

**STATE OF OHIO  
DEPARTMENT OF NATURAL RESOURCES  
CONTRACT  
TO OPERATE CERTAIN PUBLIC SERVICE FACILITIES AT  
BURR OAK 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 known as the "Concessionaire."

WITNESSETH:

WHEREAS, the Department of Natural Resources has provided lodges, cabins and ancillary public service facilities for the recreational 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 1501.091 of the Ohio Revised Code to contract for the operation of such public service facilities, and

WHEREAS, the Director of Natural Resources, hereinafter referred to as the "Director," has determined it to be in the public interest to contract with the Concessionaire for the purpose of assuring highly competent and economically practical management, maintenance, and operation of the said public service facilities, in order to furnish recreational opportunities to the public of the highest quality obtainable and at a reasonable cost;

NOWHEREFORE, 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 contracts with the Concessionaire and grants the Concessionaire the management rights and privileges provided for in this contract as hereinafter described.

1. PROPERTIES UNDER CONTRACT

- A. Burr Oak Lodge, a 38 guest room vacation lodge, located in Burr Oak State Park, Morgan County, including meeting rooms, kitchen, dining room and lounge bar, gift shop area, indoor swimming pool, fitness room, boat docks, tennis courts, miniature golf course, shelter house and 30 two-bedroom cabins.

The Department shall provide the above facilities and land areas as shown in Appendix A, and shall furnish equipment and furnishings as specifically enumerated in Appendix B. The properties, facilities and equipment covered by this Contract are hereinafter referred to as "the Properties."

The Burr Oak State Park office(s) is located within the confines of the lodge. State park office space is not available to the Concessionaire during the term of this Contract.

- B. The Director 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.

## 2. TERM

The term of this Agreement shall commence at 12:01 a.m. on July 1, 2015 and shall end at 11:59 p.m. on March 14, 2019, unless sooner terminated under the provisions hereof, or by the mutual written agreement of the Department and the Concessionaire to sooner terminate.

## 3. SERVICES TO BE PROVIDED BY THE CONCESSIONAIRE

The Concessionaire shall manage the Properties for the Department as vacation lodge type facilities accommodating all activities in connection therewith which are customary and usual to such operations and to the various facilities connected therewith, except as herein expressly prohibited. The Concessionaire shall have the exclusive right to operate and manage all of the Properties upon the terms of this Agreement, including the sale and dispensing of food, beverages, gifts, souvenirs, and any other appropriate merchandise ordinarily available at recreational facilities of these types. The Department reserves the right to disapprove of any service or the sale of any merchandise, and the Concessionaire shall immediately cease such sale or service upon notification by the Department. The Concessionaire shall operate the following facilities and shall provide the following services in accordance with the provisions herein described:

- A. **Guestrooms and cabins** – Rooms and cabins shall be available for rent to the public at all times during the term hereof, it being the intent of the parties that the lodges and cabins be operated on a year-round basis, unless otherwise approved by the director.

### B. **Lodge food service facilities**

1. The Concessionaire shall provide quality food and food service, including alcoholic beverages if permitted by law, which in the reasonable opinion of the Department will best meet the needs of the public. Food service must at all times be sufficient to meet the reasonable demands of the public. The provisions of quality food and food service is of the essence of this contract. 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 Contract be regarded as good eating places which the public wishes to patronize again.
2. The lodge dining room and lounge shall be open year round, unless otherwise approved by the Director, with hours of operation to be determined by the Concessionaire, subject to the Director's reasonable written approval. The hours of operation shall be posted for the public's information.

- C. **Meeting and banquet facilities** – Charges for meeting room rental shall be made in accordance with Section 9 of this Contract.

- D. **Indoor swimming pool** – The indoor pool shall be open for use year-round. Hours of operation of the pools are to be determined by the Concessionaire, subject to the Director’s reasonable written approval.
- E. **Activities and Programs** – The Concessionaire shall provide, in cooperation with the park manager, planned interpretive, educational or recreational activities and/or programs. Such activities and/or programs shall be offered free of charge to the lodge and cabin guests, and shall be those activities normally associated with a state park, or as approved by the Director. The Concessionaire may charge the public a fee for any other activities and/or programs, subject however to written approval of the Department.
- F. **Gift Shop Area:** The Concessionaire shall operate the gift shop within the Lodge offering for sale gifts, souvenirs, and any other appropriate merchandise ordinarily available at recreational facilities of this type. Items of merchandise not specified or inferred above, appropriate for sale, may be offered for sale upon written approval of the Director. The Concessionaire may be directed by the Director to offer for sale items of merchandise not being stocked but considered a normal commodity for such installations. Hours of operation shall be posted for the public’s information.
- G. The Concessionaire shall include vending machines and other rentals or services, which enhance the total operation of the Properties.
- H. No charge shall be made by the Concessionaire to park any vehicle on or near the Properties, or for admission to the lands or lobbies or any other public areas, except in the case of special events when the Concessionaire may charge admission to an event with prior approval of the Director.
- I. The operation of ancillary facilities, such as sports courts, miniature golf and other rentals and services which enhance the total operation of the lodges.
- J. The Concessionaire shall abide by all applicable provisions of Section 125.111 of the Ohio Revised Code and shall not discriminate against, intimidate or retaliate against any person because of race, color, national origin, ancestry, sex, disability (as that term is defined under the Americans with Disabilities Act), military status or religion in its employment practices, providing of services or in any other manner in the use of the premises or in the exercise of the rights and privileges granted by this Contract.
- K. The Concessionaire shall accept, as payment by customers, all major credit cards normally accepted in the food and lodging industry, for advance deposits and whenever a charge is made for any product or service. Service charges and/or delinquent payments incurred in providing such service shall be considered as a cost of operation to the Concessionaire and shall be the sole responsibility of the Concessionaire. As provided in Section 6 (A) below, the Concessionaire agrees to report the full amount of sales from such credit cards as gross receipts.

- L. The Concessionaire shall be responsible for all costs incurred for ambulance service, fire protection and emergency services, and for those costs incurred for security protection, other than the security, law enforcement, and minor emergency medical treatment normally provided by the Department.
- M. The Concessionaire shall accept, as payment by customers, the Ohio State Park gift cards sold by the Division of Parks and Recreation. Money for gift cards redeemed by the Concessionaire shall be reimbursed to the Concessionaire by the Department.
- N. At the Department's discretion, the Concessionaire may be required to sell the Ohio State Park gift cards. All revenue received from the sales of said gift cards shall be turned over to the Department.
- O. At the Department's discretion, the Concessionaire may be required to participate in the Ohio State Parks rewards program.

