

**STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES LEASE
TO OPERATE A KAYAK RENTAL CONCESSION AT
KELLEYS ISLAND STATE PARK**

This lease (the "Lease") is entered into by and between the State of Ohio, acting by and through the Director of the Department of Natural Resources, hereinafter referred to as the "Department", and _____ with an office at _____, hereinafter referred to as the "Concessionaire",

WITNESSETH:

WHEREAS, the Department of Natural Resources has provided certain facilities for the use and benefit of the public in areas under the administration of the Division of Parks and Watercraft, and

WHEREAS, the Department is authorized by Sections 1501.09 and 1501.10 of the Ohio Revised Code ("R.C.") to lease for the operation of such public service facilities, and with the entity which submits the highest and best bid, and

WHEREAS, the Director of the Department of Natural Resources of the State of Ohio, hereinafter referred to as the "Director", has determined it to be in the public interest to lease with the Concessionaire for the purpose of assuring highly competent facilities, in order to furnish recreational opportunities to the public of the highest quality obtainable and at a reasonable cost.

NOW THEREFORE, for the purpose of providing this service to the public, upon the terms and subject to the conditions hereinafter set forth, but subject to the laws of the State of Ohio and applicable orders, rules and regulations of the departments, divisions, or agencies thereof, the Department leases to the Concessionaire and the Concessionaire leases from the Department, the properties hereinafter described.

1. PROPERTIES UNDER LEASE:

The facilities hereby made subject to this Lease are:

- A. Those locations as are now existing for the purpose of providing the services herein specified to be furnished which are hereinafter called the "Properties". The Properties as shown in **ATTACHMENT A** furnished by the Department are located in Kelleys Island State Park and described as follows:
 - 1. Assigned land at Kelleys Island State Park on the west end of the Lake Erie beach, approximately 30 feet by 75 feet.
 - 2. Areas of the Park as mutually agreed upon between the Concessionaire and Park Manager.

- B. The Properties include the right to use the service road, loading facilities, sidewalks, and non-restricted parking areas, subject, however to the terms and conditions of this Lease and to reasonable rules and regulations or other conditions for the use hereof as may be prescribed from time to time by the Department or its Divisions. The Department reserves the right to increase or decrease the number of or alter any of the facilities provided when it is determined by the Department that the public interest will be better served thereby.
- C. The rights and privileges granted by this Lease do not give the Concessionaire exclusive rights over all services offered to the public. The Department reserves the right to issue permits relating to special events in the area surrounding the Properties under this Lease or in any other area of the park provided the public will be better served thereby. The park manager will make every effort to accommodate the interests of the Concessionaire when issuing such special event permits.

2. **TERM:**

- A. The term of this Lease shall commence upon execution and shall end at the close of business on **December 31, 2027**, unless sooner terminated under the provisions of this Lease or by the mutual written agreement of the Department and the Concessionaire.
- B. At the expiration of the original term, the Director may, at his/her option, renew the Lease for a period not to exceed four (4) years.

3. **TIMES OF OPERATION:**

- A. The Concessionaire shall operate the concession each and every day of the specified operating period, except scheduled dates and hours that may be changed by mutual written agreement. The minimum operating season and minimum daily hours of operation are:
Memorial Day Weekend through Labor Day Weekend:
Thursday through Sunday 11:00AM – 5:00PM
- B. The concession may be closed during inclement weather conditions, and at other times upon the approval of the park manager or his/her designee. The Concessionaire shall reopen the concession if the weather should clear, and the public would require the services.
- C. The above schedule is intended to establish only minimum guidelines regarding times of operation. Certain circumstances may necessitate extending or shortening the operating seasons for the various facilities. In any event, season and hours of operation will be subject to review and approval by the Department or its Division of Parks and Watercraft.

4. RENT:

A. The Concessionaire, for and in consideration of the Lease herein granted, shall pay directly to the Division of Parks and Watercraft, Concessions Section, 2045 Morse Road, A-2, Columbus, Ohio 43229-6693, no later than the **fifteenth (15th) day of each month** an amount equal to the total of the following categorical percentage calculations of gross receipts received during the preceding calendar month:

Kayak Rental	%
All Other Receipts:	%

B. Method of Payment: The Concessionaire shall directly wire payments to the State Treasurer's Office into the account designated by the Department, so that funds are available before the close of business on the 15th day of the month. A dated receipt shall promptly be provided from the Concessionaire to the Department's Columbus office as directed by the Department.

C. If monthly receipts report as provided in Section 8 below are not delivered to the Department as directed by the Department or if monthly payments are not received by the Department or State Treasurer, as appropriate, in accordance with the above schedule on or before the **fifteenth (15th) day** of each operating month, then a late penalty fee of **\$10.00** per day shall be added to the amount due.

D. "Gross Receipts" shall be the total amount of cash or credits received by the Concessionaire from all business, including the total sale amount of consigned items, resulting from the terms of this Lease. Ohio Sales Tax, writing fees for departmental licenses (hunting, fishing, watercraft) and Federal Excise Tax on those items subject to it, are exempt from the gross receipts for fee purposes.

E. Gross receipts as defined in reference to revenue derived from any and all subleased or subcontracted services, such as vending machines, offered on or about the Properties, shall mean total dollar sales derived from the operation of said subleased or subcontracted services, as opposed to commissions received by the Concessionaire.

