, either the City or the Concessionaire may request in writing that the matter be heard by the Grand Junction Parks and Recreation advisory Board (Parks Board). Upon receipt of such request, the Parks Board shall schedule a public meeting at which time the parties shall be entitled to present such information and testimony as they desire. The Parks Board shall thereafter render a decision by majority vote resolving the matter. The Parks Board shall hold such meeting and render its decision within 90 days of the initial request letter. If either party is dissatisfied with the decision of the Parks Board, or if the Parks Board does not act within the 90 day period, they may take such other legal action as is available to them, including filing a complaint in court. However, neither party may file any court proceeding without first seeking a resolution of the dispute by the Parks Board.

B. For each year during this Agreement, the City shall give concessionaire two unlimited golf course season passes which shall not be transferable and which shall be issued to Stephen Hoefler and Patrick E. Kennedy. Each holder of such season passes shall pay for all greens fees and other costs of golfing, in accordance with the requirements applicable to the general public.

IN WITNESS WHEREOF, the parties have hereunto placed their hands and seals the day and year first above written.

CITY OF GRAND JUNCTION, COLORADO
a municipal corporation

by _____
David A. Varley, Assistant City Manager

by _____
Erik Joe Stevens, Parks and Recreation

ATTEST:

Stephanie Nye, City Clerk

CONCESSIONAIRE:

by _____
Stephen M. Hoefler

by _____
Patrick E. Kennedy

Appendix A

Cleanliness Guidelines

The Concessionaire shall maintain at all times the kitchen, food preparation, dining and banquet areas, bathrooms and all equipment, fixtures, materials, utensils, accessories and other items therein in a clean and sanitary manner. Concessionaire shall comply with all applicable health and sanitation laws and regulations in effect where the food/beverage service is located. The Concessionaire shall permit and facilitate inspection of the food/beverage preparation and service areas by the City and its representatives and by any and all authorized public health, sanitation, building and fire authorities.

The following shall establish the minimum sanitation guidelines for the Concessionaire:

1. The sanitation code of the U.S. Food Service Industry as published by the National Restaurant Association.
2. All State of Colorado Laws, Acts, Statutes and Regulations governing food and beverage service operations.
3. All applicable City of Grand Junction and Mesa county public health/sanitation regulations, rules and codes.
4. All applicable Federal Government Laws, Acts, Rules and Regulations.
5. Any and all applicable statutes, codes, regulations or requirements enacted by the City, County, State or Federal government or which become effective during the pendency of the Agreement.

Sanitation Regulation and Job Inspection

1. Informal inspections of the food service facilities are to be conducted weekly by the Concessionaire. An inspection checklist is to be prepared and completed by the Concessionaire for each inspection, and said checklists are to be made available to the City upon its request. A complete report of corrective measures taken or to be taken for any deficiencies noted should accompany the inspection report.
2. Informal inspections of the food service facilities are to be conducted daily by the concessionaire with immediate corrective measures taken for any deficiencies noted.
3. Formal inspections of the food service facilities are to be conducted a minimum of four (4) times per year, on a quarterly basis, by the City's designated representative, accompanied by the Concessionaire.

Exhibit A

EQUIPMENT PROVIDED BY THE CITY

Quantity Received	Equipment Description	Pertinent Data
	<u>Kitchen</u>	
1	Range and Oven	6-burner & Conv. Oven 68"
1	French Fryer	Double Gas 28"
1	Broiler	Gas 28"
1	Sandwich Prep Unit	Stainless Open Top 72"
1	Walk-in Cooler	120 Sq. Ft. 10' x 12'
1	Freezer	3-door 78" x 32"
1	Refrigerator	2-door 52" x 34"
1	Dishwashing System	Dishwashing Unit
1	Dishwashing System	Tables
1	Hood System	12' Stainless Hood
1	Hood System	Exhaust Fans for 12' Hood
1	Fire Protection System	to fit 12' Hood
1	Ice Machine	1,200 lb. capacity
1	3-Compartment Sink	10' 121" x 23 1/2"
1	Hand Wash Sink	Stainless 28"
	<u>Bar</u>	
1	Beverage Cooler	Stainless 96"
1	Bar Sink	3-Compartment 120"
1	Front Bar	Wood 144"
1	Back Bar	Wood Cabinets 144"
	<u>Seating Areas</u>	
18	Tables	Formica Top 36" x 36"
164	Stacking Chairs	Metal with Vinyl
12	Folding Tables	Formica 96"

