

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

CONCESSION AGREEMENT

FOOD/NOVELTY CONCESSION

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

**BETWEEN THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY  
STATE PARK SERVICE  
MAIL CODE: 501-04C, P.O. BOX 420  
TRENTON, NEW JERSEY 08625-0420**

, hereinafter referred to as Department,

**AND** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

, hereinafter referred to as Concessionaire.

**NOW THEREFORE**, Department, in consideration of the payments and covenants hereinafter made, does hereby grant to Concessionaire and Concessionaire hereby agrees to operate a concession at:

\_\_\_\_\_ (Area)

Concessionaire hereby covenants and agrees to and with Department as follows:

**1. SCOPE OF CONCESSION**

A. The Concessionaire shall be granted the exclusive right in the structure(s) and/or area(s) provided by the Department for dispensing food, beverages, and novelties (hereinafter referred to as the "Concession Operation"). The Concession Operation shall be limited to the \_\_\_\_\_ square foot structure(s) or area(s) identified in Attachment \_\_\_\_ now provided by the Department for concession purposes in the areas specifically designated by the Department (hereinafter referred to as the "Concession Premises").

B. Concessionaire shall use the Concession Premises solely for the purpose set forth above and is prohibited from selling or permitting the sale of any alcoholic beverages thereon.

C. Concessionaire's status will be that of a licensee. Concessionaire will not, in any way whatsoever, be granted or conveyed any permanent easement, lease, fee, or other interest in the Concession Premises.

**2. TERM**

A. The "Initial Term" of the Concession Agreement ("Agreement") shall be from the Effective Date of the Agreements Initial Term ending on October 31, 2015. Upon expiration of the Initial Term the Concessionaire may request, in writing, and the Department may at its discretion, based upon an evaluation of the Concessionaire's compliance with the terms and conditions of the Agreement, grant not more than five (5) subsequent annual one (1) year renewal Terms. The Department reserves the right to terminate the Agreement for material breach in accordance with the terms and conditions set forth in Paragraph 4. Furthermore, failure on the part of the Concessionaire to submit Monthly Reports or the Annual Report when due constitutes a material breach of the Agreement subject to Termination in accordance with the terms and conditions set forth in Paragraph 4.

B. If the Concessionaire wishes to renew this Agreement for an additional one (1) year term, it must submit, in writing, the Concessionaire's request for a one (1) term renewal by August 15<sup>th</sup> of the year prior to the year being sought for renewal. Should the Concessionaire fail to submit a written renewal request by August 15<sup>th</sup>, the Agreement shall terminate at the conclusion of the Agreement's current term, in accordance with the terms and conditions set forth in Paragraph 4.

### **3. EFFECTIVE DATE**

A. For the purposes of the Agreement, the Effective Date for the commencement of the Initial Term shall be the Permit Date indicated on the Agreement.

B. For the purposes of the Agreement, the Effective Date for the commencement of any annual renewal term shall be the date on which the last of the following has occurred:

- (i) The renewal agreement is signed on behalf of Concessionaire and Department; and
- (ii) Department dates the renewal agreement and forwards a copy to Concessionaire; and
- (iii) The Certificate of Insurance required under the Agreement is received by Department; and
- (iv) Department has approved the proposed prices for food, beverage, and novelty items.
- (v) Mandatory Compliance and Performance Evaluation Meeting #1 has been completed, as described in Paragraph 16.

### **4. TERMINATION**

A. Concessionaire shall exercise direct and personal supervision of the operation of the Concession Premises described in this Agreement. Failure to exercise such supervision and/or the existence of any condition at the facility or in the operation of the concession which Department determines to be in violation of the terms and conditions of this Agreement shall be considered to be a material breach in which event Department may terminate this Agreement by written notice sent by regular and certified mail. Upon receipt of written notice of termination for violation, Concessionaire shall have such period of time as provided therein to cure such violation. If such violation is not cured within the period designated in said notice, termination shall, in the discretion of Department, be effective at the conclusion of the designated period.

B. Without limiting the scope of subparagraph A of this Paragraph, this Agreement shall terminate in the event of Concessionaire's failure to pay on the first (1<sup>st</sup>) of each month, when due, any compensation or other sums to be paid by Concessionaire under this Agreement and the continuation of such failure to pay for a period of five (5) days after Concessionaire's receipt of written notice thereof from Department.

