

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

OPERATING AGREEMENT

THIS AGREEMENT, made the ____ day of _____ in the year Two Thousand and Nineteen (2019).

BETWEEN

THE STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS & FORESTRY
MAIL CODE 501-04C
PO BOX 420
TRENTON, NEW JERSEY 08625-0420

Hereafter referred to as Department,

AND

XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Hereafter referred to as Operator.

WHEREAS, Department is the fee simple Owner of Centerton Golf Course (“Golf Course Property”) hereinafter described; and

WHEREAS, pursuant to the Request for Proposal issued on XXXXX by Department for a Golf Course Operator for Centerton Golf Course, (the “RFP”), a copy of which is attached hereto and incorporated by reference as Exhibit A, Operator wishes to enter into this Operating Agreement to operate the Golf Course Property, as more particularly described below; 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 Operating 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 B; and

NOW THEREFORE, this Operating Agreement is made and entered into by and between Department, its successors and assigns, and Operator and its successors and assigns. This Operating Agreement shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

THE PARTIES HERETO, for themselves, their heirs, distributes, executors, administrators, legal representatives, successors, and assigns, for good and valuable consideration, the exchange, receipt, and sufficiency of which is hereby acknowledged, hereby covenant and agree as follow;

1. GOLF COURSE PROPERTY

Department hereby allows Operator to operate Golf Course Property (as hereinafter described for the Term of this Operating Agreement). The Golf Course Property consists of approximately Two Hundred Twenty-Five (225) acres and is designated as Block 1801, Lot 1 on the Tax Map of the Township of

Pittsgrove, County of Salem, State of New Jersey. The Golf Course Property, includes an eighteen-hole public golf course and driving range together with any buildings, structures, parking lots and improvements located on the land and premise. A map of the Golf Course Property is attached hereto and incorporated by reference as Exhibit C, excluding the structure and areas currently owned by a third-party referenced below. It is expressly understood that this Operating Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Golf Course Property to Operator.

There is also a parcel of land in the center of the Golf Course Property designated as Block 1801, Lot 25 on the Tax Map of the Township of Pittsgrove, County of Salem, State of New Jersey that is not owned by the Department and is not part of the RFP and this Operating Agreement. The owner of this parcel (Centerton Real Estate Holdings LLC) operates an event center and restaurant known as The Grove at Centerton. The Grove at Centerton has the following easement on the Golf Course Property: a right-of way easement for access; four (4) drainage easements; and a septic system easement, copies of which are attached hereto and incorporated by reference as Exhibit D.

Atlantic City Electric has a utility easement across the Golf Course Property.

2. TERM

A. The Term of this Operating Agreement shall begin ~~XXXXXX~~ (“Effective Date”), at which time this Operating Agreement shall take full force and effect. Operator shall operate the Golf Course Property during the Term of this Operating Agreement beginning on the Effective Date and continuing for a period of Five (5) years (the "Initial Term") from that date until the expiration of the Operating Agreement (“Expiration Date”), unless the Operating Agreement shall end sooner pursuant to any of the terms, covenants, or conditions, herein provided or pursuant to law. Department may terminate this Operating Agreement during the Term of the Operating Agreement in accordance with the termination provisions as contained herein, 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 Golf Course Property without accompaniment of a representative of Department.

B. Provided that no event of default has occurred and provided that the Capital Improvements have been completed described in Section 1.2.12 of the Request for Proposal attached hereto and incorporated by reference as Exhibit A, Operator may request that the term of this Operating Agreement be renewed for an additional Fifteen (15) year period (the “Renewal Term”) by giving Department written notice of Operator’s request to at least one hundred and eighty (180) days prior to the expiration of the Initial Term of this Operating Agreement. Department reserves the right to disapprove renewal of this Operating Agreement for convenience. In the event that Operator’s request for renewal is not approved by Department sixty (60) days prior to the scheduled expiration date of this Operating Agreement, said request shall be deemed to have been denied, and this Operating Agreement shall expire as herein provided. The Initial Term and the Renewal Term are hereinafter collectively referred to as the “Term.” Operator shall not continue operation of the Golf Course Property beyond the expiration of the Renewal Term except upon execution of a new Operating Agreement or as provided for in Paragraph 36 hereof.

C. Operator shall assume full operation of the Golf Course Property on the Effective Date of this Agreement.

3. PAYMENTS TO THE DEPARTMENT

A. The Operator shall pay to the Department an annual fee (“Rent”) which shall be an amount equal to the greater of Sixty-Six Thousand Dollars and Zero Cents (\$66,000.00) or Ten percent (10%) of the Total Annual Gross Revenue during each said Calendar Year. With the understanding that the first and last year Rent may not be based on full calendar years.

B. The Operator shall pay the minimum Rent of Sixty-Six Thousand Dollars and Zero Cents (\$66,000.00) in twelve (12) monthly installments of Five Thousand Five Hundred Dollars and Zero Cents (\$5,500.00) on the first (1st) of each month. If the Effective Date occurs on any date other than the first of the month, this payment for a portion of the first month of the Operating

Agreement shall be pro-rated

C. The Operator shall make a final determination of the total payment of Rent due for said Calendar Year based on the audit of Annual Total Gross Revenue. The Annual Total Gross Revenue shall be defined to include all sales at the gross selling price of merchandise and items of every character sold in, upon, or through any part of the Golf Course Property by Operator, or any other person, firm, or corporation, including, but not limited to, all revenues and sales related to the operation of the golf course, pro shop, and gross charges for all services to customers or patrons, including, but not limited to, greens fees, memberships, equipment rentals, lessons, camps, golf outings, and events performed by Operator or any other person, firm or corporation, in, upon, or through any part of the Golf Course Property, and shall include sales and charges for cash and credit regardless of whether or not the same is collected or uncollected, less only all proper credits for returned merchandise, merchandise exchanges and merchandise cancellations, allowances or discounts as well as any sales taxes collected by Operator and remitted to taxing authorities with respect to each Term Year.

D. On or before May 1st of each Term Year, and on or before the May 1st immediately after this Operating Agreement has terminated, Operator shall conduct and provide Department with a complete audit of its gross revenue for the prior Calendar Year ending December 31st prepared by a Certified Public Accountant (CPA) licensed to practice accounting in the State of New Jersey ("Audit") or Special Report required in Paragraph 4 of this Operating Agreement. In the event that the Audit or Special Report determines that the percentage of Total Annual Gross Revenue for said Calendar Year is greater than the minimum Rent, Operator shall, upon submission of the Audit or Special Report, pay such amount to the Department to make the total annual Rent equal to ten percent (10%) of the Total Annual Gross Revenue for said Calendar Year. With the understanding that the first and last year Rent may not be based on full calendar years.

E. The Rent 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

C. Any payment of the Rent not made on or before the first of the 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 of Rent not received by the last day of the month will be considered a default pursuant to Paragraph 29 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. RECORDS, MEETINGS, AND AUDIT

A. Operator shall maintain complete and adequate financial records that will allow Operator to prepare financial statements in accordance with generally accepted accounting principles. Operator shall retain such records for at least six (6) years from the expiration or termination of this Operating Agreement. Such records shall be made available for audit during normal business hours by an authorized representative of Department to determine the adequacy of Operator's financial management systems and internal control systems established to meet the terms and conditions of this Operating Agreement and that the financial statements are fairly presented in accordance with generally accepted accounting principles. The results of any audit by Department shall be final and binding on Operator, including but not limited to Department's determinations with respect to revenue reporting and payment by Operator.

B. Operator shall prepare and compile, or oversee the preparation and compilation of, and submit to Department a quarterly financial report itemizing the following, on a monthly basis:

i. Financial Summary

a. Golf Course Revenue, including but not limited to:

- i. Total number of rounds of golf broken down by type of fee (weekday, senior, weekend, etc.)
- ii. green fees revenue broken down by type of fee
- iii. rental revenue broken out by item (power carts, hand carts, golf clubs, etc.)
- iv. pro-shop sales broken down by categories (golf balls, golf clubs, clothing, etc.)
- v. revenue generated from golf lessons
- vi. association and/or membership revenue (handicap fees, association fees, memberships etc.)
- vii. driving range revenue broken out by number of baskets
- viii. tournament revenue
- ix. sales tax collected

b. Restaurant/Bar, (if incorporated with the operation of the Golf Course Property) including but not limited to:

- i. food sales broken down by area (restaurant, refreshment stand, food beverage cart, banquet/catering)
- ii. beverage sales, broken down by alcoholic and non-alcoholic
- iii. banquet/catering, special events
- iv. sales tax collected

c. Expenses, including but not limited to:

- i. expenses associated with pro-shop and office operations
- ii. expenses associated with maintenance and repairs of the Golf Course Property
- iii. labor costs broken down by department (maintenance, pro-shop, office), further broken out by permanent (key personnel) and seasonal employees
- iv. unanticipated expenses
- v. Capital Improvements

ii. Brief summary of:

- a. golf course maintenance and any issues related to the operation of the Golf Course Property
- b. sales and marketing efforts
- c. review on progress of Capital Improvements

D. Operator shall, or on or before May 1st of each year, conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31st prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey (“Audit”). In the alternative, Operator may provide a special report as prescribed in Statement on Auditing Standards No. 62 prepared by a Certified Public Accountant licensed to practice accounting in New Jersey to fulfill this requirement (“Special Report”).

E. Operator, its contractors, and subcontractors, shall provide Department, through an authorized representative, reasonable access to and the right to examine all records, books, papers, or documents reasonably related to Operator’s operation of any part of the Golf Course Property and any project, services, and work being performed pursuant to any contract or subcontract. Proper facilities shall be furnished for access and inspection. Department has the right to request, and Operator agrees to provide free of charge, all information and copies of all records.

F. Operator shall confer with Department and attend meetings with Department officials and other persons as reasonably requested by Department to discuss matters relating to the operation and management of the Golf Course Property.

G. All data, technical information, materials gathered, originated, developed, prepared, used, or obtained in the performance of the Operating Agreement, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, records (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures, and documents, regardless of the state of completion, which are prepared for or are a result of the services required under the Operating Agreement, shall be and remain the property of Department and shall be delivered to Department upon thirty (30) days' notice by Department.

H. Any and all audits conducted by Operator, the Department or the Department's authorized representative, shall be paid for solely by Operator.

J. If any audit has been started but not completed or resolved prior to the expiration or termination of the Operating Agreement, Operator continues to be subject to such audit until it is completed and resolved.

K. 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 Centerton Golf Course Operational Area activities, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

5. 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 Operating 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 Operating Agreement Payment which will be added to the next payment of the Rent owed by the Operator to the Department.

6. PURPOSE

Operator agrees to operate the Golf Course Property for its intended purpose in the manner set forth in the RFP and Operator's Bid Proposal, and Operator may not operate or use the Golf Course Property for any other purpose, without the prior written consent of Department.

7. GOLF COURSE MANAGEMENT

During the term of this Operating Agreement, Operator shall manage the day-to-day operations of the golf course, 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 public golf 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.

A. Alcoholic Beverages/Annual State Permit

- i. The Operator shall not allow customers and visitors to bring alcoholic beverages onto the Golf Course Property.
- ii. A liquor license is not included as part of the Request for Proposal or the Operating Agreement and the Golf Course Property/Clubhouse does not include structures or facilities to support the service of food and alcoholic beverages.
- iii. The Operator shall be allowed to secure an Annual State Permit from the New Jersey Division of Alcoholic Beverage Control, for the service and consumption of alcoholic beverages in a structure or facility on the Golf

Course Property and a mobile food/beverage cart approved in advance by the Department in writing. Because the Golf Course Property is State-owned land, the successful bidder must also obtain the Annual State Permit form the New Jersey Division of Alcoholic Beverage Control and not from the local municipality. Prior to submission to the New Jersey Division of Alcoholic Beverage Control, the successful bidder must submit plans and obtain the Department's prior written approval of the structures or facilities that will be utilized for the service and consumption of alcoholic beverages and food on the Golf Course Property.

- iv. It is the intent of the Department that alcoholic beverage service be associated with the service of food. Nothing in the Request for Proposal or any of the attachments hereto shall be construed as a guarantee that the successful bidder shall or will obtain an Annual State Permit from the New Jersey Division of Alcoholic Beverage Control. The successful bidder is expected to perform under the Request for Proposal and Operating Agreement regardless of its ability to obtain an Annual State Permit. Failure to obtain a liquor license does not negate or void the Request for Proposal or this Operating Agreement in any way and the successful bidder shall be expected to perform under this Operating Agreement.
- v. **If the Operator obtains an Annual State Permit from the New Jersey Division of Alcoholic Beverage Control, it will be required to directly provide the services at the Golf Course Property. The Department will not permit the Operator to subcontract the alcoholic beverage service on the Golf Course Property. Consumption of alcoholic beverages on the Golf Course Property provided by any entity other than the Operator is prohibited and shall be a material breach of the Operating Agreement subject to suspension or termination in accordance with Paragraph 29 of this Operating Agreement.**

B. Food and Non-Alcoholic Beverages

Operator shall be permitted to offer for sale prepared food, snacks, candy and non-alcoholic beverages from the Clubhouse, patio, tenth (10th) Tee area and a mobile food/beverage cart.

C. Fees and Memberships

All proposed fees for public admission to the Golf Course Property, including greens fees, membership fees, or any other fees associated with access to and use of the Golf Course Property shall be submitted to Department in writing and approved by Department in writing before such fees become effective. When submitting proposed fees to Department, Operator shall be required to show that the proposed fees are comparable to fees charged by similar public golf courses within fifty (50) miles.

D. Reservations Systems and Tournaments

All reservations systems and tournament procedures established by Operator are subject to the review and approval of Department.

8. CONDITION OF GOLF COURSE PROPERTY

Operator has inspected the Golf Course Property 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 Golf Course Property, and that the Golf Course Property 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 in writing, but at the cost of Operator. Upon expiration or termination of this Operating 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 Golf Course Property.

9. SECURITY

A. Operator shall, at Operator's sole cost and expense, be completely responsible for all security of the Golf Course Property against burglary, theft, vandalism and unauthorized entry. Operator is also responsible for crowd control at the Golf Course Property. Except as otherwise provided herein, the Department has no obligation to Operator for security of the Golf Course Property 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 Golf Course Property. The cost of repair, maintenance and monitoring cost for alarm security systems shall be the responsibility of the Operator.

B. The Department reserves the right to remove and/or refuse admission to the Golf Course Property to any person or persons who, in the Department's discretion, cannot furnish satisfactory identification and justification for access to the Golf Course Property.

C. Operator shall, upon the termination of this Operating 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.

D. The Operator is required to report to the Department any injury and/or accident that occurs at the Golf Course Property requiring any medical intervention of which the Operator is notified by calling 1-877-WARN DEP (1-877-927-6337) and by sending a written report to the Department at the contact information identified in Paragraph 37 within one (1) day of the incident. The operator shall also be required to notify Department of any injury requiring medical intervention via email at OfficeofLeases@dep.nj.gov.

10. MAINTENANCE, REPAIR, AND UTILITIES

A. Operator shall be solely responsible for the maintenance of the Golf Course Property and buildings, structures, and improvements thereon, including structural repairs, the installation and repair of all utility systems, the cost of all utility services, and the irrigation system, including all of the equipment and components of the system, including sprinkler heads and pumps. Operator shall deliver the Golf Course Property to Department upon expiration or termination of this Operating Agreement in at least as good condition as it was delivered at the commencement of the term.

B. Operator shall, at its sole cost and expense, keep and maintain the Golf Course Property, including any improvements constructed or located thereon in good repair and condition and shall promptly make all structural, nonstructural, ordinary, and extraordinary repairs of every kind which may be required to be made upon or in connection with the Golf Course Property, and any improvements thereon to keep and maintain the Golf Course Property in good repair and condition. Operator shall be required to maintain the golf course within the limits of the Water Registration Permit as described herein.

C. Operator shall, at its sole cost and expense, keep and maintain the Golf Course Property, including any improvements constructed or located thereon, clean, neat, and well maintained.

D. Operator shall, at its sole cost and expense, install, maintain, repair, and replace utility systems and pay for the cost of utility services as provided below.

- i. Water: Operator shall be responsible for all water and well service on Golf Course Property.
- ii. Natural gas, propane and oil: Operator shall be responsible for the natural gas,

propane, and oil services on Golf Course Property.

- iii. Heat/Air Conditioning: Operator shall be responsible for all heating/air conditioning services on Golf Course Property.
- iv. Telephone and other communication services: Operator shall be responsible for all telephone and communications services on Golf Course Property.
- v. Electricity: Operator shall be responsible for all electric service on Golf Course Property.
- vi. Sewer and septic: Operator shall be responsible for all sewer and septic services related to Golf Course Property. The Golf Course Property currently has approval from the local board of health for its septic system which pumps less than 2,000 gallons of water each day. If the Operator desires a septic system that would pump more than 2,000 gallons per day, Operator would be required to apply to the Department for a New Jersey Pollution Discharge Elimination System (NJDES) permit for which approval is in no way guaranteed. The Operator shall bear all risk, costs and fees associated with the NJDES permit application process and the permit itself.

E. The Golf Course Property is subject to a certain right of way easement held by an adjacent property, designated as Block 1801, Lot 25 on the tax map of the Township of Pittsgrove, County of Salem. The right of way easement enables the adjoining landowner to use the driveway and parking lot on the Centeron Golf Course Property. Pursuant to the easement the owner of the centralized parcel, currently Centerton Real Estate Holdings LLC and the owner of the Golf Course Property, (the Department) are to share equally the costs of all the maintenance and repairs for the parking lot and driveway. Operator shall be solely responsible for the Department's share of the cost of repairing and maintaining the parking lot and driveway pursuant to this easement.

F. Operator shall keep the Golf Course Property free of trash and be responsible for the collection, disposal, and recycling of all garbage, rubbish, and other waste from the Golf Course Property. Operator shall participate in and comply with all recycling programs in effect for the county and municipality in which the Golf Course Property is located.

G. Operator shall not make or allow any physical change in the natural condition of the Golf Course Property, including, but not limited to, the cutting or removal of trees or shrubs, without first submitting plans and specifications therefore to Department and obtaining Department's prior written approval thereof. Department's approval shall not relieve Operator of its obligation to obtain and maintain all licenses, permits, and approvals required by the appropriate Federal and/or State governmental agency having jurisdiction over the activity to be undertaken.

H. Operator shall comply with the turf cultivation and management practices established by the United States Golf Association. Operator shall maintain the turf for playing conditions. Turf maintenance shall include, but not be limited to, the following: general cleanliness; landscaping; mowing/trimming; irrigation within the limits of the Water Registration Permit as described herein; fertilization; general erosion repairs; and other related tasks necessary to maintain acceptable playing conditions on the golf course.

I. Operator shall be responsible for and ensure that all golf course patrons, sub-operators, licensees, and permittees are satisfying all obligations to maintain and repair areas occupied by them as required by any sub-operating agreement or other applicable instrument.

11. CANADA GEESE POPULATION MANAGEMENT

The Division authorizes the Operator to manage the population of Canada Geese on the Golf Course Property in accordance with federal and state regulation and guidelines set forth in the Division's Goose Management Program. Management activities shall include adding eggs and removing and destroying nests. A copy of the Division's policy is attached and incorporated by reference as Exhibit E.

12. GOLF CARTS AND OTHER EQUIPMENT

A. Operator shall be responsible for providing and maintaining all equipment and golf carts necessary for the successful management and operation of the golf course. Department acknowledges that Operator may in the ordinary course of its business enter into leases for equipment used for the operation of Operator's business at the Golf Course Property. Operator shall provide Department with at least five (5) business days prior written notice of the material terms and conditions of any such equipment leases prior to entering into same.

13. WATER ALLOCATION

A. Water allocation is limited on the Golf Course Property pursuant to a Water Use Registration (permit) issued by Department. The permit limits water usage to 3.1 million gallons a month. Accordingly, the Operator shall be limited to watering only the greens and tees, with minimal watering of fairways.

B. Operator acknowledges and understands that the Golf Course Property is located in an area of the State that renders it unlikely to be eligible for a Water Allocation Permit, which would provide greater water usage to the Golf Course Property. The Operator may apply to Department for a Water Allocation Permit, but this Operating Agreement shall not be construed as approval for a Water Allocation Permit, nor shall it serve as a guarantee that such a permit will be granted. Operator shall bear the cost of all water permitting costs and fees.

C. Operator shall pay all costs and fees associated with the Water Use Registration and shall submit all monitoring reports and documentation to Department as required under the Water Use Registration.

14. PRO SHOP

Operator may operate a pro shop on the Golf Course Property. Sales at the shop may include, but are not limited to, merchandise, golf equipment, cart rentals, and equipment rentals. Operator shall submit a written list of items and prices for all merchandise, golf equipment, cart rentals, and equipment rentals for approval, in writing, by Department prior to sale.

15. RENOVATIONS AND IMPROVEMENTS

A. Operator shall not enter into any contract for or commence any restoration, preservation, renovation, or improvement project including, but not limited to, the Capital Improvements described in Section 1.2.12 of the Request for Proposal attached hereto and incorporated by reference as Exhibit A, the construction or placement of any non-permanent building, structure, or utility or any change in the natural condition of the Golf Course Property (collectively "Improvements") without first submitting to Department, and obtaining Department's prior written approval of, an Improvement Plan for the proposed Improvement. 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 or disapprove the proposed Improvement.

B. Department's approval shall be based upon Department's determination that Operator is capable of completing the proposed Improvement, that the intended use and character of the proposed Improvement is consistent with the purposes of this Operating Agreement, is compatible with the natural condition of the Golf Course Property, is consistent with the terms of the grant and or statutory funding source under which Department acquired the Golf Course Property, and will not pose a threat to public health and safety. As approved by Department, said Improvement Plan shall become a part of this Operating Agreement by reference, and Operator shall not modify or deviate therefrom without first obtaining Department's express written approval.

C. All Improvement Plans submitted to Department by Operator under this Paragraph are for the purpose of assisting Department in determining whether to approve the proposed Improvement under the criteria for approval set forth in Subparagraph B of this Paragraph. Department's approval of any such plan through the Division of Parks & Forestry shall not be construed to relieve Operator of its responsibility to obtain and maintain all licenses, certificates, permits, and approvals now or subsequently required by Federal, State, and local authorities for the construction and use of the Improvement. Operator shall, prior to the commencement of any Improvement, apply for and obtain all Federal, State, and local licenses, certificates, permits, and approvals required for construction of the proposed Improvement. Upon the issuance of said licenses, certificates, permits, and approvals, Operator shall submit copies of same to Department and then commence the Improvement project in accordance with the approved Improvement Plan. All construction shall be done in a good and workmanlike manner in accordance with the approved Improvement Plan and all requisite licenses, certificates, permits, approvals, and any other requirements of Federal, State, or local authorities having jurisdiction.

D. Approval by Department of design plans, specifications, and reports submitted by Operator in accordance with this Operating Agreement shall not in any way relieve Operator of responsibility for the technical accuracy thereof. Operator is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, and reports furnished under this Operating Agreement. Operator shall, at its sole cost and expense, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, and reports. Approval or acceptance thereof by Department shall not be construed as a waiver of any rights of Department under this Operating Agreement or any cause of action arising out of the performance of this Operating Agreement.

E. Department reserves the right to approve or disapprove the location, type of structure, and/or physical alteration involved in any Improvement and to require that Improvements be constructed or placed in such a manner that they may be removed with minimum damage to the Golf Course Property.

F. Upon compliance with this Paragraph, Operator may enter into contracts for the performance of construction of an Improvement, provided that in no such event shall Operator's obligations under this Operating Agreement be deemed to be diminished thereby. Nothing contained in any such contracts shall be construed as creating any contractual relationship between any contractor, subcontractor, and Department.

G. Operator shall, at its sole cost and expense, provide all necessary construction management for each Improvement. Department may, at its sole cost and expense, monitor Operator's construction management.

H. For any Improvement undertaken as a single project and involving an estimated cost aggregating more than Twenty Thousand (\$20,000.00) Dollars, Operator shall, at the request of Department: (i) provide to Department, as security for the satisfactory completion of the construction of the project in form and substance satisfactory to Department, a corporate surety bond of a corporate surety company satisfactory to Department in the amount of 100% of the cost of construction of the project naming Department and Operator as co-obligee; and (ii) provide to Department a labor and material payment bond of a corporate surety company satisfactory to Department and meeting the requirements of N.J.S.A. 2A:44-143 providing for the prompt payment for materials, supplies, labor, services and equipment, naming Department and Operator as co-obligee in form and substance satisfactory to Department.

I. Before commencement of construction, Operator shall deliver to Department certificates of insurance showing that Operator and/or its contractors and subcontractors have obtained insurance coverage during construction as follows: (i) Completed Value Builder's Risk insurance with standard fire and extended coverage and, to the extent that insurance against any additional risk is obtainable at standard rates, "all-risk" extended coverage endorsement; (ii) Contingent Liability and Comprehensive General Public Liability insurance with a Contractual Liability endorsement (including insurance with respect to owned or operated motor vehicles) with

aggregate limits of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury, death, or property damage for any one accident; 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 Two Million (\$2,000,000.00) Dollars occupational disease. The insurance policies described in (i) and (ii) above shall name Department as an additional insured. The certificates of insurance shall provide for thirty (30) days notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Operating Agreement. Operator also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies.

J. All Improvements undertaken or made without Department's written approval and/or for which Operator cannot document to the satisfaction of Department that the Improvement was completed in accordance with the requirements of all Federal, State, and local agencies having jurisdiction shall be removed by Operator upon Department's demand. Operator shall, at Operator's sole cost and expense, repair any damage to the Golf Course Property caused by Operator's construction and/or removal of any unauthorized or unacceptable Improvement.

K. Upon completion of any Improvement, Operator shall, as a condition precedent to Department's acceptance and Operator's use and operation thereof as part of the Golf Course Property, deliver to Department: (i) copies of all permanent certificates of occupancy necessary for use and occupancy of the Improvement; (ii) copies of final and complete waivers by Operator's general contractor and its subcontractors of their rights to file or assert a mechanic's lien against any part of the Golf Course Property or Improvement or any work performed; and (iii) one complete set of reproducible "as-built" or record drawings of the Improvement.

L. All Improvements hereafter constructed on the Golf Course Property by Operator shall be the property of Department. Upon the expiration or termination of this Operating Agreement, Operator shall turn over use and operation thereof to Department free of any liens or encumbrances and without payment of any compensation therefor by Department to Operator.

16. STAFF

A. Operator shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of the Golf Course Property, to provide security for the Golf Course Property and to meet the needs of the public. Operator shall submit a staffing plan to Department and obtain Department's written approval thereof. 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 a Golf Course Property covered by this Operating Agreement, Operator shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice.

B. If it becomes necessary for Operator to change any management or supervisory staff ("key personnel"), Operator shall notify the Department of the change and identify the individual, provided all contact information and the work to be performed. Resumes must be submitted evidencing that the individual proposed has the qualifications and experience.

17. COMPLIANCE WITH LAWS AND DEPARTMENT 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 Golf Course Property, and any and all permits, approvals, licenses, certificates or similar authorization for the correction, prevention, and abatement of nuisances, violations, or other grievances in, upon, or connected with the Golf Course Property during the term of this Operating Agreement, and which are directly related to Operator's use of the Golf Course Property.

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 Golf Course Property. All rules prescribed by the Department now or in the future are included in and made a part of this Operating Agreement.

18. TAXES AND ASSESSMENTS

In October 2016, an opinion issued by the Tax Court of New Jersey identified that the subject property Block 1801, Lot 1 in Pittsgrove Township, Salem County is exempt from local property taxes. All taxes and property tax assessments, if any, arising out of the use and operation of the Golf Course Property for the Initial and any Renewal term 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 during, before or after 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 constitutes a material breach of the Agreement subject to Default in accordance with the terms and conditions of the Agreement.

19. OPERATOR'S OBLIGATIONS

Operator, at its sole cost and expense, shall be responsible for preparation and compilation of Plans, Reports, Documents, and financial reports, and Operator's fully authorized personnel shall attend meetings as reasonably required by Department. Operator shall be responsible for compliance with all other obligations specified as Operator's in the RFP, attached hereto as Exhibit A.

20. EMERGENCY CLOSURE, DEPARTMENT'S ACCESS TO GOLF COURSE PROPERTY-RIGHT OF INSPECTION, REPAIR AND ALTERATION

A. Access to the Golf Course Property may be restricted during the normal Atlantic Hurricane season of June 1 through November 30, as storms may force the closure of the Golf Course Property. In addition, the Golf Course Property may be closed due to other State Emergencies. If the Golf Course Property is closed, whether for a State Emergency or storm, or for any other reason, including a State Shut-Down, the Department is not responsible for any damages resulting from such closures or for any storm damage to Operator's personal property. The Department is not responsible for ensuring the roads are passable or open to the Operator. The Department is not responsible for damages resulting from reductions or disruptions of utilities (electric, water, wastewater, etc.) due to weather, vandalism, terrorism, or similar exigent circumstances.

B. Operator shall permit the Department and its agents to enter the Golf Course Property at reasonable times and as the Department deems necessary or desirable to inspect, security of and to perform other services to maintain the Golf Course Property. In addition, Operator shall permit the Department and its agents to enter the Golf Course Property to make repairs or improvements in, to, on, or about the Golf Course Property. 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. Department shall, in accordance with the nature and extent of the activities to be undertaken as part of its access, exercise its rights in a manner intended to avoid or minimize damage to Operator's property and to avoid unreasonable interference with Operator's activities and except for emergency circumstances, Department shall endeavor to provide at least forty-eight (48) hours' notice to Operator prior to entering upon the Golf Course Property.

21. SIGNAGE, ADVERTISING, AND NEWS RELEASES

Operator shall not post or allow any signs or advertisements of any description to be painted or posted on the Golf Course Property, any of the buildings or structures on the Golf Course Property, and/or on any other property or improvement comprising part of the State Park, unless specifically approved by Department in writing. Operator shall not use Department's/State's name, logos, images, or any data or results arising from the Operating Agreement as part of any commercial advertising without first obtaining the written consent of Department. Operator shall not be permitted to change or profit from the name of the golf course by, for example, selling or licensing naming rights to the Golf Course Property. Operator shall not change the name of the Golf Course Property without the prior written consent of Department. Operator shall not issue news releases pertaining to any aspect of the services being provided under the Operating Agreement without the prior written consent of Department.

22. DAMAGE TO PROPERTY

A. Operator shall, at Operator's sole cost and expense, repair any damage caused by Operator, its employees, agents, contractors, or invitees to the Golf Course Property within the period of time prescribed by Department in a written demand. In the event that Operator fails to repair the damage after written demand by Department, Department may, at its option and subject to the availability of funds from insurance coverage or appropriated therefore, elect to make said repairs, and the cost thereof shall be paid by Operator to Department within fifteen (15) days after demand.

B. In the event of damage or destruction of the Golf Course Property, in whole or in part, by fire, explosion, the elements, or otherwise during the term of this Operating Agreement, Department may, in its discretion, terminate this Operating Agreement from the date of such damage and destruction or, subject to the availability of funds from insurance coverage or appropriated therefore, cause such damage or destruction to be repaired.

C. All repairs by Operator of damage to the Golf Course Property shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage or destruction. All repairs shall be completed in accordance with plans and specifications submitted to and approved by Department under Paragraph 10 and Paragraph 15 of this Operating Agreement to the same extent as though said repair is an Improvement.

D. This Operating Agreement shall not be construed to require Department to pay or compensate for any damage to the Golf Course Property to be repaired for the benefit of Operator. Department shall not be liable to Operator for any loss occasioned by the damage to or destruction of the Golf Course Property and/or Department's declaration that this Operating Agreement is terminated.

23. DEVELOPMENT OF STATE PARK

Any other provision herein contained to the contrary notwithstanding, in the event that Department gives Operator written notice that Department requires all or any part of the Golf Course Property for development or use for any public purpose, Operator shall, within the period set forth in said notice and without any compensation therefore by Department to Operator, abandon use of the Golf Course Property or part thereof designated by Department within the notice period.

24. INDEMNIFICATION

A. Operator shall, for itself, and any and all Sub-Operators and for Operator's successors, and assigns, assume all risks and liabilities arising out of Operator's use, operation, maintenance, and improvement of the Golf Course Property. 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 caused in whole or in part by any negligent act or omission of Operator, or anyone directly or indirectly employed by [it], *regardless of whether it is caused in part by the Department*, or its officers, agents, servants, employees, successors, and assignees;
- (ii) 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 Golf Course Property or upon any sidewalk, walkway, or patio within the Golf Course Property or in any manner growing out of or connected with the use, non-use, or condition of the Golf Course Property, or the construction or repair of any improvements of the Golf Course Property;
- (iii) 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;
- (iv) 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
- (v) 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 Golf Course Property and restrictions of record or any law, ordinance, or regulation affecting the Golf Course Property 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 Golf Course Property 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 Operating 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 Operating 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 Operating Agreement.

F. The provisions of this indemnification clause shall in no way limit the obligations assumed by Operator under this Operating 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 Operating 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 Operating 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 recision, 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.

25. INSURANCE

A. Operator shall, at its sole cost and expense, obtain and maintain at all times during the Term of this Operating 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 Two Million (\$2,000,000) 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 Golf Course Property 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 Golf Course Property. 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 Golf Course Property; 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 the 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 Golf Course Property 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 Operating Agreement, signed by Operator, to the Department for signature, Operator shall also provide the Department with a certificate of insurance evidencing that Operator has obtained all insurance coverage in accordance with this Operating Agreement. A copy of the certificate of insurance shall be attached to this Operating Agreement as Exhibit F. Failure to provide a certificate of insurance at the time of Operator's execution of this Operating Agreement shall render this Operating 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 Operating 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 Operating Agreement. Operator also shall, upon request, provide the Department with copies of each policy required under this Operating 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 Operating Agreement shall in no way limit Operator's indemnification obligations assumed in this Operating 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 Operating 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 Operating Agreement or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Operating Agreement, the Department shall consider Operator to be in default and terminate this Operating Agreement under Paragraph 29.

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.

26. ASSIGNMENT

A. Operator shall not assign or transfer this Operating Agreement, or Operator's responsibilities under this Operating Agreement or the operations authorized hereunder, nor sell or otherwise assign or transfer a controlling interest in such operations (hereinafter collectively referred to as an "Assignment") without the prior written approval of Department.

27. SUB-OPERATORS

A. Operator shall not enter into sub-operating or sub-contractor agreements with outside entities for the performance of any of its obligations under this Operating Agreement, except that Operator may enter into sub-operating and sub-contractor agreements with outside entities for the operation of a pro shop and maintenance and improvements, including: aeration, topdressing and amending; irrigation; cart maintenance; and improvement projects, with the prior written approval of Department. Before Operator may allow a sub-operator or sub-contractor to begin to operate or use the Golf Course Property in such a way, both Operator and the sub-operator/contractor must sign a sub-operating/contracting agreement, which shall be subject to Department's written approval prior to taking effect. In no event will Department and any sub-operator or sub-contractor have any contractual relationship by virtue of the sub-operator's/contractor's relationship to Operator. During the Term of this Operating Agreement, Operator shall indemnify and hold harmless Department and assume all responsibility for all acts/omissions of any sub-operator/contractor and for its compliance with respective sub-operating/contracting agreement.

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 a complete copy of all pleadings filed in connection with the initiation of the bankruptcy proceedings, the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. The obligation to report entering into any such proceedings remains in effect until final payment is made under this Operating Agreement. The Department shall have the right to terminate this Operating Agreement immediately upon receipt of a notice of bankruptcy by providing written notice to Operator.

29. TERMINATION, EXPIRATION, AND SUSPENSION OF OPERATIONS

A. Operator shall comply with the terms and conditions of this Operating Agreement. Failure to comply and/or the existence of any condition which Department determines to be in violation of the terms and conditions hereof shall be considered to be a material breach, in which event Department may, in addition to any other right or remedy provided for by law or in equity, terminate this Operating Agreement as follows:

- (i) In the event of Operator's failure to (a) obtain and maintain all the insurance coverage required to be obtained and maintained under this Operating Agreement or to provide Department with certificates of insurance documenting that Operator has obtained and is maintaining such insurance coverage; (b) provide Department with current certificates of insurance showing that its contractors or subcontractors have obtained and are maintaining insurance coverage in accordance with the requirements of this Operating Agreement; or (c) pay when due any payments or other sums required to be paid by Operator hereunder; or (d) correct any violation described in a notice or summons issued to Operator under of this Operating Agreement, and a continuation of such failure under (a), (b), (c), or (d) above for a period of ten (10) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof; or
- (ii) In the event of Operator's failure to perform or comply with any of the other covenants, agreements, and conditions herein contained and a continuation of such failure for a period of thirty (30) days after Operator's receipt of

written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof.

B. During the initial term or any renewal, Operator shall have the right to terminate this Operating Agreement upon ninety (90) days written notice served upon Department by certified mail, return receipt requested. Said notice shall include a comprehensive explanation and justification of Operator's reasons for not continuing operations under this Operating Agreement. Within forty-five (45) days after receipt of Operator's notice, Department and Operator shall determine whether the reasons for termination can be resolved to their mutual satisfaction. In the event that Operator and Department determine that said reasons cannot be resolved, termination shall become effective ninety (90) days after Department's receipt of the notice.

C. Termination of this Operating Agreement by either party as herein provided shall not release or discharge any payment, obligation, or liability owed to the other party under the terms and conditions of this Operating Agreement until the effective termination date.

D. Upon expiration or other termination or cancellation of this Operating Agreement, Operator shall quit and surrender operation of the Golf Course Property and leave the Golf Course Property in a broom clean condition, without fraud or delay, and in good order, condition, and repair, reasonable wear and tear excepted. If Operator shall fail to remove any personal property lawfully belonging to and removable by Operator within the time prescribed by any notice of termination or before the stated expiration of this Operating Agreement, Department may remove same at the expense of Operator. Operator hereby covenants to pay any and all damages which may be caused to the Golf Course Property by the removal of structures and personal property. Operator's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Operating Agreement. Operator shall not remove any permanent fixtures upon expiration or other termination or cancellation of this Operating Agreement.

E. Upon the expiration or termination of this Operating Agreement, Operator shall pay to Department without demand or notice the sum of the following:

- (i) All payments accrued to the date of such expiration or termination and, in the event of termination, the unpaid rent for the term or until Department establishes a new operator at the Golf Course Property, if sooner; and
- (ii) The cost as determined by the Department or actual expenses incurred by the Department for all restoration, renovation, improvement, and repairs initiated and has not completed by the Operator related to the conditions of the Golf Course Property, including any Capital Improvements thereon during the term and upon expiration or sooner termination of this Operating Agreement.

F. Operator shall, at the direction of Department, immediately suspend, delay, or interrupt Operator's operation of all or any part of the Golf Course Property for such period of time as Department may determine to be appropriate to protect the Golf Course Property and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Operator's failure to perform any of the covenants, agreements, and conditions contained in this Operating Agreement, provided that Department has determined that the continuance of the operation of the Golf Course Property may detrimentally impact the Golf Course Property and/or the health, safety, and welfare of persons on site. Operator hereby waives any claim, and Department shall not be liable to any party including Operator or claiming through Operator, for damages, rent abatement, or compensation as a result of Department's actions under this Paragraph. Department's suspension of Operator's operations shall be in addition to any other right or remedy available by law or in equity.

G. Upon expiration or termination of this Operating Agreement, Operator shall remit payment to the Department of the total amount of unredeemed gift certificates it sold for the Golf Course Property, and the deposits it received for golf outings and events that will occur after

expiration or termination of this Agreement. If the Operator offers golf memberships ("Memberships") that extend beyond the expiration or termination of this Operating Agreement, the Operator shall compensate the Department for the pro-rata value of the membership fees upon expiration or termination of this Agreement.

H. Operator shall not be entitled to claim constructive eviction from the Golf Course Property 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.

30. PAYMENT ABATEMENT

Operator acknowledges that the Golf Course Property is subject to unscheduled closures for reasons of health, public welfare, public safety, and government closures. Payment abatements will not be given if Operator is unable to operate the Golf Course Property for any reason.

31. RIGHT TO LOCK GOLF COURSE PROPERTY ON DEFAULT

In the event that the relationship between the Department and Operator lawfully ceases or terminates by convenience or 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 Golf Course Property, and the Department shall have the right to sell any of the personal property, goods, and materials remaining at the Golf Course Property and apply the proceeds thereof against any unpaid Rent. No action under this Paragraph shall be deemed to waive the Department's rights as set forth in other paragraphs of this Operating Agreement.

32. 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 Golf Course Property or any other part of the Golf Course Property. If Operator should cause any improvements or repairs to be made to the Golf Course Property, or if Operator should cause any labor to be performed or material to be furnished therein, thereon, or thereto, neither the Department, nor the Golf Course Property 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 Golf Course Property, 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.

33. SOLICITATION

Operator warrants that no person has been employed directly or indirectly to solicit or secure this Operating 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 Operating Agreement have not been violated by any conduct of 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. AMENDMENTS

The parties hereto agree that this Operating Agreement may be amended, supplemented, changed, modified, or altered upon mutual agreement of the parties hereto made in writing. This Operating Agreement cannot be modified or amended by conduct or course of dealings.

35. ENTIRE AGREEMENT

The parties hereto agree that this Operating Agreement represents the entire agreement between the parties; all negotiations, oral agreements, and understandings are merged herein.

36. CONTINUATION OF TERMS

If the Department permits Operator to use the Golf Course Property after expiration of the Operating Agreement without executing a new written Operating Agreement with the Department, then Operator shall use the Golf Course Property subject to all terms, conditions, and covenants contained in this Operating 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 Operating Agreement and by law.

37. NOTICES: WRITTEN AND ELECTRONIC

A. The parties hereto agree that all submissions, approvals, and notices which may be required under this Operating Agreement shall be forwarded by electronic mail and by certified mail, return receipt requested, and addressed as follows:

Department: 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

And Copy To: 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

Operator: **TO BE DETERMINED**

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 for this Agreement and report any changes during the Term of the Operating Agreement. Failure by the Operator to maintain the active email account, designated for the Operating Agreement, shall be grounds for Default of the Operating Agreement under Paragraph 29.

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.

38. END OF TERM

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

- (i) immediately cease all use of the Golf Course Property, vacate, and turn over the use thereof to the Department. Operator shall only remove the personal property listed on Exhibit G. The Department may at once reenter, secure the Golf Course Property, and remove any and all persons using the Golf Course Property;
- (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 Golf Course Property 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 Rent and other payments accrued to the date of the End of Term.

39. HAZARDOUS SUBSTANCES

At no time during this Operating Agreement shall Operator store, upon the Golf Course Property or anywhere else within the Golf Course Property, 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.

40. 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.

41. 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 Operating 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 Operating 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 Operating 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.

42. SUCCESSION AND BINDING AGREEMENT

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

43. SEVERABILITY

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

44. HEADINGS

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

45. 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, but not limited to, 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 Golf Course Property.

46. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT REQUIREMENTS

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

- (i) Operator or its subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Operator will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;
- (ii) Operator or its subcontractor, where applicable, shall, in all solicitations or advertisements for employees placed by or on behalf of Operator, state that all qualified applicants will receive consideration for employment without

regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

- (iii) Operator or its subcontractor, where applicable, shall send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of Operator's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
- (iv) Operator or its subcontractor, where applicable, agrees to comply with all regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

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

- (i) Operator and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
- (ii) Operator and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
- (iii) Operator and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
- (iv) In conforming with the targeted employment goals, Operator and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

47. 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.

48. MACBRIDE PRINCIPLES AND IRANIAN INVESTMENTS

Operator certifies pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

In addition, Operator certifies that neither the Operator nor any of the Operator's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to N.J.S.A. 52:32-55.

49. GOVERNING LAW

This Operating 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.

50. NO THIRD PARTY BENEFICIARIES

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

51. NEGOTIATED DOCUMENT

Each and every provision of this Operating Agreement has been independently, separately, and freely negotiated by the parties as if this Operating 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.

52. 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 29, 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 29.

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.

53. PREVAILING WAGE ACT

Without limiting the scope of any other provision of this Operating 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.

54. CORPORATE RESOLUTION

A. Prior to the Effective Date of this Operating 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 and shall remit annual certifications.

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

C. Prior to the Effective Date of this Operating 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.

55. ATTACHMENTS

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

Exhibit A – Request for Proposal

Exhibit B – Bid Proposal

Exhibit C – Map of the Golf Course Property

Exhibit D – Easements on the Golf Course Property

Exhibit E – Division of Parks and Forestry Goose Management Program Policy

Exhibit F – Certificate of Insurance

Exhibit G – Personal Property

Exhibit H – Corporate Resolution

IN WITNESS WHEREOF, the said parties have duly executed these presents the days and year first obtain written.

**STATE OF NEW JERSEY
Department of Environmental Protection**

By: _____
Ray Bukowski, Assistant Commissioner
Natural and Historic Resources

Date: _____

ATTEST:

By: _____

Date: _____

OPERATOR

By: _____

Date: _____

ATTEST:

By: _____

Date: _____

This Operating Agreement has been reviewed
and approved as to form by:
Gurbir S. Grewal
Attorney General
State of New Jersey

By: _____

Deputy Attorney General

Date: _____