

CANYON LAKE RESORT CONCESSION AGREEMENT

This Agreement is by and between the City of Rapid City (“City”), a South Dakota municipal corporation of 300 Sixth Street, Rapid City, SD 57701, and Derby Advertising, Inc. dba Canyon Lake Resort (“Concessionaire”), a South Dakota corporation of 2720 Chapel Lane, Rapid City, SD, 57702. This Agreement is effective once the signatures of both of the parties are affixed to this Agreement. For and in consideration of the covenants and agreements herein contained and of the payments of monies as hereinafter set forth, the parties hereto mutually agree as follows:

1. Right to Occupy and Operate. The City does hereby grant to the Concessionaire the right to occupy a certain outlined area within Canyon Lake Park (“Concession Area”) for the purposes stated within this Agreement. The boundaries of the Concession Area are outlined in blue in Attachment A. Such concession right is a privilege granted by the City subject to the terms and conditions herein.

2. Purpose. The Concessionaire agrees to operate, maintain and rent paddleboats in the Concession Area. All paddleboats offered for rent and for public use by the Concessionaire shall be of number one, first-grade quality. All federal, state, and local regulations pertaining to safety and to quality of products offered for rent must be met by the Concessionaire. The Concessionaire shall use the areas herein described only for the purposes stated and for no unlawful purposes whatsoever. The concessionaire shall provide all equipment necessary to operate the rental services.

3. Term, Hours, and Season. The term of this Agreement will commence on June 1, 2022, and will end on October 31, 2024, unless it is terminated sooner under the provisions of this Agreement. Any future agreements between the parties related to the Concession Area shall be under the terms and conditions mutually agreed to by the parties at that time.

The Concessionaire shall operate its rental on a daily basis. The 2022 concession season shall run from June 7 to and including October 31. The 2023 and 2024 concession seasons shall run from May 1 to and including October 31. The concession shall not operate outside of that date range, unless the Concessionaire receives written permission from the Parks and Recreation Director or his/her designee. The concession operation shall not commence before 7:00 am or continue after 10:00 pm of any day.

4. Compensation to be Paid to the City. The Concessionaire agrees to pay to the City an annual license payment in the amount of Five Hundred Dollars (\$500) payable on July 1, 2022, July 3, 2023, and July 1, 2024.

5. Utilities. Concessionaire must pay the cost of all utility services incidental to the operation of the concession at a metered, or flat rate where applicable, and shall permanently install at its own expense in accordance with all City and State requirements, any utilities necessary for its operation at the Concession Area. Said installed utilities shall become the property of the City upon installation and shall remain affixed to the Concession Area.

6. Indemnify, Defend, and Hold Harmless. The Concessionaire agrees to defend, indemnify, and hold harmless the City, its elected officials, employees, and agents from all lawsuits, claims, damages, and actions of any kind or nature arising directly or indirectly on the part of the

Concessionaire, its agents, employees, contractors, and suppliers out of its operations under the Agreement.

7. Liability Insurance. The Concessionaire agrees to purchase and maintain personal injury and property damage insurance for each occurrence of injury or damage in the minimum amount of Two Million Dollars (\$2,000,000) for personal injury with a Two Million Dollar (\$2,000,000) general aggregate limit. The City shall be named an additional insured in said policy or policies, and the Concessionaire shall furnish to the City evidence of insurance by a certificate of insurance for required coverage. The certificate of insurance of required coverage shall state that the City shall be given any notice of cancellation at least 30 days prior to any cancellation, unless the cancellation is for nonpayment of premiums. The Concessionaire's insurance coverage shall be primary to any insurance coverage maintained by the City. The Concessionaire's insurance coverage shall not seek contribution from any insurance coverage maintained by the City.

8. Inspection. The City reserves the right to inspect at any reasonable time the concession structure, paddleboats, and premises to assure and verify compliance with all City and State laws and regulations and with any other terms or conditions of this Agreement.

9. Sanitation. The Concessionaire shall keep all fixtures, equipment and personal property used in the operation of the concession, whether owned by the Concessionaire, the City, or third parties, and the Concession Area, in a clean, sanitary, and orderly condition at all times and shall conduct the concession strictly in accordance with State and local health requirements. All janitorial services necessary in the Concession Area shall be the responsibility of the Concessionaire. The Concessionaire shall collect trash and garbage at the end of each day in which the concession is open for any period greater than one hour, or more often as directed by the Parks and Recreation Director or his/her designee, within the entire Concession Area. The Concessionaire shall provide adequate garbage receptacles to store trash and garbage for pickup by the Concessionaire. The Concessionaire will dispose of trash collected from the Concession Area and deposited in sealed containers in locations designated by the City.

10. Improvements, Equipment, Construction, and Maintenance. No structures or improvements shall be located upon public property except a dock and a ticket booth. At any time, the City Parks and Recreation Director or his/her designee may require the Concessionaire to perform maintenance and repair or replacement under the above requirements if, in his opinion, such work is reasonably required and necessary.

All construction, repair, restoration, and maintenance required of the Concessionaire shall at all times be in accordance with the Rapid City Municipal Code, and all construction shall be coordinated with and approved by the Rapid City Parks and Recreation Director or his/her designee. The Concessionaire shall not install any additional booths, stands, fixtures, mobile units, or any other equipment or structures in connection with the business covered by this Agreement in addition to those contemplated herein without the consent of the Parks and Recreation Director or his/her designee.

