

**STATE OF NEW YORK**  
**Office of Parks, Recreation & Historic Preservation**  
**Maid of the Mist Concession**  
**Niagara Reservation State Park**  
**License # X000457**

This Agreement (hereinafter "License") made this 10<sup>th</sup> day of September, 2002 by and between the State of New York, acting by and through the Office of Parks Recreation and Historic Preservation (hereinafter referred to as "State Parks") with offices at One Empire State Plaza, Albany, New York 12238, and the **Maid of the Mist Corporation** (hereinafter referred to as "Licensee") with offices at 151 Buffalo Avenue, Office 204, Niagara Falls, New York 14303.

**W-I-T-N-E-S-S-E-T-H**

**WHEREAS**, pursuant to subdivisions 2-a and 2-d of Section 3.09 of the Parks, Recreation and Historic Preservation Law ("PRHPL"), State Parks is authorized to grant concession licenses for facilities operated, and services provided at New York State Parks; and

**WHEREAS**, State Parks has jurisdiction over Niagara Reservation State Park (the "Park"), including the Observation Tower, elevators, docks and other facilities related to Licensee's operation of the attraction commonly known as the "Maid of the Mist" boat excursion; and

**WHEREAS**, Licensee has been in continuous operation for over 100 years and is the sole commercial entity with rights of access to provide scenic boat excursions from landings on both the American and Canadian sides of the lower Niagara pool to the base of the American, Bridal Veil and Horseshoe Falls; and

**WHEREAS**, Licensee currently operates the "Maid of the Mist" as a concession within the Park pursuant to State Parks' License Agreement No. X190957 (as amended) which license expires on December 31, 2002; and

**WHEREAS**, in furtherance of the public interest, State Parks seeks to grant a new concession license to Licensee for the purpose of continuing the traditional service of transporting persons for hire for scenic boat excursions in the lower Niagara River below the American and Horseshoe Falls, including the right to dock and/or land boats and to take on or discharge passengers at certain locations designated by State Parks; the right to sell tickets for such transportation at locations designated by State Parks; and the right to sell certain souvenirs specifically and permanently branded with Licensee's trademarks, servicemarks or proprietary logos (hereinafter "Marks") and as may be authorized in writing by State Parks; and

**WHEREAS**, State Parks has undertaken and will continue the construction, reconstruction and renovation of certain facilities in the Park, including the docks, Observation Tower and elevators, to enhance the delivery of services and public access to the Niagara Gorge (hereinafter the "Development Project"); and

**WHEREAS**, in accordance with the provisions of this License, Licensee desires to participate in the funding for the Development Project as part consideration for the license granted herein; and

**WHEREAS**, in accordance with subdivision 2-d of Section 3.09 of the PRHPL, the Commissioner of State Parks has made a finding that this License is compatible with public enjoyment and participation in adjacent park facilities, and this License will encourage investment by the private sector in restoring, preserving and maintaining such property; and in addition, the License contains terms and conditions as have been deemed necessary to address environmental concerns, including any historic and recreational resources of such property; the compatible uses of adjacent parkland and facilities; and otherwise protects the public interest.

**NOW, THEREFORE**, in consideration of the terms and conditions contained in this License, State Parks and Licensee agree as follows:

**1. License Documents:**

This License is comprised of the following additional documents, all of which are hereby incorporated by reference:

- a) General Conditions
- b) Special Conditions
- c) Attachment "A" Description of the Licensed Premises
- d) Attachment "B" Inventory of Equipment
- e) Attachment "C" Required Clauses for Capital Improvement Projects
- f) Appendix "A" Required Clauses for All New York State Contracts
- g) Schedule "1" Licensee's *pro-forma* projection of revenues dated 5/06/02
- h) Schedule "2" Development Project FEIS and Findings Statement

**2. Term:**

a) The term of this License shall be for a period of forty (40) years commencing on the date of approval by the Office of the State Comptroller provided however, that the Licensed Premises as hereinafter defined, including beneficial occupancy thereof on a turnkey basis in accordance with the substantive terms of this License shall be provided to Licensee upon State Parks' substantial completion of the Development Project and acceptance of the Licensed Premises by Licensee in accordance with the terms of this License.

b) Prior to acceptance of the Licensed Premises by Licensee, the relationship of the parties shall be controlled by License No. X190957 (as amended) and such additional interim terms and conditions as may be necessary and mutually agreed to by the parties to facilitate Licensee's operations and ensure the safety of the public and security of the Licensed Premises during the performance of the Development Project. During the performance of the Development Project, State Parks shall provide Licensee with commercially reasonable access to the Licensed Premises for purposes of continuing, to the extent practicable, concession operations and for other kindred purposes incidental to the performance of License No. X190957.

