

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

**OPERATING AGREEMENT**

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

**BETWEEN**

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

hereafter referred to as Department,

**AND**

hereafter referred to as Operator.

**WHEREAS**, Department is the Owner of the Lenape Indian Village (“Indian Village”) at Waterloo Village hereinafter described; and

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

**WHEREAS**, the Department, subject to the terms set forth in the RFP, is willing to enter into this Operating Agreement under the provisions, covenants, terms, and conditions hereinafter described, which shall be consistent with the terms set forth in the (Winning Bidder’s) Bid Response Proposal submitted in response to the RFP (“Bid Proposal”), a copy of which Bid

Proposal is attached hereto and made a part hereof as Exhibit B; and

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

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

## **1. INDIAN VILLAGE PROPERTY**

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

The Indian Village is a recreated Lenape settlement in Historic Waterloo Village, located on an island at the eastern portion of Waterloo Village, in the Township of Stanhope, Sussex County, New Jersey, as depicted on the map attached hereto as Exhibit A.

It is expressly understood that this Operating Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Indian Village to the Operator.

## **2. TERM**

A. The Term of this Operating Agreement shall begin as of (DATE) (“Effective Date”), at which time this Operating Agreement shall take full force and effect. Operator shall operate the Indian Village during the Term of this Operating Agreement beginning on the Effective Date and continuing for a period of one (1) year (the “Initial Term”) from that date until the expiration of the Operating Agreement (“Expiration Date”), unless the Operating Agreement shall end sooner pursuant to any of the terms, covenants, or conditions, herein provided or pursuant to law. The Department may terminate this Operating Agreement during the Term of the Operating Agreement in accordance with the termination provisions as contained herein, in the RFP, or in accordance with applicable law. In the event of such termination, after expiration of the notice period, Operator shall not be permitted to enter the Indian Village without accompaniment of a representative of the Department.

B. Provided that no event of default has occurred and is continuing, Operator shall have four consecutive options to renew for four additional, consecutive one-year periods (the “Renewal Terms”) by giving Department written notice of Operator’s request to renew no less than one hundred and eighty (180) days prior to the expiration of the Initial Term of this Operating Agreement and each Renewal Term thereafter. Department reserves the right to disapprove renewal

of this Operating Agreement if Department determines that Operator has not satisfactorily complied with the terms, covenants, or conditions herein provided or pursuant to law or that continuation of this Operating Agreement is not consistent with reasonably anticipated plans for development or use of the Indian Village by Department. In the event that Operator's request for renewal is not approved by Department on or before sixty (60) days prior to the scheduled expiration date of this Operating Agreement, said request shall be deemed to have been denied, and this Operating Agreement shall expire as herein provided. The Initial Term and the Renewal Term are hereinafter collectively referred to as the "Term." This Operating Agreement shall not be renewed upon the expiration of the Renewal Term. Operator shall not continue operation of the Indian Village beyond the expiration of the Renewal Term except upon execution of a new Operating Agreement or as provided for in Paragraph 33 hereof.

### **3. PAYMENTS TO THE DEPARTMENT**

A. Operator shall not be required to pay any fees to the Department but shall use all of the proceeds it receives through admission fees, special events, operation of a gift shop (in the event the Department can provide space for such a shop), and fundraising efforts to fulfill its obligations under the Operating Agreement. Operator may invest funding received from non-governmental or governmental sources to improve, maintain, and operate the Indian Village.

B. Tenant also shall be responsible for maintenance and upkeep of the land and structures and payment of all utilities as set forth in this Operating Agreement.

### **4. USE OF REVENUE**

All Total Gross Revenue, except for grants that require establishment of a separate account, shall be kept by Operator in a separate fund or account and used only for the operation and maintenance of the Indian Village in accordance with this Agreement. Said fund or account shall not be commingled with other funds or assets of Operator. Operator may use Total Gross Revenue to fulfill the purpose of this Agreement, as set forth in Paragraph 7 herein. "Total Gross Revenue" means the total amount of revenue received for programming conducted at the Indian Village, from solicitations, grants, fees, or any other source pertaining to Operator's activities under this Agreement, and computed in accordance with generally accepted accounting principles, excluding only New Jersey Sales Tax.

