

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION

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THIRD AMENDMENT OF CONCESSION LICENSE

The City and County of Denver, hereinafter referred to as the "City", acting by and through its Manager of Parks and Recreation, hereinafter referred to as the "Manager," pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor's Cabinet, hereby amends the October 3, 2006, Concession License (Clerk Filing # 06-872), as amended October 9, 2007 (Clerk Filing # 06-872-A) and as amended September 22, 2009 (Clerk Filing # 06-872-B), with Concessionaire **Echo Lake Lodge Concessions, LLC, by H.W. Stewart, Inc.** for the Echo Lake Lodge in Clear Creek County, Colorado ("Concession License"), as specified below. Concessionaire, by execution of this Amendment of Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same.

1. That Sub-sections C., D., E. and J. of Section IV. of the Concession License shall be amended to now read as follows:

"IV. CONCESSIONARE'S RESPONSIBILITIES:

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C. Maintenance: At the sole expense of the Concessionaire, maintenance of the Concession Site is to be provided by Concessionaire as follows:

1. *General Interior Cleaning* – The Concession Site shall be maintained in good condition. All floors and floor coverings shall be vacuumed, swept, or mopped, as appropriate, on a regular basis and when needed, and interior walls and interior wall coverings shall be cleaned on a regular basis and when needed. All floors and interior wall surfaces that are exposed to water or regular washing shall be sealed, and the seal maintained, so as to prevent any structural damage to the facilities. Furnishings and equipment shall be dusted or cleaned on a regular basis and when needed. All doors, windows, and window glass shall be cleaned on a weekly basis.
2. *Equipment Maintenance* – Concession facilities must be maintained and serviced as needed to insure proper function and appearance including but not limited to appliances, hardware, and plumbing fixtures. Electrical fixtures, light bulbs, and other electrical appliances shall be maintained in an operating and safe condition. Water systems shall be monitored and inspected as needed.
3. *Flag Display* – Concessionaire shall obtain, maintain and properly display

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federal, state and City of Denver flags.

4. *Garbage Removal* – All garbage and trash shall be removed from the premises on a regular basis. Concessionaire shall furnish the necessary trash receptacles and collection equipment (other than dumpsters). The dumpsters and other trash receptacles shall be maintained in an enclosed area away from public view and sealed so as to prevent intrusions by wild animals. Concessionaire is further responsible for arranging and paying for trash removal/hauling from the Concession Site.

5. *Premises Maintenance* – Grounds within 100 feet of the Echo Lake Lodge, including the parking lot(s), and related support areas shall be cleaned of litter and garbage on a daily basis. Concessionaire shall be responsible for snow removal on the parking lot, sidewalks, stairs and paths and other areas within 100 feet of Echo Lake Lodge when the Concession Site is open. Concessionaire shall be responsible for assuring that access to and from the Concession Site is safe for walking and ice free.

6. *Public Rest Rooms* – All rest rooms are to be cleaned and supplies provided on a daily basis. Trash and debris within the restroom shall be regularly collected and properly disposed of. All surfaces shall be swept, washed, and sanitized as needed. At closing the restrooms are to be inspected to assure that they are vacant before locking, and at opening the restrooms shall be unlocked and inspected to determine if they are clean and properly supplied.

7. *Graffiti* – Prompt graffiti (stickers, marker and paint) removal from all exterior surfaces.

8. *Rodent and Pest Control* – Echo Lake Lodge shall be maintained free of rodents and pests.

9. *Tools and Supplies* – All tools, equipment, and cleaning and janitorial supplies kept on site for maintaining the Concession Site shall be stored in a safe location, not accessible by the public, and used in a manner that protects the public from any injury or harm. All toxic, hazardous, or flammable materials or waste shall be stored, handled, used, and disposed of in a manner that conforms with all federal, state, and local laws and regulations.

10. *Septic System Service* – Concessionaire shall arrange, and pay all of the costs, for servicing the septic system for Echo Lake Lodge.

11. *Operating Season Closure* – Concessionaire shall, prior to closure at the end of the season, arrange for the septic and grease traps to be emptied, put up all shutters, turn off and secure propane tanks (and arrange to refill at the start of the season), turn on heaters, and turn off and winterize all Concessionaire-owned

equipment.

12. Otherwise, Sub-section 2.4.e. of the Terms and Conditions (see Section XI below) shall be applicable.

D. Utilities: Concessionaire shall pay, promptly when due, all natural gas, electric, telephone, alarm monitoring, and satellite or cable TV or internet connection and service charges and related taxes for the Concession Site.

E. Security and Safety: Security and safety shall be the responsibility of Concessionaire, at Concessionaire's sole expense, for Echo Lake Lodge and the immediate surrounding area, including parking lots, 24 hours a day, seven days a week. This shall include monitoring, inspection and servicing of fire alarm and suppression systems, fire extinguishers, and burglary alarm systems and the provision of security services whether provided through a private security company retained by Concessionaire or provided by Concessionaire's employees who live in residential facilities in Echo Lake Lodge. If Concessionaire elects to provide security through live-in staff, then provision of such housing is subject to the requirements and conditions of Sub-section IV.F. below. All security plans are subject to the prior written approval of the Manager. Fire alarm and suppression systems, fire extinguishers, and burglar alarm systems are to be regularly monitored, inspected for compliance with manufacturer's specifications and fire code requirements, and maintained and repaired as needed and fire extinguishers replaced as needed. Proof of inspection of all fire alarm and suppression systems and fire extinguishers shall be provided to the City. **Any damage to Echo Lake Lodge or injury to Concessionaire's employees, agents, or guests due to failure to perform or failure to properly or timely perform these security obligations shall be the sole legal and financial liability of Concessionaire.**

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J. Capital Improvements & Repairs:

1. Concessionaire Contributions for City-Made Improvements: Upon the Third Amendment becoming effective, Concessionaire shall promptly tender the amount of Seventeen Thousand Five Hundred Dollars (\$17,500.00) to the City for future capital improvements to be made by the City to Echo Lake Lodge. The improvements selected and made by the City shall be at the sole discretion of the Manager, and work on the improvements will be managed and directed by the City.

