

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

SAMPLE – NOT INTENDED FOR USE

OPERATING AGREEMENT

THIS AGREEMENT, made the _____ day of _____ in the year Two Thousand and Nine (2009).

BETWEEN

**The State of New Jersey
Department of Environmental Protection
Division of Parks and Forestry
P.O. Box 404
Trenton, New Jersey 08625-0404**

hereafter referred to as Department,

AND

hereafter referred to as Operator.

WHEREAS, Department is the Owner _____ hereinafter described;
and

WHEREAS, pursuant to Request for Proposal # _____ for _____ (the “RFP”), a copy of which is attached hereto and made part hereof as Exhibit A, (Winning Bidder’s Name), (Winning Bidder’s address) (“Operator”), wishes to enter into this Operating Agreement to operate the _____, as more particularly described below; and

WHEREAS, the Department, subject to the terms set forth in the RFP, is willing 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 the (Winning Bidder's) Bid Response Proposal submitted in response to the RFP ("Bid Proposal"), a copy of which Bid Proposal is attached hereto and made a part hereof as Exhibit B; and

NOW THEREFORE, this Operating Agreement is made and entered into (DATE), by and between the Department, its successors and assigns, and (Winning Bidder), 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 follows:

1. PROPERTY

The Department hereby allows (Winning Bidder) to operate that certain _____(as hereinafter described) for the Term of this Operating Agreement (as hereinafter described), together with all appurtenances thereto.

The Property consists of approximately ___ acres and is designated as Block ____, Lot __ on the Tax Map of the Township of _____, County of _____, State of New Jersey. The Property includes _____ together with any buildings, structures, parking lots, and improvements located on the land and premises.

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 Property to the Operator.

2. TERM

A. The Term of this Operating Agreement shall begin as of (DATE) ("Effective Date"), at which time this Operating Agreement shall take full force and effect. (Winning Bidder) shall operate the 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. The Department may terminate this Operating Agreement during the Term of the Operating Agreement in accordance with the termination provisions as contained herein, in the RFP, or in accordance with applicable law. In the event of such termination, after expiration of the notice period, Operator shall not be permitted to enter the Property without accompaniment of a representative of the Department.

B. Provided that no event of default has occurred and is continuing, Operator may request that the term of this Operating Agreement be renewed for an additional five (5) year period (the "Renewal Term") by giving Department written notice of Operator's request to renew no less than one hundred and eighty (180) days prior to the expiration of the Initial Term of this Operating Agreement. Department reserves the right to disapprove renewal of this Operating Agreement if Department determines that Operator has not satisfactorily complied with the terms, covenants, or conditions herein provided or pursuant to law or that continuation of this Operating Agreement is not consistent with reasonably anticipated plans for development or use of the Property by Department. In the event that Operator's request for renewal is not approved by Department on or before 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." This Operating Agreement shall not be renewed upon the expiration of the Renewal Term. Operator shall not continue operation of the Property beyond the expiration of the Renewal Term except upon execution of a new Operating Agreement or as provided for in Paragraph 31 hereof.

3. PAYMENTS TO THE DEPARTMENT

A. Operator shall pay to Department an annual Operating Agreement Payment in the amount of _____ Dollars (\$_____) ("Base Payment") plus an additional payment of fifteen (15) percent of gross revenue in excess of \$_____ ("Variable Payment"). The base payment is payable on the Effective Date of this Operating Agreement, and on the anniversary of the Effective Date for the remainder of the Term. The Variable payment for the First Term Year shall be due March 31 of the Second Term Year and on March 31 of every year for the prior Term Year thereafter for the remainder of the Term.

B. For purposes of calculating the annual Variable Payment, 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 Property by the Operator, or any other person, firm, or corporation, including, but not limited to, all revenues and sales related to the operation of _____, and any food and beverage concession, and gross charges for all services to customers or patrons, including, but not limited to _____ performed by the Operator or any other person, firm or corporation, in, upon, or through any part of the 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 the Operator and remitted to taxing authorities with respect to each Term Year.

C. On or before February 28 of each Term Year, and on or before the February 28 after this Operating Agreement has terminated, Operator shall provide Department with a financial report prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey setting forth Operator's gross revenue for the previous Term Year ending December 31 and the results of the Audit or Special Report required by Paragraph 4 of this Operating Agreement ("Report"). Based on this Report, Operator's Variable Payment owed to Department for the

previous Term Year shall be determined.

D. All Operating Agreement Payments shall be paid by check made payable to "Treasurer-State of New Jersey" and sent to:

E. Any Operating Agreement Payment not made on or before the date provided in Subparagraph 3A hereof shall be considered past due. All past due amounts shall be assessed a monthly penalty of one and one-half percent (1 1/2%) of the total amount due calculated on the tenth (10th) day of each month.

