



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

**Request for Proposal**

**Management/Operation of  
Centerton Golf Course**

**Pittsgrove Township, Salem County**

**Release Date:** August 21, 2008  
**Re-Release Date:** October 28, 2008  
**(with revisions)**

**Due Date:** November 14, 2008

## **1.0 GENERAL INFORMATION FOR BIDDERS**

### **1.1 Purpose and Intent**

This Request for Proposal (RFP) is issued by the New Jersey Department of Environmental Protection (“Department”), Division of Parks and Forestry (“Division”), on behalf of the State of New Jersey (the “State”). The purpose of this RFP is to solicit proposals from qualified bidders to operate, maintain, and manage the Centerton Golf Course located in Pittsgrove Township, Salem County, New Jersey. The Department is seeking an Operator that has experience and knowledge in operating golf courses, is financially stable, and shows strength in customer service commitment and employee performance. The winning bidder will enter into a five-year Operating Agreement with the Department and will have the potential to renew the Operating Agreement for an additional five-year term. As consideration for entering the Operating Agreement, the successful bidder will pay the State a fixed annual fee, adjusted annually by the Consumer Price Index, plus a percentage of its annual gross revenue earned from course operations.

It is the goal of the State to continue the safe and efficient operation of the Golf Course Property. Thus, the Department intends to enter into an agreement with a capable Operator that will both operate and develop the Golf Course Property in accordance with Federal, State, and local laws and the terms set forth in the Operating Agreement. The successful bidder will have daily control over the Golf Course Property and will be responsible for its full time operation, as well as its physical and commercial development.

All bidders shall submit as part of their bid proposals an Operational Management Plan, setting out how they propose to operate, manage, and develop the Golf Course Property. Based on this Operational Management Plan, bidders also must propose a fixed annual fee payable to the State, plus a fixed percentage of their annual gross revenue. The winning bidder will be the qualified, experienced bidder whose proposal is most responsive to the State’s goal and whose plan provides a realistic means of generating revenue for the State.

The intent of this RFP is to award a contract in the form of a five-year Operating Agreement to a responsive bidder whose bid conforms to the requirements of this RFP and is most advantageous to the State, price and other factors considered.

### **1.2 Background**

The State, acting through the Department of Environmental Protection, Division of Parks and Forestry, is requesting proposals for the operation of the State-owned Centerton Golf Course (Centerton) located in Pittsgrove Township, Salem County.

Centerton is an 18-hole public golf course with a driving range. The entire Golf Course Property consists of approximately 225 acres, with the actual playing course encompassing about 55 acres. (Exhibit A). The Golf Course Property is designated as Block 1801, Lot 1 on the Tax Map of Pittsgrove Township, Salem County, New Jersey. Centerton was established in 1962

and designed by architect Ed Carman. It averages 30,000 rounds of golf per year and has a course rating of 69.2.

The State purchased Centerton in 2004 through the Department's Green Acres Program. Since 2004, the previous owner has been operating Centerton as a public golf course through a lease agreement with the Department.

### **1.2.1 Excluded Parcel: Banquet Hall and Restaurant**

There is a parcel of land in the center of the Golf Course Property that is not owned by the Department and is not part of this RFP or the Operating Agreement. The owner of that parcel operates a banquet hall and restaurant, Centerton Country Club Restaurant (CCCR), which is not affiliated with Centerton Golf Course. Centerton Country Club Restaurant (CCCR) has the following easements on the Golf Course Property: a right-of-way easement; four drainage easements; and a septic system easement. (Exhibit B).

### **1.2.2 Structures and Facilities**

There are thirteen (13) buildings on the Golf Course Property, including a clubhouse, attached cart garage, pump station, maintenance facility, pole barns, sheds, and storage buildings. (Exhibit A).

The clubhouse is a one-story frame building and is in fair to good condition. It contains a pro shop, small office area, and two locker rooms. The building is heated by forced warm air heaters and has central air conditioning. Attached to the clubhouse is a cart shed that is in good condition. The sloped portion of the roof on both the clubhouse and the cart shed likely will need replacement within the next couple of years. The flat rolled portion of the clubhouse roof, which covers the patio, is leaking and possibly causing structural damage.

The maintenance complex includes a number of outbuildings that collectively are in very poor condition. The construction of the buildings ranges from pole columns with wood beams, wood purlin, and tin roofing to steel-framed, open-side buildings. Two former residences are slab-on-grade wood framed buildings; one is in slightly better condition but still poor. Housing the irrigation and pump controls, the rear pump house is in good condition.

The parking lot on the Property is in need of repair. Centerton Country Club and Restaurant (CCCR) (see Subsection 1.2.1 above), along with any subsequent owners of that parcel, has a right-of-way easement which enables the facilities to use the driveway and parking lot on the Golf Course Property. Pursuant to the easement, the owner of the CCCR property and the owner of the Golf Course Property are to share equally the cost of all maintenance and repairs for the parking lot and driveway. The Operator of the Golf Course Property shall be solely responsible for the Golf Course Property's share of the cost of repairing and maintaining the parking lot and the driveway.

### **1.2.3 Irrigation System**

The irrigation system is relatively new. Within the past five years, the prior owner of the Golf Course Property installed a new pipe, controllers, pumping station, and irrigation heads. The irrigation system will remain on the Golf Course Property for the Operator. The VFD drive portion of the irrigation system currently is in need of repair, the cost of which is estimated to be around \$5,500. The Operator shall be responsible for repairing the VFD drive.

#### **1.2.4 Water Usage**

Centerton has severely limited water availability. Water allocation currently is permitted on the Golf Course Property through a Water Registration Permit issued by the Department. The Water Registration Permit limits water usage to 3.1 million gallons per month. Accordingly, watering of the Golf Course Property will be limited, most likely, to the greens and tees only.

Centerton is located in an area of the State that renders it unlikely to be eligible for a Water Allocation Permit, which would provide greater water usage for the Golf Course Property. The Operator may apply to the Department for a Water Allocation Permit, but neither this RFP nor the Operating Agreement shall be interpreted as approval for a Water Allocation Permit, nor shall either document serve as a guarantee that such a permit will be granted. The Operator of the Golf Course Property solely shall bear the expense of all water permitting costs and fees, including those associated with the Water Registration Permit.

#### **1.2.5 Septic System**

The Golf Course Property currently has approval from the local board of health for its septic system, which pumps less than 2,000 gallons of water each day. If the Operator desires a septic system that pumps more than 2,000 gallons per day, it will be required to apply to the Department for a New Jersey Pollution Discharge Elimination System (NJPDDES) permit. The Operator shall bear all costs and fees associated with the NJPDDES permit application process and the permit itself.

#### **1.2.6 Taxes, Revenue, and Operating Expenses**

The Operator shall be required to pay all operating expenses (including utilities) and taxes, if applicable.

According to information provided by the current manager, utility bills were approximately \$16,111.00 in 2007.

While bidders should be aware of revenues generated by the Golf Course Property and current operating expenses, it must be recognized that current revenue and expenses are not considered by the Department to be predictive to future revenue and expenses. Nor are current revenues and expenses to be considered as a guarantee by the Department of any possible future revenue stream. Accordingly, the approximate current revenue and expense figures serve as a guide for bidders and are provided for informational purposes only.

### 1.3 Key Events

The winning bidder shall meet with members of the Department within seven (7) days of the proposal award. The winning bidder should be prepared to assume full operation of the Golf Course Property by February 1, 2009.

#### 1.3.1 Questions and Inquiries

The Department will accept questions and inquiries from all potential bidders receiving this RFP. Questions may be submitted in writing only, via mail or fax, to the Department at the following address:

Department of Environmental Protection  
Division of Parks and Forestry  
Office of Leases  
Attention: Marci Green, Administrator  
501 E. State Street  
P.O. Box 404  
Trenton, NJ 08625-0404  
Fax No. (609) 984-0836

Deleted: ,

##### 1.3.1.1 Submission Cut-Off Date

The cut-off date for the submission of questions will be the date of the Mandatory Bidders Meeting (“Meeting”), details of which are set forth in Subsection 1.3.2 below. While all questions will be entertained at the Meeting, it is strongly urged that questions be submitted in writing prior to the Meeting. Written questions must be delivered to the Administrator of the Office of Leases. It is requested that bidders with long, complex, or multiple-part questions submit them in writing as far in advance as possible, in order for the Department to prepare answers by the time of the Meeting.

##### 1.3.1.2 Question Protocol

Questions should be submitted in writing to the attention of the Administrator of the Office of Leases. Written questions should be directly tied to the RFP. Questions should be asked in consecutive order, from beginning to end, following the organization of this RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Brief procedural inquiries may be accepted over the telephone by the Office of Leases. However, oral explanations or instructions given over the phone shall not be binding upon the State. Bidders shall not contact the Division of Parks and Forestry or any other branch of the Department directly, in person or by telephone, concerning this RFP.

### 1.3.2 Mandatory Bidders Meeting

A Mandatory Bidders Meeting (Meeting) has been scheduled for this procurement. The Meeting will be held at the Centerton Golf Course clubhouse/pro shop on November 6, 2008, at 10:00 a.m.

NOTE: Bids automatically will be rejected from any bidder or authorized representative that does not attend or that fails to properly register at the Meeting.

The purpose of the Mandatory Bidders Meeting is to provide a structured and formal opportunity for the Department to accept questions from bidders regarding this RFP. The Meeting also will provide bidders with an opportunity to view the Golf Course Property.

Any revisions to the RFP resulting from the Mandatory Bidders Meeting will be formalized and distributed to attendees as written addendum to the RFP. Answers to deferred questions also will be distributed to attendees as written addendum to this RFP.

#### **1.4 Additional Information**

##### **1.4.1 Revisions to the RFP**

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any RFP addendum will be distributed as follows:

- i. Any addendum issued before the Mandatory Bidders Meeting (see Subsection 1.3.2) will be distributed to all bidders who were sent the initial RFP; and
- ii. Any addendum issued at the time of or after the Meeting will be distributed only to those bidders that attended and properly registered at the Meeting.

##### **1.4.2 Addendum as Part of the RFP**

Any addendum to this RFP shall become part of this RFP and part of any agreement resulting from the RFP.

