

**STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES
LEASE
TO OPERATE A RETAIL CONCESSION AT
MIDDLE BASS ISLAND 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 Recreation, 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. Those buildings, rooms and locations as are now existing and being used for the purpose of providing the services herein specified to be furnished, which are hereinafter called the "Properties". The Properties furnished by the Department are located and described as follows:

The retail building located on the South Side of the Middle Bass Harbor located at 1649 Fox Road, Middle Bass Island, OH 43446.

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 by all intended parties, and shall end at the close of business on December 31, 2017 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 option, renew this Lease for a period not to exceed four (4) years.

3. TIMES OF OPERATION:

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 through Labor Day
Thursday through Sunday 11:00 a.m. to 5:00 p.m.

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 by the Department or its Division of Parks and Recreation.

4. RENT:

a. The Concessionaire, for and in consideration of the Lease herein granted, shall pay directly to the Division of Parks and Recreation C-4, Concessions Section, 2045 Morse Road, Columbus, Ohio 43229, 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	%
Souvenirs and Sundries	%
Golf Cart Rental	%
All other receipts	%

b. Method of Payment: The Concessionaire shall, at the Department's direction, either (1) mail payment postmarked no later than the 15th day of the month to the Department's Columbus office, or (2) 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. If method (2) is chosen, a dated receipt shall promptly be mailed from the Concessionaire to the Department's Columbus Office. Unless monthly reports and monthly payments are postmarked or received by the Department or State Treasurer, as appropriate, in accordance with the above schedule, on or before the fifteenth (15th) day of each month, a late penalty fee of **\$10.00** per day shall be added to the amount due.

Monthly payments in the form of checks returned to the State Treasurer's Office from the issuing financial institution due to insufficient funds, shall be considered non-payment and the penalty fee as described above shall be added to the amount due according to the above schedule.

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 **\$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.

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

6. SCOPE:

The Concessionaire agrees to operate a Retail 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 (seven) of this Lease.

- a. The service to be rendered by the Concessionaire and the provisions of such service **shall** include:
 - 1. The sale of souvenirs and sundries, pre-packaged food and apparel in quantities adequate for the needs of the public. Nothing in this section shall be construed to include a responsibility of the Department to modify or alter the facilities should the Department of Health requirements change in the future.
- b. 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 not specified or inferred from the list above to be appropriate for sale, may be offered for sale upon written approval by the Director.
 2. The Concessionaire may be directed by the Director to offer for sale items of merchandise not being stocked by considered a normal commodity for such installations.
 3. Rent Golf Carts. Any golf carts offered for rent must meet all federal, state and local safety regulations, and must be kept in good working order. The park manager can order the removal from the Properties any carts that are unsafe or inoperable. The Concessionaire will be responsible for all costs associated with the operation of the carts including charging electric carts or fueling the gas carts. If gas carts are used, the park manager must approve of any fueling that will take place on the Properties.
- c. 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 or dispensed 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 Recreation to offer such lottery games. The Department reserves the right to disapprove such lottery games at any time.
- d. The Concessionaire shall furnish and maintain all buildings, structures and a sufficient amount of movable equipment, including, but not limited to, showcases, approved cash registers with recording devices, refrigerators, freezers and such other equipment as may be necessary to operate the concessions under this Lease, except such buildings, structures and equipment as have been provided by the Department.
- e. 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.
- f. The Concessionaire shall at all times keep the Department informed of its business 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 pay phones 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 services 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 Recreation 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" as issued by the Department of Aging. Unless otherwise provided by said statutes and rules, such reduced rates and fees will not apply to such items as the sale 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 golf carts. 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 a suitable cash register 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 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 fifteenth (15th) 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 to 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.
- g. The Concessionaire shall keep proper and complete books and records of accounts of its vending operation. Internal control procedures implemented by the Concessionaire shall be adequate to ensure that all gross receipts are accounted for and recorded. All receipts of any nature from vending machines shall be immediately and properly recorded using tamperproof counters within each vending machine, and approved as to design and specifications by the Department. Such equipment shall be maintained in good operating condition, with functioning counters in place to record each and every transaction.

Consecutive readings shall be taken from each vending machine in each receipts and tax category and posted to a receipts report from each vending machine location. No reset of cumulative vending machine readings shall be permitted by the Concessionaire. If a vending machine must be sent for repairs, or otherwise removed from the Properties, the readings shall be recorded and verified by park personnel both when the equipment leaves and when it reenters the Properties. The Department reserves the right to audit readings from any vending machine at any time.

9. UTILITIES:

- a. Water and Sewage Treatment – The Department shall furnish all water and sewage treatment necessary for the concession operation.
- b. The Concessionaire shall be solely responsible for and promptly pay all charges for heat, gas, electricity, telephone, and 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 facilities.
- 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. The Concessionaire shall remove all personal property from the Properties under this Lease that may suffer damage due to lack of heat during the winter 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.

