STATE OF OHIO
DEPARTMENT OF NATURAL RESOURCES
LEASE
TO OPERATE A BOAT RENTAL CONCESSION AT
PUNDERSON STATE PARK

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

WITNESSETH:

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

WHEREAS, the Department is authorized by Section 1501.10 of the Ohio Revised Code to lease for the operation of such public service facilities for not more than two years and

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

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

1. PROPERTIES UNDER LEASE:

The facilities hereby made subject to this Lease are:

a. Those locations as are now existing for the purpose of providing the services herein specified to be furnished which are hereinafter called the "Properties". The Properties furnished by the Department are located and described as follows:

One boathouse, assigned land and shoreline, and one wooden dock with tie-up stakes for rental boats and visitor tie-ups; adjoining land and shoreline necessary for the operation of the facility.

Operating equipment as enumerated on the inventory attached hereto and incorporated herein as “Attachment A”.

b. The Properties include the right to use the service road, loading facilities, sidewalks, and non-restricted parking areas, subject, however to the terms and conditions of this Lease and to reasonable rules and regulations or other conditions for the use hereof as may be prescribed from time to time by the Department or its Divisions. The Department reserves the right to increase or decrease the number of, or

alter any of the facilities provided when it is determined by the Department that the public interest will be better served thereby.

c. The rights and privileges granted by this Lease do not give the Concessionaire exclusive rights over all services offered to the public. The Department reserves the right to issue permits relating to special events in the area surrounding the Properties under this Lease or in any other area of the park provided the public will be better served thereby. The park manager will make every effort to accommodate the interests of the Concessionaire when issuing such special event permits.

2. TERM:

a. The term of this Lease shall commence upon execution by all intended parties, and shall end at the close of business on December 31, 2016 unless sooner terminated under the provisions of this Lease or by the mutual written agreement of the Department and the Concessionaire.

b. At the expiration of the original term, the Director may at his option, renew this Lease for a period not to exceed four (4) years.

3. TIMES OF OPERATION:

The Concessionaire shall operate the boat rental concession each and every day of the specified operating period, except scheduled dates and hours that may be changed by mutual written agreement. The minimum operating season and minimum daily hours of operation are:

May 1 to Memorial Day and Labor Day to September 30 – Fridays, Saturdays, and Sundays
7:00 a.m. to 8:00 p.m.

Memorial Day through Labor Day - Daily
7:00 a.m. to 8:00 p.m.

The boat rental concession may be closed during inclement weather conditions, and at other times upon the approval of the park manager or his/her designee. The Concessionaire shall reopen the concession if the weather should clear and the public would require the services.

The above schedules are intended to establish only minimum guidelines regarding times of operation. Certain circumstances may necessitate extending or shortening the operating seasons for the various facilities. In any event, season and hours of operation will be subject to review by the Department or its Division of Parks and Recreation.

4. RENT:

a. The Concessionaire, for and in consideration of the Lease herein granted, shall pay directly to the Division of Parks and Recreation C-3, Concessions Section, 2045 Morse Rd., Columbus, Ohio 43229-6693, no later than the fifteenth (15th) day of each month an amount equal to the total of the following categorical percentage calculations of gross receipts received during the preceding calendar month:

Rental Boats and Motors	%
Bait and Tackle	%
Food and Beverage	%
Vending	%
Merchandise	%
All Other Receipts	%

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

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

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

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

5. BOND FOR PERFORMANCE:

The Concessionaire shall, as a condition precedent to any rights under this Lease, furnish a surety bond or an irrevocable Letter of Credit in the amount of **$5,000.00**, with surety to be approved by the Department, conditioned to ensure the faithful performance of this Lease and which surety shall remain in full effect throughout the term of this Lease.

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

6. SCOPE:

The Concessionaire agrees to operate a boat rental concession and shall use the premises for no other purpose than outlined herein, except as may be authorized by the express written consent of the Department, upon terms and conditions herein set forth, each and every day of the operating season, and to keep the facilities open to the public charging reasonable rates established pursuant to Section 7 (seven) of this Lease.

a. The service to be rendered by the Concessionaire and the provisions of such service **shall** include the

following:

1. The rental of boats. The Department shall furnish rental boats as listed in Attachment A. Types and quantities of all boats shall be subject to inspection and approval of the Director, Park Officers, and Watercraft Enforcement Officers.

