

PROPOSED OPERATION AGREEMENT

**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY**

THIS AGREEMENT, made the ____ day of _____, 2018,

BETWEEN **THE STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY
501 EAST STATE STREET
P. O. BOX 420
TRENTON, NEW JERSEY 08625-0420**

hereinafter referred to as the Department,

AND

hereinafter referred to as Operator.

WHEREAS, the Department owns Liberty State Park (hereinafter referred to as the State Park) and operates it as a State Park pursuant to N.J.S.A. 13:1L-1, et seq.; and

WHEREAS, the Department purchased the lands that became Liberty State Park starting in 1968; and

WHEREAS, the Park currently consist of approximately 1,212 acres, with over 300 acres available to public and includes access to the Statue of Liberty, Ellis Island National Monument, and New York City via the ferry service; and

WHEREAS, the Department recognizes that food and retail services are important amenities for Park patrons and provide revenue to the Park for maintenance of the Park; and

WHEREAS, the Department issued the *Food and Retail Services at Liberty State Park Request for Proposal* on October XX, 2017, for an operator to provide food and retail services at three Locations within the Park, known as the Operation Area, subject to this Agreement (the “RFP”), a copy of which is attached hereto and made part hereof as Exhibit A; and

WHEREAS, Operator submitted a bid proposal in response to said RFP (“Bid Proposal”), and the Department selected Operator’s bid proposal on _____, 2017, as the bid proposal most responsive to the RFP and most advantageous to the people of the State of New Jersey, price and other factors considered, a copy of which Bid Proposal is attached hereto and made a part hereof as Exhibit B; and

WHEREAS, the Department, subject to the terms set forth in the RFP, is willing to enter into this Operation Agreement with Operator under the provisions, covenants, terms, and conditions hereinafter described, which shall be consistent with the terms set forth in Operator’s Bid Proposal submitted in response to the RFP.

NOW THEREFORE, in consideration of payment by Operator to the Department as herein below provided and the mutual covenants hereinafter made, and in accordance with the provisions of N.J.S.A. 13:1L-1 et seq., the Department and Operator hereby mutually covenant

and agree as follows:

1. THE OPERATION AREA; PERSONAL PROPERTY

A. The Department hereby allows Operator to use the Operation Area, defined as follows: Location 1 – Concession Stand at the Park Office; Location 2 – Green Park Playground/Picnic Area; and Location 3 – the Central Railroad New Jersey Terminal (CRRNJ Terminal); and identified more particularly on the Maps and Photographs attached to and made a part of this Operation Agreement as Exhibit C, for the Term of this Operation Agreement. It is expressly understood that this Operation Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Operation Area to Operator.

B. Operator shall provide all the personal property (as defined in the RFP) and supplies necessary to perform under this Operation Agreement and the RFP. Operator has provided a list of all items that are personal property that shall not become a part of the Department’s property as Exhibit D. Operator shall provide an updated list, as often as necessary, to the Department. All other improvements (as defined in the RFP) shall become the property of the Department.

2. TERM

A. The term of this Operation Agreement shall commence on _____, 2018 (“Effective Date”). Operator shall operate the Operation Area during the term of this Operation Agreement, beginning on the Effective Date and continuing for a period of seven (7) years (the “Initial Term”) from that date until the expiration of the Operation Agreement (“Expiration Date”), unless the Operation Agreement shall end sooner pursuant to any of the terms, covenants, or conditions herein provided or pursuant to law. The Department may terminate this Operation Agreement in accordance with the termination provisions as contained herein, in the RFP, or in accordance with applicable law. In the event of such termination, after expiration of the notice period, Operator shall not be permitted to enter the Operation Area without accompaniment of a representative of the Department.

B. Provided that no event of default has occurred and is continuing, and provided that Operator has received financing for and completed the improvements as described in Section 1.11 of the RFP (“Improvements”), Operator may request that the term of this Operation Agreement be renewed for an additional five (5) year period (the “Renewal Term”) by giving the Department written notice of Operator’s request to renew no less than one hundred and eighty (180) days prior to the expiration of the Initial Term of this Operation Agreement. The Department reserves the right to disapprove renewal of this Operation Agreement if the Department determines: (1) Operator has not satisfactorily complied with the terms, covenants, or conditions herein provided or pursuant to law; (2) Operator has not completed the Improvements during the Initial Term; (3) that continuation of this Operation Agreement is not consistent with reasonably anticipated plans for development or use of the State Park by the Department; or (4) renewal of this Operation Agreement is not otherwise in the public interest. In the event that Operator’s request for renewal is not approved by the Department on or before sixty (60) days prior to the scheduled expiration date of this Operation Agreement, said request shall be deemed to have been denied, and this Operation Agreement shall expire as herein provided. Operator shall not continue occupying the Operation Area beyond the expiration of the Renewal Term except upon execution of a new Operation Agreement or as provided for in Paragraph 37. Holdover.

C. This Operation Agreement may be renewed only once at a five-year term, after the expiration of the Initial Term, for a maximum of twelve (12) years.

D. Operator shall take responsibility for the Operation Area upon the Effective Date of this Agreement.

3. PAYMENTS TO DEPARTMENT

A. Fixed Fee

(i) Operator shall pay to the Department an annual base monthly fixed fee (“Fixed Fee”) as follows: \$35,000 for the first year, \$70,000 the second year, \$100,000 for the third year, \$125,000 for the fourth year, \$150,000 for the fifth year, \$175,000 for the sixth year, and \$200,000 for the seventh year, to be paid in twelve equal monthly installments, on the first (1st) day of each month.

(ii) The Fixed Fee shall be paid by check made payable to "Treasurer - State of New Jersey" and sent to:

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

(iii) If the Department and Operator opt to renew this Operation Agreement after the initial seven (7) year term pursuant to Paragraph 2.B. above, the Fixed Fee shall increase at the beginning of the Renewal Term by three percent (3%) over the last year of the previous term's Fixed Fee. The Fixed Fee shall increase annually by three percent (3%) thereafter beginning on the first anniversary of the Effective Date, payable in twelve equal installments on the first day of each month.

