

PROPOSED OPERATION AGREEMENT

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

THIS AGREEMENT, made the _____ day of _____, 2017,

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

hereinafter referred to as the Department,

AND

hereinafter referred to as Operator.

WHEREAS, the Department owns and manages Jungle Habitat pursuant to N.J.S.A. 13:1L-1, et seq.; and

WHEREAS, the Department purchased the lands that comprised the Jungle Habitat property in 1998 from Warner Brothers Entertainment, Inc. using Green Acres bond funds; and

WHEREAS, Jungle Habitat, located in West Milford, Passaic County, consists of approximately 800 acres, with two large parking lots of approximately 30 acres and over 11 miles of bike, equestrian and hiking trails; and

WHEREAS, Jungle Habitat has been closed to the public since the Department purchased the land but has allowed some trails to be installed by biking enthusiasts and did not actively prevent the public from making use of the trails; and

WHEREAS, the Department issued the *Request for Proposal for Operation of Jungle Habitat* on _____ October ____, 2016, seeking an operator to offer recreational mountain biking and recreational event services in the operational area (Operational Area) at Jungle Habitat (the “RFP”), a copy of which is attached hereto and made part hereof as Exhibit A; and

WHEREAS, the Operational Area has been defined as the area on the Survey Map attached hereto and made a part hereof as Exhibit B; and

WHEREAS, Operator submitted a bid proposal in response to said RFP (“Bid Proposal”), and the Department selected Operator’s bid proposal on _____, 2016, as the bid proposal most responsive to the RFP and most advantageous to the people of the State of New Jersey, price and other factors considered, a copy of which Bid Proposal is attached hereto and made a part hereof as Exhibit C; and

WHEREAS, the Department, subject to the terms set forth in the RFP, is willing to enter into this Operation Agreement with Operator under the provisions, covenants, terms, and conditions

hereinafter described, which shall be consistent with the terms set forth in Operator's Bid Proposal submitted in response to the RFP.

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

1. THE OPERATIONAL AREA; PERSONAL PROPERTY

A. The Department hereby allows Operator to use the Operational Area for the Term of this Operation Agreement. It is expressly understood that this Operation Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Operational Area to Operator.

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

2. TERM

A. The term of this Operation Agreement shall commence on _____, 2017 ("Effective Date"). Operator shall operate the Operational Area during the term of this Operation Agreement, beginning on the Effective Date and continuing for a period of ten (10) years (the "Initial Term") from that date until the expiration of the Operation Agreement ("Expiration Date"), unless the Operation Agreement shall end sooner pursuant to any of the terms, covenants, or conditions herein provided or pursuant to law. The Department may terminate this Operation Agreement in accordance with the termination provisions as contained herein, in the RFP, or in accordance with applicable law. In the event of such termination, after expiration of the notice period, Operator shall not be permitted to enter the Operational Area without accompaniment of a representative of the Department.

B. Provided that no event of default has occurred and is continuing, and provided that Operator has received financing for and completed improvements as described in Section 1.2.5 of the RFP ("Improvements"), and has received Department's approval for such improvements during the Initial Term, Operator may request that the term of this Operation Agreement be renewed for one additional ten (10) year period (the "Renewal Term") by giving the Department written notice of Operator's request to renew no less than one hundred and eighty (180) days prior to the expiration of the Initial Term of this Operation Agreement. The Department reserves the right to disapprove renewal of this Operation Agreement if the Department determines: (1) Operator has not satisfactorily complied with the terms, covenants, or conditions herein provided or pursuant to law; (2) Operator has not completed the Improvements during the Initial Term; (3) that continuation of this Operation Agreement is not consistent with reasonably anticipated plans for development or use of Jungle Habitat by the Department; or (4) renewal of this Operation Agreement is not otherwise in the public interest. In the event that Operator's request for renewal is not approved by the Department on or before sixty (60) days prior to the scheduled expiration date of this Operation Agreement, said request shall be deemed to have been denied, and this Operation Agreement shall expire as herein provided. Operator shall not continue occupying the Operational Area beyond the expiration of the Renewal Term except upon execution of a new Operation Agreement or as provided for in Paragraph 37. Holdover.

C. This Operation Agreement may be renewed only once after the expiration of the Initial Term for a maximum of twenty (20) years.

