

**LEASE AGREEMENT**

**STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF FISH & WILDLIFE**

**THIS LEASE**, made the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and Twenty-One (2021)

**BETWEEN**

**THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF FISH AND WILDLIFE  
MAIL CODE 501-04C  
PO BOX 420  
TRENTON, NEW JERSEY 08625 -0420**

hereinafter referred to as the Department,

**AND**

***Tenant name and address***

hereinafter referred to as Tenant.

**WHEREAS**, the Department owns certain land and improvements herein below described as the Premises and the In-kind Parcel; and

**WHEREAS**, the Department administers the Premises and the In-kind Parcel as part of the ***name of area*** Wildlife Management Area under the authority of N.J.S.A. 23:8A-1 et seq.; and

**WHEREAS**, Tenant was the successful bidder on this Lease at a public auction held by the Department on ***insert date***; and

**WHEREAS**, the Department has determined that this Lease, for the purposes and subject to the terms and conditions herein provided: (i) is consistent with the Department's authority to administer the Premises in accordance with any and all applicable laws, rules, and regulations, including the provisions of N.J.S.A. 23:8A-1 et seq., and the Ogden-Rooney Act set forth at N.J.S.A. 13:1D-51 et seq.; (ii) is consistent with its mission to protect and manage wildlife and the land for wildlife conservation, and hunting, fishing and wildlife-related recreation, will not interfere with reasonably anticipated plans for the development, management, and operation of the Premises; and (iii) will serve the best interests of and be beneficial to the State of New Jersey and the public.

**NOW THEREFORE**, in consideration of the payment of rent by Tenant and the services to be performed by Tenant as hereinafter provided, incorporating the recitals above as if set forth fully below, and the mutual covenants hereinafter made, the Parties hereto agree as follows:

**1. PREMISES**

A. The Department hereby allows Tenant to use the property (as fully described below) for the Term of this Lease. It is expressly understood that this Lease does not in any way whatsoever grant or convey any permanent easement, fee, or other interest in the property to Tenant.

B. The property is described as all that certain land consisting of approximately XX acres designated as Block XX, part of Lot XX, in the Municipality, County, State of New Jersey, hereinafter referred to as the "Premises". The Premises are more particularly identified on the Lease Map attached to and made a part of this Lease as Exhibit A.

## 2. TERM

A. This Lease shall be in effect for a period of five (5) "Lease Years" ("Initial Term") commencing on January 1, 2022, and ending on December 31, 2027, unless sooner terminated as herein provided or unless extended pursuant to Subparagraph 2B.

B. Provided that no material breach has occurred and is continuing, Tenant may request that the Term of this Lease be renewed for an additional five (5) Lease Years ("Renewal Term") by giving the Department written notice of Tenant's request to renew no less than eighteen (18) months prior to the scheduled expiration of the Initial Term. The Tenant may, with written notice, request a total of three (3) five-year Renewal Terms. (The Initial Term and the Renewal Term are hereinafter collectively referred to as the "Term"). The Department reserves the right to disapprove renewal of this Lease, or approve renewal of this Lease with modified terms or conditions, if the Department determines that Tenant has not satisfactorily complied with the terms and conditions set forth herein or that continued leasing of the Premises is not consistent with reasonably anticipated plans for development, management and/or use of the Premises by the Department. If Tenant does not notify the Department of Tenant's intent to renew as provided above, this Lease shall expire as herein provided. The renewal Lease shall become effective on January 1<sup>st</sup> of the first Lease Year of each Renewal Term. Tenant's right to request renewal of this Lease shall not be construed as an option to renew. The renewal Lease may contain reasonable changes including, but not limited to, any change in or description of the Premises.

C. Tenant shall take responsibility for the Premises upon the Effective Date of this Lease.

## 3. RENT

A. Tenant shall pay to the Department an annual base amount ("Base Rent") of \$xxx.xx per year, reduced by \$xxx.xx as the value of In-kind Services.

B. Tenant shall pay to the Department Rent in the amount of \$xxx.xx per year ("Rent"). Rent for the First Lease Year shall be due on the Effective Date of this Lease and for every year thereafter on January 1<sup>st</sup> of each Lease Year.

C. The value of the In-kind Services of \$xxx.xx per year, as described in Paragraph 4 ("IN-KIND SERVICES") herein, shall be a fixed amount and is based on the actual costs of the services as determined by the Department upon consultation with external sources, which may include Penn State University, the Farm Service Agency (FSA) and Natural Resource Conservation Service (NRCS) of the United States Department of Agriculture (USDA), and any other source as determined by the Department. Failure to perform In-kind Services may result in termination of the Lease or the Tenant being deemed ineligible to perform In-kind Services as specified in Subparagraph 4I.

D. All Rent shall be paid by check made payable to "**Treasurer, State of New Jersey**" and delivered to:

Department of Environmental Protection  
Natural & Historic Resources  
Office of Leases & Concessions  
Mail Code 501-04C  
PO Box 420  
Trenton, NJ 08625-0420

If any check for payment is returned to the Department, all future payments shall be made by certified check or money order.

E. Any payment of Rent not made on or before the dates provided in Subparagraph B of this Paragraph shall be considered past due. All past due Rent amounts shall be assessed a monthly penalty of five percent (5%) of the total amount due calculated on the tenth (10th) day of each month after the due date and shall increase every thirty (30) days thereafter.

F. The cost of enforcing Tenant's compliance with this Lease shall be "Additional Rent." If the Department incurs any expense, including reasonable attorney's fees, due to the material breach of this Lease by Tenant or Tenant's failure to perform any obligation of Tenant hereunder, Tenant shall be liable for payment of such expense as Additional Rent added to and made a part of the next payment of Rent due after the Department notifies Tenant of such Additional Rent. Nonpayment of Additional Rent provides the Department the same rights against Tenant as if Tenant fails to pay Rent.

G. If this Lease is renewed pursuant to Subparagraph 2B herein, the Rent shall be increased to reflect the current fair market value of the Premises as determined by changes in the USDA Soil Rental Rates or value of similar real estate rentals. However, if the USDA Soil Rental Rates and value of similar real estate rentals decreased or remained stable, the Rent shall not decrease.

#### 4. IN-KIND SERVICES

A. Tenant shall perform In-kind Services on a parcel or parcels of land within a five (5) mile radius of the Premises (collectively referred to as "In-kind Parcel") in exchange for a reduction in Base Rent, as specified in Subparagraph 3A herein. The required In-kind Services shall be mandatory and designated by the Department on an annual basis. In-kind Services may include, but are not limited to, planting a crop, plowing, discing, seeding operations, applying herbicide, lime or fertilizer, mowing, brush hogging, no-till drilling seed or any combination of these activities. Tenant is responsible for all costs including, but not limited to labor, fuel, seed, chemical or other resources necessary to complete the In-kind Service.

B. For each Lease Year, the Department shall notify the Tenant, as described in Paragraph 34 ("NOTICES"), on or before March 1 of the current Lease Year, of the In-kind Services to be performed, the deadline to perform the In-kind Services, and the In-kind Parcel where the In-kind Services shall be performed. This notice shall be attached hereto and incorporated herein as Exhibit B.

C. If the designated In-kind Services for a particular year include planting a crop:

- (i) Tenant shall be required to apply necessary fertilizer, pesticides, and herbicides to facilitate the growth of the crop; and
- (ii) Tenant shall not be permitted to harvest the crop.

D. **Tenant shall not use pesticides or coated seeds that contain neonicotinoids on any In-kind Parcel.** Tenant shall be responsible for supplying neonicotinoid-free seed and pesticides and providing proof of purchase and date(s) of seed or pesticide application to the Department, upon the Department's request.