### **5. RECORDS, MEETINGS, AND AUDIT**

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

Department shall be final and binding on the Operator, including but not limited to the Department's determinations with respect to revenue reporting and payment by the Operator.

B. Operator shall, or on or before February 28 of each year, conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31 prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey ("Audit"). In the alternative, Operator may provide a special report as prescribed in Statement on Auditing Standards No. 62 prepared by a Certified Public Accountant licensed to practice accounting in New Jersey to fulfill this requirement ("Special Report"). If the Operator chooses to provide a Special Report, the Department shall advise the Operator of the scope of the Special Report.

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

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

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

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

## **6. ADDITIONAL PAYMENTS (SELF HELP)**

If Department incurs any expense by reason of the breach of this Operating Agreement by Operator or Operator's failure to perform any obligation of Operator hereunder, Operator shall be liable for payment of such reasonable expense, including reasonable attorney's fees and costs,

which shall be deemed an Additional Operating Agreement Payment to be paid by Operator. Any and all Additional Operating Agreement Payments shall become due within thirty (30) days of receipt of notice from the Department.

## **7. PURPOSE**

Operator agrees to operate the Indian Village by providing educational, environmental, and cultural programming about Native American life in New Jersey in the manner set forth in the RFP and the Operator's Bid Proposal, and the Operator may not operate or use the Indian Village for any other purpose, without the prior written consent of the Department, which may be given in the Department's sole discretion.

## **8. INDIAN VILLAGE MANAGEMENT**

A. During the term of this Operating Agreement, the Operator shall have full control over the day-to-day operations of the Indian Village, 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 provision of educational, environmental, and cultural programming about Native American life in New Jersey. The Operator also shall be responsible for handling disputes with third parties, obtaining any necessary permits, and providing accountability to the DEP for its activities.

### **B. Fees**

All fees for public admission to the Indian Village shall be submitted to and approved by Department before such fees become effective. The Operator's first fee schedule, attached hereto and made a part of this Operating Agreement as Exhibit B, is hereby accepted and approved by Department.

### **C. Programming**

Operator is to develop and administer educational, environmental, and cultural programming at the Indian Village about Native American life in New Jersey, including the staffing and delivery of programs for all ages, as well as programs that meet the Core Curriculum Standards adopted by the New Jersey Department of Education, available at <http://www.state.nj.us/education/cccs/>.

### **D. Walking tours of Waterloo Village**

Subject to the approval of the Department, Operator may work with non-profit organizations that have specific knowledge of the cultural and natural history of the Morris Canal and Waterloo Village to lead walking tours of the entire Waterloo Village. The Operator and such other non-profit organizations may provide interpretive services during such tours, with the approval of the Department. Access to the interiors of historic buildings located outside the Indian Village, but within Waterloo, shall be limited and possibly prohibited, depending upon

which non-profit agency the Operator has partnered. Such access will be subject to the approval of the Department.

**9. CONDITION OF INDIAN VILLAGE**

Operator has inspected the Indian Village 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.

**10. SECURITY**

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

**11. MAINTENANCE, REPAIR, AND UTILITIES**

A. Operator shall be solely responsible for the routine maintenance of the Indian Village, including the buildings, structures, interpretive props and furnishings, and improvements thereon.

B. Operator shall, at its sole cost and expense, keep and maintain the Indian Village, including any improvements constructed or located thereon, clean, neat, and in good repair.

C. Operator shall be solely responsible for repairs and renovations of the Indian Village.

D. Operator shall deliver the Indian Village to Department upon expiration or termination of this Operating Agreement in at least as good condition as it was delivered at the commencement of the term.

E. Operator shall, at its sole cost and expense, pay for the cost of all utility service, including water, gas, heat, telephone, electricity, sewer, and other utility and communications services rendered or used on or about the Indian Village.

