

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

LEASE AGREEMENT

THIS AGREEMENT, made the 2<sup>ND</sup> day of April in the year Two  
Thousand and Nine (2009),

BETWEEN

THE STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF PARKS AND FORESTRY  
501 EAST STATE STREET  
P. O. BOX 404  
TRENTON, NEW JERSEY 08625-0404

hereinafter referred to as Landlord,

AND

CITY OF NORTH WILDWOOD  
A corporate political body of the  
STATE OF NEW JERSEY  
901 ATLANTIC AVENUE  
NORTH WILDWOOD, NEW JERSEY 08260

hereinafter referred to as Tenant.

**WHEREAS**, Landlord is charged with the responsibility and is empowered to acquire, hold, lease, manage, protect and develop lands of the State of New Jersey for recreation, conservation, cultural and educational purposes; and

**WHEREAS**, Landlord, with funds appropriated under the New Jersey Green Acres Land Acquisition Acts, N.J.S.A. 13:8A-1, et seq., acquired certain properties as hereinbelow described and known as Hereford Inlet Lighthouse located in the City of North Wildwood, County of Cape May; and

**WHEREAS**, by an agreement dated March 31, 1995 Landlord leased the Hereford Inlet Light Station ("Lighthouse") to Tenant for the purpose of restoring, preserving, developing, improving, maintaining, operating and interpreting the Lighthouse as a historic site and making it available for public visitation and interpretation; and

**WHEREAS**, Tenant proposed its desire to execute a new lease with Landlord for the continued restoration, preservation, development, improvement, maintenance, operation and interpretation of the Lighthouse as a historic site and making it available for public visitation and interpretation; and

**WHEREAS**, Landlord has determined that the execution of a Lease for the purposes and subject to the terms and conditions herein provided is consistent with federal and State laws pertaining to the listing of the Lighthouse in the National and State Registers of Historic Places and federal laws pertaining to the designation of the Lighthouse as a National Landmark, and is consistent with Landlord's reasonably anticipated plans for the development, management and operation of the Lighthouse and will serve the best interest of the State of New Jersey and the public by enhancing the public interpretation of the historic significance of the Lighthouse.

**NOW THEREFORE**, in consideration of the one time payment by Tenant to Landlord of Twenty-four (\$24.00) Dollars to be paid in advance by the Effective Date hereof and the financial investment to be made, and the investment of time and expertise to be utilized by Tenant in achieving the restoration, preservation, development, improvement, maintenance, operation and interpretation of the Lighthouse and the aims, intent and purpose herein expressed, and the mutual covenants hereinafter made, the parties hereto agree as follows:

**THAT, IN ACCORDANCE** with the provisions of N.J.S.A. 13:1D-9(q), N.J.S.A. 13:1L-1 et. seq. and N.J.S.A. 13:8A-1 et. seq., Landlord does hereby grant to Tenant and Tenant does hereby accept a lease to enter upon, for the purposes herein provided: ALL that certain land and improvements thereon known and designated as the Hereford Inlet Light Station, ("Premises"). The Premises are identified more particularly on the Lease Map attached to and made a part of this Lease as Exhibit A.

Landlord and Tenant hereby mutually covenant and agree as follows:

## **1. TERM**

This Lease shall be in effect for Eighteen (18) Lease Years (the "Term") but shall not extend beyond the year 2026, unless sooner terminated, as hereinafter provided, commencing on the Effective Date of this Lease which, for the purpose hereof shall be the date on which the Landlord signs the lease, as indicated by the date on the first page of the lease.

"Lease Year" shall mean a period of twelve consecutive months beginning on January 1 and ending on December 31, except with respect to the "First Lease Year" which shall commence on the Effective Date and shall expire on December 31 of the calendar year that includes the Effective date.

## **2. PURPOSE**

- A. Tenant shall not use or occupy the Premises for any other purpose than:
- (i) the development and implementation of educational, cultural, recreational and interpretive programs, projects and activities to enhance public awareness of the historic significance of the Lighthouse and the area's natural resources;
  - (ii) the restoration, preservation, maintenance and interpretation of the Lighthouse; and
  - (iii) the conduct of such cultural, educational, social, membership or community activities as are approved by Landlord under Paragraph 8 hereof.

Said purposes are hereinafter collectively referred to as "Activities".

Tenant shall not use or allow or permit others to use the Premises for any purpose or in any manner other than as expressly provided herein. No use or manner of use shall be implied from the purposes expressed herein. Tenant shall not conduct or allow any use which would in any way (i) make void or voidable any insurance then in effect, (ii) cause damage to all or any part of the Premises or any adjacent State Park property, (iii) violate any federal, State or local law,

ordinance, rule or order, or (iv) constitute a public or private nuisance. Tenant shall not cause or permit to occur any violation of any federal or State law or regulation now or subsequently in effect related to environmental conditions on, under or about the Premises including, but not limited to soil, ground water and surface water conditions. Without limitation, Tenant shall not dump or place or otherwise permit or allow any person to dump or place (a) soil or other substances or material as landfill on the Premises except as approved by Landlord as part of the improvement and maintenance of the Premises, or (b) any trash, waste, hazardous waste, vehicles, equipment or any unsightly or offensive materials on the Premises.

B. Tenant shall not sponsor, co-sponsor or otherwise engage in any activity which would be for the profit of any individual or organization other than Tenant. Tenant may sponsor, co-sponsor or otherwise engage in an activity which would be for the profit of an individual or organization provided that said activity is open to the public, that prior to the commencement of such activity, Tenant obtains the express written approval of Landlord and that Tenant executes an agreement with such individual or organization whereby such individual or organization agrees to pay a reasonable and equitable compensation to Tenant for the right and privilege to participate in the activity.

### **3. CONDITION OF PREMISES**

The Premises are leased to and accepted by Tenant in their present condition and without representation or warranty of any kind by Landlord including, without limitation, any representation or warranty of fitness for a particular purpose. Tenant has made a physical inspection of the Premises and has found same satisfactory for all purposes of this Lease.

### **4. INDEPENDENT PRINCIPAL**

Tenant acknowledges and accepts that it is an independent principal and is not undertaking any activities for Landlord and that it has no relationship with Landlord concerning this Lease as Landlord's agent, servant, employee, contractor or otherwise. Tenant agrees not to enter any agreement or commitment on Landlord's behalf.

### **5. COSTS TAXES AND ASSESSMENTS**

A. Tenant shall, from the date of execution of this Lease and throughout the Term of this Lease, at Tenant's sole cost and expense, provide all such labor, materials, supplies, equipment, professional and technical services, and perform all work necessary to restore, preserve, improve, maintain, repair and operate the Premises for the purposes of and in accordance with this Lease. All obligations of every kind and nature whatsoever relating to or arising from Tenant's obligations under this Lease shall be paid by Tenant. Nothing in this Lease shall be construed as creating any obligation on the part of Landlord to provide any labor, materials, supplies, equipments, funds or perform any work for the purposes of this Lease. Tenant is permitted to obtain funds through State and/or Federal Grants.

B. Tenant shall promptly pay when due all taxes and assessments, if any, together with interest and penalties thereon, which are levied upon or assessed with respect to the Premises or the leasehold estate hereby created. Immediately upon receipt, Tenant shall forward a copy of any tax bill or assessment to Landlord. If any assessment or tax may be paid in installments, Tenant may pay same in installments, except that each installment and any interest shall be paid by the final date fixed for the payment thereof and the whole tax or assessment shall be paid prior to the expiration or termination of this Lease. Within thirty (30) days following the due date for payment of any tax, assessment or installment thereof, Tenant shall submit to Landlord a receipt, canceled check or other evidence required by Landlord documenting payment in a timely manner as above provided. If any tax or assessment is not paid in full prior to the expiration or termination of this Lease, payment shall remain a continuing obligation of Tenant thereafter.

