

**STATE OF OHIO  
DEPARTMENT OF NATURAL RESOURCES  
LEASE  
TO OPERATE A RESTAURANT AT  
MALABAR FARM STATE PARK**

This agreement 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 Section 1501.10 of the Ohio Revised Code to lease for the operation of such public service facilities 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. The building, rooms, and locations as are now existing known as the Malabar Farm Restaurant, located in Malabar Farm State Park, hereinafter called the "Properties". The Properties furnished by the Department are located and described as follows:

One restaurant building, including kitchen, dining room, storage areas, and public restrooms;

State-owned equipment as specifically enumerated on the inventory attached hereto and incorporated herein, as "Attachment A". It is agreed upon that the equipment listed in Attachment A and made available during the initial period of this Lease is subject to removal from service with no replacement if the Department is unable or unwilling to replace such equipment which becomes economically unfeasible to repair due to age or other cause.

Area(s) of the Park as mutually agreed upon between the Concessionaire and the 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 to 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 of the Lease and shall end at the close of business on March 1, 2029 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 this Lease for a period not to exceed four (4) years.

3. TIMES OF OPERATION:

The Concessionaire shall operate the concession(s) 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:

Tuesday - Saturday 11:00AM – 8:00PM  
Sunday 11:00AM – 7:00PM

April, May, September, October:

Tuesday – Thursday 11:00AM – 2:30PM  
Friday – Saturday 11:00AM – 8:00PM  
Sunday 11:00AM – 7:00PM

Special Events:

The concession shall be open on Saturday and Sunday of the annual Malabar Farm Maple Syrup Festival on the first and second weekends in March, the Christmas program in December and other special events to coincide with the park calendar.

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 shall be subject to review 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 C-3, Concessions Section, 2045 Morse Rd., 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:

Food and Beverage Sales	___%
Alcoholic Beverages	___%
Gifts and Souvenirs	___%
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.

If monthly receipts reports 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 twentieth (20<sup>th</sup>) day of the operating month, then a penalty fee of \$10.00 per day shall be added to the amount due.

c. "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.

Gross receipts as defined in reference to revenue derived from any and all subleased or subcontracted services, 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:

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 **\$25,000.00**, 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.

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

6. SCOPE:

The Concessionaire agrees to operate the facilities 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 (seven) of this Lease.

- a. The services to be rendered by the Concessionaire and the provisions of such services **shall** include:
  1. The operation of a restaurant for the general public. The food service shall consist of the restaurant providing lunch and dinner (complete menu) during the season of operation as specified in Section 3 of this Lease, banquets as necessitated by public demand, and any other food material necessary or incidental thereto. When available, the Concessionaire shall feature Malabar Farm products on the menu and purchase locally grown and produced products such as meat, eggs, produce and maple syrup. Locally grown and produced products shall be defined as those products grown and produced within a thirty-mile radius. The Concessionaire shall provide high-quality food and food service which in the reasonable opinion of the Department will best meet the needs and reasonable demands of the public. The provision of high-quality food and food service is of the essence of this Lease. It is intended that the food and food service be not only adequate, but that it be of such quality that the dining facilities under this Lease be regarded as good eating places and of such quality whereby most patrons wish to patronize these facilities again. The Concessionaire shall, at its expense, apply for and obtain a valid food vendor's license from the governmental agency with jurisdiction, provide and install complete stocks of food, beverages and other supplies, merchandise and equipment necessary or appropriate for the operation of the Properties, other than that agreed herein to be furnished by the Department, and at all time thereafter during the term of this Lease it shall maintain adequate stocks and supplies thereof.
- b. The Concessionaire, upon compliance with the provisions herein, may:
  1. Sell gifts and sundry items provided the public interest would be better served thereby. The Concessionaire may be directed by the Director to offer for sale items or merchandise not being stocked but considered a normal commodity for such facilities.
  2. Offer off-premise catering. The Concessionaire may utilize areas of the park for off site catering if reserved through the ODNR standard reservation policies and procedures, including without limitation utilizing any applicable reservation systems, applying for and obtaining any necessary permits and paying applicable fees. The Park Manager reserves the right to deny Concessionaire's requests for additional spaces beyond what is outlined in this lease for any reason, including space availability or Concessionaire's failure to comply with applicable policies and procedures. Revenues from food prepared on the Properties and served at park facilities shall be considered in the gross receipts when calculating rent to the State.
  3. Sell alcoholic beverages, subject to the written approval of the Director and all laws and licensing requirements. The Director reserves the right to prohibit the sale of alcoholic beverages from the Properties for any reason, and reserves the right to limit the hours of operation for any reason. The Concessionaire shall be responsible for arranging the transfer of any existing liquor license or to obtain a new license.

