

## CONCESSION AGREEMENT

This Agreement, made and entered into this 17th day of March, 2025 by and between the CITY OF DEADWOOD, a municipal corporation of the State of South Dakota, hereinafter referred to as "CITY," and PatchStop Deadwood LLC, of Deadwood, South Dakota, hereinafter referred to as "Patchstop."

### **RECITALS**

**WHEREAS** the **CITY** is the owner of a building located at 1 Mt. Moriah Drive, Deadwood, South Dakota, and proposes to furnish the facility to **PATCHSTOP** for the operation of a concession stand from January 1, 2025 to December 31, 2029; and

**WHEREAS, PATCHSTOP** was the successful bidder in response to a Request for Bid and was awarded the contract on February 18, 2025 and has agreed to operate the concession at the property first described above under the terms and conditions set forth herein;

**NOW, THEREFORE**, in consideration of the mutual covenants herein set out, the parties agree as follows:

- 1) **DESCRIPTION OF THE PREMISES.** The **CITY** hereby agrees to have **PATCHSTOP** operate a concession stand located at 1 Mt. Moriah Drive, Deadwood, South Dakota. The total space available is five hundred (500) square feet. This space shall be set forth by the Deadwood Public Works Director prior to **PATCHSTOP** taking possession of the premises. **PATCHSTOP** shall not use any other space other than that designated, nor jeopardize the Deadwood Historic Preservation's interpretive center in any way.
- 2) **TERM OF LEASE.** The term of the Lease shall be for the summer period beginning January 1, 2025 and extending through December 31, 2029; to be operated at a minimum from May 1 through September 30 to September 30 of each year of this Agreement, when the cemetery ticket booth is open and as weather dictates. The date upon which the premises are made available to **PATCHSTOP** shall be determined by a letter addressed to **PATCHSTOP** by the City of Deadwood Public Works Director. **PATCHSTOP** agrees to provide stocking of all merchandise and display merchandise in a neat and professional manner. **PATCHSTOP** shall be responsible for employment and staffing of personnel to operate the facility during the term of this agreement.
- 3) **STAFFING.** **PATCHSTOP** agrees to maintain at least one person on staff, at its sole expense, at all business times and will be located in the premises when the Mt. Moriah Cemetery ticket booth is open to the public.

- 4) **HOURS OF OPERATION.** **PATCHSTOP** agrees to provide employees, at a minimum, for the hours of operation as the ticket booth to the cemetery is open. By way of example, the ticket booth hours have historically been seven (7) days a week as follows:

May	8:00 a.m. to 5:00 p.m.
June	8:00 a.m. to 8:00 p.m.
July	8:00 a.m. to 8:00 p.m.
August	8:00 a.m. to 8:00 p.m.
September	8:00 a.m. to 5:00 p.m.

- 5) **INVENTORY.** **PATCHSTOP** agrees to offer common retail items, such as books, postcards, t-shirts, pop, and water and any other items appropriate for sale to the public, provided such material is not inappropriate or offensive to the CITY. CITY shall give notice of such inappropriate or offensive material to **PATCHSTOP** and **PATCHSTOP** shall have twenty-four (24) hours (curing period) to remove such material. **PATCHSTOP** understands and agrees that the CITY reserves the right, wholly at the CITY's discretion, to remove inappropriate materials if the CITY deems such materials to be inappropriate and/or not in the best interests of the CITY after such twenty-four (24) hour notice. Even after such removal by CITY, failure to have removed such materials may be deemed cause for termination under paragraph 11) i.
- 6) **CONSIDERATION.** **PATCHSTOP** agrees to lease the property for Fifty-Thousand and NO/100ths Dollars (\$50,000.00) (ten-thousand and NO/100ths Dollars (\$10,000.00) per year) for the above term, which consideration shall be in addition to any improvements to and maintenance of the Mt. Moriah Visitor Center. In addition, **PATCHSTOP** shall be responsible for and make timely payment of the costs of the utility services to the premises during the term of this lease. In addition, **PATCHSTOP** agrees to maintain the interior and exterior of the retail area and the interpretive area in a neat and presentable manner, at the direction of the City of Deadwood Public Works Director. **PATCHSTOP** shall make improvements and/or physical alterations to the retail area only after obtaining approval from CITY.
- 7) **DEPOSIT.** **PATCHSTOP** shall pay the Deposit of Five Hundred and NO/100ths Dollars (\$500.00). The deposit shall be returned to **PATCHSTOP** within two (2) weeks following termination of the lease and receipt of **PATCHSTOP'S** mailing address or delivery instructions, less any sums necessary to return the premises to its original condition, ordinary wear and tear excepted. This includes but is not limited to the costs for carpet cleaning, painting, and any necessary changes to locks. If the costs to return the premises to its original condition exceed the amount of the deposit, **PATCHSTOP** shall be billed for the difference.

