

**OPERATION AGREEMENT**

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

**THIS AGREEMENT**, made this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Two Thousand and Fifteen (2015),

**BETWEEN THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE PARK SERVICE  
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**, Department is the Owner of Spring Meadow Golf Course (“Golf Course”) hereinafter described; and

**WHEREAS**, the Spring Meadow Golf Course is a fully-operational year-round 18-hole golf course in Monmouth County, New Jersey. The Golf Course is adjacent to Allaire State Park on Atlantic Avenue in Wall Township with a restaurant and halfway house located within the premises of the Golf Course.

**WHEREAS**, the Department issued the *Operation of The Spring Meadow Inn at Spring Meadow Golf Course - Request for Proposal* on September 4, 2015, for an operator to manage and operate the restaurant with bar, halfway house, and mobile beverage cart, and offer high-quality banquet/catering events within the operational area (Operational Area) subject to this Agreement at Spring Meadow Golf Course to provide food, alcoholic beverages, non-alcoholic beverages and banquet/catering events (the “RFP”), a copy of which is attached hereto and made part hereof as Exhibit A; and

**WHEREAS**, the Department recognizes that the operational areas at the Spring Meadow Inn (“Inn”) and the Halfway House can and should be operated by an operator that provides food and bar (alcoholic beverage) services; and

**WHEREAS**, Department, subject to the terms set forth in the RFP, is willing and authorized pursuant to N.J.S.A. 13:1L-6 to enter into this Operation Agreement under the provisions, covenants, terms, and conditions hereinafter described, which shall be consistent with the terms set forth in Operator’s proposal submitted in response to the RFP (“Bid Proposal”), a copy of which Bid Proposal is attached hereto and incorporated by reference as Exhibit A-1; and

**WHEREAS**, the Operational Area has been defined as follows: the Inn and the Halfway House. The Inn and Halfway House were designed and constructed to provide restaurant-type food and refreshments (alcoholic and non-alcoholic beverages) for golfers and patrons as a full-service restaurant with a full-service bar; and

**WHEREAS**, said structures and operational areas are identified more particularly on the Survey Maps attached to and made a part of this Operation Agreement as Exhibit B; and

**WHEREAS**, there are material terms in the RFP which are necessary to this Agreement and to which Operator shall be bound; and

**WHEREAS**, this Operation Agreement shall be controlling and wherever there is a term different from the RFP, this Agreement shall be determinative of that term; and

**WHEREAS**, the Department is willing to enter into this Operation Agreement with Operator under the provisions, covenants, terms, and conditions hereinafter described.

**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 OPERATIONAL AREA; PERSONAL PROPERTY**

A. The Department hereby allows Operator to use the Operational Area (as fully described in the RFP) 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 Operational 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 C. Operator shall provide an updated list, as often as necessary, to the Department. All other improvements ("Improvements" shall mean any renovations, changes, alterations, modifications, retro-fittings, replacements, upgrades, additions, out-fittings, and the like, including any and all woodwork, fixtures, hardware, wiring, pipes, and appurtenances that are a part of the improvements, but shall not mean personal property. Improvements shall also mean the re-building of any building due to damage to the building or the building of any new structure) shall become the property of the Department.

**2. TERM**

A. The term of this Operation Agreement shall commence on **January 1, 2015** ("Effective Date"). Operator shall operate the Operational Area during the term of this Operation Agreement, beginning on the Effective Date and continuing for a period of five (5) years (the "Initial Term"), **between (January 1, 2016 - April 15, 2021)**, until the expiration of the Operation Agreement on **April 15, 2012** ("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 Operational Area without accompaniment of a representative of the Department.