At termination of this Lease for any reason, the Concessionaire must transfer its liquor license to the successor concessionaire or relinquish the license, as directed by the Director, and as permitted by the licensing agency. The Concessionaire shall charge no more than the original cost to obtain the license.

- c. The Concessionaire shall post and adhere to the hours of operation of the restaurant.
- d. The Concessionaire shall withdraw from sale or use any items or merchandise which are reasonably 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 or dispensed under the terms of this Lease without specific written approval from the Director.
  - 2. The Concessionaire agrees that it shall 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. The Department reserves the right to disapprove such lottery games at any time.
- e. The Concessionaire shall furnish and maintain a sufficient amount of movable equipment, including, but not limited to showcases, approved cash registers with recording devices, refrigerators, 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.
- f. The Concessionaire shall accept as payment by dining room 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.
- g. 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 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 payphones are unacceptable for use as business phones. The Concessionaire shall provide to the park manager, and update as necessary, a list of on-site supervisory employees and their phone numbers to enable the park to reach such staffs 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 beverages, food and

service shall be no greater than a written schedule thereof including the portion scale, 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 Membership Card." Typically, a ten percent (10%) reduction in rates and fees shall apply to restaurant meals. This list is not exclusively indicative of all applicable or exempted reduced rates and fees, but is provided to give examples 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. 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 Concessionaire shall furnish and use suitable cash registers as approved by the Director and according to the guidelines as specified in the Departmental Concessionaire's Manual. Dated cash register tapes and all other 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 will be deposited into and all expenditures will 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. "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, and Federal Excise Tax on those items subject to it, are exempt from the gross receipts for fee purposes.

e. 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.

f. 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.

g. 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 (e) above is of the essence of this Lease.

9. UTILITIES:

- a. The Department shall furnish all water and sewage treatment necessary for operation of the facility.
- b. The Concessionaire shall be responsible for and shall promptly pay all charges for gas, electricity, telephone, internet or any other utility used or consumed on the Properties on a year-round basis, including but not limited to utilities consumed for security purposes or in connection with maintenance, repair, replacement, or other services to the Properties.
- c. In no event shall the Department be liable for an interruption or failure in the supply of any such utilities to the Properties.
- d. In the event that it becomes necessary to temporarily discontinue any and all fuels consumed for purposes of heating the Properties due to utility cutbacks during the winter heating season, the Concessionaire shall promptly remove all personal property which may suffer damage due to the lack of heat. 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.

10. CONDITION OF FACILITIES UNDER AGREEMENT:

- 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 premises 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. All refuse shall be stored in approved trash receptacles. Trash receptacles shall be paid for at the Concessionaires sole cost and expense. Such area shall be kept neat and orderly so as not to cause a nuisance. The Concessionaire shall be responsible for the daily pick-up of debris that becomes blown or scattered upon the Properties and from the trash receptacles;
  2. the proper storage and disposal of used grease. Used grease for disposal must be stored in containers with secure lids, until such time it is picked up for disposal. Grease shall not be disposed of in the trash receptacle(s) used for solid waste;
  3. the cleaning of grease traps monthly or as otherwise required by the Department;
  4. the cleaning of ventilation duct and hood systems, including fire suppression inspections and servicing, on an annual basis or as required by the Department;
  5. routine cleaning of the Properties. Such routine cleaning shall include, but shall not be limited to:
    - the cleaning of dining room windows inside and outside. Dining room level windows shall be cleaned at least once per week during the season of operation;

- the daily cleaning of the kitchen, kitchen equipment and related areas in accordance with applicable food service laws and rules;
- the cleaning and vacuuming of the facilities;
- the cleaning and maintenance of the public restrooms and employee restrooms in the Malabar Restaurant in a clean and sanitary condition. The Concessionaire shall provide all restroom supplies including but not limited to soap, towels, toilet tissue and cleaning supplies.
- The cleaning of the Properties and all equipment at termination of the lease for any reason, subject to the approval of the park manger. If the Properties are not cleaned adequately as directed by the park manager, the Department or its designee will clean the Properties, and any and all charges for such cleaning shall be borne by the Concessionaire.