E. Tenant shall be responsible for providing his/her own equipment to perform the In-kind Services.

F. Tenant shall not enter into subcontractor agreements to fulfill Tenant's In-kind Services obligations under this Lease. Any subcontract made shall be null and void and shall, in the discretion of the Department, constitute grounds for termination of this Lease.

G. Tenant shall be solely responsible for notifying the Department, as described in Paragraph 34 (“NOTICES”), on or before the deadline identified in Exhibit B, in writing by email or regular mail when the In-kind Services are completed.

H. The Department shall be responsible for inspecting and determining if the In-kind Services are completed by the deadline identified in Exhibit B and are to the satisfaction of the Department. If the Department determines the In-kind Services are not performed, in part or in full, to the satisfaction of the Department by the deadline specified in Exhibit B, the Tenant shall be responsible for paying the Department a “Converted Payment”. The Converted Payment shall be the outstanding value of the In-kind Service plus a ten percent (10%) penalty. If the Tenant fails to perform any of the required In-kind Services by the deadline, the Converted Payment shall be \$xxx.xx (“Full Converted Payment”). The Department shall notify the Tenant, as described in Paragraph 34 (“NOTICES”), that the Tenant has failed to perform the required In-kind Services to the satisfaction of the Department in part or in full, the amount of the resulting Converted Payment, whether the payments can be made in installments, and the due date or dates for the Converted Payment.

I. Any installment of Converted Payment not made on or before the due date in the notice described in Subparagraph 4H shall be considered past due. All past due Converted Payment amounts shall be assessed a monthly penalty of five percent (5%) of the total amount due calculated on the tenth (10th) day of each month after the due date and every thirty (30) days thereafter. Nonpayment of Converted Payment provides the Department the same rights against Tenant as if Tenant fails to pay Rent.

J. Upon failure on the part of the Tenant to complete the In-kind Services, the Department may, at the Department’s discretion, terminate the Lease as described in Paragraph 25 (“TERMINATION”), or may not permit Tenant to perform In-kind Services for the remainder of the applicable Initial Term or Renewal Term. The Department shall notify the Tenant, as described in Paragraph 34 (“NOTICES”) of their ineligibility to perform In-kind Services, notify the Tenant that the amount of Rent due in Subparagraph 3B shall become \$xxx.xx (Base Rent plus the Full Converted Payment) for each Lease Year, and Subparagraphs 3A, 3 C, and 4A through 4I shall be made void. This notification shall be attached hereto and incorporated herein as Exhibit B.

## **5. CONDITION OF PREMISES**

The Premises are leased to and accepted by Tenant in their present, as is condition, and without representation or warranty of any kind by the Department, including, without limitation, any representations or warranty of fitness for a particular purpose. Tenant has made a physical inspection of the Premises and has found the same satisfactory for all purposes of this Lease except for those pre-existing conditions listed in Exhibit C. All pre-existing conditions, including deteriorated conditions of improvements and fixtures and areas containing trash and debris, if any, are described in Exhibit C, which is attached hereto and incorporated herein.

## **6. USE OF PREMISES FOR AGRICULTURAL PRODUCTION**

A. Tenant shall have possession and use of the Premises solely for Agricultural Production Purposes, which shall be defined as and limited to the following uses:

- (i) the production and harvesting of crops and plants, excluding, sod and hay, unless specifically permitted by the Department in Exhibit D, which is attached hereto and incorporated herein; and
- (ii) if hay production and harvesting is permitted by the Department, Tenant shall not cut any field prior to July 15<sup>th</sup> of each Lease Year; and

- (iii) the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, irrigation, drainage, and water management.

B. Tenant shall not be permitted to use the Premises for greenhouse production, raising or grazing animals, forestry, mining, or removal of natural resources. Tenant shall not be permitted to produce or harvest cannabis, trees, or nursery stock.

C. Tenant shall maintain the existing contours of the Premises that existed on the Effective Date of this Lease. Tenant shall not undertake any of the following changes to the Premises without first obtaining the express written approval of the Department:

- (i) clearing land of trees and/or vegetation other than crops;
- (ii) excavating or grading of soils (other than routine disturbance of soils necessary to plant Tenant's crops) as described in Paragraph 10 ("IMPROVEMENTS"); and
- (iii) composting or storing or stockpiling of trees, leaves, mulch, or any vegetation.

D. Tenant shall plant a winter cover crop on the Premises included in this Lease (with the exception of the In-kind Parcel). Winter cover crop is limited to winter wheat or rye, unless otherwise authorized in writing by the Department. Upon expiration of this Lease, all existing winter cover crops shall be left standing and remain unharvested.

E. Tenant shall not use the Premises for any purpose or in any manner other than as expressly provided in this Lease. No use or manner of use shall be implied from the purposes expressed herein. Tenant shall not conduct or allow any use of the Premises which would in any way: (i) make void or voidable any insurance that is, at the time of such use, in effect for the Premises; (ii) involve or cause any hazardous or dangerous work conditions, emergency conditions, or other operations detrimentally affecting the health, safety, or welfare of persons on site or the public or the condition of the Premises or neighboring properties; or (iii) violate any federal, State, or local law, ordinance, or rule.

F. Tenant shall not store, maintain, or repair any tangible personal property on the Premises unless such property is directly associated with Agricultural Production Purposes on the Premises. Tenant shall provide Landlord with a list of all tangible personal property including farm equipment that Tenant plans to store, maintain, or repair at the Premises for any period exceeding seven (7) days and Tenant will need written approval from the Landlord to store, maintain or repair such tangible personal property associated with Agricultural Production Purposes for a period of time longer than seven (7) days.

G. At no time during this Lease shall Tenant store, upon the Premises or anywhere else on Department-owned property, hazardous substances as that term may be defined by the New Jersey Department of Environmental Protection or by the federal Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency. Tenant shall not violate the terms of N.J.S.A. 58:10A-21 et seq., nor shall Tenant do anything that would subject the Department to the provisions of 42 U.S.C. 6991, et seq., entitled "Regulation of Underground Storage Tanks" in the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, section 234 et seq.

H. If Tenant does not use the Premises or any part thereof for a Lease Year without first obtaining the Department's written approval, the Department may consider the farm operation abandoned and treat the Lease as terminated after giving thirty (30) days' written notice to Tenant by Certified Mail, Return Receipt Requested. Within thirty (30) days of the mailing of the notice, Tenant shall either notify the Department of Tenant's intent to use the Premises for the next growing season or cease all possession and use of and vacate the Premises. Notwithstanding any other provisions of this Lease, Tenant shall not be entitled to any opportunity to cure after the thirty (30)

day period. Tenant shall be liable to the Department for all damages suffered by the Department by reason of such abandonment and termination.

I. Private hunting shall not be permitted on the Premises. Public hunting shall be permitted on the Premises and In-kind Parcel pursuant to N.J.S.A. 23:1-1 et seq. and N.J.A.C. 7:25-5.

J. Tenant may not seek or obtain depredation permits from the New Jersey Department of Environmental Protection, Division of Fish & Wildlife, or any other State or federal agency for use on the Premises or In-kind Parcel, unless specifically approved in writing by the Department.

K. Tenant acknowledges that crops not harvested prior to hunting season may be damaged by the public. The Department is not responsible for compensating Tenant for such damage.