- 8) **UTILITIES.** **PATCHSTOP** shall be solely responsible for all utilities for the premises and shall have all such utilities put into **PATCHSTOP's** name immediately upon taking possession of the leased premises. Should **PATCHSTOP** desire to shut utilities off for any reason during the term of this Agreement, **PATCHSTOP** shall give CITY twenty (20) days' notice prior to the date of shutting off such utilities to give CITY time to arrange utilities in its name to safeguard CITY property. Failure by **PATCHSTOP** to provide such notice shall subject **PATCHSTOP** to liability for any damages caused by the lack of utilities.
- 9) **MAINTENANCE.** **PATCHSTOP** is responsible for all maintenance to the facility, under the supervision and discretion of the Deadwood Public Works Director. To that end, **PATCHSTOP** shall keep the premises in good condition and repair and shall not commit waste thereon. **PATCHSTOP** shall preserve the premises in good condition and shall repair all deterioration or damage thereto occasioned by his negligent, willful, or malicious conduct or such conduct of persons acting under his direction or control.
- 10) **ENTRY.** CITY may enter upon the premises at all reasonable times for the purpose of inspecting the premises.
- 11) **INDEMNIFICATION.** **PATCHSTOP** shall indemnify CITY, its officers, agents and employees from any and all claims and demands of third persons, including employees of **PATCHSTOP** for personal injury including death and/or property damage arising out of the acts or omission of **PATCHSTOP**, its officers, employees, agents, representatives and contractors, customers, guests, invitees, and other persons doing business with **PATCHSTOP**.
- 12) **INSURANCE.** CITY shall maintain insurance on the premises and its own personal property. **PATCHSTOP** agrees to maintain insurance in an amount to protect its investment and its use of the premises and shall not look to CITY for recovery for any damages to any person or personal property under the control of **PATCHSTOP**. **PATCHSTOP** shall provide the CITY with proof of insurance in the stated amount prior to taking possession and operation of the facility.
- 13) **LIABILITY INSURANCE.** **PATCHSTOP** shall secure and maintain a general liability insurance policy naming the CITY as an additional insured, in an amount of not less than One Million and No/100ths Dollars (\$1,000,000.00) against any and all claims and demands of any persons for personal injury including death and/or property damage arising out the acts or omissions of **PATCHSTOP**, its officers, employees, agents, representatives and customers, guests, invitees, and other persons doing business with **PATCHSTOP**.

14) **TERMINATION.** This Agreement may be terminated by CITY at its option if any one or more of the following events shall occur:

- a. **PATCHSTOP** shall become insolvent or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for reorganization or the readjustment of its indebtedness under the federal Bankruptcy Law or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of all, or substantially all, of its property; or
- b. By order or decree of the court, **PATCHSTOP** shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors of **PATCHSTOP**, seeking its reorganization or the readjustment of its indebtedness under the federal Bankruptcy Law or under any bankruptcy or insolvency law or statute of the United States or of any state thereof; or
- c. A petition under any part of the federal Bankruptcy law or an action under any present or future insolvency law or statute shall be filed against **PATCHSTOP** and shall not be dismissed within twenty (20) days; or
- d. The transfer, assignment or subletting of any of **PATCHSTOP's** rights or interests hereunder, or any voluntary change in the majority ownership thereof, without the prior written consent of CITY; or
- e. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or government board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all, or substantially all, of the property of **PATCHSTOP**, and such possession or control shall continue in effect for more than ten (10) days; or
- f. Any lien is filed against the premises because of any act or omission of **PATCHSTOP** and is not removed within a reasonable period, not to exceed fifteen (15) days; or
- g. **PATCHSTOP** shall voluntarily abandon, desert, vacate or discontinue its operations in the premises; or
- h. **PATCHSTOP** shall fail duly and punctually to make the improvements or continue to properly maintain the property required hereunder or contemplated herein; or
- i. **PATCHSTOP** shall fail to comply with any other obligations in this Agreement.
- j. CITY determines it is in its convenience to terminate.

- 15) **NOTICE OF DEFAULT.** Before CITY shall be authorized to terminate this Agreement, pursuant to paragraphs 14) a-i., it shall give **PATCHSTOP** written notice of the default by certified mail, and shall give **PATCHSTOP** five (5) days in which to cure such default; provided, however, that when the curing of any such default would obviously require more than five (5) days, CITY may give **PATCHSTOP** such additional time as reasonably may be necessary in which to cure the default; or should a longer curing period be stated in this agreement for any specific obligation; unless a shorter curing period is set forth in any other paragraph of this Agreement. **PATCHSTOP** understands there is no cure available for a termination under paragraph 11) j. of this Agreement, but CITY shall give a minimum of fifteen (15) days' notice in order for **PATCHSTOP** to remove their inventory from the premises in the event such termination pursuant to paragraph 11) j. of this Agreement.
- 16) **EXCLUSIVITY.** With respect to the demised premises, **PATCHSTOP** shall have the exclusive right to operate and maintain the concession stand facilities.
- 17) **COMPLIANCE.** **PATCHSTOP** shall operate the facility, including employment of persons, in compliance with all applicable local, state and federal rules, regulations and laws.

Dated this \_\_\_\_ day of April, 2025.

CITY OF DEADWOOD

\_\_\_\_\_  
David Ruth Jr., Mayor

ATTEST:

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Jessica McKeown, Finance Officer

Dated this \_\_\_\_ day of April, 2025.

PATCHSTOP DEADWOOD LLC

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