F. In the event any check for payment is returned to Department, all future compensations shall be made by Certified or Cashier Checks 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 the Department shall be final and binding on the Operator, including but not limited to the Department's determinations with respect to revenue reporting and payment by the Operator.

B. Operator shall prepare and compile, or oversee the preparation and compilation of, and submit to the Department a quarterly financial report itemizing actual revenues and expenses against projected revenues and expenses.

C. Operator shall, or on or before February 28 of each year, conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31 prepared by a Certified Public Accountant 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").

D. Operator, its contractors, and subcontractors, shall provide the Department, through an authorized representative, reasonable access to and the right to examine all records, books, papers, or documents reasonably related to Operator's operation of any part of the Property and any

project, services, and work being performed pursuant to any contract or subcontract. Proper facilities shall be furnished for access and inspection. The Department has the right to request, and the Operator agrees to provide free of charge, all information and copies of all records.

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

F. 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 the Department and shall be delivered to the Department upon thirty (30) days' notice by the Department.

G. All financial, statistical, personnel, and/or technical data supplied by the Department to the Operator are confidential. The Operator is required to use reasonable care to protect the confidentiality of such data. The use, sale, or offering of this data in any form by the Operator, or any individual or entity in the Operator's charge or employ, will be considered a violation of the Operating Agreement and may result in termination, as well as the Operator's suspension and debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

5. ADDITIONAL PAYMENTS (SELF HELP)

If Department incurs any expense by reason of the breach of this Operating Agreement by Operator or Operator's failure to perform any obligation of Operator hereunder, 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 and be added to and become a part of the next payment of Base Payment due to be paid by Operator.

6. PURPOSE

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

7. MANAGEMENT

During the term of this Operating Agreement, the Operator shall have full control over the day-to-day operations of _____, 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 _____. The 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 DEP for its activities.

All fees for public admission to the Property, including membership fees, or any other fees associated with access to and use of the Property shall be submitted to Department and approved by Department before such fees become effective. The Operator's first fee schedule attached hereto and made a part of this Operating Agreement as Exhibit B is hereby accepted and approved by Department.

8. CONDITION OF THE PROPERTY

Operator has inspected the 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.

9. SECURITY

Operator shall, at its sole cost and expense, be responsible for security of the Property and any Improvements thereon. Department has no obligation to Operator for security of the Property and shall not be responsible to Operator, its agents, employees, or invitees (express or implied) for personal injury, death and/or loss, damage or destruction of Improvements, supplies, equipment, or personal property on the Property.

10. MAINTENANCE, REPAIR, AND UTILITIES

A. Operator shall be solely responsible for the maintenance of the Property and buildings, structures, and improvements thereon, including structural repairs, the installation and repair of all utility systems, and the cost of all utility services. Operator shall deliver the 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 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 Property, any improvements thereon or any part thereof in order to keep and maintain the Property, and any improvements thereon to keep and maintain the Property in good repair and condition.

C. Operator shall, at its sole cost and expense, keep and maintain the 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 all

utility systems and pay for the cost of all utility service, including water, gas, heat, telephone, electricity, sewer, and other utility and communications services rendered or used on or about the Property.

SAMPLE

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

F. Operator shall not make or allow any physical change in the natural condition of the Property, including but not limited to the cutting or removal of trees or shrubs, without first submitting plans and specifications therefor to Department and obtaining Department's 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.

11. EQUIPMENT

A. Operator shall be responsible for providing and maintaining all equipment necessary for the successful management and operation of the Property. Department and Operator acknowledge 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 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.

12. 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 construction or placement of any non-permanent building, structure, or utility or any change in the natural condition of the Property (collectively "Improvements") without first submitting to Department, and obtaining Department's 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 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 Property, is consistent with the terms of the grant and or statutory funding source under which Department acquired the 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 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 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 Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) 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 on Department's demand. Operator shall, at Operator's sole cost and expense, repair any damage to the 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 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 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 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.

13. STAFF

A. Operator shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of the Property to provide security for the Property and to meet the needs of the public. Operator shall submit a staffing plan to Department and obtain Department's written approval thereof. Operator shall provide Department with a written list of the names, addresses, and telephone numbers of all employees and shall update said list regularly so that Department has a list of all current employees. 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 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 the Operator to substitute any management or supervisory staff ("key personnel"), the Operator will identify the substitute personnel and the work to be performed. The Operator must provide detailed justification documenting the necessity of the substitution. Resumes must be submitted evidencing that the individual proposed as a substitution has qualifications and experience equal to or greater than the individual originally proposed or currently assigned. The Operator shall forward a request to substitute key personnel to the Department for consideration and approval. No substitute key personnel are authorized to commence work until the Operator has received written approval to proceed from the Department.

14. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

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

B. Operator shall, at its sole cost and expense, comply and shall cause the Property to comply with all duly promulgated and applicable Federal, State, and local laws, ordinances, rules, and orders affecting the Property, or any part thereof, or the use thereof, including but not limited to laws and regulations pertaining to pesticide storage and application, water allocation, and those which require the making of any structural or extraordinary changes thereto, whether or not any such laws, ordinances, rules, or orders may involve a change of policy on the part of the governmental body enacting the same.

C. Operator shall comply with the requirements of all policies of insurance required by this Operating Agreement which at any time may be in force with respect to the Property.

D. If Operator is issued:

(i) A notice of failure to comply with any policy of insurance required by this Operating Agreement;

(ii) A summons or any notice of violation of any license, permit, certification, authorization, approval, or any other similar instrument(s) required by any Federal, State, or local authority having jurisdiction necessary to improve, maintain, and use the Property in accordance with the provisions hereof; or

(iii) A summons or any notice of violation of any duly promulgated and applicable Federal, State, or local laws, ordinances, rules, and orders affecting the Property, any part thereof, or the use thereof,

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

15. TAXES AND ASSESSMENTS

Operator agrees that during the Term of this Operating Agreement, it will pay any taxes or assessments that might be imposed by any governmental body by reason of the Operator's operation of the Property. Operator immediately shall forward any notice of such tax payment to the Department.

16. 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 shall attend meetings as reasonably required by the Department. Operator shall be responsible for compliance with all other obligations specified as Operator's in Exhibit A.

17. ACCESS TO PROPERTY

During the Term of this Operating Agreement, as the owner of the Property, the State retains the unfettered right to enter the Property for any reason or no reason at all.

18. 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 Property, any of the buildings or structures on the Property, and/or on any other property or improvement comprising part of the State Park, unless specifically approved by Department in writing. The Operator shall not use the 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 the Department. The Operator shall not be permitted to change or profit from the name of _____ by, for example, selling or licensing naming rights to the Property. The Operator shall not change the name of the Property without the prior written consent of the Department. The 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 the Department.

19. 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 Property within the period of time prescribed by Department in a written demand. In the event that Operator fails to so repair after written demand by Department, the Department may, at its option and subject to the availability of funds from insurance coverage or appropriated therefor, elect to make said repairs, and the cost thereof shall be paid by Operator to Department within fifteen (15) days after demand therefor.

B. In the event of damage or destruction of the 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 therefor, cause such damage or destruction to be repaired.

C. All repairs by Operator of damage to the 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 12 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 or obligate Department to cause any damage to or destruction of the 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 Property and/or Department's declaration that this Operating Agreement is terminated.

20. 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 Property for development or use for any public purpose, Operator shall, within the period set forth in said notice and without any compensation therefor by Department to Operator, abandon use of the Property or part thereof designated by Department within the notice period.

21. INDEMNIFICATION

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

(i) Any injury to, or the death of, any person in or on, or any damage to property which occurs in, on or about the Property, any Improvements thereon or upon any sidewalk or walkway within the Property or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Property, Improvements, or any part thereof, and construction or repair of any Improvements on the Property;

(ii) Violation of any agreement or condition of this Operating Agreement by Operator, its agents, employees, contractors, express or implied invitees, or anyone claiming by or through Operator;

(iii) Violation by Operator of any contracts, agreements, or restrictions of record concerning the Property;

(iv) Failure or omission to comply with any insurance policy required under this Operating Agreement or any Federal, State, or local law, ordinance, rule, or order affecting the Property or Operator's use thereof; and

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

B. Operator agrees that any contract with its contractors and consultants shall require such contractors and consultants to defend, indemnify, protect, and save harmless Department and

release Operator and Department and their officials and employees from and against any suits, claims, demands, or damages of whatever kind or nature arising out of or claimed to arise out of in whole or in part any negligent act, error, or omission of the contractor, consultant, or their agents, subcontractors, servants, and employees in the performance of any work or professional services on or for the benefit of the Property.

C. 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 Department, Operator, or any of its agents, servants, or employees, it shall expeditiously forward or have forwarded to the other every demand, complaint, notice, summons, pleading, or other process received by or then in their possession or the possession of its representatives.

D. It is expressly agreed and understood that any approval by Department of the work performed or reports, plans, and specifications provided by Operator shall not operate to limit the obligations of Operator assumed pursuant to this Operating Agreement.