### **6. NAVIGATIONAL AID**

A. The light signal and other navigational aids located in, on and around the Lighthouse are active Federal aids to navigation ("AIDS") operated and maintained by the United

States Coast Guard. Tenant will not interfere in any manner with the AIDS or the electrical system used to power AIDS without the express written permission of the Coast Guard.

B. The Coast Guard reserves the right to relocate the AIDS, add additional AIDS or make any changes to the power system on any portion of the Premises.

C. Tenant shall not be responsible for the operation, installation, maintenance, repair and utility costs for the AIDS which shall be the exclusive responsibility of the United States Coast Guard or its designee.

## 7. MANAGEMENT PLAN

Landlord and Tenant agree that Tenant may enter into a Management Agreement with Friends of the Hereford Inlet Lighthouse, Inc. ("Friends Organization"), a not-for-profit corporation, under which the Friends Organization assumes specific obligations of Landlord as set forth in this Lease Agreement. The Management Agreement shall specifically state which items of this Lease Agreement are the responsibility of Tenant and which are the responsibility of the Friends Organization. Tenant shall submit the Management Agreement to Landlord for its approval prior to entering into the Management Agreement. As part of the Management Agreement, the Friends Organization shall be required to provide the City of Wildwood with an annual summary of activities related to the use and management of the Premises.

If Tenant enters into a Management Agreement with the Friends Organization, Tenant shall provide Landlord with the required insurance certificates and documentation submitted to it by the Friends Organization. Landlord retains the right to require Tenant to terminate the Management Agreement if Landlord concludes that the Premises are not being managed in accordance with this Lease Agreement.

Tenant shall submit to Landlord and obtain Landlord's written approval of a comprehensive management plan ("Management Plan") for the Term of this Lease. The Management Plan shall include, but not be limited to:

- (i) a detailed statement of Tenant's goals and objectives in the: (a) restoration, preservation, and improvement of the Premises; (b) development and implementation of interpretive programs, projects and activities to encourage public awareness and understanding of the historic significance of the Premises; and (c) development and conduct of cultural, educational and community programs.
- (ii) a description of the interpretive programs to be developed and offered to the public;
- (iii) a description and schedule for initiation and completion of preservation, restoration and improvement projects proposed to be undertaken by Tenant; and
- (iv) financial management and internal control systems established to meet the terms and conditions of this Lease.

Landlord's approval shall be granted provided Landlord determines that: (i) the Management Plan is consistent with the purposes of this Lease; (ii) implementation of the Management Plan will not adversely affect the historic significance of the Premises; and (iii) the Management Plan is consistent with the nature and character of the State Park and Landlord's current and reasonably anticipated plans for the development, improvement, restoration, preservation, interpretation, management and operation of the Premises. Approval by Landlord shall not be unreasonably withheld or denied. As part of its review of the Management Plan, Landlord shall, as required, submit the plan to the New Jersey Historic Sites Council for the Council's review and recommendations in accordance with N.J.S.A. 13:1B-15.110. As approved, said Management Plan shall become a part of this Lease and Tenant shall make its best good faith effort to implement said Plan. Tenant shall not modify or deviate from the approved Plan without first obtaining the express written approval thereof by Landlord.

## 8. ANNUAL PLAN INCLUDING BUDGET

A. Each Lease Year Tenant shall submit in writing to Landlord and Tenant shall obtain Landlord's written approval of a plan for the maintenance and operation of the Premises for the purposes of this Lease ("Annual Plan") Tenant shall submit the first Annual Plan to Landlord in writing when Tenant returns this Lease, signed by Tenant, to Landlord for signature. The Annual Plan shall include, but not be limited to a:

- (i) description of educational, recreational and interpretive programs, projects and activities to be offered to the public during the Calendar year;
- (ii) description of planned acquisitions, if any, for the Premises including estimated cost and proposed use of each;
- (iii) description and annual calendar of planned Events including dates, hours of operation, fees and type of activities to be offered as part of the Event, statement whether the Event will be for the profit of an Organization other than Tenant, and name of Organization;
- (iv) description of planned fund raising activities, grant applications, solicitations, membership drives, etc.;
- (v) description of staff positions required for interpretation, restoration, preservation and operation of the Premises including a description of positions, number of each position, qualifications and competency for each position, and estimated cost and funding source for paid positions; and
- (vi) description and schedule of the maintenance activities planned by Tenant; and
- (vii) description of the restoration, preservation and improvement projects, if any, proposed to be undertaken by Tenant during the year with an anticipated schedule for the commencement and completion of each project.

Landlord's approval of the Annual Plan shall be based upon Landlord's determination that it is consistent with this Lease, the Management Plan, the historic significance of the Premises and is consistent with the rights, obligations and responsibilities of Landlord and Tenant under this Lease. Approval shall not be unreasonably denied. As approved, the Annual Plan shall become a part of this Lease by reference.

B. Except as provided in subparagraph C of this Paragraph, Tenant shall submit each successive Annual Plan at least forty-five (45) days prior to the beginning of the Lease Year pertaining to that Annual Plan.

C. If the First Lease Year of this Lease is less than forty-five days before the start of the second Lease Year, Tenant shall, in addition to submitting an Annual Plan for the First Lease Year, submit an Annual Plan for the second Lease Year when Tenant returns this Lease, signed by Tenant, to Landlord for signature.

D. Failure to submit an Annual Plan and/or obtain Landlord's written approval thereof as above provided shall be grounds for suspension of operation of the Premises in accordance with Paragraph 30 of this Lease pending submission of a plan acceptable to Landlord and/or termination of this Lease in accordance with Paragraph 31 of this Lease.

E. Tenant shall use, occupy and conduct its activities on the Premises substantially in accordance with each approved Annual Plan. Tenant may conduct activities including, but not limited to Events not described in the Annual Plan if at least thirty (30) days prior to commencement of the additional activity Tenant submits a written description of the activity to Landlord in full compliance with the requirements of this paragraph to the same extent as though

the activity was included in the Annual Plan and obtains Landlord's written approval. Landlord's approval shall be based upon Landlord's determination that the additional activity is of the same or similar nature to the activities approved by Landlord as part of the Annual Plan.

F. Landlord and Tenant shall meet at least once every six (6) months to review Tenant's operations under the approved Management Plan and Annual Plan, review and approve specifications for implementation of the Plans, and discuss proposed modifications.

G. Tenant shall, as part of the Annual Plan, submit a budget to Landlord for the Lease Year covered by the Plan. The budget shall contain, but not be limited to:

- (i) projected revenue from visitation, solicitations and grants, sale of products, memberships, events or any other source pertaining to its operations under this Lease;
- (ii) an itemized description and estimate of the costs to be incurred in the: (a) maintenance, operation and staffing of the Premises; (b) development and implementation of interpretive programs; and (c) restoration and preservation of the Premises; and (d) conduct of events; and
- (iii) an itemized appropriation of funds for all work to be performed and programs to be implemented as described in (ii) above.

Said budget shall demonstrate to the satisfaction of Landlord that Tenant has the financial capability and has made the appropriate commitment to meet its obligations under this Lease.

H. A copy of the first and, if applicable, second Annual Plan(s) with respective budget(s) is attached to this Lease as Exhibit B.

## 9. STAFF

A. Tenant shall, at all times during the term of this Lease, engage a sufficient number of reliable, competent and qualified volunteer and/or paid staff for the development and implementation of the educational, cultural, recreational and interpretive programs, projects and activities and the maintenance, improvement and preservation projects by Tenant in accordance with this Lease. The number of staff positions and the competence and qualifications for each position shall be established as part of the Annual Plan. If Landlord determines that Tenant has not engaged a sufficient number of reliable, competent and qualified volunteer and/or paid staff or that an individual is not competent or qualified for the position held, Tenant shall, within thirty (30) days of receipt of written notification from Landlord, correct the staffing deficiencies described in said notice.