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

3. RENT

A. Fixed Rent

(i) Operator shall pay to the Department an annual base monthly fixed rent (“Fixed Rent”) in the amount of Twelve Thousand Dollars (\$12,000), to be paid in six equal monthly installments, starting with June 1 and ending with the November 1 payment, on the first (1st) day of each month in the amount of Two Thousand Dollars (\$2,000).

(ii) The Fixed Rent shall increase annually by three (3) percent beginning on the first anniversary of the Effective Date.

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

Manager, Office of Leases
MAIL CODE 501-04C
P.O. Box 420
Trenton, NJ 08625-0420

(iv) If the Department and Operator opt to renew this Operation Agreement after a ten (10) year term pursuant to Paragraph 2.B. above, the Fixed Rent shall be increased at the beginning of the Renewal Term by three percent (3%) over the last year of the previous term’s Fixed Rent. The Fixed Rent shall increase annually by three percent (3%) thereafter beginning on the first anniversary of the Effective Date, payable in twelve equal installments on the first of each month.

B. Variable Rent

(i) Once a year, Operator shall calculate an amount due to the Department as “Variable Rent” and pay such amount to the Department along with the submission of the yearly audit. The “Variable Rent” for the First Term Year shall be due on March 31st of the Second Term Year and on March 31st of every year for the prior Term Year thereafter and on or before March 31st immediately after this Operation Agreement has terminated. Such Variable Rent shall be calculated by multiplying the total gross receipts by XXXXXX percent (##%). At the end of the calendar year, such Variable Rent shall be equal to XXXXXX percent (##%) of the annual total gross receipts. The Variable Rent due and owing shall be the amount shown in the audit and shall be submitted with the audit. See paragraph iv, below.

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

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

(iv) On or before March 31 of each Term Year, and on or before the March 31st immediately after this Operation Agreement has terminated, Operator shall conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31 prepared by a Certified Public Accountant (CPA) licensed to practice accounting in the State of New Jersey (“Audit”) with a CPA’s highest level of assurances and verification and substantiation procedures

consistent with generally accepted accounting principles. Based on this Report, Operator's Variable Rent owed to Department for the previous Term Year shall be determined.

C. Any payment of the Fixed Rent and/or Variable Rent not made on or before the first of the following month shall be considered past due. All past due amounts shall be assessed a monthly penalty of one and one-half percent (1.5 %) of the total amount due calculated on the tenth (10th) day of each month.

D. Any payment not received by the last day of the month will be considered a default pursuant to Paragraph 20 and will trigger the remedies available to the Department thereunder.

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

4. ADDITIONAL PAYMENTS (SELF HELP)

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

5. USE OF OPERATIONAL AREA; PURPOSE

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

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

6. MANAGEMENT OF THE OPERATIONAL AREA

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

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

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

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

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

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

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

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

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

C. Operator shall promptly make all necessary repairs to the Operational Area at Operator’s expense. All repairs of damage to the Operational Area shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage. The Department shall not be responsible to any Operator for loss of property in the Operational Area, however occurring, or for damage to Operator’s personal property caused by any person.

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

E. Operator shall, at its sole cost and expense, keep and maintain the Operational Area in a neat, clean, and sanitary condition. Operator shall keep the Operational Area free of trash and be responsible for the recycling of trash. Operator shall participate in and comply with all applicable recycling programs in effect in West Milford Township, Passaic County. Operator shall be responsible for the collection and prompt removal of all trash from the Operational Area to a dumpster or other facility provided by Operator. Operator shall be responsible for obtaining bear-proof dumpsters at Operator’s sole expense, and Operator shall be responsible for all trash removal and disposal costs.

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

G. Operator may install such equipment as Operator needs to maximize Operator's use of the Operational Area, with the Department's approval. The Department shall not be responsible for any damage to said equipment while being moved in or out of the Operational Area or while in use at the Operational Area. All damage done to the Operational Area by moving or maintaining any equipment or large or heavy supplies shall be repaired at the expense of Operator.

H. Operator shall be responsible for supplying all semi-permanent or mobile facilities, equipment, appliances, inventory, furniture, supplies, and other personal property necessary to operate in the Operational Area pursuant to the RFP, Operator's Bid Proposal, and this Agreement.