**3. Grant of License:**

State Parks hereby grants to Licensee and Licensee hereby accepts from State Parks a license to occupy and use the facilities and structures comprising the Observation Tower including all elevators, a new gift shop to be constructed and related facilities; Lower Landing docks and newly renovated comfort station, ticket and service structures, and all queuing areas located within the Park as shown in diagonal hatching on the sketch annexed hereto and marked "Attachment A," together with the fixtures, improvements and other property thereon located or to be located therein or thereon, the said space, fixtures, improvements and other property of State Parks being hereinafter collectively referred to as the "Licensed Premises." State Parks and Licensee hereby acknowledge that the Licensed Premises constitutes non-residential real property and that for all purposes under this License, title to the Licensed Premises and all fixtures, improvements and other property shall be and remain vested in State Parks unless otherwise provided for herein.

**4. Rights of Use by Licensee:**

a) Licensee shall use the Licensed Premises for the following purposes and for no other purpose whatsoever without the expressed written approval of State Parks: For continuing the traditional and integral services of the "Maid of the Mist" concession to wit: the transporting of persons by boat for hire for scenic excursions in the lower Niagara River below the American and Horseshoe Falls, including the right to dock and/or land boats and to take on or discharge passengers at certain locations designated by State Parks; the right to sell tickets for such transportation at locations designated by State Parks; and the right to sell souvenirs specifically and permanently branded with Licensee's Marks and as may be authorized in writing by State Parks; and other kindred purposes consistent with Licensee's performance hereunder and the programs of State Parks.

b) Licensee's occupancy and use of the Licensed Premises shall not unduly interfere with or restrict State Parks' control over the day-to-day operation and management of other Park facilities and attractions, the open/green space, special events, and public

access consistent with State Parks' policies and the traditional recreational uses of the Park and its historic and environmental significance.

**5. Consideration:**

a) In consideration of the license herein granted, Licensee shall make payment to State Parks of all fees and other charges in accordance with the financial and other requirements set forth in this License. Within thirty (30) days of written notice of approval of this License by the Office of the State Comptroller, Licensee shall make a lump sum capital investment payment in the amount of Three Million (\$3,000,000.00) Dollars to State Parks which shall be used for the improvement of the Licensed Premises in accordance with Phase "1" of the Development Project. Within 10 days of written notice from State Parks of the award of construction contracts for Upper Gorge projects within Phase "2" of the Development Project, Licensee shall make a second and final lump sum capital payment in the amount of Two Million (\$2,000,000.00) Dollars to State Parks.

b) In accordance with the terms and conditions of License No. X190957 as (amended), until such time as the Licensed Premises are accepted by Licensee, Licensee shall pay State Parks a license fee equal to Ten (10%) percent of Gross Receipts (as hereinafter defined) from the sale of tickets for boat rides.

c) After Licensee has accepted the Licensed Premises, Licensee shall pay State Parks a basic license fee equal to Four (4%) percent of Gross Receipts from the sale of tickets for boat rides; and shall pay an additional license fee equal to Twenty (20%) percent of Gross Receipts from the sale of boat ride tickets to the extent such Gross Receipts exceed the projected value for such revenues receipts stated on Licensee's pro-forma revenue and expense projection dated May 6, 2002, a copy which is annexed to this License as Schedule "1." Revenue from the sale of State Parks' *Masterpass* ticket books or other similar programs mandated by State Parks shall not be included in the computation of the additional license fee. Licensee shall include in its monthly report of Gross Receipts the number of coupons for boat rides purchased from State Parks' *Masterpass* program that were redeemed during the previous month. Each redeemed *Masterpass* coupon shall be discounted at a rate (to be determined by State Parks and Licensee on an annual basis) and credited against the license fees otherwise due State Parks.