## **7. FARMING AND CONSERVATION PRACTICES**

A. Within thirty (30) days of the Effective Date of this Lease, Tenant shall apply to the USDA, Natural Resources Conservation Service (NRCS) on behalf of both Tenant and the Department for a NRCS Farm Conservation Plan ("Farm Conservation Plan"), for the conservation and development of soil, water, and related natural resources on the Premises. Tenant shall, upon request, provide the Department with a copy of Tenant's Farm Conservation Plan and all updates prior to NRCS finalizing and approving the Plan and/or Plan update. The Department reserves the right to review and approve, in writing, Tenant's Farm Conservation Plan and all updates prior to NRCS finalization and approval. Subject to NRCS approval, Tenant shall update the Tenant's Farm Conservation Plan as necessary to conserve the Premises.

B. Proper implementation of the Farm Conservation Plan by Tenant is a condition of this Lease. A breach of this condition shall serve as grounds for termination of the Lease pursuant to Paragraph 25 ("TERMINATION"), herein.

C. Tenant shall plant a winter cover crop on the Premises included in this Lease (with the exception of the In-kind Parcel). Winter cover crop is limited to winter wheat or rye, unless otherwise authorized in writing by the Department. Upon expiration of this Lease, all existing winter cover crops shall be left standing and remain unharvested.

D. Tenant shall not apply liquid or dewatered sludge, sludge-derived product, or marketable residual product, as defined in N.J.A.C. 7:14A-1.2, to the Premises or In-kind Parcel.

## **8. SUBSIDIZED PROGRAMS**

A. Tenant may list and/or enroll the Premises or any part thereof in any federal and/or State conservation or set aside program involving the suspension or limitation of crop or pasture production ("subsidized programs") on the Premises with the written approval of the Department.

B. Except as provided in Paragraph 7 ("FARMING AND CONSERVATION PRACTICES"), Tenant may enroll the Premises in a subsidized program, including a natural resource conservation program administered by the USDA, NRCS, within twenty-four (24) months of the effective date of this Lease, with the written approval of the Department.

C. Tenant shall submit all agreements that Tenant is required to sign in connection with the subsidized program to the Department and shall not sign any applications, agreements, or other documents in connection with the subsidized program without the prior written approval of the Department. The Department shall respond to Tenant within thirty (30) days of receipt of any such documents.

D. Tenant shall be entitled to any monetary benefits payable under the subsidized program.

E. Tenant, Tenant's heirs, executors, administrators, successors, and assigns assume all risks and liabilities arising out of the enrollment of the farm in a subsidized program, and Tenant covenants to defend, protect, indemnify, and save harmless the Department and hereby releases the Department and each and every of its officers, agents, employees, successors, and assigns from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of actions, suits, claims, demands, or judgments of any nature arising from enrollment of the Premises in a subsidized program.

F. If the Premises are enrolled in a subsidized program, Tenant is solely responsible for completing any projects required as a result of enrollment in the subsidized program, within the Term of the Lease. The Department shall have no responsibility to complete any of the Tenant's projects and Tenant shall be solely responsible for any costs or penalties resulting from Tenant's projects enrolled in a subsidized program.

## **9. CROP DAMAGE**

The Department will avoid actions which cause damage to or destruction of Tenant's crops. The Department shall not be responsible or compensate Tenant for any damage to Tenant's crops for any reason, including but not limited to vandalism, wildlife, fire, explosion, hunting, weather, or any other cause.

## **10. IMPROVEMENTS**

A. Tenant shall not commence or enter into any contract for physical change to the Premises ("Improvement") without first obtaining the Department's written approval of an Improvement Plan for the Improvement. The Improvement Plan shall include, but not be limited to: (i) a description (including plans and specifications of each Improvement); (ii) a schedule for initiation and completion of each project; and (iii) a statement as to whether each project will be performed by Tenant or a contractor.

B. Improvements may include, but are not limited to:

- (i) replacement or repair of existing structures;
- (ii) any physical change to the contour of the landscape; and
- (iii) soil and water conservation projects designed to control and prevent soil erosion, sediment damage or the control of pollution.

C. The Tenant shall not be permitted to install a fence.

D. The Department's approval of the Improvement Plan shall be based upon the Department's determination that the proposed Improvement is consistent with both Tenant's obligations under and the purpose of this Lease and the Department's mission to protect and manage wildlife and the land for habitat conservation, and hunting, fishing and wildlife-orientated recreation.

E. Approval by the Department of the Improvement Plan submitted by Tenant in accordance with this Lease shall not in any way relieve Tenant of responsibility for the technical accuracy thereof. Tenant shall, at Tenant's sole cost and expense, correct or revise any errors, omissions or other deficiencies in the Improvement Plan. Approval or acceptance thereof by the Department shall not be construed as a waiver of any rights of the Department under this Lease or of any cause of action arising out of the performance of this Lease.

F. Tenant shall obtain and maintain all licenses, permits, and approvals required by the appropriate federal, State, and local authorities for the Improvement. Tenant shall submit all such applications that Tenant is required to sign in connection with the proposed Improvement to the Department and shall not sign any applications, agreements, or other documents in connection with the proposed Improvement without the written approval of the Department. The Department's approval to submit an any such application shall not be construed as approval of the Improvement

Plan. Tenant shall provide the Department with copies of all such licenses, permits, and approvals prior to commencement of the Improvement. Tenant shall assure that all work is done in compliance with the State Uniform Construction Code (N.J.A.C. 5:23) and all requisite licenses, permits, and other requirements of federal, State, and local authorities having jurisdiction.

G. Prior to the commencement of any Improvement, Tenant shall deliver to the Department certificate(s) of insurance showing that Tenant or Tenant's contractors, including any subcontractors, have obtained insurance coverage during the period of construction, providing such coverage and amounts as may reasonably be required by the Department.

H. All Improvements made without the Department's written consent or for which Tenant cannot document to the satisfaction of the Department that the Improvement was completed in compliance with the requirements of all federal, State, and local authorities having jurisdiction shall be removed by Tenant on the Department's written demand at Tenant's sole cost and expense. Tenant shall, at Tenant's sole cost and expense, repair any damage to the Premises or any other State property caused by Tenant's construction and removal of any unauthorized or unacceptable Improvement.

I. Upon the completion of any Improvement, Tenant shall, as a condition precedent to acceptance thereof by the Department, deliver to the Department: (i) copies of evidence of completion including such permanent certificate(s) of occupancy as shall be necessary for the possession and use of such Improvement or other appropriate evidence of completion; (ii) copies of the final and complete waiver by Tenant's contractor and any subcontractors of their rights to file or assert a mechanic's lien against the Improvement or any part of the Premises; and (iii) a complete set of reproducible "as-built" drawings of the Improvement.

## **11. TITLE TO IMPROVEMENTS AND ACCEPTANCE**

A. Title to all Improvements of the Premises by Tenant shall, be vested in and remain with Tenant for the duration of the term of this Lease as set forth in Paragraph 2 ("TERM"). All Improvements must be completed in accordance with the Improvements approved by Department under Paragraph 10 ("IMPROVEMENTS").

B. Upon the expiration or termination of this Lease, Tenant shall at Tenant's sole cost and expense, remove all Improvements and restore the Premises in accordance with a written removal and restoration plan submitted to and approved by the Department.

C. Upon expiration or termination of this Lease, Tenant fails or refuses to remove any or all components of the Improvements described in Paragraph 10 and restore the Premises as above provided, or Department approves Tenant abandonment of the Improvements, the Department may appropriate the same to its own use without allowing any compensation therefor, or may remove the same and restore the Premises at the expense of Tenant. Tenant shall, within thirty (30) days after written demand therefor by Department, reimburse the Department for all costs incurred by Department in the removal of said Improvements and restoration of the Premises.

