

CONCESSION AGREEMENT
Medicine Creek Reservoir State Recreation Area

This Concession Agreement made and entered into this 1st day of November, 2011, by and between the Nebraska Game and Parks Commission (Commission) and Medicine Creek Lodge, LLC, 72848 Trail 1, Cambridge, NE 69022-6107, dba Medicine Creek Lodge(Concessionaire).

Whereas, the Frenchman-Cambridge Division, Harry Strunk Lake, Medicine Creek Dam, commonly known as Medicine Creek Reservoir State Recreation Area (Reservoir), was constructed by the United States Department of Interior, Bureau of Reclamation (Reclamation) for irrigation, flood control, recreation, fish and wildlife, and other project purposes;

Whereas, by Lease Agreement, No. 14-06-700-3816-A, dated May 1, 1995, Reclamation, pursuant to Public Law 89-72 as amended, leased to the Commission certain project lands at the Reservoir for recreation and fish and wildlife purposes.

Whereas, the Commission, leased from Reclamation said project lands at the Reservoir for recreation and fish and wildlife purposes;

Whereas, the Commission has determined that concession-provided recreational facilities and services for public use and enjoyment of the Reservoir are necessary and appropriate;

Whereas, the Commission desires the Concessionaire to construct and operate and provide certain recreation facilities and services as herein described, to promote the public recreational use and enjoyment of the Reservoir.

Whereas, the Concessionaire desires to construct and operate and provide certain recreation facilities and services as herein described, to promote the public recreational use and enjoyment of the Reservoir.

Now, Therefore, in consideration of the promises, covenants, and conditions contained herein, the Commission and Concessionaire agree as follows:

A. General

1. The Commission, by virtue of authority conferred by Sections 37-301 through 37-314, 37-345 and 37-346, Revised Statutes of Nebraska, does hereby authorize the Concessionaire to construct and operate and provide certain recreation facilities and services as herein described, to promote the public recreational use and enjoyment of the Reservoir.

2. The Reservoir is managed by the Commission under the jurisdiction of Reclamation. In addition to the terms and conditions of this Agreement, the Concessionaire's operation and use of the concession site and associated land at the Reservoir is subject to those terms and condition of said Lease Agreement identify above. Consistent with their respective legislative authority, Policies, Directives and Standards, Regulations, etc., the Commission and Reclamation may take actions that may be inconvenient, costly, or adverse to the Concessionaire.

3. The Concessionaire shall obey the terms and provisions of this Agreement. The Concessionaire's rights under this Agreement are limited, are not guaranteed in perpetuity, and may be canceled or terminated as herein described in Article J. By signing this Agreement, the Concessionaire assumes all risks associated with the use of land at the Reservoir.

B. Location

Lands designated as the concession site are located on those portions of Section 24, T5N, R26W, Frontier County, as shown on Exhibit "A" attached. Said Exhibit "A" may be amended or modified without the necessity of re-executing this Agreement or entering into a separate Agreement.

C. Term and Renewal

1. This Agreement shall be effective from November 1, 2011, until its expiration on October 31, 2016.

2. Upon written request of the Concessionaire and approval by the Commission, subject to the Concessionaire's satisfactory performance of the terms and conditions of this Agreement and being current with all previous rental fees due, this Agreement may be renewed for one additional term. The renewed Agreement, if authorized, shall commence on November 1, 2016 and terminate, in full, on April 30, 2020, unless terminated earlier in accordance with this Agreement. In no event will this Agreement extend beyond the termination of the Commission's Lease Agreement with Reclamation which expires on April 30, 2020.

3. The Concessionaire must request, in writing to the Commission, the option to renew this Agreement no later than one hundred twenty (120) days prior to its termination date of October 31, 2016. Failure by the Concessionaire to so request the renewal may result in the termination of this Agreement.

4. The renewed Agreement shall be subject to consideration of changes in rules, policies, and legal requirements of the Commission and Reclamation. The Commission may amend such provisions of this Agreement it deems appropriate or necessary to insure the needs of the public are being adequately satisfied. The Commission will also determine if continued Concession facilities and services are consistent with the Resource Management Plan. Evaluation results will be the basis for Commission determinations of whether to renegotiate a renewal or terminate this Agreement for cause.

5. The Commission may, at its sole discretion, adjust the percentage of gross revenues to be paid as yearly rental fee during the ensuing five-year period. It is the expressed intent of the Commission that such adjustments shall be based upon comparable changes in the economy, shall not be exercised in an arbitrary manner, and shall be applied to all Commission concession agreements on the occasion of their respective anniversary/extension dates.

6. Any and all verbal agreements or understandings which have arisen between the Concessionaire and the Commission or their agents prior to the date of this Agreement and which are not incorporated in this Agreement are herewith terminated and any future transactions which require the mutual agreement of the parties shall be set forth in writing as amendments to this Agreement.

D. Rental Charge

1. The Concessionaire shall pay the Commission the sum of two percent (2%) of all gross receipts derived by the Concessionaire as rental for the said Agreement. Gross receipts shall mean all collections by the Concessionaire, excluding only sales and lodging taxes collected and revenues derived from the sale of State Hunt, Fish, Trap and Park Entry Permits and Habitat Stamps. Rental payments shall be made quarterly on the fifteenth (15th) day of each January, April, July and October for all income derived the preceding calendar quarter year; such payments to commence on the first reporting date following execution of this Agreement. Rental payments shall be made directly to the NEBRASKA GAME AND PARKS COMMISSION and shall be accompanied by a Quarterly Report of Gross Receipts on reporting forms to be provided by the Commission for that purpose. In addition, the Concessionaire will file with the Commission by the 30th of April of each year a Balance Sheet and Financial Statement reflecting the financial position of the concession business for the preceding year.