d) Licensee shall pay to State Parks a license fee based on the percentage of annual Gross Receipts based on a calendar year from the sale of all souvenirs specifically branded with Licensee's Marks (as herein defined) and as may be authorized in writing by State Parks as follows:

Gross Receipts \$0 - \$1.25 million:	10.0%
Gross Receipts \$1.25 million - \$1.5 million:	12.5%

Gross Receipts \$1.5 million - \$1.8 million:	15.0%
Gross Receipts \$1.8 million - \$2.0 million:	17.0%
Gross Receipts in excess of \$2.0 million:	25.0%

Only souvenirs specifically and permanently branded with Licensee's Marks and specifically approved for sale by State Parks shall be offered for sale or distributed by Licensee on the Licensed Premises.

e) Until such time as Licensee has accepted the Licensed Premises, State Parks and Licensee shall agree to an interim operating and maintenance plan for elevator service in the Observation Tower and related facilities. After Licensee has accepted the Licensed Premises, Licensee shall operate the elevators in accordance with the terms of this License and shall pay State Parks a license fee equal to Twenty-five (25%) percent of Gross Receipts from elevator usage, provided that the approved admission price for the elevator is at least U.S. \$1.00.

f) At five (5) year intervals throughout the term of this License (measured from the date of approval of this License by the Office of the State Comptroller), or at any time that the Consumer Price Index (using the "Urban Market Basket" indicator unless otherwise agreed to by the parties in writing) exceeds Five (5%) percent, State Parks and Licensee shall each have the right to request a conference with the other party to consider adjustment of the financial terms set forth in this Section, if necessary to restore an equitable allocation of the relative value of this License to either party. Any such adjustment in financial terms shall be subject to formal amendment of the License and approval by the Attorney General and Office of the State Comptroller.

## 6. Program Approvals:

Any specific plans, projects and/or programs identified or to be advanced by Licensee, including, without limitation, capital improvement and repair and refurbishment projects, shall be subject to the specific review and express approval of State Parks as provided for in this License. No such review or approval shall be implied, construed or deemed given by State Parks by virtue of the award of this License or otherwise, except in strict accordance with terms of this License. Any new or additional revenue sources relating to the License that may be identified during the term hereof shall be subject to approval by State Parks and, if appropriate, good faith negotiation with Licensee of an equitable allocation of a portion of such additional revenue to State Parks.

**\*Signature Page Follows\***

**SIGNATURE PAGE**

**State Parks certifies that copies of this signature page with original signatures will be attached to all other exact copies of the license.**

IN WITNESS WHEREOF, State Parks and Licensee have executed this agreement on the day and year indicated.

**Licensee**

Sept. 10, 2002  
Date

By: James V. Glynn  
James Glynn, Chairman & CEO  
Maid of the Mist Corporation

Fed. Empl. ID # 16-0535345

**Recommended by Region:**

9/12/02  
Date

By: Edward J. Rutkowski  
Edward J. Rutkowski  
Assistant Deputy Commissioner  
Western District

**Approved by State Parks:**

9/21/02  
Date

Approved:

APPROVED AS TO FORM  
NYS ATTORNEY GENERAL  
DEC 03 2002  
Peter Favretto  
PETER FAVRETTO  
ASSOCIATE ATTORNEY

ATTORNEY GENERAL

By: Nancy A. Palumbo  
Nancy A. Palumbo  
Deputy Commissioner for  
Administration & Fiscal Affairs

APPROVED  
DEPT. OF AUDIT & CONTROL

FEB 21 2003

FOR THE STATE COMPTROLLER



## **General Conditions**

### **1. License Fee & Payments:**

a) Immediately upon the sale of all goods and/or services authorized for sale to the public pursuant to this License, any license fee based on a percentage of Gross Receipts payable to State Parks shall immediately vest in and become the property of State Parks. Licensee shall be solely responsible for such fee(s) until paid and delivered to State Parks as provided herein, and shall have no right to offset fees payable on account of any obligation owed by State Parks.

b) Licensee shall pay to State Parks the license fees provided for in this License in United States dollars. To the extent any license fee or any other payment required hereunder is based on Gross Receipts, such payments shall be made in monthly installments to State Parks and remitted not later than the 15<sup>th</sup> day of each month covering the business activity for the preceding month. All such payments shall be accompanied by a detailed written report of Gross Receipts including all revenue activity in all categories of authorized sales, which report shall be in a format approved or provided by State Parks.

