

**GOLF COURSE
FOOD AND BEVERAGE
CONCESSION AGREEMENT**

1. **Parties.** This agreement is made and entered into between, **Canyon Lake Chophouse**, a South Dakota corporation, of **2720 Chapel Lane, Rapid City, SD 57702** herein after referred to as “Concessionaire,” and the City of Rapid City, a municipal corporation and political subdivision of the State of South Dakota, hereinafter referred to as the “City” residing at 300 Sixth Street Rapid City, SD 57701.

2. **Purpose.** The purpose of this agreement is to establish the rights and conditions under which the City leases the Meadowbrook Golf Course Concessions to the Concessionaire for the limited purpose of conducting food and beverage concessions. This agreement shall be for all food and beverages (including beer and wine) sold at Meadowbrook Golf Course by the Concessionaire.

3. **Lease.** This lease is for the sole purpose of a food and beverage concession. The City hereby leases to the Concessionaire the property commonly known as the Meadowbrook Golf Course Concession. The legal description of the property on which the concession is located is:

Tract 4 of Rapid City Greenway Tract, Rapid City, Pennington County,
South Dakota.

The Concessionaire shall engage in no other business on said premises except the sale of food and beverage and related items. The Concessionaire shall be under the direct supervision of the Park & Recreation Director or his designee. Concessionaire must timely provide to the Director a menu for the facility including pricing for each item and shall provide said notice every time the menu is changed. Said menu must be approved by the Parks & Recreation Director.

4. **Beer License.** The Concessionaire shall at all times maintain a current and valid license for the purpose of selling malt beverages and wine at Meadowbrook. The

failure to maintain such license shall constitute a default of this agreement and be grounds for termination by the City. The Concessionaire further agrees that the malt beverage/wine licenses will be transferred back to the city or its designee at the end of the lease with no compensation paid by the City to Concessionaire for the license.

5. **Maintenance and Sanitation.** Concessionaire shall at all times maintain the leased premises, including equipment, in a neat, clean, and sanitary condition and in good repair, and shall comply with all federal, state, and municipal rules, statutes, ordinances and regulatory measures and laws of any kind applicable to the operation of the Concession. **Concessionaire shall promote and encourage use of recycling containers provided by the City.**

Concessionaire shall be responsible for all interior finishes, light bulbs, restroom supplies, and other similar maintenance items. Concessionaire shall also be responsible for maintenance, cleaning and custodial of all restrooms at Meadowbrook Golf Course. Specifically, Concessionaire shall be responsible for any blockage of the sewer system unless such blockage is determined to have resulted from a cause other than Concessionaire's occupancy of the premises.

The City shall be responsible for maintenance of the exterior of the premises; structural integrity of the premises; building electrical, plumbing, heating, air conditioning; and similar items. Additionally, the City shall be responsible for the snow removal of the parking lots and the bike path. Snow removal shall be completed before 7:00 a.m. unless extraordinary circumstances occur such as more than 10 inches of snow and drifts that occur because of wind, subject to the previously stated obligations of the Concessionaire.

6. **Term.** The term of the lease shall be from March 1, 2013 to December 31, 2017. The Concessionaire agrees to pay to the City One Thousand Dollars (\$1,000.00) on the first day of each month beginning March 1, 2013 through December 31, 2017.

7. **Hours.** The hours of operation shall be submitted to the Parks & Recreation Director for approval prior to the concession opening its operations. Modifications in the hours of operation must be approved by the Parks & Recreation Director. If modifications in the hours of operation are due to a seasonal lack of business, Concessionaire must provide documentation of seasonal lack of business. If modifications to schedule are due to lack of seasonal business, Concessionaire would be responsible for rent during that time; however the city would pay for the utilities.

Hours of operation for the restaurant will coincide with the open hours of the Pro Shop. Hours can vary longer but not shorter than the Pro Shop hours. On-course cart service hours can vary.

Concessionaire shall adequately staff the leased premises during all times that the leased premises are open to the public for business. Concessionaire shall require all employees who work directly with the public to wear appropriate uniform or dress in a manner that is complimentary and consistent with the décor of the leased premises, and mandated by law, if applicable.

In addition to the food and beverage services provided above, Concessionaire agrees to provide such service from on-course carts, at the sole cost to the Concessionaire, unless the Parks & Recreation Director or his designee and Concessionaire mutually agree that they are not needed. The food and beverages served must be of the same quality found in other Golf Course Concessions. The Park & Recreation Director or his designee must approve the cart appearance, manner of operation, and location, subject also to approval of Concessionaire's maintenance, cleaning, and custodial duties in such areas adjacent to the use of such cart. Hours for the Bar and Grill as well as the on-course cart service must be posted in locations visible to the public. An employee who is 21 years or older must be managing any on-course beverage cart if alcohol is on the beverage cart. In most instances, at least one beverage cart is to have alcohol available for purchase and only a person 21 years or older may

manage said cart. A person under 21 years of age may manage a beverage cart not containing alcoholic beverages if it is an additional beverage cart, or there is a tournament where alcohol is not being sold on the course. An example of when there would not be a beverage cart with alcohol on the course is when a high school golf tournament is being played and no alcohol is being sold on the course during the tournament.