5. BOND FOR PERFORMANCE:

A. The Concessionaire shall, as a condition precedent to any rights under this Lease, furnish a surety bond, an irrevocable Letter of Credit, or an assignable Certificate of Deposit in the amount of **\$5,000.00**, with surety to be approved by the Department, conditioned to ensure the faithful performance of this Lease and which surety shall remain in full effect throughout the term of this Lease, and thereafter so long as there are unfulfilled obligations of the Concessionaire.

B. After the first season of operation, the amount of said surety may be adjusted to provide reasonable coverage at the option of the Department.

6. **SCOPE:**

- A. The Concessionaire agrees to operate a kayak rental concession and shall use the premises for no other purpose than outlined herein, except as may be authorized by the express written consent of the Department, upon terms and conditions herein set forth, each and every day of the operating season, and to keep the facilities open to the public charging reasonable rates established pursuant to Section 7 of this Lease.
- B. In accordance with the terms set forth herein, the service to be rendered by the Concessionaire and the provisions of such service **shall** include the following:
1. Rental of personal “non-motorized” watercraft. A minimum of eight (8) kayaks shall be available for rent during the initial season of operation. Any change from this number of required craft shall be subject to the prior written approval of the park manager. Types and quantities of the boats shall be subject to inspection and approval of the Director and/or Department Natural Resource Officers.
 2. Damaged, leaky, unsound, or otherwise unsafe boats shall not be used. All marine craft and equipment offered for rent by the Concessionaire shall be Coast Guard approved and at all times be maintained in a good, first class, like-new, rentable condition during the term of this Lease. Each craft offered for rent shall be furnished with all items of safety equipment specified by Ohio Laws governing the use and operation of watercraft on state water.
 3. Boats shall not be launched except at landing areas designated for such purpose and shall not be tied, anchored, or stored at any point along the shore other than at said areas. All boats must be stored and secured as directed by the park manager.
 4. The Concessionaire will not rent boats to persons intoxicated or seen or known to be in possession of intoxicating liquor or other illegal substances.
 5. It shall be the responsibility of the Concessionaire, his agents and employees offering boats for rental under this Lease, to provide for each person aboard such rented boat, a personal flotation device which is Coast Guard approved for that person and any other safety equipment and instruction required by the U.S. Coast Guard or insurance industry standards.
 6. The Concessionaire’s personal vehicles shall not be stored in any area included in the Properties at any time during this Lease without the express written consent of the Director.
- C. The Concessionaire, upon compliance with all the provisions herein, **may**:
1. Sell other items, provided the public interest would be better served thereby, subject to the approval of the Director. Items of merchandise or other recreational services

not specified or inferred from the list above to be appropriate for sale, may be offered for sale upon written approval from the Director. The Concessionaire may be directed by the Director to offer for sale items of merchandise not being stocked but considered a normal commodity for such installation.

- D. The Concessionaire shall post and adhere to the hours of operation..
- E. The Concessionaire shall withdraw from sale or use any items disapproved by the Director, including but not limited to merchandise and materials determined by the Director to pose a negative environmental impact. The Concessionaire shall comply with the following special provisions:
1. Intoxicating beverages, including beer with any alcoholic content, may not be sold, dispensed, or consumed under the terms of this Lease without specific written approval from the Director.
 2. The Concessionaire agrees that it will not permit gambling or games of chance upon the Properties, or install, operate, or permit to be installed any device for such purposes, or permit or conduct any activities upon the Properties which are illegal or contrary to good morals or are otherwise objectionable. This paragraph does not apply to lottery games conducted pursuant to the Ohio Lottery Commission as permitted under Chapter 3770 of the Ohio Revised Code. The Concessionaire shall receive annual approval of the Chief of the Division of Parks and Watercraft to offer such lottery games at any time.
 3. Glass containers are not permitted on beaches. Concessions operating near a bathing beach shall operate in such a manner as to not allow glass containers to be removed from the Concession premises.
- F. The Concessionaire shall furnish and maintain all buildings, structures, and a sufficient amount of movable equipment, including, but not limited to showcases, retail displays, approved cash registers with recording devices, safety equipment, and such other equipment as may be necessary to operate the concession(s) under this Lease, except such buildings, structures, and equipment as have been provided by the Department.
- G. The Concessionaire shall accept, as payment by customers, one or more of the major credit cards normally accepted in the retail industry. Thereafter, the Concessionaire shall pay all applicable service charges of the credit card company. The Concessionaire agrees to report the full amount of sales from such credit cards as gross receipts and all credit card sales must be rung on the register when the sale is made and reported as sales at that time. The Concessionaire shall not advertise this service on the premises other than by a small counter or wall sign showing credit cards accepted.

- H. At the Department's discretion, the Concessionaire may be required to accept as payment by customers, the Ohio State Parks Gift Cards sold by the Department. Money redeemed for gift cards by the Concessionaire shall be reimbursed to the Concessionaire by the Department, in a manner directed by the Department.
- I. At the Department's discretion, the Concessionaire may be required to sell the Ohio State Park gift cards. All revenue received from the sales of said gift cards shall be remitted to the Department in a manner directed by the Department.
- J. The Concessionaire shall not sell gift cards or gift certificates, other than the Ohio State Parks Gift Cards referenced above, without written approval from the Department.
- K. The Concessionaire may be required to participate in the Department's rewards program, at the Department's discretion, so long as it is continued by the Department.
- L. The Concessionaire shall at all times keep the Department informed of its business address, email address and telephone number, and shall promptly inform the Department of any change of address, email address and/or telephone number on a year-round basis. The Concessionaire shall, at its sole cost and expense, provide a business telephone by which the Concessionaire may be reached during regular business hours. Facility pay phones are unacceptable for use as business phones. The Concessionaire shall provide to the Department, and update as necessary, a list of on-site supervisory employees and their phone numbers to enable the park to reach such staff in the case of an emergency.