#### 4. LODGE OPERATIONS

The lodge and cabins shall at all times during the term hereof be open for use and occupancy by the public, except during capital improvement construction or renovation when closing any of the Properties is directed by the Department. At the discretion of the Director, facilities or portions thereof may be closed for reasons including, but not limited to, using the facilities for state continuity of operations/continuity of government operations, if said operations cannot be performed in their standard locations due to an emergency, disaster or catastrophe.

At the discretion of the Director, or at the request of the Concessionaire with written approval of the Director, facilities or portions thereof may be closed only for reasons determined to be acceptable by the Director.

#### 5. CAPITAL IMPROVEMENTS

- A. Capital improvements funded by the Department may occur at any of the facilities, which are a part of the Properties during the duration of this Contract. The Department reserves the right to determine the scope of any capital improvement projects. The Concessionaire shall not interfere in any way with the Department or its contractors or subcontractors during any renovation project. The Department reserves the right to reduce commission payments due from the Concessionaire if substantial portions of the Properties are closed or are unavailable for use, although the Department is under no obligation to do so. In the event that portions of the Properties are closed by the Department or made unavailable for use by the Concessionaire, the parties hereto agree that such closure or unavailability shall not give rise to any legal liability for the Department. The Concessionaire agrees that any and all consequences, business or otherwise, associated with closure or unavailability shall be borne at the sole risk of the Concessionaire.

6. REMITTANCES

- A. The Concessionaire agrees to pay to the Department at its office in Columbus, Ohio not later than the twentieth (20<sup>th</sup>) day of each and every month, as payment for the occupied Properties, the following percentages of gross receipts:

Lodge Rooms and Cabins:	_____%
Food and Non-Alcoholic Beverages:	_____%
Alcoholic Beverages:	_____%

For the purpose of calculating gross receipts, lodge rooms and cabins shall include charges for guest rooms, cabins, additional beds, additional persons, and hospitality suites; food shall include all food items and non-alcoholic beverages sold, excluding vending machines.

- B. Method of Payment: The Concessionaire shall, at the Department's direction, either (1) mail payment postmarked no later than the 20<sup>th</sup> 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 20<sup>th</sup> day of the month. If method (2) is chose, a dated receipt shall promptly be mailed from the Concessionaire to the Department's Columbus Office.

Unless monthly receipts reports as provided in Section 6 (C) below 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 twentieth (20<sup>th</sup>) day of each month, a late penalty fee of \$100.00 per day per report shall be added to the amount due.

- C. The Concessionaire shall furnish to the Department monthly receipts reports of total gross receipts from the operation of the Properties for the preceding month, by category of sales due on or before the twentieth of each month, in such a form as directed by the Director, and as outlined in the Departmental Concessionaire's Manual, provided to the Concessionaire by the Department at the time this Contract is entered into, and any subsequently revised versions thereof.

- D. Computation of Gross Receipts: In computing gross amount of receipts from rentals, sales, services, businesses, or operations upon which percentage amounts are payable to the Department as above set forth, there shall be excluded from such gross amounts any amounts collected by the Concessionaire from guests and customers for Ohio Sales Tax and any local lodging tax, and also, in connection with the sale of toiletries and other like items subject to Federal Excise Tax collected from guests or customers. In computing such gross amounts, there shall also be excluded there from, the amounts received by the Concessionaire as reimbursement for rendition of the following services when performed as non-profit services:

1. Laundry service;
2. Valet service;
3. Transportation of guests to or from airports or neighboring towns;
4. Telephone, FAX and internet service;

5. Reimbursement for cash advances;
6. Employee meals;
7. Automated teller machines (ATM's)
8. Lottery ticket sales

Gross receipts, as defined in reference to revenue derived from any assignment, subcontract, sublease, or licensing of sales or service and any and all vending and/or game machines located on or about the Properties shall mean total dollar sales derived from such sales, services, or operation of the machines, as opposed to commissions received by the Concessionaire.

All forfeited advance deposit monies shall be treated as sales and shall be included in gross receipts as income from the sale of rooms.

## 7. RECORDS, REPORTS, AND CHARGES

- A. The Concessionaire shall keep true, accurate and complete records of all of its operations under this Contract, including all receipts and disbursements of money by it, which records and accounting methods shall be in such form and kept in such manner as may be directed or approved by the Director. All books, accounts, records and operations of the Concessionaire shall be available to the Department and/or the Park Manager in the state of Ohio, and shall be open during normal working hours to inspection and copying by the Department.
- B. The Concessionaire shall establish checking and/or banking accounts that shall be used only for the operation of the Properties which are the subject of this Contract.
- C. The Concessionaire shall furnish the Department prior to April 1<sup>st</sup> of each year, a copy of its annual (calendar year or fiscal year) audited financial statement (defined as balance sheet, statement of changes in financial position, and statement of income together with appended notes, prepared in accordance with generally accepted accounting principles) and for its (and its guarantor, if applicable) combined operations for such year including any operations not under this Contract. Such audited financial statement shall be prepared by independent certified public accountant(s). The Concessionaire shall also furnish detailed profit and loss statements for the Properties, in a form approved by the Department, for calendar or fiscal year periods, showing revenues by category of sales, and all expenses by category.
- D. The Concessionaire shall provide to the Department no later than the 20<sup>th</sup> of each month a report of the balance of advance deposits at the end of the preceding month. The Concessionaire's records of advance deposit and reservations shall at all times be available for inspection by the Department. Refunds of advance deposits of parties requesting cancellation of reservations shall be made on a timely basis.
- E. The Concessionaire shall retain all books, accounts and records of its operations under this Contract for a period of two years after termination of this Contract, unless any litigation, claim or audit is started before the expiration of this Contract. All books, accounts and records shall be retained until all litigation, claim or audit findings involving same is

resolved. The Concessionaire shall make all books, accounts and records of its operation under this Contract available in the state of Ohio for inspection and copying by the Department or State Auditor upon request.

- F. The Concessionaire shall use standard hotel management software capable of electronically transmitting revenue and occupancy figures on a daily basis.