c. The service rendered by the Concessionaire under this concession Lease shall at all times be orderly and sufficient to meet the reasonable demands of the public.

d. 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, REPAIR, AND REPLACEMENT FUND:

a. Establishment and handling of the Maintenance. In order to assure that sufficient funds are available for the purposes of satisfying certain maintenance and replacement responsibilities of the Concessionaire, and to ensure the continued operation of the Properties as first class public service facilities, to permit them to serve effectively as part of a group of similar public facilities and not be a detriment thereto, the following amounts shall be placed into the Maintenance, Repair and Replacement accounts for the Malabar Farm Restaurant (the "MR&R Fund"):

1. During the first ninety (90) days of this Lease, the Concessionaire shall deposit into the MR&R Fund \$ \_\_\_\_\_, the dollar amount proposed by the Concessionaire for improvements. Such proposed improvements shall be subject to the approval of the Department and shall be completed within the first eighteen (18) months of this Lease, unless otherwise agreed to by the Department. Any improvements made to the Properties using these funds shall be and become property of the Department upon their completion.

2. Eight percent (8%) of total gross receipts throughout the term of this Lease, excluding receipts from lottery games conducted pursuant to Section 6(d)(2) shall be deposited into the MR&R Fund. On or before the 20<sup>th</sup> day of each calendar month during the term of this Lease, beginning with the month following the date this Lease is entered into, the Concessionaire shall pay into the MR&R Fund the percentage as specified above of its total gross receipts resulting from the operations from the preceding month, as reported on the monthly receipts reports required in Section 8(C).

3. At whatever time this Contract is terminated, any monies remaining in the MR&R Funds shall be turned over to the Department to be held and to be surrendered to the new operator for the purpose of re-establishing the MR&R Funds, it being the intent of the Department to maintain these funds in



perpetuity for the benefit of the physical facilities and Properties.

4. The depository for the MR&R Funds shall be established as directed by the Department. If interest income is generated by the MR&R Funds, it shall not be included in gross receipts and shall remain part of the MR&R Funds. MR&R Funds procedures shall be in accordance with the Maintenance, Repair and Replacement Fund Manual (the "MR&R Manual") provided to the Service Provider by the Department at the time this Contract is entered into or any subsequently revised versions thereof.

5. All expenditures and withdrawals from the MR&R Funds shall require the prior written approval of the Director. Request for prior written approval shall include a summary sheet listing the inventory numbers for the items being replaced, the cost and a detailed description of items to be charged to the Fund sufficient to enable the Director to make a determination of suitability and value. A "not-to-exceed" figure shall be agreed upon for purchases for which only estimates are available. All expenditures in excess of \$10,000.00 will require the Service Provider to obtain three (3) written competitive bids or price quotes and submit evidence of said quotes to the Department with the request for prior written approval. The Department, at its sole discretion, may require the Service Provider to obtain three (3) written competitive bids or price quotes for projects or purchases under the \$10,000.00 threshold. The Service Provider shall obtain prior written approval from the Department to continue to utilize vendors that have received \$50,000.00, or more, in payments in the current calendar year from the MR&R Funds.

6. In order to initiate from the MR&R Funds, the Service Provider shall follow the procedures as set forth in the MR&R Manual or any subsequently revised versions thereof.

b. Permissible uses of the MR&R Fund:

1. the replacement of items provided by the Department such as furniture, furnishings, fixtures and equipment and the addition of said items when determined necessary by the Department;
2. all those repair and maintenance items not specifically excluded in Section 11(c) below;
3. changes and alterations to improve the Properties whose funding from this source is approved by the Director;
4. any bank charges levied for its services, in connection with maintaining the Maintenance, Repair and Replacement Fund Account.

c. Impermissible uses of the MR&R Fund:

1. Salary of maintenance or other personnel employed by the Concessionaire;
2. Labor charges for services performed when, in the opinion of the Director, such services are considered normal and customary maintenance duties which should be performed by the Concessionaire's maintenance staff;
3. Any replacement or repairs to items owned by the Concessionaire;
4. Items and repairs considered operational or expendable in nature, as specified in Attachment B.
5. Consultant's fees in connection with design, specification, selection, or purchase of replacement

items, except as provided in Section 11 (c) (1);

6. Any fixture, sign or other item which contains the Concessionaire's trademark or copyrighted logo, unless considered marketing materials or menus, as permitted in Section 11(f) (3) (f) above;

7. Any repairs to the Properties necessitated by the Concessionaire's negligence or failure to perform required routine maintenance;

8. Items considered tools and office equipment as specified in Attachment B.

It is expressly understood between the Concessionaire and the Department that the limitations on the use of the Fund do not limit the overall maintenance responsibilities of the Concessionaire, and that the amount available in the Fund does not constitute the Concessionaire's total liability with regard to its maintenance and other responsibilities.