7. **RATES AND PRICES:**

- A. The Concessionaire shall keep at all times on public display, the prices, rates, and charges which may be charged for the sale of goods and services to the public. The maximum prices charged for services shall be no greater than a written schedule thereof, submitted to and approved by the Director prior to the initial opening date of the concession and by March 1st of each subsequent year of operation.
- B. The Concessionaire agrees to comply with all statutes and all rules of the Division of Parks and Watercraft which provide for reduced rates and fees on certain recreational facilities, equipment or related activities for persons who are holders of a "Golden Buckeye Card." Unless otherwise provided by said statutes and rules, such reduced rates and fees will not apply to such items as automatic vending machines and sales of goods at concession stands. Typically, a ten percent (10%) reduction in rates and fees will apply to the rental of recreational equipment such as rental of boats and dock rentals. This is not exclusively indicative of all applicable reduced rates and fees but is provided to give an example of certain items.

8. REPORTS AND RECORDS:

- A. The Concessionaire shall keep true, accurate, and complete records of all its operations under this Lease, including all receipts and disbursements of money by it. Records, reporting forms, transaction documentation, and accounting methods shall be in such form and kept in such manner as approved by the Director and as directed in the Departmental Concessionaire's Manual, effective at the time this Lease is entered into and any subsequently revised versions thereof. All books, accounts, records, and operations of the Concessionaire shall be open at all reasonable times for inspection and copying by the Department. The Department reserves the right to take custody of any records any time probable cause is shown. Concessionaires whose offices are located outside of the State of Ohio must make the above referenced records available in the State of Ohio upon request of the Department. The Department reserves the right to take custody of any records any time probable cause is shown. The Concessionaire shall furnish and use a suitable cash register or other method of accounting for sales as approved by the Director, and according to the guidelines as specified in the Departmental Concessionaire's Manual. All accounting records must be retained for inspection by the Department throughout the term of this Lease and for a period of three years subsequent.
- B. A separate checking account shall be opened by the Concessionaire for the operations covered under this Lease. All revenues shall be deposited into, and all expenditures shall be paid from this account. This account is not to be used for personal or any other purposes.
- C. The Concessionaire shall furnish the Department monthly revenue statements, as outlined in the Departmental Concessionaire's Manual, in such form as approved by the Director, showing all income for the preceding month, by the **twentieth (20th) day of each month.**
- D. The Concessionaire shall furnish to the Department, promptly after the close of each fiscal year, a profit and loss statement for the operations under this Lease.
- E. The Concessionaire shall furnish to the Department upon request a copy of Schedule C or other schedules of the Federal Income Tax Return pertaining to the operation of the facilities covered under this Lease.
- F. The Concessionaire shall use its best efforts to follow recognized, modern business practices to the end of providing efficient and adequate services the public at fair and reasonable rates. Prompt and timely reporting as required by (c) and (d) above is of the essence of this Lease.

9. UTILITIES:

- A. No utilities are available upon the Properties. The Concessionaire, at its option, may provide at its sole cost and expense, a well muffled generator, subject to the approval of the park manager.

10. CONDITION OF FACILITIES UNDER LEASE:

- A. The Concessionaire shall accept the concession premises "as is" in their presently existing condition.
- B. The Concessionaire shall be solely responsible for:
 - 1. Seeing that the buildings, equipment, and surrounding Properties, occupied under this Lease are kept free from debris and in a clean and sanitary condition at all times in conformity with the rules and regulations pertaining to sanitation and public health.
 - 2. The disposal of rubbish, refuse, garbage, and debris from the Properties, as may be mutually agreed upon between the park manager and Concessionaire. All refuse shall be stored in approved trash receptacles. The Properties shall be kept neat and orderly so as not to cause a nuisance. The Concessionaire shall be responsible for the daily pick-up of litter and debris in the in the immediate vicinity of Properties under this Lease.
 - 3. Any renovation or upgrades to the Properties deemed necessary by the Concessionaire and approved by the park manager.
 - 4. Removing any personal property from the Properties under this Lease at the end of the operating season. Any equipment owned by the Concessionaire and left on the Properties during the non-operating season and any resulting damage that may occur thereto shall be the sole responsibility of the Concessionaire.
- C. The Department shall be responsible for all grass mowing in and around the Properties.
- D. The service rendered by the Concessionaire under this Lease shall at all times be orderly and sufficient to meet the reasonable demands of the public.
- E. The storage of gasoline, oils and lubricants shall comply with all applicable laws, rules, and regulations. Storage of used materials shall meet state and federal standards to include secondary containment with regular and proper disposal. Any containers used for the temporary storage of gasoline shall be spill resistant and OSHA approved, and stored outside public view.
- F. Due to the Nature of lake water levels, the Concessionaire shall be totally responsible for removal of its equipment, merchandise, supplies and all other personal property from the Properties under this Lease in the case of flooding.
- G. The Director has the right to object to the service or any particular condition of the Properties and order the unsatisfactory service or condition to be corrected; if such action is necessary to protect and maintain the public health, safety, and welfare it shall be done immediately.