##### **1.4.3 Issuing Office**

This RFP is issued by the New Jersey Department of Environmental Protection, Division of Parks and Forestry. The Administrator is the sole point of contact between the bidder and the Department for the purposes of this RFP.

##### **1.4.4 Bidder Responsibility**

The bidder assumes sole responsibility for the complete effort required by this RFP. No special consideration shall be given after bids are opened because of a bidder's failure to be knowledgeable of all the requirements of the RFP. By submitting a proposal in response to this RFP, each bidder represents that it has satisfied itself, from its own investigation, of all the requirements of this RFP. The bidder further represents that it has made its own calculations,

based on the information provided and its own research and experience, of costs, expenses, and revenues, for which the Department bears no liability.

#### **1.4.5 Cost Liability**

The State assumes no responsibility and bears no liability for costs incurred by bidders in the preparation and submission of bid proposals in response to this RFP. Furthermore, the Department does not warrant or guarantee any current or future revenues that may be generated from operation of the Golf Course Property.

#### **1.4.6 Contents of Bid Proposal**

The entire content of every bid proposal will be opened publicly and becomes a public record. This is the case, notwithstanding any statement to the contrary made by a bidder in its bid proposal.

As public records, all bid proposals are available for public inspection. Interested parties may make an appointment with the Administrator to inspect bid proposals received in response to this RFP.

#### **1.4.7 Price Alteration**

Bid prices must be typed or written in ink. Any price change, including “white-outs,” must be initialed. Failure to initial price changes may preclude an award from being made to a bidder.

#### **1.4.8 Joint Venture**

If a joint venture is submitting a bid, the agreement between the parties relating to said joint venture should be submitted with the joint venture’s proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Pay to Play Disclosure Statement, Ownership Disclosure Form, Affirmative Action Employee Information Report, and foreign (i.e. out of State) corporation registration, if applicable, must be supplied for each party to a joint venture.

### **2.0. DEFINITIONS**

The following definitions shall be part of any agreement executed as a result of this RFP:

- a. “Department” or “the State” shall mean the State of New Jersey, Department of Environmental Protection.
- b. “Golf Course Property” or “Centerton” shall mean the Centerton Golf Course, as shown on the survey map attached hereto as Exhibit A.

- c. "Operating Agreement" shall mean the written agreement resulting from this Request for Proposal executed by the New Jersey Department of Environmental Protection and the winning bidder.
- d. "Operator" shall mean the winning bidder to this Request for Proposal that enters into an Operating Agreement with the New Jersey Department of Environmental Protection.
- e. "Bidder" shall mean an individual or a company that submits a bid proposal in response to this Request for Proposal.
- f. "Meeting" shall mean the Mandatory Bidders Meeting.
- g. "Division" shall mean the Division of Parks and Forestry.
- h. "Office" shall mean the Office of Leases.
- i. "Administrator" shall mean the Administrator of the Office of Leases.
- j. "Commissioner" shall mean the Commissioner of the New Jersey Department of Environmental Protection.
- k. "Evaluation Committee" shall mean a committee established by the Department to review and evaluate bid proposals submitted in response to this RFP and to recommend a proposal award.
- l. "Operational Management Plan" shall mean a detailed business plan submitted by each bidder in response to this RFP that details its proposal for operating, managing, and developing the Golf Course Property in accordance with the State's goal.
- m. "Fiscal year" shall mean the period beginning July 1 and ending June 30 in any given calendar year.
- n. "Request for Proposal (RFP)" shall refer to this document, which establishes the bidding requirements and solicits proposals to meet the needs of the Department as identified herein.

### **3.0 SCOPE OF WORK**

The Department seeks to enter into a five-year Operating Agreement with a private individual or entity that will perform the services set forth in the Operating Agreement, which has been attached to this RFP as Exhibit C. Bidders should refer to the Operating Agreement in

preparation of submitting a bid proposal to gain a full understanding of the services required to be performed thereunder.

In exchange for entering and performing under the Operating Agreement, the Operator shall pay the Department a fixed annual fee, which will be adjusted annually based on the Consumer Price Index, plus a fixed percentage of annual gross revenue.

#### **4.0 PROPOSAL PREPARATION & SUBMISSION**

##### **4.1 General Information**

The bidder must follow the instructions contained in this RFP in preparing and submitting its bid proposal. The bidder is advised to thoroughly read and follow all instructions.

The information required to be submitted in response to this RFP has been determined to be essential in the bid evaluation and proposal award process. Any qualifying statements made by the bidder as to the RFP's requirements could result in a determination that the bidder's proposal is materially non-responsive. Each bidder is given wide latitude in the degree of detail it elects to offer or the extent to which plans, processes, and procedures are revealed. However, each bidder is cautioned that insufficient detail may result in a determination that the bid proposal is materially non-responsive or, alternatively, may result in a low technical score being given to the bid proposal.

##### **4.2 Proposal Delivery and Identification**

In order to be considered, a bid proposal must arrive at the Office no later than 5:00 p.m. on November 14, 2008. All bidders submitting proposals are advised to allow adequate delivery time to ensure punctual delivery of proposals. Late proposals are ineligible for consideration. The exterior of all bid proposal packages must be labeled with the bid identification number, final bid opening date, and the bidder's name.

##### **4.3 Number of Bid Proposal Copies**

Each bidder must submit one (1) complete original bid proposal that clearly has been marked as the "ORIGINAL" bid proposal. Each bidder also must submit four (4) full, complete, and exact copies of the original. The copies are necessary in the evaluation of your bid. Bidders failing to provide the required number of copies shall be charged the cost incurred by the Department in producing the required number of copies. It is suggested that the bidder make and retain a copy of its bid proposal for its own records.

##### **4.4 Proposal Content**

The bid proposal should be submitted in one volume that is divided in five (5) parts as follows:

#### **4.4.1 Forms (Part 1)**

##### **4.4.1.1 Affirmative Action Employee Information Report**

The bidder must complete the attached Affirmative Action Employee Information Report (Exhibit D), or alternatively, must supply either (1) a New Jersey Affirmative Action Certificate or (2) evidence that the bidder is operating under a Federally approved or sanctioned affirmative action program. This requirement is a precondition to entering into a valid and binding contract with the State.

##### **4.4.1.2 Business Registration Reporting**

Proof of valid business registration with the Division of Revenue, Department of Treasury, State of New Jersey, should be submitted by the bidder with its bid proposal. No Operating Agreement shall be executed without proof of business registration with the Division of Revenue. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730.

All foreign (i.e. out of State) corporations receiving a notice of proposal award shall be afforded seven (7) days thereafter to register with the Division of Revenue.

##### **4.4.1.3 Pay to Play**

All bid applications are subject to the provisions of N.J.S.A. 19:44A-20.13 et seq. and N.J.S.A. 19:44A-20.26 et seq. (P.L. 2005 c. 51 and P.L. 2005 c.271, collectively "Pay to Play"). Compliance with these acts shall constitute a material term and condition of the bid application, and these acts shall be binding upon the parties thereto upon the entry of an Operating Agreement. All bidders must complete and submit with their bid proposals the following enclosed forms in accordance with their instructions: (1) Ownership Disclosure Form; (2) Contractor Certification and Disclosure of Political Contributions Form (P.L. 2005, c. 51); and (3) Vendor Certification and Political Contribution Disclosure Form (P.L. 2005, c. 271) (Exhibit E).

Bidders further are advised of their 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-20.13 (P.L. 2005, c.271, section 3) if the bidder receives contracts in excess of \$50,000.00 from a public entity in a calendar year. It is the bidder's responsibility to determine if filing is necessary. Failure to so file will preclude a proposal award and 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).

#### **4.4.2 Background Information (Part 2)**

Each bidder shall submit written answers to the following inquiries:

- i. How many years has your organization been in business under its present business name?
- ii. Under what other or former names has your organization operated?
- iii. If your organization is a corporation, provide the following information: date of incorporation; State of incorporation; president's name; vice president's name; secretary's name; and treasurer's name.
- iv. If the organization is a partnership, provide the following information: date of organization; type of partnership; and name(s) of general partner(s).
- v. If your organization is individually owned, provide the following information: date of organization; and name of owner.
- vi. Has your organization ever failed to complete any contract awarded to it?
- vii. Within the past five (5) years, has any officer or principal of your organization ever served as an officer or principal of another organization when it failed to complete a contract?
- viii. Are there any judgments, claims, arbitration proceedings, or lawsuits pending or outstanding against your organization or its officers?
- ix. Has your organization filed any lawsuits or requested arbitration with regard to any contracts within the last five (5) years?
- x. Has any owner made a claim against you, which has resulted in arbitration or litigation with the past five (5) years?
- xi. Has your organization or any of its officers or owners ever been convicted of a crime, or are they presently the target of any criminal or administrative investigation?
- xii. Has your organization or any of its officers or owners ever been disqualified, suspended, or debarred from a contract with any Federal, State, or local government entity?

If the answer to any questions "vi" through "xii" is yes, please provide details.

Each bidder also shall describe in detail its expertise in providing golf course management services for projects similar in size and scope to Centerton, including:

- i. a description of all golf courses the bidder has managed, including size, number of memberships, and location for each course; and

- ii. the beginning and ending dates of each management contract or lease associated with each golf course listed in “i” above.

#### **4.4.3 Technical Proposal (Part 3)**

In this Section, the bidder shall describe in detail its plans and approach for fulfilling the requirements as reflected in the Operating Agreement. The Operating Agreement fully describes the minimum services to be provided by the Operator. The bidder must present its understanding of the requirements of the Operating Agreement and its ability to fulfill said requirements successfully. However, the bidder should not be limited by the services described and is encouraged to expand upon, supplement, or add other service areas where the bidder has expertise that may benefit the State. This section of the bidder’s proposal should contain at least the following information:

##### **4.4.3.1 Management Overview**

The bidder shall set forth its overall technical approach and plans to meet the requirements of the Operating Agreement in a narrative format. This narrative should be presented as an Operational Management Plan. The Operational Management Plan shall contain a complete description of how the bidder intends to implement each aspect of the operation, maintenance, and service requirements set forth in the Operating Agreement. The narrative should convince the State that the bidder understands the objectives the Operating Agreement is designed to meet, the nature of the services required, and the level of effort necessary to successfully carry out the Operating Agreement. The bidder’s narrative further should be designed to convince the Department that the bidder’s Operational Management Plan is viable and that the bidder’s general approach to undertaking the Operating Agreement and fulfilling the State’s goals is in accordance with the tasks and subtasks involved.