B. Variable Fee

(i) Once a year, Operator shall calculate an amount due to the Department as "Variable Fee" (the Variable Fee shall be based on total gross receipts received for the prior calendar year which hereinafter will be referred to as a "Term Year") and pay such amount to the Department along with the submission of the yearly audit. The "Variable Fee" for the First Term Year shall be due on March 31st of the Second Term Year and on March 31st of every year for the prior Term Year thereafter and on or before March 31st immediately after this Operation Agreement has terminated with the understanding that the first and last "Variable Fee" may not be based on full calendar years. Such Variable Fee shall be calculated by multiplying the total gross receipts by XXXXXX percent (##%). At the end of the calendar year, such Variable Fee shall be equal to XXXXXX percent (##%) of the annual total gross receipts. The Variable Fee due and owing shall be the amount shown in the audit and shall be submitted with the audit. See paragraph iv, below.

(ii) Variable Fee shall be paid in accordance with Paragraph A.ii., above.

(iii) For purposes of calculating the Variable Fee, total gross receipts shall be defined to include all sales at the gross selling price of food, alcoholic and non-alcoholic beverages, retail merchandise, and items of every character sold in, upon, or through any part of the Operation Area by Operator, or any other person, firm, or corporation, including, but not limited to, all revenues and sales related to the operation of food and retail services and gross charges for all services to customers or patrons, including, but not limited to, the provision of food and retail services performed by Operator or any other person, firm or corporation, in, upon, or through any part of the Operation Area, and shall include sales and charges for cash and credit regardless of whether or not the same is collected or uncollected, less only any New Jersey sales taxes collected by Operator and remitted to New Jersey taxing authorities with respect to each Term Year.

(iv) On or before March 31 of each Term Year, and on or before the March 31 immediately after this Operation Agreement has terminated, Operator shall conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31 prepared by a Certified Public Accountant (CPA) licensed to practice accounting in the State of New Jersey ("Audit") with a CPA's highest level of assurances and verification and substantiation procedures consistent with generally accepted accounting principles. Based on this Report, Operator's Variable Fee owed to Department for the previous Term Year shall be determined.

C. Any payment of the Fixed Fee and/or Variable Fee not made on or before the first of the following month shall be considered past due. All past due 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.

D. Any payment not received by the last day of the month will be considered a default pursuant to Paragraph 21 and will trigger the remedies available to the Department thereunder.

E. In the event any check for payment is returned to the Department, all future compensation shall be made by Certified or Cashier's Check only.

4. ADDITIONAL PAYMENTS (SELF HELP)

If the Department incurs any expense as a result of Operator's failure to perform any obligation of Operator hereunder or by reason of the breach of this Operation Agreement by Operator, Operator shall be liable for payment of such reasonable expense, including reasonable attorney's fees and costs, which shall be deemed an Additional Operation Agreement Payment and be added to and become a part of the next payment of the Fixed Fee due to be paid by Operator.

5. USE OF OPERATION AREA; PURPOSE

A. Operator agrees to operate the Operation Area for its intended purpose in the manner set forth in the RFP, this Operation Agreement, and Operator's Bid Proposal, and Operator may not operate or use the Operation Area for any other purpose, without the prior written consent of the Department, which may be given in the Department's sole discretion.

B. Operator shall not use or allow or permit others to use the Operation Area for any purpose or in any manner other than as expressly provided herein. No use or manner of use shall be implied from the purposes expressed herein. Operator shall not conduct or allow any use that would in any way cause damage to all or any part of the Operation Area or any other part of the State Park or constitute a public or private nuisance or otherwise disturb the quiet enjoyment of any tenants or occupants.

6. MANAGEMENT OF THE OPERATION AREA

A. During the term of this Operation Agreement, Operator shall have full control over the day-to-day operations of the Operation Area including, but not limited to, handling the collection and deposit of all money, hiring and supervision of all employees, and purchasing of all goods and services consistent with the operation of food and retail services. Operator also shall be responsible for handling disputes with third parties, collecting and paying appropriate taxes, obtaining all appropriate permits, and providing accountability to the Department for its activities.

B. If Operator applies for and is issued an Annual State Permit from the New Jersey Division of Alcohol Beverage Control allowing for the service of alcoholic beverages for consumption on the licensed premises, the following shall apply:

(i) Alcoholic beverage service shall be strictly associated with the service of meals. Operator shall not serve alcohol separate from providing food services.

(ii) Nothing in this Operation Agreement or any of the attachments hereto shall be construed as a guarantee that the successful bidder shall be issued a liquor license from the New Jersey Division of Alcohol Beverage Control. Operator shall perform under this Operation Agreement regardless of its ability to obtain a liquor license. Failure to obtain a liquor license does not negate this Operation Agreement in any way.

7. IMPROVEMENTS, MAINTENANCE, CARE, REPAIR AND CONDITION OF OPERATION AREA

A. Operator has inspected the Operation Area and accepts it in "as is" condition and without representation or warranty of any kind by Department including, without limitation, any representations or warranty of fitness for a particular purpose. Operator agrees that Operator shall take good care of the Operation Area, and that the Operation Area shall not be improved without the written consent of the Department. Operator further agrees that, unless otherwise provided by written agreement, all improvements that may be required will be done with the approval of the Department, but at the cost of Operator. Upon expiration or termination of this Operation Agreement, these improvements shall be the property of the Department without payment of any compensation therefore to Operator. Any improvements will remain upon and be surrendered with the Operation Area.

(ii) For proposed improvements, Operator shall submit to the Department an Improvement Plan. The Improvement Plan shall include but not be limited to: (a) a description (including plans and specifications when deemed appropriate by Department) of each improvement; (b) a schedule for initiation and completion of each improvement; (c) a statement whether each improvement will be performed by Operator or a contractor; and (d) such additional information that Department may reasonably require to determine whether to approve the proposed improvement.

(iii) For all improvements approved by the Department, Operator shall obtain any and all applicable permits and shall pay the Prevailing Wage pursuant to Paragraph 44 for any construction to the Operation Area.