11. MAINTENANCE RESPONSIBILITIES:

- A. Except as to loss or damage caused by fire or other casualty insured against, or in the case of uninsured property, loss or damage resulting from windstorm, other natural casualty, or fire not resulting from negligence or fault of the Concessionaire, its agents, employees, assignee, subcontractor, sublessee, or licensee, the Concessionaire shall provide at its expense all maintenance and repairs needed to keep and maintain the whole of the Properties and appurtenances in good, rentable condition at all times during the term of this Lease and shall replace items as required under this Lease. "Good, rentable condition" is intended to mean a condition that the typical visitor would deem acceptable and equivalent to conditions found in similar facilities elsewhere.
- B. The Department shall be responsible for all rebuilding, restoration and replacement of Department property necessitated by fire, windstorm, or other natural casualty not resulting from the negligence or intentional act of the Concessionaire, its agents or employees, in accordance with Section 23 of this Lease. The Concessionaire shall be responsible for all rebuilding, restoration and replacement of Department property necessitated by casualty resulting from the negligence or intentional act of the Concessionaire, its agents, or employees.
- C. The Concessionaire shall, at its cost and expense, provide all routine repairs and maintenance required to preserve the Properties and equipment (if applicable) furnished by the Department under this Lease. Such maintenance and repairs shall include, but shall not be limited to:
 - 1. Electrical wiring and plumbing necessitated by additional equipment of the Concessionaire;
 - 2. Maintenance, repair and replacement of equipment or other structures provided by the Concessionaire;
 - 3. Maintenance, repair and replacement of equipment owned and provided by the Concessionaire.
- D. The Concessionaire shall be responsible for all rebuilding, restoration and replacement of Department property necessitated by casualty from the negligence or intentional act of the Concessionaire, its agents, or employees.
- E. The Concessionaire shall provide written notice to the Department immediately upon discovery of deterioration of any of the Properties where repair of such deterioration is the responsibility of the Department as herein provided.

12. INSPECTIONS

- A. The Department may, at all reasonable times and without unreasonably interfering with the operations being conducted upon the Properties, enter into and upon such Properties to examine the condition thereof, and to determine whether the Concessionaire is conducting its operations thereon in compliance with the terms and provisions of this Lease.

13. BUILDINGS, OTHER STRUCTURES, EQUIPMENT AND SUPPLIES

Any buildings or other structures erected by the Concessionaire upon the Properties shall be pre-approved by the Director and built to standards approved by the Director.

Such buildings, or other structures may be removed by the Concessionaire upon termination of this Lease, provided they are removed within forty-five (45) days after the date of termination of this Lease and provided all payments due or to become due under this Lease shall have been paid. If the structures are not removed within forty-five (45) days after the date of termination, or if payments are not made, the structures will become and remain the property of the Department, or, at the election of the Department, such property shall be removed by and disposed of by the Department and the Concessionaire shall reimburse the Department for any and all removal and disposal costs associated therewith. The Department is not required to offset the Concessionaire's debts to the Department, if any, by the estimated value of such property.

14. IMPROVEMENTS AND ALTERATIONS:

- A. The Concessionaire shall not make or cause to be made any alterations, additions, or improvements, or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings, or make any changes or additions to the concession premises without first obtaining the Department's written approval and consent. The Concessionaire shall present to the Department plans and specifications for such work at the time approval is sought.
- B. All alterations, decorations, additions, and improvements made by the Concessionaire, shall remain the property of the Concessionaire during the term of this Lease. Such alterations, decorations, additions, and improvements shall not be removed from the Properties prior to the end of the term of this Lease without prior consent in writing from the Director. Upon expiration of this Lease, the Concessionaire shall remove its trade fixtures and all such alterations, decorations, additions, and improvements as the Director shall direct, and shall restore the Properties to the same condition as they were at the commencement thereof, ordinary wear and tear and damage by unavoidable casualty excluded. All alterations, decorations, additions, and improvements not directed to be removed shall, upon expiration of the Lease term, be and become the property of the Department. Notwithstanding the above, at any time during the term of this Lease or at

termination, the Concessionaire shall be allowed to remove any identifying characteristics, trade fixtures, equipment, signs, trademark and/or copyright items.

15. CONDITION AND SURRENDER OF PROPERTY:

- A. The buildings, rooms, locations, equipment, and all parts thereof, which are the property of the Department shall remain the property of the Department. Upon termination of this Lease, whether by lapse of time or otherwise, or upon the exercise of the Director of the power to reenter and repossess the leased premises without terminating this Lease, as herein provided, the Concessionaire shall at once surrender the possession of the same to the Department in good order. If the Concessionaire does not at once surrender possession of the same, the Department may forthwith reenter and repossess the premises without being guilty of or liable for trespassing or of forcible entry or detainer and without incurring liability to the Concessionaire for loss or damage to the Concessionaire's property. In the event that the Department does so reenter and repossess the premises as provided for hereunder, the Concessionaire shall nevertheless remain liable for any and all damages and expenses incurred by the Department as a result of termination of this Lease and/or reentering and repossessing the premises.
- B. Property of the Concessionaire must be removed from the premises within ten days after any termination, provided all payments due from the Concessionaire to the Department have been paid in full, unless otherwise authorized by the Director. If any property of the Concessionaire is not removed within 10 days of termination, or payment is not made within 10 days, such property shall become and remain the property of the Department, or, at the election of the Department, such property shall be removed by and disposed of by the Department and the Concessionaire shall reimburse the Department for any and all removal costs associated therewith. The Department is not required to offset the Concessionaire's debts to the Department, if any, by the estimated value of such property.
- C. Alterations, decorations, additions and improvements, however, can only be removed in accordance with Section 16(B).

18. STANDARDS OF PERFORMANCE:

- A. The Concessionaire shall be responsible for assuring that the concession operations authorized by this Lease provide services to the best standards prevailing for similar businesses.

