

**AMENDMENT TO GOLF COURSE
FOOD AND BEVERAGE CONCESSION AGREEMENT**

This Amendment to the *Golf Course Food and Beverage Concession Agreement* is entered into effective the _____ day of _____, 2013, by and between Derby Advertising Inc., a South Dakota corporation, dba Canyon Lake Chophouse, 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 “City,” residing at 300 Sixth Street, Rapid City, SD 57701.

WHEREAS, the parties have entered into a *Golf Course Food and Beverage Concession Agreement* dated February 4, 2013 (the “Agreement”), attached as Attachment A; and

WHEREAS, the Agreement set forth the rights and conditions by which Concessionaire may conduct food and beverage concessions at the Meadowbrook Golf Course; and

WHEREAS, extenuating circumstances such as road construction, parking lot construction, weather, and other circumstances had a detrimental effect on the public’s use of the Meadowbrook Golf Course in 2013; and

WHEREAS, the parties expect that these extenuating circumstances will negatively affect use of the Meadowbrook Golf Course in 2014 and 2015; and

WHEREAS, as a result the parties wish to amend the terms of the Agreement to link Concessionaire’s annual lease payments in 2014 and 2015 to the overall use of the Meadowbrook Golf Course; and

WHEREAS, the parties mutually desire to reduce their understandings and agreements to writing by executing this Amendment to the Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, it is hereby agreed as follows:

1. Incorporation of Recitals. The aforementioned recitals are incorporated herein by reference as if more fully set forth hereinafter.

2. Maintenance and Sanitation. Paragraph 5 “Maintenance and Sanitation” is hereby amended to remove the sentence “Concessionaire shall also be responsible for maintenance, cleaning and custodial of all restrooms at Meadowbrook Golf Course.” The parties agree that hereinafter City will be responsible for maintenance, cleaning, and custodial of all restrooms at Meadowbrook Golf Course for the life of the Agreement.

The remainder of Paragraph 5 shall remain in full force and effect.

3. Term. Paragraph 6 titled “Term” shall be deleted and replaced with the following:

Term and Payments. The term of the lease shall be from March 1, 2013 to December 31, 2017.

For the years 2014 and 2015, the parties agree to calculate Concessionaire's annual payments pursuant to this Agreement based upon the number of starts which occur at the Meadowbrook Golf Course for the golf season for that calendar year. One "start" is defined as one player beginning a round of golf.

The parties agree to the following calculation scheme for an annual payment:

- 43,000 starts or more – Concessionaire pays \$7,000.
- 40,000 to 42,999 starts – Concessionaire pays \$5,500.
- 37,000 to 39,999 starts – Concessionaire pays \$4,000.
- 34,000 to 36,999 starts – Concessionaire pays \$2,500.
- Less than 34,000 starts – Concessionaire pays \$0.

City agrees to tabulate the annual starts and provide the information to Concessionaire by November 30. Concessionaire promises to provide all payment under this paragraph before December 30 of each applicable calendar year.

The parties agree that the original terms of paragraph 6 of the Agreement will apply to calendar years 2016 and 2017 unless the parties agree to further amend the Agreement.

4. Utilities. Paragraph 9 titled "Utilities" shall be deleted and replaced with the following:

Meadowbrook Golf Course utilities:

Gas, Water, Sewer, Electric

"Utility costs" shall include the costs of gas service, water, sewer, and electric service.

City Responsibilities: City agrees to pay all monthly bills for utility costs throughout 2014 and 2015 and to ensure that utilities are consistently provided to the facility.

City agrees to pay all monthly bills for utility costs in 2014 and 2015 for those months in which Concessionaire is closed without seeking any reimbursement from Concessionaire.

For those utility costs arising during the months Concessionaire is open, City agrees to pay 25 percent of all utility costs without seeking any reimbursement from Concessionaire.

Concessionaire's Share of Utility Costs: For those utility costs which arise during the months Concessionaire is open only, Concessionaire agrees to reimburse City for a proportion of the utility costs, up to 75 percent of the total utility costs, based upon the annual number of starts as defined in Paragraph 3.

The parties agree to apportion the cost the utilities arising during the months Concessionaire is open in the following manner:

- 43,000 starts or more – Concessionaire pays 75 percent of utility costs, City pays 25 percent of utility costs.
- 40,000 to 42,999 starts – Concessionaire pays 56 percent of utility costs, City pays 44 percent of utility costs.
- 37,000 to 39,999 starts – Concessionaire pays 37.5 percent of utility costs, City pays 62.5 percent of utility costs.
- 34,000 to 36,999 starts – Concessionaire pays 19 percent of its share of utility costs, City pays 81 percent of Concessionaire's share of utility costs.
- Less than 34,000 starts – Concessionaire pays 0 percent of utility costs, City pays 100 percent of utility costs.

City agrees to tabulate the annual starts and provide the information regarding Concessionaire's reimbursement to Concessionaire by November 30. Concessionaire promises to provide all payment for utilities under this paragraph before December 30 of each applicable calendar year.

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.

5. Balance of Agreement Terms Remain. All other terms of the Agreement shall remain unchanged, and in full force and effect. In the case of conflict of another portion of the Agreement not amended hereby with the amended sections above, the amended sections, and the intent those amended sections, shall control.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in the manner appropriate to each, to be effective as set forth herein.

Dated this _____ day of _____, 20____.

CITY OF RAPID CITY

By _____
Sam Kooiker, Mayor

ATTEST:

Finance Officer
(SEAL)

State of South Dakota)
SS.
County of Pennington)

On this the _____ day of _____, 2013, before me, the undersigned officer, personally appeared Sam Kooiker and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Officer, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the City of Rapid City by themselves as Mayor and Finance Officer.

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

(SEAL)

Notary Public, South Dakota
My Commission Expires:

CANYON LAKE CHOPHOUSE

*By Mike Derby
Its Owner*

*By Carmen Derby
Its Owner/CFO*

STATE OF _____)
)ss.
COUNTY OF _____)

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

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

(SEAL)

Notary Public, State of _____
My Commission Expires: _____