B. Operator shall take responsibility for the Operational Area upon the Effective Date of this Agreement.

**3. RENT**

As consideration for entering into the Agreement, the successful bidder shall pay the State the two monthly rental amounts below:

- 1.) Fixed Monthly Rent: Two Thousand Five Hundred (\$2,500) Dollars (or higher TBD by RFP), adjusted up annually by 3%, or;
- 2.) Variable Monthly Rent: Bidders must propose the percentage of their total monthly receipts that will be paid to the State each month; the proposed percentage must be at least a **minimum** of Five (5%) Percent of the Monthly Total Gross Revenue, less sales taxes, generated by all business operations;

- 3.) The first Fixed Monthly Rent of Two Thousand Five Hundred (\$2,500) Dollars will be due on January 1<sup>st</sup>, 2016, then the first (1<sup>st</sup>) of every month thereafter;
- 4.) The first Variable Monthly Rent will be due on February 15<sup>th</sup>, 2016, then the 15<sup>th</sup> of every month thereafter.

To calculate Variable Monthly Rent the Operator shall prepare and compile, or oversee the preparation and compilation of, and submit to Department a Monthly Report itemizing the Monthly Total Gross Revenue generated by all business operations, including but not limited to:

- i. Food sales must be reported and recorded by area (Restaurant, Bar, Halfway House, Food/Beverage Cart and Banquet/Catering)
- ii. Beverage sales, must be recorded and reported by alcoholic and non-alcoholic
- iii. Banquet/Catering & Special Events
- iv. Sales tax collected

All payments shall be submitted by check made payable to “**Treasurer - State of New Jersey**” and be received on or before scheduled payment date to:

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

If Operator fails to pay said compensation at such time and in such manner as specified herein, such failure shall constitute a material breach of the Agreement and grounds for termination of the Agreement.

C. Any payment of the Fixed Rent and/or Variable Rent not made on or before the fifteenth (15<sup>th</sup>) day of the following month shall be considered past due. All past due amounts shall be assessed a monthly penalty of five (5%) percent of the total amount due calculated on the tenth (10<sup>th</sup>) day of each month.

D. Any payment not received by the fifteenth (15<sup>th</sup>) day of the month will be considered a default pursuant to Paragraph 22 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 to be paid by Operator. The Department shall provide notice in accordance with Paragraph 22.

#### **5. USE OF OPERATIONAL AREA; PURPOSE; EVENTS**

A. Operator agrees to operate the Operational Area for its intended purpose in the manner set forth in this Operation Agreement and the RFP, and Operator may not operate or use the Operational 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 Operational 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 Operational Area or any other part of

Spring Meadow Golf Course or constitute a public or private nuisance or otherwise disturb the quiet enjoyment of another tenant or occupant.

## 6. MANAGEMENT OF THE OPERATIONAL AREA

A. During the term of this Operation Agreement, Operator shall have full control over the day-to-day operations of the Operational 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 a restaurant, bar, halfway house, banquet/catering and event facility. 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. Prices for all food and beverages (alcoholic & non-alcoholic), shall be submitted in writing annually to and approved by Department in writing before any proposed price can become effective. Proposed prices to be charged must be submitted and approved at least ten (10) days prior to initial opening of the Operational Areas and on a yearly basis thereafter for the duration of the Agreement. Failure on the part of the Operator to obtain the Department's advance written approval is a material breach of the Agreement, subject to suspension and/or termination of the Agreement upon notice to the Operator in accordance with Paragraph 22. All prices shall be properly displayed in price menus at all times. Price menus must be professional in appearance and neat.

C. Operator shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of each Operational Area covered by the Agreement. If Department determines that Operator has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation and management of the Operational Area, Operator shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice. If the deficiencies described in said notice are not corrected by Operator immediately upon receipt of written notification, Department reserves the right to suspend Operator's operation of the Operational Area, pending correction of the deficiencies operator shall not be entitled to any abatement of revenue payment due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Operator, or any party claiming through Operator, for any claim, liability, or damages resulting from said action by Department.

D. All employees must wear uniform apparel and name tags to identify and distinguish them as Operators employees. The type of uniform apparel and identification shall be pre-approved, in writing, by the Department, prior to the start of the term. Failure on the part of the Operator to comply with the uniform requirement shall be a material breach on the Agreement.