19. RELATIONSHIP OF PARTIES AND CONCESSIONAIRE'S EMPLOYEES:

- A. Concessionaire shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Concessionaire will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes,

including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

- B. While Concessionaire shall be required to render services described hereunder for the Department during the term of this Lease, nothing herein shall be construed to imply, by reason of Concessionaire's engagement hereunder as an independent contractor, that the Department shall have or exercise any right of control over Concessionaire with regard to the manner or method of Concessionaire's performance of services hereunder.
- C. Ohio Retirement System Retirant. If the Concessionaire is a PERS Retirant, as defined by R.C. § 145.38, Concessionaire shall notify the ODNR of such status in writing prior to the commencement of Work. Notices pursuant to this Paragraph c shall be sent to the ODNR, Director of Human Resources by mail at 2045 Morse Rd., Building D-2, Columbus, Ohio 43229, by fax at 614-265-7995, or by email at hr@dnr.state.oh.us. The ODNR shall not be responsible for any changes to Concessionaires' retirement benefits that may result from entering into this Lease. Concessionaire acknowledges and agrees any of its individual employees providing personal services under this Lease are not public employees for purposes of R. C. Chapter 145. The ODNR will not make contributions to the public employees' retirement system on behalf of any individuals employed by the Concessionaire, or its sub-contractors or other agents. The Concessionaire certifies that it is a business entity with five or more employees as defined at R.C. § 145.037 (A) for the purposes of the application of R.C. Chapter 145, or that it has completed the necessary forms and returned them to the ODNR if the Concessionaire is a business entity with no more than four (4) employees.
- D. Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- E. It is fully understood and agreed that Concessionaire is an independent contractor and neither Concessionaire nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Department or the State of Ohio.
- F. For any employees or subcontractors working onsite at any Department location, Concessionaire understands that these employees or subcontractors may be subject to a background check conducted by the Department. Such a background check may include criminal records, tax records, driving records, verification of academic credentials or degrees. The Department reserves the right to refuse access to the job site at any time if the Department determines in its discretion that Concessionaire's employee or subcontractor presents a potential security threat or if there is a change in the results of the background check at any time during the term of the Lease.
- G. The Concessionaire shall employ only competent and qualified employees who will keep themselves neat and clean and will accord courteous and competent treatment and service to all guests and patrons. The Concessionaire's employees shall be properly trained in their duties and must be adequate in number and quality to provide prompt and efficient service

to the public and to properly carry out all housekeeping and maintenance and all other responsibilities associated with the operation of the Properties. Whenever the Director notifies the Concessionaire that its manager of the Properties or any employee is deemed by it to be incompetent, disorderly or unsatisfactory, the Concessionaire shall discharge such person within twenty-four (24) hours provided, however, that such discharge does not violate any outstanding union contract or Ohio or Federal employment regulation, in which event such discharge shall take place in accordance with said contracts and regulations. In the case of any managerial or supervisory personnel deemed unsatisfactory by the Director, the Director shall give written notification to the Concessionaire stating the reason(s) for discharge. The Concessionaire shall have thirty (30) days to replace supervisory personnel and sixty (60) days to replace the manager. Any person so discharged shall not be reemployed upon the Properties except with the written consent of the Director.

- H. In the event the Director specifies uniforms to be worn by persons working on the Properties, the Concessionaire shall furnish the necessary uniforms or require the employees to furnish them and shall require their use in accordance with the requirements of the Department. Any uniforms so required shall be of the type ordinarily worn by employees doing like work in similar places of business.

20. ASSIGNMENTS AND SUBLEASES:

- A. The Concessionaire shall not assign this Lease in whole or in part, nor sublet all or any part of the Properties, such as vending and game machines, without first obtaining the written consent of the Director. In the event the Director consents to any such assignment or sublease, the Concessionaire shall remain primarily liable for the payments herein provided, unless expressly provided otherwise by the written consent of the Director. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting created by operation of law. If this Lease is assigned, or if the Properties or any part thereof is underlet or occupied by anybody other than the Concessionaire without the consent of the Director as hereinabove provided, the Department may collect rent from the assignee, undertenant, or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, undertenant or occupant as the Concessionaire, or a release of the Concessionaire from further performance by the Concessionaire of the terms contained in this Lease.
- B. Notwithstanding any assignment or sublease, the Concessionaire shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants, and conditions of this Lease, including payment terms as specified herein based on total dollar revenues, including the total sale amount of consigned items.

21. DEFAULT:

- A. The Concessionaire shall be in default if it:

1. Shall fail to pay any installment of rent within ten (10) days after it becomes payable and if such default shall continue for five (5) days after receiving written notice from the Department demanding payment;
2. Shall fail to maintain in full force and effect any insurance or bond required by the terms of this Lease or Ohio law;
3. Shall fail to maintain adequate standards in providing service required by this Lease, or in any manner shall fail to provide adequate service to the public;
4. Shall fail to observe and perform any other provision, covenant or condition of this Lease by the end of fifteen (15) days after written notice from the Department specifying such failure;
5. Shall abandon or vacate the Properties or any part thereof during the term of this Lease;
6. Shall voluntarily or involuntarily be subject to bankruptcy proceedings;
7. Shall make an assignment for the benefit of creditors or shall enter into a composition agreement with its creditors, or if the interest of the Concessionaire in the Properties is attached, levied upon, or seized by legal process;
8. Shall assign this Lease in violation of the terms hereof;
9. Shall under-report revenue on monthly income statements, or any other financial reports, or shall misrepresent the source of revenue in such reports furnished to the Department;
10. Shall fail to remain authorized to do business of the type and nature required in this Lease in the State of Ohio; and/or
11. Its principal(s) or officers(s), if the Concessionaire is a corporation, or its partners(s) if the Concessionaire is a partnership, are convicted of any theft offense; then, and in any of such cases, immediately or at any time thereafter, at the option of the Director, the Department shall have the right to immediately reenter and take possession of the Properties, and, as the Director elects, either:
 - a. Declare this Lease to be terminated, in which event this Lease, all rights of the Concessionaire, and all duties of the Department shall immediately cease and terminate and the Department may possess and enjoy the Properties as though this Lease had never been made, without prejudice, however, to any and all rights of action against the Concessionaire the Department may have for rent, damages, or breach of covenant, in respect to which the Concessionaire shall remain and continue to be liable notwithstanding such termination; or