B. Tenant shall have direct supervision of all its employees, agents, volunteers, contractors and subcontractors performing any activity for Tenant under this Lease. Tenant shall assure compliance by its employees, agents, volunteers, contractors and subcontractors with the terms and conditions of this Lease.

## 10. MAINTENANCE AND UTILITIES

A. Tenant shall, at Tenant's sole cost and expense, be completely responsible for the maintenance and repair of the Premises. Tenant shall deliver up peaceable possession of the Premises to Landlord upon the expiration or termination of this Lease in good repair and condition. Landlord shall not be required to maintain or repair the Premises.

B. Tenant shall keep and maintain the Premises, utility systems including, but not limited to, the septic/sewer system, heat, water, and electricity, equipment and fixtures comprising part of the Premises in good repair and condition. Tenant's responsibility to maintain the Premises in good repair and condition requires Tenant to always keep and maintain the Premises in such condition as to minimize, so far as practicable, the effects from age, use and damage. In addition, Tenant shall immediately upon discovery make all structural, nonstructural, ordinary and extraordinary repairs of every kind required to be made upon or in connection with

the Premises, utility systems, equipment and fixtures comprising part of the Premises to keep and maintain the Premises in good repair and condition in accordance with all federal, State, and local requirements.

C. Tenant shall keep and maintain the Premises well maintained in a neat, clean, safe and sanitary condition. Tenant shall be responsible for all interior housekeeping maintenance. Tenant shall keep the grass mowed, all trees and shrubbery trimmed, all gardens reasonably free of weeds, and all sidewalks, walkways, roads and parking lots clear of ice, snow and debris. Tenant shall be responsible for all repairs, grading and replacement of sidewalks, walkways, roads and parking lots. Tenant shall keep the Premises free of trash and debris and shall be responsible for the collection, disposal and recycling of all garbage, rubbish and other waste from the Premises. Tenant shall participate in and comply with all recycling programs in effect for the County and/or municipality.

D. Tenant shall be completely responsible for payment of all costs for the installation, repair or replacement of all utility systems servicing the Premises. Tenant shall pay the cost of all utility service to the Premises. The whole amount of said utility cost shall be paid before the expiration or termination of this Lease. If the full amount is not paid before the expiration or termination of this Lease, the payment thereof shall remain a continuing obligation of Tenant thereafter.

E. Tenant shall keep the Premises free of trash and be responsible for the collection, disposal and recycling of all garbage, rubbish and other waste from the Premises. Tenant shall participate in and comply with all recycling programs in effect for the County and/or local municipality.

F. Tenant shall not make or allow any physical change in the natural condition of the Premises including but not limited to the cutting or removal of trees or shrubs, without first submitting plans or specifications therefor to Landlord and obtaining Landlord's written approval thereof.

G. Tenant shall not use or permit the storage of any flammable substances, such as illuminating oils, candles, oil lamps, turpentine, benzine, naptha or any similar substances prohibited in standard policies of fire insurance companies in the State of New Jersey in any building or structure on the Premises without prior written approval of and subject to such terms and conditions as may be required by Landlord.

H. Tenant and Landlord shall jointly inspect the Premises on an annual basis and shall prepare a mutually agreed list of necessary repairs and routine maintenance to be accomplished during the next Calendar Year. This list shall be included as part of the Annual Plan.

I. If Tenant, after receipt of a written notice from Landlord describing Tenant's failure to comply with Tenant's obligations under this paragraph, fails within the period prescribed in said notice to commence and substantially correct the conditions described therein, Landlord may terminate or suspend this Lease and/or enter upon the Premises and perform such work as Landlord determines is necessary to correct said conditions. Tenant shall reimburse all costs and expenses incurred by Landlord in performing such work.

## 11. SECURITY

A. Tenant shall, at its sole cost and expense, be completely responsible for all security of the Premises against burglary, fire, theft, vandalism and unauthorized entry. Landlord has no obligation to Tenant for security of the Premises and shall not be responsible to Tenant, its agents, employees, contractors or invitees for personal injury, death, and/or loss, damage or destruction of improvements, supplies, equipment or personal property on the Premises. Tenant shall install, maintain, repair and replace all fire and security alarm systems for the Premises. Tenant shall install a secure locking system for the Premises. Tenant shall give Landlord master keys. No other locks may be installed or affixed to any door, closet, or storage area within the Premises except a safe and/or cash box.

B. Tenant shall provide all necessary security and administrative support for all Tenant sponsored programs, projects, activities and special events.

## 12. IMPROVEMENT PROJECTS - APPROVALS AND CONTRACTING

A. Tenant may, at its sole cost and expense and with the prior written approval of Landlord, undertake specific preservation, restoration, rehabilitation, and reconstruction projects ("Work") within the Premises. Since the Premises is listed in the New Jersey Register of Historic Places and the National Register of Historic Places, all Work which Landlord through the New Jersey Office of Historic Preservation determines will affect historical aspects of the Premises, either external or internal to the land or structures shall be done in compliance with all federal and State statutes and regulations pertaining to the designation of the Premises as an historic site including, but not limited to, the "Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (published by the Secretary of the United States Department of the Interior, incorporated herein by reference and available from the New Jersey Office of Historic Preservation, PO Box 404, Trenton, New Jersey 08625-0404) or subsequent amendments thereto adopted by the Secretary. Any Work shall be considered to have an effect whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological or cultural characteristics that qualify the Premises to meet the criteria of the State and National Register.

B. Tenant shall not let any contract for or commence any Work, renovation or improvement project including the installation or replacement of any utility system, construction or placement of any building or structure, or any change in the natural condition of the Premises (collectively "Improvement") without first submitting to Landlord and obtaining Landlord's written approval of: (i) a copy of the proposed construction contract; (ii) a statement of the proposed contractor's qualifications; (iii) the design plan and specifications for the Improvement; and (iv) such additional information that Landlord may reasonably require to determine whether to approve the proposed Improvement. For the purposes of this Lease, construction shall be deemed to commence when Tenant begins grading or excavation on the Premises or if same is not necessary any on-site preparation for construction or installation of the Improvement. Tenant may enter contracts for construction of an Improvement provided that in no such event shall Tenant's obligations under this Lease be diminished thereby. Nothing contained in the contract shall be construed as creating any contractual relationship between any contractor and subcontractor and Landlord. Landlord reserves the right to reasonably disapprove the use of any contractor and, in such event, Tenant shall promptly secure the services of a contractor reasonably acceptable to Landlord. The design plan shall include, but not be limited to, the preliminary drawings, outline specifications, materials, measurements and dimensions, including site plans, floor plans, elevations and cross sections which establish the intent, scope and character of the proposed Improvement. Approval of the design plan by Landlord shall be granted if Landlord determines that the proposed Improvement as set forth in the submitted plan is consistent with this Lease, the Management Plan, and the historic significance of the Premises. If Landlord determines to approve a proposed Improvement and before the issuance of written approval, Landlord shall refer the design plan to the New Jersey Office of Historic Preservation for encroachment review under the "New Jersey Register of Historic Places Act," N.J.S.A. 13:1B-15.128 et seq. and the regulations promulgated pursuant thereto now or subsequently in effect. Landlord's approval shall incorporate conditions adopted as part of the encroachment review. As approved by Landlord, the design plan and adopted conditions of encroachment review shall be incorporated in and made a part of this Lease by reference. Tenant shall not modify or deviate therefrom without first obtaining Landlord's express written approval.