8. GARBAGE

As noted above, Operator shall be responsible for all trash removal and at Operator's expense. Operator shall be allowed the use of open trash containers during events; however, upon the termination of any event, Operator shall store all trash from the Operational Area in bear-proof containers until the trash is removed from the Operational Area by Operator. Failure to strictly abide by this Paragraph shall be considered a default pursuant to Paragraph 20 and shall trigger the remedies available to the Department thereunder.

9. HAZARDOUS SUBSTANCES

At no time during this Operation Agreement shall Operator store, upon the Operational Area, hazardous substances as that term may be defined by the Department (see N.J.S.A. 58:10-23.11(b)) or the U.S. Environmental Protection Agency pursuant to section 311 of the "Federal Water Pollution Act, amendments of 1972" (33 U.S.C. 1321; see also 40 C.F.R. 302.3) and the list of toxic pollutants designated by Congress or the Environmental Protection Agency pursuant to section 307 of that Act (33 U.S.C. 1317; see also 40 C.F.R. 401.15). Operator shall not violate the terms of N.J.S.A. 58:10A-21 et seq., nor shall Operator do anything that would subject the Department to the provisions of 42 U.S.C. 6991, et seq., entitled "Regulation of Underground Storage Tanks" in the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616, section 234 et seq.

10. UTILITIES

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

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

- (i) if any utility shall become unavailable from any public utility company, public authority, or any other such person or entity (including the Department) supplying or distributing such utility, or
- (ii) for any interruption in any utility service caused by the making of any necessary repairs or improvements or by any cause beyond the Department's reasonable control, and the same shall not constitute a termination of this Operation Agreement or an eviction of Operator.

C. The Department shall not furnish, supply, nor maintain any services or utilities at Jungle Habitat.

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

A. If Operator shall change the lock or re-key the gate lock pursuant to Paragraph 14.C. Security, below, Operator shall give four (4) keys to the Department. The Department shall retain these keys to the Operational Area and, with notice of not less than two (2) days, Operator shall permit the Department and its agents to enter the Operational Area at reasonable times and as the Department deems necessary or desirable to inspect and to perform other services to maintain the Operational Area. In addition, Operator shall permit the Department and its agents to enter the Operational Area to make repairs or improvements in, to, on, or about the Operational Area and to erect scaffolding, props, or other mechanical devices. Notice is not required in the case of an

emergency. Operator shall have no claim or cause of action against the Department because of entry for the reasons articulated in this Paragraph.

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

12. NO INTERFERENCE WITH OPERATION OF STATE PARK - CLOSURE

A. Operator shall, in Operator's use of the Operational Area, conduct all activities so as not to interfere with, impair, or prevent the Department's development, maintenance, and management of Jungle Habitat. Operator shall coordinate with the Department all activities which could adversely affect Jungle Habitat and shall implement all measures reasonably required by the Department to minimize such adverse effects.

B. The Department, in its sole discretion, reserves the right to limit or close access to Jungle Habitat, including the Operational Area, if the Department determines that there is inclement weather or threat thereof; or Jungle Habitat is closed for any reason under the Department's State Park closure policies now or subsequently in effect. Operator hereby agrees to abide by the Department's decision and waives any claim for damages, compensation or rental abatement resulting from closure of Jungle Habitat.

13. EMERGENCY; REPORT OF INJURY

Any injury which shall occur during any activity hereunder to Operator, its servants, employees, agents, contractors, invitees or the general public while in the Operational Area, requiring medical intervention of which Operator is notified, shall be reported by Operator to the State Park Police by calling 1-877-WARN-DEP (1-877-927-6337).

14. SECURITY

A. Operator shall, at Operator's sole cost and expense, be completely responsible for all security of the Operational Area against burglary, theft, vandalism and unauthorized entry. Operator is also responsible for crowd control during events at the Operational Area. Except as otherwise provided herein, the Department has no obligation to Operator for security of the Operational Area and shall not be responsible to Operator, its agents, servants, employees, visitors, invitees, agents or contractors for personal injury, death, and/or loss, damage or destruction of improvements, supplies, equipment or other personal property on the Operational Area.