## **12. MAINTENANCE, REPAIRS, AND UTILITIES**

A. Tenant shall keep and maintain the Premises and any Improvements, equipment, and fixtures comprising part of the Premises in a neat, clean, safe, and sanitary condition. Tenant shall not allow any trash, debris, refuse, or any other waste material to accumulate on the Premises. Tenant shall, at Tenant's sole cost and expense, promptly remove from the Premises and dispose of all trash, debris, refuse, or any other waste, except for those pre-existing conditions described in Exhibit C. Tenant shall participate in and comply with any recycling program in effect in the municipality in which the Premises are located.

B. Tenant shall keep and maintain the Premises, Improvements, utility systems, structural components, equipment, and fixtures comprising part of the Premises in good repair and condition, so as to minimize the effects of deterioration from age, use, and damage, at Tenant's sole



cost. The Department shall not be required to maintain or repair the Premises or maintain, repair, or replace Improvements, structures, structural components, utility systems, equipment, or fixtures comprising part of the Premises. The Department and Tenant agree that the base condition of each designated improvement to be maintained by Tenant is as described in Exhibit C. Upon the expiration or any termination of the Lease, Tenant shall deliver up peaceable possession of the Premises in as good repair and condition as they were delivered to Tenant at the commencement of this Lease, ordinary wear and tear excepted.

C. Tenant shall be solely responsible for the payment of all utility services including, but not limited to, electricity, gas, water, and sewage. The Department is not liable for the installation of or interruption of any utility services. Such stoppage or reduction shall not justify or excuse Tenant from paying Rent to the Department.

D. If Tenant fails to comply with a written notice from the Department describing Tenant's failure to comply with Tenant's obligations under this Paragraph, the Department may terminate this Lease pursuant to Paragraph 25 ("TERMINATION"), hereof or, in its sole discretion, the Department may enter upon the Premises and perform such work as the Department determines is necessary to correct said condition and charge Tenant for the cost of such work.

### **13. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES**

A. Tenant shall obtain and maintain all necessary licenses, permits, and approvals required by the appropriate federal and State authorities for the improvement, maintenance, and use of the Leased Premises in accordance with this Lease. Department agrees to cooperate with Tenant in obtaining the same. Tenant shall provide Department with satisfactory written evidence that all such licenses, permits and approvals have been obtained prior to commencement of improvement, maintenance, and use of the Premises. Tenant also shall provide Department with satisfactory documentation that all such licenses, permits, and approvals have been renewed as may be required so that Department is at all times in possession of adequate documentation that Tenant has obtained and is maintaining such licenses, permits, and approvals.

B. Tenant shall, at Tenant's sole cost and expense, comply and shall cause the Premises to comply with duly promulgated and applicable federal and State laws, rules, and orders affecting the Premises, or any other part thereof, or the use thereof, including those which require the making of any structural or extraordinary changes thereto whether or not any such laws, rules, or orders may involve a change of a policy on the part of the governmental body enacting the same. Without limiting the scope of the preceding sentence, Tenant shall comply with the applicable provisions of the Division of Fish and Wildlife Rules, N.J.A.C. 7:25-2 et seq., or as subsequently in effect, in Tenant's use and possession of the Premises and any activities on adjacent land and waters owned and/or under the control of Department.

C. If Tenant is issued:

- (i) A notice of failure to comply with any policy of insurance required by this Lease;
- (ii) A summons or any notice of violation of any license, permit, certification, authorization, approval, or any other similar instruments required by any federal or State authority having jurisdiction necessary to improve, maintain, and use the Premises in accordance with the provisions hereof; and
- (iii) A summons of any notice of violation of any duly promulgated and applicable federal or State laws, ordinances, rules, and orders affecting the Premises, and part thereof, or the use thereof.

Tenant shall immediately forward a copy of the notice or summons to Department and Tenant shall have such period of time to correct said violation as is prescribed in the summons or notice. If such

violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Lease and the terms of Paragraph 25 (“TERMINATION”) shall be applicable.

**14. SECURITY**

Tenant shall, at Tenant’s sole cost and expense, be completely responsible for all security of the Premises. Except as otherwise provided herein, Department has no obligation to Tenant for security of the Premises and shall not be responsible to Tenant, its agents, servants, employees, visitors, or contractors for personal injury, death, and/or loss, damage or destruction of improvements, supplies, equipment, or other personal property on the Premises.

**15. TAXES AND ASSESSMENTS**

Tenant shall be responsible for, and promptly pay when due, all taxes and assessments, together with interest and penalties thereon, that are levied upon or assessed with respect to the Premises or the leasehold estate hereby created . Tenant shall forward any notice/evidence to the Department, within thirty (30) days along with proof of the payment or appeal of any such tax or assessment. If any tax or assessment is not paid in full prior to the expiration or termination of this Lease, said tax or assessment shall remain a continuing obligation of Tenant thereafter.

**16. NO INTERFERENCE WITH OPERATION AND DEVELOPMENT OF WILDLIFE MANAGEMENT AREA**

A. Tenant shall conduct all activities on the Premises in a manner that will not interfere with, impair, or prevent Department’s development, maintenance, and management of the adjoining Department-owned property. Tenant shall coordinate with Department all activities on the Premises such as work schedules which could affect the development, maintenance, and management of the adjoining State-owned property and the safe use and enjoyment thereof by the public or other tenants of Department and shall implement all measures reasonably required by Department to minimize such effects. Tenant shall, upon receipt of written notice from Department and within the time period prescribed in said notice, take such action as may be required by Department to eliminate any such interference or impairment occasioned by Tenant’s use of the Premises.

B. Any other provision herein contained to the contrary notwithstanding, in the event that Department gives Tenant written notice that Department requires the use of all or any part of the Premises for any reason, Tenant shall, within the period set forth in said notice and without any compensation therefor by Department to Tenant, turn over to Department possession of the Premises or part thereof designated by Department (including any and all improvements thereon owned by Tenant and not required by Department to be removed by Tenant within the notice period). If Tenant determines that Department’s use of the Leased Premises materially affects Tenant’s ability to use the remainder, Tenant may terminate this Lease pursuant to Subparagraph 25C (“TERMINATION”). Department shall not be liable to Tenant for any compensation, loss, damage, or any other claim arising from Department’s use in accordance with this subparagraph.

C. If any historic artifacts or items appearing to be of a historical nature are uncovered or discovered during the course of Tenant’s activities on the Premises, Tenant shall immediately notify the Department. Such historic articles are to be left in place until inspection by the Department, who will ascertain their historic significance and issue instructions regarding handling and removal. Such items are the property of the State of New Jersey and shall be surrendered to the Department’s representatives. Failure to comply with this subparagraph may subject Tenant to the violations available to the Department under N.J.S.A. 23:7-1.2.

**17. ACCESS TO PREMISES**

A. The Department, its agents, or employees shall have the right and privilege of ingress and egress on, over and across the Premises to access State-owned property for inspection, maintenance, development, and operation. Any authorized representative of the Department shall have the right to

enter upon and inspect the Premises, improvements, and the operations thereof and to take such action thereon as the Department may deem necessary to assure compliance by Tenant with the terms and conditions of this Lease.

B. The Department shall exercise its right under subparagraph A, above, in such manner so as to avoid and minimize damage to Tenant's property and crops or unreasonably interfere with Tenant's activities.

C. Tenant shall maintain at all times eight (8) foot wide perimeters that are uncultivated and free of obstructions around all fields on the Premises and In-kind Parcel (e.g., Agriculture Production Purposes) to enable the Department to access the Premises and In-kind Parcel.

D. Tenant shall not plant any trees and/or crops within twenty (20) feet of any building, structure, or ingress/egress point to the Premises.

E. The Department may erect new gates to the access area of the Premises. Any new gate shall be installed in a manner that does not limit or restrict access to the Premises for farm equipment. The Department shall provide Tenant with the means to unlock the gate.