   Damaged, leaky, unsound, or otherwise unsafe craft shall not be used. All marine equipment offered for rent by the Concessionaire shall be Coast Guard approved and at all times be maintained in a good, first class, rentable condition during the term of this Lease. Each craft offered for rent shall be furnished with all items of safety equipment specified by Ohio Laws governing the use and operation of watercraft on state water.

   Boats shall not be launched except at landing areas designated for such purpose and shall not be tied, anchored, or stored at any point along the shore other than at said areas. All craft shall be stored and secured as directed by the park manager.

   Where the use of motors is prohibited or restricted by rules and regulations of the Division of Parks and Recreation or the Division of Watercraft, the rental of motors by the Concessionaire shall be subject to such restriction.

   The Concessionaire shall not rent craft to persons intoxicated or seen or known to be in possession of intoxicating liquor or other illegal substances.

   It shall be the responsibility of the Concessionaire, its agents and employees offering such craft for rental under this Lease, to provide for each person aboard such rented craft, a personal flotation device, life jacket, or life vest which is Coast Guard approved for that person, and any other safety equipment and instruction required by the U. S. Coast Guard or insurance industry standards.

   If canoes are rented, they shall be equipped with outrigger stabilizers.

2. The sale of ice.

3. The sale of food and beverage, miscellaneous refreshments and confectionery in quantities adequate for the needs of the public. Sandwiches and other "prepared on the premises" goods may be offered for sale provided the Properties comply with the standards required by the Department of Health. Nothing in this section shall be construed to include a responsibility of the Department to modify or alter the facilities should the Department of Health requirements change in the future.

b. The Concessionaire, upon compliance with all the provisions herein, **may**:

1. Sell souvenirs and items usually considered novelties. 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 facilities.

2. Sell other items or provide other services. Provided the public interest would be better served

thereby, subject to the approval of the Director.

3. Install and operate upon the Properties vending machines, dispensing such items as coffee, snacks and soft drinks, provided such machines can be conveniently and properly installed in compliance with State and Local Health Department standards and with the approval of the Park Manager. The Concessionaire shall have all vending machines stocked, and in good working order at all times during the term of this Lease. In the event of vending machine malfunction, the Concessionaire shall place signs on all machines indicating where refunds may be obtained. The State will not be responsible for any refunds.

c. The Concessionaire shall withdraw from sale or use any items disapproved by the Director, including but not limited to merchandise and materials determined by the Director to pose a negative environmental impact. The Concessionaire shall comply with the following special provisions:

1. Intoxicating beverages, including beer with any alcoholic content, may not be sold, dispensed, or consumed under the terms of this Lease <u>without specific written approval from the Director.</u>

2. The Concessionaire agrees that it will not permit gambling or games of chance upon the Properties, or install, operate, or permit to be installed any device for such purposes, or permit or conduct any activities upon the Properties which are illegal or contrary to good morals or are otherwise objectionable.

d. The Concessionaire shall furnish and maintain all structures and a sufficient amount of movable equipment, including, but not limited to rental craft, boat oars and paddles, safety equipment, showcases, approved cash registers with recording devices, refrigerators, and such other equipment as may be necessary to operate the concession(s) under this Lease, except such buildings, structures, and equipment as have been provided by the Department. The Concessionaire shall have available at all times during the term of this Lease, an inventory of life jackets and other safety items sufficient to equip all available rental boats.

e. The Concessionaire shall accept, as payment by customers, one or more of the major credit cards normally accepted in the retail industry. Thereafter, the Concessionaire shall pay all applicable service charges of the credit card company. The Concessionaire agrees to report the full amount of sales from such credit cards as gross receipts and all credit card sales must be rung on the register when the sale is made and reported as sales at that time. The Concessionaire shall not advertise this service on the premises other than by a small counter or wall sign showing credit cards accepted.

f. The Concessionaire shall at all times keep the Department informed of its business address and telephone number, and shall promptly inform the Department of any change of address and/or telephone number on a year-round basis. The Concessionaire shall, at its sole cost and expense, provide a business telephone by which the Concessionaire may be reached during regular business hours. Facility pay phones are unacceptable for use as business phones.