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

G. Operator shall not make or allow any physical change in the natural condition of the Indian Village, including but not limited to the cutting or removal of trees or shrubs, without first

submitting plans and specifications therefor to Department and obtaining Department's written approval thereof. Department's approval shall not relieve Operator of its obligation to obtain and maintain all licenses, permits, and approvals required by the appropriate Federal and/or State governmental agency having jurisdiction over the activity to be undertaken.

## **12. STRUCTURES, FACILITIES, AND FURNISHINGS**

A. Operator shall use the structures, facilities, and furnishings at Indian Village for interpretive programs.

B. There are no structures on the Indian Village for an office or gift shop; however, the Department may be able to provide space in buildings in Waterloo Village, near the Indian Village, for the Operator to use as an office and gift shop. In the alternative, the Department may permit the construction of a small structure on Indian Village for use as a gift shop.

## **13. RENOVATIONS AND IMPROVEMENTS**

A. Operator shall not enter into any contract for or commence any restoration, preservation, renovation, or improvement project including, but not limited to, the construction or placement of any non-permanent building, structure, or utility or any change in the natural condition of the Indian Village (collectively "Improvements") without first submitting to Department, and obtaining Department's written approval of, an Improvement Plan for the proposed Improvement. The Improvement Plan shall include but not be limited to: (a) a description (including plans and specifications when deemed appropriate by Department) of each Improvement; (b) a schedule for initiation and completion of each Improvement; (c) a statement whether each Improvement will be performed by Operator or a contractor; and (d) such additional information that Department may reasonably require to determine whether to approve the proposed Improvement.

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

C. All Improvement Plans submitted to Department by Operator under this Paragraph are for the purpose of assisting Department in determining whether to approve the proposed Improvement under the criteria for approval set forth in Subparagraph B of this Paragraph. Department's approval of any such plan through the Division of Parks & Forestry shall not be construed to relieve Operator of its responsibility to obtain and maintain all licenses, certificates, permits, and approvals now or subsequently required by Federal, State, and local authorities for the construction and use of the Improvement. Operator shall, prior to the commencement of any

Improvement, apply for and obtain all Federal, State, and local licenses, certificates, permits, and approvals required for construction of the proposed Improvement. Upon the issuance of said licenses, certificates, permits, and approvals, Operator shall submit copies of same to Department and then commence the Improvement project in accordance with the approved Improvement Plan. All construction shall be done in a good and workmanlike manner in accordance with the approved Improvement Plan and all requisite licenses, certificates, permits, approvals, and any other requirements of Federal, State, or local authorities having jurisdiction.

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

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

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

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

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

I. Before commencement of construction, Operator shall deliver to Department certificates of insurance showing that Operator and/or its contractors and subcontractors have obtained



insurance coverage during construction as follows: (i) Completed Value Builder's Risk insurance with standard fire and extended coverage and, to the extent that insurance against any additional risk is obtainable at standard rates, "all-risk" extended coverage endorsement; (ii) Contingent Liability and Comprehensive General Public Liability insurance with a Contractual Liability endorsement (including insurance with respect to owned or operated motor vehicles) with aggregate limits of not less than One Million Dollars (\$1,000,000.00) with respect to bodily injury, death, or property damage for any one accident; and (iii) Worker's Compensation applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars occupational disease. The insurance policies described in (i) and (ii) above shall name Department as an additional insured. The certificates of insurance shall provide for thirty (30) days' notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Operating Agreement. Operator also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies.

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

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

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

#### **14. STAFF**

A. Operator shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of the Indian Village to provide security for the Indian Village and to meet the needs of the public. Operator shall submit a staffing plan to Department and obtain Department's written approval thereof. Operator shall provide Department with a written list of the names, addresses, and telephone numbers of all employees and shall update said list regularly

so that Department has a list of all current employees. If Department determines that Operator has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation and management of Indian Village, Operator shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice.

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

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

B. Operator shall, at its sole cost and expense, comply and shall cause the Indian Village to comply with all duly promulgated and applicable Federal, State, and local laws, ordinances, rules, and orders affecting the Indian Village, or any part thereof, or the use thereof, whether or not any such laws, ordinances, rules, or orders may involve a change of policy on the part of the governmental body enacting the same.

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

D. If Operator is issued:

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

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

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

Operator immediately shall forward a copy of the notice or summons to Department and Operator

shall have such period of time to correct said violation as is prescribed in the summons or notice.

## **16. TAXES AND ASSESSMENTS**

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

## **17. MANAGEMENT PLAN**

The management plan submitted by Operator as part of its bid proposal, incorporated herein as Exhibit B, shall be implemented during the first term of this Agreement. Prior to the expiration of each one-year term, if this Agreement is renewed, Operator shall submit to the Department, and obtain Department's written approval of, a Management Plan for the next one-year period. The Management Plan shall include the following:

- i. Description of interpretive and educational programs the Operator will provide for different age groups;
- ii. Anticipated staffing and personnel structure, including required qualifications for specific positions;
- iii. A fundraising plan to help meet the financial costs associated with fulfilling obligations under the Operating Agreement;
- iv. Description of any special events to be held at Indian Village;
- v. Plans for advertising and publicizing the Indian Village;
- vi. Description of method for booking tours and appointments;
- vii. Proposed hours of operation and months of operation;
- viii. Suggested fee schedule;
- ix. Proposed budget; and
- x. Detailed plans for a gift shop, including hours of operation and the type of merchandise sold, which the Operator shall be responsible for supplying, in the event the Department can provide space for a gift shop.

## **18. OPERATOR'S OBLIGATIONS**

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

## **19. ACCESS TO INDIAN VILLAGE**

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

## **20. SIGNAGE, ADVERTISING, AND NEWS RELEASES**

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

## **21. DAMAGE TO PROPERTY**

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

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

C. All repairs by Operator of damage to the Indian Village shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage or destruction. All repairs shall be completed in accordance with plans and specifications submitted to and approved by Department under Paragraph 13 of this Operating Agreement to the same extent as though said repair is an Improvement.

D. This Operating Agreement shall not be construed to require or obligate Department to cause any damage to or destruction of the Indian Village to be repaired for the benefit of Operator. Department shall not be liable to Operator for any loss occasioned by the damage to or destruction of the Indian Village and/or Department's declaration that this Operating Agreement is terminated.

## **22. DEVELOPMENT OF STATE PARK**

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

## **23. 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 Indian Village. Operator covenants to defend, protect, indemnify, and save harmless Department and hereby releases Department and each of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of every nature arising from or claimed to arise, in whole or in part, in any manner out of, be occasioned by, or result from:

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

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

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

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

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

B. Operator agrees that any contract with its contractors and consultants shall require such contractors and consultants to defend, indemnify, protect, and save harmless Department and release Operator and Department and their officials and employees from and against any suits, claims, demands, or damages of whatever kind or nature arising out of or claimed to arise out of in whole or in part any negligent act, error, or omission of the contractor, consultant, or their agents, subcontractors, servants, and employees in the performance of any work or professional services on or for the benefit of the Indian Village.

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

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

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

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

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

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

## **24. INSURANCE**

A. Operator shall, at Operator's sole cost and expense, obtain and maintain at all times during the term of this Operating Agreement, insurance for any damages imposed by law and

assumed under this Operating Agreement of the types and in the amounts hereinafter provided:

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

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

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

D. When Operator returns this Operating Agreement, signed by Operator, to Department for signature, Operator shall provide Department with a certificate of insurance evidencing that Operator has obtained all insurance coverage in accordance with this Operating Agreement. A copy of the certificate of insurance shall be attached to this Operating Agreement as Exhibit D. Failure to provide a certificate of insurance at the time of Operator's execution of this Operating Agreement shall render this Operating Agreement null and void. The certificate of insurance shall provide for thirty (30) days notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Operating Agreement. Operator also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies so that Department is continuously in possession of current documentation that Operator has obtained and is maintaining in full force and effect all insurance required under this Operating Agreement. Operator also shall, upon request, provide Department with copies of each policy required under this Operating Agreement certified by the agency or underwriter to be true copies of the policies provided by Operator. The Operator shall not allow any contractor or subcontractor to engage in any activity on the Premises without first submitting to Department a current certificate of insurance showing that the contractor or subcontractor has obtained insurance coverage in accordance with the requirements of this Operating Agreement. Operator shall deliver the certificates to Department's address as provided in Paragraph 34 of this Operating Agreement.