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

C. Operator may replace the lock on the gate or otherwise re-key the lock of the gate in the Operational Area with the Department's approval. If Operator installs a security system anywhere within the Operational Area, Operator shall provide the Department with the security system pass code. Operator shall be given keys to the main gate. Operator shall, upon the termination of this Operation Agreement, return to the Department all keys either furnished to or otherwise procured by Operator. In the event of the loss of any keys furnished by the Department, Operator shall pay to the Department the replacement cost thereof.

15. COMPLIANCE WITH LAWS AND DEPARTMENT'S RULES

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

fires.

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

16. RECORDS AND AUDIT; REVENUE

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

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

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

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

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

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

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

17. DAMAGE TO THE OPERATIONAL AREA

A. If the Operational Area is damaged by fire or other cause to the extent that the cost of restoration, as reasonably estimated by the Department, will equal or exceed twenty-five percent (25%) of the replacement value of the parking lots just prior to the occurrence of the damage, then the Department may, no later than ninety (90) days following the damage, give Operator notice of election to terminate this Operation Agreement. In the event of election by the Department, this Operation Agreement shall be deemed to terminate on the tenth (10th) day after the giving of notice, and Operator shall leave the Operational Area and remove Operator's personal property within said ten (10) day period. The Fixed Rent will be apportioned as of the date of the surrender of the Operational Area. The Fixed Rent paid for any period beyond the surrender date will be repaid to Operator. If the cost of restoration as estimated by the Department amounts to less than twenty-five percent (25%) of the replacement value of the parking lots, or if despite the cost the Department

does not elect to terminate this Operation Agreement, the Operator shall restore the Operational Area with reasonable promptness, subject to the availability of adequate funds from insurance proceeds or specifically appropriated therefore, and subject to delays in the making of insurance adjustments between the Department, Operator and Operator's insurance carrier. Operator shall have no right to terminate this Operation Agreement except as provided herein. Any provision herein contained to the contrary notwithstanding, this Operation Agreement shall not be construed to create any obligation upon the Department to restore any building(s) or semi-permanent or mobile structures.

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

18. INDEMNIFICATION

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

- (i) Any injury to, or the death of, any person in or on, or any damage to property which occurs in, on, or about the Operational Area, or in any manner growing out of or connected with the use, nonuse, or condition of the Operational Area;
- (ii) Violation of any agreement or condition of this Operation Agreement by Operator, its agents, employees, contractors, licensees, invitees (express or implied), visitors or anyone claiming by or through Operator;
- (iii) Violation by Operator of any contracts, agreements, or restrictions of record concerning the Operational Area or any federal, State, or local law, ordinance, or regulation affecting the Operational Area and/or Operator's use thereof; or
- (iv) Any act, error or omission by Operator, its agents, employees, contractors, invitees (express or implied), or anyone claiming by or through Operator in the performance of this Operation Agreement.

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

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

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

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

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

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

19. INSURANCE

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

- (i) Commercial General Liability policy (including insurance with respect to owned or operated motor vehicles) as broad as 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 Five Million (\$5,000,000.00) Dollars for each occurrence of bodily injury, death, and property damage liability;
- (ii) 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 Thousand (\$1,000,000.00) Dollars occupational disease per employee with an aggregate limit of One Million (\$1,000,000.00) Dollars occupational disease;
- (iii) Business Auto Liability insurance with a minimum limit of One Million (\$1,000,000.00) Dollars per accident and including, but not limited to, coverage for liability arising out of the ownership, maintenance or use of any auto, and for auto non-ownership and hired car coverage; and
- (iv) Such other insurance and in such amounts as may from time to time be reasonably required by the Department.
- (v) 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 Operation Agreement shall be issued by an insurance company authorized and approved to do business in New Jersey and shall name the State of New Jersey as an additional insured.

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

is maintaining in full force and effect all insurance required under this Operation Agreement. Operator also shall, upon request, provide the Department with copies of each policy required under this Operation Agreement certified by the agency or underwriter to be true copies of the policies provided by Operator.

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

E. In the event that (i) Operator fails or refuses to renew any of its insurance policies or to provide the Department with timely certificates of insurance showing that Operator is maintaining insurance coverage in full force and effect to the extent required by this Operation Agreement or (ii) any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of this Operation Agreement, the Department shall consider Operator to be in default and terminate this Operation Agreement under Paragraph 20. Default.

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

20. DEFAULT; DEPARTMENT'S REMEDIES ON DEFAULT

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

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

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

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

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

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

21. SUSPENSION OF OPERATIONS

Operator shall, at the direction of Department, immediately suspend, delay or interrupt Operator's operation of all or any part of the Operational Area for such period of time as Department may determine to be appropriate to protect the Operational Area 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 Agreement on its part to be performed provided that Department has determined that the continuance of the operation may detrimentally impact the Operational Area and/or 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, payment 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.

22. RIGHT TO LOCK OPERATIONAL AREA ON DEFAULT

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

23. CONDITIONS OF DEPARTMENT'S LIABILITY

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

24. WAIVER - CUMULATIVE REMEDIES

A. Failure of either party to complain of any act or omission on the part of the other party, no matter how long same may continue, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of breach of any provision of this Operation Agreement shall be deemed waiver or breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion.

B. Any and all rights and remedies which either party may have under this Operation Agreement or by operation of law, either at law or in equity, by reason of a breach by the other

party, shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two or more or all of such rights and remedies may be exercised at the same time.

C. Acceptance by either party of any of the benefits of this Operation Agreement with knowledge of any breach thereof by the other party shall not be deemed a waiver by the party receiving the benefit of any rights or remedies to which it is entitled hereunder or by law.

25. LIENS OR ENCUMBRANCES

A. Operator shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage, or other encumbrance upon the interest of the Department in the Operational Area or any other part of Jungle Habitat. If Operator should cause any improvements or repairs to be made to the Operational Area, or if Operator should cause any labor to be performed or material to be furnished therein, thereon, or thereto, neither the Department, Jungle Habitat, nor the Operational Area shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such improvements, repairs, labor, and material, shall be made, furnished, and performed at Operator's expense, and Operator shall be solely and wholly responsible to the contractors, laborers, and materialmen furnishing and performing such labor and material. Operator shall require, as a condition of any contract or subcontract for labor or materials, all contractors, laborers and materialmen to execute a release of lien against the Department.

B. If, because of any act or omission (or alleged act or omission) of Operator, any mechanic's or other lien, charge, or order for the payment of money shall be filed against the Operational Area, against Jungle Habitat, 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. Failure to do so shall be a default under Paragraph 20.A(i).

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

26. TAXES AND ASSESSMENTS

Operator shall, during the term of this Operation Agreement, promptly pay when due all taxes and/or assessments, together with interest and penalties thereon that are levied upon or assessed by any government body by reason of the Operator's operation of the Operational Area. Operator immediately shall forward any notice of such tax payment to Department and any notice of assessment, tax bill, or any other notice, correspondence or document relating to local property taxation of the Operational Area to the Department. Failure to provide notice to the Department and failure to pay taxes and assessments shall be a default under Paragraph 20.A(i). If Operator files a timely appeal of such taxes and assessments, the timelines under Paragraph 20.A.ii shall begin when all appeals have been exhausted.

27. BANKRUPTCY

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

28. SUCCESSOR IN INTEREST; ASSIGNMENT

A. If Operator is acquired by, or affiliates, consolidates or merges with another entity,

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

- (i) continue with this Operation Agreement with the new operator. The new operator must complete all paperwork required by the State including, but not limited to, a new Certificate of Insurance, a Certificate of Incorporation, a New Jersey Business Registration, Pay-to-Play disclosures, and a new Board Resolution. The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of the Operation Agreement;
- (ii) continue the Operation Agreement on a conditional basis as stipulated in an amendment to this Agreement providing the new operator complies with all paperwork as noted above; or
- (iii) terminate this Operation Agreement.

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

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

29. NO DISCRIMINATION

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

Operator shall not discriminate in employment and agrees to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

Specifically, Operator shall not

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

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

30. CONFLICTS OF INTEREST

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

has an interest within the meaning of N.J.S.A. 52: 13D-13g.