E. When 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 beverages are for on-premises consumption in conjunction with the restaurant, bar, halfway house, mobile beverage cart, and banquet/catering events. The intent of this Agreement is for the day-to-day operation of a restaurant, bar, halfway house, mobile beverage cart, and banquet/catered events for the sale and on-premises consumption of alcoholic beverages.
- (ii) Nothing in this Operation Agreement or any of the attachments hereto shall be construed as a guarantee that the Operator 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 will negate this Operation Agreement.

## 7. MAINTENANCE, CARE, REPAIR AND CONDITION OF OPERATIONAL AREA

A. The Operator shall be required to perform any and all ordinary and extraordinary maintenance and repairs of the Inn, Halfway House, and Equipment located thereon and the utilities as outlined in Paragraph 7. Notification of all repairs shall be made to the Department via email prior to the repair being made unless the repair is emergent in nature. The Operator shall be solely responsible for making any and all ordinary and extraordinary repairs and maintenance at Operator's sole expense.

B. Operator shall mow and maintain the grass areas and landscaping of the Premises, and around the propane tank located in the rear of the Inn, at the Operator's sole expense.

C. The clearing of snow and ice from the walkway adjacent to the employee parking area and entrances associated with the Premises shall be the sole responsibility and at the sole expense of the Operator. If Operator determines that ice patches should be salted for safety reasons, Operator shall do so at Operator's sole expense.

D. Operator shall be solely responsible for trash removal from the Premises, at Operator's sole expense. Trash removal from the dumpster(s) shall be Operator's responsibility and at Operator's sole expense. The Operator shall participate in and comply with all applicable recycling programs in effect in Wall Township and/or Monmouth County.

E. Fire prevention and suppression within the structures of the Premises shall be Operator's sole responsibility and expense and shall be coordinated with the Wall Township's Fire Marshall and/or the State Fire Marshall.

F. Operator shall preserve and maintain in good and clean condition the Premises and all Equipment, reasonable wear and tear excepted. Operator is solely responsible for the maintenance and cleanliness of the Premises and Equipment.

G. Regular maintenance and any and all repair costs associated with the Premises and Equipment shall be the sole responsibility of the Operator.

H. Operator shall be solely responsible for the following:

- (i) Interior maintenance of all structures and cleanliness of the entire Premises;
- (ii) Regular cleaning and degreasing of the blacktop area, shipping/receiving area, and trash container area;
- (iii) Snow removal from the front entrance area, sidewalk from the front entrance to the parking lot, and back door area of Inn;
- (iv) Cleaning and trash pickup from the front and rear of Inn and all areas around the Halfway House;
- (v) Cleaning and replacement, as needed, of all window trim, drapes, shades, screens, blinds, etc.;
- (vi) Daily sweeping, maintenance, and quarterly professional cleaning of all carpeted areas. Replacement of the carpeting as needed, with spike proof carpeting;
- (vii) Daily bathroom maintenance and upkeep. Repair of all fixtures, floors, and walls as needed;
- (ix) Division of Fire Safety inspection, service and/or repair of Ansul fire protection system after discharge or as required. A copy of the inspection report must be provided to the Department, upon request;
- (xi) Degreasing and deep cleaning of kitchen and exhaust hood a minimum of twice per year. Operator shall service the exhaust systems, including the

roof vent, on an annual basis and shall post a notice of said cleaning, as provided by the cleaning service obtained. Operator shall provide a copy of the cleaning report to the Department, upon request;

- (xii) Septic and grease tanks must be pumped at least twice a year (during the months of April and October) and, Operator shall provide proof of completion of the pumping to the Department, upon request; and
- (xiii) Maintenance (including, but not limited to the emergency repair) of the Inn:
  - (a) Plumbing systems
  - (b) Heating units
  - (c) Hot water heaters
  - (d) Air conditioning units
  - (e) Walk-in refrigerators and freezers, reach-in refrigerators and freezers and refrigerated sandwich units
  - (f) Beer tap delivery system
  - (g) Ice Machines
  - (h) Fire monitoring system
  - (i) Soda beverage dispensing machines