E. 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 which survive such termination or expiration.

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

G. 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 Department from taking any other actions available to it under any provisions of this Operating Agreement or at law or in equity.

H. 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 the Operating Agreement shall be construed as a waiver by the Department of any warranty, expressed or implied, or any remedy at law or in equity.

22. INSURANCE

A. Operator shall, at Operator's sole cost and expense, obtain and maintain at all times during the term of this Operating Agreement, insurance for any damages imposed by law and assumed under this Operating Agreement of the types and in the amounts hereinafter provided:

- (i) Comprehensive General Liability policy as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include an endorsement (broad form) for contractual liability. Limits of liability shall be maintained at the level of One Million (\$1,000,000.00) Dollars per occurrence as a combined single limit for bodily injury and property damage liability;
- (ii) Property insurance to cover loss or damage on an "all risk" of physical loss form of coverage against fire, water, wind, storm, loss, theft, and damage on any structures on the 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 Property. Said insurance shall be in an amount not less than the full value of such structures, fixtures, equipment, and contents. The value of said structures, fixtures, equipment, and contents shall be determined by 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 applicable to the laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars occupational disease; and
- (iv) Such other insurance and in such amounts as may from time to time be reasonably required by Department.

B. Operator shall require any person providing any service and/or conducting any activity on the Property, as part of Operator's operation thereof, to secure and maintain in force at all times during the provision of any service and/or conduct of any activity thereon, as part of Operator's operation of the Premises, insurance coverage of the types and in at least the minimum amounts required under subparagraph A of this paragraph.

C. All policies of insurance shall provide that the proceeds thereof shall be payable to Department and Operator as their respective interests may appear. All insurance coverage required to be maintained by Operator in accordance with this Operating Agreement shall be issued by an insurance company authorized and approved to conduct business in the State of New Jersey and shall name the State of New Jersey, Department of Environmental Protection as an additional insured.

D. When Operator returns this Operating Agreement, signed by Operator, to Department for signature, Operator shall provide 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 D. 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 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 so that 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 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. The Operator shall not allow any contractor or subcontractor to engage in any activity on the Premises without first submitting to Department a current certificate of insurance showing that the contractor or subcontractor has obtained insurance coverage in accordance with the requirements of this Operating Agreement. Operator shall deliver the certificates to Department's address as provided in Paragraph 32 of this Operating Agreement.

E. 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 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.

F. The limits of insurance policies described in this Paragraph shall be reviewed by 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.

23. 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.

24. SUB-OPERATORS

A. Operator shall not enter into sub-operating agreements with outside entities for the performance of any of its obligations under this Operating Agreement, except that Operator may enter into sub-operating agreements with outside entities for the operation of _____ with the prior written approval of Department. Before Operator may allow a sub-operator to begin to operate or use the Property in such a way, both the Operator and the sub-operator must sign a sub-operating agreement, which shall be subject to Department's written approval prior to taking effect. In no event will the Department and any sub-operator have any contractual relationship by virtue of the sub-operator's relationship to (Winning Bidder). During the Term of this Operating Agreement, Operator shall indemnify the Department and assume all responsibility for all acts/omissions of any sub-operator and for its compliance with respective sub-operating agreement.

25. BANKRUPTCY

In the event the Operator enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Operator agrees to furnish written notification of the bankruptcy to the Department with a copy to the Attorney General's Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include 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. This obligation remains in effect until final payment is made under this Operating Agreement.

26. 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 Paragraph 14 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. 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 as of the date of such termination.

D. Upon expiration or other termination or cancellation of this Operating Agreement, the Operator shall quit and surrender operation of the Property and leave the 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 Property by the removal of structures and personal property. The Operator's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Operating Agreement. The 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 Property, if sooner. If the Department contracts with a new operator at the Property for less than Operator's payments to the Department, Operator shall pay the difference until the end of the term. If Department contracts with a new operator at the Property for more than Operator's payments to the Department, Operator is not entitled to the excess; and
- (ii) The cost of making all restoration, renovation, improvement, and repairs required to be made by Operator hereunder and of performing all covenants of Operator relating to the conditions of the Property, including any improvements thereon during the term and upon expiration or sooner termination of this Operating Agreement, is to be deemed prima facie to be the cost estimated by an architect or contractor selected by Department or the amounts actually expended or incurred thereafter by Department.

F. Operator shall, at the direction of Department, immediately suspend, delay, or interrupt Operator's operation of all or any part of the Property for such period of time as Department may determine to be appropriate to protect the 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 Property may detrimentally impact the 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 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.