8. ADVANCE DEPOSIT AND GUARANTEE FUNDS

- A. As a condition precedent to any rights under this Contract, the Concessionaire shall pay **thirty thousand dollars (\$30,000.00)** into a fund as set out below for the purpose of securing advance deposits received by the Concessionaire. Such fund shall hereinafter be referred to as the “Advance Deposit Fund.” The amount of the Advance Deposit Fund is subject to annual adjustment by the Director. If any monthly advance deposit balance during the previous operating year exceeds thirty thousand dollars (**\$30,000.00**), the Director may accordingly increase the amount required of the Concessionaire to be paid into the Advance Deposit Fund.
- B. As a condition precedent to any rights under this Contract, the Concessionaire shall pay **two hundred thousand dollars (\$200,000.00)** into a fund as set out below for the purpose of guaranteeing compliance by the Concessionaire with the terms of this Contract. Such fund shall hereinafter be referred to as the “Guarantee Fund.”
- C.
  - 1. Upon written approval of the Director, moneys on deposit in the Guarantee Fund or Advance Deposit Fund may be placed in savings certificates, certificates of deposit, bonds or other income producing investments. Interest on said funds shall be the property of the Concessionaire and may be withdrawn by the Concessionaire at any time. The principle of the Guarantee Fund and the Advance Deposit Fund, and all deposits and investments thereof, shall be deposited, invested and held so that the sole signature required for withdrawal is that of the Director.
  - 2. Notwithstanding the other Guarantee Fund and Advance Deposit Fund investment or depository options, the Concessionaire may substitute a Commercial Performance Bond or irrevocable Letter of Credit in partial or total satisfaction of the Guarantee and/or Advance Deposit Funds. Such surety shall be subject to the approval of the Director. At all times during the term of this Contract, monies on deposit or surety held in requirement of the Advance Deposit Fund shall be separate from monies on deposit or surety held in requirement of the Guarantee Fund.
  - 3. At the termination of this Contract for any reason, the Advance Deposit Fund shall be applied by the Department to the advance reservations. At the termination of this Contract for any reason, the Guarantee Fund shall be applied by the Department first to any repairs, maintenance or replacements needed to fully comply with the Concessionaire’s obligation under this Contract, second, to the payment of any other obligation of the Concessionaire under this Contract, and third, to the payment of any monies due the Department from the Concessionaire. The remaining balances in the Guarantee and Advance Deposit Funds, if

any, shall be payable to the Concessionaire. Nothing in this Section shall be construed as limiting any legal, financial, or other obligations of the Concessionaire to the amounts so deposited in such funds.

4. The Concessionaire must furnish evidence of the Guarantee Fund and the Advance Deposit Fund prior to execution of this Contract. The Concessionaire must secure written approval of the Director before any changes are made in the options chosen for the Guarantee Fund or Advance Deposit Fund.

9. RATES AND PRICES

A. All rates, prices and charges for lodging, food, drinks, merchandise, and all other items and services are subject to the annual review and written approval of the Director. The Concessionaire shall submit in a manner prescribed by the Department all rates, prices, and charges contemplated to be imposed and collected and any changes therein. The Concessionaire shall not charge or collect rates, prices, or charges in excess of those so approved by the Director.

B. The room and cabin rates, including charges for additional persons and/or rollaway beds or cots, shall be submitted to the Department by the Concessionaire prior to January 1st each year, and shall be subject to review and change or approval by the Director. The Concessionaire shall not charge or collect lodge rates in excess of those approved by the Director.

Guests with reservations shall be notified by the Concessionaire of any change in room rates by U.S. Mail within 15 days of written approval of new rates by the Director.

C. Discounts; Reduced and Off-Season Rates:

1. Every resident of this state who furnishes evidence in the form of a Golden Buckeye Card as issued in a manner prescribed by the Ohio Department of Aging, shall be charged no more than ninety percent (90%) of the otherwise applicable rates for lodging, restaurant meals, and the rental of recreational equipment at the facilities covered under this Contract on a year-round basis. This discount does not apply to automatic vending machines, concession stands, snack bars, charges for alcoholic beverages, or gift shop purchases.

2. Remittances due the Department shall be computed upon the actual amount received by the Concessionaire. Reports of Golden Buckeye and promotional discounts for lodging shall be submitted to the Department on or before the twentieth (20<sup>th</sup>) day of each month with the monthly receipts reports.

3. As used in this Section, "lodging" shall include lodge guestrooms and cabins only.

4. The Concessionaire may grant special reduced rates, charges and prices to groups or for certain occasions or in certain seasons or in circumstances where the Concessionaire

deems it to be necessary and beneficial, except as prohibited in Section 9 (C) above. A detailed report of all reduced rate accommodations or services and of the persons to whom granted, with the reasons therefore, shall be included in the monthly receipts reports to the Department. Any such practices which are thereafter disapproved by the Director, who shall have complete discretion to do so, shall not thereafter be engaged in by the Concessionaire, and if so engaged in, the Concessionaire shall be chargeable with the full regular rates for such accommodations or services in computing remittances to be paid to the Department.

## 10. RESERVATION SYSTEM

The Concessionaire shall provide a toll-free reservation system that incorporates both online (internet) and call center reservations. Such reservation system may be operated by the Concessionaire or by another reservation system provider. The Concessionaire shall also provide an internet website describing the facilities and services provided.

## 11. UTILITIES

### A. Water and Sewage Treatment:

The Department shall be responsible for water and sewage charges at Burr Oak. The Department shall provide the necessary sewage treatment for Burr Oak. Any necessary actions of the Concessionaire which result in water needs or sewage loads in excess of 10% of the normal routine amounts, including but not limited to swimming pool filling and draining, shall require the prior approval of the respective park managers.

The Concessionaire, at its cost, shall maintain the water supply system and sewage/wastewater collection system within the confines of the Properties, and in strict compliance with the requirements of all applicable laws and regulations and in such manner as will insure the continuous proper functioning of these systems. The Concessionaire shall not use any chemicals or cleaning products that would have a deleterious effect on the treatment of wastewater or sewage, or the wastewater system. Grease traps shall be inspected daily and the grease shall be removed and disposed of in a manner approved by the Department. All costs incurred, including, but not limited to equipment breakdown, cleanup and damage resulting from non-compliance shall be the responsibility of the Concessionaire. If so directed by the Department, the Concessionaire shall remove the garbage disposal units within the lodges.

B. Electricity, Natural Gas and Propane: The Department shall be solely responsible for all costs incurred in connection with the operation of the lodge and cabins.

C. Telephone and Other: The Concessionaire shall be solely responsible for all costs incurred in connection with the telephone service, cable or satellite television, internet, and other utility products and services used in and upon the Properties and properties adjacent thereto used in connection therewith, including telephone equipment amortization costs, except for that equipment which may be provided by the Department. Telephone service shall be

considered phone service for the lodge and park office. Telephone service provider and services must be approved by the park manager.