12. 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 Service Provider, its agents, employees, assignee, subcontractor, sublessee, or licensee, the Service Provider 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 Contract, and shall replace items as required under this Contract. "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. Maintenance responsibilities of the Concessionaire shall include, but not be limited to the following:

1. Interior maintenance of the Properties including:

- Minor plumbing, electrical, mechanical and structural repairs, involving such things as ceilings, walls, floors, fixtures, outlets, toilets, faucets, vents, electric hand dryers and other such equipment;

- Painting of the interior of the Properties as necessary and as directed by the park manager;

- Proper disposal of grease from traps and tanks;

- Professional steam cleaning of cooking ventilation hoods and ducts a minimum of once yearly, or as directed by the Department; the park manager should be notified of all mandated inspections and forwarded the results of all inspections when received by the Concessionaire.

- Professional steam cleaning of the dining room carpeting.

2. Lubrication of all mechanical equipment in the kitchen as per manufacturer's recommendations.

3. Preventive maintenance and repair of all kitchen equipment in accordance with the manufacturer's recommendations; keeping maintenance records on equipment, and providing such records to Department personnel upon request. The Concessionaire shall obtain service contracts with non-affiliated, reputable bonded companies to service and maintain all

mechanical equipment where sufficient expertise is not possessed by the Concessionaire or the Concessionaire's employees.

4. Window glass breakage replacement and inside and outside window washing of the Properties per Section 10(b)(5) of this Lease.
5. Planting, weeding and maintenance of the outdoor flower beds, and landscaping.
6. 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 hereinafter provided.
7. Surface maintenance of sidewalks, decks and other walkways including, but not limited to snow removal and salt application.

c. Maintenance responsibilities of the Department shall include:

1. All major plumbing, electrical and mechanical repairs, including rewiring and re-plumbing if necessary, except for any repairs necessitated by the Concessionaire's negligence or intentional act, or the negligence or intentional act of the Concessionaire's employees or agents, in which case the Concessionaire shall be solely responsible for total cost of repairs;
2. Major structural repair, including exterior painting, the structure being defined in the structural blueprints on file in the Chief Engineer's office of the Department, unless necessitated by the Concessionaire's negligence or the negligence of the Concessionaire's employees or agents, in which case the Concessionaire shall be solely responsible for total cost of repair;
3. Surface maintenance of parking areas, roadways and drives;
4. Roof repairs and replacement where the roof has outlived its usefulness;
5. Parking lot lights and poles (normal maintenance);

d. Upon becoming aware of any condition of the Properties which may result in the need for major repair or maintenance, the Concessionaire shall notify the park manager.

e. The Concessionaire shall be responsible for the improvement and replacement of furniture, furnishings, and equipment made necessary by wear, loss, breakage, theft, vandalism or other cause. At all times during the term of this Lease there shall be a full inventory of all items if chattel property included in this Lease, consisting either of the original items in good rentable condition or suitable replacement items of equal value, quality and utility in good rentable condition, supplied by the Concessionaire, after prior written approval of the Department.

1. Any design, specification, selection, or purchase fees incurred by the Concessionaire in connection with the improvement or replacement of furniture, furnishings and equipment shall be considered as a cost of operation to the Concessionaire and shall be the sole responsibility of the Concessionaire, and shall not be paid out of the Maintenance, Repair and Replacement Fund, unless prior written approval is obtained from the Director on a per project basis.