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

F. Should this Operating Agreement be renewed after one (1) year and the Operator remain at the Site, the limits of insurance policies described in this Paragraph shall be reviewed by Department and Operator every two (2) years. Operator shall increase the limits of said policies to meet changed circumstances including, but not limited to, changes in the United States Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

## **25. ASSIGNMENT**

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

## **26. SUB-OPERATORS**

A. Operator shall not enter into sub-operating agreements with outside entities for the performance of any of its obligations under this Operating Agreement, except that Operator may enter into sub-operating agreements with outside entities for the operation of a gift shop, if the



Department is able to provide Operator with space for a gift shop. Before Operator may allow a sub-operator to begin to operate or use the Indian Village in such a way, both the Operator and the sub-operator must sign a sub-operating agreement, which shall be subject to Department's written approval prior to taking effect. In no event will the Department and any sub-operator have any contractual relationship by virtue of the sub-operator's relationship to Operator. During the Term of this Operating Agreement, Operator shall indemnify the Department and assume all responsibility for all acts/omissions of any sub-operator and for its compliance with respective sub-operating agreement.

## **27. BANKRUPTCY**

In the event the Operator enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Operator agrees to furnish written notification of the bankruptcy to the Department with a copy to the Attorney General's Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy.

## **28. TERMINATION, EXPIRATION, AND SUSPENSION OF OPERATIONS**

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

- (i) In the event of Operator's failure to (a) obtain and maintain all the insurance coverage required to be obtained and maintained under this Operating Agreement or to provide Department with certificates of insurance documenting that Operator has obtained and is maintaining such insurance coverage; (b) provide Department with current certificates of insurance showing that its contractors or subcontractors have obtained and are maintaining insurance coverage in accordance with the requirements of this Operating Agreement; or (c) pay when due any payments or other sums required to be paid by Operator hereunder; or (d) correct any violation described in a notice or summons issued to Operator under Paragraph 15 of this Operating Agreement, and a continuation of such failure under (a), (b), (c), or (d) above for a period of ten (10) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof; or
- (ii) In the event of Operator's failure to perform or comply with any of the other covenants, agreements, and conditions herein contained and a continuation

of such failure for a period of thirty (30) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof.

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

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

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

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

- (i) All payments accrued to the date of such expiration or termination and;
- (ii) The cost of making all restoration, renovation, improvement, and repairs required to be made by Operator hereunder and of performing all covenants of Operator relating to the conditions of the Indian Village, including any improvements thereon during the term and upon expiration or sooner termination of this Operating Agreement. This cost is to be deemed, prima facie, to be the cost estimated by an architect or contractor selected by Department or the amounts actually expended or incurred thereafter by Department.

F. Operator shall, at the direction of Department, immediately suspend, delay, or

interrupt Operator's operation of all or any part of the Indian Village for such period of time as Department may determine to be appropriate to protect the Indian Village and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Operator's failure to perform any of the covenants, agreements, and conditions contained in this Operating Agreement, provided that Department has determined that the continuance of the operation of the Indian Village may detrimentally impact the Indian Village and/or the health, safety, and welfare of persons on site. Operator hereby waives any claim, and Department shall not be liable to any party claiming through Operator, for damages 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.

## **29. CREATION OF LIENS OR ENCUMBRANCES BY OPERATOR**

A. Operator shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage, or other encumbrance upon any interest of Department in the Indian Village or in the buildings or Improvements thereon; it being agreed that should Operator cause any alterations, rebuilding, replacements, changes, additions, Improvements, or repairs to be made to the Indian Village or the buildings or labor performed or material furnished therein, thereon, or thereto, neither Department nor the Indian Village shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such alterations, rebuilding, replacements, changes, additions, improvements, repairs, labor, and material, shall be made, furnished, and performed at Operator's expense, and Operator shall be solely and wholly responsible to the contractors, laborers, and materialmen furnishing and performing such labor and material.