Mere reiteration of the requirements set forth in the Operating Agreement is strongly discouraged, in that such a narrative would not provide insight into the bidder’s ability to successfully perform under the Operating Agreement. In sum, the bidder’s response to this Section of the RFP should be designed to convince the Department that the bidder’s detailed plans and proposed approach to performing the requirements under the Operating Agreement are realistic, attainable, and appropriate and that the bidder’s proposal will lead to successful performance.

##### **4.4.3.2 Agreement Management**

The bidder should describe its specific plans to manage, control, and supervise the Operating Agreement to ensure satisfactory performance according to the bidder’s proposed schedule. The Operational Management Plan should include the bidder’s approach to communication with the Department, including but not limited to status meetings and status reports.

##### **4.4.3.3 Specific Plan Content**

The bidder's Operational Management Plan should identify and fully detail the following: potential number of employees; required qualifications for all specific positions; proposed hours of operation and months of operation; a suggested fee schedule for all services, memberships, and course usage; equipment and maintenance schedules; plans for a pro shop; plans for food and beverage concession; and proposed plans for improvements.

With respect to a fee schedule, the Operator in its Operational Management Plan shall establish all applicable fees, which will be subject to the Department's review and ultimate approval. Fees should be comparable to those charged by other public golf courses in the area.

With respect to plans for a pro shop, food and beverage concession, and any improvements, the bidder should incorporate a schedule into its proposed Operational Management Plan. Therein, the bidder should set out the initiation dates and completion dates for these projects, if applicable. The bidder also should identify the scheduling and control methodology to be used and should provide the rationale for choosing such methodology.

With respect to a pro shop, the bidder shall explain in detail its plans for operating such a facility, including proposed hours of operation and the types of merchandise that will be sold. The Operator shall be responsible for supplying the necessary inventory.

With respect to a small-scale food and beverage concession, the bidder shall provide a sample menu of its intended food and beverage concessions with its bid proposal. The Operator shall be required to provide to the Department, prior to the beginning of operation, a menu including all items and prices. Department shall have the right to approve or reject the menu and/or prices.

#### **4.4.3.4 Mobilization and Implementation Plan**

It is essential that the State move forward quickly to have the Operating Agreement in place. Therefore, the bidder must include as part of its bid proposal a mobilization and implementation plan, beginning with the date of notification of the proposal award. The mobilization and implementation plan should include the following elements:

- i. A detailed timetable for the mobilization and implementation period. This timetable should be designed to demonstrate how the bidder will have the Golf Course Property operational within a reasonable time after February 1, 2009, but no later than thirty (30) days after February 1, 2009.
- ii. The bidder's plan for the development and use of management, supervisory, or other key personnel during the mobilization and implementation period. The plan should show all management, supervisory, and key personnel that will be assigned to manage, supervise, and monitor the bidder's mobilization and implementation of the Operating Agreement within the period of a reasonable time after February 1, 2009, but no later than thirty (30) days after February 1, 2009.

NOTE: The bidder should identify clearly the management, supervisory, or other key staff that will be assigned only during the mobilization and implementation period.

The bidder should submit a plan for the purchase and distribution of equipment, inventory, supplies, materials, etc. that will be required to fully implement the Operating Agreement on the required start date.

The bidder also should submit a plan for the use of sub-operators, if any, with respect to a pro shop and/or food and beverage concession. Emphasis should be placed on how any sub-operator identified will be involved in the mobilization and implementation plan.

#### **4.4.3.5 Potential Problems**

The bidder should set forth a summary of any and all problems anticipated during the term of the Operating Agreement. For each problem identified, the bidder should provide its proposed solution.

#### **4.4.4 Organizational Support and Experience (Part 4)**

The bidder should include information relating to its organization, personnel, and experience, including but not limited to references, together with contact names and telephone numbers, evidencing the bidder's qualifications and capabilities to perform the services required by this RFP.

##### **4.4.4.1 Location**

The bidder should include the name, location, and telephone number of the office that will be responsible for the project.

##### **4.4.4.2 Organization Chart [Specific]**

The bidder should include an organization chart with names showing the management, supervisory, and other key personnel, including any sub-operators, who will be acting under the Operating Agreement. The chart should include the labor category and title of each such individual.

##### **4.4.4.3 Resumes**

Detailed resumes should be submitted for all management, supervisory, and key personnel who will be acting under the Operating Agreement. Resumes should be structured to emphasize the relevant qualifications and experience of these individuals in successfully completing projects of similar size and scope to those set forth in the Operating Agreement. Resumes should clearly identify previous experience in completing similar projects. Beginning and ending dates should be given for each similar project. A description of the project should be given and should demonstrate how the individual's work on the completed project relates to the

individual's ability to contribute to the successful provision of services required by the Operating Agreement. With respect to each similar project, the bidder should include the name and address of each reference, together with a person and telephone number to contact for a reference check.

In the event the bidder must hire or otherwise engage management, supervisory, and/or key personnel if awarded the proposal, the bidder should include a recruitment plan for such personnel. Said recruitment plan should demonstrate that the bidder will be able to initiate and complete the project within the time frame required by this RFP.

#### **4.4.4.4 Backup Staff**

The bidder should include a list of backup staff that may be called upon to assist or replace primary individuals performing under the Operating Agreement. Backup staff must be clearly identified as such.

In the event the bidder must hire management, supervisory, and/or key personnel if awarded the proposal, the bidder should include, as part of its recruitment plan, a plan to secure backup staff in the event that primary individuals initially assigned need assistance or must be replaced during the term of the Operating Agreement.

#### **4.4.4.5 Organization Chart [Complete]**

The bidder should include an organization chart depicting the bidder's entire organizational structure. This chart should show the relationship of the individuals performing under the Operating Agreement to the bidder's overall organizational structure.

#### **4.4.4.6 Experience of Bidder on Projects of Similar Size and Scope**

As evidence of the bidder's ability to complete the services set forth in the Operating Agreement, the bidder should provide a comprehensive listing of golf course management projects similar in size and scope that it successfully has completed. A description of all such projects should be included and should demonstrate how such projects relate to the bidder's ability to complete the services required under the Operating Agreement. For each such project, the bidder should provide the name and telephone number of a contact person.

Specifically, the bidder should describe its expertise in providing golf course management services, including the following:

- i. a description of all golf courses it has managed, including size, number of memberships, and location for each course; and
- ii. the beginning and ending date of each management agreement or lease associated with each golf course listed in "i" above.

#### **4.4.4.7 Financial Viability of the Bidder**

The bidder shall provide proof of its financial capacity and capabilities to undertake and successfully carry out its responsibilities under the Operating Agreement. To satisfy this requirement, the bidder shall submit the following with its bid proposal:

- i. The name and address of the bidder's bank, chief banking representative handling the bidder's account, and the bidder's federal employer information number (FEIN number);
- ii. Certified financial statements, including applicable notes, reflecting the bidder's assets, liabilities, net worth, revenues, expenses, profit or loss, and cash flow for the most recent calendar year or the bidder's most recent fiscal year; or
- iii. If a certified financial statement is not available, then either a reviewed or compiled statement from an independent accountant setting forth the same information shall be provided.

#### **4.4.4.8 Sub-operator(s)**

Operator shall not enter into any sub-operating agreements with outside entities for the performance of any of its obligations under this Operating Agreement, except that Operator may enter into sub-operating agreements with outside entities for the operation of a pro shop and/or a small food and beverage concession. If the bidder proposes to utilize a sub-operator to fulfill any of its obligations with respect to a pro shop and/or food and beverage concession, the bidder shall be responsible for each sub-operator's performance, compliance with all terms and conditions of this RFP and the Operating Agreement, and compliance with the requirements of all applicable laws.

The bidder must provide a detailed description of the services to be provided by each proposed sub-operator. The bidder further should provide a detailed resume for each sub-operator's management, supervisory, and other key personnel that demonstrates knowledge, ability, and experience relevant to the work the sub-operator has been designated to perform.

The bidder should provide documented experience to demonstrate that each sub-operator successfully has performed work on projects of similar size and scope to the work the sub-operator has been designated to perform in the bidder's proposal.

NOTE: Before the Operator may allow a sub-operator to begin to operate or use the Golf Course Property with respect to a pro shop or food and beverage concession, both the Operator and sub-operator must sign a sub-operating agreement, which shall be subject to the Department's written approval prior to taking effect.

#### **4.4.5 Monetary Proposal (Part 5)**

The bidder must submit all requested monetary proposals. Failure to submit all requested monetary proposals may result in the bidder's proposal being considered materially non-

responsive. Each bidder must hold its price(s) firm through completion of the proposal award process.

Each bidder shall submit two figures as part of its monetary bid:

- i. Annual fee to be paid to the Department; and
- ii. A threshold amount of annual gross revenue, above which the Operator will be required to remit fifteen (15) percent to the Department. (e.g. If the successful bidder submits a threshold gross revenue amount of \$100,000.00, it shall be required to remit 15% of all gross revenues above \$100,000.00 to the Department on an annual basis).

For purposes of this RFP and the Operating Agreement, gross revenue is defined to include all sales at the gross selling price of merchandise and items of every character sold in, upon, or through Centerton Golf Course, by the Operator, or any other person, firm, or corporation, including, but not limited to, all revenues and sales related to the operation of the Centerton Golf Course, pro shop, and any food and beverage concession, and gross charges for all services to customers or patrons, including, but not limited to, greens fees, memberships, and equipment rentals, performed by the Operator or any other person, firm, or corporation in, upon, or through any part of Centerton Golf Course, and shall include sales and charges for cash and credit, regardless of whether or not the same is collected or uncollected, less all proper credits for returned merchandise, merchandise exchanges and merchandise cancellations, allowances, or discounts, as well as any sales taxes collected by the Operator and remitted to taxing authorities.