- D. The Concessionaire, at its cost and expense, shall maintain all utility supply systems within the boundaries of the Properties, as specified in Appendix A. The Department shall not be held liable for any interruption of any utility service.

## 12. MAINTENANCE

- A. During the first (90) days of this Contract, the Concessionaire shall deposit into the Maintenance, Repair, and Replacement Fund as hereinafter described, \$ \_\_\_\_\_ as proposed by the Concessionaire. All improvements and/or additions funded from the Maintenance, Repair, and Replacement Fund shall be subject to the approval of the Department, and shall be and become the property of the Department.

- B. Except as to loss or damage caused by fire or other casualty insured against, or in the case of uninsured property, loss or damage resulting from windstorm, other natural casualty, or fire not resulting from negligence or fault of the Concessionaire, its agents, employees, assignee, subcontractor, sublessee, or licensee, the Concessionaire shall provide at its expense all maintenance, repairs and restoration 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. "Good, rentable condition" is intended to mean a condition that a typical lodge or cabin visitor would deem acceptable and equivalent to conditions found in similar facilities elsewhere. The Concessionaire's maintenance personnel shall be properly trained and qualified to operate and perform routine maintenance of the lodges' mechanical systems.

1. Maintenance responsibilities of the Concessionaire shall include, but shall not be limited to the following:

- a. Interior and exterior maintenance of the buildings and other structures in the properties including, but not limited to:

- All electrical, plumbing, and mechanical (HVAC) costs for maintenance and replacement, unless in the opinion of the Department, such repairs are considered major structural repairs as defined in Section 12(B)(2)(a) of this Contract. All changes to the electric, plumbing, and mechanical systems shall include the submittal of as-built plans to the Department;
- Routine maintenance of the swimming pool including, but not limited to filtration system repair and renovation, pool equipment and piping, painting, in-pool lights, chemical treatment as required for disinfecting and maintaining the water in chemical balance, and keeping records of water quality and pool operation, providing such records to the Department as requested;

- The routine repair of the lodge and cabin roofs;
  - Painting, staining, pest control, and routine maintenance of the interior and exterior of buildings and other structures;
  - Maintenance of all flashings, gutters, downspouts, windows, and window screens, including the removal of leaves, seeds and other debris a minimum of three (3) times per year;
  - Maintenance of the State owned equipment in the facilities.
- b. Maintenance of the grounds and recreational areas, and walkways in the immediate vicinity of any building covered in this Contract including weeding and yearly pruning of shrubs, trees, and bushes, and litter collection in the parking lots, lodge and cabin areas, and other recreational areas and walkways within the boundary lines shown in Appendix A.
- c. Landscaping of the grounds not intended to be in their natural state, flower beds around all structures included within the boundary lines shown in Appendix A., including, but not limited to the maintenance and replacement of shrubs, bushes, perennial and annual flowers, and the mulching of such areas. The Concessionaire shall submit to the Department prior to February 15<sup>th</sup> each year a written landscaping plan for the Properties under this Contract. Spring plantings identified in the landscaping plans shall be completed by Memorial Day weekend each year, unless otherwise approved by the park manager.
- d. Repair and replacement of sidewalks, steps, walkways, and parking area bumper blocks upon the Properties within the boundary lines shown in Appendix A.
- e. Pneumatic and electronic controls and air handling equipment, if applicable, regulating temperatures throughout the lodges shall be adjusted and balanced, a minimum of twice yearly at the beginning of the heating and cooling seasons by a qualified HVAC professional, and shall be repaired as needed.
- f. Air handling equipment filters shall be inspected and changed per manufacturer's recommendations.
- g. Lubrication of all mechanical equipment shall be as per manufacturer's recommendations and as directed by the Department.
- h. Preventative maintenance on all equipment in accordance with the manufacturer's recommendations; keeping maintenance records on equipment, and providing such records to Department personnel upon request.

i. The Concessionaire shall obtain mechanical service contracts with non-affiliated, reputable, bonded, qualified companies to provide the following services:

- Heating, cooling and ventilation systems (HVAC), boilers, hot water heaters, pumps, heat exchangers and associated piping – to conduct a comprehensive inspection of these systems quarterly, and to provide a detailed report of its findings to the Concessionaire,. The Concessionaire shall forward the report to the Department. The Department and the Concessionaire shall then mutually determine if the needed maintenance, repairs or replacements are to be funded by the Maintenance, Repair and Replacement Fund or are to be carried out by the Concessionaire’s employees. The intent of this service contract is to identify and report routine maintenance needs versus non-routine needs. It is not intended to cover routine maintenance that can be conducted by the Concessionaire’s maintenance staff. Such service contract provider shall be licensed in heating, cooling, and ventilation systems (HVAC), plumbing, hydronics, and refrigeration.
- For fire suppression systems and elevators, such service contracts shall cover the inspection of such items and any necessary maintenance needed to maintain these items in good, working order and in compliance with any laws or rules regulating the same.

Said contracts shall be subject to written approval of the Director. If it is determined by the Department that service as specified in the service contracts are not being provided, then the Concessionaire shall terminate such service contract(s) within thirty (30) days of notification by the Department of such failure to provide such services. In such case, the Concessionaire shall promptly obtain other service contract(s) to fulfill the requirements of this Section.

- j. Snow removal from sidewalks, including lodge and cabin steps, located within the boundary lines shown in Appendix A.
- k. Written notice to the Department immediately upon discovery of deterioration of any of the Properties where repair of such deterioration is the responsibility of the Department as hereinafter provided.
- l. Maintenance, repair and replacement of all exterior lighting including parking lot lights, unless replacements are considered major structural in nature as determined by the Department.
- m. Routine maintenance and repair of boilers, chillers, heat exchangers, transformers, cooling towers and other supplemental heating sources.

- n. Removal of all refuse from lodge, cabin and pro shop operations. During the period from Memorial Day weekend through Labor Day, such refuse removal shall be done a minimum of twice weekly. The Concessionaire shall be responsible for providing trash receptacles.
- o. Glass breakage replacement.
- p. Cleaning of kitchen ventilation exhaust duct systems by a qualified contractor semi-annually or more often if necessary, or as directed by the Director.
- q. Tennis and basketball court resurfacing, re-building, and repair.
- r. Maintenance of the fire hydrants and related equipment located within the boundary lines indicated in Appendix A.
- s. Cost of major structural repairs which result from the Concessionaire's negligence of failure to perform required routine maintenance.
- t. Obtaining all necessary permits as required by law for any construction, modification, or repair upon the Properties.
- u. Routine maintenance and minor repair of the lodge courtesy boat docks including, but not limited to board replacement and bumper rail replacement.
- v. Grease traps shall be inspected daily and the grease shall be removed and disposed of in a manner approved by the Department.
- w. Landscaping and fertilization
- x. All other repair and maintenance not specifically listed under Section 12(B)(2) below.