### **2. Gross Receipts Defined:**

a) Except as provided for herein, the term "Gross Receipts" as used in this License shall mean the total amount received by, or accruing to Licensee on an annual (calendar year) basis, by reason of the privileges granted under this License, from all sales for cash or credit, for consumption or use on or off the Licensed Premises, of any and all goods or services as may be specifically allowed hereunder and approved by State Parks or otherwise.

b) Only the following may be excluded or deducted from Gross Receipts for the purpose of computing payments due State Parks:

i. excise, sales or other taxes which are imposed upon the sale of goods or services and which are collected by the Licensee, including any taxes or other levies of a different character imposed on the Licensee subsequent to the date of this License which are intended as substitutes for or to complement any such taxes. This exclusion from Gross Receipts shall not apply to any franchise, capital stock, income or similar taxes that are based upon profits of Licensee; and



- ii. refunds, discounts, rebates or allowances received by Licensee from wholesalers or suppliers and refunds or other approved adjustments paid or given to patrons; tips, gratuities or other charges for merchandise or services which are included in the account or bill of a patron and for which Licensee makes actual payment to employees or others provided however, that any portions of such charges retained by Licensee shall be included in Gross Receipts.
- c) No deductions from Gross Receipts shall be made for commissions or other considerations paid by Licensee to agents, travel agencies, group tour operators or organizers, outside salesmen or promotional or booking organizations or services, nor shall any exclusion from Gross Receipts be made from delinquent patron accounts: No deduction or exclusion from Gross Receipts shall be made for the cost of goods or services sold or commissions paid to credit card companies, to collection agencies or to other outside parties engaged to assist in the collection of accounts receivable.

**3. Performance Bond:**

- a) Within ten (10) days of Licensee's acceptance of the Licensed Premises, Licensee shall provide State Parks with an original performance bond, in a form satisfactory to State Parks, from a corporate surety licensed in the State of New York in the amount specified in the Special Conditions. Such bond shall name State Parks as the sole beneficiary and shall guarantee the faithful performance by Licensee of all terms; and conditions of this License pertaining to the payment to State Parks of all required license fees on account of retail sales.
- b) Upon the advance approval of State Parks, which shall not be unreasonably withheld or delayed, an irrevocable standby letter of credit in a form approved or provided by State Parks, or a cash or equivalent security deposit, in like amount, may be substituted for a performance bond.
- c) Licensee shall keep the performance bond or letter of credit required hereunder in full force and effect through the entire term of this License. The performance bond or letter of credit shall require the issuing surety or bank to give State Parks notice in writing not less than thirty (30) days prior to the expiration date thereof, and/or of the bank or surety's intention not to renew said bond or letter of credit. In any event, the performance bond or letter of credit shall not be terminated without the advance written approval of State Parks.

**4. Capital Improvement Investment:**

Capital improvement projects to be undertaken by Licensee are subject to the prior review and written approval of State Parks, and shall be completed in accordance with all State codes, rules and regulations, including, when applicable, historic preservation review and

the State Environmental Quality Review Act (SEQRA). All approved capital projects shall be performed by Licensee in strict compliance with the terms, conditions and procedures set forth in the "Requirements for Capital Improvement Projects" annexed hereto as Attachment "C."

**5. Condition of the Licensed Premises:**

Subject to Licensee's express written approval of the Development Project as provided for in Paragraph "1" of the Special Conditions, Licensee acknowledges the status of the Licensed Premises as including historic structures subject to State and federal regulations and assumes all risks, uncertainties, costs and liabilities that may be encountered in connection with any future approved renovation, capital project and/or the operation of a facility of its vintage and state of repair. Licensee further acknowledges that upon acceptance of the Development Project, State Parks shall not be responsible for any risks or uncertainties, including construction delays, costs and/or liabilities associated with any future capital project at the Licensed Premises undertaken by or on behalf of Licensee.