2. The Concessionaire shall provide detailed invoices to substantiate the quality and value of all replacements. Where the cost of items is to be paid from the Maintenance, Repair and Replacement Fund, the Concessionaire shall use its best efforts to obtain any available industry discounts, and in no event shall payment from the Fund be made to the Concessionaire or be made for more than an item's cost to the Concessionaire.
3. All original and replacement items belonging to the Department shall be identified according to inventory methods established by the Department. Replacements of items owned by the Department become the property of the Department. The original items being replaced become the property of the Concessionaire after the replacements have received approval of the Director, unless otherwise directed by the State's Department of Administrative Services, State Surplus Property. The Concessionaire shall remove any Department identification numbers from the items becoming its property, and shall tag such items as being its property. The Concessionaire shall promptly remove the replaced items from the Properties.
4. Any state-owned furnishings or equipment which the Concessionaire deems in excess of his needs shall be turned over in satisfactory condition to the Department. The Concessionaire shall not remove any such furnishings or equipment except with the approval of the Director. The Concessionaire must receive and keep a receipt for any Department-owned furnishings or equipment temporarily removed from the Properties for repairs or service.

f. The Concessionaire may, at its own option and expense, or funded from the Maintenance, Repair and Replacement Fund, whose conditions are hereinafter described, make structural alterations, additions and improvements provided the same are approved in advance in writing by the Director. Plans and specifications for structural improvements, alterations or modifications must be submitted to the Department with the Concessionaire's request for approval, and shall be subject to the approval of the Department.

g. 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, or its business customers in accordance with Section 22 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 its employees.

### 13. INSPECTIONS:

The Department shall make on-site reviews of all the Properties to identify needed maintenance, repairs and replacements. The Concessionaire shall participate in the property reviews. The needed maintenance, repairs and replacements shall then be addressed as directed by the Department and carried out by the Concessionaire at its expense and/or funded from the Fund, if appropriate. The property review process and the maintenance, repair and replacement priorities identified during these reviews shall not in any way relieve the Concessionaire of its obligations under this Lease with respect to keeping the Properties in good condition at all times and to make repairs and replacements as needed, as elsewhere provided in this Lease.

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.

The Department may, at its discretion, require the Service Provider to contract with a Department approved third party industry standard professional to perform annual quality assurance inspections to ensure compliance with industry service, maintenance, and facility cleanliness and condition standards.

14. 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 structure 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:

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.

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 may 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.

Alterations, decorations, additions and improvements, however, can only be removed in accordance with Section 13 (b).

16. STANDARDS OF PERFORMANCE:

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.

17. 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 Agreement, 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 Service Provider is a PERS Retirant, as defined by R.C. § 145.38, Service Provider 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](mailto:hr@dnr.state.oh.us). The ODNR shall not be responsible for any changes to Service Providers' retirement benefits that may result from entering into this Agreement. Service Provider acknowledges and agrees any of its individual employees providing personal services under this Agreement 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 Service Provider, or its sub-contractors or other agents. The Service Provider 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 Service Provider 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 re-employed 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.

18. 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.

19. DEFAULT:

If the Concessionaire:

a. Shall fail to pay any installment of rent or make any deposit into the Maintenance, Repair and

Replacement Fund within ten (10) days after it becomes due or payable and if such default shall continue for five (5) days after receiving written notice from the Department demanding payment or deposit;

- b. Shall fail to maintain in full force and effect any insurance or bond required by the terms of this Lease or Ohio law;
- c. Shall fail to maintain adequate standards in providing food or service required by this Lease, or in any manner shall fail to provide adequate service to the public;
- d. 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;
- e. Shall abandon or vacate the Properties or any part thereof during the term of this Lease;
- f. Shall voluntarily or involuntarily be subject to bankruptcy proceedings;
- g. 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;
- h. Shall assign this Lease in violation of the terms hereof;
- i. 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; or
- j. its principal(s) or officer(s), if the Concessionaire is a corporation, or its partner(s) if the Concessionaire is a partnership, are convicted of any theft offense,
- k. Shall fail to remain authorized to do business of the type and nature required in this Lease in the State of Ohio,

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:

1. 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
2. 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.

20. 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 the 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.

21. PROPERTY AT CONCESSIONAIRE'S RISK:

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; and if the whole or any part thereof shall be destroyed or damaged by fire, water, 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 park 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.

22. DESTRUCTION OF PROPERTIES UNDER AGREEMENT:

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.

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.

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 20, has no responsibility for repair or replacement of any property of the Concessionaire.