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

C. Operator may not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in Operator to any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

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

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

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

31. SOLICIATION

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

32. SUPERSEDES – ENTIRE AGREEMENT - AMENDMENTS

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

33. NOTICES

The parties hereto agree that all submissions, approvals, and notices (except for the Notice of Injury required under Paragraph 13. Emergency; Report of Injury) which may be required under this Operation Agreement shall be forwarded by Certified Mail, Return Receipt Requested, and addressed as follows:

Department: State of New Jersey
Department of Environmental Protection

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

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

Operator:

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

34. END OF TERM

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

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

B. The obligation to pay accrued fixed rent, variable rent and other payments required under this Operation Agreement shall survive expiration, termination and surrender. The Department reserves all legal remedies available to the Department for Operator's failure to make such payments.

35. SUCCESSION AND BINDING AGREEMENT

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

36. NO THIRD PARTY BENEFICIARIES

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

37. HOLDOVER

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

38. CORPORATION - RESOLUTION

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

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

C. Prior to the Effective Date of this Operation Agreement, Operator shall provide the Department with a copy of a completed Ownership Disclosure Form pursuant to N.J.S.A. 52:25-24.2, attached hereto as Exhibit H.

39. NEGOTIATED DOCUMENT

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

40. HEADINGS

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

41. SEVERABILITY

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

42. GOVERNING LAW

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

43. INDEPENDENT PRINCIPAL

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

44. PREVAILING WAGE ACT

Without limiting the scope of any other provision of this Operation Agreement, Operator

agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150 as codified in N.J.S.A. 34:11-56.25, et seq. Operator also agrees to comply with 42 U.S.C. § 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and § 9604 (g)(1), the Operator must comply with the federal requirements.

45. PAY TO PLAY

A. Pursuant to N.J.S.A. 19:44A-20.13, et seq. (P.L. 2005, c.51) and specifically N.J.S.A. 19:44A-20.21, and Executive Order No. 117 (2008) it shall be a breach of the terms of this Operation Agreement for Operator to: (1) make or solicit a contribution in violation of P.L. 2005, c. 51; (2) knowingly conceal or misrepresent a contribution given or received; (3) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (4) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee; (5) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by Operator itself, would subject that entity to the restrictions of P.L. 2005, c. 51; (6) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (7) engage in any exchange of contributions to circumvent the intent of P.L. 2005, c. 51; or (8) directly or indirectly through or by any other person or means, do any act which would subject Operator to the restrictions of P.L. 2005, c. 51. Further, where Operator is a business entity, as defined by N.J.S.A. 19:44A-20.17, and the value of this Operation Agreement exceeds \$17,500, Operator shall submit with this Operation Agreement a “Certification and Disclosure of Political Contributions Form”, certifying that it has not made any contributions prohibited by P.L. 2005, c. 51 and reporting all contributions Operator made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a “continuing political committee” within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7, and the “Ownership Disclosure Form”. It is the Operator’s continuing obligation to report any contributions it makes during the term of this Operation Agreement. Additionally, unless this Operation Agreement is required by law to be publicly advertised for bids, if Operator is a for-profit business entity, as defined by N.J.S.A. 19:44A-20.26 and the value of this Operation Agreement exceeds \$17,500, Operator shall submit with this Operation Agreement a “Vendor Certification and Political Contribution Disclosure Form” listing its political contributions as set forth in this subsection that are reportable by the recipient pursuant to the provisions of P.L. 1973, c. 83 (C.19:44A-1 et al.) and that were made by Operator during the preceding 12-month period, along with the date and amount of each contribution and the name of the recipient of each contribution. The forms and instructions are available at <http://www.state.nj.us/treasury/purchase/forms.shtml>.

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

46. ATTACHMENTS

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

Exhibit A – Request for Proposal

Exhibit B – Survey Map of Operational Area

Exhibit C – Operator’s Bid Proposal

Exhibit D - List of Operator’s personal property

Exhibit E – Certificate of Insurance

Exhibit F – Certificate of Incorporation

Exhibit G – Board Resolution

Exhibit H – Ownership Disclosure Form

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

DEPARTMENT

STATE OF NEW JERSEY

Department of Environmental Protection

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

Date: _____

ATTEST:

OPERATOR:

By: _____

By: _____

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

Christopher S. Porrino
Attorney General
State of New Jersey

By: _____

Deputy Attorney General

Date: _____