C. All plans and specifications required to be submitted to Landlord by Tenant under this paragraph are submitted to assist Landlord through the Division of Parks and Forestry in determining whether the proposed Improvement is consistent with this Lease. Landlord's approval thereof shall not in any way relieve Tenant of responsibility: (i) to apply for, obtain, and maintain all licenses, permits and approvals now or subsequently required by Federal, State and local authorities for the construction, operation, occupancy, and use of the Improvement; and (ii) for the professional quality, technical accuracy, timely completion and coordination of all plans and specifications furnished under this Lease. Tenant shall, at its sole cost and expense, correct or revise any errors, omissions, or other deficiencies in its plans and specifications. Tenant shall provide Landlord with satisfactory documentation that all required licenses, permits



and approvals have been obtained prior to the construction, operation and use of the Improvement as appropriate. Approval or acceptance of plans and specifications by Landlord shall not be construed as a waiver of any rights of Landlord under this Lease or any cause of action arising out of the performance of this Lease.

D. Landlord reserves the right to approve the location and type of any Improvement and to require that Improvements be constructed or placed so they may be removed with minimum damage to the Premises.

E. Before commencing any Improvement, Tenant shall: (i) apply to all federal, State and local authorities having jurisdiction over the Premises for building and other permits, licenses and approvals required for construction of the proposed Improvement; and (ii) submit to Landlord satisfactory written evidence that Tenant has obtained all required permits and approvals. Upon issuance of all required building and other permits, licenses and approvals, Tenant shall commence and diligently prosecute the Improvement by one or more general contractors and/or subcontractors. All construction shall be done in a good and workmanlike manner, in accordance with the approved plan and requisite building and other permits, licenses and approvals and other requirements of federal, State and local authorities having jurisdiction including, but not limited to, all federal and State laws and rules applicable to the historic site.

F. Before commencement of construction, Tenant shall deliver to Landlord certificates of insurance showing that Tenant and/or its contractors and subcontractors have obtained insurance coverage during construction as follows: (i) Completed Value Builder's Risk insurance with standard fire and extended coverage and, to the extent that insurance against any additional risk is obtainable at standard rates, "all-risk" extended coverage endorsement; (ii) Contingent Liability and Comprehensive General Public Liability insurance with a Contractual Liability endorsement including insurance with respect to owned or operated motor vehicles with aggregate limits of not less than One Million Dollars (\$1,000,000) with respect to bodily injury, death or property damage for anyone accident; and (iii) Worker's Compensation and Employer's Liability insurance in accordance with the requirements of Workers' Compensation Laws of the State of New Jersey. The insurance policies described in (i) and (ii) above shall name Landlord as an additional insured.

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

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

I. All Improvements undertaken without Landlord's written approval and/or for which Tenant cannot document to the satisfaction of Landlord that the Improvement was completed in accordance with requirements of all federal, State and local authorities having jurisdiction shall be removed by Tenant on Landlord's demand. Tenant shall, at its sole cost and expense, repair any damage to the Premises and affected State property caused by Tenant's construction and/or removal of any such Improvement.

### **13. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE**

A. Tenant shall obtain, maintain and comply with all licenses, permits and approvals required by federal, State and local authorities necessary to conduct activities on the Premises under this Lease. Landlord agrees to fully cooperate with Tenant in obtaining same. Tenant shall give Landlord satisfactory written evidence that all such licenses, permits and approvals have

been obtained prior to commencement of activities on the Premises. Tenant shall also provide Landlord with satisfactory documentation that all such licenses, permits and approvals have been renewed as may be required so that Landlord is at all times in possession of adequate documentation that Tenant has obtained and is maintaining such licenses, permits and approvals.

B. Tenant shall, at its sole cost and expense, comply and shall cause the Premises to comply with all duly promulgated and applicable federal, State and local laws, ordinances, rules and orders affecting the Premises, or any part thereof, or the use thereof, including those which require the making of any structural or extraordinary changes thereto whether or not any such laws, ordinances, rules or orders may involve a change of policy on the part of the governmental body enacting the same. Without limiting the scope of the preceding sentence, Tenant shall comply with the provisions of the New Jersey State Park Service Code, N.J.A.C. 7:2-1 et seq., or as subsequently in effect, in Tenant's use and occupancy of the Premises and any activities on adjacent land and waters owned and/or under the control of Landlord.

C. Tenant shall comply with the requirements of all policies of insurance required by this Lease which at anytime may be in force with respect to the Premises.

D. If Tenant is issued: (i) a notice of failure to comply with any policy of insurance required by this Lease; (ii) a summons or any notice of violation of any license, permit, certification, authorization, approval or any other similar instruments required by any federal, State or local authority for the conduct of activities on the Premises under this Lease; or (iii) a summons or any notice of violation of any federal, State or local law, rule or order affecting the Premises, any part thereof or the use thereof, Tenant shall immediately forward a copy of the notice or summons to Landlord and shall have such period to correct said violation as is prescribed in the summons or notice. If such violation is not cured within the prescribed period or any extension thereof by the issuing agency, it shall be deemed a material breach of this Lease and Landlord, besides declaring a default hereunder by Tenant may, in its discretion, suspend Tenant's operation of all or the affected portion of the Premises under Paragraph 30 hereof or terminate this Lease as provided in Paragraph 31 hereof. Tenant shall indemnify, defend and hold harmless Landlord against all liability, claims, losses or payments of any kind arising from Tenant's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval or any applicable federal or State law, rule or order.

#### **14. TITLE TO IMPROVEMENTS AND CERTIFICATION OF COMPLETION**

A. All Improvements by Tenant and all restored fabric including, but not limited to, woodwork, hardware and fixtures shall, upon completion in accordance with the approved plans therefor and the requirements of public authorities having jurisdiction thereof and Landlord's acceptance of the Improvement, become the property of Landlord as part of the Premises without compensation therefor to Tenant.

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

#### **15. FEES**

All public visitation fees, and any other fees associated with access to and use of the Premises including programs conducted by or authorized by Tenant to be conducted on the Premises shall be submitted to and approved by Landlord before such fees can become effective. All fees are to be listed in the Annual Plan.

#### **16. SALE OF PRODUCTS**

A. Tenant shall make no sale of products on or from the Premises without first obtaining Landlord's express written approval of the nature, type and quality of product offered for sale.

B. The maximum allowable price for all items offered for sale shall be no greater than the suggested manufacturer's retail price as provided by the manufacturer, wholesaler and/or supplier or as appears in catalogs provided by same. Tenant may discount the approved price for products without the approval of Landlord, but Tenant shall not increase the price of any product above the suggested manufacturer's retail price without first obtaining the express written approval thereof by Landlord.

#### 17. USE OF REVENUE

A. All Total Gross Revenue except for grants that require establishment of a separate account shall be kept by Tenant in a separate fund or account and used only for the operation, maintenance, administration including staff, salaries, and equipment, promotion, interpretation, restoration, preservation and improvement of the Premises in accordance with this Lease. "Total Gross Revenue" means the total amount computed in accordance with generally accepted accounting principles, excluding only New Jersey Sales Tax, from solicitations, grants, memberships, programs, Events, sale of products, or any other source pertaining to Tenant's activities under this Lease.

B. With prior written approval of Landlord, Tenant may maintain an accrual account of monies not anticipated to be spent to cover costs for the purposes of this Lease. Said funds or accounts shall not be commingled with other funds or assets of Tenant and shall not be used for any purpose other than the purposes of and in accordance with this Lease.