B. Operator shall commit no act of waste. Operator shall take good care of the Operation Area. Upon the termination or expiration of this Operation Agreement, Operator shall surrender the Operation Area and the improvements thereon to the Department in as good condition and repair as reasonable and proper use of the Operation Area thereon will permit, normal wear and tear excepted.

C. Operator shall promptly make all necessary repairs to the Operation Area at Operator's expense. All repairs of damage to the Operation Area shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage. Operator shall notify the State Park Office of all repairs by sending an email to _____@dep.nj.gov, with enough information about the repair so that a representative from the State Park may find the locale of the repair and inspect the work completed.

D. Operator shall, in the use of the Operation Area, conform to all laws, orders and regulations of the federal, State and local governments pertaining to the Operation Area and Operator's use of the Operation Area.

E. Operator shall, at its sole cost and expense, keep and maintain the Operation Area in a neat, clean, and sanitary condition. Operator shall keep the Operation Area free of trash and be responsible for the recycling of trash. Operator shall participate in and comply with all applicable recycling programs in effect in Jersey City, Hudson County. Operator shall be responsible for the collection and prompt removal of all trash from the Operation Area to a dumpster or other facility provided by Operator. Operator shall be responsible for all trash removal and disposal costs.

F. The sidewalk entrances, passages, courts, vestibules, stairways, corridors and halls shall not be obstructed or encumbered by Operator or used for any purpose other than ingress and egress to and from the Operation Area.

H. The sinks and other plumbing fixtures shall not be used for any purposes other than those for which they were constructed and no sweepings, trash, rags, or other substances, including caustic or hazardous substances, shall be placed therein. Operator shall, at Operator's sole expense, repair all damages to any fixture resulting from any misuse thereof by Operator or Operator's servants, employees, agents, visitors or licensees.

I. Operator shall, before closing and leaving the Operation Area and as may be required by weather conditions, assure that all doors and windows are closed. Operator shall not leave the doors and/or windows open when it rains. Operator shall be liable for any injury sustained by the Department for damage to paint or plastering, or damage otherwise caused to the Operation Area, resulting from Operator's failure to close all doors and/or windows in the Operation Area.

L. Operator shall not place or allow any kind of permanent sign to be placed at or about the entrance to the Operation Area, any other part of same, and/or any part of the State Park, except in or at such place or places as may be indicated by the Department and consented to by the Department in writing. If the Department or the Department's representatives shall deem it necessary to remove any such permanent sign or signs in order to paint or to make any other repairs or improvements in or upon the Operation Area or the State Park, the Department shall have the right to do so, providing the sign or signs shall be removed and replaced at the Department's expense whenever the said repairs or improvements have been completed.

M. Operator may install such equipment as Operator needs to maximize Operator's use of the Operation Area, with the Department's approval. The Department shall not be responsible for

any damage to said equipment while being moved in or out of the Operation Area or while in use at the Operation Area. All damage done to the buildings by moving or maintaining any equipment or large or heavy supplies shall be repaired at the expense of Operator.

N. Operator shall be responsible for supplying all equipment, appliances, inventory, furniture and supplies necessary to operate the Operation Area pursuant to the RFP and Operator's Bid Proposal.

8. GARBAGE

As noted above, Operator shall be responsible for all trash removal and at Operator's expense. Operator shall be allowed the use of open trash containers during the day; however, upon the closure of the food and retail services at the end of the day, and as necessary during the day, Operator shall store all trash from the Operation Area in dumpsters, located in an area or areas as directed by the Park Superintendent, until the trash is removed from the dumpster(s) by Operator. Failure to strictly abide by this Paragraph shall be considered a default pursuant to Paragraph 21 and shall trigger the remedies available to the Department thereunder.

9. HAZARDOUS SUBSTANCES

At no time during this Operation Agreement shall Operator store, upon the Operation Area or anywhere else within the State Park, hazardous substances as that term may be defined by the New Jersey Department of Environmental Protection (see N.J.S.A. 58:10-23.11(b)) or by the federal Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Act, amendments of 1972" (33 U.S.C. 1321; see also 40 C.F.R. 302.3) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that Act (33 U.S.C. 1317; see also 40 C.F.R. 401.15). Operator shall not violate the terms of N.J.S.A. 58:10A-21 et seq., nor shall Operator 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.

10. UTILITIES

A. The Operator shall be responsible for the payment and maintenance and repair of the utilities and utility systems for the Operation Area as outlined in the RFP.

B. The Department shall not be liable to the Operator in damages or otherwise

- (i) if any utility shall become unavailable from any public utility company, public authority, or any other such person or entity (including the Department) supplying or distributing such utility, or
- (ii) for any interruption in any utility service (including without limitation, any water and septic systems) caused by the making of any necessary repairs or improvements or by any cause beyond the Department's reasonable control, and the same shall not constitute a termination of this Operation Agreement or an eviction of Operator.

11. DEPARTMENT'S ACCESS TO OPERATION AREA – RIGHT OF INSPECTION, REPAIR AND ALTERATION

A. If Operator shall construct a walk-in closet(s) and/or storage space(s) with locks within Locations 1 and/or 3, Operator shall give four (4) keys to the Department. The Department shall provide keys to the Operation Area to the Operator who shall not re-key the Department's locks, pursuant to Paragraph 15.C, Security. The Department shall retain these keys to the Operation Area and, with notice of not less than two (2) days, Operator shall permit the Department and its agents to enter the Operation Area at reasonable times and as the Department deems necessary or desirable to inspect and to perform other services to maintain the Operation Area. In addition, Operator shall permit the Department and its agents to enter the Operation Area to make repairs or improvements in, to, on, or about the Operation Area and to erect scaffolding, props, or other mechanical devices. Notice is not required in the case of an emergency. Operator shall have no claim or cause of action against the Department because of entry for the reasons articulated in this Paragraph.

B. The Department reserves the right to improve or remove any existing or future parking area, roads or driveways, and may make any repairs or improvements the Department deems necessary to the parking lots, roads and driveways.

12. BUILDING SERVICES – INTERRUPTION

A. The Department shall furnish the services to the Operation Area, as set forth below, to the extent that the existing facilities permit, and when, in the sole judgment of the Department, weather conditions allow. The Department shall furnish, supply, and maintain the following at the Department's cost and expense: the fire suppression system in Location 3. The Department shall furnish, supply, and maintain the following systems at a cost to Operator: the water and sewer system in the Operation Area, and the heat, air conditioning, water, and electricity at Location 3.