I. Upon expiration or termination of the Agreement, Operator shall deliver up peaceable possession of the Premises to Department in as good and clean condition as the Premises was made available at the commencement of the Agreement, reasonable wear and tear excepted. In the event that Operator does not deliver up possession as herein provided, Department may restore the Premises to such condition, whether due to a need to repair or to clean or both; and the cost thereof shall be paid by Operator to Department within fifteen (15) days of Department's written demand for payment.

## 8. IMPROVEMENTS

A. Operator has inspected the Operational 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 Operational Area, and that the Operational 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 written pre-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 Operational Area.

- (i) For any 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.
- (ii) For all improvements approved by the Department, Operator shall obtain any and all applicable permits and shall pay the Prevailing Wage pursuant to Paragraph 45 for any construction to the Operational Area.
- (iii) The Operator shall be solely responsible to obtain and pay for all necessary permits for the making of improvements at the Inn and Halfway House and shall pay Prevailing Wage for all construction projects. The contractor must comply with New Jersey Uniform Construction Code and the latest NEC70, Building Officials & Code Administrators. Basic Building code, OSHA and all applicable codes for this requirement.

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

C. Operator shall promptly make all necessary repairs to the Operational Area at Operator's expense. All repairs of damage to the Operational Area shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage. Operator shall notify the Department of all repairs by sending an email to: [George.Chidley@dep.nj.gov](mailto:George.Chidley@dep.nj.gov), with enough information about the repair so that a representative from the Department may find the locale of the repair and inspect the work completed.

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

E. Operator shall, at its sole cost and expense, keep and maintain the Operational Area in a neat, clean, and sanitary condition. Operator shall keep the Operational 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 Wall Township, Monmouth County. Operator shall be responsible for the collection and prompt removal of all trash from the Operational Area to a dumpster or other facility provided by Operator. Operator shall be responsible for obtaining an animal-proof dumpster at Operator's sole expense, and Operator shall be responsible for all trash removal and disposal costs.

F. The sidewalk entrances, 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 Operational Area.

G. 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.

H. Operator shall, before closing and leaving the Operational 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 Operational Area, resulting from Operator's failure to close all doors and/or windows in the Operational Area.

I. Operator shall not place or allow any kind of permanent sign to be placed at or about the entrance to the Operational Area, any other part of same, and/or any part of Spring Meadow Golf Course, 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 Operational Area or Spring Meadow Golf Course, 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.

J. Operator may install such equipment as Operator needs to maximize Operator's use of the Operational Area, with the Department's approval, in writing. The Department shall not be responsible for any damage to said equipment while being moved in or out of the Operational Area or while in use at the Operational 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.

K. Operator shall be responsible for supplying all equipment, appliances, inventory, furniture and supplies necessary to operate the Operational Area pursuant to the RFP.

## 9. GARBAGE

As outlined above and in the RFP, Operator shall be responsible for all trash removal and at Operator's expense. Operator shall be allowed the use of open trash containers during events; however, upon the termination of any event, Operator shall store all trash from the Operational Area or from any other location within Spring Meadow Golf Course in animal-proof containers until the trash is removed from the Operational Area by Operator. Failure to strictly abide by this Paragraph shall be considered a default pursuant to Paragraph 22 and shall trigger the remedies available to the Department thereunder.

## 10. HAZARDOUS SUBSTANCES

At no time during this Operation Agreement shall Operator store, upon the Operational Area, 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.

## 11. UTILITIES

A. The Operator shall be responsible for the payment and maintenance and repair of the utilities and utility systems for the Operational 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.