#### 18. REPORTS, RECORDS AND AUDIT

A. Tenant shall, on February 15 of each year, submit to Landlord an annual written report of its operations on the Premises during the preceding Lease Year. The report shall include, but not be limited to:

- (i) a description of the public visitation, interpretative programs and educational and recreational activities offered to meet the aims, intent and purpose hereinabove expressed and use of the Premises during the year, including the number of various programs and activities with a total number of visitors served during the year;
- (ii) a description of the Premises maintenance performed by Tenant during the year;
- (iii) description of any Improvements and projects initiated and/or completed by Tenant during the year;
- (iv) a description and cost of any equipment or artifacts acquired by Tenant;
- (v) a certified statement by the Treasurer itemizing: (a) the Total Gross Revenue as defined in Paragraph 17 hereof; (b) all expenditures incurred by Tenant for Improvement, interpretation, maintenance and operation of the Premises; and (c) the amount and purpose of each accrual account.

B. Tenant shall maintain complete and adequate financial records that will allow Tenant to prepare financial statements in accordance with generally accepted accounting principles for all Total Gross Revenue and all expenditures incurred in Tenant's operations under this Lease. Tenant shall retain such records for at least six (6) years from the expiration or termination of this Lease. Such records shall be made available for audit during normal business hours by an authorized representative of Landlord to determine the adequacy of Tenant's financial management systems and internal control systems established to meet the terms and conditions of this Lease and that the financial statements are fairly presented in accordance with generally accepted accounting principles.

**19. NO INTERFERENCE WITH OPERATION OF STATE PARK - CLOSURE**

A. Tenant shall, in its occupancy and use of the Premises, conduct all activities so as not to interfere with, impair, or prevent Landlord's development, maintenance, management, and operation of the State Park and the safe use and enjoyment thereof by the public. Tenant shall coordinate with Landlord all activities which could adversely affect the State Park or the public's use and enjoyment thereof and shall implement all measures reasonably required by Landlord to minimize such adverse effects.

B. Landlord, in its sole discretion, reserves the right to limit or close access to the State Park, including the Premises, if Landlord determines that State Park facilities are being used to capacity; there is inclement weather or threat thereof, or the State Park is closed for any reason under Landlord's State Park closure policies. Tenant hereby agrees to abide by Landlord's decision and waives any claim for damages or compensation resulting from closure of the State Park.

**20. ACCESS TO PREMISES**

A. Landlord, its agents, employees and contractors, shall have the right of access to and egress and ingress on, over and across the Premises for access to, maintenance, development, operation and administration of other State Park property. Landlord shall exercise its rights under this subparagraph in such manner so as not to damage Tenant's property or unreasonably interfere with Tenant's use and occupancy of the Premises considering the nature and extent of Landlord's necessary access. Whenever possible, Landlord shall exercise its rights under this subparagraph by use of existing access roads on the Premises.

B. An authorized representative of Landlord shall have the right to enter upon the Premises and evaluate Tenant's interpretation, restoration, preservation, improvement, maintenance and operation thereof and take such action as Landlord may deem appropriate to assure compliance by Tenant with the terms and conditions of this Lease and/or to correct any condition resulting from Tenant's failure or omission to comply with this Lease. Landlord shall exercise its rights under this subparagraph in such manner so as not to damage Tenant's property or unreasonably interfere with Tenant's use and occupancy of the Premises considering the nature and extent of Landlord's activities necessary to assure Tenant's compliance with this Lease.

C. Public visitors to the State Park shall have the right of ingress and egress over the land included within the Premises for access to and use of other State Park property.

**21. SIGNS**

Tenant agrees that Tenant shall not paint or post or otherwise permit or allow temporary or permanent signs or advertisements of any description to be painted or posted on or about the Premises or any other property comprising part of the State Park without the prior written approval of Landlord.

**22. PROMOTION AND ADVERTISEMENT**

Tenant shall, in all promotion and advertisement of the Premises and any scheduled events at or pertaining thereto, provide that same is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry as part of the State Park. Before implementation, Tenant shall submit to Landlord and obtain Landlord's written approval of all plans for promotion and advertisement. Landlord's approval shall be based upon Landlord's determination that the promotion or advertisement complies with this paragraph. Said approval shall not be unreasonably withheld or denied.

**23. DAMAGE TO PROPERTY**

A. Tenant shall, at its sole cost and expense, repair any damage caused by Tenant, its employees, agents, contractors or invitees express or implied to the Premises, its Improvements, or to any adjacent State-owned property not included in the description of the Premises. In the

event that Tenant fails to so repair after written demand by Landlord, Landlord may, at its option, elect to make said repairs and/or terminate this Lease and the cost thereof shall be paid by Tenant to Landlord within thirty (30) days after demand therefor.

B. In the event of damage or destruction of the Premises and/or Improvements in whole or in part, by fire, explosion, the elements or other cause not attributable to Tenant, its employees, agents, contractors or invitees express or implied, during the Term of this Lease, Landlord or Tenant may terminate this Lease. If neither Landlord nor Tenant elect to terminate this Lease as allowed under this subparagraph, Tenant shall, at Tenant's sole cost and expense, cause such damage and destruction to be repaired. Landlord shall not be liable to Tenant for any loss occasioned by the damage or destruction of the Premises.

C. All repairs by Tenant of damage to the Premises, its Improvements or any other State-owned premises shall be completed in accordance with plans and specifications submitted to and approved by Landlord. Tenant shall comply with all requirements of Paragraphs 12, 13 and 14 to the same extent as though the repair is an Improvement.

## **24. INDEMNIFICATION**

A. Tenant shall, for Tenant, its successors and assigns, assume all risks and liabilities arising out of Tenant's use and occupancy of the Premises. Tenant covenants to defend, protect, indemnify and save harmless Landlord and each of its officers, agents, employees, successors and assigns and hereby releases Landlord and each of its officers, agents, employees, successors and assigns from and against any liabilities, losses, damages, costs, expenses including reasonable attorney's fees and expenses, causes of action, suits, claims, demands or judgments of any nature arising or claimed to arise in whole or in part from: (i) any injury to, or the death of any person in or on or any damage to property which occurs in or on or about the Premises or in any manner growing out of or connected with the condition of the Premises and/or the use, non-use, occupancy or conduct of activities on the Premises, or any part thereof; (ii) violation of any agreement or condition of this Lease by Tenant, its agents, employees, volunteers, contractors, invitees and anyone claiming by or through Tenant; (iii) violation by Tenant of any contracts, agreements or restrictions of record concerning the Premises (iv) failure or omission to comply with any insurance policy required under this Lease or any federal or State law, or regulation affecting the Premises and/or the conduct of activities thereon; and (v) any act error or omission by Tenant, its agents, employees, volunteers, contractors, invitees, and anyone claiming by or through Tenant in the performance of activities under this Lease.

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

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

D. It is agreed and understood that: (i) any approval by Landlord of the work performed and/or reports, plans and specifications provided by Tenant shall not limit the obligations of Tenant assumed under this Lease; (ii) Tenant's liability under this paragraph shall continue after the termination or expiration of this Lease with respect to any liability, loss, expense or damage resulting from any claim arising prior to such termination or expiration; and (iii) Tenant's indemnification obligations hereunder are not limited to the proceeds received from the insurance coverage obtained by Tenant and/or its contractors in accordance with this Lease.

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

## 25. REPORT OF INJURY

Any injury which shall occur during any activity hereunder to Tenant, its servants, agents or invitees requiring medical intervention of which Tenant shall be notified, shall be reported by Tenant to Landlord in writing within twenty-four (24) hours of the incident.