2. In the event of any delinquency, the Concessionaire agrees to pay the Commission 1% interest per month (12%/annum) of all outstanding balances due and payable to the Commission after 30 days as provided by Section 45-104, Revised Statutes of Nebraska. Failure to pay any rental by the date prescribed shall be considered just and sufficient cause for forfeit and termination of this Agreement. In the further event there shall be owing any rental at the date the Agreement is forfeited, said forfeiture shall not be construed to bar the Commission from bringing action in the appropriate forum for the recovery of any unpaid rental. In the event an extension for good cause is granted by the Commission, such shall be made in writing and shall not act as a waiver of any other right reserved by the Commission herein.

3. The Concessionaire agrees to keep business records of all purchases and sales in accordance with standard accounting procedures. Purchase records shall be supported with delivery invoices, sales slips, or comparable documentation detailing the item, quantity and price. Sales records shall consist of duplicates of receipts; sales slips, cash register tapes or such documentation as may be agreed upon.

4. The Concessionaire agrees to open their records to inspection by the Commission or their designated agent and to furnish documentation in support of all transactions, as described above, at any time during normal business hours. In this regard, the Concessionaire agrees that after the 15th of any month, they will furnish complete records of the previous months' transactions for inspection by the Commission's agent, upon request. The Concessionaire further agrees to furnish the Commission copies of their Federal and State income tax return forms for the enterprises permitted under this Agreement within 10 days of the dates such forms are filed with the proper authorities.

5. The Concessionaire will remit rental payment and required documentation according to the following prescribed schedule unless the Commission or its representative has approved other arrangements in advance: (Remit through Area Superintendent)

January 15 - Fourth quarter gross sales report and 2% rental payment

March 1 - Schedule of Rates and Prices

Anniversary Date - Insurance Binder

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April 15 - First quarter gross sales report and 2% rental payment

April 15 - Federal and State Income Tax Reports

April 30 - Balance Sheet and Financial Statement Due

July 15 - Second Quarter gross sales report and 2% rental payment

October 15 - Third quarter gross sales report and 2% rental payment

December 1 - Deadline for requests for mobile home sites rental increase.

6. Violation of the conditions contained herein which, in the judgment of the Commission do not merit termination of this Agreement, but which warrant closer scrutiny of the Concessionaire's ability and willingness to operate in compliance with the terms and conditions of this Agreement, shall be cause for modification of the term hereof at the end of the then ongoing season. Such modified agreement shall be deemed probationary and the Concessionaire shall be required thereafter to annually apply for a new agreement until such time as the Commission shall release the Concessionaire from probationary status based upon demonstrated ability and willingness to operate in compliance with the terms and conditions contained herein, or until such time as the Commission shall determine the performance of the Concessionaire under the probationary agreement merits termination.

E. Operations

1. The Concessionaire, upon proper license or permit as may be required by other regulatory agencies, shall conduct the following enterprises on the permitted premises:

- a) The sale of food, refreshments and related items;
- b) The sale of sporting goods, bait and related items;
- c) The sale of motor boat fuel and lubricants;
- d) The sale of camping and picnic supplies; and,
- e) The sale of State Hunt, Fish, Trap and Park Permits and Habitat Stamps.

In addition to the aforementioned enterprises, the Concessionaire, upon proper license or permit and by prior written consent of the Commission, may conduct the following enterprises:

- a) The sale of boats and motors;
- b) The service, repair and maintenance of privately-owned water craft;
- c) The transportation of passengers by boat for hire;
- d) Operations of a dry storage facility for water craft, trailers and related equipment;
- e) The rental of seasonal RV/trailer sites;
- f) The rental of docks, boats, motors and related items; and,
- g) The rental of mobile home sites.

2. The Concessionaire shall conduct all aspects of their concession business in a manner acceptable to the Commission and in accordance with accepted business standards and practices. The Concessionaire specifically agrees they shall keep all personal and business loans and operating accounts current; insure they and their employees always treat customers in a polite, respectful, responsive and nondiscriminatory manner; and insure they and their employees

refrain from engaging in public criticism of Commission policies, programs or personnel with which they may be in disagreement.

3. This Agreement does not include any area between elevation 2386.2 and the Reservoir waterline; except that, the Concessionaire may construct such boat launching, docking and harboring facilities on that portion of Section 24, T5N, R26W contiguous with the concession site as they deem necessary and advisable, as approved by the Commission, to conduct the enterprises outlined under Section E. Plans shall be submitted and approved in the manner prescribed in Paragraph H. The Concessionaire will be responsible for the installation of shoreline stabilization materials necessary to protect the permitted premises.

4. The Concessionaire shall provide and maintain electrical service, water facilities, toilets, sewage and garbage disposal facilities in accordance with Federal, State and Local rules, regulations, policies, acts etc., existing now or promulgated in the future. Such facilities will be installed and functional before being opened to public use.

5. In addition to any other remedies the Commission may have under this Agreement, the Commission may go upon the premises and construct, remove, remodel or relocate water facilities, toilets, sewage and garbage facilities and do anything that is necessary to enforce its rules and regulations with reference to the construction and maintenance of such facilities. The Concessionaire will pay the Commission, in addition to all other payments provided in this contract, the cost incurred by the Commission in so doing.

6. The Concessionaire shall obey all applicable laws, rules or regulations, Policies, etc., promulgated by the State of Nebraska, or any agency thereof, or by the United States, or any agency thereof.

7. The Concessionaire agrees to employ sufficient help to maintain law and order on the premises at all times.

8. The vending of beer in metal containers only is permitted under any class permit for which the Concessionaire is eligible under the laws of the State of Nebraska and Frontier County; however, beer in glass containers and wine by the glass may be vended for consumption within the licensed premises. The place of such sales is herewith confined to the licensed portion of the primary concession building and any authorized alcoholic beverage vended for immediate consumption shall be consumed only within the licensed premises. Consumption of draft beer, beer in cans and/or glass containers, and wine by the glass in an approved "beer garden" is authorized, subject to application for and approval of appropriate state and local agencies having jurisdiction.