- b. Relet the Properties, or any part thereof, for such term or terms and on such conditions as the Department determines for and on behalf of the Concessionaire, for the highest rental reasonably obtainable in the judgement of the Director, which reletting shall not be considered as a surrender or acceptance back of the Properties or a termination of this Lease, and recover from the Concessionaire any deficiency between the amount of rent, additional rent and all other charges payable under this Lease, plus any expenses incurred by the Department in connection with repairs, or alterations the Director deems necessary or appropriate to make in connection with such reletting, all costs incurred in actually reletting the Properties and sums expended for reasonable attorney's fees; but the Director shall be under no duty to relet the Properties.

22. RIGHT OF ENTRY, INSPECTION, PROTECTION OF PROPERTY, AND EASEMENT BY PUBLIC:

- A. The Department reserves the right to enlarge, close or reduce the size of any area for the purpose of improvement, repair, construction, or any other legitimate purpose.
- B. The Department and its employees together with appropriate public agencies with proper jurisdiction to enforce laws passed for the protection of public health, safety, and welfare shall have full right and power to enter buildings for the purpose of construction, repairs or replacement of buildings and equipment furnished by the Department, inspection, enforcing laws, rules and regulations, and for any other lawful purpose.
- C. The Department, or its authorized representatives, may at all reasonable times and without interfering with the operations being conducted upon the Properties, enter into and upon said Properties to examine the condition thereof, and determine whether the Concessionaire is conducting its operations thereon in compliance with the terms and conditions of this Lease.

23. PROPERTY AT CONCESSIONAIRE'S RISK:

- A. The Concessionaire's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to the Concessionaire, which may be on, in or about the Properties during the continuance of this Lease, or thereafter, shall be at the sole risk and hazard of the Concessionaire. If the whole or any part thereof shall be destroyed or damaged by fire, water, flooding or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or any other cause, no part of said loss or damage is to be charged to or be borne by the Department, unless proximately caused by the Department, its agents or employees, and the Concessionaire hereby agrees to forever hold the Department harmless from and to indemnify the Department against any and all loss, cost, debt, claim, damage, judgment, and/or expense suffered and incurred by the Department in connection with the Properties. Although the Department employs law

enforcement officers as part of its park staff, the Concessionaire, at its sole cost and expense, shall be responsible for any and all security measures it deems necessary in addition to such park staff, including but not limited to charges for security personnel, security alarm systems or security system monitoring. The Department shall be under no obligation whatsoever to provide security for the Concessionaire's property.

24. DESTRUCTION OF PROPERTIES UNDER LEASE:

- A. Except as provided herein, if the Properties are damaged by fire, the elements, unavoidable accident or other casualty not due to the fault or neglect of the Concessionaire, its agents or employees, the Department may, at its own expense, cause the damage to be repaired, although it is under no obligation to do so.
- B. If, by reason of any of the above occurrences not due to the fault or neglect of the Concessionaire, its agents or employees, the Properties are rendered wholly unfit for use by the Concessionaire, or if fifty percent (50%) or greater of the rentable area of the building in which the Properties are a part are damaged or destroyed, as determined by the Department, the Department at its option may either:
 - 1. cause the damage to be repaired at the expense of the Department, or
 - 2. terminate this Lease and the concession hereby created by giving to the Concessionaire, within sixty (60) days of the occurrence, written notice of the Director's election to terminate.
- C. By reason of any of the above occurrences not due to the fault or neglect of the Concessionaire, its agents or employees, the Concessionaire shall, at its expense, clean the facilities and cause any resultant damage to its equipment to be repaired to the extent necessary to resume and continue its normal operation of the Properties, except in the above case where this Lease is terminated. The Department, as noted in Section 14, has no responsibility for repair or replacement of any property of the Concessionaire.

25. LIABILITY AND INDEMNIFICATION OF DEPARTMENT:

- A. All operations by the Concessionaire under this Lease shall be conducted solely at its own risk. The Concessionaire shall take proper safeguards to prevent any and all injuries or damage to employees and property of the Department, to the public and to any other person, property, material or thing, and the Concessionaire alone shall be responsible for any and all damage or injury occurring on or about the Properties resulting from its operations under this Lease. The Concessionaire shall assume, pay and at all times indemnify, protect and save harmless the Department, their agents and employees, from and against any and all claims, actions, damages, liability and expense in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in, upon, or at the Properties under this Lease, occasioned wholly or in part by any act or omission of the Concessionaire, its agents, contractors, employees, servants or lessees. In case the

Department shall, without fault on its part, be made a party to any litigation commenced by or against the Concessionaire, then the Concessionaire shall protect and hold the Department harmless and shall pay all costs and expenses incurred or paid by the Department in connection with such litigation. The Concessionaire shall also pay all costs and expenses that may be incurred or paid by the Department in enforcing the covenants and provisions of this Lease.