## 26. INSURANCE

A. Tenant shall, at its sole cost and expense, obtain and maintain at all times during the Term of this Lease insurance coverage on the Premises of the types and in at least the minimum amounts hereinafter provided:

- (i) comprehensive general liability insurance as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage including protection and indemnity, broad form contractual liability, and broad form property damage endorsements against claims for bodily injury, death or property damage occurring on, in or about the Premises or in any manner growing out of or connected with any activity conducted by Tenant, its agents, employees, volunteers, contractors and/or invitees, express or implied. Limits of liability shall not be less than One Million (\$1,000,000) Dollars per occurrence as a combined single limit for bodily injury liability and for property damage liability;

- (ii) property insurance to cover loss or damage on an "All Risk" of physical loss form of coverage against fire, loss, theft and damage on the contents owned by Tenant and located in structures owned by Landlord. Said insurance shall be in an amount not less than the full value of such contents. The value of the contents shall be determined by Tenant using whatever procedures Tenant considers appropriate. Said policy shall be written to provide that the insurer waives all right of subrogation against either Landlord or Tenant concerning any loss or damage covered by the policy;

- (iii) workers' compensation and employers' liability insurance applicable under the Laws of the State of New Jersey; and

- (iv) such other insurance and in such amounts as may from time to time be reasonably required by Landlord against other insurable risks which at the time are commonly insured against for premises similarly situated with due regard to the type of improvements and the type of use and operations to be conducted by Tenant under this Lease.

B. Tenant shall require any person providing any service and/or conducting any activity on the Premises as part of Tenant's use and occupancy thereof to secure and maintain in force at all times during the provision of any service and/or conduct of any activity thereon as part of Tenant's use and occupancy of the Premises, insurance of the types and in at least the minimum amounts required under Subparagraph 26A(i), (iii) and (iv) above.

C. The insurance required under Subparagraphs 26A and 26B above shall be issued by an insurance company authorized and approved to do business in New Jersey and, except for worker's compensation and employer's liability insurance, shall name the State of New Jersey, Department of Environmental Protection as an additional insured.

D. When Tenant returns this Lease, signed by Tenant, to Landlord for signature, Tenant shall provide Landlord with a certificate of insurance evidencing that Tenant has obtained

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

E. If Tenant fails or refuses to renew any of its insurance policies or to provide Landlord with timely current certificates of insurance showing that Tenant is maintaining insurance coverage in full force and effect to the extent required by this Lease, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Lease, or Tenant fails or refuses to provide Landlord with current certificates of insurance showing that its contractors have obtained insurance coverage in accordance with the requirements of this Lease, Landlord shall, under Paragraph 30 hereof, immediately direct Tenant to suspend all of its operations on the Premises and/or terminate this Lease under Paragraph 31 hereof.

F. The limits of the insurance policies described herein shall be reviewed by Landlord and Tenant every two (2) years and Tenant shall increase the limits of said policies to meet changed circumstances including but not limited to changes in the United States Consumer Price Index and changes caused by the course of plaintiff's verdicts in personal injury actions.

## 27. ASSIGNMENT

A. Tenant shall not assign or transfer this Lease or Tenant's responsibilities under this Lease or the operations authorized hereunder, nor sell, or otherwise assign or transfer a controlling interest in such operations or Tenant's ownership (hereinafter collectively referred to as an "Assignment") without first obtaining the express written approval thereof by Landlord. Said approval shall not be unreasonably withheld provided that Landlord, in its discretion and in addition to other considerations described below, determines that the business reputation, financial standing, operational experience and the type of business or style of operation of the proposed assignee is satisfactory for the purposes of this Lease. The term "controlling interest" shall mean an interest beneficial or otherwise of sufficient outstanding voting securities or capital of Tenant so as to permit exercise of substantial managerial influence over the operations of Tenant. Landlord will determine whether or not an interest in Tenant constitutes a controlling interest. Prior to any Assignment, Tenant shall notify the prospective assignee in writing that the Assignment cannot be executed without first obtaining the approval of Landlord. Tenant shall request in writing Landlord's approval of the proposed Assignment and shall include with said request all relevant documents related to the Assignment and the names and qualifications of the proposed assignee. Such Assignment shall be in writing and Tenant shall furnish Landlord with a copy of same and an assumption agreement in writing wherein the assignee assumes full, faithful and due performance of all the covenants, conditions and obligations to be kept, performed and observed under this Lease on the part of Tenant. Upon Landlord's approval of the Assignment and Tenant's delivery of such assignment and assumption agreement to assignee, all liabilities and obligations on the part of Tenant accruing after the effective date of such Assignment shall terminate and, upon the effective date of such Assignment and thereafter, all liabilities and obligations of Tenant under this Lease shall be binding upon the assignee. There shall be no Assignment if Tenant is in default under any of the terms and conditions of this Lease at the time that Landlord's approval of any such Assignment is requested and on the effective date of such Assignment. Any Assignment executed without first obtaining the express written approval thereof by Landlord shall be null and void and shall constitute grounds for termination of this Lease.



B. Landlord, in exercising the discretionary authority set forth herein, shall, among other matters, take into consideration the management qualifications of the person(s) or entities which would thereby obtain an interest in the Premises, the experience of such individuals or entities with operation of a concession of the type and quality herein required, and the ability of such individuals or entities to operate the Concession and Premises in the public interest. In the review of any proposed Assignment, Landlord reserves the right to require the proposed assignee to demonstrate compliance with or the ability to comply with the requirements of this Lease. No Assignment shall become effective without first obtaining Landlord's written approval of the terms and conditions thereof and the ability of the proposed assignee. In approving any Assignment, Landlord reserves the right to set conditions based upon a consideration of the qualifications and the financial ability of the proposed assignee to perform the obligations of tenant under this Lease. Without limitation, Landlord's discretionary approval shall be based upon Landlord's determination that the Assignment does not alter the rights, obligations and liabilities of Landlord and Tenant under this Lease.

C. Any consent given by Landlord for a particular Assignment shall not constitute a waiver of the necessity for such consent to any subsequent Assignment. In each instance of a permitted Assignment, a duplicate original or a certified copy thereof in recordable form shall be delivered to Landlord within ten (10) days after execution, together with an assumption agreement duly signed and acknowledged by the assignee.

D. The Assignment or divestiture by Tenant of its leasehold interest in this Lease shall not relieve Tenant of any obligations and liabilities, actual or contingent, accruing under this Lease on or prior to the effective date of such Assignment or divestiture.

## 28. SUBLETTING

A. Tenant shall not sublet the Premises or any part thereof without first obtaining the express written approval thereof by Landlord. Prior to any sublease, Tenant shall notify the prospective subtenant in writing that the sublease cannot be executed without first obtaining the written approval of Landlord. Notwithstanding any subletting, Tenant shall at all times remain fully responsible and liable for the payment of any Rent and for compliance with all of Tenant's other obligations under this Lease. Any sublease executed without first obtaining Landlord's written approval thereof shall be null and void and shall constitute grounds for termination of this Lease.