2. Maintenance Responsibilities of the Department:

- a. Major structural repair, unless necessitated by the Concessionaire's negligence or failure to perform required routine maintenance as stipulated in Section 12(B)(1) above, in which case the Concessionaire shall be responsible for total cost of repair. Major structural repair shall include but shall not be limited to:
  - Foundation, beams and major wall repairs, due to settling necessitated by aging or extreme settling of the buildings under this Contract;

- Roof replacement where the roof has outlived its usefulness, except where replacement is required due to the Concessionaire's negligence or failure to perform required routine maintenance;
- Replacement or correction of extreme erosion conditions not caused by the Concessionaire's negligence.
- Swimming pool replacements and major renovations, including but not limited to total replacement of circulation systems.

This list of major structural repairs is not indicative of all repairs, but is provided to give examples of the types of major repairs, which are the Department's responsibility to correct.

- b. Surface maintenance of the parking areas, roadways, and drives, included but not limited to paving and striping.
- c. Sewage lift station maintenance, repairs and replacements, provide such repairs are not due to the Concessionaire's negligence.
- d. Mowing and trimming of the grounds located within the boundary lines shown in Appendix A.
- e. Snow removal from driveways and parking lots located within the boundary lines shown in Appendix A.
- f. Replacement of boilers, chillers, heat exchangers, transformers, cooling towers, and other supplemental heating sources.
- g. Paving repairs required to maintain the integrity of the roadways and drives; the sealing and striping of the parking lots, and maintenance of the parking lot bumper blocks.
- h. Removal of dead or dying trees upon the Properties.

C. The Concessionaire shall be responsible for the improvement and replacement of furniture, furnishings, fixtures, and equipment made necessary by wear, loss, breakage, theft, vandalism, or other cause. At all times during the term of this Contract and at its termination there shall be a full inventory of all items of chattel property included in the Contract, consisting either of the original item in good, rentable condition or suitable replacement items of equal value, quality, and utility in good rentable condition. The Concessionaire must obtain prior written approval of the Director for all replacement items.

1. Any design, specification, selection, or purchase fees incurred by the Concessionaire in connection with the improvement or replacement of furniture, furnishings, fixtures, 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. 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.

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.

- D. 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.

E. Maintenance, Repair, and Replacement Fund:

1. Purpose: In order to assure that sufficient funds are available for the purposes of satisfying the maintenance and replacement responsibilities of the Concessionaire, and to ensure the continued operation of the Properties described herein 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, three percent (3%) of gross receipts derived from the properties throughout the term of the contract shall be placed into a single fund hereinafter known as the "Maintenance, Repair, and Replacement Fund."

At whatever time this Contract is terminated, any funds remaining shall be held by the Department to be surrendered to the new operator for the purpose of re-

establishing the Fund account, it being the intent of the Department to maintain this Fund in perpetuity for the benefit of the physical facilities and Properties which are the subject of this Contract.

2. Mechanics: On or before the 20th day of each calendar month during the term of this Contract, beginning with the month following the date this Contract is entered into, the Concessionaire shall pay into the Maintenance, Repair and Replacement Funds the percentage as specified above of its total gross receipts resulting from its operations under this Contract during the preceding month, as reported on the monthly receipts reports required in Section 6(C). The depository for the Fund shall be established as directed by the Department. If interest income is generated by the Fund, it shall not be included in gross receipts and shall remain part of the Fund. Maintenance, Repair and Replacement Funds procedures shall be in accordance with the manual provided to the Concessionaire by the Department at the time this Contract is entered into and any subsequently revised versions thereof.

All expenditures and withdrawals from the 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. For all expenditures in excess of \$7,500.00, the Concessionaire is required to obtain three (3) written competitive bids or price quotes and submit evidence of said quotes to the Director with the request for prior written approval, unless otherwise approved by the Chief of the Division of Parks and Recreation.

In order to initiate payment from the Fund, the Concessionaire shall follow the procedures as set forth in the Maintenance, Repair, and Replacement Manual.

3. Permissible uses of the Maintenance, Repair, and Replacement Fund:
  - a. 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;
  - b. Changes and alterations to improve the Properties whose funding from this source is approved by the Director;
  - c. Service contracts in fulfillment of Section 12(B)(1)(i);
  - d. Any bank charges levied for its services, in connection with maintaining the Maintenance, Repair and Replacement Fund Account;
  - e. Any sales or use tax charged for the purchase of tangible property as required by law;

- f. Equipment required for selling and reading Department gift cards;
- g. Pest control
- h. Laundry equipment purchases and washer, dryer, and mangle repair for lodge use;
- i. Window cleaning for large outdoor windows
- j. Housekeeping and laundry cart purchases
- k. Landscaping and fertilization
- l. Repair and maintenance items not specifically excluded in Section 12(E)(4) below, subject however to the approval of the Department.

4. Impermissible uses of the Maintenance, Repair and Replacement Fund:

- a. Salary of maintenance or other personnel employed by the Concessionaire;
- b. Labor charges for services performed when, in the opinion of the Director, such services are considered normal and customary maintenance duties that can be performed by the Concessionaire's maintenance staff (as specified in Appendix C);
- c. Any replacement or repairs to items owned by the Concessionaire;
- d. Items, repairs, and services considered operational or expendable in nature, as specified in Appendix C.
- e. The maintenance, repair or replacement of furnishings or equipment required to be provided by the Concessionaire;
- f. Any fixture, sign or other item which contains the Concessionaire's trademark or copyrighted logo;
- g. Consultant's fees in connection with design, specification, selection, or purchase of replacement items, except as provided in Section 12(C)(1);
- h. Any repairs necessitated by damage to the Properties by the public, beyond normal wear and tear, unless the Concessionaire has pursued reimbursement from the renter or guest for such damage and such reimbursement is uncollectible. In such case, the Concessionaire shall supply to the Department evidence of its attempts to recover such reimbursement.

- i. Items considered tools and office equipment as specified in Appendix C;
- j. Any repairs to the Properties necessitated by the Concessionaire's negligence or failure to perform required routine maintenance.
- k. Any charges for equipment, labor, hardware, software, materials, or any other charges in connection with supplying a reservation system for the operation of the Properties.

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 Concessionaires total liability with regard to its maintenance and other responsibilities.

- F. If, after written notification by the Department that the Concessionaire has failed in the opinion of the Department to meet any of its obligations under Sections 12(B)(1), 12(C), or 12(D), and such failure continues for sixty (60) days thereafter, then the Department may utilize the Maintenance, Repair and Replacement Fund to fulfill such obligations. The Department may withdraw from the Maintenance, Repair and Replacement Fund an amount equal to the cost and expense of any work done by the Department and of material purchased by it, together with a fair apportionment of overhead costs relative to such actions on the part of the Department.

### 13. PROPERTY REVIEWS

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, etc., shall be then 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 Contract 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 Contract.

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 Contract.

### 14. PROMOTIONAL ACTIVITIES

- A. Because the successful operation and use of the Properties will depend in part upon adequate advertising, promotional and sales activities, such advertising, promotional and sales activities shall be conducted by the Concessionaire on a regular basis, at the Concessionaire's expense.
- B. In the interest of public service the Concessionaire shall cooperate with the other state park lodge operators in promoting all state park lodges in referral and, in general, advising the

public of the facilities available and reservations procedures in effect at the other state park lodges. The Department will consult with, advise, and furnish information to the Concessionaire, which will be of assistance to it in its preparation of promotional material as herein provided. An initial review process by the Department is required to establish the trademark/logo and general marketing plan for the Properties covered under this Contract. Thereafter promotional plans and materials shall be submitted for review on an annual basis or as requested by the Director.

- C. All promotional literature offered by the Concessionaire to the public regarding the Properties is subject to Department review and approval. Any such promotional material disapproved by the Director shall be immediately removed.
- D. The Concessionaire shall agree to disseminate to the public free of charge Department-supplied surveys, comment cards, and informational materials as directed by the Department.

#### 15. COMPLAINTS FROM USERS

From time to time it is expected that there will be a minimal number of complaints from the public who utilize the Properties, concerning accommodations, food, service, maintenance and similar matters. It is the intent of both the Department and the Concessionaire to resolve each complaint, if possible, in an expeditious manner so as to preclude a future, similar occurrence.

#### 16. TRANSITION PERIOD

In order to ensure users of the lodge Properties uninterrupted service during the transition period at the expiration of this Contract, the Concessionaire agrees to immediately provide to the Department records of advanced deposits, reservations, and other operational information when requested by the Director.

#### 17. INVENTORY AND SUPPLIES

On or before the date it is required to begin operations on the Properties, the Concessionaire shall, at its expense, provide and install complete stocks of food, beverages, and other supplies, merchandise and equipment necessary and appropriate for the operation of the Properties, other than that agreed herein to be furnished by the Department, and at all times thereafter during the term of this Contract it shall maintain adequate stocks and supplies.

#### 18. STARTING INVENTORY

At the time the Concessionaire takes possession of the Properties, an inventory of all personal property of the Department which constitutes a part of the Properties shall be made in itemized form by the Department and the Concessionaire, and a copy of such inventory signed by the parties shall be retained by and become a part of this Contract as Appendix B.

At the inception of the Contract, the Concessionaire will take ownership of all operational and expendable items on the properties as identified in Appendix C.

## 19. CONCESSIONAIRE'S AUTHORITY

Subject to the approval of the Director and all of the terms and provisions hereof and all applicable laws and regulations, the Concessionaire shall have control and discretion in the operation of the Properties, including the use of the premises for all customary purposes, the terms of admittance to the guest rooms, and the terms of admittance for commercial space, for privileges of entertainment and amusement, for food and beverages, and the labor policies (including wage rates) and the hiring and discharge of employees, and all phases of promotion and publicity. The Department agrees that the Concessionaire, by making the payments specified herein and performing and observing the Contract and conditions herein on its part to be performed and observed, may occupy the Properties during the term hereof without further demands or hindrance by the Department or anyone claiming under it.

It is further understood and agreed by and between the parties that nothing herein contained shall constitute or be construed as a co-partnership or joint venture between the Department, its successors or assigns on the one part and the Concessionaire, its successors or assigns, on the other part.

## 20. 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.

I. The Concessionaire shall employ the following management employees with the following qualifications:

- Chef/kitchen manager; qualifications shall include being a certified food handler; in accordance with the Ohio Department of Health's Food Service Managers Certification Program or the National Restaurant Association's Serv-Safe Program.

- Maintenance Supervisor; qualifications shall include: experience in facility maintenance; knowledge and ability to perform maintenance and repair of HVAC, boiler, chiller, and other mechanical systems; knowledge of and ability to perform basic electrical, plumbing, and carpentry repairs; certification in swimming pool/spa operation; knowledge of and ability to perform routine landscaping; experience in the supervision of maintenance staff.

21. PROPERTY AT CONCESSIONAIRE'S RISK

- A. The Concessionaire's supplies and all merchandise, effects and other property of every kind, nature and description belonging to the Concessionaire, which may be on or in the Properties during the terms of this Contract 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 such 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 any and all loss, cost, debt, claim, damage, judgment and/or expense suffered or incurred by the Concessionaire in connection therewith.
- B. The Concessionaire shall immediately notify the park office of all property damages or personal injuries upon the Properties.

22. ENVIRONMENTAL INITIATIVES

- A. The Concessionaire shall operate the properties in an environmentally responsible manner. Where practical, the Concessionaire will implement and utilize water conservation and energy efficient policies, procedures, and products.
- B. The Concessionaire shall implement a recycling program for cans, bottles, paper, and other recyclable products.

23. LIABILITY AND INDEMNIFICATION OF THE DEPARTMENT

- A. All operations by the Concessionaire under this Contract shall be conducted solely at its own risk. The Concessionaire 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 Concessionaire alleging bodily injury, death or property damage arising directly out of the Concessionaire's negligence in performing under this Agreement, the Concessionaire 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 Concessionaire of any claims for which the Department may seek indemnification.

- 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 **Ten Million Dollars (\$10,000,000.00)** 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. Nothing in this Contract imposes liability on the Concessionaire for damages caused by acts of God.