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. This shall include daily litter and debris pick-up in the immediate vicinity of the Properties under this Lease.
 - 2. Routine cleaning of the Properties;
 - 3. The disposal of rubbish, refuse, garbage, and debris from the Properties, as may be mutually agreed upon between the park manager and the Concessionaire.
 - 4. The cleaning of the Properties and all equipment at termination of the lease for any reason, subject to the approval of the park manager. If the Properties are not cleaned adequately as directed by the park manager, the Department or its designee will clean Properties, and any and all charges for such cleaning shall be borne by the Concessionaire. If the Concessionaire does not pay all charges for such cleaning, the Department reserves the right to make a claim against the Concessionaire's performance bond for the amount of such charges;
 - 5. Any renovation or upgrades to the Properties deemed necessary by the Concessionaire and approved by the Park Manager.
- c. The Department shall be responsible for all grass mowing and trimming around the Properties.
- d. The Concessionaire shall maintain the public restroom within the building in a clean and sanitary condition, and shall provide all restroom supplies including but not limited to soap, towels, toilet tissue and cleaning supplies.
- 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 of public view.
- f. Due to the nature of the 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 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.

h. 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. REPAIRS:

a. The Department shall, at its cost and expense, provide all major repairs and maintenance required to preserve the buildings and equipment furnished by the Department under this Lease, with the exception of any damage due to negligence of the Concessionaire, the Concessionaire's employees, or the Concessionaire's agents and/or representatives. In such an event, the Concessionaire shall be responsible for all necessary repairs or replacements. The Department's responsibilities include but are not limited to:

- Major structural repair
- Exterior painting
- Maintenance of sidewalks, steps, railings, roofs, gutters and downspouts
- Major plumbing repair and replacement
- Water heater repair and replacement
- Major electrical system repair and replacement

b. The Concessionaire shall, at its sole cost and expense, provide all routine maintenance and repairs to preserve the buildings furnished by the Department under this Lease. Such routine maintenance and repairs shall include, but shall not be limited to:

- Interior painting of building with prior approval of the park manager
- Drain cleaning and maintenance within the confines of the concession building
- Plumbing fixture repair and replacement
- Lighting fixture repair and replacement, including bulbs
- Window and screen replacement
- Door repair and replacement
- Electrical wiring necessitated by additional equipment of the Concessionaire
- Furnace cleaning and furnace filter replacement, if applicable

The above lists of maintenance responsibilities are not indicative of all responsibilities, but are provided to give examples of major and routine repairs and maintenance.

c. 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 20 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.

d. The Concessionaire shall see that the storage of portable gasoline tanks, gasoline cans and batteries is done according to State and Local Fire Codes.

12. 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.

13. BUILDINGS, OTHER STRUCTURES, EQUIPMENT AND SUPPLIES:

Any buildings or other structures erected by the Concessionaire upon the Properties shall be 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 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. 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 12 (b).

15. 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.

16. 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 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 Agreement. Concessionaire 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 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 Agreement.

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.

17. 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.

18. DEFAULT:

If the Concessionaire:

a. 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;

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 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 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;

g. Shall assign this Lease in violation of the terms hereof;

h. 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

i. Shall fail to remain authorized to do business of the type and nature required in this Lease in the State of Ohio,

j. Shall voluntarily or involuntarily be subject to bankruptcy proceedings;

k. its principal(s) or officer(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:

- 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.

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

- a. The Department reserve the right to raise or lower lake waters, and 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 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.

20. 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. 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, 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, judgement, 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.

21. DESTRUCTION OF PROPERTIES UNDER AGREEMENT:

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.

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

22. 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, its 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 commercial general liability insurance 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 (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. The Concessionaire's policy shall be primary over any other coverage.

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. 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.

23. 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 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 that has been disapproved by the Director.

24. 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.

25. 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.

26. 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 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.

e. Should the Department enter into a licensing agreement or contract for the exclusive use of soft drinks, the Concessionaire shall abide by the Department's licensing agreement, and shall sell no other soft drinks, in fountain or bottled form than those covered by the license or contract, without the express written approval of the Director. Product cost of such soft drinks to the Concessionaire shall be at the same price the Department is charged by the soft drink provider.

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

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 Recreation, or any other Department administrative officer so designated by the Director, may act in his/her stead.

36. 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. Concessionaire 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. NONDISCRIMINATION OF EMPLOYMENT

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.

42. 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.

43. 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.

[Remainder of page left intentionally blank]

44. 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 _____) :SS
County of _____)

On this the _____ day of _____, 20____, before me,

_____ personally appeared in the City of

_____, State of _____, known to me (or satisfactorily proven) to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

NOTARY PUBLIC