B. Any subletting shall be made solely upon the following terms and conditions:

- (i) Tenant shall give Landlord at least thirty (30) days prior written notice of any proposed sublease together with a statement containing the name and address of the proposed subtenant, comprehensive description of the proposed use by subtenant, description of improvements to Premises necessary for the subtenant's use, and a copy of the proposed sublease. Landlord's approval shall be based upon Landlord's determination that the proposed sublease, the proposed use and any improvements by subtenant and the terms and conditions of the sublease are consistent with this Lease. Landlord shall either approve or disapprove the proposed sublease by notice to Tenant within thirty (30) days after receipt of the notice from Tenant. Without limitation, Landlord's approval shall be conditioned upon the subtenant agreeing to indemnify, protect, defend and save harmless Landlord and obtaining such types and amounts of insurance coverage required by Landlord. Any insurance coverage required by Landlord shall be obtained and maintained by the subtenant in compliance with this Lease and shall name Tenant and Landlord as additional insureds. In the event that Landlord approves the proposed sublease, all rent or other income realized by Tenant from the sublease shall be considered Total Gross Revenue and used only for the purposes allowed under Paragraph 17 hereof;

- (ii) there shall be no event of default by Tenant under any of the terms, covenants and conditions of this Lease at the time that Landlord's approval



of any such subletting is requested and the date of the commencement of the term of any such proposed sublease;

(iii) upon receiving Landlord's written approval, a duly executed copy of the sublease together with a certificate of insurance documenting that the subtenant has obtained such insurance coverage as shall be prescribed by Landlord as a condition of its approval of the sublease shall be delivered to Landlord within ten (10) days after execution thereof. Any such sublease shall provide that the subtenant shall comply with all applicable terms and conditions of this Lease to be performed by Tenant. Tenant shall be responsible for assuring subtenant's compliance with this Lease. Any violation of this Lease by subtenant shall, in the discretion of Landlord, constitute grounds for termination of this Lease;

(iv) in no event shall any permitted subtenant assign its sublease or further sublet all or any part of its sublet space without Landlord's prior written approval;

(v) prior to the commencement of any improvement to and any use or occupancy of the sublet space, Tenant shall deliver to Landlord satisfactory written documentation that all licenses, certificates, permits and approvals have been obtained from all federal, State and local authorities having jurisdiction over subtenant's proposed use; and

(vi) any consent given by Landlord to a particular sublease shall not constitute a waiver of the necessity for Tenant to obtain Landlord's approval of any subsequent sublease.

### **29. INABILITY TO PAY DEBTS - RECEIVERSHIP**

If Tenant admits in writing an inability to pay its debts or if for any reason a receiver is appointed for Tenant, Landlord may terminate this Lease under Paragraph 31 hereof.

### **30. SUSPENSION OF OPERATION**

Tenant shall, at the direction of Landlord, immediately suspend, delay or interrupt all or any part of its operations on the Premises as Landlord determines to be appropriate. Any suspension shall be effective immediately upon notification of Tenant by Landlord. The primary reasons for issuance of such an order will be: (i) failure by Tenant to comply with any of the obligations and responsibilities on its part to be performed under this Lease; (ii) closure of the State Park by Landlord, and/or (iii) any reason including, but not limited to, the occurrence of hazardous work conditions, emergency conditions, unusually violent weather conditions or the threat thereof, State Park visitor limits, or any other reason where continuation of activities by Tenant may detrimentally impact State-owned property and/or the health and safety of the public, persons on site. Any suspension under item (i) above shall be in effect until Tenant resolves, to the satisfaction of Landlord, its failure to comply with any of the obligations and responsibilities on its part to be performed under this Lease. Tenant's failure to comply shall be described in the notice. If Tenant fails to satisfactorily resolve its failure to comply within fifteen (15) days from the date of notification, Landlord may terminate this Lease. Any suspension shall be effective under (ii) above until Landlord opens the State Park and under (iii) above until the reason for closure no longer exists. Tenant hereby waives any claim for damages or compensation as a result of Landlord's action under this paragraph. Landlord's rights under this paragraph shall be in addition to and shall not limit any other right or remedy available to Landlord under this Lease or otherwise at law.

### **31. TERMINATION**

A. Tenant shall comply and assure compliance by its employees, agents, contractors and subcontractors with the terms and conditions of this Lease. Failure to comply or to assure such compliance and/or the existence of any condition which Landlord determines to be in

violation of the terms and conditions hereof shall be considered to be a material breach in which event Landlord may terminate this Lease as follows:

- (i) Tenant's failure to obtain and maintain all the insurance coverage required to be obtained and maintained under this Lease or to provide Landlord with certificates of insurance documenting that Tenant has obtained and is maintaining such insurance coverage; or (b) to provide Landlord with current certificates of insurance showing that its contractors or subcontractors have obtained and are maintaining insurance coverage in accordance with the requirements of this Lease, or (c) pay when due, any Rent, Additional Rent or other sums required to be paid by Tenant hereunder and a continuation of such failure under (a), (b) or (c) above for ten (10) days after Tenant's receipt of written notice thereof from Landlord served by Certified Mail Return Receipt Requested. If such violation is not cured within said ten (10) day period, termination shall, in the discretion of Landlord, be effective at the conclusion thereof; or
- (ii) Tenant's failure to perform or comply with any of the other covenants, agreements and conditions herein contained. Upon receipt of a written notice of termination for violation served by Certified Mail Return Receipt Requested, Tenant shall have thirty (30) days to cure such violation as Landlord shall describe therein. If the violation is not cured within said period, termination shall, in the discretion of Landlord, be effective at the conclusion thereof.

B. Tenant shall have the right to terminate this Lease upon ninety (90) days written notice served upon Landlord by Certified Mail Return Receipt Requested. Said notice shall include a comprehensive explanation and justification of Tenant's reasons for not continuing operations under this Lease. Within forty-five (45) days after Landlord's receipt of said notice, Landlord and Tenant shall determine whether the reasons for termination can be resolved to their mutual satisfaction. If Tenant and Landlord determine that said reasons cannot be resolved, termination shall become effective ninety (90) days after Landlord's receipt of the notice.

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

D. Any other provision herein contained to the contrary notwithstanding, in the event that Landlord gives Tenant written notice that Landlord requires all or any part of the Premises for development or use for any public purpose, Tenant shall, within the period set forth in said notice and without any compensation therefor by Landlord to Tenant, abandon use of the Premises or part thereof designated by Landlord, including any and all Improvements thereon owned by Tenant and not removed by Tenant within the notice period. If Tenant determines that a partial taking of the Premises materially affects Tenant's ability to use the remainder, Tenant may terminate this Lease in accordance with this Paragraph. Landlord shall not be liable to Tenant or any person or entity claiming by or through Tenant for any compensation, loss, damage or any other claim resulting from any taking.

### 32. END OF TERM

Upon the expiration, termination, surrender or declaration that this Lease is null and void ("End of Term"), Tenant shall:

- (i) immediately cease all occupancy and use of the Premises, vacate and turnover peaceable possession and use thereof to Landlord. Landlord may at once reenter and remove any and all persons occupying the Premises;
- (ii) at Tenant's sole cost and expense remove all personal property lawfully belonging to and removable by Tenant within the time prescribed in any notice of termination or before the End of Term. If Tenant fails to remove such personal property, Landlord may appropriate the same to its own use

without allowing any compensation therefor or may remove the same at the expense of Tenant. If Tenant removes any personal property, Tenant hereby covenants to repair any and all damage which may be caused to the Premises by said removal; and

- (iii) pay to Landlord without demand all Rent, Additional Rent and other payments accrued to the date of the End of Term.

### **33. LIENS OR ENCUMBRANCES**

Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage or other encumbrance upon the interest of Landlord in the Premises. If Tenant should cause any alterations, rebuilding, replacements, changes, additions, improvements or repairs to be made to the Premises or the buildings thereon or labor performed or material furnished therein, thereon or thereto, neither Landlord nor the Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such alterations, rebuilding, replacements, changes, additions, improvements, repairs, labor and material shall be made, furnished and performed at Tenant's expense and Tenant shall be solely and wholly responsible to the contractors, laborers and materialmen furnishing and performing such labor and material. If any mechanic's or other lien, charge or order for the payment of money shall be filed against the Premises or against Landlord whether or not such lien, charge or order is valid or enforceable as such, Tenant shall, at its own cost and expense, cause the same to be canceled and discharged of record within ten (10) days after notice from Landlord of the filing thereof, and Tenant shall indemnify and save harmless Landlord against and from all costs, expenses, claims and demands, including reasonable counsel fees resulting therefrom. Tenant shall, upon completion of any improvements, provide Landlord with a signed copy of any and all liens indicating that all contractors have been paid and all liens have been discharged.