7. <u>RATES AND PRICES</u>:

a. The Concessionaire shall keep at all times on public display, the prices, rates, and charges which may be charged for the sale of goods and services to the public. The maximum prices charged for services shall

be no greater than a written schedule thereof, submitted to and approved by the Director prior to the initial opening date of the concession and by March 1st of each subsequent year of operation.

b. The Concessionaire agrees to comply with all statutes and all rules of the Division of Parks and Recreation which provide for reduced rates and fees on certain recreational facilities, equipment or related activities for persons who are holders of a "Golden Buckeye Card" as issued by the Department of Aging. Unless otherwise provided by said statutes and rules, such reduced rates and fees will not apply to such items as automatic vending machines and sales of goods at concession stands. Typically, a ten percent (10%) reduction in rates and fees will apply to the rental of recreational equipment such as the rental of beach equipment or bicycles. This list is not exclusively indicative of all applicable reduced rates and fees, but is provided to give examples of certain items.

8. REPORTS AND RECORDS:

a. The Concessionaire shall keep true, accurate, and complete records of all its operations under this Lease, including all receipts and disbursements of money by it. Records, reporting forms, transaction documentation, and accounting methods shall be in such form and kept in such manner as approved by the Director and as directed in the Departmental Concessionaire's Manual. All books, accounts, records, and operations of the Concessionaire shall be open at all reasonable times for inspection and copying by the Department. Concessionaires whose offices are located outside of the State of Ohio must make the above referenced records available in the State of Ohio upon request of the Department. The Concessionaire shall furnish and use a suitable cash register or other method of accounting for sales as approved by the Director, and according to the guidelines as specified in the Departmental Concessionaire's Manual. All accounting records must be retained for inspection by the Department throughout the term of this Lease and for a period of three years subsequent.

b. A separate checking account shall be opened by the Concessionaire for the operations covered under this Lease. All revenues shall be deposited into and all expenditures shall be paid from this account. This account is not to be used for personal or any other purposes.

c. The Concessionaire shall furnish the Department monthly revenue statements, as outlined in the Departmental Concessionaire's Manual, in such form as approved by the Director, showing all income for the preceding month, by the fifteenth (15th) day of each month.

d. The Concessionaire shall furnish to the Department, promptly after the close of each fiscal year, a profit and loss statement for the operations under this Lease.

e. The Concessionaire shall furnish to the Department upon request a copy of Schedule C or other schedules of the Federal Income Tax Return pertaining to the operation of the facilities covered under this Lease.

f. The Concessionaire shall use its best efforts to follow recognized, modern business practices to the end of providing efficient and adequate services the public at fair and reasonable rates. Prompt and timely reporting as required by (c) and (d) above is of the essence of this Lease.

g. The Concessionaire shall keep proper and complete books and records of accounts of its vending operation. Internal control procedures implemented by the Concessionaire shall be adequate to ensure that

all gross receipts are accounted for and recorded. All receipts of any nature from vending machines shall be immediately and properly recorded using tamperproof counters within each vending machine, and approved as to design and specifications by the Department. Such equipment shall be maintained in good operating condition, with functioning counters in place to record each and every transaction.

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

9. UTILITIES:

a. The Department shall furnish all water and sewage treatment necessary for the concession operation.

b. The Concessionaire shall be solely responsible for and promptly pay all charges for gas, electricity, telephone, and any other utility used or consumed on the Properties, including, but not limited to utilities consumed for security purposes or in connection with maintenance, repair, replacement, or other services to the facilities.

c. In no event shall the Department be liable for an interruption or failure in the supply of any such utilities to the Properties.

d. The Concessionaire shall remove all personal property from the Properties under this Lease which may suffer damage due to the lack of heat during the winter season. Any equipment owned by the Concessionaire and left on the Properties during the non-operating season and any resulting damage that may occur thereto shall be the sole responsibility of the Concessionaire.