## **5.0 AGREEMENT TERMS & CONDITIONS**

### **5.1 Precedence of Agreement Terms and Conditions**

The Operating Agreement ultimately shall consist of this RFP, any addendum to this RFP, the winning bidder's proposal, the Department's Notice of Acceptance, and the executed Operating Agreement. The bidder shall agree to all of the material terms and conditions of the Operating Agreement.

In the event of a conflict between the provisions of this RFP and any addendum to the RFP, the addendum shall govern. In the event of a conflict between the provisions of this RFP (including any addendum to same) and the winning bidder's proposal, the RFP and/or addendum shall govern.

### **5.2 Agreement Term and Extension Option**

The term of the Operating Agreement shall be for a period of five (5) years, unless earlier terminated pursuant to the terms of the Operating Agreement. The anticipated Effective Date will be provided in the Operating Agreement. If delays in the bid process result in an adjustment

of the anticipated Effective Date, the bidder agrees to accept an agreement for the full term of same. The Operating Agreement may be extended for an additional five (5) year period, by mutual written consent of the Operator and the Department.

If Department permits the Operator to continue operating the Golf Course Property after expiration of the Operating Agreement without having executed a new written agreement with the Department, then the Operator shall operate the Golf Course Property subject to all terms, covenants, and conditions contained in the expired Operating Agreement. Such continuation of operations by the Operator shall not constitute a renewal or extension of the expired Operating Agreement.

## **6.0 PROPOSAL EVALUATION & SELECTION PROCESS**

### **6.1 Proposal Evaluation Committee**

Proposals will be evaluated by an Evaluation Committee composed of representatives from the Department of Environmental Protection.

### **6.2 Oral Presentation and/or Clarification of Proposal**

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee also may require a bidder to submit written responses to questions regarding its bid proposal. The purpose of such communication with a bidder, either through an oral presentation or written letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. However, original bid proposals may not be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Further, bidders may not attend presentations made by other bidders.

It is within the discretion of the Evaluation Committee to require a bidder to make an oral presentation or to submit written responses to questions regarding its bid proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Administrator will be the sole point of contact regarding any request for an oral presentation or written clarification.

### **6.3 Evaluation Criteria**

The following evaluation criteria, not necessarily listed in order of significance, shall be used to evaluate bid proposals received in response to this RFP. The evaluation criteria categories may be used to develop more detailed evaluation criteria to be used in the review process:

- i. The bidder's general approach and plans in meeting the requirements of this RFP;

- ii. The bidder's detailed approach and plans to perform the services under the Operating Agreement;
- iii. The bidder's documented experience in successfully completing projects of a similar size and scope to Centerton;
- iv. The qualifications and experience of the bidder's management, supervisory, and other key personnel assigned to the Operating Agreement, with emphasis on documented experience in successfully completing projects similar in size and scope to Centerton;
- v. The bidder's overall ability to mobilize, undertake, and successfully perform in accordance with the Operating Agreement. This judgment will include but not be limited to the number and qualifications of management, supervisory, and other staff proposed, the availability and commitment to the Operating Agreement of the bidder's management, supervisory, and other staff proposed, and the bidder's Operational Management Plan;
- vi. The bidder's financial viability and organizational history; and
- vii. The bidder's monetary proposal.

#### **6.4 Selection Process**

The proposal shall be awarded with reasonable promptness and by written notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered. Any or all bids may be rejected if the Department determines that it is in the public interest to do so.

#### **7.0 EXHIBITS**

- A. Survey
- B. Easements on Golf Course Property (right-of-way easement, four drainage easements, and septic system easement)
- C. Operating Agreement (proposed)
- D. Affirmative Action Employee Information Report
- E. Pay to Play Forms: (1) Ownership Disclosure Form; (2) Contractor Certification and Disclosure of Political Contributions Form (P.L. 2005, c. 51); and (3) Instructions -- Contractor Certification and Disclosure of Political Contributions (P.L. 2005, c. 51); and

(4) Vendor Certification and Disclosure of Political Contribution Disclosure Form (P.L. 2005, c. 2711)

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

**OPERATING AGREEMENT**

**THIS AGREEMENT**, made the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and Eight (2008).

**BETWEEN**

**The State of New Jersey  
Department of Environmental Protection  
Division of Parks and Forestry  
P.O. Box 404  
Trenton, New Jersey 08625-0404**

hereafter referred to as Department,

**AND**

hereafter referred to as Operator.

**WHEREAS**, Department is the Owner of Centerton Golf Course (“Golf Course Property”) hereinafter described; and

**WHEREAS**, pursuant to Request for Proposal # \_\_\_\_\_ for Golf Course Operator for Centerton Golf Course as amended (the “RFP”), a copy of which is attached hereto and made part hereof as Exhibit A, (Winning Bidder’s Name), (Winning Bidder’s address) (“Operator”), wishes to enter into this Operating Agreement to operate the Golf Course Property, as more particularly described below; and

**WHEREAS**, the Department, subject to the terms set forth in the RFP, is willing to enter into this Operating Agreement under the provisions, covenants, terms, and conditions hereinafter described, which shall be consistent with the terms set forth in the (Winning Bidder’s) Bid Response Proposal submitted in response to the RFP (“Bid Proposal”), a copy of which Bid Proposal is attached hereto and made a part hereof as Exhibit B; and

**NOW THEREFORE**, this Operating Agreement is made and entered into (DATE), by and between the Department, its successors and assigns, and (Winning Bidder), and its successors and assigns. This Operating Agreement shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

**THE PARTIES HERETO**, for themselves, their heirs, distributes, executors, administrators, legal representatives, successors, and assigns, for good and valuable consideration, the exchange, receipt, and sufficiency of which is hereby acknowledged, hereby covenant and agree as follows:

**1. GOLF COURSE PROPERTY**

The Department hereby allows (Winning Bidder) to operate that certain Golf Course Property (as hereinafter described) for the Term of this Operating Agreement (as hereinafter

described), together with all appurtenances thereto.

The Golf Course Property consists of approximately 225 acres and is designated as Block 1801, Lot 1 on the Tax Map of the Township of Pittsgrove, County of Salem, State of New Jersey. The Golf Course Property includes an eighteen-hole golf course and driving range together with any buildings, structures, parking lots, and improvements located on the land and premises.

It is expressly understood that this Operating Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Golf Course Property to the Operator.

There is a parcel of land in the center of the Golf Course Property that is not owned by the DEP and is not part of this RFP. The owner of that parcel operates a banquet hall and restaurant, Centerton Country Club Restaurant (CCCR), which is not affiliated with Centerton Golf Course. Centerton Country Club Restaurant (CCCR) has the following easements on the Property: a right-of-way easement; four drainage easements; and a septic system easement.

## **2. TERM**

A. The Term of this Operating Agreement shall begin as of (DATE) (“Effective Date”), at which time this Operating Agreement shall take full force and effect. (Winning Bidder) shall operate the Golf Course Property during the Term of this Operating Agreement beginning on the Effective Date and continuing for a period of five (5) years (the "Initial Term") from that date until the expiration of the Operating Agreement (“Expiration Date”), unless the Operating Agreement shall end sooner pursuant to any of the terms, covenants, or conditions, herein provided or pursuant to law. The Department may terminate this Operating Agreement during the Term of the Operating Agreement in accordance with the termination provisions as contained herein, in the RFP, or in accordance with applicable law. In the event of such termination, after expiration of the notice period, Operator shall not be permitted to enter the Golf Course Property without accompaniment of a representative of the Department.

B. Provided that no event of default has occurred and is continuing, Operator may request that the term of this Operating Agreement be renewed for an additional five (5) year period (the “Renewal Term”) by giving Department written notice of Operator’s request to renew no less than one hundred and eighty (180) days prior to the expiration of the Initial Term of this Operating Agreement. Department reserves the right to disapprove renewal of this Operating Agreement if Department determines that Operator has not satisfactorily complied with the terms, covenants, or conditions herein provided or pursuant to law or that continuation of this Operating Agreement is not consistent with reasonably anticipated plans for development or use of the Golf Course Property by Department. In the event that Operator’s request for renewal is not approved by Department on or before sixty (60) days prior to the scheduled expiration date of this Operating Agreement, said request shall be deemed to have been denied, and this Operating Agreement shall expire as herein provided. The Initial Term and the Renewal Term are hereinafter collectively referred to as the “Term.” This Operating Agreement shall not be renewed upon the expiration of the Renewal Term. Operator shall not continue operation of the Golf Course Property beyond the expiration of the Renewal Term except upon execution of a new Operating Agreement or as provided for in Paragraph 34 hereof.

## **3. PAYMENTS TO THE DEPARTMENT**

A. Operator shall pay to Department an annual Operating Agreement Payment in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (“Base Payment”) plus an additional payment of fifteen (15) percent of gross revenue in excess of \$\_\_\_\_\_ (“Variable Payment”). The base payment is payable on the Effective Date of this Operating Agreement, and on the anniversary of the Effective Date for the remainder of the Term. The Variable payment for the First Term Year shall be due March 31 of the Second Term Year and on March 31 of every year for the prior Term Year thereafter for the remainder of the Term.

B. For purposes of calculating the annual Variable Payment, gross revenue shall be defined to include all sales at the gross selling price of merchandise and items of every character sold in, upon, or through any part of the Golf Course Property by the Operator, or any other person,

firm, or corporation, including, but not limited to, all revenues and sales related to the operation of the golf course, pro shop, and any food and beverage concession, and gross charges for all services to customers or patrons, including, but not limited to, greens fees, memberships, and equipment rentals, performed by the Operator or any other person, firm or corporation, in, upon, or through any part of the Golf Course Property, and shall include sales and charges for cash and credit regardless of whether or not the same is collected or uncollected, less only all proper credits for returned merchandise, merchandise exchanges and merchandise cancellations, allowances or discounts as well as any sales taxes collected by the Operator and remitted to taxing authorities with respect to each Term Year.