Exhibit B

EQUIPMENT PROVIDED BY THE CONCESSIONAIRE

Quantity	Equipment Description	Pertinent Data
	<u>Kitchen</u>	
1	Microwave	
3	Prep Tables	Stainless 60"
3	Storage Racks	Metal 72"
1	Slicing Machine	
1	Glass Washer	
1	Bar Blender	
1	Coffee Machine	
1	Small Bar	6'
30	Sets of Salt & Pepper Shakers	
1	Commercial Toaster	
	Various Pots, Pans & Utensils	
	<u>Serving Items</u>	
60 Doz.	Glassware	Bev, Beer, Wine, etc.
150 Sets	Dishes	Dinner & Salad Plates, Cups, Bowls
	Flatware	Knives, Forks, Spoons
	<u>Snack Bar</u>	
1	Beer Cooler	
1	Hot Dogger	
1	Cash Register	
1	Ice Machine	
3	Compartment Sink	
2	Beverage Dispenser	
1	Microwave	
1	Coffee Machine	
1	Refrigerator	
	<u>Leased Items</u>	
2	Soda Dispensers	

Schedule A

FINANCIAL STATEMENT FORMAT FOR OPERATION SUBMITTAL PURPOSES

FOOD, BEVERAGE AND VENDING SALES

<u>Sales</u>	<u>Amounts (\$)</u>	<u>%</u>
<u>Food Service</u>		
- Catered Affairs		
- Cafeteria Operations		
<u>Beverage Service</u>		
- Catered Events		
- Cafeteria Operations		
<u>Coin Operated Vending</u>		
- Vending		
TOTAL FOOD, BEVERAGE & VENDING SALES	_____	_____
<u>Cost of Sales</u>		
<u>Food Service</u>		
- Catered Affairs		
- Cafeteria Operations		
<u>Beverage Service</u>		
- Catered Events		
- Cafeteria Operations		
<u>Gross Profit</u>		
<u>Food Service</u>		
- Catered Affairs		
- Restaurant Operations		
<u>Beverage Service</u>		
- Catered Events		
- Restaurant Operations		
<u>Coin Operated Vending</u>		
- Vending		
<u>Miscellaneous Sales</u>		

Total Gross Profit	_____	_____
Other Income	_____	_____
TOTAL INCOME	_____	_____

Controllable Expenses

Payroll		
Employee Benefits		
Employee Meals		
Direct Operating Expenses		
- Replacement		
- Insurances		
- Extermination		
- Janitorial & Paper		
- Laundry & Uniforms		
- Telephone & Office		
- Ice		
- Miscellaneous		
Advertising & Sales Promotion		
Administrative & General		
Repairs & Maintenance	_____	_____

TOTAL CONTROLLABLE EXPENSES	_____	_____
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Profit before depreciation		
Depreciation (minor pieces of equipment Contractor may provide)		

OPERATING PROFIT		
Additions to or Deductions from Profit	_____	_____

NET PROFIT

Coin Operated Vending

- Vending

TOTAL FOOD, BEVERAGE & VENDING SALES	_____	_____
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First Amendment of Concession Agreement

THIS AGREEMENT serves as an amendment to that certain agreement dated December 31, 1996, by and between the CITY OF GRAND JUNCTION, COLORADO, hereinafter referred to as the CITY, and PINON GRILL, INC., a Colorado corporation, hereinafter referred to as CONCESSIONAIRE. In consideration of the premises stated in the aforementioned concession and lease agreement, the parties hereto agree as follows:

1. That the December 31, 1996 agreement by and between the CITY and the CONCESSIONAIRE is hereby amended as follows:

The Concessionaire shall obtain and maintain as a condition of this Agreement, a hotel/restaurant liquor license for the clubhouse premises and an optional premises license or licenses for the golf course. Alcohol beverages, as that term is defined in Colorado Revised Statutes, may be sold by the Concessionaire on the golf course. Concessionaire shall strictly enforce the requirements of this Agreement and shall not serve or dispense alcohol beverages in violation of this Agreement, appropriate and prudent service and management practices and/or applicable law. Service that violates any or all of these provisions, or the loss of or the failure to renew the hotel/restaurant and/or the optional premises license(s) shall be deemed a breach of this Agreement. Concessionaire shall adhere to and comply with all liquor, wine and alcohol laws, codes or regulations of the State of Colorado, the City of Grand Junction or other regulatory entities having jurisdiction. Concessionaire shall have and has affirmatively acknowledged its duty to be circumspect and prudent with regard to over-service, underage service and compliance with commercially reasonable alcohol service practices. Furthermore, the Concessionaire agrees that the City, by and through the Director of Parks and Recreation, has plenary authority to order, direct and require the Concessionaire to suspend or terminate sales of alcohol beverages on the golf course, if the Concessionaire is not being or has not been prudent with regard to over-service, underage service and compliance with commercially reasonable alcohol service practices. The Director may limit the area or areas of service of alcohol beverages without suspending service on the entire golf course premises. Any limitation, restriction or suspension of sales by the Director shall be in writing and shall state with particularity the action to be taken. The notice shall state the facts, the circumstances or allegations relied on by the Director in limiting, restricting or suspending sales of alcohol beverages on the golf course. Any such limitation, restriction or suspension of sales by the Director shall not be cause to claim or assert breach of this Agreement or to claim damages, loss of profit, loss of benefit of a bargain or any other direct or consequential damages or liability. If Concessionaire objects to the limitation, restriction or suspension imposed, or to be imposed, by the Director, Concessionaire may notify the City Manager in writing. A meeting with the City Manager shall be convened within no less than 72 hours, at which Concessionaire and the Director may present their views with respect to the Director's actions or proposed actions and a decision shall be rendered by the City Manager, with the advice and consent of the City

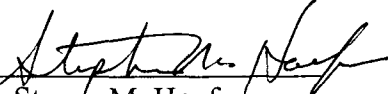
Attorney, as to whether the Director's action will be implemented or stayed. Any action taken or not taken by the City and/or the City Manager under the dispute resolution provisions of this paragraph or paragraph XIX.A. shall not preclude the City from enforcement by or through the Liquor Licensing Authority. If either the Director or Concessionaire is dissatisfied with the decision, he may proceed as set forth in Paragraph XIX.A. below.

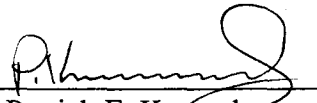
Concessionaire shall pay all license fees, taxes and all retails sales taxes on the products or services which the Concessionaire provides hereunder, including but not limited to, all federal and state taxes, including withholding, state and local taxes, compensation payments, unemployment insurance and other taxes with respect to services or products provided under this Agreement and all other taxes, fees and excises arising from the Concessionaire's operation.

2. This amendment shall replace and supersede only Article III, paragraph B. All other articles, paragraphs, terms and conditions of the agreement not modified herein or hereby are not modified or amended.
3. The parties acknowledge and agree that additional profit, competitive advantage or other tangible or intangible benefit received, accrued or that may potentially be received or accrued, as well as any consideration that CONCESSIONAIRE may receive under or pursuant to the agreement dated December 31, 1996, shall be the sole and only consideration due it. The CONCESSIONAIRE acknowledges the sufficiency and adequacy of consideration and waives any and all contractual defenses or challenges to this amendment.
4. The City of Grand Junction, by and through the Director of Parks and Recreation, is responsible for authorizing and approving the work performed by the CONCESSIONAIRE and in his capacity recommends and approves of the lease amendment as provided in this agreement.
5. The CONCESSIONAIRE, being contractually obligated to perform the work provided for by agreement with the CITY, does hereby affirm its obligation thereunder and furthermore acknowledges, accepts and agrees that CONCESSIONAIRE shall abide by all conditions and obligations imposed by the agreement as amended.


IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the 12th day of May 1999.

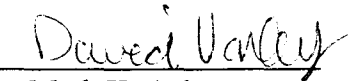
CONCESSIONAIRE
Pinon Grill Inc.

by: 
Steven M. Hoefler
Secretary-Treasurer

by: 
Patrick E. Kennedy
President

CITY OF GRAND JUNCTION

by: 
Erik Joe Stevens
Director of Parks & Recreation

by: 
Mark K. Achen
A-57 City Manager