#### 24. CONCESSIONAIRE'S DEFAULT

If the Concessionaire:

- A. Shall default in any payment due under this Contract, or any payment becoming due from it to the Department or to the Maintenance, Repair and Replacement Fund under the terms hereof, and if such default shall continue for ten days after written notice from the Director to the Concessionaire designating such default;
- B. Shall fail to maintain standards of food and food service as required by this Contract, or in any manner shall fail to provide adequate service to the public, and if such default shall continue for ten (10) days after written notice from the Director to the Concessionaire designating such default;
- C. For a period of ten (10) days after written notice by the Director specifying some other default or defaults, the Concessionaire has not commenced diligently to correct the default or defaults so specified;
- D. Shall abandon or vacate the Properties or discontinue the conduct of business thereon;
- E. Shall make an assignment for the benefit of creditors;
- F. Shall experience the interest of the Concessionaire in this Contract or any of the assets used by it in the transaction of the business conducted by it under the provisions of this Contract being sold upon execution or other legal process;
- G. Shall underreport revenue on monthly receipts reports, or any other financial reports, or misrepresent the source of revenue in such reports furnished the Department;

H. Fails to remain authorized to do business of the type and nature required in this Contract in the State of Ohio, then in any of such cases, the Director may declare this Contract terminated and the Concessionaire shall immediately turn over all the Properties to the Department the same as if the term of the Contract had expired. In the event there is repeated default in maintaining standards of food or food service, sufficient to cause a decline in public respect for any facility under this Contract, the Director may by written notice declare this Contract terminated even though the immediate default may have been corrected. In case of any such termination, in addition to any arrears of payments and interest thereon, and damages for other breaches of this Contract prior to and including such termination or in the case of mutual termination the Concessionaire shall: (a) indemnify the Department against all loss, liability and damage incurred until such time as a new operator is obtained, but not to exceed one hundred twenty (120) days, as a result of such termination, and (b) be liable to the Department for any deficiency between the amount of remittances due from the new operator pursuant to a recontract of the Properties and that due from the Concessionaire under this Contract, plus any expenses incurred by the Department in connection with rebidding and recontracting, including, without limitation, the expenses of any redecorating, repairs or alterations the Department deems necessary or appropriate to make in connection with such rebidding and recontracting, and sums to reimburse the Department for time expended in rebidding, recontracting, and associated activities. Suit for the recovery of any such damages may be brought at any time by the Director, at his option, and the Director shall not be required to postpone suit until the date originally fixed for the expiration of the term of this Contract.

#### 25. NON-WAIVER OF BREACH

No assent, expressed or implied, by the Director to any breach in or default of any Contract or condition herein contained on the part of the Concessionaire to be performed or observed, shall constitute a waiver of or assent to any succeeding breach in or default of the same or any other Contract or condition hereof.

#### 26. DESTRUCTION BY FIRE OR OTHER HAZARD

In the event of the total destruction of the Properties or taking by eminent domain, or damage to or destruction of a portion thereof so substantial that the remainder is not economically operable for the purposes herein contemplated, by fire, windstorm, or other hazard, operation of the Properties shall be suspended until the portions thereof so destroyed or damaged are rebuilt, repaired, or replaced. Such rebuilding, repairing or replacement, hereinafter collectively called "restoration", shall be done by the Department from the proceeds of insurance or from other funds that may be available for the purpose, unless the responsibility for such restoration is that of the Concessionaire under other provisions of this Contract, in which event the same shall be done by the Concessionaire at its expense. In the event such restoration is the responsibility of the Department, it may serve the Concessionaire with notice that it does not intend to carry out such restoration, in which latter event this Contract shall thereupon terminate. In the event such damage or destruction is less substantial so that the remainder of the Properties are economically operable, operation shall continue to the extent practical while restoration is under way. In the event the Director elects to proceed with restoration of the portion of the Properties so damaged

or destroyed, it shall proceed as rapidly as reasonably practical to complete such restoration. In the event of complete destruction of the Property and suspension of the operation thereof during the period of restoration, no payments shall be made by the Concessionaire for the period of complete suspension of operations. In the event the destruction is only partial and the Department elects not to restore the portion of the Properties destroyed, and such portion destroyed exceeds 50% either in reasonable value or revenue producing capacity of the Properties, the Concessionaire shall have an option to terminate the Contract provided it so notifies the Director within thirty (30) days after the Director has served the Concessionaire with notice that it does not intend to restore the destroyed portion of the Properties.

## 27. SURRENDER AT TERMINATION

Upon the expiration of this Contract the Concessionaire agrees to return to the Department all of the Properties, including all replacements thereof and additions thereto made after commencement of this Contract, in good rentable condition as hereinabove provided. Property of the Concessionaire must be removed from the premises within ten days after such termination, provided all payments due from the Concessionaire to the Department have been paid in full. Any property of the Concessionaire not removed within said period shall become and remain the property of the Department or at the election of the Department, such property may be removed 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 Concessionaire's debts to the Department, if any, by the estimated value of such property. The Concessionaire shall provide to the Department all records, files, and correspondence necessary to the continuity of operation of the Properties as determined by the Director. At whatever time this Contract is terminated, advance deposits less balance of guest ledger held by the Concessionaire, shall be turned over to the Department to be held for the next operator of the Properties.

## 28. COMPLIANCE WITH LAWS

- A. The Concessionaire agrees that it shall keep itself fully informed of all laws, ordinances, rules and regulations in any manner affecting its operation of the Properties and facilities and of all orders and decrees of bodies and tribunals having jurisdiction or authority over same. The Concessionaire shall at all times observe and comply with, and cause its agents and employees to observe and comply with such existing and future laws, ordinances, regulations, orders and decrees, and shall protect the Department against any claim or liability arising from any failure to so comply. The Concessionaire shall procure all permits and licenses, pay any charges, license fees, or taxes incident to the operation and give all notice necessary and incident to the lawful and proper prosecution of its operations hereunder.
- B. 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 minimum wage, maximum hours, and other laws, rules, and regulations applicable to conditions of employment upon or in connection with the premises. A current and valid certificate issued by the Bureau of Workers' Compensation shall be furnished prior to execution of

this Contract and periodically thereafter as renewal of such certificate becomes available to the Concessionaire. The Concessionaire further agrees that it shall not permit gambling upon the premises, nor install, operate, or permit to be installed or operated any device, or permit or conduct any activities upon the premises, 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 prior annual approval of the Chief of the Division of Parks and Recreation to offer such lottery games. The Chief reserves the right to disallow such lottery games at any time.

- C. Obligations of the State are subject to Ohio Revised Code Section 126.07.
- D. The Concessionaire agrees to comply with all pertinent provisions of the Drug Free Workplace Act.
- E. Should the Department enter into a licensing agreement or contract for the exclusive use of any product, the Concessionaire shall abide by the Department's licensing agreement, and shall sell no other similar product than those covered by the license or contract, without the express written approval of the Director. Product cost to the Concessionaire shall be at the same price the Department is charged by the provider.