B. If, because of any act or omission (or alleged act or omission) of Operator, any mechanic's or other lien, charge, or order for the payment of money shall be filed against the Indian Village, any buildings, or any Improvements thereon, or against Department (whether or not such lien, charge, or order is valid or enforceable as such), Operator shall, at its own cost and expense, cause the same to be cancelled and discharged of record or bonded within ten (10) days after notice to Operator of the filing thereof.

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

## **30. SOLICITATION**

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

**31. AMENDMENTS**

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

**32. ENTIRE AGREEMENT**

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

**33. CONTINUATION OF TERMS**

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

**34. NOTICES**

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

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

Operator: (Winning Bidder's Address)

**35. SUPERSEDES**

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

**36. INDEPENDENT PRINCIPAL**

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

**37. WAIVER**

Failure of either party to complain of any act or omission on the part of the other party, no matter how long same may continue, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of breach of any provision of this Operating Agreement shall be deemed waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Operating Agreement or by operation of law, either at law or in equity, by reason of a breach by the other party shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two or more or all of such rights and remedies may be exercised at the same time. Acceptance by either party of any of the benefits of this Operating Agreement, with knowledge of any breach thereof by the other party, shall not be deemed a waiver by the party receiving the benefit of any rights or remedies to which it is entitled hereunder or by law.

**38. SUCCESSION AND BINDING AGREEMENT**

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

**39. SEVERABILITY**

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

**40. HEADINGS**

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

**41. NO DISCRIMINATION - AMERICANS WITH DISABILITIES ACT**

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

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

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

#### **42. GOVERNING LAW**

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

#### **43. NO THIRD PARTY BENEFICIARIES**

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

#### **44. NEGOTIATED DOCUMENT**

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

#### **45. PREVAILING WAGE ACT**

Without limiting the scope of any other provision of this Operating Agreement, Operator agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150. Operator also agrees to comply with 42 USC, Section 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and Section 9604 (g)(1), the Operator must comply with the Federal requirements.

The Operator's signature on this Operating Agreement is a guarantee that neither (Winning

Bidder) nor any contractors of (Winning Bidder) may employ to perform work required under this Operating Agreement has been suspended or debarred by the Commissioner, Department of Labor for violation of the Prevailing Wage Act, P.L. 1963, Chapter 150.

#### **46. CORPORATE RESOLUTION**

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

#### **47. ATTACHMENTS**

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

Exhibit A – Request for Proposal

Exhibit B – (Winning Bidder's) Bid Proposal

Exhibit C – Map of Indian Village

Exhibit D – Certificate of Insurance

Exhibit E – Corporate Resolution

Exhibit F – Certificate of Incorporation as a non-profit corporation

Exhibit G – Certificate of Standing (Secretary of State)

Exhibit H – (potentially) IRS Determination letter

#### **48. EXEMPT ORGANIZATION**

A. Operator shall, during the Term of this Operating Agreement, comply with the definition of an exempt organization as defined in Section 501(c)(7) of the Internal Revenue Code of 1954 as amended and comply with all provisions of said Code and regulations promulgated thereunder in order to maintain said exempt status. If annual revenue is \$25,000 or greater, Operator shall, prior to the Effective Date and annually on the anniversary thereof, submit to Operator determination letters from the Internal Revenue Service relating to Operator's exempt status and compliance with pertinent statutes and regulations.

B. Prior to the Effective Date hereof, Operator shall submit to Department a certified copy of Operator's current Certificate of Incorporation as a non-profit corporation. Operator shall

not amend, modify or otherwise change the Certificate of Incorporation without first submitting the proposed amendment, modification or change to Department for comment. Department shall have a period of thirty (30) days to review any proposed amendment, modification or change before same can become effective.

C. Operator shall, prior to the Effective Date hereof and annually on the anniversary thereof, submit to Department a Certificate of Standing issued by the Secretary of State.

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

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

By: \_\_\_\_\_  
Amy Cradic, Assistant Commissioner  
Natural and Historic Resources

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

**ATTEST:**

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

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



**OPERATOR**

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

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

**ATTEST:**

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

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

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

Attorney General  
State of New Jersey

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

Deputy Attorney General

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