10. CONDITION OF FACILITIES UNDER AGREEMENT:

a. The Concessionaire shall accept the concession premises "as is" in their presently existing condition.

b. The Concessionaire shall be solely responsible for:

1. seeing that the premises occupied under this Lease are kept free from debris and in a clean and sanitary condition at all times in conformity with the rules and regulations pertaining to sanitation and public health. This shall include litter and debris pick-up in the immediate vicinity of the Properties under this Lease, including but not limited to the boat docking area.

2. the disposal of rubbish, refuse, garbage, and debris from the Properties, as may be mutually agreed upon between the park manager and the Concessionaire.

3. the cleaning of grease traps and ventilation hood systems, including ducts, on an annual basis or as required by the Department.

4. the routine cleaning of the Properties.

5. the cleaning of the Properties and all equipment at termination of the lease for any reason, subject to the approval of the park manager. If the Properties are not cleaned adequately as directed by the park manager, the Department or its designee will clean Properties, and any and all charges for such cleaning shall be borne by the Concessionaire. If the Concessionaire does not pay all charges for such cleaning, the Department reserves the right to make a claim against the Concessionaire's performance bond for the amount of such charges.

c. The Department shall be responsible for all mowing and trimming upon the Properties.

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

e. The Director has the right to object to the service or any particular condition of the Properties and order the unsatisfactory service or condition to be corrected; if such action is necessary to protect and maintain the public health, safety and welfare it shall be done immediately.

f. The storage of gasoline, oils and lubricants shall comply with all applicable laws, rules and regulations. Storage of used materials shall meet state and federal standards to include secondary containment with regular and proper disposal. Any containers used for the temporary storage of gasoline shall be spill resistant and OSHA approved, and stored outside of public view.

11. <u>REPAIRS</u>:

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

- major structural repair
- exterior painting
- maintenance of sidewalks, steps, railings, roofs, gutters and downspouts
- water heater repair and replacement
- major plumbing repair and replacement
- major electrical system repair and replacement
- major dock repair.

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

- interior painting of buildings with prior approval of the park manager
- plumbing fixture repair and replacement
- drain cleaning and maintenance within the confines of the concession buildings
- lighting fixture repair and replacement, including bulbs
- window and screen replacement

- door repair
- hood and ventilation system cleaning and annual inspections and servicing, if applicable
- electrical wiring necessitated by additional equipment of the Concessionaire
- furnace cleaning and furnace filter replacement, if applicable
- all repair to equipment supplied by the Department, including, but not limited to, repair of rental boats and motors

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

c. The Department shall be responsible for all rebuilding, restoration and replacement of Department property necessitated by fire, windstorm, or other natural casualty not resulting from the negligence or intentional act of the Concessionaire, its agents or employees, in accordance with Section 20 of this Lease. The Concessionaire shall be responsible for all rebuilding, restoration and replacement of Department property necessitated by casualty resulting from the negligence or intentional act of the Concessionaire, its agents or employees.

d. It is agreed that the equipment listed on the attached inventory, "Attachment A", and made available during the initial period of this lease is subject to removal from service with no replacement if the Department is unable or unwilling to replace such equipment which becomes economically unfeasible to repair due to age or other cause.

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

12. <u>ALTERATIONS</u>:

a. The Concessionaire shall not make or cause to be made any alterations, additions, or improvements, or install or cause to be installed any trade fixtures, exterior signs, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings, or make any changes or additions to the concession premises without first obtaining the Department's written approval and consent. The Concessionaire shall present to the Department plans and specifications for such work at the time approval is sought.

b. All alterations, decorations, additions, and improvements made by the Concessionaire, shall remain the property of the Concessionaire during the term of this Lease. Such alterations, decorations, additions, and improvements shall not be removed from the Properties prior to the end of the term of this Lease without prior consent in writing from the Director. Upon expiration of this Lease, the Concessionaire shall remove its trade fixtures and all such alterations, decorations, additions, and improvements as the Director shall direct, and shall restore the Properties to the same condition as they were at the commencement thereof, ordinary wear and tear and damage by unavoidable casualty excluded. All alterations, decorations, additions, and improvements not directed to be removed shall, upon expiration of the Lease term, be and become the property of the Department.