F. Tenant shall not alter access to Department-owned property. Tenant shall not lock any access gates that are typically unlocked or unlock gates that are typically locked without the prior written approval of the Department. If Tenant is not sure whether a gate is typically locked or unlocked, Tenant shall contact the Department prior to locking or unlocking any gates. If a gate is locked by the Department or Tenant, both shall have a means to unlock the gate. Tenant shall not install any gates altering access to the Premises unless approved in advance and in writing by the Department.

G. The Department shall ensure that Tenant has access to the Premises and In-kind Parcel. Tenant shall notify the Department immediately if access has been impaired. If restoring access requires a physical change to the Premises, the Department shall either repair the impaired access or authorize Tenant to make the repair. If Tenant is authorized to make the repair, the repair shall be treated as an Improvement pursuant to Paragraph 10 ("IMPROVEMENTS"), and Tenant shall be required to obtain the Department's written approval of an Improvement Plan and the associated cost prior to beginning any work. If the Department approves the Improvement Plan and the cost, the Department can indicate that Tenant may deduct the cost of the repair from the next Rent payment.

## **18. SIGNS**

Tenant shall not permit any signs or advertisements of any description to be painted or posted on any of the buildings or structures, or about the Premises, without prior written approval of Department. The Department may, at its sole discretion, place signs along the perimeter of the property.

## **19. DAMAGE TO PREMISES**

A. In the event of any damage to or destruction of the Premises, any Improvements thereon, or any other State property caused in whole or in part by Tenant, its contractors, agents, servants, employees, or invitees or arising in whole or in part from Tenant's failure to implement sound farming and conservation practices (hereinafter collectively referred to as "damage"), Tenant shall, at Tenant's sole cost and expense, promptly repair such damage. All determinations as to whether Tenant has implemented sound farming and conservation practices shall be made by the Department in consultation with NRCS or the appropriate Soil Conservation District, and if a Farm Conservation Plan has been approved for the Premises, the determination shall be made on the basis of such approved Plan. If the Department determines that such damage should not be repaired, Tenant shall be responsible to the Department for the diminution in value of the Premises. In the event that Tenant fails to comply with Tenant's obligations under this Paragraph after receiving written notice of damage, the Department may terminate this Lease pursuant to Paragraph 26, or in its sole discretion, enter upon the Premises and perform such work as the Department determines is

necessary to correct said damage. Tenant shall, after written demand therefor by the Department, reimburse the Department for all costs incurred by the Department in performance of such work. The Department shall not be liable to Tenant or any person claiming by or through Tenant for any loss occasioned by the damage or destruction of the Premises and/or any Improvements thereon. This Lease shall not be construed to require or obligate the Department to cause any damage to the Premises to be repaired for the benefit of Tenant.

B. All repairs by Tenant of damage to the Premises and/or any other Department-owned property shall be completed in accordance with plans and specifications submitted to and approved by the Department. The parties shall comply with all the requirements and procedures set forth in Paragraph 10 ("IMPROVEMENTS"), hereof to the same extent as though the repair is an Improvement.

## 20. INDEMNIFICATION

A. Tenant shall, for itself, its successors, and assigns, assume all risks and liabilities arising out of Tenant's possession, operation, maintenance, and improvement of the Premises and In-kind Parcel. Tenant covenants to defend, protect, indemnify, and save harmless Department and hereby releases Department and each of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of every nature arising from or claimed to arise, in whole or in part, in any manner out of, be occasioned by, or result from:

- (i) Any injury to, or the death of, any person in or on, or any damage to property which occurs in, on, or about the Premises and In-kind Parcel, or in any manner growing out of or connected with the use, nonuse, condition, or occupancy of the Premises and In-kind Parcel;
- (ii) Violation of any agreement or condition of this Lease by Tenant, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through Tenant;
- (iii) Violation by Tenant of any contracts, agreements, or restrictions of record concerning the Premises and In-kind Parcel or any federal or State law or regulation affecting the Premises and In-kind Parcel and/or Tenant's possession, use and occupancy thereof; or
- (iv) Any act, error, or omission by Tenant, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through Tenant in the performance of this Lease.

B. Department and Tenant shall, as soon as practicable after a claim has been made against either of them, give written notice thereof to the other, along with full and complete particulars of the claim. If the suit is brought against Department, Tenant, or any of their agents, servants, or employees, it shall expeditiously forward or have forwarded to the other every demand, complaint, notice, summons, pleading, or other process received by or then in their possession or the possession of its representatives.

C. Tenant's liability pursuant to this Paragraph shall continue after the termination or expiration of this Lease with regard to causes of action arising or claimed to arise prior to the termination or expiration hereof and/or obligations of Tenant under this Lease that survive such termination or expiration.

D. This indemnification is not limited by, but is in addition to, the insurance obligations contained in this Lease.

E. The provisions of this indemnification clause shall in no way limit the obligations assumed by Tenant under this Lease, nor shall they be construed to relieve Tenant from any liability or

to preclude Department from taking any other actions available to it under any provisions of this Lease or at law or in equity.

F. All claims asserted against Department by the Tenant shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. Nothing in this Lease shall be construed as a waiver by Department of any warranty, express or implied, or of any remedy at law or in equity.

G. Any claim against the Department relating to a final decision by the Commissioner regarding contract award rescission, contract interpretation, contractor performance, and/or contract reduction, suspension or termination shall not accrue, and the time period for performing any act required by N.J.S.A. 59:8-8 or 59:13-5 shall not commence, until a decision is rendered by the Superior Court of New Jersey, Appellate Division (or by the Supreme Court of New Jersey, if appealed) that such final decision by the Commissioner was improper.

## 21. INSURANCE

A. Tenant shall, at Tenant's sole cost and expense, obtain and maintain at all times during the term of this Lease, insurance on the Premises and the In-kind Parcel, and any Improvements thereon for damages imposed by law and assumed under this Lease, of the types and in the amounts hereinafter provided:

- (i) Commercial General Liability policy (including insurance with respect to owned or operated motor vehicles). The policy shall include an endorsement for contractual liability. Limits of liability shall be maintained at the level of One Million (\$1,000,000) Dollars per occurrence for bodily injury and property damage and a Two Million (\$2,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies; and
- (ii) Property insurance to cover loss or damage on a "Special Causes of Loss" form of coverage against fire, water, wind, storm, loss, theft, and damage on any structures on the Premises and all fixtures, equipment, and other property attached thereto and/or physically incorporated therein and the contents owned by Tenant and located in or on the Premises. Said insurance shall be in an amount not less than the full value of such structures, fixtures, equipment, property, and contents. The value of said structures, fixtures, equipment, property, and contents shall be determined by Tenant using whatever procedures Tenant considers appropriate. Said policy shall be written so as to provide that the insurer waives all right of subrogation against Department in connection with any loss or damage covered by the policy; and
- (iii) Worker's Compensation Insurance applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Million (\$1,000,000) Dollars Bodily Injury By Accident (Each Accident) and One Million (\$1,000,000) Dollars Bodily Injury By Disease (Each Employee) with an aggregate limit of One Million (\$1,000,000) Dollars Bodily Injury By Disease (Policy Limit); and
- (iv) Comprehensive Automobile Liability Insurance, which shall be written to cover any all vehicles used by Tenant. Limits of liability to cover bodily injury and property damage shall not be less than One Million (\$1,000,000) Dollars per person or per accident. Coverage must include hired and non-owned vehicles. A MCS-90 certificate shall be filed with the State of New Jersey if hazardous materials or waste will be transported during the Lease Term; and
- (v) Such other insurance and in such amounts as may from time to time be reasonably required by Department.