**6. Coordination with State Parks Officials:**

Licensee shall cooperate with State Parks' officials and will comply with all reasonable requests made by such officials with respect to the operation and maintenance of the Licensed Premises.

**7. Operating Schedule:**

a) Prior to commencement of operations, and thereafter as may be reasonably necessitated by programmatic change, Licensee shall submit to State Parks for approval a written program and operating schedule, including detailed hours of operation, for the Licensed Premises and all concession and patron services afforded or provided by Licensee. Schedule changes caused by weather, emergency, or other unexpected conditions may be approved verbally by the Park Manager or his or her designee.

b) Subject to Licensee's compliance with terms hereof, State Parks' review and approval pursuant to this section shall not be unreasonably delayed or withheld.

**8. Special Events:**

a) Within forty-eight (48) hours prior to advertising, public offering, or implementation, whichever occurs earlier, Licensee shall submit to State Parks for its approval all plans for Special Events and Promotions at the Licensed Premises. For purposes of this section, the definition of "Special Events" and "Promotions" shall be determined in the sole discretion of State Parks in consultation with Licensee and in consideration of the programmatic criteria for the Licensed Premises. All events outside

Licensee's ordinary course of business shall be deemed "Special Events" and shall require the advance approval of State Parks hereunder.

b) State Parks' review and approval pursuant to this section shall not be unreasonably delayed or withheld.

**9. Standards of Operation:**

a) Inasmuch as the Licensed Premises and concession are provided first and foremost for the convenience, benefit and enjoyment of the general public, Licensee acknowledges that the quality of its services is essential to the satisfactory performance of this License.

b) Licensee shall maintain the Licensed Premises, and any equipment or ancillary facilities included under this License, in an attractive, safe, operable, sanitary and inviting condition at all times, including all buildings or portions thereof used for disposal of waste and refuse, public lobbies and lounges, restrooms, entrances and exits. Licensee shall keep the sidewalks and grounds within the Licensed Premises in a safe, clean, neat and attractive condition. It is the intent and agreement of State Parks and Licensee, that high quality standards shall be diligently adhered to and implemented by Licensee so as to reflect positively on the reputation of Licensee and State Parks.

c) Licensee warrants that all merchandise and services sold or kept for sale pursuant to this License shall be of high quality and must conform in all respects to federal, state and municipal laws, ordinances, rules and regulations. All goods and services offered for sale must be in good taste and considered appropriate, proper and consistent with State Parks' policies, mission, and responsibilities to its patrons. Service to all patrons shall at all times be prompt, courteous and efficient and shall be provided without discrimination on any basis protected by the New York State Human Rights Law. In the event that in State Parks' judgment any goods or services offered by Licensee are inconsistent with the image, policies or reputation of State Parks or the State of New York, or are otherwise reasonably deemed unsuitable in accordance with the standards set forth herein, State Parks may require Licensee to cease offering and selling such goods or services immediately.

**10. Qualified Staff:**

a) Licensee shall provide all necessary managers and employees, including but not limited to mechanics and maintenance staff in sufficient force to deliver all patron services properly and efficiently and to meet all of the standards for operation required by this License. Licensee shall employ only duly qualified, competent, professional and experienced managers to oversee and administer the operation of the Licensed Premises. At least one person in charge of Licensee's operation must be on duty at all times that the Licensed Premises is open for business.

b) All employees and contractors of Licensee must be able to communicate effectively with State Parks officials, the public, vendors, public safety personnel and all others with whom they must interact during the course of their employment.

c) Licensee shall assign a full-time general manager or equivalent to devote personal attention to the management, operation and maintenance of the Licensed Premises. Prior to the engagement of any person as general manager, Licensee shall provide State Parks with a written statement of the candidate's background and qualifications, and State Parks shall have the right to disqualify any candidate it reasonably deems unsuitable for the position. Licensee's general manager shall have sufficient authority to implement any request, which State Parks may reasonably make during the term hereof.