C. On or before February 28 of each Term Year, and on or before the February 28 after this Operating Agreement has terminated, Operator shall provide Department with a financial report prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey setting forth Operator's gross revenue for the previous Term Year ending December 31 and the results of the Audit or Special Report required by Paragraph 4 of this Operating Agreement ("Report"). Based on this Report, Operator's Variable Payment owed to Department for the previous Term Year shall be determined.

D. All Operating Agreement Payments shall be paid by check made payable to "Treasurer-State of New Jersey" and sent to:

Parvin State Park  
701 Almond Road  
Pittsgrove, New Jersey 08318-3928

E. Any Operating Agreement Payment not made on or before the date provided in Subparagraph 3A hereof shall be considered past due. All past due amounts shall be assessed a monthly penalty of one and one-half percent (1 1/2%) of the total amount due calculated on the tenth (10th) day of each month.

F. In the event any check for payment is returned to Department, all future compensations shall be made by Certified or Cashier Checks only.

#### **4. RECORDS, MEETINGS, AND AUDIT**

A. Operator shall maintain complete and adequate financial records that will allow Operator to prepare financial statements in accordance with generally accepted accounting principles. Operator shall retain such records for at least six (6) years from the expiration or termination of this Operating Agreement. Such records shall be made available for audit during normal business hours by an authorized representative of Department to determine the adequacy of Operator's financial management systems and internal control systems established to meet the terms and conditions of this Operating Agreement and that the financial statements are fairly presented in accordance with generally accepted accounting principles. The results of any audit by the Department shall be final and binding on the Operator, including but not limited to the Department's determinations with respect to revenue reporting and payment by the Operator.

B. Operator shall prepare and compile, or oversee the preparation and compilation of, and submit to the Department a quarterly financial report itemizing actual golf course revenues and expenses against projected revenues and expenses.

C. Operator shall, or on or before February 28 of each year, conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31 prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey ("Audit"). In the alternative, Operator may provide a special report as prescribed in Statement on Auditing Standards No. 62 prepared by a Certified Public Accountant licensed to practice accounting in New Jersey to fulfill this requirement ("Special Report").

D. Operator, its contractors, and subcontractors, shall provide the Department, through an authorized representative, reasonable access to and the right to examine all records, books, papers, or documents reasonably related to Operator's operation of any part of the Golf Course Property and any project, services, and work being performed pursuant to any contract or

subcontract. Proper facilities shall be furnished for access and inspection. The Department has the right to request, and the Operator agrees to provide free of charge, all information and copies of all records.

E. The Operator shall confer with the Department and attend meetings with Department officials and other persons as reasonably requested by the Department to discuss matters relating to the operation and management of the Golf Course Property.

F. All data, technical information, materials gathered, originated, developed, prepared, used, or obtained in the performance of the Operating Agreement, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, records (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures, and documents, regardless of the state of completion, which are prepared for or are a result of the services required under the Operating Agreement, shall be and remain the property of the Department and shall be delivered to the Department upon thirty (30) days' notice by the Department.

G. All financial, statistical, personnel, and/or technical data supplied by the Department to the Operator are confidential. The Operator is required to use reasonable care to protect the confidentiality of such data. The use, sale, or offering of this data in any form by the Operator, or any individual or entity in the Operator's charge or employ, will be considered a violation of the Operating Agreement and may result in termination, as well as the Operator's suspension and debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

## **5. ADDITIONAL PAYMENTS (SELF HELP)**

If Department incurs any expense by reason of the breach of this Operating Agreement by Operator or Operator's failure to perform any obligation of Operator hereunder, Operator shall be liable for payment of such reasonable expense, including reasonable attorney's fees and costs, which shall be deemed an Additional Operating Agreement Payment and be added to and become a part of the next payment of Base Payment due to be paid by Operator.

## **6. PURPOSE**

Operator agrees to operate the Golf Course Property for its intended purpose in the manner set forth in the RFP and the Operator's Bid Proposal, and the Operator may not operate or use the Golf Course Property for any other purpose, without the prior written consent of the Department, which may be given in the Department's sole discretion.

## **7. GOLF COURSE MANAGEMENT**

During the term of this Operating Agreement, the Operator shall have full control over the day-to-day operations of the golf course, including but not limited to handling the collection and deposit of all money, hiring and supervision of all employees, and purchasing of all goods and services consistent with the operation of a public golf facility. The Operator also shall be responsible for handling disputes with third parties, collecting and paying appropriate taxes, obtaining all appropriate permits, and providing accountability to the DEP for its activities.

The Operator shall not be required to comply with the State Park Service regulations pertaining to golf courses, N.J.A.C. 7:2-10.1 et seq., but shall be subject to the following restrictions and requirements.

### **A. Alcoholic Beverages**

Operator shall not allow course visitors to bring their own alcoholic beverages onto the Golf Course Property. The Operator may set up a concession to sell alcoholic beverages, provided it obtains all necessary license and permits including, but not limited to, the proper license from the Division of Alcoholic Beverage Control for such sales and consumption.

### **B. Fees**

All fees for public admission to the Golf Course Property, including greens fees, membership fees, or any other fees associated with access to and use of the Golf Course Property shall be submitted to Department and approved by Department before such fees become effective. When submitting proposed fees to the Department, the Operator shall be required to show that the proposed fees are to comparable to fees charged by similar public golf courses within fifty (50) miles. Department shall be reasonable in considering such approval. The Operator's first fee schedule attached hereto and made a part of this Operating Agreement as Exhibit B is hereby accepted and approved by Department.

C. Reservations Systems and Tournaments

All reservations systems and tournament procedures established by Operator are subject to the review and approval of the Department, which shall be reasonable in considering such approval.

**8. CONDITION OF GOLF COURSE PROPERTY**

Operator has inspected the Golf Course Property and accepts it in "as is" condition and without representation or warranty of any kind by Department including, without limitation, any representations or warranty of fitness for a particular purpose.

**9. SECURITY**

Operator shall, at its sole cost and expense, be responsible for security of the Golf Course Property and any Improvements thereon. Department has no obligation to Operator for security of the Golf Course Property and shall not be responsible to Operator, its agents, employees, or invitees (express or implied) for personal injury, death and/or loss, damage or destruction of Improvements, supplies, equipment, or personal property on the Golf Course Property.

**10. MAINTENANCE, REPAIR, AND UTILITIES**

A. Operator shall be solely responsible for the maintenance of the Golf Course Property and buildings, structures, and improvements thereon, including structural repairs, the installation and repair of all utility systems, and the cost of all utility services. Operator shall deliver the Golf Course Property to Department upon expiration or termination of this Operating Agreement in at least as good condition as it was delivered at the commencement of the term.

B. Operator shall, at its sole cost and expense, keep and maintain the Golf Course Property, including any improvements constructed or located thereon in good repair and condition and shall promptly make all structural, nonstructural, ordinary, and extraordinary repairs of every kind which may be required to be made upon or in connection with the Golf Course Property, any improvements thereon or any part thereof in order to keep and maintain the Golf Course Property, and any improvements thereon to keep and maintain the Golf Course Property in good repair and condition. The Operator shall be required to maintain the golf course within the limits of the Water Registration Permit as described herein.

C. Operator shall, at its sole cost and expense, keep and maintain the Golf Course Property, including any improvements constructed or located thereon, clean, neat, and well maintained.

D. Operator shall, at its sole cost and expense, install, maintain, repair, and replace all utility systems and pay for the cost of all utility service, including water, gas, heat, telephone, electricity, sewer, and other utility and communications services rendered or used on or about the Golf Course Property.

E. Operator shall keep the Golf Course Property free of trash and be responsible for the collection, disposal, and recycling of all garbage, rubbish, and other waste from the Golf Course Property. Operator shall participate in and comply with all recycling programs in effect for the county and municipality in which the Golf Course Property is located.

F. Operator shall not make or allow any physical change in the natural condition of the

Golf Course Property, including but not limited to the cutting or removal of trees or shrubs, without first submitting plans and specifications therefor to Department and obtaining Department's written approval thereof. Department's approval shall not relieve Operator of its obligation to obtain and maintain all licenses, permits, and approvals required by the appropriate Federal and/or State governmental agency having jurisdiction over the activity to be undertaken.

G. The Golf Course Property is subject to a certain right of way easement held by an adjacent property, designated as Block 1801, Lot 25 on the tax map the Township of Pittsgrove, County of Salem. The right of way easement enables the adjoining landowner to use the driveway and parking lot on the Centerton Golf Course Property. Pursuant to the easement, the owner of the centralized parcel, currently Centerton Country Club and Restaurant (CCCR) and the owner of the Golf Course Property are to equally share the cost of all maintenance and repairs for the parking lot and driveway. The Operator shall be solely responsible for its share of the cost of repairing and maintaining the parking lot pursuant to this easement.

H. Operator shall comply with the turf cultivation and management practices established by the United States Golf Association. Operator shall maintain the turf for playing conditions. Turf maintenance shall include, but not be limited to, the following: general cleanliness; landscaping; mowing/trimming; irrigation within the limits of the Water Registration Permit as described herein; fertilization; general erosion repairs; and other related tasks necessary to maintain acceptable playing conditions on the golf course.

I. The Operator shall be responsible for and ensure that all golf course patrons, sub-operators, licensees, and permittees are satisfying all obligations to maintain and repair areas occupied by them as required under any sub-operating agreement or other applicable instrument.

## **11. GOLF CARTS AND OTHER EQUIPMENT**

A. Operator shall be responsible for providing and maintaining all equipment and golf carts necessary for the successful management and operation of the golf course. Department and Operator acknowledge that Operator may in the ordinary course of its business enter into leases for equipment used for the operation of Operator's business at the Golf Course Property. Operator shall provide Department with at least five (5) business days prior written notice of the material terms and conditions of any such equipment leases prior to entering into same.

## **12. WATER USAGE**

A. Water allocation is limited on the Golf Course Property pursuant to a Water Registration Permit (permit) issued by DEP. The permit limits water usage to 3.1 million gallons a month. Accordingly, the Operator shall be limited to watering only the greens and tees, with minimal watering of fairways.