9. The Commission agrees it will not enter into any other concession agreements on the Reservoir for the purpose of carrying out any of the enterprises to be provided by the Concessionaire under the terms of this Agreement, so long as this Agreement is in effect. If the Commission determines at a later date that some enterprise not contemplated by this Agreement is desirable for location on the concession site, the opportunity to develop or provide such enterprises shall first be offered the Concessionaire. If the Concessionaire refuses to accept such opportunity, the Commission shall be free to negotiate for the conduct of such enterprises with a third party at a separate location outside the concession site.

10. The Concessionaire shall be responsible for the maintenance and repair of buildings

and improvement, including both Commission and Concessionaire owned, to the satisfaction of the Commission. At a minimum, Concessionaire shall ensure:

- a) Exteriors of all buildings and improvements shall be painted in harmonious colors acceptable to the Commission, and maintained in a condition free of blistering and peeling;
- b) All buildings and improvements are maintained in a weather-tight condition year-round, free of obvious structural damage, broken or missing windows and screens, or missing or loose roofing materials;
- c) The concession site, including associated grounds developed for marina options, is kept serviceable, attractively landscaped and free of hazards, including removal of dead and dying trees;
- d) All concession vehicles and equipment items are maintained in a safe and operable condition and have current licenses and, that any such vehicles or equipment not so maintained are removed from the concession site and stored elsewhere outside the boundaries of the Reservoir;
- e) Marina docks, walkways and related facilities, including fuel storage and dispensing equipment, are regularly inspected; meet industry safety standards, and all deficiencies and hazardous conditions are immediately corrected;
- f) Any food service areas and public sanitary facilities are maintained in a clean and sanitary condition at all times;
- g) Sufficient trash containers to meet demand are placed throughout the concession site and all refuse from the concession and mobile home area is removed in a regular and timely manner and deposited in a state licensed landfill off the Reservoir; and,
- h) The Concessionaire shall maintain roads, parking areas, curbing, sidewalks, walkways and trails within the concession site and on adjacent land leading to marina facilities in a state of good repair and in a manner that provides reasonable access to the general public, persons with physical disabilities and emergency and service vehicles.

11. The Concessionaire will employ only competent and qualified employees who will keep themselves neat and clean and will accord courteous and competent treatment and service to all guests and patrons. The Concessionaire's employees shall be properly trained in their duties and must be adequate in number and quality to provide prompt and efficient service to the public and to properly carry out all housekeeping and maintenance and all other responsibilities associated with the operation of the premises. Whenever the Commission notifies the Concessionaire that any employee is deemed by it to be incompetent, disorderly, or unsatisfactory, the Concessionaire or its manager shall take appropriate measures to expeditiously correct the deficiencies or discharge such person.

12. The Concessionaire agrees to keep their various facilities and services open and available during reasonable hours for a business of this nature; however, facilities and services will be open for business a minimum of eight hours a day, seven days a week during the period from Memorial weekend through Labor Day weekend.

13. The Concessionaire agrees to maintain prices for the various services rendered or goods supplied at a reasonable rate and in line with other businesses in the same general business area furnishing similar services and goods. Charges for all goods and services shall be annually approved by the Commission before they are implemented. The Concessionaire will promptly ~~notify~~ the Commission of any proposed changes in charges for such goods and services other than changes necessary because of normal fluctuations in the selling price in a business of this

nature due to fluctuations in the cost of doing business. A Schedule of Rates and Prices along with a proposed operating schedule and sample concession issued permits (mobile home, dock, etc.) will be submitted to the Commission for review and written approval by March 1. Written requests and justifications for increases in annual mobile home site rents will be submitted to the Commission for review and written approval no later than December 1 for the ensuing calendar year.

14. The Concessionaire shall not discriminate because of race, color, religion, age, gender, marital status, disability, national origin or political affiliation against any person by refusing to furnish such person any accommodation; facility, service or privilege offered to or enjoyed by the general public. The Concessionaire and their employees shall not publicize the accommodations, facilities, services or privileges in any manner that would directly or inferentially reflect upon or question the acceptability or the patronage of any person because of race, color, religion, age, gender, marital status, disability, national origin or political affiliation.

15. The Concessionaire shall be responsible for the repair or replacement of any property of the Commission and/or Reclamation in which the Concessionaire has possession, supervision or control which shall be damaged or destroyed, except acts of God, negligence by the Commission, its agents or employees.

F. Rentals and Exclusive Use

1. If the operation of overnight and seasonal RV camp sites is provided pursuant to this Agreement, the Concessionaire agrees that ten (10) percent of available sites will be for transient use and will be limited to a maximum occupancy of 14 consecutive days. The balance of the sites may be occupied on a seasonal basis but not before April 15 and not later than October 15. RVs must be removed from camp sites and placed in an approved storage area or removed from the Reservoir.

2. If the operation of rental cabins and/or seasonal mobile homes is provided pursuant to this Agreement, the Concessionaire agrees to provide electricity, water, latrine, and sewage facilities adequate to meet the demands of the area concerned. The degree of adequacy, in this instance, will be at the determination of the State Electrical Division, State Fire Marshall, Department of Environmental Quality, and State Department of Health. Mobile homes in approved areas are required to retain the running gear in an operable condition. No permanent additions are permitted. Open porches and decks which are not permanently attached may be authorized according to Section H, of this Agreement. Concessionaire shall further operate mobile home area in accordance with established Seasonal Mobile Home Covenants, attached hereto as Exhibit "C" and made a part hereof. Said Exhibit "C" may be amended, modified, or enlarged by mutual agreement of the parties hereto without the necessity of re-executing this Agreement or entering into a separate agreement.

3. The Concessionaire shall provide utilities for a minimum period of six continuous months each year. Mobile home site permits will be provided to permittees not less than thirty days prior to the commencement of the designated period. The Concessionaire will provide the Commission with a complete list of permittees including lot number, name, address, and phone number within 30 days after commencement of the designated period.

4. The Concessionaire will develop a map, updated annually, of the concession area to include all buildings, campsites, trailer sites and mobile home sites. The map shall be provided

to the Commission and local police/fire/emergency responders.