B. Operator shall not cause any unnecessary labor due to Operator's carelessness or indifference to the preservation of good order and cleanliness. The Department shall not be responsible to any Operator for loss of property in the Operation Area, however occurring, or for damage to Operator's personal property caused by any person.

C. Operator shall not use any electrical equipment which in the Department's reasonable opinion will overload the wiring installations or interfere with the Department's reasonable use of the wire installations.

D. The Department reserves the right to suspend temporarily any service provided by the Department for the purpose of inspection, repair, replacement, or improvement of facilities. Interruption or curtailment of services provided by the Department, if caused by strikes, government shutdowns, State or local emergency orders, mechanical difficulties, or causes beyond the Department's control, whether similar or dissimilar to those enumerated, will not entitle Operator to any claim against the Department or an abatement of the Fixed Fee and/or Variable Fee. These interruptions will not constitute constructive or partial eviction.

13. NO INTERFERENCE WITH OPERATION OF STATE PARK - CLOSURE

A. Operator shall, in Operator's use of the Operation Area, conduct all activities so as not to interfere with, impair, or prevent the Department's development, maintenance, management, and operation of the State Park and the safe use and enjoyment thereof by the public. Operator shall coordinate with the Department all activities which could adversely affect the State Park or the public's use and enjoyment thereof and shall implement all measures reasonably required by the Department to minimize such adverse effects.

B. The Department, in its sole discretion, reserves the right to limit or close access to the State Park, including the Operation Area, if the Department determines that State Park facilities are being used to capacity; there is inclement weather or threat thereof; the Department lacks sufficient resources to operate and/or maintain the State Park; or the State Park is closed for any reason under the Department's State Park closure policies now or subsequently in effect. Operator hereby agrees to abide by the Department's decision and waives any claim for damages, compensation or fee abatement resulting from closure of the State Park.

14. EMERGENCY; REPORT OF INJURY

Operator shall call the Park Police for any emergency requiring the assistance of police, fire or EMS at 1-877-WARN-DEP (1-877-926-6337) that occurs within the Park.

In addition, any injury which shall occur during any activity hereunder to Operator, its servants, agents, invitees or the general public while in the Operation Area, requiring medical intervention of which Operator is notified, shall be reported by Operator to the Department by calling 1-877-WARN-DEP (1-877-926-6337), and in writing within one (1) day of the incident.

15. SECURITY

A. Operator shall, at Operator's sole cost and expense, be completely responsible for all security of the Operation Area against burglary, theft, vandalism and unauthorized entry. Operator is also responsible for crowd control at the Operation Area. Except as otherwise provided herein, the Department has no obligation to Operator for security of the Operation Area and shall not be

responsible to Operator, 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 Operation Area.

B. The Department reserves the right to remove and/or refuse admission to the Operation Area to any person or persons who, in the Department's discretion, cannot furnish satisfactory identification and justification for access to the Operation Area. Operator shall have access to all areas within the Operation Area during the hours identified in the RFP and Operator's RFP, as agreed to by the Department, subject to interruptions outlined above.

C. Operator may not replace the locks on the doors or otherwise re-key the locks of the buildings comprising the Operation Area without the Department's approval. No additional locks or bolts of any kind shall be placed upon any of the doors or windows by Operator. If Operator installs a security system, Operator shall provide the Department with the code. Operator shall be given keys to the Location 1 and Location 3 of the Operation Area. Operator shall, upon the termination of this Operation Agreement, return to the Department all keys either furnished to or otherwise procured by Operator. In the event of the loss of any keys furnished by the Department, Operator shall pay to the Department the replacement cost thereof.

16. COMPLIANCE WITH LAWS AND DEPARTMENT'S RULES

A. Operator shall, at its sole cost and expense, comply with all statutes, ordinances, rules, orders, regulations, and requirements of federal, State, and local governments and of any and all of their departments and bureaus applicable to the Operation Area, for the correction, prevention, and abatement of nuisances, violations, or other grievances in, upon, or connected with the Operation Area during the term of this Operation Agreement, and which are directly related to Operator's use of the Operation Area. Operator shall also promptly comply with and execute all rules, orders, and regulations of the City of Jersey City's Fire Marshall and/or the State Fire Marshall and/or the Board of Fire Underwriters or any other similar body, for the prevention of fires.

B. Operator shall observe and comply with any rules and regulations that the Department may prescribe now or in the future through written notice to Operator for the safety, care, and cleanliness of the Operation Area. All rules prescribed by the Department now or in the future are included in and made a part of this Operation Agreement.

17. RECORDS AND AUDIT; REVENUE

A. Pursuant to paragraph 3.B.iv, Operator shall provide a yearly audit to the Department by no later than the following March 31st. The yearly audit shall include a CPA's highest level of assurances and verification and substantiation procedures consistent with generally accepted accounting procedures. Financial statement compilations, financial statement reviews, or any or any other lower level of financial statements will not be accepted in lieu of an audit.

B. Operator shall maintain complete and adequate financial records that will allow Operator to prepare financial statements and audits in accordance with generally accepted accounting principles for all Total Gross Revenue and all expenditures incurred in Operator's operations under this Operation Agreement. Operator shall retain such records for at least six (6) years from the expiration or termination of this Operation Agreement. Such records shall be made available for audit during normal business hours by an authorized representative of the Department to determine the adequacy of Operator's financial management systems and internal control systems established to meet the terms and conditions of this Operation Agreement and to ensure that the financial statements are fairly presented in accordance with generally accepted accounting principles.

C. Operator, its contractors and subcontractors, shall provide the Department through an authorized representative reasonable access to and the right to examine all records, books, papers, documents or systems reasonably related to Operator's use of any part of the Operation Area and/or the State Park, and any project, services and work being performed pursuant to any contract or subcontract. Access to Operator's records, books, papers, documents or systems shall be on a date as agreed to by the Department and Operator or no later than ten (10) days after the Department's request if Operator and the Department cannot agree to a date. Proper facilities shall be furnished for access and inspection.