B. Operator acknowledges and understands that the Golf Course Property is located in an area of the State that renders it unlikely to be eligible for a Water Allocation Permit, which would provide greater water usage to the Golf Course Property. The Operator may apply to DEP for a Water Allocation Permit, but this Operating Agreement shall not be interpreted as approval for a Water Allocation Permit, nor shall it serve as a guarantee that such a permit will be granted. Operator shall bear the cost of all water permitting costs and fees.

C. Operator shall pay all costs and fees associated with the Water Registration Permit and shall submit all monitoring reports and documentation to DEP as required under the Water Registration Permit.

## **13. PRO SHOP**

Operator may operate a pro shop on the Golf Course Property. Sales at the shop may include, but are not limited to, merchandise, golf equipment, cart rentals, and equipment rentals.

## **14. FOOD AND BEVERAGE CONCESSION**

Operator may operate a small-scale food and beverage concession operation, including an alcoholic beverage concession pursuant to Paragraph 7A of this Operating Agreement, within the pro-shop/clubhouse or the surrounding patio area immediately adjacent to the clubhouse. Operator shall provide, prior to the beginning of operations, a menu with all items and prices to the DEP. The DEP shall have the right to approve or reject the menu and/or prices.

## **15. RENOVATIONS AND IMPROVEMENTS**

A. Operator shall not enter into any contract for or commence any restoration, preservation, renovation, or improvement project including, but not limited to, the construction or placement of any non-permanent building, structure, or utility or any change in the natural condition of the Golf Course Property (collectively "Improvements") without first submitting to Department, and obtaining Department's written approval of, an Improvement Plan for the proposed Improvement. The Improvement Plan shall include but not be limited to: (a) a description (including plans and specifications when deemed appropriate by Department) of each Improvement; (b) a schedule for initiation and completion of each Improvement; (c) a statement whether each Improvement will be performed by Operator or a contractor; and (d) such additional information that Department may reasonably require to determine whether to approve the proposed Improvement.

B. Department's approval shall be based upon Department's determination that Operator is capable of completing the proposed Improvement, that the intended use and character of the proposed Improvement is consistent with the purposes of this Operating Agreement, is compatible with the natural condition of the Golf Course Property, is consistent with the terms of the grant and or statutory funding source under which Department acquired the Golf Course Property, and will not pose a threat to public health and safety. As approved by Department, said Improvement Plan shall become a part of this Operating Agreement by reference, and Operator shall not modify or deviate therefrom without first obtaining Department's express written approval.

C. All Improvement Plans submitted to Department by Operator under this Paragraph are for the purpose of assisting Department in determining whether to approve the proposed Improvement under the criteria for approval set forth in Subparagraph B of this Paragraph. Department's approval of any such plan through the Division of Parks & Forestry shall not be construed to relieve Operator of its responsibility to obtain and maintain all licenses, certificates, permits, and approvals now or subsequently required by Federal, State, and local authorities for the construction and use of the Improvement. Operator shall, prior to the commencement of any Improvement, apply for and obtain all Federal, State, and local licenses, certificates, permits, and approvals required for construction of the proposed Improvement. Upon the issuance of said licenses, certificates, permits, and approvals, Operator shall submit copies of same to Department and then commence the Improvement project in accordance with the approved Improvement Plan. All construction shall be done in a good and workmanlike manner in accordance with the approved Improvement Plan and all requisite licenses, certificates, permits, approvals, and any other requirements of Federal, State, or local authorities having jurisdiction.

D. Approval by Department of design plans, specifications, and reports submitted by Operator in accordance with this Operating Agreement shall not in any way relieve Operator of responsibility for the technical accuracy thereof. Operator is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, and reports furnished under this Operating Agreement. Operator shall, at its sole cost and expense, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, and reports. Approval or acceptance thereof by Department shall not be construed as a waiver of any rights of Department under this Operating Agreement or any cause of action arising out of the performance of this Operating Agreement.

E. Department reserves the right to approve the location, type of structure, and/or physical alteration involved in any Improvement and to require that Improvements be constructed or placed in such a manner that they may be removed with minimum damage to the Golf Course Property.

F. Upon compliance with this Paragraph, Operator may enter into contracts for the

performance of construction of an Improvement, provided that in no such event shall Operator's obligations under this Operating Agreement be deemed to be diminished thereby. Nothing contained in any such contracts shall be construed as creating any contractual relationship between any contractor, subcontractor, and Department.

G. Operator shall, at its sole cost and expense, provide all necessary construction management for each Improvement. Department may, at its sole cost and expense, monitor Operator'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, Operator shall, at the request of Department: (i) provide to Department, as security for the satisfactory completion of the construction of the project in form and substance satisfactory to Department, a corporate surety bond of a corporate surety company satisfactory to Department in the amount of 100% of the cost of construction of the project naming Department and Operator as co-obligee; and (ii) provide to Department a labor and material payment bond of a corporate surety company satisfactory to Department 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 Department and Operator as co-obligee in form and substance satisfactory to Department.

I. Before commencement of construction, Operator shall deliver to Department certificates of insurance showing that Operator 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 (\$1,000,000.00) with respect to bodily injury, death, or property damage for any one accident; and (iii) Worker's Compensation applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars occupational disease. The insurance policies described in (i) and (ii) above shall name Department as an additional insured. The certificates of insurance shall provide for thirty (30) days notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Operating Agreement. Operator also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies.

J. All Improvements undertaken or made without Department's written approval and/or for which Operator cannot document to the satisfaction of Department that the Improvement was completed in accordance with the requirements of all Federal, State, and local agencies having jurisdiction shall be removed by Operator on Department's demand. Operator shall, at Operator's sole cost and expense, repair any damage to the Golf Course Property caused by Operator's construction and/or removal of any unauthorized or unacceptable Improvement.

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

L. All Improvements hereafter constructed on the Golf Course Property by Operator shall be the property of Department. Upon the expiration or termination of this Operating Agreement, Operator shall turn over use and operation thereof to Department free of any liens or encumbrances and without payment of any compensation therefor by Department to Operator.

## **16. STAFF**

A. Operator shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of the Golf Course Property to provide security for the Golf Course Property and to meet the needs of the public. Operator shall submit a staffing plan to Department and obtain Department's written approval thereof. Operator shall provide Department with a written list of the names, addresses, and telephone numbers of all employees and shall update said list regularly so that Department has a list of all current employees. If Department determines that Operator has not provided a sufficient number of reliable, competent, and qualified staff of legal age for the operation and management of a Golf Course Property covered by this Operating Agreement, Operator shall, immediately upon receipt of written notification from Department, correct the staffing deficiencies described in said notice.

B. If it becomes necessary for the Operator to substitute any management or supervisory staff ("key personnel"), the Operator will identify the substitute personnel and the work to be performed. The Operator must provide detailed justification documenting the necessity of the substitution. Resumes must be submitted evidencing that the individual proposed as a substitution has qualifications and experience equal to or greater than the individual originally proposed or currently assigned. The Operator shall forward a request to substitute key personnel to the Department for consideration and approval. No substitute key personnel are authorized to commence work until the Operator has received written approval to proceed from the Department.

## **17. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES**

A. Operator shall obtain, maintain and comply with all necessary licenses, permits, and approvals required by the appropriate Federal, State, and local authorities for the improvement, maintenance, and use of the Golf Course Property in accordance with this Operating Agreement. Department agrees to cooperate fully with Operator in obtaining same. Operator shall provide Department with satisfactory written evidence that all such licenses, permits, and approvals have been obtained prior to the commencement of improvement, maintenance and use of the Golf Course Property. Operator also shall provide Department with satisfactory documentation that all such licenses, permits, and approvals have been renewed as may be required so that Department is at all times in possession of adequate documentation that Operator has obtained and is maintaining such licenses, permits, and approvals.

B. Operator shall, at its sole cost and expense, comply and shall cause the Golf Course Property to comply with all duly promulgated and applicable Federal, State, and local laws, ordinances, rules, and orders affecting the Golf Course Property, or any part thereof, or the use thereof, including but not limited to laws and regulations pertaining to pesticide storage and application, water allocation, and 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.

C. Operator shall comply with the requirements of all policies of insurance required by this Operating Agreement which at any time may be in force with respect to the Golf Course Property.

D. If Operator is issued:

(i) A notice of failure to comply with any policy of insurance required by this Operating Agreement;

(ii) A summons or any notice of violation of any license, permit, certification, authorization, approval, or any other similar instrument(s) required by any Federal, State, or local authority having jurisdiction necessary to improve, maintain, and use the Golf Course Property in accordance with the provisions hereof; or

(iii) A summons or any notice of violation of any duly promulgated and applicable Federal, State, or local laws, ordinances, rules,

and orders affecting the Golf Course Property, any part thereof, or the use thereof,

Operator immediately shall forward a copy of the notice or summons to Department and Operator shall have such period of time to correct said violation as is prescribed in the summons or notice.

#### **18. TAXES AND ASSESSMENTS**

Operator agrees that during the Term of this Operating Agreement, it will pay any taxes or assessments that might be imposed by any governmental body by reason of the Operator's operation of the Golf Course Property. Operator immediately shall forward any notice of such tax payment to the Department.

#### **19. OPERATOR'S OBLIGATIONS**

Operator, at its sole cost and expense, shall be responsible for preparation and compilation of Plans, Reports, Documents, and financial reports, and Operator shall attend meetings as reasonably required by the Department. Operator shall be responsible for compliance with all other obligations specified as Operator's in Exhibit A.

#### **20. ACCESS TO GOLF COURSE PROPERTY**

During the Term of this Operating Agreement, as the owner of the Golf Course Property, the State retains the unfettered right to enter the Golf Course Property for any reason or no reason at all.

#### **21. SIGNAGE, ADVERTISING, AND NEWS RELEASES**

Operator shall not post or allow any signs or advertisements of any description to be painted or posted on the Golf Course Property, any of the buildings or structures on the Golf Course Property, and/or on any other property or improvement comprising part of the State Park, unless specifically approved by Department in writing. The Operator shall not use the Department's/State's name, logos, images, or any data or results arising from the Operating Agreement as part of any commercial advertising without first obtaining the written consent of the Department. The Operator shall not be permitted to change or profit from the name of the golf course by, for example, selling or licensing naming rights to the Golf Course Property. The Operator shall not change the name of the Golf Course Property without the prior written consent of the Department. The Operator shall not issue news releases pertaining to any aspect of the services being provided under the Operating Agreement without the prior written consent of the Department.