5. No new exclusive use seasonal trailer or mobile home trailer sites are permitted. Existing exclusive use shall be reduced by a minimum of 6% each year and at least 33% of all exclusive sites shall be reduced every five years. This provision shall apply to all renewals of this Agreement and to any new permit holder(s). In the event these quotas are not met at renewal time, no renewal will be granted until quotas are achieved. All exclusive use will be eliminated by the expiration of the Master Lease in 2020.

G. Provisions and Conditions

1. The Concessionaire agrees that the State of Nebraska shall have first lien, second only to purchase money liens and operating loans to the Concessionaire held by upon all improvements authorized by the Commission which are now on the land or may hereafter be placed thereon with the approval of the Commission to secure payment of all rentals and penalties due or to become due under the terms of this Agreement and remaining unpaid at the end of said term, whether this Agreement has been terminated by forfeiture or otherwise, the said lien to be superior to the rights of all other persons and agrees to execute the necessary documents to effectuate this Agreement.

2. This Agreement may not be transferred or assigned except by prior written permission of the Commission. The Commission may agree to allow and approve an assignment and transfer thereof to a person acceptable to the Commission if the same is necessary to protect the security of any one or more of the creditors of the Concessionaire. The Commission recognizes that the improvements to be made by the Concessionaire may be financed through capital raised by loans partially or wholly secured by liens against the buildings, equipment and other assets of the Concessionaire on or off the concession site. Should the Concessionaire have their interest therein foreclosed or should they become insolvent or bankrupt or otherwise no longer be in a position to operate said enterprise, then said creditors or any of them should have the right, subject to the approval of the Commission, to continue said enterprise under the same terms and conditions at the option of said creditors.

H. Construction Specifications

1. The Concessionaire may construct on the concession site the buildings or improvements necessary to conduct the activities required and /or authorized by this Agreement. If the Concessionaire determines that additional facilities or services are necessary and desirable in the future, written consent of the Commission shall be obtained prior to their installation or operation. All such buildings or improvement, including those acquired from previous owners or so constructed under authorities granted by the Commission or Reclamation shall remain the personal property of the Concessionaire except as otherwise provided herein.

2. No building shall be constructed below elevation 2386.2 feet above mean sea level.

3. No alterations of the concession site or the building and improvements shall be made without the prior written approval of the Commission, except for ordinary repairs. Before constructing or placing any improvements of any kind on the concession site or substantially altering existing structures, the Concessionaire will submit two copies of plans and specifications for such structures or alterations to structures to the Commission for Commission review and approval. The Commission shall also forward such plans and specifications to Reclamation for

further review and approval. The following preliminary information is required for the Commission and Reclamation to review and evaluate the suitability of the proposal:

- a) Project Description - A thorough narrative description of the project. Identify the specific proposed land and water uses of each portion of the parcel. Final plans or drawings are not required, but preliminary plans and an overall site plan to aid the Commission in visualizing the development or improvement are required at this time.
- b) Project Schedule - Attach a project schedule reflecting at a minimum anticipated starting and completion dates. Also, provide a brief description of each phase and a timetable if phased development is proposed.
- c) Key Personnel - Identify the key personnel and responsibilities of the development team relating to this project.
- d) Financial Capability - Enclose current financial statements for each of the principals of the development prepared by an independent CPA.
- e) Uses and Sources of Funds - Include a preliminary budget identifying all hard and soft costs. Identify all interim and permanent sources of funds.
- f) Project Operation - Submit a proposed operating schedule and staffing pattern for the primary operating season (Memorial Day Weekend through Labor Day Weekend) and such off-season operation as is applicable.
- g) Cash Flow Projection - Submit a detailed analysis of how the project is anticipated to pay for itself. Include a preliminary fee and charge schedule for such services as wet slip rental, dry storage rental, site rental and cabin rental.

Upon preliminary approval from the Commission, the following additional information and assurances will be required:

- a) A final budget for the project, including all hard and soft costs. Costs must be itemized and hard costs certified by a contractor.
- b) Professionally prepared drawing reflecting all construction detail stamped by a Certified Engineer.
- c) Evidence of financial commitments for the project.
- d) Firm financing commitments for interim and permanent financing. The documentation must specify all terms and conditions upon which the loan authorization is based.
- e) Evidence of the capacity to raise equity necessary for the completion of the project. Typically, this evidence will be in the form of one hundred percent performance and one hundred percent materials and labor bonds payable to the Nebraska Game and Parks Commission in the full amount of the certified construction costs. Such bonds are to be issued by a Nebraska resident agent authorized to do business in Nebraska and accompanied by a certified and current copy of the agent's power of attorney.

4. Drawings of all proposed buildings or improvements will be submitted through and reviewed by the Area Superintendent at least ninety (90) days prior to the proposed date for the commencement of construction. Drawings for structures should be professional architectural sketches, they must be in scale and show the following: a) floor plan, b) front and side elevation, c) general location of all intended improvements on the lot including toilets, walks, drives, well, etc., d) ADA compliance, and e) the type of materials that are intended will be indicated on the drawings. All drawings will be submitted in duplicate.

5. Any system or method of construction may be used which is in accordance with well-established principles of mechanics and sound construction practices. It is the intent to insure the erection of well-built structures of reasonably good appearance without excessive cost.

6. All heating and ventilating installations shall conform to the requirements of the National Board of Fire Underwriters, and the latest edition of the American Society of Heating and Ventilating Engineers, Heating, Ventilating and Air Conditioning Guide. All electrical installations and systems shall conform to methods and practices promoting safety of life and property. The rules and regulations of the National Board of Fire Underwriters, "National Electrical Code", local and state laws, shall be followed. The Concessionaire shall be solely responsible in making arrangements for electrical service and all costs attached thereto

7. The Concessionaire will construct or place only such buildings and improvements as are so approved. Any and all buildings or improvements placed on the concession site by the Concessionaire without the prior written approval of the Commission shall be and become the property of the State and subject to removal from the concession site at the convenience of the Commission and at the sole expense of the Concessionaire.