The Concessionaire will be billed for gas for the beverage cart on the last day of each month.

City will provide the starter shack at no additional charge.

8. **Exclusive Right.** Concessionaire shall have the exclusive right regarding all food and beverage concessions at the golf course and no other entity or person shall be allowed to sell or give away any food or beverage without the prior written consent of the Concessionaire with the exception of food and beverages for South Dakota Golf Association (SDGA) and Pro Golf Association (PGA) Demo Days. City agrees that every effort will be made by the Meadowbrook Staff to purchase food and beverages from the Concessionaire for the above mentioned activities. This does not prohibit an individual from bringing his own non-alcoholic beverage, food or snacks for his own personal use onto the course. All alcoholic beverages will be prohibited unless furnished by the Concessionaire. The Parks & Recreation Director or his designee may, in his/her discretion, prohibit alcoholic beverages outside the clubhouse at such times as he/she may determine. Concessionaire agrees to work closely with other organizations on an individual basis to provide catering during golf tournaments at the golf course if requested by the Golf Pro Shop Manager.

9. **Utilities**

Meadowbrook Golf Course utilities:

Gas: The Concessionaire shall pay 75% of all gas costs.

The City will be responsible for paying the remaining 25% of all gas costs.

Water, Sewer and Electric: The Concessionaire shall pay 75% of all water, sewer, and electric costs each year.

The City will be responsible for paying the remaining 25% of all water, sewer, and electric costs.

Garbage Removal: The City shall be responsible for the collection in a central location on the golf course premises of all garbage, trash, **recyclables** and debris arising out of the operation of all concessions granted under this Agreement.

10. **Cable TV.** Concessionaire shall be responsible for paying for cable television service. Internet will be provided under the Meadowbrook service and paid by the City.
11. **Telephone.** Concessionaire shall be responsible for paying for its phone line in the Meadowbrook telephone service.
12. **Signs.** Concessionaire shall not place sign(s) on sidewalks, in public rights of way, or on the exterior of the building premises, except those signs approved by the City as to size and location prior to the execution of this agreement.
13. **Public Accounting.** The Concessionaire agrees to make available to the Parks and Recreation Director or his designee its financial transactions within thirty (30) days of a written request by the Director. The Concessionaire agrees to make available to the Parks and Recreation Director or his designee its financial transactions within sixty (60) days after December 31 of the operating year. Such accounting shall be in the form of a report of income and expenses, and balance sheet of assets and liabilities, although the City reserves the right to request additional information.
14. **Liability and Indemnity.** The Concessionaire agrees to defend, indemnify and save harmless the City from any and all claims, damages, costs, and expenses, including reasonable attorney fees, arising out of or in connection with the conduct or management of the business conducted by the Concessionaire. City shall not be liable and the

Concessionaire waives all claims for damages to person(s) or property sustained by the Concessionaire, its agents, servants, invitees, and customers resulting from the condition of the building in which the leased premises are situated or resulting from Concessionaires possession of said building or said leased premises.

15. Insurance. Concessionaire shall purchase and maintain at a minimum the following insurance during the term of this agreement:

A. Worker's Compensation coverage as required by law, including Employer's Liability Insurance of not less than:

Bodily Injury by Accident	\$100,000.00 Each Accident
Bodily Injury by Disease	\$100,000.00 Each Employee
Bodily Injury by Disease	\$500,000.00 Policy Limit

B. Commercial General Liability Insurance with a Combined Single Limit of Liability of not less than:

General Aggregate	\$2,000,000.00
Products and Completed Operations Aggregate	\$1,000,000.00
Personal Injury Each Person	\$1,000,000.00
Advertising Injury Each Person Limit	\$1,000,000.00
Each Occurrence Limit	\$1,000,000.00

C. Commercial Automobile Insurance for owned autos, hired and non-owned automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000.00) each person.

D. Commercial Umbrella Insurance providing excess liability over primary coverage of Employer's Liability Commercial General Liability, and Commercial Automobile Liability limits of not less than One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate.

E. Additional insurance regulations. Each Insurance policy shall include the following conditions by endorsement to the policy:

- (i) Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to City by certified mail to: City Finance

Officer, 300 Sixth Street, Rapid City, South Dakota, 57701, or to such address as the City may designate in writing. The Concessionaire shall also notify City in a like manner within ten (10) days of receipt, of any notices of expiration, cancellation, non-renewal payment of premiums or assessments for any deductibles which all are the sole responsibility and risk of the Concessionaire.

(ii) Companies issuing the insurance policy or policies shall have no recourse against the City for payment of premiums or assessments for any deductibles that are the sole responsibility and risk of the Concessionaire.

(iii) The Term "City" shall include all elected officials, boards, commissions, divisions, departments, and officers of the City and individual members and employees thereof in their official capacities, and while acting on behalf of the City.

(iv) The City shall be endorsed to the required policy or policies as an additional insured.

(v) The policy clause "Other Insurance" shall not apply to any insurance policy coverage currently held by the City, to any future coverage, or to the City's self-insured retentions of whatever nature. Concessionaire and City each waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for the loss of or damage to such waiving party or its property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Concessionaire and City shall give noticed to their respective insurance carriers that the foregoing mutual waiver of subrogation is contained in the lease.

16. **Waiver of Subrogation.** Each of the parties hereby waives and relinquishes any and all rights which it may have against the other party on account of any claims for damages resulting from a loss to property owned by said party caused by the alleged negligence of the other party or its agents or employees or persons on the within described premises by permission of such other party, whether or not the property of such other party is insured against such loss in the amount of its full insurable value. Each of the parties hereto will use good faith efforts to procure from the carrier of the insurance on its property an endorsement on all its policies of insurance in substantially the following language:

It is hereby stipulated that this insurance shall not be invalidated should the insured waive in writing prior to loss any or all right of recovery against any party for loss occurring to the property described herein or attached thereby.

17. **Non-Discrimination.** Concessionaire shall provide food service to the general public without discrimination as to race, color, creed, national origin, disability, age, or sex. Concessionaire agrees that in the operation and use of the premises, he will not on the grounds of race, color, creed, national origin, disability, age, or sex, discriminate or permit discrimination against any person or group of persons in any manner. The prices charged by Concessionaire shall be reasonable and shall not be in excess of prices prevailing elsewhere for the same kind and quality of service.
18. **Binding Upon Heirs, Successors, and Assignors.** This agreement is binding upon the parties, their heirs, beneficiaries, successors, administrators, executors and assignors.
19. **Assignment and Sublease.** Concessionaire agrees not to assign, lease, or sublease the premises as described in paragraph 3 of this Lease, or any part thereof, without the express written permission of the City.
20. **Fixtures.** The city has in its inventory and will allow the use of the following equipment and fixtures:
List in Exhibit A

Concessionaire shall be responsible for providing all other equipment for use in any of the concession areas granted by this agreement. All fixtures placed on the premises by the Concessionaire shall remain the property of the Concessionaire; improvements to the property, including wiring and structural improvements, shall become the property of the City.
21. **Surrender of Possession.** At the expiration of the tenancy hereunder, whether by lapse of time or otherwise, Concessionaire shall quit and surrender the leased premises in good condition and repair, reasonable wear and tear excepted.

In the event Concessionaire remains in possession of the leased premises after the expiration of the tenancy hereunder and without the execution of a new lease, he shall be deemed to be occupying said premises as Lessee from month to month subject to all other conditions, provisions, and obligations of this lease insofar as the same are applicable to a month to month tenancy.

22. **Default.** If either party to this lease is in default under any provision of this lease and such default shall continue to exist more than thirty (30) days after receipt by the defaulting party written notice, except for nonpayment of rent which shall be ten (10) day written notice, the other party may terminate this lease. If the City is the defaulting party, the Concessionaire may surrender possession of the leased premises to the City and if the Concessionaire is the defaulting party, the City may take possession of the leased premises. Such termination of this lease shall be without prejudice to the right of recovering damages against the defaulting party for breach of this agreement.
23. **Termination.** The lease granted by this agreement shall be terminable for cause by either party upon a thirty (30) day written notice. It is specifically agreed that the Concessionaires failure to operate the food and beverage concession for a period equal to the minimum hours of operation required shall be grounds for termination without notice of default. If the agreement is terminated, Concessionaire agrees to surrender possession of the leased premises to the city.
24. **Damage or Destruction of Premises.** If the premises are damaged or destroyed by fire or other causes, the City shall be under no obligation to repair or replace. Should the City reconstruct the damaged or destroyed premises within two (2) years of the execution of this lease and agree to again lease the premises, Concessionaire shall be provided the right of first refusal on a new lease. If the premises become unusable for the use intended for a period to exceed thirty (30) days, this lease shall terminate unless otherwise agreed to by the parties.

CONCESSIONAIRE
Canyon Lake Chophouse

By: Mike Derby
Its: Owner

By: Carmen Derby
Its: Owner/CFO

State of South Dakota)
 SS.
County of Pennington)

On this the ____ day of _____, 2013, before me, the undersigned officer, personally appeared Mike Derby and Carmen Derby, who acknowledged themselves to the Owner and Owner/CFO, respectively, of Canyon Lake Chophouse, a South Dakota Corporation, and as such officers, being authorized to do executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by his/herself as Officers of said Corporation.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)