C. Concessionaire may terminate this Agreement by ninety (90) days written notice to Department sent by regular and certified mail return receipt requested. Such termination shall, at the discretion of Department become effective either immediately or at the end of ninety (90) days after receipt of the notice of termination or upon selection by Department of a new concessionaire, whichever occurs sooner. In the meantime, Concessionaire shall continue to operate the concession in accordance with the terms and conditions of this Agreement. Department shall commence the process of selecting a new concessionaire immediately upon receipt of the notice of termination.

D. If at any time during the term of this Agreement, Concessionaire shall make any assignment for the benefit of creditors or be decreed insolvent or bankrupt according to law, or if a receiver shall be appointed for Concessionaire, then Department may terminate this Agreement by notice served upon the assignee, receiver, trustee or other person in charge, but such termination

shall not release or discharge any payment or obligation then owed by Concessionaire to Department hereunder.

E. Termination of this 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 Agreement as of the date of such termination.

F. Upon the expiration or any termination of this Agreement, Department may at once re-enter and remove any and all persons occupying the Concession Premises. If Concessionaire fails to remove any property lawfully belonging to and removable by Concessionaire upon any notice of termination hereof, or before the stated expiration of this Agreement, Department may appropriate same to its own use without allowing any compensation therefor, or may remove same at the expense of Concessionaire. In the event that Concessionaire removes any personal property, Concessionaire hereby covenants to pay any and all damages which may be caused to the property of Department by this removal.

**6. REVENUE PAYMENTS AND ANNUAL INCREASE**

A. For the Initial Term of this Agreement, Concessionaire shall pay to the Department the following sum as consideration for the concession, license and privilege granted herein:

TOTAL TERM COMPENSATION: \$ \_\_\_\_\_

Said compensation shall be paid according to the following payment schedule:

TERM PAYMENT SCHEDULE:	May 1	\$ _____
	June 1	\$ _____
	July 1	\$ _____
	August 1	\$ _____

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

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

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

C. The Department may at its discretion, require Concessionaire to make all payments for the Initial Term of the Agreement by certified or cashier’s check only.

D. All past due payments shall be assessed a monthly penalty of five (5%) percent of the total amount due calculated after the fifth (5<sup>th</sup>) day of each month.

E. In the event any check for payment is returned to Department, all future compensation payments must be made by certified or cashier check only.

F. The total amount of annual compensation shall be increased by three (3%) percent for each renewal term. Total annual compensation will be calculated by the Department and rounded up to the closest dollar.

**7. RECORDS AND AUDIT**

A. Concessionaire shall maintain complete, accurate, and detailed accounting records of all transactions pertaining to each Concession Operation covered by this Agreement that will allow Concessionaire to prepare financial statements in accordance with generally accepted accounting principles. Concessionaire shall make such records available to any authorized representative of Department upon request, as often as it is deemed necessary by Department, to determine the

effectiveness of the financial management system and internal procedures that have been established by Concessionaire to ensure compliance with the terms and conditions of the Agreement and that the financial statements, and reports present fairly the results of Concessionaire's operations pursuant to the Agreement. Said records shall be maintained and made available to Department for a period of six (6) years after the termination or expiration of the Agreement.

B. All sales shall be recorded by means of cash registers that publicly display the amount of each sale and automatically issue a customer's receipt or certify the amount recorded on a sales slip.

Each cash register must have the following:

- Dual Tape/Readable tape (customer must be offered a receipt)
- Customer Display
- Continuous grand total

## **8. DAILY RECEIPTS**

A. Under the Agreement, Concessionaire is required to maintain a daily record of all gross receipts derived from the Concession Operation. This record shall be available at all times. Concessionaire shall upon request by the Department provide a breakdown and accounting of all sales activity for each day.

B. All cash received by Concessionaire shall be deposited into a single bank account maintained at a bank located within the State of New Jersey and maintained solely for subject Concession Operation, through which all financial transactions (including but not limited to deposits, withdrawals, and purchases) must pass.