23. LIABILITY AND INDEMNIFICATION OF DEPARTMENT:

a. All operations by the Service Provider under this Contract shall be conducted solely at its own risk. The Service Provider shall employ all proper safeguards to prevent any and all injuries or damage to the public, to employees or property of the Department and to any other person, property, material or thing. In case the Department shall, without fault on its part, be made a party to any litigation commenced by or against the Service Provider alleging bodily injury, death or property damage arising directly out of the Service Provider's negligence in performing under this Agreement, the Service Provider shall protect and hold the Department harmless and shall pay all costs and expenses, including but not limited to judgments, incurred or paid by the Department in connection with such litigation. Each party shall also pay all its own costs, expenses, and attorney fees that may be incurred or paid in enforcing the covenants and provisions of this Contract. The Department will promptly notify the Service Provider of any claims for which the Department may seek indemnification.

b. The Service Provider shall at all times during the term of this Contract maintain or cause to be maintained in full force and effect commercial general liability insurance to include products and completed operations with a financially responsible insurance company or companies, covering the respective buildings 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 Dollars (\$1,000,000.00) per occurrence/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 Agreement, Service Provider's insurance shall be primary. Any insurance or self-insurance maintained by the State, its officers, officials or employees, shall be excess of the Service Provider's insurance and shall not contribute with it. Service Provider hereby grants to the State of Ohio a waiver of any right of subrogation which any insurer of said Service Provider may acquire against the State by virtue of the payment of any loss under such insurance. Service Provider 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 Service Provider, or a subsidiary, successor, affiliate or controlling corporation of the Service Provider. The Service Provider 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 Service Provider 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.

24. 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) and websites in connection with the operation of this business, including websites and social media sites, or any advertising in any manner or form, whether in or about the buildings and 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 which has been disapproved by the Director.

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

25. 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.

26. NONDISCRIMINATION

Pursuant to R.C. 125.111 and the State's policy, Service Provider agrees that Consultant, any subcontractor, and any person acting on behalf of Service Provider 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. Service Provider further agrees that Concessionaire, any subcontractor, and any person acting on behalf of Service Provider 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.

27. COMPLAINTS FROM USERS:

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.

28. COMPLIANCE WITH LAWS AND AGREEMENTS:

a. The Concessionaire shall, throughout the term of this Lease, keep itself fully informed of and promptly comply or cause compliance with, all laws, ordinances, rules, and regulations in any manner affecting its operation of the Properties and facilities and of all orders and decrees of bodies and tribunals having jurisdiction or authority over same, whether present or future, foreseen or unforeseen, ordinary or extraordinary, whether or not the same shall be presently within the contemplation of the Department and the Concessionaire, or shall involve any change of governmental policy, which may be applicable with respect to the Properties. The Concessionaire shall protect the Department against any claim or liability arising from any failure to so comply.

b. Obligations of the State are subject to the provisions of Ohio Revised Code Section 126.07.

c. The Concessionaire shall procure all permits and licenses, including food vendor, health and liquor 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 shall 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 shall pay all premiums or other charges legally assessed therefore, and that it shall also comply with all statutory minimum wage, statutory maximum hours, and other laws, rules, and regulations applicable to conditions of employment upon or in connection with the Properties.

29. QUALIFICATIONS OF CONCESSIONAIRE:

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 shall continue to be so qualified during the term of this Lease.

30. JURISDICTION:

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.

31. CONFLICTS OF LAW:

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.

32. TIME OF THE ESSENCE:

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.

33. CHANGES IN WRITING ONLY:

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.

34. CAPTIONS:

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.

35. SUCCESSORS AND ASSIGNS

This Contract 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 in writing by the Director, shall vest in the assigns any right, title or interest whatsoever.

36. SEVERABILITY:

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.

37. NONWAIVER:

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.

38. ADMINISTRATION:

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.

39. FINDINGS FOR RECOVERY:

Ohio Revised Code (O.R.C.) 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. Service Provider warrants that it is not now and will not become subject to an “unresolved” finding for recovery under O.R.C. 9.24 during the pendency of this Lease.

40. ETHICS

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 Agreement and may result in the loss of other contracts or grants with the State of Ohio.

41. CAMPAIGN CONTRIBUTIONS

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.

42. DRUG FREE WORKPLACE

Concessionaire agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free work places 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.

43. AFFIRMATIVE ACTION PROGRAM

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.

44. DEBARMENT

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.

45. SWEATSHOP FREE CERTIFICATION

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.

46. INDEPENDENT CONTRACTORS

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.

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SAMPLE

47. ELECTRONIC SIGNATURES

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.

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

\_\_\_\_\_  
for CONCESSIONAIRE

\_\_\_\_\_  
DATE

STATE OF OHIO

\_\_\_\_\_  
MARY MERTZ, Director  
Department of Natural Resources

\_\_\_\_\_  
DATE