8. Obtaining prior written approval from the Commission for an undertaking described herein does not relieve the Concessionaire of obtaining or securing any or all appropriate building, electrical, plumbing permits, or utility and road crossing permits, etc., from the appropriate State or local regulatory agency. Lacking such appropriate permits, prior written approval from the Commission may not constitute the authority to begin construction, replacement, maintenance, or modification activities. It is the responsibility of the Concessionaire to identify and obtain all such appropriate permits before beginning any such activities.

9. NEPA and NHPA compliance may be required for all construction or development activities. NEPA and NHPA compliance shall cover activities on the concession site and areas outside the concession site that are used for electrical power, domestic water, sewage disposal, telephone, etc., to the Lot. Reclamation is the agency responsible for ensuring NEPA and NHPA compliance for activities at the Reservoir and Reclamation may bill the Concessionaire for any and all of these associated costs in connection with the preparation and approval of such activities. The Commission may also require an equivalent state approved compliance document.

10. The Concessionaire shall be particularly alert in land-disturbing operations and shall take all reasonable and necessary precautions to protect and preserve historic, prehistoric, archaeological, and paleontological resources on and adjacent to the concession site. If such resources are discovered during land disturbing operations, the Concessionaire shall immediately suspend work within the vicinity of the resource in question and notify the Commission and Reclamation of the suspected resource. Reclamation will promptly have the area inspected to

determine its significance and the appropriate actions to follow (salvage, test excavation, etc., and resumption of operations). All objects salvaged from project lands at Medicine Creek Reservoir are the property of the United States and will be turned over to Reclamation for dispensation. The Concessionaire will be responsible for any damage to affected resources.

11. Upon completion of any new- or re-construction, the Concessionaire shall provide the Commission with a detailed copy of "As Built" drawings.

12. In connection with any contractual services conducted under this Agreement, the Concessionaire agrees to insure that:

"Contractors and subcontractors agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. Concessionaire will further ensure contractors and subcontractors will take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin. The permitted premises controlled by the Concessionaire shall be open to entry and use by all persons regardless of race, color, religion, sex or national origin. No qualified person shall on the basis of disability, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity."

13. If the Concessionaire shall at any time fail to keep and perform each of the foregoing terms and conditions, the Commission may, at its option, as hereinafter provided, terminate this Agreement. Failure to terminate the Agreement for the violation of any of its terms shall not be a waiver of the Commission's rights to terminate it for any subsequent violation.

I. Exceptions and Reservations

1. It is expressly understood that neither the Commission nor Reclamation shall be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges granted herein, or for damages to the property of the Concessionaire, or for damages to the property or injuries to the person of the Concessionaire's officers, agents, servants or employees or others who may be on the above described premises at their invitation or the invitation of any one of them arising from or incident to the flooding of such premises by Reclamation or flooding from any cause, or arising from or incident to any authorized activities of the Commission or Reclamation on such premises. The Concessionaire shall hold the Commission and Reclamation harmless from any and all such claims.

2. The right of the officers, agents, employees, licensees, and permittees of the Commission or Reclamation at any and all times, and without notice to the Concessionaire, to have ingress into, passage over, and egress from the concession site, for the purpose of exercising, enforcing, and protecting the rights reserved by and for enforcing any and all provisions of this Agreement

3. That neither the Commission nor Reclamation has any obligations whatsoever to maintain any reservoir water level, and that the right is hereby reserved to manipulate said level in any manner or extent and at any time without giving notice, and that the Concessionaire shall have no claim for damages of any character on account thereof against the Commission or Reclamation, or any officer, agent, or employee thereof.

4. That the use and occupation of the concession site shall be subject to the general

supervision and approval of the Commission and Reclamation and shall be subject to such rules and regulations as may be prescribed now or promulgated in the future.

5. That nothing contained herein shall be construed as authority to prohibit or restrict public access to, or use of, water areas or shoreline of the Reservoir except that the Concessionaire may exercise the usual control of the public on the concession site for the protection and preservation of its property and the convenience and well being of its officers, agents and patrons.

6. That in the event of war or national emergency, the Commission and/or Reclamation may exclude the Concessionaire and the public from the premises. In such events, the Concessionaire will not be liable for any rental fees for such time as they and the public are so excluded. The Commission or Reclamation will not be liable to the Concessionaire for any damages resulting from such exclusion or because of any restriction in the use of the concession site required by the Federal or State government or any agency thereof due to a war or national emergency.

7. That if more than one Concessionaire is named in this Agreement, the obligation of said Concessionaires herein contained shall be joint and several obligations.

8. If the Concessionaire is a corporation established in accordance with applicable Statutes of Nebraska,

a) Then a merger, consolidation, reorganization, liquidation, or any other change in the form of the corporation which results in a change in voting control of the corporation will be treated as an assignment of this Agreement requiring prior written consent of the Commission. Any transfer, hypothecation, or other change in the ownership of the shares of voting stock of the Concessionaire which results in the change in voting control of the corporation will be treated as an assignment of this Agreement requiring prior written consent of the Commission. A change of the voting control of the Concessionaire occurs if the person or persons owning a majority of shares on the date of this Agreement no longer own a majority of shares.

b) The Concessionaire agrees to file with the Commission prior to execution of this Agreement personal guarantees on forms to be furnished by the Commission, such guarantees to be executed by stockholders possessing ownership of a minimum of 51% of all corporate stock outstanding, securing the State against financial loss in the event of default of debts due and owing the State by the corporation.

c) The Concessionaire further agrees to file annually with the Commission a current listing of the corporation's officers, majority stockholders, and management personnel, complete with names, mailing addresses, shares of stock and to file such amendments thereto as changes occur.

9. If the Concessionaire is a Limited Liability Company (LLC) established in accordance with applicable Statutes of Nebraska,

a) Then a change in the contribution of capital of a member, which results in a change of control of the LLC, will be treated as an assignment of the Concessionaire requiring prior written consent of the Commission. If the Articles of Organization provide for other

forms of management, then a change of management which results in a change of operational control of the LLC will be treated as an assignment of the Concessionaire requiring prior written consent of the Commission.

b) The Concessionaire agrees to file with the Commission prior to execution of this Agreement personal guarantee on forms to be furnished by the Commission, such guarantees to be executed by majority members, securing the State against financial loss in the event of default of debts due and owing the State by the LLC.

c) The Concessionaire further agrees to file annually with the Commission a current listing of the LLC's manager and members, complete with mailing addresses, and to file such amendments thereto as changes occur.

10. The Commission herewith reserves the right of approval and/or disapproval of any persons retained by the Concessionaire to serve as managers or operators of the concession facilities. The Concessionaire shall designate an on-site manager who has full authority to act on behalf of the Concessionaire, including acting as the liaison between the Concessionaire and the Commission. The manager or operator will reside in proximity to the concession to provide daily oversight of operations.

11. All rights-of-way heretofore acquired or initiated or hereafter required by Reclamation for highways, railroads, irrigation works, or any other purpose;

12. Reclamation's right at all times to take from said lands material for construction, operation, and maintenance of Reclamation project works;

13. Reclamation's right at all times to continue construction, operation, and maintenance of any Reclamation project works now or hereafter required to be located on said lands;

14. Reclamation's right to conduct studies of stream- or reservoir-related flooding and Safety of Dams investigations on the permitted premises, and to modify or terminate this Permit or implement any measures deemed necessary to comply with Federal, State, or local flood plain management regulations, or to otherwise correct flooding or Safety of Dams problems;

15. Reclamation's right to issue oil, gas, and mineral permits, easements, leases, permits, licenses, and other use authorizations to outside parties, and to conduct tests and surveys of any kind, and to take any other measures on the land deemed necessary, at any and all times, and at the sole discretion of Reclamation, in order to protect the interests of the United States.

16. The Commission and Reclamation will give due consideration to the Concessionaire's development and use of the concession area and will notify the Concessionaire of their intent to undertake any of the above mentioned activities in a timely manner.

J. Termination

1. This Agreement shall terminate and all rights and privileges of the Concessionaire hereunder shall cease:

a) Upon the sale or transfer of ownership of the improvements.

- b) At the expiration of the term as herein set forth, unless a renewal has been requested and approved.
- c) Ten days after written notice by the Commission to the Concessionaire of violation of any of the terms or conditions of this Agreement unless the Concessionaire has cured or remedied such violation within the said ten days, or has reached an agreed upon time schedule with the Commission to remedy such violation.
- d) Any time by mutual agreement.
- e) Immediately upon written notice by the Commission that the concession site is required for project purposes.
- f) Thirty days after written notice by the Concessionaire to the Commission.
- g) Upon determination by the Commission that the Concessionaire has failed to reasonably provide those goods and services contracted for in Section E.
- h) Upon determination by Reclamation that the Concessionaire has failed to comply with the terms of this Concession contract, created an environmental problem or created a public health and safety issue, unless the Concessionaire has cured or remedied such violation within a specified period of time.
- i) Upon expiration or termination of the Lease Agreement between Reclamation and the Commission. It is expressly understood that Reclamation will not be responsible for any type of reimbursement for fixed assets placed on the Federal estate by the Commission or the Concessionaire. The Commission will not be responsible for any type of reimbursement for fixed assets placed on the Federal estate by the Concessionaire.

2. Any notice as required herein shall be considered adequate when in writing and mailed to the last known post office address of the Concessionaire or the Commission.

3. In the event that this Agreement is terminated, the Concessionaire shall remove or otherwise dispose of all personal property including buildings, structures or other improvements (personal property) owned by the Concessionaire within one-hundred eighty (180) days after receipt of said notice or such longer period as may be determined by the Commission to be reasonable. In the event the Concessionaire's personal property are not removed or disposed of within said 180 days or any extension thereof, such personal property shall become the property of the Commission without compensation therefore and no claim for damages against the Commission or Reclamation or its officers or agents shall be created by or made on account thereof.

4. The Concessionaire's personal property may be sold for use on the concession site only to a person or persons that have been approved by the Commission as a suitable concessionaire. In the event the Concessionaire's personal property are sold, bartered, or transferred without the Commission's prior written approval, this Agreement is terminated and the Commission is under no obligation to issue a new concession agreement to the person(s) obtaining possession of the Concessionaire's personal property. If the Commission does not issue a new concession agreement to the person(s) obtaining possession of the Concessionaire's personal property, said person(s) shall have 30 days to remove the personal property from the

concession site. In the event the personal property is not removed or disposed of within 30 days or any extension thereof, the personal property shall become the property of the Commission without compensation. No claim for damages against the Commission or Reclamation or its officers or agents shall be created by or made on account thereof.

5. The following permanent improvements to the land, including trees, shrubs, turf, septic systems, vault toilets, wells, retaining walls, permanent stairways leading to the waterfront, waterfront facilities excluding docks, and other similar improvements become fixed property and must remain with the concession site, unless their removal is otherwise approved or directed by the Commission. The permanent improvements herein identified are not considered the Concessionaire's personal property at the expiration or termination of this Agreement. All permanent improvements remaining with the concession site become the property of the Commission, with no reimbursement being given to the Permittee for such improvements subject to the provisions of Article H, 1.

6. This Agreement is expressly subject to Lease Agreement #14-06-700-3816-A, dated May 1, 1995, and any and all modifications and amendments thereto, by and between Reclamation and the State of Nebraska, Game and Parks Commission. The Commission has exclusive control and administration over the reservoir concerning recreation and fish and wildlife management.

7. Concessionaire releases Reclamation, their successors, assigns, officers, directors, agents and employees from any and all claims arising directly or indirectly from any acts, neglect or the omission of the Reclamation and each of them in connection with the construction, operation and maintenance of dam and irrigation project works. The Concessionaire agrees to indemnify and hold Reclamation harmless from any loss, damage or expense (including attorney fees) which may be suffered by the United States, directly or indirectly occasioned by any act, neglect or omission of said Concessionaire.