## **9. MONTHLY REPORT**

A. On or before the tenth (10<sup>th</sup>) of each month during operation, Concessionaire shall provide Department with the following: a "Monthly Report", certified by the Concessionaire, Concessionaire's Bookkeeper, or Accountant containing a Statement of Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Concessionaire from operation of the Concession and any other Concession-related operation approved by Department during the previous month. Failure on the part of the Concessionaire to submit a certified Monthly Concession Report when due, constitutes a material breach of the Agreement subject to Termination, in accordance with the terms and conditions set forth in Paragraph 4.

B. The Concessionaire-certified Monthly Report must be submitted, in the Department approved format before the tenth (10<sup>th</sup>) day of each month.

## **10. ANNUAL REPORT**

A. Concessionaire shall submit to Department, no later than October 15<sup>th</sup> of each term the Agreement is in effect, an Annual Financial Statement including the following: Total Gross Revenue, New Jersey State Sales Tax, Operating Expenses; and Net Profit from State Park Concession Operations. Failure on the part of the Concessionaire to submit Annual Report when due, constitutes a material breach of the Agreement subject to Termination, in accordance with the terms and conditions set forth in Paragraph 4. The Concessionaire shall provide the Department with any additional clarification and/or information necessary to confirm the accuracy of Concessionaire's Operating Expenses.

B. The Concessionaire-certified Annual Report must be submitted in compliance with the Department approved format before October 15<sup>th</sup> each term the Agreement is in effect.

## **11. HOURS OF OPERATION AND LIMITATIONS**

A. The Concession shall open and operate from May \_\_\_\_\_ to September 30<sup>th</sup> for each term of the Agreement.

B. The Concession shall be open for business Sunday through Saturday from \_\_\_\_\_ to \_\_\_\_\_. The Concession shall operate daily between the Core Business Hours of 11:00 am through 3:00 pm. The Concession must be prepped, fully operational, and capable of serving patrons the pre-approved menu of hot and cold food items by 11:00 am each day. The Department reserves the right to have Concessionaire complete a daily attendance log at a location determined by the Department.

C. Failure on the part of the Concessionaire to open for business during the Core Business Hours will be a material breach of the Agreement in which event the Department may terminate this Agreement. The Area Superintendent shall be the sole authority to determine whether or not an area will be closed due to inclement weather. The Department is not responsible to Concessionaire for any loss or damage caused by such determination.

D. Concessionaire shall be responsible for staffing and operation the Concession during the Core Hours. Failure on the part of the Concessionaire to open the Concession shall be a material breach of the Agreement and cause for Termination at the Department's discretion.

## **12. ALTERNATE HOURS OF OPERATION**

The Concessionaire may request authorization to extend the hours of operation, by opening before 11:00 am or closing after 3:00 pm. All requests to extend hours of operation must be made in writing to the area Superintendent ten (10) days in advance of the proposed effective date. The Concessionaire shall not implement the alternate hours of operation without written authorization from the area Superintendent.

## **13. EXTENSION OF THE SEASON**

The Concessionaire may request to extend the period of operation either before May 1<sup>st</sup> or after September 30<sup>th</sup>. All requests shall be submitted to the Area Superintendent and Office of Leases & Concessions in writing sixty (60) days in advance of implementation. Approval of this request shall be within the Department's sole discretion. The Concessionaire shall be deemed not have permission to extend the period of operation without written approval from the Area Superintendent. The Concessionaire shall compensate the Department in advance of the date of implementation. Compensation to the Department shall be calculated on a monthly basis or prorated by day and submitted by check made payable to "Treasurer – State of New Jersey".

## **14. PRICES**

Prices for all food, beverages, and novelty items shall be submitted in writing annually to and approved by Department, in writing, before any proposed price can become effective. Proposed prices to be charged must be submitted and approved at least ten (10) days prior to initial opening of the Concession and on a yearly basis thereafter for the duration of the Agreement. Failure on the part of the Concessionaire to obtain the Department's advance written approval is a material breach of the Agreement, subject to suspension of the Concession operation and/or termination of the Agreement. All prices shall be properly displayed in prominent places at all times. Price signage must be professional in appearance, neat, and made of weather-proof materials.

## **15. STAFF**

A. Concessionaire shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of each concession location covered by the Agreement. If Department determines that Concessionaire has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation and management of the Concession Premises, Concessionaire shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice. If the deficiencies described in said notice are not corrected by Concessionaire immediately upon receipt of written notification, Department reserves the right to do the following: (1) suspend Concessionaire's operation of the Concession Premises, pending correction of the deficiencies; (2) obtain the service of reliable, competent, and qualified staff of legal age to operate said concession facility for Concessionaire for the remainder of the then current operating season; or (3) terminate the Agreement. Concessionaire shall compensate any staff obtained by Department for the remainder of the then current operating season and shall reimburse Department for all costs incurred by

Department in obtaining appropriate staff. Concessionaire shall not be entitled to any abatement of revenue payment due to any suspension or other action taken by Department under this Paragraph, and Department shall not be liable to Concessionaire, or any party claiming through Concessionaire, for any claim, liability, or damages resulting from said action by Department.

B. All Concession employees must wear uniform apparel and name tags to identify and distinguish them as concession employees. The type of uniform apparel and identification shall be pre-approved by Area Superintendent, prior to the start of each term. Failure on the part of the Concessionaire to comply with the uniform requirement shall be a material breach on the Agreement.

## **16. COMPLIANCE AND PERFORMANCE EVALUATION**

Mandatory concessionaire review meetings shall be conducted annually during two (2) specified periods. Additional meetings may be scheduled at the discretion of the Department to ensure Concessionaire's effectiveness and compliance. The meetings shall review all aspects of the operation insuring that quality public services are being provided on a continuing basis in accordance with the bid specifications and the Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on site with Department designated State Park Service staff representative, the on-site concession manager, and a management/supervisory representative of the Concessionaire's firm. A report form shall be utilized to document the evaluation meeting, which will identify any deficiencies and the corrective action required. The mandatory meetings shall be conducted annually during the following periods:

- Meeting #1 - During the month of May, prior to the Effective Date, described in Paragraph 3.
- Meeting #2 - During the week immediately after Labor Day.

## **17. EQUIPMENT**

A. The State-owned equipment listed on Attachment " " has been installed on the Concession Premises for use by Concessionaire to provide full, complete, and efficient service to the public. The Department shall not be responsible for the damage, loss, or maintenance of any equipment installed by the Concessionaire. The Concessionaire shall obtain a written approval from the Department prior to locating or installing any of the Concessionaire's equipment on the concession premises.

B. The exhaust hood covering the cooking area must be cleaned to a satisfactory level, inspected, and approved by the Area Superintendent **prior** to the first day of operation each term. If the chute/chimney extending from the hood through the structure to the exterior of the building is determined to need cleaning by a fire inspector the Concessionaire will be solely responsible for obtaining the services of a recognized, professional exhaust hood-cleaning service to clean the hood and obtain fire inspector's approval.

C. The Concessionaire shall not be authorized to store any supplies, goods or equipment related to the operation of the concession outside the approved period of operation. The Department shall not be responsible or liable for any loss or theft of goods or equipment.

D. The Department shall not be responsible for any damages, loss of goods or services resulting from equipment failure. The Concession is encouraged to obtain insurance to cover possible losses resulting from equipment failure.

## **18. REPAIR**

Concessionaire shall, prior to the commencement of concession operations under this Agreement, provide to Department a type written concession equipment maintenance plan for the Concession Premises, together with a schedule for preventative maintenance and a report on maintenance completion and equipment condition. Failure to comply with this preventative maintenance schedule shall result in the Concessionaire being responsible for all repairs and/or replacement of equipment. The review and Department inspection of each Concession Premises and its equipment will be conducted during the routine inspection of each Concession Premises and as a part of the pre-season and year-end concession close out inspection.

**19. MAINTENANCE OF CONCESSION PREMISES**

A. Concessionaire shall preserve and maintain in good and clean condition, reasonable wear and tear excepted, the Concession Premises. Concessionaire is solely responsible for the maintenance and cleanliness of the Concession Premises.

B. Upon expiration or termination of the Agreement, Concessionaire shall deliver up peaceable possession of the Concession Premises to Department in as good and clean condition as the Concession Premises was made available at the commencement of the Agreement, reasonable wear and tear excepted. In the event that Concessionaire does not deliver up possession as herein provided, Department may restore the Concession Premises to such condition, and the cost thereof shall be paid by Concessionaire to Department within ten (10) days of Department's demand for payment.