d) Licensee shall train its employees in appropriate operational procedures and standards, including as may be applicable, pricing definitions; item specifications; housekeeping standards; courtesy and guest relations; personal appearance; speed and style of service standards; cleaning of all restroom areas; maintenance; safety; and to individual job performance. Management personnel shall receive training in quality and cost controls, customer relations, marketing and advertising, supervision of sanitation and housekeeping, and accounting and cash control procedures.

e) State Parks reserves the right to reasonably require Licensee to discipline, retrain or replace any employee whose conduct or appearance is inconsistent with the standards of State Parks as set forth herein. To the extent commercially reasonable, any collective bargaining agreement entered into between Licensee and any labor union or organization must recognize the foregoing right of State Parks, and no such collective bargaining agreement shall in any way affect or diminish the rights of State Parks hereunder.

#### **11. Employee Uniforms & Conduct:**

Licensee shall provide its employees with distinctive and clean uniforms that foster a neat and appropriate public image. The style of uniforms shall be subject to advance approval by State Parks. Licensee shall require employees to be clean, courteous, helpful, and neat in appearance at all times. Management employees shall be generally knowledgeable about the Park and its operations. Licensee shall not suffer or permit any employee who uses improper language or acts in a loud, boisterous or otherwise improper manner. Licensee shall take prompt and appropriate action with regard to complaints concerning the conduct of its employees.

#### **12. Housekeeping & Sanitation:**

a) Licensee shall at all times keep the Licensed Premises and any ancillary or common area used by Licensee in a reasonably clean and sanitary condition (in accordance with all

applicable health and sanitary codes) and shall meet or exceed the standards of Licensee's concession operations in Canada.

b) Licensee shall be responsible for all cleaning supplies, tissue and sundries to keep the public restroom facilities located within the Licensed Premises in a reasonably clean and sanitary condition (in accordance with all applicable health and sanitary codes) and shall meet or exceed the standards of Licensee's concession operations in Canada.

c) Licensee shall be responsible for keeping the enclosed portions of the Licensed Premises reasonably free from ants, flies, roaches, rodents, and all other pests, insects or vermin, including all costs incurred in connection therewith.

d) All State and local health and sanitary codes, standards and regulations, including sanitary standards established and issued by State Parks, shall be adhered to at all times. Violation of such codes, standards or regulations may result in written warnings to Licensee. Licensee shall diligently address and immediately undertake the correction of any such violation within two (2) working days. If correction of such violation is not undertaken within two (2) working days, State Parks shall have the right to correct the deficiencies and to charge the Licensee for the actual cost of labor and materials. Nothing contained in this section shall limit any other rights of State Parks pursuant to this License. Repeated or persistent failure of the Licensee to correct health or sanitary code violations shall be deemed a material breach of this License and may result in termination thereof. For purposes of this License, such charges by State Parks shall be deemed an additional license fee owed by Licensee. The closing of the Licensed Premises, or any portion thereof, by a State or county health agency shall be deemed a material breach of this License and may, at the option of State Parks, result in termination of this License. Immediately upon receipt by Licensee, Licensee shall forward to State Parks' Regional Headquarters and Director of Concessions & Contract Administration, a copy of any notice, inspection report, and/or citation received from any State or county health agency.

**13. Trash & Debris:**

Licensee shall provide for the prompt and proper collection, storage, removal, transportation and costs, including tipping fees, for all refuse, trash and debris generated at the Licensed Premises and all common areas for which Licensee is responsible. Licensee shall comply with all local and state regulations requiring recycling, and shall not burn trash at or on the Licensed Premises or at or on any other property of State Parks.

**14. Use of Biodegradable/Recyclable Products:**

Licensee shall use recyclable materials whenever reasonably possible. All such materials will be rinsed, collected and brought to a recycling center for disposal by the Licensee. Licensee shall provide appropriate receptacles to allow the public the opportunity to

separate recyclable material from biodegradable waste resulting from sales made at the Licensed Premises.