13. <u>CONDITION AND SURRENDER OF PROPERTY</u>:

The buildings, rooms, locations, equipment, and all parts thereof, which are the property of the Department shall remain the property of the Department. Upon termination of this Lease, whether by lapse of time or

otherwise, or upon the exercise of the Director of the power to reenter and repossess the leased premises without terminating this Lease, as herein provided, the Concessionaire shall at once surrender the possession of the same to the Department in good order. If the Concessionaire does not at once surrender possession of the same, the Department may forthwith reenter and repossess the premises without being guilty of or liable for trespassing or of forcible entry or detainer and without incurring liability to the Concessionaire for loss or damage to the Concessionaire's property. In the event that the Department does so reenter and repossess the premises as provided for hereunder, the Concessionaire shall nevertheless remain liable for any and all damages and expenses incurred by the Department as a result of termination of this Lease and/or reentering and repossessing the premises.

Property of the Concessionaire must be removed from the premises within ten days after any termination, provided all payments due from the Concessionaire to the Department have been paid in full, unless otherwise authorized by the Director. If any property of the Concessionaire is not removed within 10 days of termination, or payment is not made within 10 days, such property shall become and remain the property of the Department, or, at the election of the Department, such property shall be removed by and disposed of by the Department and the Concessionaire shall reimburse the Department for any and all removal costs associated therewith. The Department is not required to offset the Concessionaire's debts to the Department, if any, by the estimated value of such property.

Alterations, decorations, additions and improvements, however, can only be removed in accordance with Section 12 (b).

14. STANDARDS OF PERFORMANCE:

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

15. CONCESSIONAIRE'S EMPLOYEES:

The Concessionaire shall employ only competent and orderly employees who will keep themselves neat and clean and will accord courteous and competent treatment and services 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. Employees of the Concessionaire working on the Properties shall dress in a manner suitable for public service and subject to the approval and requirements of the Department. Whenever the Department 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 hours provided, however, that such discharge does not violate any outstanding union contracts or other Ohio or Federal employment regulations, in which event such discharge shall take place and be effective in accordance with said contracts and regulations. The Concessionaire alone shall be liable for breach of any such union contracts or Ohio or Federal employment regulations as a result of any actions taken pursuant to this Section and shall hold the Department harmless therefrom.

In the case of any personnel deemed unsatisfactory by the Department, the Director shall give written notification to the Concessionaire stating the reason(s) for discharge. The Concessionaire will have thirty (30) days to replace supervisory personnel and sixty (60) days to replace the manager. Any person so discharged will not be re-employed except with the prior written consent of the Director.

16. ASSIGNMENTS AND SUBLEASES:

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

b. Notwithstanding any assignment or sublease, the Concessionaire shall remain fully liable on this Lease and shall not be released from performing any of the terms, covenants, and conditions of this Lease, including payment terms as specified herein based on total dollar revenues, including the total sale amount of consigned items.

17. DEFAULT:

If the Concessionaire:

a. Shall fail to pay any installment of rent within ten (10) days after it becomes payable and if such default shall continue for five (5) days after receiving written notice from the Department demanding payment;

b. Shall fail to maintain in full force and effect any insurance or bond required by the terms of this Lease or Ohio law;

c. Shall fail to maintain adequate standards in providing service required by this Lease, or in any manner shall fail to provide adequate service to the public;

d. Shall fail to observe and perform any other provision, covenant or condition of this Lease by the end of fifteen (15) days after written notice from the Department specifying such failure;

e. Shall abandon or vacate the Properties or any part thereof during the term of this Lease;

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

g. Shall make an assignment for the benefit of creditors or shall enter into a composition agreement with its creditors, or if the interest of the Concessionaire in the Properties is attached, levied upon, or seized by legal process;

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

i. Shall under-report revenue on monthly income statements, or any other financial reports, or shall

misrepresent the source of revenue in such reports furnished to the Department; or