**20. INSPECTION**

Concessionaire shall make the Concession Premises available for inspection at any time by any authorized representative of Department to assure compliance with the terms and conditions of this Agreement.

**21. GARBAGE DISPOSAL, RECYCLING, AND BIODEGRADABLE MATERIALS**

A. Concessionaire shall be responsible for maintaining the cleanliness of the Concession Premises. Concessionaire shall ensure placement of all garbage and trash generated by the Concession Operation in designated containers and that said containers are emptied daily, or as more frequently required by the Department, at a location within the Area designated by the Department. Disposal costs from this location shall be borne by the Department. Concessionaire shall provide such additional trash containers as may be required to keep the immediate Concession Premises clean at all times. The type of trash containers provided by the Concessionaire shall be approved by the Department prior to installation.

B. Concessionaire shall comply with any and all recycling requirements and regulations promulgated by the Department's Office of Recycling.

C. Any wrappings, containers, bowls, plates, carton, or cups that are not intended for reuse must be composed of biodegradable material. Biodegradable material is defined as follows: MATERIAL CAPABLE OF BEING BROKEN DOWN FROM A COMPLEX MOLECULAR STRUCTURE INTO SIMPLER GASSES AND ORGANIC COMPOUNDS BY LIVING MICROORGANISMS.

D. No glass containers of any kind shall be used in the dispensing of food and/or beverages.

**22. UTILITIES**

Concessionaire is responsible for the payment of any and all utility charges related to the Concession Operation for the duration of the Agreement. If the utility fees cannot be separately metered, the Concessionaire shall pay the Department a flat fee of Two Hundred Fifty (\$250) Dollars, each month, in addition to the monthly Revenue Payment. The flat fee above shall be increased from time to time to meet changed circumstances, including but not limited to a change in the price of utilities, charged by providers

**23. TAXES**

All taxes and assessments, if any, arising out of the use and occupancy of the Concession Premises and the operation of the Concession shall be paid by Concessionaire. If any tax or assessment may be legally paid in installments, Concessionaire shall have the option to pay such tax or assessment in installments, except that each installment thereof and all interest thereon must be

paid by the final date fixed for the payment thereof, and in the event that the whole amount thereof is not paid prior to the expiration of the Agreement, payment shall remain a continuing obligation of Concessionaire after the expiration or termination of the Agreement. Concessionaire shall furnish to Department, within ten (10) days of demand therefor, proof of the payment of any such tax or assessment.

**24. RULES AND REGULATIONS**

Concessionaire shall comply with all rules and regulations promulgated by the Department and all applicable rules and regulations promulgated by the New Jersey State Department of Health.

**25. ADVERTISEMENT AND PROMOTION**

A. Concessionaire shall not advertise in any manner or form on or about the Concession Premises or any other part of the Area, except by means of such signs or forms of advertising as first shall be approved by the Department.

B. Concessionaire shall, in all promotion and advertisement of the Concession Premises and any scheduled event(s) at or pertaining thereto, provide that the Concession Premises is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry, State Park Service, as part of the Area.

C. Prior to the implementation of any and all promotion and advertisement of the Concession Premises and any scheduled event(s) at or pertaining thereto, Concessionaire shall submit, and obtain Department's written approval of, all plans for promotion and advertisement of the Concession Premises. Such approval shall not be unreasonably withheld. In the event that Department does not approve or disapprove an advertisement or promotion plan within fifteen (15) days of receipt thereof, said advertisement and promotion plan shall be deemed as approved.

**26. CONSTRUCTION AND IMPROVEMENTS**

Concessionaire shall not erect any structures, buildings, or additions to the Concession Premises without first obtaining the written approval of Department.

**27. REPORT OF INJURY**

Any injury that shall occur to Concessionaire, its servants, agents, or invitees requiring medical intervention of which Concessionaire is notified, shall be reported to Department in writing within one (1) day of the incident.

**28. SOLICITATION**

Concessionaire warrants that no person has been employed directly or indirectly to solicit or secure the Agreement in violation of the provision of Section 10, Chapter 48 of the Laws of 1954, N.J.S.A. 52:34-15, and that the Laws of the State of New Jersey relating to the procurement or performance of the Agreement have not been violated and shall not be violated by any conduct of Concessionaire, 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. INDEPENDENT PRINCIPAL**

Concessionaire's status shall be that of an independent principal and not as an agent or employee of the Department.