27. CREATION OF LIENS OR ENCUMBRANCES BY OPERATOR

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 any interest of Department

in the Property or in the buildings or Improvements thereon; it being agreed that should Operator cause any alterations, rebuilding, replacements, changes, additions, improvements, or repairs to be made to the Property or the buildings or Future Improvements thereon or labor performed or material furnished therein, thereon, or thereto, neither Department nor the 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 alterations, rebuilding, replacements, changes, additions, 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.

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 Property, any buildings, or any Improvements thereon, or against 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 Department with a signed copy of any and all lien(s), which shall indicate that all contractors have been paid and all lien(s) have been discharged.

28. 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.

29. 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.

30. 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.

31. CONTINUATION OF TERMS

If Department permits the Operator to continue operating the Property after expiration of this Operating Agreement without having executed a new written agreement with Department, the Operator shall operate the Property subject to all terms, covenants, and conditions contained in this Operating Agreement. Such continuation of operations by the Operator shall not constitute a renewal or extension of this Operating Agreement.

32. NOTICES

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

Department: State of New Jersey
Department of Environmental Protection
Office of Leases
P.O. Box 404
Trenton, New Jersey 08625-0404

Operator: (Winning Bidder's Address)

33. FLOOD HAZARD ZONE

Department and Operator acknowledge that the Property is located within a flood hazard zone. Department shall not be responsible to Operator, its agents, employees, or express or implied invitees for loss, damage, or destruction of improvements or personal property on the Property as the result of flooding.

34. SUPERSEDES

This Operating Agreement supersedes and cancels all previous agreements covering the Property.

35. INDEPENDENT PRINCIPAL

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

36. WAIVER

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 of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this 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. 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.

37. 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 Department and Operator's heirs, executors, administrators, and assigns.

38. 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 enforced to the fullest extent permitted by law.

39. 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.

40. NO DISCRIMINATION - AMERICANS WITH DISABILITIES ACT

A. Operator shall not discriminate against any person, employee, or applicant for employment because of age, national origin, race, creed, color, disability, sex, or sexual preference. This provision shall include, but not be limited to, the following: employment; upgrading; demotion; transfer; recruitment; recruitment advertising; rates of pay or other forms of compensation; layoff or termination; and selection for training, including apprenticeship.

B. Operator shall not discriminate on the basis of age, national origin, residence, race, creed, color, disability, sex, or sexual preference in allowing the public access to and use of the Property.

C. Operator shall make all facilities and programs accessible to the disabled in compliance with the Architectural Barriers Act of 1968, 42 U.S.C.A. 4151 et seq., Title VI Civil Rights Act, Section 504, Americans With Disabilities Act, 42 U.S.C.A. 12101 et seq., and the New Jersey Barrier Free Subcode, N.J.A.C. 5:23-7 et seq., all as are now in effect and subsequently amended.

41. GOVERNING LAW

The Department and Operator hereby agree that jurisdiction of any action hereunder shall lie in a court of competent jurisdiction in the County of Mercer, State of New Jersey. This Operating Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

42. 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.

43. 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.

44. PAY TO PLAY

A. This Operating Agreement is subject to the provisions of P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.), and compliance with said statute shall be a material term and condition of this Operating Agreement.

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

45. 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. Operator also agrees to comply with 42 USC, Section 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and Section 9604 (g)(1), the Operator must comply with the Federal

requirements.

The Operator's signature on this Operating Agreement is a guarantee that neither (Winning Bidder) nor any contractors (Winning Bidder) may employ to perform work required under this Operating Agreement has been suspended or debarred by the Commissioner, Department of Labor for violation of the Prevailing Wage Act, P.L. 1963, Chapter 150.

46. CORPORATE RESOLUTION

Operator shall adopt a resolution authorizing the execution of this Operating Agreement by Operator for the purposes and subject to the terms and conditions herein provided. When Operator returns this Operating Agreement, signed by Operator, to Department for signature, a certified copy of said resolution shall be attached to this Operating Agreement as Exhibit E.

47. ATTACHMENTS

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

Exhibit A – Request for Proposal

Exhibit B – (Winning Bidder's) Bid Proposal

Exhibit C – Map of Property

Exhibit D – Certificate of Insurance

Exhibit E – Corporate Resolution

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

DEPARTMENT

STATE OF NEW JERSEY
Department of Environmental Protection

By: _____
Amy Cradic, 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:

Attorney General
State of New Jersey

By: _____

Deputy Attorney General

Date: _____

I hereby certify that the terms and conditions hereof were approved on _____,
by the State House Commission.

Date: _____

Secretary

SAMPLE