## 12. DEPARTMENT'S ACCESS TO OPERATIONAL AREA – RIGHT OF INSPECTION, REPAIR AND ALTERATION

A. If Operator shall change the locks or re-key the locks pursuant to Paragraph 15C. Security, below, Operator shall give four (4) keys to the Department. The Department shall retain these keys to the Operational Area and, with notice of not less than two (2) days, Operator shall permit the Department and its agents to enter the Operational Area at reasonable times and as the Department deems necessary or desirable to inspect and to perform other services to maintain the Operational Area. In addition, Operator shall permit the Department and its agents to enter the Operational Area to make repairs or improvements in, to, on, or about the Operational 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, and to temporarily revoke or modify the parking rights granted to Operator hereunder.



### **13. BUILDING SERVICES – INTERRUPTION**

A. The Department shall furnish the services for which the Operational Area is equipped, as set forth below, to the extent that the existing facilities permit, and when, in the sole judgment of the Department, weather conditions require.

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 on the Operational 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 to an abatement of the Fixed Rent and/or Variable Rent. These interruptions will not constitute constructive or partial eviction.

### **14. NO INTERFERENCE WITH OPERATION OF GOLF COURSE - CLOSURE**

A. Operator shall, in Operator's use of the Operational Area, conduct all activities so as not to interfere with, impair, or prevent the Department's development, maintenance, management, and operation of the Golf Course and the safe use and enjoyment thereof by the public. Operator shall coordinate with the Department all activities which could adversely affect the Golf Course 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 Golf Course, including the Operational Area, if the Department determines that Golf Course facilities are being used to capacity; there is inclement weather or threat thereof; the Department lacks sufficient resources to operate and/or maintain the Golf Course; or the Golf Course 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 rental abatement resulting from closure of the Golf Course.

### **15. 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 Golf Course.

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

### **16. SECURITY**

A. Operator shall, at Operator's sole cost and expense, be completely responsible for all security of the Operational Area against burglary, theft, vandalism and unauthorized entry. Operator is also responsible for crowd control during events at the Operational Area. Except as otherwise provided herein, the Department has no obligation to Operator for security of the Operational 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 Operational Area.

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

C. Operator may replace the locks on the doors or otherwise re-key the locks of the buildings comprising the Operational Area with 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 all locks within the Operational 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.

## **17. 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 Operational Area, for the correction, prevention, and abatement of nuisances, violations, or other grievances in, upon, or connected with the Operational Area during the term of this Operation Agreement, and which are directly related to Operator's use of the Operational Area. Operator shall also promptly comply with and execute all rules, orders, and regulations of the Township of Wall'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 Operational Area. All rules prescribed by the Department now or in the future are included in and made a part of this Operation Agreement.

## **18. RECORDS AND AUDIT; REVENUE**

A. Operator shall provide a yearly audit to the Department 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. 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 sub-operators, subcontractors and contractors, 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 Operational Area and/or Spring Meadow Golf Course, 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 Spring Meadow Golf Course Operational Area activities, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

## 19. DAMAGE TO THE OPERATIONAL AREA

A. If the Operational Area within Inn or Halfway House is/are 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 (25%) percent 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 (10<sup>th</sup>) day after the giving of notice, and Operator shall leave the Operational Area and remove Operator's personal property within said ten (10) day period. The Fixed Rent will be apportioned as of the date of the surrender of the Operational Area. The Fixed Rent 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 (25%) percent 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 the Operational Area within the Inn or Halfway House 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 Rent.

## 20. 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 Operational 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 or on, or any damage to property which occurs in, on, or about the Operational Area, or in any manner growing out of or connected with the use, nonuse, or condition of the Operational Area;
- (ii) Violation of any agreement or condition of this Operation Agreement by Operator, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through Operator;
- (iii) Violation by Operator of any contracts, agreements, or restrictions of record concerning the Operational Area or any federal, State, or local law,

ordinance, or regulation affecting the Operational Area and/or Operator's use thereof; or

- (iv) Any act, error or omission by Operator, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through Operator in the performance of this Operation Agreement.

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. 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.

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

E. 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.

F. 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.

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. 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 as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements 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 (\$1,000,000.00) Dollars for each occurrence of bodily injury and property damage liability and a Two Million (\$2,000,000.00) Dollars annual aggregate; and
- (ii) Property insurance to cover loss or damage on an "all risk" of physical loss form of coverage against fire, water, wind, storm, loss, theft, and damage on any structures on the Leased 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 Leased Premises. Said insurance shall be in an amount not less than the full value of such structures, fixtures, equipment, and contents. The value of said structures, fixtures, equipment, 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 applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Million (\$1,000,000.00) Dollars per occurrence for bodily injury liability and One Million (\$1,000,000.00) Dollars occupational disease per employee with an aggregate limit of One Million (\$1,000,000.00) Dollars occupational disease; and
- (iv) Comprehensive Automobile Liability to cover bodily injury and property damage with limits of not less than \$1,000,000.00 per person or per occurrence for all vehicles used on the Property. 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 performance of work; and
- (v) Such other insurance and in such amounts as may from time to time be reasonably required by Department.

B. All insurance coverage required to be maintained by Operator in accordance with this Operation Agreement shall be issued by an insurance company authorized and approved to do business in New Jersey and shall name the State of New Jersey as an additional insured.

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 D. 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.

## 22. 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 Rent, Variable Rent, 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 thirty (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 thirty (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.

After the Department has terminated this Operation Agreement, the Department may, at any subsequent time, resume possession of the Operational 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 will be deemed a default and will result in the Department terminating this Operation Agreement. 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(i), 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 C, from the Operational Area.

## 23. RIGHT TO LOCK OPERATIONAL 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 Operational Area, and the Department shall have the right to sell any of the personal property, goods, and materials remaining at the Operational Area and apply the proceeds thereof against any unpaid Fixed Rent

and/or Variable Rent. No action under this Paragraph shall be deemed to waive the Department's rights as set forth in other paragraphs of this Operation Agreement.

**24. CONDITIONS OF DEPARTMENT'S LIABILITY**

Operator shall not be entitled to claim constructive eviction from the Operational 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.

**25. 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.

**26. 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 Operational Area or any other part of Spring Meadow Golf Course. If Operator should cause any improvements or repairs to be made to the Operational Area, or if Operator should cause any labor to be performed or material to be furnished therein, thereon, or thereto, neither the Department, Spring Meadow Golf Course, nor the Operational 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 Operational Area, against Spring Meadow Golf Course, 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.

**27. TAXES AND ASSESSMENTS**

Operator shall, during the term of this Operation Agreement, promptly pay when due all taxes and/or assessments, together with interest and penalties thereon that are levied upon or assessed by any government body by reason of the Operator's operation of the Operational Area. Operator immediately shall forward any notice of such tax payment to Department and any notice

of assessment, tax bill, or any other notice, correspondence or document relating to local property taxation of the Operational Area to the Department.

## **28. 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.

## **29. 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.

## **30. SUB-OPERATOR(S)**

Operator may not enter into sub-operating or subcontractor agreements with outside entities for the operation of any alcoholic beverage service, except that Operator may enter into sub-operating and subcontractor agreements with outside entities for the performance of any of its other obligations under this Operation Agreement with the prior written approval of Department. Before Operator may allow a sub-operator or subcontractor to begin to operate or use the Operational Area, both Operator and the sub-operator/contractor must sign a sub-operating/contracting agreement, which shall be subject to the Department's written approval prior to taking effect. In no event will Department and any sub-operator or subcontractor have any contractual relationship by virtue of the sub-operator's/contractor's relationship to Operator. During the Term of this Operation Agreement, Operator shall indemnify Department and assume all responsibility for any and all acts and/or omissions of any sub-operator/contractor and for its compliance with the respective sub-operating/contracting agreement. In addition, Operator shall ensure that all sub-operators/contractors are held to the same terms and conditions as the Operator, and in particular the following paragraphs: Rent (Paragraph 3.B),



Indemnification (Paragraph 20), Insurance (Paragraph 21), and Pay-to-Play (Paragraph 47).

**31. 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 in employment and agrees to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

Specifically, Operator shall not:

A. discriminate against any person, employee, or applicant for employment because of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality. This provision shall include, but not be limited to, the following: employment; upgrading; demotion; transfer; recruitment; recruitment advertising; rates of pay or other forms of compensation; layoff or termination; and selection for training, including apprenticeship.

B. discriminate on the basis of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality in allowing the private access to and use of the Operational Area.

C. discriminate on the basis of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality in allowing the public access to and use of the Golf Course.

**32. CONFLICTS OF INTEREST**

A. Pursuant to New Jersey's Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., Operator 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-13b and e., in the Department of Environmental Protection 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-13i., 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-13g.

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

C. 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 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. 52:130-13g. 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.

D. Operator 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. Operator 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 Operator 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 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 under paragraph 3c of Executive Order 189.

**33. 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.

**34. 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 Operational 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.

**35. NOTICES**

The parties hereto agree that all submissions, approvals, and notices (except for the Notice of Repairs which shall be made in compliance with Paragraph 7C. 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  
State Park Service, Office of the Director  
Mail Code 501-04, P.O. Box 420  
Trenton, New Jersey 08625-0420

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

Operator: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

### 36. 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 Operational Area, vacate, and turn over the use thereof to the Department. Operator shall only remove the personal property listed on Exhibit C. Operator shall periodically amend Exhibit C and submit a copy to the Department in accordance with Paragraph 35 and also via electronic mail to: [George.Chidley@dep.nj.gov](mailto:George.Chidley@dep.nj.gov). The Department may at once reenter, secure the Operational Area, and remove any and all persons using the Operational 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 Operational 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 Rents, Variable Rents, and other payments accrued to the date of the End of Term.

### 37. 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 insure to the benefit of the successors and assignees of the Department and Operator's successors, heirs, executors, administrators, and assigns.

### 38. 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.

### 39. HOLDOVER

If the Department permits Operator to use the Operational Area after expiration of the Operation Agreement without executing a new written Operation Agreement with the Department, then Operator shall use the Operational 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.

### 40. 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 E.

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 F.

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 G.

**41. 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.

**42. 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.

**43. 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.

**44. 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.

**45. 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.

**46. 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.

**47. 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 Operation Agreement for Operator 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 Operator 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 Operator to the restrictions of P.L. 2005, c.51. Further, where Operator is a business entity, as defined by N.J.S.A. 19:44A-20.17, and the value of this Operation Agreement exceeds \$17,500, Operator shall submit with this Operation Agreement 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 Operator 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 Operator’s continuing obligation to report any contributions it makes during the term of this Operation Agreement. Additionally, if Operator is a for-profit business entity, as defined by N.J.S.A. 19:44A-20.26 and the value of this Operation Agreement exceeds \$17,500, Operator shall submit with this Operation Agreement 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 Operator 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. Operator 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 Operator received contracts in excess of Fifty Thousand (\$50,000.00) Dollars from a public entity 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](http://www.elec.state.nj.us).

**48. ATTACHMENTS**

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

- Exhibit A – Request for Proposal
- Exhibit A-1 – Bid Proposal, Proposal Supplement and Best and Final Offer
- Exhibit B – Aerial Map of Operational Area
- Exhibit C – List of Operator’s personal property
- Exhibit D – Certificate of Insurance
- Exhibit E – Certificate of Incorporation
- Exhibit F – Board Resolution
- Exhibit G – 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:**

**John Jay Hoffman  
Acting Attorney General  
State of New Jersey**

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

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

Christine Piatek  
Deputy Attorney General