B. Tenant shall require any person or organization providing any service and/or conducting any activity on the Premises or In-kind Parcel as part of Tenant's use and occupancy thereof to secure and maintain in force at all times during the provision of any service and/or conduct of any activity thereon as part of Tenant's use and occupancy of the Premises or In-kind Parcel, insurance coverage of the types and in at least the minimum amounts required under subparagraph 21A and the requirements of subparagraph 21C.

C. All policies of insurance shall provide that the proceeds thereof shall be payable to Department and Tenant as their respective interests may appear. All insurance coverage required to be maintained by Tenant on the Premises and In-kind Parcel in accordance with this Lease shall be issued by an insurance company authorized and approved to conduct business in the State of New Jersey and shall name the **“State of New Jersey, Department of Environmental Protection LEXX-XXX”** as an additional insured.

D. When Tenant returns this Lease, signed by Tenant, to Department for signature, Tenant shall provide Department with a certificate of insurance evidencing that Tenant has obtained all insurance coverage in accordance with this Lease. A copy of the certificate of insurance shall be attached to this Lease as Exhibit E. The certificate of insurance shall provide for thirty (30) days' notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Lease. Tenant also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies so that Department is continuously in possession of current documentation that Tenant has obtained and is maintaining in full force and effect all insurance required under this Lease. Tenant also shall, upon request, provide Department with copies of each policy required under this Lease certified by the agency or underwriter to be true copies of the policies provided by Tenant. Tenant shall not allow any contractor or subcontractor to engage in any activity on the Leased Premises without first submitting to Department a current certificate of insurance showing that the contractor or subcontractor has obtained insurance coverage in accordance with the requirements of this Lease. Tenant shall deliver the certificates to Department's address as listed in Paragraph 34 (“NOTICES”).

E. Tenant expressly understands and agrees that any insurance protection required by this Lease shall in no way limit Tenant's indemnification obligations assumed in this Lease and shall not be construed to relieve Tenant from liability in excess of such coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Lease and as otherwise provided for at law or in equity.

F. In the event (i) Tenant fails or refuses to renew any of its insurance policies or to provide Department with timely certificates of insurance showing that Tenant is maintaining insurance coverage in full force and effect to the extent required by this Lease or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Lease, the Department shall consider Tenant to be in material breach and terminate this Lease under Paragraph 25 (“TERMINATION”) .

G. The limits of insurance policies described in this Paragraph shall be reviewed by Department and Tenant every two (2) years. Tenant shall increase the limits of said policies to meet changed circumstances including, but not limited to, changes in the United States Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

## 22. REPORT OF INJURY

Any injury that shall occur to Tenant, its servants, agents, or invitees requiring medical intervention of which Tenant shall be notified shall be reported to the Department immediately and in writing within twenty-four (24) hours of the incident.

## 23. ASSIGNMENT OR SUBLEASE OF PREMISES

A. Tenant shall not sublease the whole or any part of the Premises, nor shall Tenant transfer a controlling interest in this Lease or Tenant's responsibilities under this Lease or the

operations authorized hereunder. Any sublease or transfer of controlling interest shall be null and void and shall, in the discretion of the Department, constitute grounds for termination of this Lease after thirty (30) days written notice without an opportunity to cure.

B. Tenant shall not assign this Lease, without first obtaining the Department's express written approval thereof and upon such terms and conditions required by the Department. Any such assignment must be for the whole of the Lease. Tenant shall notify any prospective assignee that any assignment is void and of no effect unless same is first approved by the Department. Such assignment shall be in writing, and Tenant shall furnish the Department with a copy of same and an agreement in writing wherein the assignee assumes and agrees to keep, observe, and perform all of the covenants, conditions, and obligations to be kept, performed, and observed under this Lease on the part of Tenant. Any assignment, of controlling interest made without first obtaining the Department's express written approval thereof shall be null and void and shall, in the discretion of the Department, constitute grounds for termination of this Lease after thirty (30) days written notice without an opportunity to cure.

## **24. SUSPENSION OF OPERATIONS**

Tenant shall, at the direction of the Department, immediately suspend, delay, or interrupt all or any part of its possession and use of the Premises and any other Department-owned lands as the Department determines to be appropriate. Any suspension shall be effective immediately upon notification of Tenant by the Department in writing. The primary reasons for issuance of such an order will be: (i) failure by Tenant to comply with any of the obligations and responsibilities on its part to be performed under this Lease; and/or (ii) any reason including but not limited to the occurrence of hazardous work conditions, emergency conditions, unusually violent weather conditions or the threat thereof, or any other reason where continuation of activities by Tenant may detrimentally impact State-owned property and/or the health and safety of the public or persons on site. Any suspension under item (i) above shall be in effect until Tenant resolves, to the satisfaction of the Department, its failure to comply with any of the obligations and responsibilities on its part to be performed under this Lease. Tenant's failure to comply shall be described in the written notice. Any suspension under item (ii) above shall be effective until the reason for closure no longer exists to the satisfaction of the Department. Tenant hereby waives any claim for damages or compensation as a result of the Department's action under this Paragraph. The Department's rights under this Paragraph shall be in addition to and shall not limit any other right or remedy available to the Department under this Lease or otherwise at law or in equity.

## **25. TERMINATION**

A. Tenant shall comply with the terms and conditions of this Lease. Failure to comply and/or the existence of any circumstance which the Department determines to be in violation of the terms and conditions hereof shall be a material breach, which shall authorize the Department to terminate this Lease as follows (except where another method of termination is expressly prescribed elsewhere in this Lease), in addition to exercising any other right or remedy provided for by law or in equity:

- (i) In the event of Tenant's failure to perform the following: (a) maintain any of the insurance policies to the extent required under this Lease or provide the Department with valid certificates of renewal of insurance upon expiration of the policies; (b) pay when due any Rent, Additional Rent, Converted Payment, taxes or assessments, or other sums required to be paid by Tenant hereunder; or (c) perform the In-kind Services set forth herein; termination shall, in the discretion of the Department, become effective ten (10) days after Tenant's receipt of written notice of such failure served by Certified Mail, Return Receipt Requested, if such failure is not cured beforehand; and
- (ii) Tenant fails to perform and/or comply with any of the other obligations, responsibilities, covenants, agreements, leases, and/or terms and conditions herein

contained. Upon receipt of a written notice of termination for violation served by Certified Mail, Return Receipt Requested, Tenant shall have thirty (30) days to begin to cure such violation as the Department shall describe therein and an additional thirty (30) days to substantially cure such violation. If Tenant has not begun to cure such violation by the end of the first thirty (30) days, termination shall, in the discretion of the Department, be effective at the conclusion of such thirty (30) day period. If Tenant has begun to cure such violation within the first thirty days but does not substantially cure it within said sixty (60) day period, termination shall, in the discretion of the Department, be effective at the conclusion thereof. In the event that the conditions which give rise to the material breach are of such nature that they cannot reasonably be remedied within the notice period, then such material breach shall not be deemed to continue so long as Tenant, after receiving such notice, proceeds to remedy the material breach as soon as is reasonably possible within the notice period and continues diligently to take all steps necessary to complete such remedy within a reasonable period of time.

B. If the Department fails to cure any material breach of the Department of which it has been notified by Tenant in writing within the time reasonably required to cure such material breach, Tenant shall have the right to terminate this Lease, upon sixty (60) days' written notice of Tenant's intention to terminate hereunder, which right shall be in addition to any and all other remedies available to Tenant.