D. Any and all audits conducted, whether by Operator, the Department or the

Department's authorized representative, shall be paid for solely by Operator.

E. Whether or not such audits are conducted during the term of this Operation Agreement, a final audit may be conducted after the Operation Agreement terminates.

F. If any audit has been started but not completed or resolved before the end of the six-year period, Operator continues to be subject to such audit until it is completed and resolved.

G. All cash, checks, credit card payments, etc. received by Operator shall be deposited into a single bank account, maintained at a bank located within the State of New Jersey and maintained solely for the State Park Operation Area activities, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

18. DAMAGE TO THE OPERATION AREA

A. If Location 1 and/or Location 3 are/is damaged by fire or other cause to the extent that the cost of restoration, as reasonably estimated by the Department, will equal or exceed twenty-five percent (25%) of the replacement value of the building (exclusive of foundations) just prior to the occurrence of the damage, then the Department may, no later than ninety (90) days following the damage, give Operator notice of election to terminate this Operation Agreement. In the event of election by the Department, this Operation Agreement shall be deemed to terminate on the tenth (10th) day after the giving of notice, and Operator shall leave the Operation Area and remove Operator's personal property within said ten (10) day period. The Fixed Fee will be apportioned as of the date of the surrender of the Operation Area. The Fixed Fee paid for any period beyond the surrender date will be repaid to Operator. If the cost of restoration as estimated by the Department amounts to less than twenty-five percent (25%) of the replacement value of the building, or if despite the cost the Department does not elect to terminate this Operation Agreement, the Operator shall restore Location 1 and/or Location 3 within the Operation Area with reasonable promptness, subject to the availability of adequate funds from insurance proceeds or specifically appropriated therefore, and subject to delays in the making of insurance adjustments between the Department, Operator and Operator's insurance carrier. Operator shall have no right to terminate this Operation Agreement except as provided herein. Any provision herein contained to the contrary notwithstanding, this Operation Agreement shall not be construed to create any obligation upon the Department to restore the building(s).

B. Regardless whether the damage is Operator's fault or the fault of Operator's agents, employees, servants, visitors, contractors, or licensees, Operator will not be entitled to abatement or reduction of the Fixed Fee.

19. INDEMNIFICATION

A. Operator shall, for itself, its successors, and assigns, assume all risks and liabilities arising out of Operator's use, operation, maintenance, and improvement of the Operation Area. Operator covenants to defend, protect, indemnify, and save harmless the Department and hereby releases the 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, on, or about, or any damage to property which occurs in, on, or about the Operation Area or upon any sidewalk, walkway, or patio within the Operation Area or in any manner growing out of or connected with the use, non-use, or condition of the Operation Area, or the construction or repair of any improvements of the Operation Area;
- (ii) any act, error, or omission of Operator, Operator's officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Operator in the performance of this Agreement;
- (iii) violation of any agreement or condition of this Agreement by Operator, Operator's officers, agents, servants, employees, contractors, invitees, and

anyone claiming by or through Operator in the performance of this Agreement; and

- (iv) violation by Operator, its officers, agents, servants, employees, contractors, invitees, and anyone claiming by or through Operator in the performance of this Agreement of any contracts and agreements of record concerning the Operation Area and restrictions of record or any law, ordinance, or regulation affecting the Operation Area or any part thereof or the ownership, occupancy, or use thereof.

B. The Department and Operator 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 the Department, Operator, 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 its representatives.

C. It is expressly agreed and understood that any approval by Department of Operator's operation of the Operation Area shall not operate to limit the obligations of Operator assumed pursuant to this Agreement.

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

E. This indemnification is not limited by, but is in addition to, the insurance obligations contained in this Operation Agreement.

F. The provisions of this indemnification clause shall in no way limit the obligations assumed by Operator under this Operation Agreement, nor shall they be construed to relieve Operator from any liability or to preclude the Department from taking any other actions available to it under any provisions of this Operation Agreement or at law or in equity.

G. All claims asserted against the Department by the Operator 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 Operation Agreement shall be construed as a waiver by the Department of any warranty, express or implied, or of any remedy at law or in equity.

H. 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.

20. INSURANCE

A. Operator shall, at its sole cost and expense, obtain and maintain at all times during the Term of this Operation Agreement, insurance of the types and in the amounts hereinafter provided:

- (i) Commercial General Liability policy (including insurance with respect to owned or operated motor vehicles) as broad as that provided by the standard basic, unamended, and unendorsed occurrence coverage forms currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage. The policy shall include an endorsement (broad form) 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 Five Million (\$5,000,000) Dollars annual aggregate. This can be accomplished with a combination of Commercial General Liability and Commercial Umbrella policies;

- (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 Operation Area and all fixtures, equipment, and other property attached thereto and/or physically incorporated therein and the contents owned by Operator and located in or on the Operation Area. 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 Operator using whatever procedures Operator 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;
- (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);
- (iv) Business Auto Liability insurance, which shall be written to cover any automobile or trailer used by Operator, with minimum limits of liability to cover bodily injury and property damage of not 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 operation of the Concession; and
- (v) Such other insurance and in such amounts as may from time to time be reasonably required by the Department.
- (vi) If Operator is issued a liquor license by the New Jersey Division of Alcohol Beverage Control, Operator shall procure such insurance, with the Department as an additional insured, that shall include but not be limited to the sale and service of alcohol.

B. All insurance coverage required to be maintained by Operator in accordance with this Agreement shall be issued by an insurance company with an A-VIII or better rating by A.M. Best & Company authorized and approved to do business in New Jersey. All policies except for Worker's Compensation shall name the State of New Jersey, Department of Environmental Protection, and Division of Parks and Forestry as additional insureds and include the blanket additional insured endorsement or its equivalent. The certificate(s) of insurance shall identify the Agreement Number assigned to this Agreement and the location(s) of the Operation Area in the Description of Operations box and shall list the State of New Jersey, Department of Environmental Protection, Natural and Historic Resources, Office of Leases & Concessions, P.O. Box 420, Mail Code: 501-04C, Trenton, New Jersey 08625-0420, in the Certificate Holder box.