**30. INDEMNIFICATION**

A. Concessionaire shall, for itself, its successors, and assigns, assume all risk and liabilities arising out of the management, maintenance, and operation of the Concession and covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, employees, successors, and assignees and hereby releases Department and each and every 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 any nature arising from the following:

(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 Concession Premises or upon any sidewalk, walkway, or patio within the Concession Premises or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Concession Premises or the construction or repair of any improvements of the Concession Premises;

(ii) any act, error, or omission of Concessionaire, its agents, servants, employees, contractors, invitees, and anyone claiming by or through Concessionaire in the performance of the Agreement; and

(iii) violation of any agreement or condition of the Agreement by Concessionaire, its agents, employees, contractors, invitees, and anyone claiming through Concessionaire of any contracts and agreements of record concerning the Concession Premises and restrictions of record or any law, ordinance, or regulation affecting the Concession Premises or any part thereof or the ownership, occupancy, or use thereof.

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

C. It is expressly agreed and understood that any approval by Department of Concessionaire's operation of Concession Premises shall not operate to limit the obligations of Concessionaire assumed pursuant to the Agreement.

D. Concessionaire's liability pursuant to this Paragraph shall continue after the termination or expiration of the Agreement with respect to any liability, loss, expense, or damage resulting from actions or inactions occurring prior to such termination or expiration.

E. Concessionaire's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in the Agreement.

### **31. INSURANCE**

A. Concessionaire shall, for each Concession Operation described in the Agreement, secure and maintain, in full force and effect on or before the date that Concessionaire is required to commence annual operation of each concession facility under the Agreement and throughout the term of Concessionaire's annual occupancy thereof, the following types and amounts of insurance coverage:

1. Public liability as broad as the standard coverage forms 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 be endorsed to include the following:

- (a) Broad Form Comprehensive General Liability;
- (b) Premises/Operations;
- (c) Products/Completed Operations;
- (d) Protection and Indemnity; and
- (e) Concessionaire owned, operated, or non-owned motor vehicles.

The limits of liability for Bodily Injury and Property Damage shall not be less than One Million Dollars (\$1,000,000) per occurrence combined single limits for each location covered by the Agreement.

2. Worker's Compensation insurance applicable to the laws of the State of New Jersey and Employers' Liability insurance with the limits of not less than:

- (a) \$1,000,000 Bodily Injury Each Occurrence
- (b) \$1,000,000 Disease Each Employee
- (c) \$1,000,000 Disease Aggregate Limit

3. Property insurance to cover loss or damage on an "All Risk" of physical loss form of coverage against fire, loss, theft, and damage on the contents of the Concession Premises owned by Concessionaire. Said insurance shall be in an amount not less than the appraised value of those contents. Concessionaire shall obtain and provide, at its own expense, an appraisal of the contents owned by Concessionaire for the purpose of obtaining and maintaining the aforementioned insurance.

4. Such other insurance, and in such amounts as may from time to time be reasonably required by Department in consultation with Concessionaire against other insurable hazards which at the time are commonly insured against in the case of concession operations similarly situated with due regard to the type of building, its construction, and the type of concession operation.

5. The limits of liability described in (1) through (4) above shall be increased from time to time to meet changed circumstances, including but not limited to changes in the purchasing power of the dollar, as measured by changes in the United States Consumer Price Index and changes indicated by plaintiffs' verdicts in personal injury actions.

B. All insurance policies providing the coverage required under the Agreement shall be obtained from an insurance company authorized to do business in the State of New Jersey and shall, except for Worker's Compensation Insurance under the Agreement, name the State of New Jersey, Department of Environmental Protection as an "Additional Insured." The certificate of insurance shall identify the Concession Number assigned to the Agreement and the location of Concession Premises. Prior to the date that Concessionaire is required to commence annual operation of the Concession Premises, Concessionaire shall provide Department with a current certificate of insurance, in form and substance satisfactory to the Department, showing that Concessionaire has obtained the insurance coverages required in the Agreement for the Concession Operation. The certificate shall provide that the insurance coverages shall not be canceled for any reason, except after thirty (30) days' written notice to:

STATE OF NEW JERSEY  
 DEPARTMENT OF ENVIRONMENTAL PROTECTION  
 OFFICE OF LEASES & CONCESSIONS, NATURAL & HIST. RESOURCES  
 MAIL CODE: 501-04C, P.O. BOX 420  
 TRENTON, NEW JERSEY 08625-0420

The certificate of insurance shall also provide for thirty (30) days' notice, in writing, to Department prior to any expiration or non-renewal during the term the insurance is required to be maintained in accordance with the Agreement. Concessionaire shall further be required to provide Department with valid certificates of renewal of the insurance upon expiration of the policies, except where otherwise provided in this Paragraph. Concessionaire also shall, upon request, provide Department with copies of each policy required under the Agreement certified by the agency or underwriter to be true copies of the policies provided to Concessionaire.

C. In the event that Concessionaire fails or refuses to renew any of its insurance policies to the extent required by the Agreement, or if any policy is canceled, terminated, or modified so that the insurance does not meet the requirements of the Agreement, Department may immediately suspend all of Concessionaire's operations on the Concession Premises until Concessionaire obtains insurance coverage in satisfactory form and in compliance with the Agreement or may proceed to default Concessionaire and terminate the Agreement.

D. Concessionaire expressly understands and agrees that any insurance protection required by the Agreement shall in no way limit Concessionaire's obligations under the Agreement and shall not be construed to relieve Concessionaire from liability in excess of such coverage, nor

shall it preclude Department from taking such other actions as are available to it under any provisions of the Agreement or otherwise in law or equity.

### **32. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES**

A. For the duration of the Agreement, Concessionaire shall obtain, pay for, maintain, and comply with all licenses, permits, authorizations, or any other documents required by any applicable government agency having jurisdiction over the Concession Premises or the conduct of Concessionaire's operations thereon. Concessionaire shall provide Department with written evidence that such applicable licenses, permits, authorizations, or other required documents have been obtained no later than ten (10) days prior to commencement of the activity or operation covered by the license, permit, authorization, or other documentation as shall be required by the Agreement.

B. Concessionaire shall, at its sole cost and expense, comply with all duly promulgated and applicable federal and State laws, rules, ordinances, and orders affecting the conduct of the Concession Operation described in the Agreement.

C. Concessionaire shall comply with the requirements of all insurance policies required by the Agreement.

D. If Concessionaire:

(i) receives a notice of failure to comply with the insurance required by the Agreement;

(ii) is issued a summons or any notice of violation of any license, permit, certification, authorization, approval, or any similar instruments required by any governmental authority having jurisdiction necessary to maintain and operate the Concession in accordance with the provisions of the Agreement; or

(iii) is issued a summons for violation of any duly promulgated and applicable federal, State, county, municipal, and other governmental laws, rules, ordinances, or orders affecting the Concession Operation or any part thereof,

Concessionaire shall immediately forward a copy of the notice of non-compliance, summons, or notice of violation to Department, and Concessionaire shall have such amount of time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of the Agreement, and Department, in addition to declaring a default of the Agreement by Concessionaire, may suspend Concessionaire's operation of all or the affected portion of the Concession Premises.

E. Concessionaire shall indemnify Department against all liability, claim, loss, or payment of any kind arising from Concessionaire's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State law, rule, ordinance, or order.

### **33. PUBLIC USE**

Concessionaire shall not be construed as to affect the privileges accorded to the public's use of the area or to restrain or prevent individual persons or groups of persons from bringing their own food, drink, and recreational equipment into the Area.

### **34. NO DISCRIMINATION**

A. Concessionaire shall comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4); the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; and the rules and regulations promulgated pursuant thereto.

B. Concessionaire shall not discriminate on the basis of age, national origin, race, creed, color, sexual orientation, or sex in the use of the Concession Premises by the public.

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

### **35. SUSPENSION OF OPERATIONS:**

Concessionaire shall, at the direction of Department, immediately suspend, delay or interrupt Concessionaire's operation of all or any part of the Concession Premises for such period of time as Department may determine to be appropriate to protect the Concession Premises 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, Concessionaire'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 of the Concession may detrimentally impact the Concession Premises and/or health, safety and welfare of persons on-site. Concessionaire hereby waives any claim and Department shall not be liable to any party claiming through Concessionaire, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph. Department's suspension of Concessionaire's operations shall be in addition to any other right or remedy available by law or in equity.