## 29. TRANSFER OF LICENSES

At the termination of this Contract for any cause, the Concessionaire agrees to transfer to the Department, or its designee, on a pro rata basis, any and all licenses, permits, trade names, copyrights (not to include Concessionaires corporate business name), domain names, or patents, used in connection with the operation of all or any portion of the Properties, and hereby appoints any attorney designated by the Director as attorney-in-fact for the Concessionaire, and gives to him all necessary powers of attorney to execute on behalf of the Concessionaire all necessary papers or applications to effectuate such transfer.

## 30. INTELLECTUAL PROPERTY RIGHTS/PUBLIC USE

The ODNR shall retain unrestricted rights to all historic, geographic, or geologic names of places or things located within the confines of the territory encompassed by this Concession lease and the Concessionaire hereby agrees that it will not at any time file any applications with any public or private offices, agencies or bureaus the purpose of which is to obtain any intellectual property rights by way of copyright, trademark or otherwise. The ODNR shall have unrestricted authority to reproduce, distribute and use (in whole or in part) any reports, data, or materials prepared by Concessionaire pursuant to this Lease. No such documents or other materials produced (in whole or in part) with funds provided to Concessionaire by the ODNR shall be subject to copyright protection by Concessionaire in the United States or any other country. Concessionaire agrees that all original works created under this Lease shall be made freely available to the general public to the extent permitted or required by law until and unless specified otherwise by the ODNR. Any requests for distribution received by Concessionaire shall be promptly referred to the ODNR for disposition. Any attempt by Concessionaire to obtain intellectual property rights in violation of this provision shall result in the immediate termination of this Lease. Concessionaire hereby assigns to ODNR all intellectual property

rights in works created under the Lease as “works made for hire” and agrees to execute assignment documents transferring said rights to ODNR.”

### 31. ASSIGNMENT AND SUBCONTRACTING PROHIBITED

The Concessionaire may not assign this Contract, in whole or in part, or sublet any part of the Properties, or subcontract, or license with any other entity for the performance of any part of its obligations or duties under this Contract, without first obtaining the written consent of the Director, who shall have sole discretion whether to authorize such assignment, subcontract, sublease, or license. In the event the Director consents to any such assignment, sublease, subcontract, or license, the assignee, sublessee, subcontractor, or licensee shall be subject to the same record keeping, report-making, open records and all other applicable requirements of this Contract as are placed upon the Concessionaire by this Contract, and the Concessionaire shall remain primarily liable for the payments herein provided, and all other obligations and duties under this Contract unless expressly otherwise provided in the written consent of the Director thereto. No assignment, sublease, subcontract or license made by the Concessionaire without the written consent of the Director shall vest any right of interest whatsoever in such other party, or relieve the Concessionaire of any of its duties and obligations. Evidence of gross receipts from assigned, sublet, subcontracted, or licensed services shall be provided to the Department by the twentieth (20th) day of each month to substantiate the monthly receipts reports.

### 32. CHANGES IN WRITING ONLY

This instrument, designated "Contract" and the appendices hereto, contains the entire Contract of the parties and no change, modification, or waiver in or of any of the terms, provisions or conditions of this Contract shall be in any way valid or 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.

### 33. 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 to in writing by the Director, shall vest in the assigns any right, title or interest whatsoever.

### 34. 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 Contract, and that it shall continue to be so qualified during the term of this Contract.

### 35. ADMINISTRATION

Whenever this Contract refers to the Department or to the Director of Natural Resources, the Chief of the Division of Parks and Recreation, or other Department administrative officer so designated by the Director, may act in his/her stead. Unless otherwise notified in writing by the Director, all reports, records, payments, etc. shall be mailed to: Ohio Department of Natural Resources, Division of Parks and Recreation, Concessions Section, 2045 Morse Road C-3, Columbus, Ohio 43229.

### 36. FINDINGS FOR RECOVERY

The Concessionaire affirmatively represents and warrants to the Department that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. The Concessionaire agrees that if this representation or warranty is deemed to be false, this Contract shall be void *ab initio* as between the parties to this Contract, and any funds immediately may be commenced by the Department for recovery of said funds.

### 37. 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.

### 38. 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.

### 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.

44. EXECUTIVE ORDER 2011-12K – GOVERNING THE EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES

**A. EXECUTIVE ORDER REQUIREMENTS:**

The Contractor affirms to have read and understands Executive Order 2011-12K issued by Ohio Governor John Kasich and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. The Executive Order is provided as an attachment.

The Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

**B. TERMINATION, SANCTION, DAMAGES:**

The State is not obligated and shall not pay for any services provided under this Contract that the Contractor or any of its subcontractors performed outside of the United States. If services are performed outside of the United States, this will be treated as a material breach of the Contract, and Contractor shall immediately return to the State all funds paid for those services.

In addition, if the Contractor or any of its subcontractors perform any such services outside of the United States, the State may, at any time after the breach, terminate this Contract for such breach, upon written notice to the Contractor. If the State terminates the Contract, the State may buy substitute services from a third party, and the State may recover the additional costs associated with acquiring the substitute services.

If the Contractor or any of its subcontractors prepares to perform services, changes or shifts the location(s) of services performed by the Contractor or its subcontractors under this Contract to a location(s) outside of the United States, but no services are actually performed, the Contractor has [insert number of days not to exceed 30 days] to change or shift the location(s) of services performed to location(s) within the United States. The State may recover liquidated damages in the amount of [insert the percentage] % of the value of the contract for every day past the time permitted to change or shift the location(s).

**C. ASSIGNMENT / DELEGATION:**

The Contractor will not assign any of its rights nor delegate any of its duties and responsibilities under this Contract without prior written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

[Reminder of page left intentionally blank]

45. 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 Contract and all duplicate copies are effective upon execution by all intended parties. By signing below, the signatories hereto represent that they are fully authorized to bind the principals to this contract, and the principals agree to be so bound.

\_\_\_\_\_ for Concessionaire/Title

\_\_\_\_\_ 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 person described in the foregoing instrument, and acknowledged that he/she 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

STATE OF OHIO

APPROVED:

\_\_\_\_\_  
GARY OBERMILLER, Deputy Director                      DATE  
Department of Natural Resources

\_\_\_\_\_  
JAMES ZEHRINGER, Director                                      DATE  
Department of Natural Resources

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 person described in the foregoing instrument, and acknowledged that he/she 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