#### **22. DAMAGE TO PROPERTY**

A. Operator shall, at Operator's sole cost and expense, repair any damage caused by Operator, its employees, agents, contractors, or invitees to the Golf Course Property within the period of time prescribed by Department in a written demand. In the event that Operator fails to so repair after written demand by Department, the Department may, at its option and subject to the availability of funds from insurance coverage or appropriated therefor, elect to make said repairs, and the cost thereof shall be paid by Operator to Department within fifteen (15) days after demand therefor.

B. In the event of damage or destruction of the Golf Course Property, in whole or in part, by fire, explosion, the elements, or otherwise during the term of this Operating Agreement, Department may, in its discretion, terminate this Operating Agreement from the date of such damage and destruction or, subject to the availability of funds from insurance coverage or appropriated therefor, cause such damage or destruction to be repaired.

C. All repairs by Operator of damage to the Golf Course Property shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage or destruction. All repairs shall be completed in accordance with plans and specifications submitted to and approved by Department under Paragraph 15 of this Operating Agreement to the same extent as though said repair is an Improvement.

D. This Operating Agreement shall not be construed to require or obligate Department to cause any damage to or destruction of the Golf Course Property to be repaired for the benefit of Operator. Department shall not be liable to Operator for any loss occasioned by the damage to or destruction of the Golf Course Property and/or Department's declaration that this Operating Agreement is terminated.

### **23. DEVELOPMENT OF STATE PARK**

Any other provision herein contained to the contrary notwithstanding, in the event that Department gives Operator written notice that Department requires all or any part of the Golf Course Property for development or use for any public purpose, Operator shall, within the period set forth in said notice and without any compensation therefor by Department to Operator, abandon use of the Golf Course Property or part thereof designated by Department within the notice period.

### **24. INDEMNIFICATION**

A. Operator shall, for itself, its successors, and assigns, assume all risks and liabilities arising out of Operator's use, operation, maintenance, and improvement of the Golf Course Property. Operator covenants to defend, protect, indemnify, and save harmless Department and hereby releases Department and each of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of every nature arising from or claimed to arise, in whole or in part, in any manner out of, be occasioned by, or result from:

(i) Any injury to, or the death of, any person in or on, or any damage to property which occurs in, on or about the Golf Course Property, any Improvements thereon or upon any sidewalk or walkway within the Golf Course Property or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Golf Course Property, Improvements, or any part thereof, and construction or repair of any Improvements on the Golf Course Property;

(ii) Violation of any agreement or condition of this Operating Agreement by Operator, its agents, employees, contractors, express or implied invitees, or anyone claiming by or through Operator;

(iii) Violation by Operator of any contracts, agreements, or restrictions of record concerning the Golf Course Property;

(iv) Failure or omission to comply with any insurance policy required under this Operating Agreement or any Federal, State, or local law, ordinance, rule, or order affecting the Golf Course Property or Operator's use thereof; and

(v) Any act, error, or omission by Operator, its agents, employees, contractors, express or implied invitees, or anyone claiming by or through Operator in the performance of this Operating Agreement.

B. Operator agrees that any contract with its contractors and consultants shall require such contractors and consultants to defend, indemnify, protect, and save harmless Department and release Operator and Department 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 Golf Course Property.

C. Department and Operator shall, as soon as practicable after a claim has been made against either of them, give written notice thereof to the other, along with full and complete particulars of the claim. If the suit is brought against Department, Operator, or any of its agents,

servants, or employees, it shall expeditiously forward or have forwarded to the other every demand, complaint, notice, summons, pleading, or other process received by or then in their possession or the possession of its representatives.

D. It is expressly agreed and understood that any approval by Department of the work performed or reports, plans, and specifications provided by Operator shall not operate to limit the obligations of Operator assumed pursuant to this Operating Agreement.

E. Operator's liability pursuant to this paragraph shall continue after the termination or expiration of this Operating Agreement with regard to causes of action arising or claimed to arise prior to the termination or expiration hereof and/or obligations of Operator under this Operating Agreement which survive such termination or expiration.

F. This indemnification is not limited by, but is in addition to, the insurance obligations contained in this Operating Agreement.

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

H. All claims asserted against the Department by the Operator shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. Nothing in the Operating Agreement shall be construed as a waiver by the Department of any warranty, expressed or implied, or any remedy at law or in equity.

## **25. INSURANCE**

A. Operator shall, at Operator's sole cost and expense, obtain and maintain at all times during the term of this Operating Agreement, insurance for any damages imposed by law and assumed under this Operating Agreement of the types and in the amounts hereinafter provided:

- (i) Comprehensive General Liability policy 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. The policy shall include an endorsement (broad form) for contractual liability. Limits of liability shall be maintained at the level of One Million (\$1,000,000.00) Dollars per occurrence as a combined single limit for bodily injury and property damage liability;
- (ii) Property insurance to cover loss or damage on an "all risk" of physical loss form of coverage against fire, water, wind, storm, loss, theft, and damage on any structures on the Golf Course Property and all fixtures, equipment, and other property attached thereto and/or physically incorporated therein and the contents owned by Operator and located in or on the Golf Course Property. Said insurance shall be in an amount not less than the full value of such structures, fixtures, equipment, and contents. The value of said structures, fixtures, equipment, and contents shall be determined by Operator using whatever procedures Operator considers appropriate. Said policy shall be written so as to provide that the insurer waives all right of subrogation against Department in connection with any loss or damage covered by the policy;
- (iii) Worker's Compensation applicable to the laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars occupational disease; and
- (iv) Such other insurance and in such amounts as may from time to time be

reasonably required by Department.

B. Operator shall require any person providing any service and/or conducting any activity on the Golf Course Property, as part of Operator's operation 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 Operator's operation of the Premises, insurance coverage of the types and in at least the minimum amounts required under subparagraph A of this paragraph.

C. All policies of insurance shall provide that the proceeds thereof shall be payable to Department and Operator as their respective interests may appear. All insurance coverage required to be maintained by Operator in accordance with this Operating Agreement shall be issued by an insurance company authorized and approved to conduct business in the State of New Jersey and shall name the State of New Jersey, Department of Environmental Protection as an additional insured.

D. When Operator returns this Operating Agreement, signed by Operator, to Department for signature, Operator shall provide Department with a certificate of insurance evidencing that Operator has obtained all insurance coverage in accordance with this Operating Agreement. A copy of the certificate of insurance shall be attached to this Operating Agreement as Exhibit D. Failure to provide a certificate of insurance at the time of Operator's execution of this Operating Agreement shall render this Operating Agreement null and void. The certificate of insurance shall provide for thirty (30) days notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Operating Agreement. Operator also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies so that Department is continuously in possession of current documentation that Operator has obtained and is maintaining in full force and effect all insurance required under this Operating Agreement. Operator also shall, upon request, provide Department with copies of each policy required under this Operating Agreement certified by the agency or underwriter to be true copies of the policies provided by Operator. The Operator shall not allow any contractor or subcontractor to engage in any activity on the Premises without first submitting to Department a current certificate of insurance showing that the contractor or subcontractor has obtained insurance coverage in accordance with the requirements of this Operating Agreement. Operator shall deliver the certificates to Department's address as provided in Paragraph 35 of this Operating Agreement.

E. Operator expressly understands and agrees that any insurance protection required by this Operating Agreement shall in no way limit Operator's indemnification obligations assumed in this Operating Agreement and shall not be construed to relieve Operator from liability in excess of such coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Operating Agreement and as otherwise provided for at law or in equity.

F. The limits of insurance policies described in this Paragraph shall be reviewed by Department and Operator every two (2) years. Operator 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 indicated by the course of plaintiffs' verdicts in personal injury actions.

## **26. ASSIGNMENT**

A. Operator shall not assign or transfer this Operating Agreement or Operator's responsibilities under this Operating Agreement or the operations authorized hereunder, nor sell or otherwise assign or transfer a controlling interest in such operations (hereinafter collectively referred to as an "Assignment") without the prior written approval of Department.

## **27. SUB-OPERATORS**

A. Operator shall not enter into sub-operating agreements with outside entities for the performance of any of its obligations under this Operating Agreement, except that Operator may enter into sub-operating agreements with outside entities for the operation of the pro shop and/or a small-scale food and beverage concession with the prior written approval of Department. Before Operator may allow a sub-operator to begin to operate or use the Golf Course Property in such a way, both the Operator and the sub-operator must sign a sub-operating agreement, which shall be

subject to Department's written approval prior to taking effect. In no event will the Department and any sub-operator have any contractual relationship by virtue of the sub-operator's relationship to (Winning Bidder). During the Term of this Operating Agreement, Operator shall indemnify the Department and assume all responsibility for all acts/omissions of any sub-operator and for its compliance with respective sub-operating agreement.

## **28. BANKRUPTCY**

In the event the Operator enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Operator agrees to furnish written notification of the bankruptcy to the Department with a copy to the Attorney General's Office. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. This obligation remains in effect until final payment is made under this Operating Agreement.

## **29. TERMINATION, EXPIRATION, AND SUSPENSION OF OPERATIONS**

A. Operator shall comply with the terms and conditions of this Operating Agreement. Failure to comply and/or the existence of any condition which Department determines to be in violation of the terms and conditions hereof shall be considered to be a material breach, in which event Department may, in addition to any other right or remedy provided for by law or in equity, terminate this Operating Agreement as follows:

- (i) In the event of Operator's failure to (a) obtain and maintain all the insurance coverage required to be obtained and maintained under this Operating Agreement or to provide Department with certificates of insurance documenting that Operator has obtained and is maintaining such insurance coverage; (b) provide Department 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 Operating Agreement; or (c) pay when due any payments or other sums required to be paid by Operator hereunder; or (d) correct any violation described in a notice or summons issued to Operator under Paragraph 17 of this Operating Agreement, and a continuation of such failure under (a), (b), (c), or (d) above for a period of ten (10) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof; or
- (ii) In the event of Operator's failure to perform or comply with any of the other covenants, agreements, and conditions herein contained and a continuation of such failure for a period of thirty (30) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof.