### **36. PAYMENT ABATEMENT**

A. In the event that Concessionaire is unable to operate the Concession Premises as a direct result of the performance, failure to perform or negligent performance by Department, its officers, agents and employees, of any act under the control or responsibility of Department, Concessionaire may be considered for an abatement of revenue for the period that the Concession Premises cannot be operated. Circumstances for consideration of payment abatement shall include but not be limited to, disruption caused by Department construction activities in or around the Concession Premises and interruption of utility service as a result of actions by the Department. Construction activities outside the control of the Department and interruption of utility services by the utility service provider shall not be grounds for abatement. Suspension of operations as provided in Paragraph 35 shall not be grounds for abatement. Notwithstanding the circumstances, the decision whether or not to grant an abatement and the amount of any abatement lies completely within the discretion of the Department.

B. State Park Service facilities are subject to unscheduled closures for reasons of health and public safety. These closures may result from inclement weather, water quality or lifeguard staffing. Payment abatements will not be given for inclement weather or water quality closures. Further, the Department will not consider payment abatement for closures due to staffing until the total number of full-day closures exceeds ten (10) days. No abatements will be given for partial closures that do not extend fully during the Core Business Hours.

C. To be eligible for consideration for payment abatement, Concessionaire shall submit a written request to Department setting forth specific details and circumstances comprising grounds for abatement and the amount of abatement requested. Said request shall be submitted in the approved Department format within thirty (30) days of the last day for which abatement is claimed.

D. All abatement awards shall be adjusted, disbursed or credited after the annual report and final payment are received.

### **37. FINAL DECISION**

Concessionaire covenants that the decision of the Commissioner of the Department, relative to the performance of the terms of the Agreement, shall be final and conclusive.

### **38. CORPORATION**

A. For any Concessionaire that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey, all papers of incorporation shall be provided to Department, along with renewals, changes, or any other documents that in any way affect the current or future status of Concessionaire as a legal corporation.

B. Concessionaire shall adopt a resolution authorizing the execution of the Agreement by Concessionaire. Concessionaire shall submit a copy of said resolution to Department prior to execution of the Agreement by Department.

**39. ASSIGNMENT OR SALE OF INTERESTS**

Concessionaire shall not assign the Agreement or sell controlling interest in the Concession.

**40. PAY TO PLAY**

Concessionaire is responsible 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-20.13 (P.L. 2005, c.271, section 3) if the contractor receives contracts in excess of Fifty Thousand (\$50,000) dollars from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

**41. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between the parties, and all negotiations, oral agreements, and understandings are merged herein. This Agreement may be amended, supplemented, changed, modified, or altered only upon mutual agreement of the parties hereto in writing.

**42. WAIVER OF TRIAL**

It is mutually agreed between Department and Concessionaire that they hereby waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement or the relationship of the Department and Concessionaire, the Concessionaire's use or occupancy of the Concession Premises, and/or any claim of injury of damage.

**43. SUBMISSIONS, APPROVALS, AND NOTICES**

The parties hereto agree that all submissions, approvals, and notices that may be required under this Agreement shall be forwarded by certified mail, return receipt requested to the address that appears on page one (1) of this Agreement. Either Department or Concessionaire may at any time change such address by mailing a notice of change to the stated address at least ten (10) days prior to the effective date of such change.

**44. 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 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 that either party may have under this 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 (2) 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 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.

**45. SUPERSEDES**

This Agreement supersedes and cancels all prior agreements covering the Concession Premises.

**46. SUCCESSION AND BINDING AGREEMENT**

Except as otherwise set forth herein, all of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of the respective parties hereto and binding on Trustee in bankruptcy.

**47. HEADINGS**

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

**48. GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.

SAMPLE

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

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

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

Rich Boornazian, Assistant Commissioner  
Natural and Historic Resources

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

**CONCESSIONAIRE**

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

Witness

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

\_\_\_\_\_, Concessionaire

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

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

**THIS AGREEMENT HAS BEEN  
REVIEWED AND APPROVED AS TO  
FORM BY:  
JOHN JAY HOFFMAN  
ATTORNEY GENERAL  
STATE OF NEW JERSEY**

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

\_\_\_\_\_  
Deputy Attorney General

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