### **34. ADDITIONAL RENT**

Additional Rent shall mean and be deemed to consist of all sums of money which shall become due from and payable by Tenant to Landlord after the Effective Date. If Landlord incurs any expense including, but not limited to, reasonable attorney's fees, by reason of the breach of this Lease by Tenant or Tenant's failure to perform any obligation of Tenant hereunder, Tenant shall be liable for payment to Landlord of such expense which shall be deemed Additional Rent. Additional Rent shall be due and payable to Landlord within thirty (30) days after written demand therefor by Landlord. Tenant's obligation to pay any Additional Rent accruing during the Term of this Lease shall survive and remain a continuing obligation of Tenant after the expiration or termination of this Lease.

### **35. NO DISCRIMINATION**

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

B. Tenant shall not discriminate based on age, national origin, race, creed, color, disability, sex or sexual preference in allowing the public access to and use of the Premises and/or any activity conducted by Tenant.

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

### **36. SOLICITATION**

Tenant warrants that no person has been employed directly or indirectly to solicit or secure this Lease in violation of N.J.S.A. 52:34-15 and that N.J.S.A. 52:34-19 relating to the procurement and performance of this Lease has not been violated by any conduct of Tenant, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity or consideration of any kind to any State employee, officer or official.

#### **37. RESOLUTION**

Tenant shall adopt a resolution authorizing Tenant's execution of this Lease for the purpose and subject to the terms and conditions herein provided. When Tenant returns this Lease, signed by Tenant, to Landlord for signature, Tenant shall submit a certified copy of said resolution to Landlord. The resolution shall be attached to and made a part of this Lease as Exhibit D.

#### **38. SUPERSEDES - ENTIRE AGREEMENT - SUCCESSION - AMENDMENT**

This Lease: (i) supersedes and cancels all prior leases and agreements between Landlord and Tenant covering the Premises; (ii) represents the entire agreement between the parties with all negotiations oral agreements and understandings merged herein; (iii) shall be binding upon and inure to the benefit of the successors of Landlord and Tenant; and (iv) may be amended, supplemented, changed, modified or altered only upon mutual written agreement of the parties.

#### **39. NOTICES**

The parties hereto agree that all submissions, approvals, and notices which may be required under this Lease shall be forwarded by Certified Mail Return Receipt Requested and addressed as follows:

#### **TO LANDLORD:**

Department of Environmental Protection  
Office of Leases and Concessions  
501 East State Street  
P. O. Box 404  
Trenton, New Jersey 08625-0404

#### **TO TENANT:**

City Administrator  
City of North Wildwood  
901 Atlantic Avenue  
North Wildwood, New Jersey 08260

Either party may anytime change such address by mailing to the address above a notice of the change at least ten (10) days prior to such change.

#### **40. HISTORIC SITES COUNCIL**

The Premises is listed in the New Jersey Register of Historic Places and the National Register of Historic Places. Tenant shall at all times comply with conditions of the New Jersey Historic Sites Council in such Council's approval of Tenant's plan for all Improvements and public interpretation. Tenant shall not modify, change or deviate therefrom without first obtaining the express written approval thereof by Landlord and the New Jersey Historic Sites Council.

#### **41. HISTORICAL ARTIFACTS**

Any historic artifacts or items appearing to be of a historic nature are uncovered or discovered during Tenant's activities on the Premises is the property of the State of New Jersey and shall be surrendered to Landlord. Tenant shall notify the Superintendent or the State Ranger on duty. All historic articles shall be left in place until inspection by appropriate State Park Service personnel who will ascertain the item's historic significance and issue instructions regarding handling and removal.

**42. WAIVER - CUMULATIVE REMEDIES**

A. Failure of either party to insist at any time upon the strict performance of any covenant or agreement, or to exercise any option, right, power or remedy contained in this Lease, or to complain of any act or omission by the other party, no matter how long same may continue, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time express or implied of breach of any provision of this Lease shall be deemed a waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion.

B. Any and all rights and remedies which either party may have under this Lease or by operation of law, either at law or in equity, by reason of a breach by the other party shall be distinct, separate and cumulative and shall not be deemed inconsistent with any other right or remedy and any two or more or all of such rights and remedies may be exercised at the same time. Acceptance by either party of any of the benefits of this Lease with knowledge of any breach thereof by the other party shall not be deemed a waiver by the party receiving the benefit of any rights or remedies to which it is entitled hereunder or by law.

**43. NEGOTIATED DOCUMENT**

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

**44. NO THIRD PARTY BENEFICIARIES**

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

**45. HOLD OVER TENANCY**

If Landlord permits Tenant to remain in possession of the Premises after expiration of this Lease without having executed a new written lease with Landlord, Tenant shall occupy the Premises subject to all terms, covenants and conditions contained in this Lease. Such holding over by Tenant shall not constitute a renewal or extension of this Lease. Landlord may, at its option, elect to treat Tenant as one who has not removed at the end of its Term, and thereupon be entitled to all the remedies against Tenant provided by law.

**46. HEADINGS**

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

**47. STATE HOUSE COMMISSION APPROVAL**

This Lease shall not be effective unless Landlord obtains from the State House Commission evidence that the State House Commission has approved the execution of this Lease for the purposes and subject to the terms and conditions herein provided.

**48. GOVERNING LAW**

This Lease shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.

**49. PREVAILING WAGE ACT**

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

**50. PAY TO PLAY**

- A. This Agreement is subject to the provisions of P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.) and compliance with said statute shall be a material term and condition of this Agreement
- B. Tenant is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, section 3) if Tenant received contracts in excess of \$50,000 from a public entity in a calendar year. It is Tenant's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at [www.elec.state.nj.us](http://www.elec.state.nj.us).

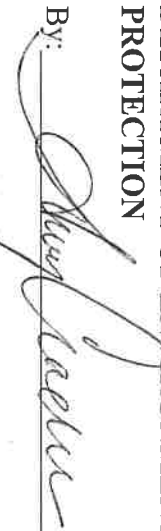
**51. ATTACHMENTS**

The following are attached to and made a part of this Lease:

- Exhibit A – Map of Premises
- Exhibit B – Annual Plan
- Exhibit C – Certificate of Insurance
- Exhibit D – Resolution

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease effective on the date hereinbelow set forth.

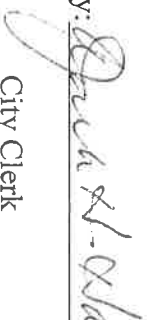
LANDLORD: STATE OF NEW JERSEY  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

By:   
Amy Cradic, Assistant Commissioner  
Natural and Historic Resources

Date: 4/2/09

ATTEST:

TENANT: City of North Wildwood

By:   
City Clerk

By:   
William Henley, Mayor

Date: 1-29-09

Date: 1-29-09

This Lease has been reviewed  
and approved as to form by:

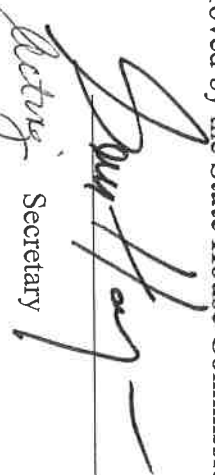
Anne Milgram  
Attorney General  
State of New Jersey

By:   
Deputy Attorney General

Date: 2/27/09

STATE HOUSE COMMISSION CERTIFICATION

I HEREBY CERTIFY that, on March 11, 2009, this lease between the Department of Environmental Protection, Division of Parks and Forestry as landlord, and the City of North Wildwood as tenant, was approved by the State House Commission.

Date: 4/3/09  
  
Secretary