11. Supervision and Operation. The Concessionaire shall provide adequate adult supervision at all times during operation and restrict operation of paddleboats to such areas of the lake as may be established and marked by the City in the sound discretion of the Parks and Recreation Director or his/her designee. All operations shall be conducted in a manner consistent with the park atmosphere at Canyon Lake Park.

12. Service and Compliance with Laws and Regulations. The Concessionaire shall provide service to meet seasonal public demand, subject to any reasonable orders, rules, and regulations concerning the conduct and management of the business that may be made by the Parks and Recreation Director or his/her designee.

13. Assignment. The Concessionaire shall not assign or transfer its rights and privileges granted under this Agreement, either in whole or in part, without first obtaining the written consent of the Parks and Recreation Director or his/her designee.

14. Termination. The City may terminate this Agreement and may repossess the Concession Area in the event any payment herein agreed to be made is in arrears and remains unpaid for a period of fifteen (15) days after the same is due. Or in the event any of the other provisions, terms or conditions of this Agreement have been violated upon giving ten (10) days written notice to the Concessionaire to cure the violation and the City's intention to so terminate. At the end of said ten (10) days, all the rights of the Concessionaire hereunder shall terminate unless said violation is cured to the satisfaction of the Parks and Recreation Director, his/her designee, or other agents or officials of the City.

Such termination shall not waive the right of the City to recover damages from the Concessionaire for its failure to comply with the terms of this Agreement. The acceptance of monies due the City for any period or periods after a default or any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver on the part of the City. No waiver or default by the City of any of the terms, covenants, or conditions hereof shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept and observed by the Concessionaire.

15. Removal on Termination. On the date of termination hereof, or in case of the termination of the relationship created by this Agreement prior thereto, the Concessionaire shall have the right to remove from the Concession Area all personal property, fixtures, and equipment not a part of the real estate, installed by and title to which the Concessionaire retains; subject, however, to any valid lien or claim which the City may have for unpaid fees provided, also, that if said removal causes any damage to the premises, said Concessionaire will repair the same in a proper and satisfactory manner at its own expense.

16. Non-Discrimination. The Concessionaire shall not on the grounds of race, color, sex, creed, religion, ancestry, national origin or disability discriminate or permit discrimination against any person or group of persons, in any manner prohibited by local, state, or federal laws. The Concessionaire further agrees to comply with any requirements made to enforce the foregoing which may be required of or by the City.

17. Severability. If any provision of this Agreement shall be invalid for any reason, such invalidity shall not affect the remaining provisions herein, the parties to this Agreement hereby declaring that they would have agreed to the other provisions of this Agreement notwithstanding such invalidity.

18. Contacts. Anything required by this Agreement to be delivered to City in writing shall be delivered to the following contacts. The contact for Derby Advertising, Inc. dba Canyon Lake Resort is: Michael Derby, 4510 Shore Drive, Rapid City, SD 57702. City has a continuing

obligation to ensure that the Director of Parks and Recreation has accurate contact information for Concessionaire and to notify the Director of any changes to the contact information herein.

Unless otherwise specified in this Agreement, the contact for the City will be: Director of Parks and Recreation, 515 West Boulevard, Rapid City, SD 57701, (605) 394-4175.

19. City Authority. All matters pertaining to the terms of this Agreement shall be subject to the powers of the City Council and its designated authorized agents consistent with the laws of the State of South Dakota. The City Council appoints and delegates the Director of Parks and Recreation as the primary contact point for City with Concessionaire in administering and fulfilling the terms of this Agreement.

20. Relationship between the Parties. This Agreement does not create any employee/employer relationship between the City of Rapid City and Concessionaire, its agents or employees. Nothing contained in this Agreement is intended to create a partnership or joint venture between Concessionaire and City, and no agent of Concessionaire shall be the agent of City. Concessionaire covenants that it will not take any action in the name of, or by holding itself out as the agent of, the City of Rapid City.

21. Integration. The parties agree that this Agreement, along with any attachments, constitutes the entire understanding between the parties and supersedes all prior negotiations, agreements, and understandings, whether oral or written.

23. Choice of Law. This Agreement shall be governed by the laws of the State of South Dakota and any action to enforce the terms of this Agreement shall be venued in the 7th Judicial Circuit, Pennington County, South Dakota.

24. Waivers. The failure by one party to require performance of any provision of this Agreement shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

25. Amendments. This Agreement may only be amended by a written document duly executed by both parties.

26. Headings. The headings and numbering of the different sections of this Agreement are inserted for convenience only and are not to control or affect the meaning, construction or effect of any provision.

Dated this ____ day of _____, 2022.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Director

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF PENNINGTON)

On this the _____ day of _____, 2022, before me, the undersigned officers, personally appeared Steve Allender and Pauline Sumption, who acknowledged themselves to be the Mayor and Finance Director, respectively, of the City of Rapid City, a municipal corporation, and that they as such Mayor and Finance Director, 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 Director.

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

Notary Public, South Dakota

My Commission Expires:

(SEAL)

Dated this 4th day of May, 2022.

DERBY ADVERTISING, INC.
DBA CANYON LAKE RESORT

Michael Derby
Michael Derby, President

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF PENNINGTON)

On this the 4th day of May, 2022, before me, the undersigned officer, personally appeared Michael Derby, who acknowledged himself to be the President of Derby Advertising, Inc. dba Canyon Lake Resort, and that he, as such President being authorized so to do, executed the foregoing instrument for the purposes therein contained.

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

Larry D. O'Neill
Notary Public, South Dakota

My Commission Expires:

Larry D. O'Neill
My Commission Expires
May 14, 2025

(SEAL)



Attachment A
Canyon Lake Park