8. In the event of and upon the termination of the Lease Agreement between Reclamation and the Commission, Reclamation shall not stand in the stead of the Commission for the remaining term of this Agreement, and this Agreement will terminate. Reclamation will assess the condition of the concession operation and determine if a new concession agreement should be issued to the Concessionaire. Reclamation will notify the Concessionaire within sixty (60) days of its intention to issue a new concession agreement. In the event a new concession agreement is not issued, the Concessionaire will be granted a period of time not less than ninety (90) days and not more than one year to remove all improvements and restore the land to a condition satisfactory to Reclamation. Title to those improvements shall, unless removed, vest in Reclamation.

8. The Concessionaire agrees to thoroughly acquaint himself with the various current laws and regulations established by the Commission, and Federal game laws and regulations, and to cooperate fully with State and Federal game law enforcement officers in the performance of their duties. A conviction of the Concessionaire for a violation of the aforementioned laws or regulations committed on the Reservoir will be deemed a violation of this Agreement and may result in its termination.

K. Miscellaneous Conditions

1. The Concessionaire shall not cut or damage any trees or otherwise disturb the natural

vegetation located within or outside the concession site; and, shall not plant trees or shrubs or undertake any landscaping inside or outside the boundaries of concession site without the prior written approval of the Commission.

2. No unlawful business shall be conducted on the Permitted Lot.

3. The Concessionaire shall not inflict or cause to be inflicted any damage, destruction, defacement, or waste of facilities or resources within the concession site or on other Reservoir land or water areas.

4. The Concessionaire shall use the land in such a manner to promote acceptable conservation and shall control noxious weeds on the concession site. The Concessionaire shall further cooperate in weed control programs in compliance with laws or regulations which may authorize representatives of public agencies to enter the concession site to control noxious weeds.

5. Dogs, cats or other pets owned by the Concessionaire or their guests shall be kept on the concession site and controlled in accordance with state or county animal control regulations and in a manner that causes no nuisance or danger to the general public or Reservoir resources. Stock animals such as horses, pigs, goats, etc. or poultry shall not be kept on concession site unless authorized by the Commission for concession related activities. Pets may not be left unattended overnight nor shall they be allowed to roam free. The Concessionaire shall not allow members of the public to feed feral or wild animals, including dogs, cats, deer, etc. The Concessionaire shall take every reasonable action to control the presence of rodents, feral or other wild animals within the concession site.

6. The Concessionaire agrees to do all in their power to prevent and suppress any range or forest fire on or threatening any lands on the Reservoir controlled by the Concessionaire, and to immediately report any fire which they cannot suppress, and to place himself, their employees, and transportation facilities at the disposal of the proper authorities for the purpose of fighting such fires.

L. Hazardous Materials

1. The Concessionaire may not allow contamination or pollution of the Reservoir lands and waters for which the Concessionaire has the responsibility for care and maintenance and shall take reasonable precautions to prevent such contamination or pollution.

2. The Concessionaire shall not deposit, cause to be deposited, or permit the deposition of any hazardous waste materials anywhere on the concession site or the Reservoir and agrees to hold forever harmless the Commission and Reclamation from any such misuse of the concession site. The Concessionaire shall be solely responsible for removal of any such hazardous waste materials and the return of the premises to its natural condition.

3. "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and regulations promulgated pursuant to that Act.

4. Substances causing contamination or pollution shall include but are not limited to hazardous materials, refuse, garbage, sewage effluent, petroleum products, misused pesticides, pesticide containers, or any other pollutants.

5. The Concessionaire shall comply with all applicable local, state and Federal laws, regulations, ordinances, policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, transported, stored, or disposed of on or in the concession site or the lands and waters of the Reservoir.

6. Upon discovery of any event which may or does result in contamination or pollution of the lands and waters of the Reservoir, the Concessionaire shall initiate any necessary emergency measures to protect the environment and public health and safety, and shall report such discovery and full details of the actions taken to the Commission at the earliest opportunity. The earliest opportunity means within twenty-four (24) hours of the time of discovery.

7. The use of pesticides, defined herein as including herbicides, fungicides, insecticides, pesticides, or other similar substances, shall be in accordance with all provisions of Federal and State pesticide laws and amendments thereto. No restricted-use chemicals shall be used.

8. The Permittee shall be liable for all damages caused by the Concessionaire's failure to comply with this Article.

M. Reviews and Inspections

The Concessionaire agrees that the Commission and or Reclamation and its representatives may have full access to the above-described concession site. The Commission and or Reclamation and its representatives may also, during reasonable daylight hours, have access to and inspect the buildings, structures and improvements on the concession site. The Commission will conduct an annual compliance review of the concession site and the Concessionaire's compliance with the terms and conditions of this Agreement. The Commission and Reclamation will review and evaluate all exclusive use sites at least once every 5 years, pursuant to 43 CFR Part 429.32, to determine if there is a greater public need to convert the exclusive use sites to other short-term recreation uses and if the following criteria, at a minimum, are being met: a) environmental requirements; and b) public health and safety.

N. Covenant against Contingent Fees

The Concessionaire warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Concessionaire for the purpose of securing business. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability or in its discretion to require the Concessionaire to pay the full amount of such commission, percentage, brokerage, or contingent fee.

O. Officials not to Benefit

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may result wherefrom.

P. No Property right Created

This Agreement grants only "mere permission" to use the Federal lands included in this Agreement. This Agreement does not grant any real property rights or other interests in lands of the United States, and the privileges granted under this Agreement are strictly limited by the terms and conditions contained herein. Any decision to terminate this Agreement becomes the Commission's or Reclamation's final decision when made by an authorized agency official.

Q. Waiver of Right to Appeal

By signing this Agreement, the individual(s) whose name appears below agrees to accept all terms of this Agreement, and further agrees to waive all rights to protest or appeal any of the terms, conditions, or provisions contained herein.

R. Failure to Enforce does not Constitute Waiver

The Commission's waiver of an infraction of this Agreement by the Concessionaire is not a waiver of future compliance, and any provision waived as well as other provisions of this Agreement shall remain in full force and effect. The Commission is not precluded from future exercise of a right or remedy (including but not limited to termination) or the exercise of any other right or remedy by a single or partial exercise of a right or remedy.

S. Severability

If any term or condition of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

T. Contingent on Appropriation or Allotment of Funds

The expenditure of any money and the performance of any work by the Commission or Reclamation, as provided for by the terms of this Agreement, which may require appropriation of money by the respective legislative bodies, or the allotment of funds shall be contingent upon such appropriation or allotment being made. The failure of either of such legislative bodies to appropriate funds or the absence of any allotment of funds shall not impose any liability on either of the parties hereto.

U. Indemnification

1. The Concessionaire agrees to indemnify the Commission and the United States for, and hold the Commission and the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the Concessionaire.

2. The Concessionaire will insure and keep insured their liability and any liability of the State of Nebraska and the United States arising out of the operation of such enterprises by the

Concessionaire to any person, against injury or loss of life, and damage to property while on the premises, except the Commission's employees engaged in the performance of duties required of them. By proper liability or indemnity insurance policy, the Concessionaire shall protect the Commission and the United States from any such claim, providing therein for limits of not less than \$1,000,000 per person in any one claim, and an aggregate limit of not less than \$2,000,000 for any number of persons or claims.

3. A copy of the insurance policy binder naming the State and the United States as co-insured shall be deposited with the Commission before this Agreement shall become effective and a copy of each year's binder shall be forwarded prior to the expiration date of the policy.

V. COMPENSATION

At the termination or expiration of this Contract, the Concessionaire must remove from the Site all its personal property and improvements developed and used under this Contract, as may be directed by Reclamation. No compensation is due the Concessionaire from Reclamation or a successor concessionaire for the Concessionaire's personal property or improvements so removed. Reclamation will not compensate the Concessionaire for any personal improvements made to Reclamation's property.

At Reclamation's request, the Concessionaire may leave in the Site for use in future operations certain of its personal property or improvements that may be considered for purchase by a successor concessionaire, or subject to the availability of appropriated funds, by Reclamation. The Concessionaire is not required to leave or sell any such personal property or improvements; and, the successor concessionaire or Reclamation is not required to purchase such personal property or improvements. However, should the successor concessionaire or Reclamation determine to purchase said property or improvements, the value of the property or improvements shall be established as herein described; and the successor concessionaire or Reclamation will compensate the outgoing Concessionaire the established value.

Property or improvements designated for retention will be appraised in accordance with the Department of the Interior (Interior) appraisal policy and succeeding standards and manuals. All Interior appraisals and any third-party appraisals shall conform to the Uniform Standards of Professional appraisal Practices (USPAP) and Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) or any other standards that may become applicable in the future pursuant to Interior's appraisal policy or as otherwise provided by statute.

At the expiration or termination of this Contract, all property leased by the Concessionaire from other vendors for use on the Site shall have been removed. Reclamation will not compensate a lessor for any property the Concessionaire may have leased for use in the Site and that was either damaged or not returned. If the leased property is not removed at the expiration or termination of this Contract, Reclamation shall not be held liable to the lessor for any property deemed abandoned by Reclamation and either disposed of or destroyed.

* * * * *

IN WITNESS WHEREOF we have executed this Agreement the date first mentioned herein.

NEBRASKA GAME AND PARKS COMMISSION

BY: Roger L. Kuben
Division Administrator

MEDICINE CREEK LODGE, LLC

BY: _____
Concessionaire

BY: _____
Concessionaire

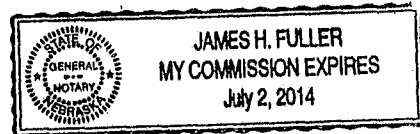
STATE OF NEBRASKA

Lancaster COUNTY

On this 20th day of December, 2011, before the undersigned, James H Fuller
a Notary Public within and for said county, personally
appeared Roger L Kuben, to me known as the identical person named in and who
executed, and whose name is affixed to the foregoing instrument as part thereof, and
acknowledged the signing and execution of the same to be his voluntary act and deed.

WITNESS my hand and notarial seal the date last above written.

James H Fuller



STATE OF NEBRASKA

_____ COUNTY

On this ____ day of _____, 2011, before the undersigned, _____
a Notary Public within and for said county, personally appeared
_____, to me known as the identical person named in and
who executed, and whose name is affixed to the foregoing instrument as part thereof, and
acknowledged the signing and execution of the same to be his/their voluntary act and deed.

WITNESS my hand and notarial seal the date last above written.

IN WITNESS WHEREOF we have executed this Agreement the date first mentioned herein.

GAME & PARKS COMMISSION
RECEIVED

FEB 17 2012

CASH _____ MO _____
DRAFT _____ CHECKS _____

NEBRASKA GAME AND PARKS COMMISSION

BY: Roger H. Kuehn
Division Administrator

MEDICINE CREEK LODGE, LLC

BY: Cody R. Kuehn 1/5/2012
Concessionaire

BY: Bruce D. Kuehn 1-5-2012
Concessionaire

By: C Douglas Bering 1-5-2012

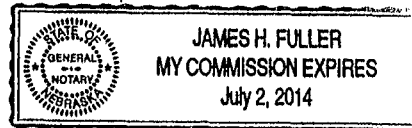
STATE OF NEBRASKA

Lancaster COUNTY

On this 20th day of December, 2011, before the undersigned, James H Fuller
a Notary Public within and for said county, personally appeared Roger H. Kuehn, to me known as the identical person named in and who executed, and whose name is affixed to the foregoing instrument as part thereof, and acknowledged the signing and execution of the same to be his voluntary act and deed.

WITNESS my hand and notarial seal the date last above written.

James H Fuller



STATE OF NEBRASKA

_____ COUNTY

On this ____ day of _____, 2011, before the undersigned, _____
a Notary Public within and for said county, personally appeared _____, to me known as the identical person named in and who executed, and whose name is affixed to the foregoing instrument as part thereof, and acknowledged the signing and execution of the same to be his/their voluntary act and deed.

WITNESS my hand and notarial seal the date last above written.