- B. The Concessionaire shall at all times during the term of this Contract maintain or cause to be maintained in full force and effect marine general liability insurance with an insurer with a rating of not less than A- VII from AM Best or a comparable rating agency, covering the respective premises and/or operations thereon with the State of Ohio, Department of Natural Resources an additional insured as its interests may appear. Such insurance shall have a limit of One Million (1,000,000.00) per claim or occurrence and Two Million (2,000,000.00) aggregate. The institution furnishing such insurance shall be licensed to do business in the State of Ohio and must be approved by the Director prior to execution. For any claims related to this Lease, Concessionaire's insurance shall be primary. Any insurance or self-insurance maintained by the State, its officers, officials or employees, shall be excess of the Concessionaire's insurance and shall not contribute with it. Concessionaire hereby grants to the State of Ohio a waiver of any right of subrogation which any insurer of said Concessionaire may acquire against the State by virtue of the payment of any loss under such insurance. Concessionaire agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the State has received a waiver of subrogation endorsement from the insurer.
- C. Such insurance may be carried under a blanket policy or policies covering other liabilities and locations of the Concessionaire, or a subsidiary, successor, affiliate or controlling corporation of the Concessionaire. If carried under a blanket policy, each insured should have an individual aggregate limit. The Concessionaire shall furnish to the Department evidence that the insurance referred to in this Section is in full force and effect and that the premiums therefore have been paid. All instruments purchased by the Concessionaire to satisfy the insurance requirements stated above shall carry the requirement that the Director will be notified in writing not less than sixty (60) days prior to the cancellation of any coverages for any reason.

26. ADVERTISING AND PRINTING:

- A. The Concessionaire shall be responsible for all costs and expenses incurred in connection with advertising, promotional, and sales activities, including services and materials for such advertising and promotions.
- B. Materials to be used for printing (i.e., stationery, brochures, post cards, display advertising, and other like materials) in connection with the operation of this business, including websites and social media sites or any advertising in any manner or form, whether on or about the premises or elsewhere, or in any newspaper or otherwise, shall be submitted for

review on an annual basis or as requested by the Director. The Concessionaire shall not display, distribute or advertise anything that has been disapproved by the Director.

- C. To the extent Concessionaire elects to include information about the State Park and/or ODNR on its website and in other public communications, including information about Park hours of operation, events, and rules and policies, Concessionaire shall ensure that the information is accurate and up to date. ODNR will notify Concessionaire if it becomes aware that any of Concessionaire's communications contain false or inaccurate information about the State Park and/or ODNR, and Concessionaire shall correct the information in its communications within five (5) days of receiving such notice.

27. SIGNS:

- A. Signs or advertisements placed by the Concessionaire upon any property of the Department or upon any vehicle used by the Concessionaire directly in the concession under Lease shall be subject to the Department's approval. The Department shall have the right, without notifying the Concessionaire, to remove any sign or signs that do not meet the approval of the Department.
- B. The Concessionaire further agrees to maintain any sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved, in good condition and repair at all times.

28. NONDISCRIMINATION:

- A. Pursuant to R.C. 125.111 and the State's policy, Concessionaire agrees that Consultant, any subcontractor, and any person acting on behalf of Concessionaire or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the work. Concessionaire further agrees that Concessionaire, any subcontractor, and any person acting on behalf of Concessionaire or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.
- B. Concessionaire agrees that the concession shall be open to the public during the hours of operation without discrimination as to race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

29. COMPLAINTS FROM USERS:

- A. From time to time, it is expected there will be a minimal number of complaints from the public utilizing the Properties relating to the Concessionaire's operation. It is the intent of

both the State and the Concessionaire to resolve each complaint in an expeditious manner so as to preclude a future similar occurrence.

30. COMPLIANCE WITH LAWS AND AGREEMENTS:

- A. The Concessionaire agrees that it shall keep itself fully informed of all laws, ordinances, rules and regulations in any manner affecting its operation of the Properties and facilities and all orders and decrees of bodies and tribunals having jurisdiction or authority over the same. The Concessionaire shall at all times observe and comply with, and cause its agents and employees to observe and comply with such existing and future laws, ordinances, regulations, orders and decrees, and shall protect the Department against any claim or liability arising from any failure to comply.
- B. Obligations of the State are subject to the provisions of R.C. Section 126.07.
- C. The Concessionaire will procure all permits and licenses, pay any and all charges, license fees, and taxes incident to the operation of the Properties and give all notices necessary and incident to the lawful and proper execution of its operations hereunder.
- D. The Concessionaire agrees that it will at all times carry Workers' Compensation protection under the laws of the State of Ohio on all persons employed by it upon the Properties or in connection with its operations thereon, and will pay all premiums or other charges legally assessed therefore, and that it will also comply with all minimum wage, maximum hours, and other laws, rules, and regulations applicable to conditions of employment upon or in connection with the Properties.

31. QUALIFICATIONS OF CONCESSIONAIRE:

- A. The Concessionaire hereby represents and warrants that it is duly authorized to transact, in the State of Ohio, business of the type and nature required for the operation of the Properties and facilities included in this Lease and it will continue to be so qualified during the term of this Lease.

32. JURISDICTION:

- A. Any action at law, suit in equity or judicial proceeding for the enforcement of this Lease or any provision thereof shall be instituted only in the courts of the State of Ohio.

33. CONFLICTS OF LAW:

- A. It is mutually understood and agreed that this Lease shall be governed by the laws of the State of Ohio, both as to interpretation and performance.