C. When Operator returns this Operation Agreement, signed by Operator, to the Department for signature, Operator shall provide the Department with a certificate of insurance evidencing that Operator has obtained all insurance coverage in accordance with this Operation Agreement. A copy of the certificate of insurance shall be attached to this Operation Agreement as Exhibit E. Failure to provide a certificate of insurance at the time of Operator's execution of this Operation Agreement shall render this Operation Agreement null and void. The certificate of insurance shall provide for sixty (60) days' notice, in writing, to the Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Operation Agreement. Operator also shall provide the Department with valid certificates of renewal of the insurance upon the expiration of the policies so that the Department is continuously in possession of current documentation that Operator has obtained and is maintaining in full force and effect all insurance required under this Operation Agreement. Operator also shall, upon request, provide the Department with copies of each policy required under this Operation Agreement certified by the agency or underwriter to be true copies of the policies provided by Operator.

D. Operator expressly understands and agrees that any insurance protection required by

this Operation Agreement shall in no way limit Operator's indemnification obligations assumed in this Operation Agreement and shall not be construed to relieve Operator from liability in excess of such coverage, nor shall it preclude the Department from taking such other actions as are available to it under any provision of this Operation Agreement and as otherwise provided for at law or in equity.

E. In the event that (i) Operator fails or refuses to renew any of its insurance policies or to provide the Department with timely certificates of insurance showing that Operator is maintaining insurance coverage in full force and effect to the extent required by this Operation Agreement or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Operation Agreement, the Department shall consider Operator to be in default and terminate this Operation Agreement under Paragraph 21. Default.

F. The limits of insurance policies described in this Paragraph shall be reviewed by the Department and Operator every two (2) years. Operator 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.

21. DEFAULT; DEPARTMENT'S REMEDIES ON DEFAULT

A. Operator shall comply with the terms and conditions of this Operation Agreement. The failure to comply, and/or the existence of any condition which the Department determines to be in violation of the terms and conditions of this Operation Agreement, shall be considered a default, in which event the Department may terminate this Operation Agreement as follows:

- (i) Operator's failure to: (a) pay, when due, any Fixed Fee, Variable Fee, or other sums required to be paid by Operator hereunder; and/or (b) obtain and maintain all the insurance coverage on its part to be obtained and maintained under this Operation Agreement or to provide the Department with certificates of insurance documenting that Operator has obtained and is maintaining such insurance coverage and continuation of such failure under (a) or (b) above for a period of five (5) days after Operator's receipt of written notice thereof from the Department served by Certified Mail, Return Receipt Requested. If such violation is not cured within said five (5) day period, termination shall, in the sole discretion of the Department, be effective at the conclusion thereof; or
- (ii) Operator's failure to perform and/or comply with any of the other covenants, agreements, and conditions contained in this Operation Agreement. Upon receipt of a written notice of termination for violation served by Certified Mail, Return Receipt Requested, Operator shall have fifteen (15) days to begin to cure such violations as the Department shall describe therein and shall have an additional fifteen (15) days to substantially cure said violations. If the violations are not substantially cured within said thirty (30) day period, termination shall, in the sole discretion of the Department, be effective at the conclusion thereof and Operator shall be required to vacate the premises and remove Operator's personal property. In the event that the conditions which give rise to the default are of such nature that they cannot reasonably be remedied within the 30-day notice period, then such default shall not be deemed to continue so long as Operator, after receiving such notice, proceeds to remedy the default as soon as reasonably possible within the 30-day notice period and continues to diligently take all steps necessary to complete such remedy within a reasonable period of time and provides the Department with status updates about the measures underway to remedy default; or
- (iii) If Operator secures a liquor license from the New Jersey Division of Alcohol Beverage Control and receives an Order or Revocation, Operator shall have five (5) days from Operator's receipt of written notice thereof from the New Jersey Division of Alcohol Beverage Control to cure such Order of Revocation. If such Order of Revocation is not cured within said five (5) day period, termination shall, in the sole discretion of the Department, be effective at the conclusion thereof.

After the Department has terminated this Operation Agreement, the Department may, at any subsequent time, resume possession of the Operation Area by any lawful means and remove Operator and Operator's personal property.

B. If the Department fails to cure any default of the Department, of which the Department has been notified by Operator in writing and within the time reasonably required to cure such default, Operator shall have the right to terminate this Operation Agreement upon providing thirty (30) days' written notice of Operator's intention to terminate.

C. Operator's failure to obtain or, once obtained, maintain a liquor license from the New Jersey Division of Alcohol Beverage Control is not a default and will not result in the Department terminating this Operation Agreement unless such failure to maintain the liquor license is due to an Order of Revocation. Immediately upon receipt of an Order of Revocation, Operator shall so notify the Department. An Order of Revocation from the New Jersey Division of Alcohol Beverage Control Board shall constitute a default under A(iii), above, and trigger the Department's available remedies under this Paragraph.

D. Whether upon Operator's default or the Department's default, Operator shall only remove Operator's personal property, as listed in Exhibit D, from the Operation Area.

22. RIGHT TO LOCK OPERATION AREA ON DEFAULT

In the event that the relationship between the Department and Operator lawfully ceases or terminates by the eviction of the Operator on summary proceedings, the Department, in addition to the Department's other rights hereunder, shall have the right to lock the Operation Area, and the Department shall have the right to sell any of the personal property, goods, and materials remaining at the Operation Area and apply the proceeds thereof against any unpaid Fixed Fee and/or Variable Fee. No action under this Paragraph shall be deemed to waive the Department's rights as set forth in other paragraphs of this Operation Agreement.

23. CONDITIONS OF DEPARTMENT'S LIABILITY

Operator shall not be entitled to claim constructive eviction from the Operation Area unless Operator has first notified the Department in writing of the conditions giving rise to the constructive termination, Operator's complaints are justified, and the Department has failed within a reasonable time after receipt of notice to remedy the conditions.

24. WAIVER - CUMULATIVE REMEDIES

A. Failure of either party 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 Operation Agreement shall be deemed waiver or 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.

B. Any and all rights and remedies which either party may have under this Operation Agreement 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.

C. Acceptance by either party of any of the benefits of this Operation Agreement 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.

25. LIENS OR ENCUMBRANCES

A. Operator shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage, or other encumbrance upon the interest of the Department in the Operation Area or any other part of the State Park. If Operator should cause any improvements or repairs to be made to the Operation Area, or if Operator should cause any labor to be performed or material to be furnished therein, thereon, or thereto, neither the Department, the State Park, nor the Operation Area 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 Operator's expense, and Operator shall be solely and wholly responsible to the contractors, laborers, and materialmen furnishing and performing such

labor and material. Operator shall require, as a condition of any contract or subcontract for labor or materials, all contractors, laborers and materialmen to execute a release of lien against the Department

B. If, because of any act or omission (or alleged act or omission) of Operator, any mechanic's or other lien, charge, or order for the payment of money shall be filed against the Operation Area, against The State Park, or against the Department (whether or not such lien, charge, or order is valid or enforceable as such), Operator 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 Operator of the filing thereof.

C. Operator 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.

26. TAXES

A. All taxes and property tax assessments, if any, arising out of the operation of the food and retail services and the use of the Operation Area shall be the sole responsibility of Operator and shall be promptly paid by Operator when due, regardless of whether such tax or assessment is assessed within or outside a Term of this Agreement. Operator shall provide copies of the notice of any tax and assessment notice received from any government agency, municipality or county to the Department. Payment shall remain a continuing obligation of Operator after any Term of this Agreement and/or the expiration or termination of this Agreement, and Department is authorized to make a demand for payment and take any and all steps to ensure payment. Operator shall furnish to Department, within ten (10) days of demand therefor, proof of the payment of any such tax or assessment. Operator's failure to timely pay any tax or assessment or otherwise comply with this subparagraph constitutes a material breach of this Agreement subject to Default in accordance with the terms and conditions set forth in Paragraph 21.

B. Operator and its subcontractor, if any, and each of their affiliates shall, for any and all Terms of this Agreement, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act," P.L.1966, c. 30 (N.J.S.A. 54:32B-1 et. seq.) on all their sales of tangible personal property delivered into this State. Any questions in this regard can be directed to the Division of Revenue at <https://www.state.nj.us/treasury/revenue/revgencode.shtml>.

27. BANKRUPTCY

In the event Operator enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Operator agrees to furnish written notification of the bankruptcy to 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 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 Operation Agreement. The Department shall have the right to terminate this Operation Agreement immediately upon receipt of a notice of bankruptcy by providing written notice to Operator.

28. SUCCESSOR IN INTEREST; ASSIGNMENT

A. If Operator is acquired by, or affiliates, consolidates or merges with another entity, Operator shall give notice of such change or takeover to the Department at least ninety (90) days prior to such acquisition, affiliation, consolidation or merger. Operator shall supply such additional information about said change as requested by the Department. At the Department's option, the Department may:

- (i) continue with this Operation Agreement with the new operator. The new Operator must complete all paperwork required by the State including, but not limited to, a new Certificate of Insurance, a Certificate of Incorporation, a New Jersey Business Registration, Pay-to-Play disclosures, and a new Board Resolution. The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of the Operation

Agreement;

(ii) continue the Operation Agreement on a conditional basis as stipulated in an amendment to this Agreement providing the new operator complies with all paperwork as noted above; or

(iii) terminate this Operation Agreement.

The Department shall notify Operator of the Department's decision within thirty (30) days of receipt of all information requested by the Department. If the Department chooses option (i) or (ii), Operator shall assign this Operation Agreement and Operator's responsibilities under this Agreement, to the new operator.

B. Operator may assign this Operation Agreement only in accordance with this Paragraph and only upon written approval of the Department.

29. NO DISCRIMINATION

Operator 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.

Operator 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.

Specifically, Operator shall not unlawfully discriminate: 1) against any person, employee, or applicant for employment, or 2) in allowing access to and use of the Operation Area.

30. NEW JERSEY CONFLICT OF INTEREST LAW

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 198 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

(i) Operator shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, 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-13b. and e., in the Department of the Treasury or any other agency with which Operator 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-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer has an interest within the meaning of N.J.S.A. 52:13D-13g.

(ii) 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 Operator shall be reported, in writing forthwith by Operator to the Attorney General and the Executive Commission on Ethical Standards.

(iii) Operator 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 Operator to, any 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-13g. 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.

(iv) Operator shall not influence, or attempt to influence or cause to be influenced, 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 Operator or any other person.

(v) The provisions cited above in Subparagraphs (i) through (iv) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Operator 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.

31. SOLICIATION

Operator warrants that no person has been employed directly or indirectly to solicit or secure this Operation Agreement in violation of the provisions of 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 Operation Agreement have not been violated by any conduct if Operator, 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. SUPERSEDES – ENTIRE AGREEMENT - AMENDMENTS

This Operation Agreement supersedes and cancels all previous leases, agreements, and “special use permits” between the Department and Operator covering the Operation Area and represents the entire agreement between the parties. All negotiations, oral agreements, and understandings are merged herein. This Operation Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of the parties hereto in writing.

33. NOTICES: WRITTEN AND ELECTRONIC

A. The parties hereto agree that all submissions, approvals, and notices (except for the Notice of Repairs which shall be made in compliance with Paragraph 7.C. Improvement, and the Notice of Injury required under Paragraph 14. Emergency; Report of Injury) which may be required under this Operation Agreement shall be forwarded by Certified Mail, Return Receipt Requested, and addressed as follows:

Department: State of New Jersey
Department of Environmental Protection
Division of Parks and Forestry
Office of the Director
Mail Code 501-04
P.O. Box 420
Trenton, New Jersey 08625-0420

Copy: State of New Jersey
Department of Environmental Protection
Office of Leases and Concessions
Mail Code 501-04C
P.O. Box 420
Trenton, New Jersey 08625-0420

Copy: Liberty State Park
200 Morris Pesin Drive
Jersey City, New Jersey 07305

Operator:

B. Operator is required to have a working email address on file with the Department prior to the start of the Term. Operator shall maintain an active email address, designated to this Agreement and report any changes during the Term of the Operation Agreement. Failure by the Operator to maintain the active email account, designated for the Operation Agreement, shall be grounds for Default of the Operation Agreement under Paragraph 21.

C. Either the Department or Operator may, at any time, change an address by mailing to the address above a notice of the change at least ten (10) days prior to such change.

34. END OF TERM

Upon the expiration, termination, surrender, or declaration that this Operation Agreement is null and void ("End of Term"), Operator shall:

- (i) immediately cease all use of the Operation Area, vacate, and turn over the use thereof to the Department. Operator shall only remove the personal property listed on Exhibit D. The Department may at once reenter, secure the Operation Area, and remove any and all persons using the Operation Area;
- (ii) at Operator's sole cost and expense, remove all personal property lawfully belonging to and removable by Operator within the time prescribed in any notice of termination or before the End of Term. If Operator removes any personal property, Operator hereby covenants to repair any and all damage which may be caused to the Operation Area by said removal. If Operator fails to remove such personal property, the Department may appropriate the same to its own use without allowing any compensation therefor or may remove the same at the expense of Operator; and
- (iii) pay to the Department without demand all Fixed Fees, Variable Fees, and other payments accrued to the date of the End of Term.

35. SUCCESSION AND BINDING AGREEMENT

Except as otherwise set forth herein, all of the terms and provisions of this Operation Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of the Department and Operator's successors, heirs, executors, administrators, and assigns.

36. NO THIRD-PARTY BENEFICIARIES

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

37. HOLDOVER

If the Department permits Operator to use the Operation Area after expiration of the Operation Agreement without executing a new written Operation Agreement with the Department, then Operator shall use the Operation Area subject to all terms, conditions, and covenants contained in this Operation Agreement. The Department may, at its option, elect to treat Operator as one who has not removed at the end of the Term and thereupon will be entitled to all of the remedies against Operator provided by this Operation Agreement and by law.

38. CORPORATION - RESOLUTION

A. Prior to the Effective Date of this Operation Agreement, Operator shall provide the Department with a copy of Operator's certificate of incorporation on file with the Secretary of State and a current certificate of standing issued by the Secretary, as attached hereto as Exhibit F.

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

C. Prior to the Effective Date of this Operation Agreement, Operator shall provide the

Department with a copy of a completed Ownership Disclosure Form pursuant to N.J.S.A. 52:25-24.2, attached hereto as Exhibit H.

39. NEGOTIATED DOCUMENT

Each and every provision of this Operation Agreement has been independently, separately, and freely negotiated by the parties as if this Operation Agreement were drafted by all parties hereto. The parties therefore waive any statutory or common law presumption which would serve to have this document construed in favor of or against any party as the drafter hereof.

40. HEADINGS

The article, paragraph, and subparagraph headings throughout this Operation Agreement 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 Operation Agreement.

41. SEVERABILITY

If any term or provision of this Operation Agreement, 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 Operation Agreement, or the application of such term and provision of this Operation Agreement, shall be valid and be enforced to the fullest extent permitted by law.

42. GOVERNING LAW

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

43. INDEPENDENT PRINCIPAL

Operator shall, at all times, act as an independent principal and not as an agent or employee of the Department. Operator agrees not to enter into any agreement or commitment with any other party on the Department's behalf.

44. PREVAILING WAGE ACT

Without limiting the scope of any other provision of this Operation Agreement, Operator 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. Operator 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 Operator must comply with the federal requirements.

45. PAY TO PLAY

A. Chapter 51 (P.L. 2005, c. 51, codified at N.J.S.A. 19:44A-20.13 to -20.25, known as "Chapter 51") and EO 117 restrict business entities which agree to certain contracts or agreements with the State from making or soliciting certain contributions. Compliance with Chapter 51 and EO 117 is a material term and condition of this Agreement. It shall be a material breach of the terms of the Agreement, subject to Default in accordance with the terms and conditions set forth in Paragraph 21, for Operator to do any of the following during any Term of the Agreement:

- (i) make or solicit a contribution in violation of Chapter 51 or EO 117;
- (ii) knowingly conceal or misrepresent a contribution given or received;
- (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- (iv) 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 of Lieutenant Governor, or to any State, county, or municipal party committee, or any legislative leadership committee;

(v) 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 Operator itself, would subject Operator to the restrictions of Chapter 51 or EO 117;

(vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees;

(vii) engage in any exchange or contributions to circumvent the intent of Chapter 51 or EO 117; or

(viii) directly or indirectly, through or by any other person or means, do any act which would subject Operator to the restrictions of Chapter 51 or EO 117. It is Operator's continuing obligation to report any contributions it makes during any and all Term(s) of the Agreement.

B. Operator is required, on a continuing basis, to report any contributions and solicitations Operator makes during any Term of the Agreement at the time any such contribution or solicitation is made. Failure to do so is a breach of the Agreement, subject to Default in accordance with the terms and conditions set forth in Paragraph 21.

C. Operator shall 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 2) if Operator receives contracts in excess of Fifty Thousand (\$50,000.00) dollars from public entities in a calendar year. It is Operator'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.

46. ATTACHMENTS

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

Exhibit A – Request for Proposal

Exhibit B – Operator's Bid Proposal

Exhibit C – Maps and Photographs of Operation Area

Exhibit C.1 – Location 1

Exhibit C.2 – Location 2

Exhibit C.3 – Location 3

Exhibit D - List of Operator's personal property

Exhibit E – Certificate of Insurance

Exhibit F – Certificate of Incorporation

Exhibit G – Board Resolution

Exhibit H – Ownership Disclosure Form

IN WITNESS WHEREOF, the Department and Operator have duly executed this Operation Agreement effective on the date herein below set forth.

DEPARTMENT

STATE OF NEW JERSEY
Department of Environmental Protection

By: _____
Richard Boornazian, Assistant Commissioner
Natural and Historic Resources

Date: _____

ATTEST:

OPERATOR:

By: _____

By: _____

Date: _____

Date: _____

This Operation Agreement has been reviewed and approved as to form by:

Christopher S. Porrino
Attorney General
State of New Jersey

By: _____

Deputy Attorney General

Date: _____