B. Operator shall have the right to terminate this Operating Agreement upon ninety (90) days written notice served upon Department by certified mail, return receipt requested. Said notice shall include a comprehensive explanation and justification of Operator's reasons for not continuing operations under this Operating Agreement. Within forty-five (45) days after receipt of Operator's notice, Department and Operator shall determine whether the reasons for termination can be resolved to their mutual satisfaction. In the event that Operator and Department determine that said reasons cannot be resolved, termination shall become effective ninety (90) days after Department's receipt of the notice.

C. Termination of this Operating Agreement 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 Operating Agreement as of the date of such termination.

D. Upon expiration or other termination or cancellation of this Operating Agreement, the Operator shall quit and surrender operation of the Golf Course Property and leave the Golf Course Property in a broom clean condition, without fraud or delay, and in good order, condition, and repair, reasonable wear and tear excepted. If Operator shall fail to remove any personal property lawfully belonging to and removable by Operator within the time prescribed by any notice of termination or before the stated expiration of this Operating Agreement, Department may remove same at the expense of Operator. Operator hereby covenants to pay any and all damages which may be caused to the Golf Course Property by the removal of structures and personal property. The Operator's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Operating Agreement. The Operator shall not remove any permanent fixtures upon expiration or other termination or cancellation of this Operating Agreement.

E. Upon the expiration or termination of this Operating Agreement, Operator shall pay to Department without demand or notice the sum of the following:

- (i) All payments accrued to the date of such expiration or termination and, in the event of termination, the unpaid rent for the term or until Department establishes a new operator at the Golf Course Property, if sooner. If the Department contracts with a new operator at the Golf Course Property for less than Operator's payments to the Department, Operator shall pay the difference until the end of the term. If Department contracts with a new operator at the Golf Course Property for more than Operator's payments to the Department, Operator is not entitled to the excess; and
- (ii) The cost of making all restoration, renovation, improvement, and repairs required to be made by Operator hereunder and of performing all covenants of Operator relating to the conditions of the Golf Course Property, including any improvements thereon during the term and upon expiration or sooner termination of this Operating Agreement, is to be deemed prima facie to be the cost estimated by an architect or contractor selected by Department or the amounts actually expended or incurred thereafter by Department.

F. Operator shall, at the direction of Department, immediately suspend, delay, or interrupt Operator's operation of all or any part of the Golf Course Property for such period of time as Department may determine to be appropriate to protect the Golf Course Property and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Operator's failure to perform any of the covenants, agreements, and conditions contained in this Operating Agreement, provided that Department has determined that the continuance of the operation of the Golf Course Property may detrimentally impact the Golf Course Property and/or the health, safety, and welfare of persons on site. Operator hereby waives any claim, and Department shall not be liable to any party claiming through Operator, for damages, rent abatement, or compensation as a result of Department's actions under this Paragraph. Department's suspension of Operator's operations shall be in addition to any other right or remedy available by law or in equity.

### **30. CREATION OF LIENS OR ENCUMBRANCES BY OPERATOR**

A. Operator 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 any interest of Department in the Golf Course Property or in the buildings or Improvements thereon; it being agreed that should Operator cause any alterations, rebuilding, replacements, changes, additions, improvements, or repairs to be made to the Golf Course Property or the buildings or Future Improvements thereon or labor performed or material furnished therein, thereon, or thereto, neither Department nor the Golf Course Property 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 Operator's expense, and Operator shall be solely and wholly responsible to the contractors, laborers, and materialmen furnishing and performing such labor and material.

B. If, because of any act or omission (or alleged act or omission) of Operator, any

mechanic's or other lien, charge, or order for the payment of money shall be filed against the Golf Course Property, any buildings, or any Improvements thereon, or against Department (whether or not such lien, charge, or order is valid or enforceable as such), Operator shall, at its own cost and expense, cause the same to be cancelled and discharged of record or bonded within ten (10) days after notice to Operator of the filing thereof.

C. Operator shall, upon completion of any improvement(s), provide Department with a signed copy of any and all lien(s), which shall indicate that all contractors have been paid and all lien(s) have been discharged.

### **31. SOLICITATION**

Operator warrants that no person has been employed directly or indirectly to solicit or secure this Operating Agreement in violation of the provisions of N.J.S.A. 52:34-19 and that the laws of the State of New Jersey relating to the procurement and performance of this Operating Agreement have not been violated by any conduct of Operator, 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.

### **32. AMENDMENTS**

The parties hereto agree that this Operating Agreement may be amended, supplemented, changed, modified, or altered upon mutual agreement of the parties hereto made in writing. This Operating Agreement cannot be modified or amended by conduct or course of dealings.

### **33. ENTIRE AGREEMENT**

The parties hereto agree that this Operating Agreement represents the entire agreement between the parties; all negotiations, oral agreements, and understandings are merged herein.

### **34. CONTINUATION OF TERMS**

If Department permits the Operator to continue operating the Golf Course Property after expiration of this Operating Agreement without having executed a new written agreement with Department, the Operator shall operate the Golf Course Property subject to all terms, covenants, and conditions contained in this Operating Agreement. Such continuation of operations by the Operator shall not constitute a renewal or extension of this Operating Agreement.

### **35. NOTICES**

The parties hereto agree that all submissions, approvals, and notices which may be required under this Operating Agreement shall be forwarded by certified mail, return receipt requested, and addressed as follows:

Department: State of New Jersey  
Department of Environmental Protection  
Office of Leases  
P.O. Box 404  
Trenton, New Jersey 08625-0404

Operator: (Winning Bidder's Address)

### **36. FLOOD HAZARD ZONE**

Department and Operator acknowledge that the Golf Course Property is located within a flood hazard zone. Department shall not be responsible to Operator, its agents, employees, or express or implied invitees for loss, damage, or destruction of improvements or personal property on the Golf Course Property as the result of flooding.

**37. SUPERSEDES**

This Operating Agreement supersedes and cancels all previous agreements covering the Golf Course Property.

**38. INDEPENDENT PRINCIPAL**

Operator shall, at all times, act as an independent principal and not as an agent or employee of Department. Operator agrees not to enter into any agreement or commitment on Department's behalf.

**39. WAIVER**

Failure of either party to complain of any act or omission on the part of 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 Operating Agreement shall be deemed 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. Any and all rights and remedies which either party may have under this Operating Agreement 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 Operating Agreement, 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.

**40. SUCCESSION AND BINDING AGREEMENT**

Except as otherwise set forth herein, all of the terms and provisions of this Operating Agreement shall be binding upon and shall insure to the benefit of the successors and assignees of Department and Operator's heirs, executors, administrators, and assigns.

**41. SEVERABILITY**

If any term or provision of this Operating Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Operating Agreement, or the application of such term and provision of this Operating Agreement, shall be valid and enforced to the fullest extent permitted by law.

**42. HEADINGS**

The article, paragraph, and subparagraph headings throughout this Operating Agreement 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 Operating Agreement.

**43. NO DISCRIMINATION - AMERICANS WITH DISABILITIES ACT**

A. Operator shall not discriminate against any person, employee, or applicant for 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: employment; upgrading; demotion; transfer; recruitment; recruitment advertising; rates of pay or other forms of compensation; layoff or termination; and selection for training, including apprenticeship.

B. Operator shall not discriminate on the basis of age, national origin, residence, race, creed, color, disability, sex, or sexual preference in allowing the public access to and use of the Golf Course Property.

C. Operator shall make all facilities and programs 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 are now in effect and subsequently amended.

#### **44. GOVERNING LAW**

The Department and Operator hereby agree that jurisdiction of any action hereunder shall lie in a court of competent jurisdiction in the County of Mercer, State of New Jersey. This Operating Agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

#### **45. NO THIRD PARTY BENEFICIARIES**

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

#### **46. NEGOTIATED DOCUMENT**

Each and every provision of this Operating Agreement has been independently, separately, and freely negotiated by the parties as if this Operating Agreement were drafted by all parties hereto. 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.

#### **47. PAY TO PLAY**

A. This Operating 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 Operating Agreement.

B. Operator 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 Operator received contracts in excess of Fifty Thousand (\$50,000.00) Dollars from a public entity in a calendar year. It is Operator'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).

#### **48. PREVAILING WAGE ACT**

Without limiting the scope of any other provision of this Operating Agreement, Operator agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150. Operator 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 Operator must comply with the Federal requirements.

The Operator's signature on this Operating Agreement is a guarantee that neither (Winning Bidder) nor any contractors (Winning Bidder) may employ to perform work required under this Operating Agreement has been suspended or debarred by the Commissioner, Department of Labor for violation of the Prevailing Wage Act, P.L. 1963, Chapter 150.

#### **49. CORPORATE RESOLUTION**

Operator shall adopt a resolution authorizing the execution of this Operating Agreement by Operator for the purposes and subject to the terms and conditions herein provided. When Operator returns this Operating Agreement, signed by Operator, to Department for signature, a certified copy of said resolution shall be attached to this Operating Agreement as Exhibit E.

**50. STATE HOUSE COMMISSION APPROVAL**

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

**51. ATTACHMENTS**

The following are attached to and made part of this Operating Agreement:

Exhibit A – Request for Proposal

Exhibit B – (Winning Bidder's) Bid Proposal

Exhibit C – Map of Golf Course Property

Exhibit D – Certificate of Insurance

Exhibit E – Corporate Resolution

**IN WITNESS WHEREOF**, the said parties have duly executed these presents the days and year first obtain written.

**DEPARTMENT**

**STATE OF NEW JERSEY**  
**Department of Environmental Protection**

By: \_\_\_\_\_  
Amy Cradic, Assistant Commissioner  
Natural and Historic Resources

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**OPERATOR**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

This Operating Agreement has been reviewed  
and approved as to form by:

Attorney General  
State of New Jersey

By: \_\_\_\_\_

Deputy Attorney General

Date: \_\_\_\_\_

I hereby certify that the terms and conditions hereof were approved on \_\_\_\_\_,  
by the State House Commission.

Date: \_\_\_\_\_

\_\_\_\_\_

Secretary