**15. Hazardous Materials:**

a) Licensee shall not use, treat, store or dispose of any Hazardous Substance at the Licensed Premises in violation of any applicable State or Federal laws, codes rules or regulations or prohibited in standard policies of fire insurance companies in the State of New York. Hazardous Substance shall mean, without limitation, any flammable, explosive or radioactive material, lead paint, asbestos, urea formaldehyde, polychlorinated biphenyl, methane, and any hazardous or toxic substance or related material, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Appendix §§1801, et seq.), the Resource Conservation and Recovery Act, as amended, (42 U.S.C. §§9601, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§2601, et seq.) and Articles 15; 17, 27 and 40 of the New York State Environmental Conservation Law. This section is not intended and shall not be construed to prohibit the reasonable, legal and proper use and storage of ordinary cleaning solutions and solvents in the ordinary course of Licensee's operation and maintenance of the Licensed Premises.

b) Licensee shall properly handle, store, and use all fuel, including gasoline, propane, and oil in compliance with all applicable State or Federal laws, codes, rules and regulations.

c) No indoor or outdoor fireworks, fireworks displays, or performances involving pyrotechnics of any kind are authorized or permitted pursuant to this License without the expressed prior written approval of State Parks.

**16. Deliveries:**

Licensee shall use its best efforts to schedule deliveries so as not to interfere with State Park's operations and other users of the Park. All deliveries of supplies and equipment to Licensed Premises by commercial vehicle shall be directed through the Park by route approved by the Park Manager. Licensee shall endeavor to schedule deliveries during regular business hours on ordinary weekdays and before noon on Saturday. On Sundays and holidays, all deliveries shall be completed before 10:00 a.m. Emergency deliveries may be made with the approval of the Park Manager. Licensee and its vendors and contractors shall not suffer or permit the unnecessary idling of engines or motors of delivery and other service vehicles.

**17. Utilities:**

- a) After completion of the Development Project as hereafter defined, State Parks shall not be responsible for the installation of any water supply, sewers, drainpipes or fixtures, or electric, fuel oil or gas lines or fixtures beyond those already in place prior to the granting of this License. If additional utility installations or meters within the Licensed Premises are required as a result of a capital project undertaken or proposed by Licensee pursuant to this License, the full cost of such installations shall be borne by Licensee.
- b) In instances in which Licensee receives any utility or other service directly from a provider other than State Parks, Licensee shall be responsible for all (100%) of all costs of such services and shall make timely payment directly to such provider.
- c) In instances in which utility services are separately metered but billed through State Parks, Licensee shall be solely responsible for all (100%) of such costs of electricity, fuel oil and gas used in connection with the operation of the Licensed Premises, including all exterior lighting. Licensee shall use electricity only for power and illumination of the Licensed Premises and exterior lighting, and shall use all electric lights and power in strict accordance with the plans and designs designated and approved by State Parks. State Parks shall bill Licensee at the end of each month for such services, and Licensee shall promptly pay the billed amount within fifteen (15) days of receipt of such billing from State Parks.
- d) In the event of interruption of water supply, electricity, or other utility services to the Licensed Premises provided by State Parks, State Parks shall undertake to repair such interruption promptly; however, State Parks shall not be liable or in any manner responsible for any claim, loss or damage of any kind sustained by Licensee or any third party as a result of such delay or interruption in utility service regardless of cause. Under all circumstances, Licensee shall be solely responsible for the cost and provision of its own sources of temporary power as may be necessary.

**18. Pricing:**

- a) At least forty-five (45) days in advance of a proposed price change or increase, Licensee shall submit for the written approval of State Parks, a detailed price list for all items and services authorized by State Parks to be sold by the Licensee. All prices shall be comparable to those at prevailing rates at similar establishments in the region.
- b) All requests for price increases must first be submitted for approval in writing to State Parks. State Parks reserves the right to withhold approval for prices or a change in the price, quantity or quality of goods or services for which adequate justification is not provided in supporting data provided by Licensee. If the underlying justification for an approved change in price, quality or quantity specification ceases to exist for any reason,

State Parks reserves the right to require Licensee to revert to the price, quality or quantity specification in effect prior to the approved change. If State Parks disapproves a requested price increase, Licensee shall be notified in writing stating the reasons for the disapproval.

c) State Parks shall use good faith efforts to respond to all requests regarding pricing within fifteen (15) days of receipt thereof, provided that Licensee provides State Park with adequate justification for the change, such approval shall not be unreasonably withheld.