34. CONFLICTS OF INTEREST:

- A. Concessionaire, and anyone acting on its behalf, shall not voluntarily acquire any personal interest, direct or indirect, which creates or appears to create a conflict of interest, or is otherwise incompatible or in conflict with the discharge and fulfillment of its functions under to this Lease for the duration of this Lease. Any actual, potential, or apparent conflict of interest shall be immediately disclosed to the Department in writing. ODNR shall determine in its sole discretion, in the light of the actual, potential, or apparent conflict, whether continued performance under this Lease is contrary to the public interest.

35. TIME OF THE ESSENCE:

- A. Time is of the essence in the doing, performance and observation of each and every term, covenant, and condition of this Lease by the Concessionaire.

36. CHANGES IN WRITING ONLY:

- A. This instrument designated "Lease" and the attachments thereto contain the entire agreement of the parties and no change, modification, or waiver in or of the terms, provisions or conditions of this Lease shall be in any way binding on either of the parties hereto unless the same be dated after the date hereof and be in writing and signed by both parties.

37. CAPTIONS:

- A. The captions of the several sections of this Lease are not a part of the context hereof and shall be ignored in construing this Lease. They are intended only as aids in locating and reading the various provisions hereof.

38. SUCCESSORS AND ASSIGNS:

- A. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that as hereinbefore specified no assignment by, from, through or under the Concessionaire, not consented to in writing by the Director, shall vest in the assigns any right, title, or interest whatsoever.

39. SEVERABILITY:

- A. It is understood and agreed by the parties hereto that if any part, term, or provision of this Lease is by the courts held to be illegal or in conflict with any law of the State of Ohio, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Lease did not contain the particular part, term, or provision held to be invalid.

40. NONWAIVER:

- A. Neither a failure by the Department to exercise any of its options hereunder, nor failure to enforce its right to seek the remedies herein provided for in the event of default, nor the acceptance by the Department of any rent accruing before or after any default from the Concessionaire or otherwise, shall effect or constitute a waiver of the Department's right to exercise such option, to enforce such right, or to seek such remedy with respect to that default or to any prior or subsequent default. The remedies provided in this Lease shall be cumulative and shall not in any way abridge, modify, or preclude any other rights or remedies to which the Department is entitled, whether at law or in equity.

41. ADMINISTRATION:

- A. Whenever this Lease refers to the Department or to the Director of the Department of Natural Resources, the Chief of the Division of Parks and Watercraft, or any other Department administrative officer so designated by the Director, may act in his/her stead.

42. FINDINGS FOR RECOVERY:

- A. Ohio Revised Code Section 9.24 prohibits the Department from awarding a contract to anyone against whom the Auditor of State has issued a finding for recovery if the finding for recovery is “unresolved” at the time of award. Concessionaire warrants that it is not now and will not become subject to an “unresolved” finding for recovery under R.C. 9.24 during the pendency of this Lease.

43. ETHICS:

- A. The Concessionaire by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Concessionaire understands that failure to comply with Ohio’s ethics and conflict of interest laws is, in itself, grounds for termination of this Lease and may result in the loss of other contracts or grants with the State of Ohio.

44. CAMPAIGN CONTRIBUTIONS:

- A. The Concessionaire affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

45. DRUG FREE WORKPLACE:

- A. Concessionaire agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none

of its employees or permitted subcontractors engage in the Work purchase, transfer use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

46. AFFIRMATIVE ACTION PROGRAM:

- A. Concessionaire represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to R.C. 125.111(B) and has filed an Affirmative Action Program Verification form with the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.

47. DEBARMENT:

- A. Concessionaire represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or 125.25.

48. SWEATSHOP FREE CERTIFICATION:

- A. The Concessionaire certifies that all facilities used for the production of the supplies or performance of services offered in the lease are in compliance with applicable domestic labor, employment, health, and safety, environmental and building laws. This certification applies to any and all suppliers and/or subcontractors used by the Concessionaire in furnishing the supplies or services described in the Lease and awarded to the Concessionaire.

49. INDEPENDENT CONTRACTORS:

- A. In making and performing under this Lease, the parties are acting and shall act as independent contractors and not that of master and servant or partnership. Neither party is, nor will be deemed to be, an agent, legal representative, joint venture, or partner of the other party for any purpose. Neither party shall have any authority to act for or to bind the other party in any respect, nor shall either party hold itself out as having such authority. Each party agrees to assume complete responsibility for its own employees with regard to federal or state employer's liability, worker's compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements, and other laws.

50. BOYCOTTING:

- A. Pursuant to R.C. 9.76, Concessionaire hereby declares that it is not boycotting any jurisdiction with whom the State of Ohio can participate in open trade, including the nation of Israel, and will not do so during the term of this lease.

51. ENVIRONMENTAL INITIATIVES:

- A. The Concessionaire shall operate the Properties in an environmentally responsible manner. Where practical, the Concessionaire will implement and utilize energy efficient policies, procedures, and products. The Concessionaire shall not use Styrofoam products including cups, plates or take-out containers and shall provide alternatives to plastic products when practical including biodegradable, bamboo, or other environmentally approved straws and swizzle straws at the facilities.

52. ELECTRONIC SIGNATURES:

- A. Any party hereto may deliver a copy of its counterpart signature page to this Lease electronically pursuant to R.C. 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Lease and all duplicate copies are effective upon execution by all intended parties.

CONCESSIONAIRE

**OHIO DEPARTMENT OF NATURAL
RESOURCES**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE