

**CONCESSION AGREEMENT
SPRING CREEK RESORT AND MARINA**

This Concession Agreement is made and entered into on _____ ("Effective Date") by and between the South Dakota Department of Game, Fish and Parks ("Department") 523 East Capitol, Pierre South Dakota 57501, and _____, ("Concessionaire") Address. This Agreement is authorized by the South Dakota Game, Fish and Parks Commission and is subject to and governed by the requirements of ARSD Article 41:13 subtitled Park Concession Leases effective October 17, 2005, (the "Rules") a copy of which has been provided to Concessionaire.

WITNESSETH

Whereas, Spring Creek Recreation Area is administered by the Department for providing park and related services, tourism, and resource management; and

Whereas, the Department desires to have a limited and prescribed portion and areas of Spring Creek Recreation Area operated by a concessionaire as a resort open to the general public; and

Whereas, the Department chooses to commercially operate the area through a private concessionaire to provide services to the general public; and

Whereas, the Department has provided grounds and facilities of the area, and desires a private concessionaire to operate the same; and

Whereas, the Commission has promulgated the Rules relating to concession leases under which certain powers and authority to enter into concession leases and agreements have been delegated to the Department; and

Whereas, Concessionaire desires to enter into a concession agreement with the Department to operate a resort concession in portions of Spring Creek Recreation Area and be a concessionaire, as defined in the Rules.

Now therefore, for the purposes of carrying out concession operations in part of the Park pursuant to the terms and conditions of this Agreement, the parties agree as follows:

Section 1. Term of Agreement

- (a) This Agreement shall be for a term of ten (10) years, commencing on _____ and ending on _____.

Section 2. Definitions

- (a) "Agreement" means this Concession Agreement, and all its amendments, addendums, exhibits, attachments, and all documents executed for the purpose of ensuring Concessionaire's performance of this Concession Agreement.
- (b) "Commission" means the South Dakota Game, Fish and Parks Commission.
- (c) "Concessionaire" means as defined under ARSD 41:13:01.
- (d) "Concessionaire Facilities" means as defined under ARSD 41:13:01.
- (e) "Department" means the South Dakota Department of Game, Fish and Parks.
- (f) "Division" means the Division of Parks and Recreation, a division of the Department of Game, Fish and Parks responsible for the administration of the state park system, including Spring Creek Recreation Area.
- (g) "Director" means the Director of the Division of Parks and Recreation, acting on behalf of the Secretary of the Department of Game, Fish and Parks, and his or her duly authorized representatives.
- (h) "Fair Market Value" means as defined under ARSD 41:13:01.
- (i) "Government Facilities" means as defined under ARSD 41:13:01
- (j) "Gross Receipts" means all revenue received, to be received, or realized by Concessionaire from all sales for cash or credit, of services, accommodations, materials and other merchandise made pursuant to the rights granted under this Agreement, Gross Receipts of SubConcessionaires, commissions earned on leases or agreements with other persons or companies operating in the Resort, and revenue earned from sales through electronic media, mail order or otherwise. Concessionaire shall report all of its revenues to the Department without allowances, exclusions or deductions of any kind. For purposes of calculating franchise fees and other fees and reserve amounts identified in this agreement, gasoline sales, hunting and fishing license sales (not including agent fees), and park entrance license sales will be excluded from Gross Receipts.

- (k) "Gross Receipts of SubConcessionaires" means all revenue received, to be received, or realized by SubConcessionaires from all sales for cash or credit, of services, accommodations, materials and other merchandise made as a result of the exercise of the rights conferred by a lease, license or agreement between the Concessionaire and a SubConcessionaire at the Resort, revenues of Sub-SubConcessionaires, commissions earned on leases or agreements between SubConcessionaires and other persons or companies operating in the Resort, and revenue earned from sales through electronic media, mail order or otherwise. A SubConcessionaire shall report all of its revenues to the Concessionaire without allowances, exclusions or deductions of any kind or nature.
- (l) "Park" means the property within the boundaries of Spring Creek Recreation Area.
- (m) "Personal Property" means as defined in ARSD 41:13:01.
- (n) "Possessory Interest" means as defined in ARSD 41:13:01.
- (o) "Qualified Appraiser" means as defined in ARSD 41:13:01.
- (p) "Resort" means the geographic area as set forth in Exhibit A-1 that includes Government Facilities and Concessionaire Facilities assigned to the Concessionaire as set forth in Exhibit A-3 and A-4, and the operation thereof as permitted under this Agreement.
- (q) "SubConcessionaire" means a third party that, with the approval of the Director, has been granted rights by Concessionaire to operate under a concession lease, license or agreement (or any portion thereof) between Concessionaire and a third party, or between a SubConcessionaire and a third party, whether in consideration of a percentage of revenues or otherwise.
- (r) "Park Supervisor" means the management of Spring Creek Recreation Area or his or her duly authorized representatives.

Section 3. Accommodations, Facilities and Services

- (a) Concessionaire shall provide the following accommodations, facilities, and services within the Resort, subject to the Performance Standards for the Operation and Maintenance of Spring Creek Recreation Area Resort attached to the Agreement as Exhibit B.

Minimum Required Accommodations, Facilities and Services

1. At least 53 boat slips with water and electricity (30/50 Amp) hookups on 36 of the slips.
 2. A resort store offering grocery items, ice, fishing and camping supplies, fishing and park entrance licenses, basic first-aid supplies, state souvenir sales, and miscellaneous items
 3. Fishing bait and tackle sales
 4. Fishing license sales
 5. Boat gas, oil and grease sales, including on-the-water boat gas sales
 6. Operation and maintenance of the Department-owned water marine sani-pump wastewater pump-out service located on B-Dock.
 7. Cabin and lodge room rental. At least one cabin must be compliant with the Americans with Disabilities Act.
 8. Wireless internet service in restaurant and to marina slips
- (b) The Department authorizes the Concessionaire to provide only the following additional accommodations, facilities and services within the Resort. The Department retains the right to approve these or any other additional services contemplated by the Concessionaire in advance.

Additional Authorized Accommodations, Facilities and Services:

1. Additional marina rental slips as approved by the Department.
2. Restaurant food service
3. Hunting license and supply sales.
4. Licensed off-sale beer sales between 6 a.m. and midnight.
5. Licensed on- sale liquor and malt beverage sales between 6 a.m. & midnight.
6. Fishing guide service
7. Rental boats and motors
8. Firewood sales with written permission from the Department.
9. Dry-dock boat and trailer storage in Department-approved locations only

10. The Lessee shall not permit gambling on the premises, except for video lottery machines of the type authorized by SDCL Ch. 42-7A. All revenue derived from video lottery after prizes and payment of the Lottery Commission's percentage is subject to the franchise fees payable to the Department under this lease

- (c) The Department retains the right to authorize additional accommodations, facilities, services and merchandise within the Park. The Department shall give the Concessionaire first opportunity to provide such additional accommodations, facilities, services and merchandise. If Concessionaire does not desire to provide such additional accommodations, facilities, services and merchandise, or if the Department and Concessionaire are unable to agree upon the terms under which Concessionaire would provide such additional accommodations, facilities, services and merchandise, the Department shall be entitled to contract with a third party to provide said additional accommodations, facilities, services and merchandise within the Resort under terms acceptable to the Department.
- (d) The Department reserves the right to establish reasonable standards as to the nature, type and quality of Concessionaire's services and merchandise. The Department retains the right to disapprove types of services and merchandise that do not meet these standards.

Section 4. Rates and Quality Control

- (a) All rates and prices for accommodations, facilities, services and merchandise shall be clearly posted or marked and are subject to Administrative rule 41:13:02:07.
- (b) The Department reserves the right to establish reasonable standards as to the nature, type and quality of the Concessionaire's accommodations, facilities, services and merchandise. All accommodations, facilities, services and merchandise sold are subject to the rules and laws of the State of South Dakota and the United States.
- (c) Concessionaire may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Agreement. However, the Director reserves the right to review and modify Concessionaire's and/or SubConcessionaire's complimentary or reduced rate policies and practices.

Section 5. Capital Development and Improvements

- (a) Concessionaire, with prior written approval of the Director, may construct, modify or install at its cost such fixtures, structures, or improvements to Government Facilities or Concessionaire Facilities necessary for the operations required or authorized hereunder, subject to the Possessory Interest (and extent thereof) as authorized by ARSD 41:13. Concessionaire shall acquire no Possessory Interest to any fixtures, structures, and improvements made to Government Facilities or Concessionaire Facilities without the written approval of the Director. Requests shall be made in writing to the Department in sufficient detail to determine the scope, financing and scheduling of the proposed project. Drawings, maps or illustrations shall accompany the written request which accurately describe the location and design of all proposed fixtures, structures and improvements and affected areas. All requests must address the requirements of the Americans with Disabilities Act.

Unless otherwise agreed upon by the parties in advance, professionally developed design and construction plans for each project contemplated and requested by Concessionaire, prepared by architects, engineers and/or contractors, shall be submitted to the Director for approval. The design and construction plans shall include: a written narrative of the proposed work, the estimated cost of the fixtures, structures and improvements contemplated and any required regulatory or permit information applicable. No construction, modification, or installation of fixtures, structures and improvements shall commence without receipt of written approval from the Director. Once approved, Concessionaire shall make no changes or alterations to the construction plans except upon the Director's written approval. Concessionaire agrees that any review or approval by the Director of Concessionaire's construction plans is solely for the benefit of the Department, and without any representation, warranty or liability whatsoever to Concessionaire or any other person with respect to the adequacy, correctness or sufficiency thereof or any compliance with all local, state and federal laws, regulations and building codes, or otherwise. All designs and construction of the fixtures, structures and improvements shall be in compliance with all local, state and federal laws, regulations and building codes. The Director may require plans to be prepared, approved and signed off by a professional licensed architect and/or engineer for a proposed project.

Concessionaire shall timely commence and complete construction of the fixtures, structures and improvements in accordance with the construction plans as approved by the Director. During the process of construction and upon its completion, the Director shall have the right to periodically inspect the construction project. Upon completion of construction, Concessionaire shall submit to the

Director a certification of an architect, engineer and/or contractor certifying that the fixtures, structures and improvements have been completed in accordance with the construction plans.

Upon completion of these projects, Exhibit A shall be amended to include the additions and value of Possessory Interest associated with the fixtures, structures and improvements.

- (b) In addition to any rights and remedies afforded to the Department for breach of Agreement, the construction of any unauthorized fixtures, structures and improvements to or of Concessionaire Facilities and/or Government Facilities, at the discretion of the Department, must either be;
 - (i) restored to their original condition at the expense of Concessionaire, or
 - (ii) become Government Facilities with no Possessory Interest compensation.
- (c) Activities involving any ground disturbance, placement of fill material, prescribed burning of vegetation or tree removal shall require prior written approval from the Department. Any requests for these activities shall be made to the Department in writing in sufficient detail to determine the scope and schedule of the proposed project. Drawings, maps or illustrations accurately describing the location of these activities shall accompany the written request. All activities involving any ground disturbance, placement of fill material, prescribed burning of vegetation or tree removal shall be completed in compliance with all local, state and federal laws and regulations.
- (d) In the event that Concessionaire constructs fixtures, structures or improvements to Concessionaire Facilities or Government Facilities, Concessionaire shall be responsible for securing all necessary licenses and permits required under local, state and federal laws and regulations.
- (e) All construction activities must meet or exceed existing levels of craftsmanship. No Department owned resources or materials from the Park shall be used in any project, except by written consent of the Department.
- (f) Concessionaire shall not cause, permit or suffer any lien or encumbrance to attach to the Resort, the Concessionaire Facilities or Government Facilities, except for capital development improvements to Concessionaire Facilities as outlined in Section 5. If Concessionaire shall cause, permit or suffer a lien or encumbrance to attach, Concessionaire shall cause the same to be

cancelled and discharged of record by bond or otherwise as allowed by law at the expense of Concessionaire within thirty (30) days after the filing thereof. Concessionaire shall defend on behalf of the Department, at Concessionaire's sole cost and expense, any action, suit or proceeding which may be brought thereon for the enforcement of such lien or encumbrance. Concessionaire shall pay any damages, including payment of any legal expenses incurred by the Department for doing the same in the event Concessionaire fails to obtain cancellation or discharge of the lien or encumbrance, fails to satisfy and discharge any judgment entered thereon and/or fails to save the Department harmless from any claim or damage resulting therefrom.

Section 6. Facilities

- (a) The Department hereby assigns for use by Concessionaire, the Government Facilities identified in Exhibit A-3, located within the Resort as identified in Exhibit A-1. The Department also assigns to Concessionaire the Concessionaire Facilities set forth in Exhibit A-2.
- (b) Concessionaire has inspected the Government Facilities and Concessionaire Facilities identified in Exhibit A2 and A-3 and is thoroughly acquainted with their condition, and accepts them and other items in an "as is" condition.
- (c) The Department reserves the right to withdraw or expand the land, Government Facilities and/or Concessionaire Facilities located within the Resort during the term of this Agreement for the purposes of protecting the Park and its visitors, and/or to restrict or provide additional accommodations, facilities, services and/or merchandise. Any material adjustment shall require an appropriate adjustment to the franchise fees, if necessary, and the terms of ARSD 41:13:03:04 (4) shall apply.
- (d) Both parties understand that the State of South Dakota may self-insure Government Facilities. Therefore, if a Government Facility is destroyed or damaged to an extent that in the sole discretion of the Department it is impractical to repair or replace, the Department makes no assurance that the Government Facility shall be repaired, improved or replaced.
- (e) If Government Facilities are damaged by the acts or conduct of Concessionaire, its agents, employees or customers, which damage in the sole discretion of the Department is practical to repair or replace, it shall be the responsibility of Concessionaire to make the necessary repairs/replacements at its own expense to a

condition satisfactory to the Department in an amount not to exceed \$25,000 per occurrence. If Government Facilities are damaged by the acts or conduct of Concessionaire, its agents, employees or customers, which damage in the sole discretion of the Department amounts to a total loss or is impractical to repair or replace, Concessionaire shall pay Department an amount not to exceed \$25,000 per occurrence to compensate Department for the loss.

- (f) The Department shall have the right to enter the Resort, Government Facilities and Concessionaire Facilities for the proper administration of the terms of this Agreement and other purposes the Department deems necessary, including health and safety inspections.
- (g) In the event that a Concessionaire Facility is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, Concessionaire shall at its own expense, promptly restore the site to its natural condition to the extent that the Concessionaire Facility had an impact upon the site.

Section 7. Operations and Maintenance

- (a) Concessionaire shall operate the Resort in compliance with the terms and conditions of this Agreement including the performance standards for the Operation and Maintenance of the Resort set forth in Exhibit B. The performance standards are established in order to maintain a high standard of public service, physical appearance, operation, repair and maintenance.
- (b) Concessionaire shall comply with the specific dates and hours of services specified in Section 2 of Exhibit B.
- (c) Concessionaire, at its expense, shall provide all maintenance of Concessionaire Facilities, Government Facilities and Personal Property located within the Resort with the exception of the fish cleaning station, boat ramp and associated boat ramp docks, vault toilet, yard hydrant, parking lots, asphalt and gravel road surfaces which will be the responsibility of the Department. The Concessionaire shall perform such work in accordance with the performance standards contained in Exhibit B. Concessionaire shall also be responsible for keeping the Resort free from litter, complying with environmental laws and regulations, complying with safety rules, laws and regulations, and maintaining in good order and in a safe condition the grounds, Government Facilities, Concessionaire Facilities, and Personal Property of and within the Resort and in accordance with the performance standards

contained in Exhibit B.

- (d) At the expiration or termination of this Agreement, Concessionaire shall return to the Department the Government Facilities in the same condition or better condition than existed at the initiation of this Agreement, reasonable wear and tear excepted.
- (f) Concessionaire shall not do or permit to be done any act or thing within the Resort and within Concessionaire's operations which shall or might subject the Department to any liability or responsibility or injury to any person or to property by reason of any business or operation being carried on or upon the Resort or by Concessionaire. Concessionaire shall comply with all laws, orders and regulations of federal, state and local authorities, and with any direction of any public officer or officers pursuant to applicable laws which impose any order or duty upon Concessionaire with respect to the Resort, the use or occupation thereof, or with respect to Concessionaire's business and operations.
- (g) Concessionaire shall occupy the Resort as of the Effective Date and thereafter will continuously use the Resort solely for the purpose of providing the accommodations, facilities, services and merchandise identified in Section 3 and other uses incidental thereto. Concessionaire shall not use or knowingly permit any part of the Resort to be used for any unlawful purpose, and shall not conduct or allow to be conducted any activity that shall constitute a nuisance.
- (h) Concessionaire shall not during the term of this Agreement, or during any period of holdover, use, store, generate or treat any Hazardous Materials on or within the Resort, except in accordance with all applicable, federal, state and local laws and regulations. Concessionaire shall not release or allow to be released into the environment any Hazardous Materials. Concessionaire shall indemnify, defend and hold harmless the Department from and against any loss, cost, damage, liability, or expense, including but not limited to attorneys' fees and disbursements, arising by reason of any clean-up, removal, remediation or detoxification action required under applicable federal, state and local laws and regulations by reason of the Concessionaire's use, generation, storage, treatment or release of Hazardous Materials. The foregoing covenants and indemnity obligation shall survive the expiration or any termination of this Agreement. "Hazardous Materials" shall mean (i) any biologically or chemically active or other toxic or hazardous wastes, pollutants or substances, including, without limitation, asbestos, PCBs, petroleum products and by-products, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in or

pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., and as hazardous wastes under the Resources Conservation and Recovery Act, 42 U.S.C. § 6010 et seq., (ii) any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., (iii) any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §466 et seq., as amended, (iv) any hazardous air pollutant under the Clean Air Act, 42 U.S.C. § 7401 et seq., 9v) hazardous materials identified in or pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., and (vi) any hazardous or toxic substances or pollutant regulated under any federal, state or local law.

- (i) Concessionaire acknowledges and agrees that the State makes available for purchase and use by Concessionaire within the Resort the alcoholic beverage license currently held by Spring Creek Ventures, LLC. Concessionaire agrees to purchase from Spring Creek Ventures, LLC. on the Effective Date the alcoholic beverages license for the purchase price of \$75,000. Concessionaire shall comply with all laws and regulations applicable to the alcoholic beverages licenses, including but not limited to the timely payment of all sales taxes assessed upon sales of alcoholic beverages.

- (j) Any names, logos, trademarks, or copyrights (the "Intellectual Property") developed during or pursuant to this Agreement that in any way associates with, identifies, implicates, or infers an affiliation with the State of South Dakota, the Department, the State Park System, Spring Creek Recreation Area, and/or the Resort must receive prior approval from the Commission and belongs to the State of South Dakota upon creation and continues in the State of South Dakota's exclusive ownership upon termination of this Agreement. For all Intellectual Property approved by the Commission, Concessionaire shall receive a non-exclusive, non-transferable license to use the Intellectual Property with respect to the accommodations, facilities, services and merchandise offered for sale by Concessionaire. The license shall be limited to the sale of accommodations, facilities, services and merchandise from the Resort only. Concessionaire shall not offer for sale outside of the Resort, including by mail order, other store locations and the Internet, the services and merchandise without the Department's prior written consent. Concessionaire shall not be permitted to sublicense any of the Intellectual Property without the Department's consent. Concessionaire agrees to cooperate in the filing of any affidavits and applications by providing proof of use of the Intellectual Property upon the Department's reasonable request. Concessionaire acknowledges that the Department has the unrestricted authority to set the standards for the use of the Intellectual Property, as well as the standards, specifications and

qualities of the accommodations, facilities, services and merchandise. As such, the Department shall have the right, at all reasonable times, to inspect Concessionaire's business locations, services and merchandise for quality verification purposes. The Department, on behalf of the State of South Dakota, does not make any representation or warranty with respect to the Intellectual Property and the use thereof, and expressly disclaims all representations and warranties including, without limitation, the warranty of non-infringement. Concessionaire agrees to promptly notify the Department of any possible infringement of the Intellectual Property by third parties or, of any claims of infringement against Concessionaire and/or the State of South Dakota made by a third party. The State of South Dakota shall have the sole right to bring any action for infringement and to recover and retain any and all damages.

Section 8. Utilities

Concessionaire shall pay costs for utilities in the Resort, including but not limited to water, sewer, electricity and garbage disposal with the exception of water, sewer, electricity, and one garbage receptacle that serves the Department-owned fish cleaning station, and the pumping of the vault toilet. Maintenance responsibilities of Concessionaire for Department-owned utility systems within the Resort shall be in accordance with the performance standards set forth in Exhibit B.

Section 9. Accounting Records and Other Reports

- (a) Concessionaire shall prepare and maintain accounting records of the Resort segregated by profit center under generally accepted accounting principles that are customary for resort operating businesses. The records shall be made available for inspection by the Department on reasonable notice during normal working hours.
- (b) All capital costs of any fixtures, structures or improvements for which Concessionaire claims a Possessory Interest shall be recorded at actual cost and the depreciation schedule shall be based on generally accepted accounting principles, all of which shall be submitted to the Department at the time such capital assets are entered on Concessionaire's books.
- (c) Concessionaire shall submit to the Department annual accounting records and reports separated for the operation of the Resort to include Gross Receipts broken down by profit center. These records and reports along with state tax remittance forms are to be

provided to the Department with the corresponding franchise fee payments as provided for in Section 10.

- (d) Concessionaire shall within one hundred twenty (120) days of the close of Concessionaire's fiscal year submit to the Department annual audited accounting records and reports for the operation of the Resort to include a consolidated balance sheet and income statement for all operations. Additionally, Concessionaire shall provide a profit and loss statement by profit center and all necessary supporting schedules.
- (e) The Concessionaire shall retain all records and reports required by law and under this Agreement for a period not less than five years following the expiration or termination of this Agreement and its amendments. The Department shall, at any time during the term of the Agreement and until five years after the expiration or termination of this Agreement, have access to and the right to examine any of the pertinent books, records, documents, and papers of Concessionaire related to this Agreement, including state and federal income tax records and returns. If the result of any audit or examination of the Concessionaire's financial records indicates substantial discrepancies from the information that is reported to the Department, the Department reserves the right to bill and the Concessionaire shall pay for the costs of conducting such audit or examination in addition to any other amounts payable to the Department pursuant to this Agreement.
- (f) In addition to the accounting records mentioned above, Concessionaire shall provide to the Department an annual lodging utilization report which shall include information relating to available rooms, occupied rooms, resulting levels of occupancy, revenues and resulting average daily rates (ADR) for each lodging property. These reports shall also comparisons with the previous year. These reports shall be submitted to the Department by May 1 for the previous year.
- (g) From time to time, the Department may require Concessionaire to submit other reports and data regarding the Resort, Concessionaire's performance under this Agreement or otherwise, including but not limited to, operational information and capital progress reports.
- (h) Concessionaire agrees to waive any right to confidentiality of all records and reports identified in this section for Commission purposes. This waiver is not intended to apply to third parties or the public at large, except as provided by State law and Subsection (i) below.

- (i) Concessionaire agrees to waive any right to confidentiality of records, reports and information contained therein for the purposes of preparing a prospectus and other documents for leasing the Resort, as necessary for any subsequent concessionaire to operate the Resort, or for other legislative or administrative purposes.

Section 10. Fees

Franchise Fees: Concessionaire shall pay to the Department a franchise fee which shall be a sum of money equal to:

- (a) One percent (1%) of all Gross Receipts excluding restaurant and A-Dock Fees during each year of the Agreement term AND,
- (b) Fifty percent (50%) of all revenue generated from slip rentals on the Department owned A-Dock structure.

Payments shall be made no later than January 30th, for the final calendar quarter of the proceeding calendar year; July 30th, for the first two quarters of the current year; and October 30th for the third calendar quarter of the current year and shall be accompanied by accounting records as described in Section 9(c). Payments to the Department by Concessionaire not received on or before the due date shall be considered to be in arrears and subject to an interest payment equivalent to one and one-half percent (1.5%) per month of the unpaid amount which shall be added to the following month's remittance.

Section 11. Remedies, Termination or Expiration of the Agreement

- (a) Procedures upon termination or expiration of this Agreement shall be in accordance with ARSD 41:13.
- (b) Upon termination or expiration of this Agreement for any reason, and, in the event that Concessionaire is not to continue the operations authorized under this Agreement after its expiration, Concessionaire shall comply with all applicable requirements of Exhibit C to this Agreement, "Transition to New Concessionaire." This section and Exhibit C shall survive the expiration of this Agreement.
- (c) The Department may elect any and all remedies available to the Department under applicable law, including but not limited to the termination of this Agreement upon written notice in whole or in part at any time for default, and may terminate this Agreement upon written notice in whole or in part when necessary for the protection

of visitors or area resources. Termination for default may be utilized in circumstances where the Concessionaire has materially breached any requirements of this Agreement, including but not limited to failure to maintain and operate the minimum required accommodations, facilities, services and merchandise as provided in Section 3 herein, sale of merchandise disapproved for sale, failure to meet the requirements of the operations and maintenance performance standards as set forth in Exhibit B, and has failed to cure the breach as set forth in this Subsection. If Concessionaire materially defaults on any of the terms or conditions of this Agreement, and does not cure or remedy such default within ten (10) days of receipt of written notice from the Department, or Concessionaire is not diligently proceeding to cure such default if the curing of such default cannot be reasonably effected within such ten (10) day period, the Department may terminate this Agreement without further notice.

- (d) In the event of termination of this Agreement for default, the provisions of this Section apply.
- (e) To avoid interruption of service at the Resort upon expiration or termination of this Agreement, Concessionaire shall, at the option of the Department:
 - (i) continue to provide visitor services, as agreed upon in writing by the parties, to enable the Department to select a successor, and to allow the successor to otherwise comply with the terms of this Agreement in the ordinary course of business and endeavor to meet the standards of service and quality that are required by the Department in order to maintain customer service in conjunction with Exhibit B; or
 - (ii) consent to the assignment of a temporary operator, or operation by the Department, for the operation of the Concessionaire Facilities and Personal Property for a period not to exceed 365 days; provided that the temporary operator or the Department pays Concessionaire a reasonable fee for the use of the Concessionaire Facilities and Personal Property, not to exceed ten percent (10%) annually of the depreciated book value of such Concessionaire Facilities and Personal Property used by the temporary operator or the Department, and prorated for the amount of time they are in use by the temporary operator or the Department.
 - (iii) consent to the purchase of Concessionaire's inventory and supplies by the temporary operator or the Department for use or resale purposes. The temporary operator or the

Department must reimburse Concessionaire for any inventory and supplies purchased by Concessionaire and retained by the temporary operator or the Department for use or resale purposes. The value of the inventory and supplies retained by the temporary operator or the Department shall be determined by actual invoice amounts submitted to or paid by Concessionaire.

- (f) The Department shall have a right of offset against amounts owed the Department for all amounts owed by the Department under this Agreement.
- (g) If any legal proceedings are brought by either party to this Agreement against the other in connection with the interpretation, application or performance of the terms and conditions of this Agreement, each party shall be required to pay its own attorney's fees and costs in connection with such proceedings. All amounts due the Department by reason of any default on the part of Concessionaire shall accrue interest at the rate of one and one-half percent (1.5%) per month from the date the amount is due until paid.
- (h) In addition to the rights and remedies provided for herein, the Department and Concessionaire shall each have all remedies at law or in equity, all remedies being cumulative.

Section 12. Possessory Interest Provisions

Possessory Interests for Government Facilities and Concessionaire Facilities shall be determined in accordance with ARSD 41:13. The Department shall have a right of offset against amounts owed the Department for all amounts owed by the Department for any Possessory Interests purchased by the Department.

Section 13. Indemnification, Waiver of Claims and Insurance

- (a) Concessionaire agrees to defend, hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liabilities and expenses, including but not limited to attorneys' fees, in connection with the loss of life, personal injury and/or damages to property of third persons that may arise from or out of the occupancy, use or maintenance of the Resort, and as a result of performing services hereunder. This section does not require Concessionaire to be responsible for or defend against claims or damages arising solely

from errors or omissions of the State, its officers, agents or employees. This indemnification shall survive the termination or expiration of this Agreement.

- (b) Concessionaire agrees that during the term of this Agreement Concessionaire shall maintain such insurance as Concessionaire deems necessary but agrees that the minimum amount of insurance Concessionaire shall acquire and maintain in full force and effect throughout the period of time covered by this Agreement shall be as set forth below. Concessionaire shall maintain the following coverages and limits, but may attain the same by means of supplementing the respective coverages with Excess Umbrella Liability
- (i) Commercial General Liability Insurance: Concessionaire shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than Two Million Dollars (\$2,000,000.00) for each occurrence and a per location aggregate limit of not less than Two Million Dollars (\$2,000,000.00). If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.
 - (ii) Business Automobile Liability Insurance: Concessionaire shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than One Million Dollars (\$1,000,000.00). Such insurance shall include coverage for owned, hired and non-owned vehicles.
 - (iii) Excess Umbrella Liability Insurance: This coverage may be used to supplement any of the above liability coverage policies in order to arrive at the required minimum limit of liability coverage. In addition, coverage shall be at least as broad as that provided by underlying insurance policies, and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the "Excess Umbrella" liability policy.
 - (iv) Workman's Compensation Insurance and Unemployment Insurance: This coverage shall be as required by South Dakota law covering Concessionaire employees as will protect itself and the State of South Dakota and agencies thereof from claims under the Workman's Compensation laws and unemployment insurance laws of the State of South Dakota.

- (v) Personal Property Insurance:
 1. Amount of Insurance: 100% of replacement value, without deduction for physical depreciation
 2. Insurance shall cover the Personal Property contained in all buildings, structures, improvements & betterments for all Government Facilities and Concessionaire Facilities and/or used in Concessionaire's operations.
 3. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
 4. The policy shall provide for loss recovery on a replacement value basis, without deduction for physical depreciation.
 5. "Blanket Amount" insurance is to be provided. The amount of insurance (limit of liability) should represent no less than 100% of the replacement value of the sum total of all insured property, without deduction for physical depreciation.
 6. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
 7. The vacancy and unoccupancy restriction, if any, must be eliminated for Personal Property that shall be vacant or unoccupied beyond any time period specified in the policy.
 - (vi) Real Property Insurance: Concessionaire shall provide real property insurance to cover against loss to Concessionaire Facilities at 100% of replacement value (without deduction for physical depreciation).
 - (vii) Liquor Liability Insurance: Concessionaire shall maintain liquor liability insurance with a limit of not less than One Million Dollars (\$1,000,000.00).
- (c) These minimum requirements are subject to evaluation and revision every two years during the term of this Agreement or upon renewal or modification of this Agreement.
 - (d) South Dakota state employees shall be included as an additional insured under all insurance policies identified in Section 13(b) (i), (ii), (iii) and (vii).
 - (e) Concessionaire, prior to engaging in and/or providing the services described herein, shall furnish satisfactory proof of such insurance by filing with the Department, a Certificate of Insurance from the Insurance Company verifying and certifying to the existence and

limits of the required insurance. Such Certificate shall provide therein that no cancellation of said insurance shall be made or become effective without at least thirty (30) days' written notice being provided to the Department. Concessionaire is required to provide to the Department a current certificate of insurance at all times.

- (f) Concessionaire agrees to report to the Park Supervisor any event encountered in the course of performance of this Agreement which results in injury or loss to any person or property, or which may otherwise subject Concessionaire, the State of South Dakota and/or their respective officers, agents or employees to liability. Concessionaire shall report any such event to the Park Supervisor immediately upon discovery. Concessionaire's obligation under this section shall only be to report the occurrence of any event to the Park Supervisor and to make any other report provided for by Concessionaire's duties or applicable law. Concessionaire's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the Park Supervisor under this section shall not excuse or satisfy any obligation of Concessionaire to report any event to law enforcement or other authorities under the requirements of any applicable law.
- (g) The Department has no obligation to and is not responsible for payment of any money to Concessionaire that results from disruption of services.
- (h) Except as set forth in Section 6(e), neither the Department nor Concessionaire shall be liable to the other, nor to any SubConcessionaires, for any loss or damage to any building, structure or other tangible property owned by the other, including but not limited to lost rents, income and profits, even through such loss or damage might have been occasioned by the negligence of such party, its employees, agents, contractors or invitees. Concessionaire shall include in any lease, contract or agreement with a SubConcessionaire a provision in accordance with this Subsection.

Section 14. Repair and Maintenance Reserve Provisions

- (a) Concessionaire shall establish a repair and maintenance reserve (the "Repair and Maintenance Reserve"). Concessionaire shall contribute to the Repair and Maintenance Reserve a sum no less than three percent (3.0%) of the annual Gross Receipts.

- (b) Use of Funds. Funds in the Repair and Maintenance Reserve shall be used for the maintenance, repair and renovation of existing Concessionaire Facilities included in this Agreement.
 - (i) Of the 3.0%, 0.5% may be expended by Concessionaire for repair and maintenance of Concessionaire Facilities on an emergency basis without prior approval. If not expended during any calendar year, the remainder shall be expended by Concessionaire under the provisions of Section 14 (b) (ii) hereof.
 - (ii) The remaining 2.5%, plus any amounts not expended under Section 14 (b) (i) shall be administered and utilized for maintenance, repair and renovation of Concessionaire Facilities which projects have been previously approved by the Commission.

- (c) Unallowable Uses. Funds in the Repair and Maintenance Reserve shall not be used for the following:
 - (i) Seasonal salaries of Concessionaire's employees, SubConcessionaire's employees, and/or independent contractors performing housekeeping and grounds keeping activities associated with Concessionaire's and SubConcessionaire's respective operations.
 - (ii) Routine maintenance including, but not limited to, periodic and/or occasional inspection, adjustment, lubrication, cleaning, painting, replacement of parts, repairs, and other activities intended to prolong service and prevent unscheduled breakdown.
 - (iii) Preventative maintenance, including planned or scheduled servicing, inspection and adjustment activities that result in continued service, fewer breakdowns, and intended to prevent premature failure of equipment and materials.
 - (iv) New construction or additions to existing facilities.

- (d) Possessory Interest. Concessionaire does not obtain any right to a Possessory Interest for repair and maintenance of Government Facilities funded from the Repair and Maintenance Reserve.

- (e) Approval process. An annual repair and maintenance plan of action shall be developed by Concessionaire and submitted to the Department for approval prior to the commencement date of this Agreement, by November 1, 2019, and by November 1 of each year thereafter. The plan shall outline proposed repair and maintenance projects consistent with the above requirements for the succeeding calendar year. If Concessionaire and the

Department cannot agree on the plan of action, then the Commission shall make the final determination on the plan. The repair and maintenance plan shall be performed as approved prior to December 15 of the following year unless the approval contemplated the extension thereof, or unless an extension is granted by the Department. Concessionaire shall provide the Department with a detailed report of activities and the costs expended and incurred, for the annual repair and maintenance work completed. This report is due by January 1 of each year, unless an extension of time was granted.

- (f) Carryover of funds on an annual basis. The annual approved Repair and Maintenance Reserve plan may carry a surplus or deficit from year to year. If an approved plan exceeds the annual amount set forth in Section 14 (a), the excess amount shall be credited, without interest, to the balance for the following year or years. If the annual approved Repair and Maintenance Plan amount is less than the amount set forth in Section 14 (a), this deficit may be offset through a surplus in the following year or years. No expenses in excess of the approved amounts in the plan will be considered for credit without prior Department approval.
- (g) Treatment of reserve funds at end of term. The parties agree to make every effort to exhaust all funds in the Repair and Maintenance Reserve and bring the balance to zero by the end of the Agreement term. If there is a surplus at the end of the term, any remaining Repair and Maintenance Reserve funds shall be transferred to the Department for the purpose of ongoing maintenance of Concessionaire Facilities associated with this Agreement. If there is a deficit at the end of the Agreement term, the Concessionaire shall be granted possessory interest credit in the amount of the deficit.
- (h) If this Agreement is terminated by the Department before the established expiration date, the Department shall reimburse Concessionaire for the cost of approved repairs and maintenance activities expended by Concessionaire which have been prepaid and un-recovered by application of the annual Repair and Maintenance Reserve.

Section 15. Personal Property

Concessionaire shall provide all Personal Property, including without limitation, removable equipment, furniture and goods for the operations under this Agreement. Concessionaire, at its expense, shall maintain in

good order and repair and shall replace on an as-needed basis, all Personal Property utilized in the Resort. All Personal Property shall be managed in accordance with the performance standards outlined in Exhibit B.

Section 16. General Provisions

- (a) Reference to the Department in this Agreement shall include the Secretary, Director, Park Supervisor and his/her authorized representative.
- (b) Concessionaire shall comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to operating the Resort and providing services pursuant to this Agreement, and shall be solely responsible for obtaining current information on such requirements.
- (c) This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- (d) All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.
- (e) This Agreement and any operations and services authorized thereunder may not be assigned, sublet, extended, renewed or amended in any respect, except when agreed to in writing by the Department and Concessionaire.
- (f) Concessionaire may not use SubConcessionaires, subcontractors or sublessees to perform the services described herein without the express prior written consent of the Department. Concessionaire shall include provisions in its Department-approved SubConcessionaire agreements requiring its SubConcessionaires, subcontractors, or sublessees to comply with all provisions of this Agreement, to indemnify the Department, and to provide insurance coverage for the benefit of the Department in a manner consistent with this Agreement. Concessionaire shall cause its SubConcessionaires, subcontractors, sublessees, and their agents and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements, and shall adopt such review and inspection procedures as are necessary to assure such compliance.

Concessionaire shall remain responsible to the Department for obligations, responsibilities, and rights assigned to another by Concessionaire. Concessionaire agrees and Department acknowledges that all records required under this Agreement shall be maintained in the name of and provided by _____ on behalf of Concessionaire.

- (g) In addition to the remedies afforded to the Department for breach of the terms of this Agreement, the Department reserves the right to bill Concessionaire for, and the Concessionaire agrees to pay to the Department, the actual costs incurred by the Department to provide any minimum required accommodations, facilities, services and merchandise for sale specified in Section 3 of this Agreement in the event Concessionaire fails to provide those minimum required accommodations, facilities, services and merchandise for sale.
- (h) In the event that the applicable court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- (i) Concessionaire acknowledges and supports the Department's effort to collect park entrance fees to provide for the continued maintenance of the South Dakota state park system.
- (j) In each instance where the consent, approval or acceptance of the Department is required under the terms of this Agreement, such consent, approval or acceptance shall not be unreasonably withheld by the Department.
- (k) Concessionaire agrees that in performance of this Agreement it is acting as an "independent contractor" and not as an employee of the Department.
- (l) Any notice or other communication required under this Agreement shall be in writing and sent or delivered to the address set forth below. Notices shall be given by and to the Director on behalf of the Department, and by and to the president on behalf of Concessionaire, or such authorized designees as either party may from time to time designate in writing.

Department
Director
Division of Parks & Recreation
523 East Capitol
Pierre, South Dakota 57501

Concessionaire

Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail or, if personally delivered, when received by such party. Copies of all correspondence from Concessionaire to the Department or Director shall be sent simultaneously to the Park Supervisor.

- (n) No amendment or modification of this Agreement shall be effective for any purpose unless the same be in writing and signed by authorized representatives of the parties.

Section 17. Discrimination.

Concessionaire shall not discriminate against any person based upon race, color, national origin, religion, sex and disability in the operation and maintenance of the Resort and shall fully comply with Title VI of the 1964 Civil Rights Act, and applicable federal and state laws and regulations.

Discrimination on the Basis of Residence. Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.

Concessionaire shall not discriminate on the basis of disability, and is subject to Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and applicable federal and state laws and regulations.

Section 18. Park Entrance License Provisions.

- (a) All individuals utilizing the boat ramp, associated docks, fish cleaning station, or marina parking lot are subject to the park entrance license requirements and payment of the required fee.
- (b) Concessionaire shall take reasonable steps to ensure that its patrons, employees, agents, and volunteers comply with the park entrance license fee requirements.

Section 19. Resident Use

- (a) Except for the residence in the shop storage building north of the resort, no portions of the facilities or Resort assigned hereunder shall be used for the purposes of seasonal or permanent residency unless authorized in writing by the Department.

Section 20. Procedure for Assignment, Sale or Transfer of Agreement

- (a) The parties agree that the provisions of ARSD 41:13 shall apply to the sale, lease, or transfer of this Agreement.

Section 21. Collateral

- (a) Concessionaire shall furnish the Department with a surety bond, certificate of deposit or letter of credit to be approved by the Department in the name of the Department of Game, Fish and Parks effective for each year of the Agreement in the amount of \$30,000.00 conditioning and guaranteeing Concessionaire's faithful fulfillment and performance of the terms and conditions of this Agreement.

END OF AGREEMENT TEXT

The above and foregoing CONCESSION AGREEMENT was approved by the Game, Fish and Parks Commission on _____, ____, 20__ authorizing the Director of the Division of Parks and Recreation to execute the same on behalf of the Commission.

Dated at _____, South Dakota, this ____ day of _____, 20__.

SOUTH DAKOTA DEPARTMENT OF GAME, FISH AND PARKS

BY: _____
Katie Ceroll, Director
Division of Parks and Recreation

CONCESSIONAIRE

BY: _____

List of Exhibits

Exhibit A

A-1 – Land Assignments (Resort) Maps for areas including Concessionaire and Government Facilities Assigned to the Concessionaire

A-2 - Mowing Responsibilities

A-3 – List of Concessionaire Facilities and associated possessory interest

A-4 – List of Buildings and Structures Constituting Government Facilities Assigned to the Concessionaire

Exhibit B

PERFORMANCE STANDARDS FOR THE OPERATIONS AND MAINTENANCE OF THE SPRING CREEK RECREATION AREA RESORT

Exhibit C

TRANSITION TO A NEW CONCESSIONAIRE

Exhibit D

ADMINISTRATIVE RULES OF SOUTH DAKOTA ARTICLE 41:13, PARK CONCESSION LEASES

EXHIBIT A-1



Exhibit A-2



EXHIBIT A-3

List of Concessionaire Facilities and associated possessory interest

<p align="center">CONCESSIONAIRE IMPROVEMENT AUTHORIZATION AND DETERMINATION OF POSESSORY INTEREST</p> <p align="center">South Dakota Division of Parks and Recreation</p>			
<p align="center">Exhibit A-3 attached to and made part of Agreement:</p>			
<p align="center">Concessionaire:</p>		<p align="center">Agreement (Effective Date):</p>	
<p align="center">Concessionaire Facilities and Associated Possessory Interest</p>			
<p align="center">Fac. NO</p>	<p align="center">Description</p>		<p align="center">Possessory Interest at Agreement Effective Date</p>
	Restaurant, lounge, and store building		100%
	4-plex Cabins (2)		100%
	Cabins (10)		100%
	Motel unit		100%
	Concessionaire owned docks		100%
	Shop building		100%

EXHIBIT B

PERFORMANCE STANDARDS FOR THE OPERATIONS AND MAINTENANCE OF THE SPRING CREEK RECREATION AREA RESORT

The following Performance Standards (“Standards”) of the operation and maintenance of the Resort sets forth the specific responsibilities to be performed by the Concessionaire as required by the Agreement entered into on _____ . These Standards are an integral element of the Agreement. These Standards set forth the general, operational and maintenance requirements of the Concessionaire with respect to all services, Government Facilities, Concessionaire Facilities and land assigned for use by the Concessionaire at the Resort, unless specifically provided for elsewhere in the Agreement between the parties. The Standards are subject to annual review and may be amended by mutual written agreement of the parties.

Any material deviation from the Standards set forth herein shall be a breach by the Concessionaire of the Agreement and shall be subject to the applicable terms and conditions set forth in the Agreement.

Section 1. General

All operations and activities shall be conducted in compliance with local, state and federal laws, regulations and standards applicable within the Resort. Use of the assigned area by the Concessionaire is limited to operation of the Resort set forth in the Agreement or as approved by the Department which are necessary to provide the minimum required and authorized services as outlined in Section 3 of the Agreement. The assigned area is defined by Exhibit A-1 of the Agreement. The Department reserves the right for the public to travel across the land, trails, and roads within the Resort boundaries. The Concessionaire shall not restrict access to public waters along the frontage of the Resort boundaries.

Section 2. OPERATIONS

(a) Dates of Operation

- (i) All Resort facilities and services must be open and available to the public. The minimum season for all locations and services that shall be considered is daily operation according to the following dates. Concessionaire shall have access to the Resort at all times during the term of the Agreement.

Minimum Operating Dates

Facility	Open	Close
Restaurant	The Friday of the weekend during the month of May that precedes Memorial Day weekend	The day after Labor Day
Marina	May 1	October 1
Convenience Store	May 1	October 1
Lodging	May 1	October 1

- (ii) During those periods when the facilities and services are not open to the public, the Concessionaire’s activities shall be limited to those necessary to accomplish its administrative, maintenance, capital improvement and security obligations and responsibilities under the Agreement. Any exceptions to this must be approved by the Department. If the Resort is open or offering services beyond the minimum required dates as required by this Agreement, the Concessionaire must provide a schedule of the days, hours and services that shall be available to the Park Supervisor in advance of any changes in said schedule.

(b) Hours of Operation

- (i) On dates when the minimum required services are open and available to the public, operating hours shall be in accordance to the following schedule. Minimum hours of operation shall be required. Maximum hours of operation shall not be exceeded.

Operating Hours			
		Minimum	Maximum
	Restaurant	11 a.m. to 8 p.m.	
	Lounge	12 p.m. to 8 p.m.	12 p.m. to midnight
	General Store	7 a.m. to 8 p.m.	

- (ii) Deviations from this standard must be submitted in writing and in advance of any modifications and shall be subject to approval by the Department.
- (iii) An authorized representative of the Concessionaire shall be available to the Department's on-site representative at all times to respond to and handle emergencies. A listing of authorized Concessionaire representatives and their permanent residence telephone numbers shall be provided to the Department at the commencement of the Agreement and annually thereafter to be included in the annual operating plan. Modifications to the listing shall be communicated to the Department within twenty-four hours of the same.

(c) Utilities

Electricity – The Concessionaire shall be responsible for activating electrical service with the electric provider and paying directly to the provider all electrical costs attributable to usage of the Resort. The Concessionaire shall be responsible for maintenance of the electrical services within the Resort with the exception of the fish cleaning station. All electrical repairs shall be conducted by a qualified individual licensed by the South Dakota Electrical Commission.

- (i) Water – The Concessionaire shall be responsible for activating water service with the water provider and paying directly to the provider all water costs attributable to usage of the Resort. The Concessionaire shall be responsible for maintenance of the water systems that serve the Resort with the exception of the fish cleaning station. All water system repairs shall be performed by a qualified individual licensed by the South Dakota Plumbing Commission, unless for emergency temporary repairs required to prevent or minimize property damage or for public safety.
- (ii) Sewer – The Concessionaire shall be responsible for activating wastewater disposal service with the wastewater disposal provider and paying directly to the provider all wastewater disposal costs attributable to usage of the Resort. The Concessionaire shall be responsible for maintenance of the sanitary sewer collection system with the exception of the fish cleaning station. All sanitary sewer collection system repairs shall be performed by a qualified

individual licensed by the South Dakota Plumbing Commission, unless for emergency temporary repairs required to prevent or minimize property damage or for public safety.

The Concessionaire shall ensure that any septic tank within the Resort is pumped as needed and functions properly to ensure the proper operation of the sewer system.

The Concessionaire shall not discharge or permit to be discharged any chemicals, substances or materials into any sanitary or storm sewer system that are not lawful and labeled or designated as acceptable for such discharge into the sewer systems.

- (iii) Garbage Disposal – The Concessionaire shall be responsible for contracting with a local garbage hauler and paying all costs directly to the hauler. The Concessionaire is responsible for providing dumpsters and receptacles of which the size, locations, colors and construction are acceptable to the Park Supervisor. Dumpsters shall be emptied and maintained as to not allow or encourage overflowing garbage, offensive odors or other unsightly problems. No disposal of refuse of any type shall be permitted within the Park without approval of the Park Supervisor. The Park will provide one garbage receptacle for the fish cleaning station, and be responsible for its service.
- (iv) Television - The Concessionaire shall provide television services to all lodging units within the Resort. Expenses for repairs and maintenance of the television signal delivery systems are the responsibility of the Concessionaire.
- (v) Communications - The Concessionaire shall provide wireless internet services in the restaurant and to the marina slips. Expenses for repairs and maintenance of the telephone and wireless internet systems are the responsibility of the Concessionaire.

(d) Department Activities

The Department shall advise the Concessionaire in advance of activities other than maintenance, law enforcement and inspections to be conducted within the Resort, notwithstanding the Department's rights to access as specified in the Agreement.

(e) Visitor Information

- (i) The Concessionaire shall make available and provide without charge to all patrons and Resort visitors, informational literature, safety precautions and notification of potential hazards with respect to Spring Creek Recreation Area as provided by the Department at no expense to the Concessionaire.
- (ii) The Department shall cooperate with the Concessionaire in the distribution and communication of available concession services and customer satisfaction surveys, so long as all materials are provided to the Department free of charge, and Department resources are available to perform the requested distribution and/or communication.
- (iii) In an effort to evaluate and improve public services provided by Concessionaires throughout the state park system, the Department may wish to implement customer satisfaction surveys for Concessionaire patrons. The Concessionaire shall cooperate with the Department for the distribution, collection, and administration of any customer satisfaction surveys or comment cards.

(f) Orientation Training for Resort and Park Employees

- (i) All Resort employees and volunteers shall be able to effectively and courteously respond to the public to inform them of all the Resort's and Park's services, activities, and information.
- (ii) The Concessionaire agrees to allow on an annual basis Park employees to attend and be present, or as otherwise agreed to be necessary by the Concessionaire and Park Supervisor, at an orientation session scheduled and conducted by the Concessionaire to acquaint them with the resources, features and services of Spring Creek Recreation Area. Concessionaire employees, and designated representatives that are employed by the Concessionaire at the time that the training is offered, can participate in training provided by the Department on Park regulations and informational topics
- (iii) The Concessionaire shall ensure that all of its employees are trained in risk management, customer relations and food safety (where applicable-for staff involved in food handling).

(g) Advertising

- (i) In addition to the provisions under 41:13:02:08, use of the State seal, Department or other logos affiliated with the Division of Parks and Recreation, is expressly prohibited without prior written approval of the Department.
- (ii) Promotional material distributed within the Park is restricted to services and facilities within the Park and region and is subject to approval by the Park Supervisor.

(h) Special Events

- (i) Special events planned or promoted by the Concessionaire must be proposed in writing and receive prior written approval of the Department. Written proposals shall be made at least 15 days in advance of the planned special event.
- (ii) Special events are those activities which materially deviate from the minimum required and authorized Resort services. In addition to the written approval of the Department, special events permits may be necessary. Conformance to all Department regulations related to special events shall be required.

(i) Employees

- (i) Any changes or appointments proposed by the Concessionaire to the management personnel that oversee all of the Resort areas are subject to Department approval.
- (ii) Each on-site resort manager must possess the necessary experience and expertise to ensure a high quality resort operation. The Concessionaire shall employ only competent and orderly employees who shall keep themselves neat and clean and accord courteous and competent treatment and service to all patrons. Whenever the Department notifies the Concessionaire that a Concessionaire employee is disorderly, incompetent or unsatisfactory, the Concessionaire shall investigate the matter thoroughly, and take appropriate action to correct.
- (iii) In providing visitor services, the Concessionaire must require its employees to observe a strict impartiality as to rates and services in all circumstances.

- (iv) The Concessionaire shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessionaire shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessionaire.
- (v) The Concessionaire shall provide all personnel necessary to provide the visitor services required and authorized by this Agreement.
- (vi) The Concessionaire shall comply with all applicable laws relating to employment and employment conditions.
- (vii) The Concessionaire shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessionaire shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessionaire.
- (viii) The Concessionaire shall review the conduct of any of its employees whose actions or activities are considered by the Concessionaire or as reported to the Concessionaire by the Department to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.
- (ix) The Concessionaire shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessionaire employee housing, within the Resort. The Concessionaire shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Resort, and specifying the actions that shall be taken against employees for violating this prohibition.

(j) Signs

- (i) The Department is responsible for providing and maintaining all Department owned and traffic control signs within the

Resort. The Concessionaire is responsible for providing and maintaining all other signs within the Resort. All signs must be approved in advance by the Department and be of a design and fabrication that is consistent with the signage program of the overall Park.

- (ii) No signs, permanent or temporary, may be erected or placed outside of the Resort, on Department property without the prior written approval of the Park Supervisor.
- (iii) All signs shall be of a professional quality appearance.
- (iv) Signs or other paraphernalia visible to the general public associated with political candidates or issues is expressly prohibited. There shall be no signs visible from outside the buildings within the Resort that contain any advertisements or insignia that identify with intoxicating beverages without the written permission of the Department.

(k) Lost and Found

Items found by or turned in to the Concessionaire shall be returned to the owner if identifiable. All other items shall be tagged, showing the location found, name and address of the finder and turned into the Concessionaire office.

(l) Complaints

- (i) The Concessionaire shall document and attempt to resolve any and all such complaints, including forwarding a copy of any written communications regarding the same to the Department and the Park Supervisor.
- (ii) Any complaints regarding the Resort received by the Department shall be documented and forwarded to the Concessionaire for resolution.

(m) Pets

Pets maintained by Resort employees or guests must be kept under control in accordance with established state park rules. Pets shall not be allowed in public areas such as the restaurants and stores with the exception of service animals pursuant to SDCL 20-12-23.2 and 23.4 and applicable federal laws.

(n) Safety

- (i) The Concessionaire must maintain and test all life and property safety equipment, devices and systems according to established and applicable laws, rules, regulations, and codes. Such equipment, devices, and systems may include but are not limited to smoke detectors, fire extinguishers, fire suppression systems, alarms, escape routes and egress openings. Any malfunctions of safety equipment, devices and systems must be reported to the Park Supervisor immediately.
- (ii) The Concessionaire shall immediately notify the Department of any accident it has knowledge of that occurs involving visitors, patrons or employees. The Department shall immediately notify the Concessionaire of any accident that involves personal injury or property damage in the Resort in addition to any pending or actual litigation.
- (iii) The Concessionaire must provide and promote policies and training to its employees on how to detect, report and minimize any unsafe or hazardous situations.

(o) Rentals

- (i) All equipment offered to the public for rental shall be maintained in good operating condition and appearance. Defective or damaged equipment shall not be rented at any time.
- (ii) All watercraft that are available for rent shall be equipped with at least one approved personal flotation device per rated passenger. All vessels shall comply with all state and U.S. Coast Guard regulations and laws.
- (iii) All watercraft that are on the water shall be discreetly identified with the company name and an identification number.
- (iv) The Concessionaire shall reasonably attempt to ascertain the prospective renter's ability and competency in regard to the item(s) being rented. Where reasonable doubt as to the required ability and competency exist, the Concessionaire may refuse to rent the item(s).
- (v) The Concessionaire shall clearly indicate as part of the rental agreements utilized in its operation, the specific and

implied liabilities resulting from a prospective customer's use of the rental equipment.

(p) Food and Beverage Service

- (i) The Concessionaire shall comply with all applicable health codes, laws and regulations in order to maintain the required South Dakota Department of Health food service establishment license. Copies of all inspection reports must be provided to the Department. The Concessionaire must immediately notify the Department of any deficiency or failure to comply as a result of Department of Health inspections.
- (ii) Food Safety Certification. The Concessioner shall have at least one full-time certified food safety manager. The manager shall be certified as a ServSafe Food Protection Manager by the National Restaurant Association. The Concessioner is required to train all employees involved in food preparation in compliance with all applicable laws.
- (iii) Liquor Laws. The Concessioner shall have at least one full-time manager that has attended a liquor law training program and is required to train all employees involved in alcoholic beverage service in compliance with all applicable laws.
- (iv) On and off-sale alcoholic beverages shall be permitted to the extent that those services authorized under the Concession Agreement and subject to the Concessionaire's securing of all applicable licenses and permits and complying with all applicable state laws.
- (v) All foods, drinks, beverages, confections, refreshments and the like sold or kept on the premises for sale shall be of first quality, wholesome and pure and shall conform in all respects to the applicable federal, state and municipal laws and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale, and all material on hand shall be sorted and handled with due regard for sanitation.

(q) Merchandise, Convenience Items and Accessories Sales

- (i) All merchandise, convenience items and accessories and the like sold or kept on the premises for sale shall be of the first quality, wholesome and pure and shall conform in all respects to the applicable federal, state and municipal laws

and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale. Concessionaire shall be responsible for collecting and remitting all sales taxes as required by law.

At minimum, store locations must provide the following:

1. First aid items such as bandages, antiseptics, pain relievers, skin ointments, sunscreen, and bug repellent.
 2. Basic grocery, toiletry and personal items.
 3. Ice
- (ii) Display areas and shelving are to be clean and attractive and the merchandise well presented and uncluttered.
- (iii) No merchandise shall be sold which persons of normal sensitivity might consider to be obscene, sexually oriented, profane, vulgar or demeaning.
- (iv) Fireworks shall not be sold, stored or used at the Resort

(r) Rental Lodging

- (i) At a minimum, all cabins and lodge rooms shall provide the following amenities:
1. Beverage containers (plastic or glass)
 2. Amenity package that includes soap and shampoo/conditioner; bulk dispensers are preferred
- (ii) All cabins and lodge rooms may be given daily maid service if desired by guests.
- (iii) Posted check in time must be no later than 4:00 p.m. and check out time must be no earlier than 11:00 a.m.
- (iv) Each cabin and lodge room shall contain adequate furnishings jointly acceptable to the Department and Concessionaire.
- (v) Carpets, sheets, bedspreads, pillowcases, blankets, terry and window coverings must not be frayed, faded, worn, stained, odiferous, or contain holes.
- (vi) All rugs must be kept clean and free of stains and offensive odors. Carpets and rugs must be vacuumed daily if desired by the guest.
- (vii) Non-smoking rooms shall be provided in accordance with hospitality industry and guest trends.
- (viii) The front desk shall be available for guest services during the minimum hours of the convenience store during the minimum operating season.

- (ix) Each cabin and room must be equipped with a serviced fire extinguisher. Appropriate fire exit information shall be posted in each cabin and room in accordance with South Dakota law.
- (x) Each cabin and room must be equipped with a carbon monoxide and explosive gas detection device, unless room is heated by a non-combustive heating system.
- (xi) Reservations shall be accepted via the phone, email, internet, and regular mail up to two years in advance.
- (xii) Rates, charges, check in/check out and appropriate hotel regulations should be posted in each cabin and room.
- (xiii) The Concessionaire shall comply with all applicable laws in order to maintain the required South Dakota State Department of Health lodging establishment license.

(s) Fuel Sales

- (i) Concessionaire shall be responsible for the proper fueling of all vehicles and boats, instructing the public who wish to fuel their own vehicles on the appropriate safety measures that must be undertaken prior to fueling the vehicle.
- (ii) The fuel storage tanks and dispensing systems shall be operated in accordance with applicable laws

(t) Guide Service

- (i) Fishing Guide Service
 1. Guides must possess sufficient knowledge of park resources and safety procedures.

(u) Boat Slip Allocation Process

- (i) Near the first of each calendar year slip lease contracts will be sent out to all slip holders of record from the previous season. The concessionaire may only refuse issuance of a new slip contract unless the slip holder has materially breached its Department-approved slip rental contract with the Concessionaire. It is required that the previous slip holder return the slip lease with full payment by February 15 to reserve the same slip for the new season. Immediately after that date, changes to slip type or location (requested by returning slip holders) are made if available.
- (ii) Once this process is complete with last year's slip holders, the assignment of vacant slips begins. New slip lease

contracts are sent out to any person requesting a slip in writing for the new season on a first come, first served basis. In the case of an over demand for a particular size or location of slips the oldest written request will be honored first.

- (iii) The Department shall have access to all slip rental documentation and correspondence upon request.

SECTION 3. MAINTENANCE AND FACILITY IMPROVEMENTS

(a) General

All maintenance and facility improvements shall meet all federal, state or local legal and regulatory requirements, including the Americans with Disabilities Act.

(b) Plans and Materials

- (i) Proposals by the Concessionaire to change physical facilities, both Government Facilities and Concessionaire Facilities, shall follow procedures outlined in ARSD 41:13.
- (ii) All plans and materials are subject to Department approval.

(c) Maintenance Responsibilities-Concessionaire

Maintenance, for the purpose of this Agreement shall include, but not be limited, to all routine, preventative and cyclical maintenance of facilities, equipment, utilities, and grounds necessary for the quality operation and appearance of the Resort.

- (i) Buildings and Structures – The Concessionaire shall maintain all buildings and structures, including Government Facilities, assigned to or owned by the Concessionaire. Maintenance includes, but is not limited to painting, electrical and plumbing maintenance and cleaning. Maintenance and cleaning should be equivalent to that generally provided by skilled workers using commercial quality building maintenance equipment and materials. Exterior and interior paint and roof colors must be approved in advance by the Department.
- (ii) Personal Property – The Concessionaire shall maintain all Personal Property assigned to or owned by the Concessionaire including, but not limited to painting, re-

finishing, cleaning, and repairing. Maintenance and cleaning should be equivalent to that generally provided by skilled workers using commercial quality maintenance equipment and materials.

- (iii) Boat Docks and Slips – The Concessionaire shall maintain, replace, install and remove boat docks and slips as authorized and necessary, including the Department-owned breakwater. The Department owns and is responsible for replacement of A and B-Dock decking and concessionaire is responsible for routine maintenance. Off-season storage of boat docks and slips shall be allowed in the locations approved by the Department. The dock surface, floatation and ramps must be in good condition, properly positioned and secured. They must be sturdy, free from cracks, protruding nails or boards or uneven or broken surfacing. Winch and anchor line maintenance and adjustment shall be the responsibility of the Concessionaire.
- (iv) Sidewalks, Steps, Decks and Landings – The Concessionaire shall maintain all concrete, wood and gravel sidewalks, steps, decks and landings within the Resort. All walking surfaces shall be in good condition, level, smooth, and properly positioned and secured. They must be sturdy, free from cracks, protruding nails or boards or uneven or broken surfacing.
- (v) Grounds – Mowing, weed/pest control, and maintenance of landscaping within the Resort shall be the responsibility of the Concessionaire as per mowing Exhibit A-2. The grounds shall be maintained at a level that will provide an attractive, safe, functional and nuisance-free environment. All trees shall be maintained according to generally accepted arboricultural techniques appropriate for this geographic area. All turf areas shall be established and maintained according to generally accepted turf culture appropriate to this geographic area.
- (vi) Garbage and Trash – The Concessionaire shall be responsible for all litter pickup and removal of trash in the Concession Area. Garbage and trash from the Resort shall be disposed of on a regular basis through a Concessionaire maintained contract with a local garbage hauler. The Concessionaire shall provide outdoor receptacles in high traffic areas. All receptacles are to be provided by the

Concessionaire and shall be kept clean, well maintained, serviceable and contained where necessary.

- (vii) Flagpoles, Television and Radio Antennas, Satellite Dishes – The Concessionaire shall provide maintenance for all masts and electronic systems for entertainment/communication devices. As with other structures, construction, modification or relocation of these devices require prior written approval of the Park Supervisor.
- (viii) Health and Safety – Facilities assigned to the Concessionaire are subject to periodic inspections for health and safety requirements. Repairs, corrections, improvements or operational changes determined necessary by the Department as a result of these inspections shall be at the sole cost and responsibility of the Concessionaire.
- (ix) Fire Protection Equipment – The Concessionaire shall provide and maintain in good working order, fire detection and protection systems that conform to and comply with applicable laws. The Concessionaire shall comply with all directives or recommendations of the Fire Marshall's office.
- (x) Winterizing Facilities – The Concessionaire is responsible for taking appropriate measures to protect all resort owned facilities for which the Concessionaire has maintenance responsibility, including the marina sani-pump station from winter weather and to have all such protective measures accomplished by November 1st of each year, or sooner depending on weather conditions or temperature. Protective measures may include (but not limited to), draining and flushing of water lines, window bracing, and utility shut-offs. The Concessionaire is responsible for spring re-opening while it is the concessionaire. The Department will take action to appropriately address spring re-opening of marina comfort station and other state-owned facilities.
- (xi) Snow Removal. The Concessionaire shall be responsible for snow removal within the Resort including parking lots and sidewalks that serve Concessionaire facilities. The Concessionaire is responsible for marking fire hydrants, propane tanks, and other fuel storage/dispensing facilities with snow stakes/flags and for keeping snow clear around hydrants.

- (xii) Grease Traps (if applicable). The Concessionaire shall be responsible for maintaining grease traps. Grease traps must be pumped on a regular basis, with documentation available to the Department, and the grease disposed of outside the Park and in accordance with applicable laws. The Concessionaire shall notify the Department within 24 hours in the event of a grease trap failure.
- (xiii) Restrooms. All restrooms within Resort shall be well maintained by the Concessionaire, cleaned and restocked with paper products a minimum of two times per day, and with greater frequency during peak periods. Fixtures and equipment shall be fixed immediately upon notification of a problem. Fixture replacement within the marina comfort station should be directed to the Department.
- (xiv) Fire Grates. All fire grates and fire places must be properly maintained. Outdoor fireplaces must be maintained in accordance with “Guidelines for Minimum Acceptable Safety Requirements for Outdoor Fireplaces” developed by the South Dakota Department of Agriculture, Division of Forestry document no. AG-DOF-216/89. The Park Supervisor may impose fire restrictions at any and all resort locations at any time as the result of wildfire risk assessments.
- (xv) Rental Lodging. Case goods shall be well maintained and repaired to ensure a pleasant and safe guest experience. Soft goods shall be clean and free from any stains, holes or tears. An adequate inventory of replacement soft goods shall be kept on hand in order to replace damaged soft goods prior to renting a rental unit.
- (xvi) Restaurants. Restaurant tables and chairs shall be well maintained and repaired to ensure a pleasant and safe guest experience. Soft goods, including linen, shall be clean and free from any stains, holes or tears. An adequate inventory of replacement soft goods shall be kept on hand in order to replace damaged soft goods.
- (xvii) The Concessionaire is responsible for annually cleaning and inspecting active chimneys and exhaust ducts, inspecting range/grill hoods monthly and cleaning as required.
- (xviii) Retail Operations. All shelving and merchandise display areas shall be sound, secure, clean and presentable.
- (xix) Service stations. The Concessionaire will ensure that fuel dispensers and other pieces of equipment are maintained by

a qualified professional. The Concessionaire will calibrate weights and measures annually or more frequently in accordance with applicable laws. The calibration will be conducted by a state or local sealer. Each pump will have a current seal indicating it is within the prescribed tolerance. All dispensing systems, including nozzles and hoses, will be inspected each week to ensure they are in proper working order as to minimize gasoline vapor losses.

- (xx) Removable equipment. All Concessionaire operated appliances, machinery, and equipment; including parts, supplies and related materials will be maintained, serviced, and repaired per manufacturer's recommendations, and replaced as necessary.
- (xxi) Boilers. Inspecting, cleaning, and tuning boilers will occur annually, or more often, as conditions warrant.
- (xxii) Comfort Station. The Concessionaire will be responsible for all daily routine and preventative maintenance, including replacement of soap, and appropriate paper products.
- (xxiii) Pumpout. The Concessionaire shall maintain the Department-owned pumpout to ensure its maximum functionality and availability to the marina users without contamination of any natural resources. The pumpout shall be winterized prior to November 1 of each year. Replacement parts for this pump will be ordered and installed by the Department.
- (xxiv) Gas tanks, pumps, lines and leak detection. All systems included in the fuel storage, delivery, dispensing, and leak/spill detection must be maintained by the Concessionaire to ensure its optimum functionality.

(d) Maintenance Responsibilities-Department

- (i) Boat Ramp and Docks – The Department will maintain adjust the boat ramp and associated dock (s) that is located within the Resort. The docks are for the use of the general public including Resort patrons.
- (ii) Roads and Parking Lot – The Department will be responsible for maintenance of roads and parking lots within the Resort. This maintenance will include necessary crack seal, paint-stripping, pothole repair and surfacing of paved areas and necessary grading of non-paved areas. Snow Removal will be in accordance with Section 3 (d) (iii) of this Exhibit below.

- (iii) Mowing as per Exhibit A-2
- (iv) Snow Removal – The Department will be responsible for snow removal necessary to maintain access to key public and administrative areas located within the Resort. Snow removal will be performed on weekdays (Monday – Friday) during regular park employee work hours (8:00 a.m. – 5:00 p.m.). During these periods, the Department is not obligated to perform snow removal until snowfall, blowing and drifting have ceased. The Department cannot guarantee snow removal for the access road outside of regular park employee work hours, but agrees to cooperate if staff is reasonably available to perform such duties.
- (v) Fish Cleaning Station – The Department will be responsible for all routine and preventative maintenance, including cleaning of the fish cleaning station including pumping of the septic tanks.
- (vi) Vault Toilet – The Department will be responsible for routine and preventative maintenance of the vault toilet near the fish cleaning station, including pumping the vault.

SECTION 4. INSPECTIONS AND AGREEMENT COMPLIANCE REVIEWS

(a) Maintenance Inspections

- (i) Representatives from the Department and the Resort shall conduct preventative maintenance and inspections of the Resort grounds and facilities. At minimum, at least one inspection will be held in the spring prior a week before Memorial Day and in the fall no later than October 31. The purpose of the inspection will be to identify the current conditions and maintenance levels of the facilities and Personal Property therein.
- (ii) Upon analysis of the results of the inspection, the Department will present the Concessionaire with a written list of maintenance objectives for which the Concessionaire is responsible and a list of maintenance objectives the Department is responsible for in the Resort. The Department and the Concessionaire will jointly agree to the prioritization of the projects and the schedule for completing the identified maintenance work. The Department and Concessionaire shall also agree as to what projects are to be included to satisfy the Repair and Maintenance Reserve as required in Section 14 of the Concession Agreement. The

Concessionaire shall submit a repair and maintenance program and plan to the Department for approval no later than November 1 of each year.

- (iii) In the event that the Concessionaire refuses or fails to perform any of the projects identified by a date and time specified in the written inspection report, the Department specifically reserves the right to complete the project(s) and charge the resulting expenses to the Concessionaire.

(b) Health, Safety, and Fire Inspections

- (i) There may be other inspections as required by law or insurance policies pertaining to but not limited to health, safety, fire, and environmental rules and regulations that are the responsibility of other agencies or authorities. The Concessionaire must notify the Department in advance of any such inspection and allow Department staff to accompany the inspection.
- (ii) Annual electrical code compliance inspections of the marina will be required unless otherwise stated by the department in writing by the South Dakota Electrical Commission. Cost of the inspections will be the responsibility of the concessionaire.
- (iii) Copies of the inspection or report must be provided to the Department upon request. Any failures, substandard or otherwise unsatisfactory scores, inspections or individual components of an inspection must be reported to the Department immediately.

(c) Agreement Compliance Audits

- (i) The Department reserves the right to conduct Agreement Compliance Audits during the course of each Agreement year. The purpose of the Audit will be to ascertain on a qualitative and quantitative basis, the Concessionaire's compliance with all requirements of the Agreement. The form and content of such an audit may include but not be limited to; inspections, product sampling, customer surveys, blind shopping, interviews and other techniques as required to satisfy the Department that all elements and requirements are being performed at a level consistent with the Standards and other covenants of the Agreement. A written summary of the results of the performance audit will be provided to the

Concessionaire. When remedial actions are needed, a specific date will be given for a follow-up audit to ensure the necessary corrective measures have been taken. In the event that corrective measures have not been implemented by the date specified, the Department reserves the right to take the necessary action and then bill the Concessionaire for the direct cost of the corrective action taken.

EXHIBIT C

TRANSITION TO A NEW CONCESSIONAIRE

Section 1. In General

The Department and the Concessionaire hereby agree that, in the event of the expiration or termination of this Agreement for any reason (hereinafter "Termination" for purposes of this Exhibit) and the Concessionaire is not to continue the operations authorized under this Agreement after the Termination Date, the Department and the Concessionaire in good faith will fully cooperate with one another and with the new Concessionaire or Concessionaires selected by the Department to continue such operations ("New Concessionaire" for purposes of this Exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to park area visitors and minimize transition expenses.

Section 2. Cooperation Prior to the Termination Date

At such time as the Director may notify the Concessionaire that it will not continue its operations upon the Termination of this Agreement, the Concessionaire shall, notwithstanding such notification:

(a) Continue Operations.

Continue to provide visitor services and otherwise comply with the terms of the Agreement in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

(b) Continue Bookings.

Continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken; not divert any bookings to other facilities managed or owned by the Concessionaire or any affiliate of the Concessionaire; and notify all guests with bookings for any period after the Termination Date that the facilities and services are to be operated by the New Concessionaire. The Concessionaire may quote rates based upon rates approved by the Department. Promptly following notification to the Concessionaire by the Department of the selection of the New Concessionaire, the Concessionaire shall provide the New Concessionaire with a copy of Concessionaire's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessionaire, and thereafter the Concessionaire shall update such log on a periodic basis

(but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's (1) address, (2) contact information, (3) dates of stay, (4) rate quoted, (5) amount of advance deposit received and (6) confirmation number, if applicable.

(c) Designating a Point of Contact and Other Actions.

Cooperate with the Department and the New Concessionaire to ensure the smooth transition of operations by: (1) designating one of the Concessionaire's executives as the point of contact for communications between the Concessionaire and the New Concessionaire; (2) providing the Department and the New Concessionaire with access to any assigned Real Property Improvements, including "back-of-house areas" and including copies of the keys to assigned Real Property Improvements; (3) providing the Department and the New Concessionaire with full access to the books and records, licenses and all other materials pertaining to any assigned Government Facilities and Concessionaire Facilities and the Concessionaire's operations in general; (4) providing the Department and the New Concessionaire with copies of all maintenance agreements, equipment leases (including short-wave radio) service contracts and supply contracts, including contracts for on-order merchandise (collectively, "Contracts"), and copies of all liquor licenses and other licenses and permits (collectively, "Licenses"); (5) allowing the New Concessionaire to solicit and interview for employment all of the Concessionaire's salaried and hourly employees, including seasonal employees through a coordinated process implemented by the Concessionaire; and (6) not entering into any contracts or agreements that would be binding on any assigned Government Facilities or Concessionaire Facilities or operations in general after the Termination Date without the prior written agreement of the New Concessionaire.

(d) Financial Reports.

Within 30 days after receipt of the notification of the selection of the New Concessionaire, provide the New Concessionaire with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessionaire's operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessionaire shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum:

- (i) A balance sheet for the Concessionaire's assigned Real Property Improvements, if any;
- (ii) a schedule of pending accounts payable; and
- (iii) a schedule of pending accounts receivable.

(e) Inventory and Personal Property.

Provide the New Concessionaire with a complete, detailed and well-organized list of physical inventory, supplies, and other Personal Property owned or leased by the Concessionaire in connection with its operations under the Agreement (including a list of such items that are on-order) The list shall be provided to the New Concessionaire within thirty (30) days following receipt of the notification of the selection of the New Concessionaire, shall be updated monthly thereafter, and shall designate those items that the Concessionaire believes are essential to maintaining the continuity of operations or the special character of its operations. The Concessionaire shall assist the New Concessionaire in reviewing and validating the list.

(f) Other Information and Reports.

Provide the New Concessionaire with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessionaire's operations for the period of one year prior to notification of the selection of the New Concessionaire, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessionaire, and shall be updated periodically (but no less frequently than thirty (30) days) until the Termination Date.

(g) Access to Facilities

Provide the New Concessionaire reasonable access to Concessionaire Facilities and Government Facilities to facilitate the transition and transfer.

(h) Other Cooperation.

Provide the Department and the New Concessionaire with such other cooperation as may be reasonably requested.

Section 3. Cooperation Upon the Termination Date.

Upon the Termination Date, the Concessionaire shall:

(a) Transfer of Contracts and Licenses.

Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessionaire that the New Concessionaire elects to assume.

(b) Reservation Systems.

- (a) Provide the New Concessionaire with an update of the reservation log through the Termination Date;
- (b) disconnect its operations from the Concessionaire's centralized reservation system, if any; and
- (c) cooperate with the New Concessionaire in transitioning to the New Concessionaire's reservation system.

(c) Fees and Payments.

Within ten (10) days after the Termination Date, the Concessionaire shall provide the Department with an itemized statement of all fees and payments due to the Department under the terms of the Agreement as of the Termination Date, including, without limitation, all deferred, accrued and unpaid fees and charges. The Concessionaire shall, within ten (10) days of its delivery to the Department of this itemized statement, pay such fees and payments to the Department. The Concessionaire and the Department acknowledge that adjustments may be required because of information that was not available at the time of the statement.

(d) Access to Records.

Notwithstanding any other provision of this Agreement to the contrary, upon the Termination Date, the Concessionaire shall make available to the Department for the Department's collection, retention and use, copies of all books, records, licenses, permits and other information in the Concessionaire's possession or control that in the opinion of the Department, are related to or necessary for orderly and continued operations of the related facilities and services.

(e) Removal of Marks.

Concessionaire shall within thirty (30) days after Termination, remove (with no compensation to Concessionaire) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessionaire.

(f) Other Cooperation.

Provide the Department and the New Concessionaire with such other cooperation as may be reasonably requested.