2. Repairs: Concessionaire shall be responsible for paying the first one thousand dollars (\$1000.00) of each repair made to the Concession Site, including but not limited to repairs to structure, finishes, fixtures, appliances, and mechanical, heating, electrical, and plumbing systems and parts. Obligations to maintain, service or repair otherwise stated as being the responsibility and cost of Concessionaire under this Section IV shall not be subject to the \$1000 limitation. All non-emergency repairs shall require prior approval of the Manager. For

emergency repairs, Concessionaire shall make reasonable efforts to get prior approval from the Manager, but if not possible, then the Manager must be notified immediately after the repair and a justification of any costs over \$1000 provided.

2. That Section V of the Concession License shall be amended to now read as follows:

V. CITY'S RESPONSIBILITIES: The overall operation of Echo Lake Park, in which Echo Lake Park is located, shall remain under the supervision and authority of the City. The following responsibilities with respect to Echo Lake Lodge will be undertaken by the City, subject to appropriation and availability of funds:

A. Operating Season Closure & Opening: The City will drain the plumbing system at the end of the season, make any needed repairs, and bring the plumbing system back on line at the beginning of the season; turn off and secure the electrical power to facility at the end of the season and turn the electrical power back on at the beginning of the season; and take the fire detector system off-line at the end of the season and put the fire detector system back on-line at the beginning of the season.

B. Repairs: The City shall pay for the cost any single repair made by Concessionaire to the extent the cost exceeds one thousand dollars (\$1,000.00) with the Concessionaire paying the first one thousand dollars (\$1,000.00) of each repair. Non-emergency repairs costing over one thousand dollars (\$1,000.00) must be pre-approved by the Manager in order to qualify for reimbursement, and emergency repairs costing over one thousand dollars (\$1,000.00) that could not be pre-approved by the Manager must be found acceptable by the Manager after the repair is made.

D. Trees: The City will maintain all trees and natural vegetation in and around Echo Lake Lodge. No trees are to be cut or removed without the prior written permission of the Manager.

E. Terms & Conditions: The City shall perform the obligations and have the right to exercise all authority set forth in the Terms and Conditions (see Section XI below).

3. That Section VI of the Concession License shall be amended to now read as follows:

“VI. <u>TERM:</u>	<u>EFFECTIVE DATE:</u>	<u>EXPIRATION DATE:</u>
	October 1, 2006	December 31, 2015

Unless revoked in accordance with Section 7 of the Terms and Conditions (Section XI below).”

4. That Sub-sections B. and E. of Section VIII. of the Concession License shall be amended to now read as follows:

“VIII. COMPENSATION TO BE PAID TO CITY: All of the following forms of Compensation

shall be paid by Concessionaire to the City in the manner and at the times specified:

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B. During the first five years of the Term of the Concession License, four point eight percent (4.8%) of Gross Revenues up to \$250,000 of Gross Revenues and four percent (4%) of Gross Revenues over \$250,000. During the remainder of the Term of the Concession License, four point eight percent (4.8%) of Gross Revenues. Said Percentage Payment shall be due and payable **November 25th** of each year of the Term of this Concession License. **If the operating season continues past September 30th, the payment is due December 26th.**

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E. Two revenue reports shall be provided to the Manager, with the first due **August 25th** for the first half of the operating season (May 15th through July 31st) and second due **November 25th** for the second half of the operating season (August 1st through September 30th or closing date if earlier)."

5. That Sub-section D of Section VIII is hereby deleted and no longer in effect.

6. That a new Section XII be added to read as follows:

XII. LEGAL AUTHORITY: Concessionaire warrants and guarantees that Concessionaire possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Concession License. The person or persons signing and executing this Agreement on behalf of Concessionaire, do hereby warrant and guarantee that he/she or they have been fully authorized by Echo Lake Lodge Concessions, LLC, and H.W. Stewart, Inc., to execute this Concession License and to validly and legally bind Echo Lake Lodge Concessions, LLC, and H.W. Stewart, Inc., to all the terms, conditions and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Concession License, if there is a reasonable dispute as to the legal authority of either Concessionaire or the person(s) signing the Concession License to enter into this Concession License or to legally bind Echo Lake Lodge Concessions, LLC, and H.W. Stewart, Inc.

7. As herein amended, the Concession License is hereby ratified and reaffirmed in all particulars, and all provisions not otherwise modified by express language above, including all bonding and insurance requirements, shall remain in full force and effect. This Third Amendment shall be effective upon the date that the Third Amendment is fully executed by the City.

Contract Control Number: PARKS-RC67002-03

Contractor Name: Echo Lake Lodge Concessions, LLC by H.W. Stewart, Inc.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

DOUGLAS J. FRIEDNASH, Attorney
for the City and County of Denver

By _____

By _____

By _____



Contract Control Number: PARKS-RC67002-03

Contractor Name: Echo Lake Lodge Concessions, LLC by H.W. Stewart, Inc.

By: William S. Carle

Name: William S. Carle
(please print)

Title: Pres, Lake H.W. Stewart Inc
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