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

k. Its principal(s) or officers(s), if the Concessionaire is a corporation, or its partners(s) if the Concessionaire is a partnership, are convicted of any theft offense;

then, and in any of such cases, immediately or at any time thereafter, at the option of the Director, the Department shall have the right to immediately reenter and take possession of the Properties, and, as the Director elects, either:

1. declare this Lease to be terminated, in which event this Lease, all rights of the Concessionaire, and all duties of the Department shall immediately cease and terminate and the Department may possess and enjoy the Properties as though this Lease had never been made, without prejudice, however, to any and all rights of action against the Concessionaire the Department may have for rent, damages, or breach of covenant, in respect to which the Concessionaire shall remain and continue to be liable notwithstanding such termination; or

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

18. <u>RIGHT OF ENTRY, INSPECTION, PROTECTION OF PROPERTY, AND EASEMENT BY PUBLIC</u>:

a. The Department reserves the right to raise or lower lake waters, and to enlarge, close or reduce the size of any area for the purpose of improvement, repair, construction, or any other legitimate purpose.

b. The Department and its employees shall have full right and power to enter buildings for the purpose of construction, repairs or replacement of buildings and equipment furnished by the Department, inspection, enforcing laws, rules and regulations, and for any other lawful purpose.

c. The Department, or its authorized representatives, may at all reasonable times and without interfering with the operations being conducted upon the Properties, enter into and upon said Properties to examine the condition thereof, and determine whether the Concessionaire is conducting its operations thereon in compliance with the terms and conditions of this Lease.

d. Duly authorized agents of the State of Ohio shall have the use of the landing docks free of charge to discharge or anchor their boat when it is being used in performance of their respective duties in connection with the operation, maintenance, and policing of the area, provided such agents carry proper identification.

19. PROPERTY AT CONCESSIONAIRE'S RISK:

The Concessionaire's supplies and all merchandise, effects, and other property of every kind, nature, and description belonging to the Concessionaire, which may be on, in or about the Properties during the continuance of this Lease, or thereafter, shall be at the sole risk and hazard of the Concessionaire. If the whole or any part thereof shall be destroyed or damaged by fire, water, flooding or otherwise, or by the leakage or bursting of water pipes, steam pipes, or other pipes, by theft, or any other cause, no part of said loss or damage is to be charged to or be borne by the Department, and the Concessionaire hereby agrees to forever hold the Department harmless from and to indemnify the Department against any and all loss, cost, debt, claim, damage, judgment, and/or expense suffered and incurred by the Department in connection with the Properties. Although the park employs law enforcement officers as part of its park staff, the Concessionaire, at its sole cost and expense, shall be responsible for any and all security measures it deems necessary in addition to such park staff, including but not limited to charges for security personnel, security alarm systems or security system monitoring. The Department shall be under no obligation whatsoever to provide security for the Concessionaire's property.

20. DESTRUCTION OF PROPERTIES UNDER AGREEMENT:

Except as provided herein, if the Properties are damaged by fire, the elements, unavoidable accident or other casualty not due to the fault or neglect of the Concessionaire, its agents or employees, the Department may, at its own expense, cause the damage to be repaired.

If, by reason of any of the above occurrences not due to the fault or neglect of the Concessionaire, its agents or employees, the Properties are rendered wholly unfit for use by the Concessionaire, or if fifty percent (50%) or greater of the rentable area of the building in which the Properties are a part are damaged or destroyed, as determined by the Department, the Department at its option may either:

1. cause the damage to be repaired at the expense of the Department, or

2. terminate this Lease and the concession hereby created by giving to the Concessionaire, within sixty (60) days of the occurrence, written notice of the Director's election to terminate.

By reason of any of the above occurrences not due to the fault or neglect of the Concessionaire, its agents or employees, the Concessionaire shall, at its expense, clean the facilities and cause any resultant damage to its equipment to be repaired to the extent necessary to resume and continue its normal operation of the Properties, except in the above case where this Lease is terminated.

21. LIABILITY AND INDEMNIFICATION OF 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 **One Million Dollars ($1,000,000.00)** per occurrence/aggregate. The institution furnishing such insurance shall be licensed to do business in the State of Ohio and must be approved by the Director prior to execution. 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.