C. Notwithstanding the Department's compliance with all terms and conditions herein, Tenant shall have the right to terminate this Lease upon ninety (90) days' written notice served upon the Department by Certified Mail, Return Receipt Requested. Said notice shall include a comprehensive explanation and justification of Tenant's reasons for not continuing operations under this Lease. Within forty-five (45) days of receipt of Tenant's notice, the Department and Tenant shall determine whether the reasons for termination can be resolved to their mutual satisfaction. In the event that the Department and Tenant determine that said reasons cannot be resolved, termination shall become effective ninety (90) days after the Department's receipt of the notice.

D. Expiration of this Lease or termination hereof by either party shall not release or discharge any payment, obligation, or liability owed to the other party or any third party under this Lease as of the date of such expiration or termination.

E. If the Department exercises its right to terminate due to breach by Tenant, or if Tenant exercises its right to terminate this Lease without a material breach on the part of the Department, under Subparagraph C, above, Tenant shall be liable for all Rents due for the Lease, subject to any duty to mitigate on behalf of the Department. In the event that Tenant exercises its right to terminate this Lease under Subparagraph B, above, due to breach by the Department, the Department shall refund to Tenant any Rent paid in advance for the unexpired Lease Year. In all cases, Tenant shall remain liable for all Additional Rent due.

F. This Lease shall not be terminated without providing sufficient time for Tenant to harvest its Way-going crops except where there has been a material breach by Tenant.

G. If the Department exercises its right to terminate this Lease, the Department shall not be liable to Tenant or any other person claiming by or through Tenant for any losses, damages, costs, or expenses (including reasonable attorney's fees) or other claims occasioned by such termination except as expressly stated in the Lease.

H. In the event that Tenant has enrolled the Premises in a subsidized program pursuant to Paragraph 8 herein, and this Lease is terminated prior to fulfilling the terms of enrollment in the subsidized program, Tenant shall be solely liable for all costs and repayment of funds associated with early withdrawal from the subsidized program including where Tenant terminates the Lease pursuant to Paragraph 16B herein.

I. If the Department terminates this Lease due to breach of covenant by Tenant, the Department reserves the right not to enter into another lease with Tenant and reserves the right not to allow Tenant to sublease, or be a subcontractor on, land owned by the Department.



## **26. END OF TENANCY**

In the event of any termination of or upon the expiration of this Lease, Tenant shall immediately cease all use and operations on the Premises and In-kind Parcel and deliver up peaceable possession of the Premises to the Department in at least as good condition as they were delivered to Tenant at the commencement of this Lease. Upon termination, the Department has a right to re-enter and remove any and all persons occupying the Premises and/or In-kind Parcel. If Tenant shall fail to remove any personal property lawfully belonging to and removable by Tenant within the time prescribed by any notice of termination or before the stated expiration of this Lease, the Department may appropriate the same to its own use without allowing any compensation therefor, or may remove the same at the expense of Tenant. In the event that Tenant removes any personal property, Tenant hereby covenants to pay any and all damages which may be caused to the Premises and/or In-kind Parcel and/or other property of the Department by said removal.

## **27. BANKRUPTCY**

In the event Tenant enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Tenant agrees to furnish written notification of the bankruptcy to the Department with a copy to the Attorney General's Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include a complete copy of all pleadings filed in connection with the initiation of the bankruptcy proceedings, the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. The obligation to report entering into any such proceedings remains in effect until final payment is made under this Lease. The Department shall have the right to terminate this Lease immediately upon receipt of a notice of bankruptcy by providing written notice to Tenant.

## **28. CREATION OF LIENS OR ENCUMBRANCES BY TENANT**

A. Tenant shall have no power to do any act or make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance upon the interest of the Department in the Premises, the In-kind Parcel, any part of the Premises or In-kind Parcel, or any of the Department's properties. If Tenant should cause any Improvements to be made to the Premises and/or In-kind Parcel, or if Tenant should cause any labor to be performed or material to be furnished therein, thereon, or thereto, neither the Department, nor the Premises and/or In-kind Parcel, nor any of the Department's other properties shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such improvements, repairs, labor, and material, shall be made, furnished, and performed at Tenant's expense, and Tenant shall be solely and wholly responsible to the contractors, laborers, and materialmen furnishing and performing such labor and material.

B. If, because of any act or omission (or alleged act or omission) of Tenant, any mechanic's or other lien, charge, or order for the payment of money shall be filed against the Premise, the In-kind Parcel, any of the Department's properties, or against the Department (whether or not such lien, charge, or order is valid or enforceable as such), Tenant shall, at its own cost and expense, cause the same to be cancelled and discharged of record or bonded within ten (10) days after notice to Tenant of the filing thereof.

C. Tenant shall, upon completion of any improvement(s), provide the Department with a signed copy of any and all lien(s), said statement indicating that all contractors have been paid and all lien(s) have been discharged.

## **29. NO DISCRIMINATION**

A. Tenant must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, et seq.

B. Tenant shall not discriminate, and shall abide by all anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d-2000d-4; the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and all rules and regulations promulgated pursuant thereto.

C. Specifically, Tenant shall not unlawfully discriminate: 1) against any person, employee, or applicant for employment, or 2) in allowing access to and use of the Premises and/or In-kind Parcel.

### **30. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS**

A. Pursuant to N.J.A.C. 17:27-3.5, Tenant agrees that:

- (i) Tenant or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, Tenant will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;
- (ii) Tenant or its subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- (iii) Tenant or its subcontractor, where applicable, will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Tenant's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
- (iv) Tenant or its subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

B. Further, pursuant to N.J.A.C. 17:27-3.7, Tenant agrees that:

- (i) Tenant and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- (ii) Tenant and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

- (iii) Tenant and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- (iv) In conforming with the targeted employment goals, Tenant and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

### 31. SOLICITATION

Tenant warrants that no person has been employed directly or indirectly to solicit or secure this Lease in violation of N.J.S.A. 52:34-15 and that N.J.S.A. 52:34-19, and that the laws of the State of New Jersey relating to the procurement and performance of this Lease have not been violated by any conduct of Tenant, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity, or consideration of any kind to any State employee, officer, or official.

### 32. CONFLICTS OF INTEREST LAW

A. Pursuant to New Jersey's Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., Tenant shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13., of Department or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13.

B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from the Tenant shall be reported in writing forthwith by the Tenant to the Attorney General and the Executive Commission on Ethical Standards.

C. Tenant may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in Tenant to any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

D. Tenant shall not influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

E. Tenant shall not cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for Tenant or any other person.

F. The provisions cited above shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with Tenant under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order 189 (Kean).

### 33. HOLDOVER TENANCY

If the Department permits Tenant to remain in possession of the Premises after expiration of the Term of this Lease without extending, renewing, or executing a new Lease, Tenant shall occupy the Premises and In-kind Parcel subject to all the terms, covenants, and conditions contained in this Lease unless modified by a subsequent Lease renewal, amendment and/or extension. Such holding over by Tenant shall not constitute a renewal or extension of this Lease. The Department may elect to treat Tenant as one who has not removed at the end of its Term and shall thereupon be entitled to all the remedies against Tenant as provided by law or in equity.

### 34. NOTICES

A. **WRITTEN:** All submissions, approvals, and notices required under this Lease shall be forwarded by Certified Mail, Return Receipt Requested, and addressed as follows:

TO DEPARTMENT: State of New Jersey  
Department of Environmental Protection  
Division of Fish & Wildlife  
Mail Code 501-03  
PO Box 420  
Trenton, New Jersey 08625-0420

Copy to: State of New Jersey  
Department of Environmental Protection  
Natural & Historic Resources  
Office of Leases & Concessions  
Mail Code 501-04C  
PO Box 420  
Trenton, New Jersey 08625-0420

TO TENANT: *insert Tenant's contact information*

Either party may change such address by mailing to the address above a notice of change at least ten (10) days prior to such change.

### B. ELECTRONIC SUBMISSIONS

- (i) Tenant is required to have a working email address on file with the Department prior to the start of the Term.
- (ii) Tenant shall maintain an active email address, designated to this Lease and report any changes during the Term of the Lease. Failure by the Tenant to maintain the active email account, designated for the Lease, shall be a material breach and grounds for Termination of the Lease under Paragraph 25 ("TERMINATION").
- (iii) The Department may fulfill any notification obligation under this Lease by sending an email message with pertinent content and/or attachments to the Tenant's email address. This shall include any Term or Rent related emails generated by the Department's database, after its deployment, and delivered to the Tenant's active email address.

### 35. SUPERSEDES - ENTIRE LEASE - AMENDMENTS

This Lease supersedes and cancels all previous leases, permits, agreements, and “special use permits” covering the Premises and/or In-kind Parcel and represents the entire agreement between the parties. All negotiations, oral agreements, and understandings are merged herein. This Lease may be amended, supplemented, changed, modified, or altered only upon mutual agreement of the parties hereto in writing.

### **36. WAIVER - CUMULATIVE REMEDIES - GOVERNING LAW**

A. Failure of either party to this Lease to complain of any act or omission on the part of the other party, no matter how long same may continue, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of breach of any provision of this Lease shall be deemed a waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, by reason of a breach by the other party, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two or more or all of such rights and remedies may be exercised at the same time. Acceptance by either party of any of the benefits of this Lease with knowledge of any breach thereof by the other party shall not be deemed a waiver by the party receiving the benefit of any rights or remedies to which it is entitled hereunder or by law.

B. This Lease shall be governed by and interpreted in accordance with the Laws of the State of New Jersey and any legal actions filed hereunder shall be filed in the courts of the State of New Jersey.

### **37. INDEPENDENT PRINCIPAL**

Tenant shall, at all times, act as an independent principal and not as an agent or employee of The Department. Tenant agrees not to enter into any Lease or commitment on the Department's behalf.

### **38. SUCCESSION AND BINDING EFFECT**

Except as otherwise set forth herein, all of the terms and provisions of this Lease shall be binding upon and shall benefit the Department's successors and assigns and Tenant's heirs, executors, administrators, successors, and assigns.

### **39. PAY TO PLAY**

A. Pursuant to N.J.S.A. 19:44A-20.13, et seq. (P.L.2005, c.51) and specifically N.J.S.A. 19:44A-20.21, and Executive Order No. 117 (2008) it shall be a breach of the terms of this Lease for Tenant to: (1) make or solicit a contribution in violation of P.L.2005, c.51; (2) knowingly conceal or misrepresent a contribution given or received; (3) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (4) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (5) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Tenant itself, would subject that entity to the restrictions of P.L.2005, c.51; (6) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (7) engage in any exchange of contributions to circumvent the intent of P.L.2005, c.51; or (8) directly or indirectly through or by any other person or means, do any act which would subject Tenant to the restrictions of P.L.2005, c.51. Further, where Tenant is a business entity, as defined by N.J.S.A. 19:44A-20.17, and the value of this Lease exceeds \$17,500, Tenant shall submit with this Lease a “Certification and Disclosure of Political Contributions Form”, certifying that it has not made any contributions prohibited by P.L.2005, c.51 and reporting all contributions Tenant made during the preceding four

years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7, and the “Ownership Disclosure Form”. It is the Tenant’s continuing obligation to report any contributions it makes during the term of this Lease. Additionally, unless this Lease is required by law to be publicly advertised for bids, if Tenant is a for-profit business entity, as defined by N.J.S.A. 19:44A-20.26 and the value of this Lease exceeds \$17,500, Tenant shall submit with this Lease a “Vendor Certification and Political Contribution Disclosure Form” listing its political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L.1973, c.83 (C.19:44A-1 et al.) and that were made by Tenant during the preceding 12-month period, along with the date and amount of each contribution and the name of the recipient of each contribution. The forms and instructions are available at <http://www.state.nj.us/treasury/purchase/forms.shtml>.

B. Tenant is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC) pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 3) if Tenant received contracts in excess of Fifty Thousand (\$50,000.00) Dollars from a public entity in a calendar year. It is Tenant’s responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

#### **40. PREVAILING WAGE ACT**

Without limiting the scope of any other provision of this Lease, Tenant agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 as codified in N.J.S.A. 34:11-56.25, et seq. for all construction, reconstruction, demolition, alteration, fabrication, repair work or maintenance work, including painting and decorating, done under contract. Tenant also agrees to comply with 42 U.S.C. 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and §9604 (g)(1), the Tenant must comply with the federal requirements.

#### **41. CORPORATE STATUS AND RESOLUTION (IF APPLICABLE)**

Prior to the Effective Date of this Lease, Tenant shall provide the Department with:

A. A copy of Tenant’s certificate of incorporation on file with the Secretary of State, attached hereto as Exhibit F, and a current certificate of standing issued by the Secretary.

B. A notarized copy of a resolution adopted by the Board of Directors of Tenant, authorizing the execution of this Lease by Tenant for the purposes and subject to the terms and conditions herein provided, is attached hereto as Exhibit G.

C. A current New Jersey Business Registration Certificate, is attached hereto as Exhibit H.

#### **42. HEADINGS**

The article, paragraph, and subparagraph headings throughout this Lease are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Lease.

#### **43. SEVERABILITY**

If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease, or the application of such term and provision of this Lease, shall be valid and be enforced to the fullest extent permitted by law.

**44. STATE HOUSE COMMISSION APPROVAL**

This Lease shall not be effective unless the Department obtains from the State House Commission evidence that the State House Commission has approved the execution of this Lease for the purposes and subject to the terms and conditions herein provided.

**45. NO THIRD-PARTY BENEFICIARIES**

There shall be no third-party beneficiaries of this Lease, and no person, firm, or entity not a party to this Lease shall be entitled to claim any right, benefit, or presumption from or estoppel by this Lease.

**46. FISH AND GAME COUNCIL**

Pursuant to N.J.S.A. 23:8A-1 the New Jersey Fish and Game Council reviewed this lease on \_\_\_\_\_.

**47. ATTACHMENTS**

The following are attached to and made a part of this Lease:

- Exhibit A - Map of the Premises;
- Exhibit B - In-kind Services and Parcel for the Lease Year;
- Exhibit C - Pre-existing Conditions;
- Exhibit D - List of permissible crops (if applicable);
- Exhibit E - Certificate of Insurance;
- Exhibit F - Certificate of Incorporation (if applicable);
- Exhibit G - Notarized Corporate Resolution (if applicable);
- Exhibit H - New Jersey Business Registration Certificate (if applicable).

**IN WITNESS WHEREOF**, the Department and the Tenant have duly executed this Lease on the date herein below set forth.

**DEPARTMENT:**

**STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

By: \_\_\_\_\_  
Ray Bukowski, Assistant Commissioner  
Natural and Historic Resources

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**TENANT: insert name**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Lease has been reviewed and approved as to form by:  
Andrew Bruck, Acting Attorney General  
State of New Jersey

By: \_\_\_\_\_  
Deputy Attorney General

Date: \_\_\_\_\_

**STATE HOUSE COMMISSION CERTIFICATION**

**I HEREBY CERTIFY** that, on ***insert date***, this Lease between the Department of Environmental Protection, Division of Fish and Wildlife, as the Department, and ***insert name*** as Tenant, was approved by the State House Commission pursuant to N.J.S.A. 52:31-1.1 et seq. and N.J.S.A. 52:31-1.3(a).

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Secretary