22. ADVERTISING AND PRINTING:

a. The Concessionaire shall be responsible for all costs and expenses incurred in connection with advertising, promotional, and sales activities, including services and materials for such advertising and promotions.

b. Materials to be used for printing (i.e., stationery, brochures, post cards, display advertising, and other like materials) in connection with the operation of this business, or any advertising in any manner or form, whether on or about the premises or elsewhere, or in any newspaper or otherwise, shall be submitted for review on an annual basis or as requested by the Director. The Concessionaire shall not display, distribute or advertise anything that has been disapproved by the Director.

23. SIGNS:

a. Signs or advertisements placed by the Concessionaire upon any property of the Department or upon any vehicle used by the Concessionaire directly in the concession under Lease shall be subject to the Department's approval. The Department shall have the right, without notifying the Concessionaire, to remove any sign or signs that do not meet the approval of the Department.

b. The Concessionaire further agrees to maintain any sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved, in good condition and repair at all times.

24. NONDISCRIMINATION:

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 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 Lease. The Concessionaire assumes full legal responsibility for any failure to comply with said nondiscrimination requirement.

25. COMPLAINTS FROM USERS:

From time to time, it is expected there will be a minimal number of complaints from the public utilizing the Properties relating to the Concessionaire's operation. It is the intent of both the State and the Concessionaire to resolve each complaint in an expeditious manner so as to preclude a future similar occurrence.

26. COMPLIANCE WITH LAWS AND AGREEMENTS:

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

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

c. The Concessionaire will procure all permits and licenses, pay any and all charges, license fees, and taxes incident to the operation of the Properties and give all notices necessary and incident to the lawful and proper execution of its operations hereunder.

d. The Concessionaire agrees that it will at all times carry Workers' Compensation protection under the laws of the State of Ohio on all persons employed by it upon the Properties or in connection with its operations thereon, and will pay all premiums or other charges legally assessed therefore, and that it will also comply with all minimum wage, maximum hours, and other laws, rules, and regulations applicable to conditions of employment upon or in connection with the Properties.

e. The Concessionaire shall require and ensure that all contractors hired by it to provide maintenance upon the Properties shall carry Workers' Compensation protection and liability insurance to protect the Concessionaire and the Department from claims for personal injury, direct or derivative, including death or claims for property damage resulting from operations in the performance of such maintenance services, by contractor or its subcontractors, or anyone directly or indirectly employed by them. Said policies shall be in the following minimum amounts:

Bodily injury	$1,000,000/$1,000,000 Limit Minimum
Property damage	$1,000,000 Limit Minimum

f. The Concessionaire agrees to comply with all applicable provisions of the Drug Free Workplace Act.

27. QUALIFICATIONS OF CONCESSIONAIRE:

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

28. JURISDICTION:

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

29. CONFLICTS OF LAW:

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

30. TIME OF THE ESSENCE:

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

31. CHANGES IN WRITING ONLY:

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

32. 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.

33. CAPTIONS:

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

34. SEVERABILITY:

It is understood and agreed by the parties hereto that if any part, term, or provision of this Lease is by the courts held to be illegal or in conflict with any law of the State of Ohio, the validity of the remaining

portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Lease did not contain the particular part, term, or provision held to be invalid.

35. NONWAIVER:

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

36. ADMINISTRATION:

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

37. 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 Lease shall be void *ab initio* as between the parties to this Lease, and any funds paid by the Department hereunder immediately shall be repaid to the Department, or an action for recovery immediately may be commenced by the Department for recovery of said funds.

38. ETHICS

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

39. 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.

40. SWEATSHOP FREE CERTIFICAITON:

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.

[The remainder of this page has been intentionally left blank.]

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

_____		_____
WITNESS	DATE	Concessionaire
_____		_____
WITNESS	DATE	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

_____	_____
WITNESS DATE	GLEN COBB, Chief DATE Division of Parks and Recreation
_____	
WITNESS DATE	
_____	_____
WITNESS DATE	JAMES ZEHRINGER, Director DATE Department of Natural Resources
_____	
WITNESS 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