**19. Sale of Alcoholic Beverages & Tobacco Products:**

No alcoholic beverages or tobacco products may be sold at the Licensed Premises without the specific written approval of State Parks. Neither Licensee, nor its contractors may sell or serve alcoholic beverages unless and until the New York State Liquor Authority has granted an appropriate license or permit for the Licensed Premises.

**20. Advertising:**

Licensee shall use commercially reasonable efforts to promote the concession and services authorized by this License. All brochures, media advertisement and similar copy to be released, disseminated to the public or distributed in any manner shall be in good taste, consistent with State Parks' mission and policies, and provided to State Parks' Public Information Officer (or designated representative) no less than forty-eight (48) hours prior to the release, dissemination or distribution of the material. State Parks reserves the right to reasonably and promptly object to the form and content of any such material, and Licensee agrees to discontinue or withhold the release, dissemination and distribution of any such material unless and until State Parks and Licensee have agreed to a resolution of State Parks' objection.

**21. Sponsorships:**

a) Sponsorship opportunities may be allowed subject to the prior written approval of State Parks as to form, content and manner of presentation. Sponsorship by companies, interests or organizations that are directly identified with the sale or use of alcoholic beverages, tobacco products, or casino gambling are currently strictly prohibited. Sponsorship opportunities include, but are not limited to, program inserts, product sampling, and advertising displays at the Licensed Premises.

b) Sponsorship of the Licensed Premises, or its programs or services authorized by this License by soft drink or other beverage companies is subject to the approval of State Parks, and may not be procured by Licensee without the expressed written approval of State Parks.



c) Licensee shall not sell, lease, license, market or otherwise offer so-called "naming rights" to the Licensed Premises without the expressed written permission of State Parks. "Naming rights" as used herein shall include, without limitation, recognition of contributors and donors of money, property, services or anything of value to Licensee.

**22. Sale or Distribution of Products or Services Not Authorized:**

Nothing in this License authorizes Licensee to sell or distribute any items, or to promote or provide any commercial services to the public at the Licensed Premises other than those specifically enumerated herein, or which State Parks specifically approves in writing. Licensee shall not commercially exploit the Licensed Premises for any purpose other than as may be authorized in this License or as may be otherwise specifically approved by State Parks in writing.

**23. Rights Reserved by State Parks:**

State Parks reserves for its sole benefit all other rights to the Licensed Premises, including but not limited to, the right to retain all revenues derived from other sources not specifically granted to Licensee pursuant to this License, and the right to authorize the installation of cellular telephone antenna and other related or utility systems at the Licensed Premises.

**24. Signage:**

State Parks reserves the exclusive right to erect, remove or change exterior and directional signage at the Licensed Premises, as it deems necessary and desirable for the convenience of the public. No exterior or directional signs shall be erected on, removed or changed by Licensee without the prior written approval of State Parks, which shall not be unreasonably withheld. All such signage shall be consistent with State Parks' uniform sign program for the Park.

**25. Books of Account & Financial Reporting:**

a) Licensee shall keep books and records of account in accordance with generally accepted accounting principles and procedures. Licensee shall permit State Parks, the Office of the State Comptroller, and/or their authorized representatives and consultants to inspect and audit appropriate books and records at any reasonable time, after giving Licensee twenty-four (24) hours notice of the date and time of such inspection and audit. Such right of inspection and audit shall exist during the term of this License and for a period of six (6) years after its expiration or termination. Notwithstanding the requirement for twenty-four (24) hour advance notice with respect to access to Licensee's books for the purposes of audit, State Parks reserves the right to conduct periodic "spot" inspections of the Licensed Premises at any time during business hours for the purpose of

conducting cash counts, health code and regulatory compliance inspections, maintenance inspections, and quality assurance inspections.

b) Except in specific cases approved otherwise by State Parks (such as the use of temporary and/or portable kiosks and carts in a manner consistent with past practice) all sales of any nature within the Licensed Premises shall be immediately and properly recorded using cash registers or point of sale systems with tamper proof totalizers within each cash register machine or point of sale system. All such systems shall be provided at the sole cost of Licensee, and approved as to design and specification by State Parks. All such cash register or point-of-sale equipment must be certified Year 2000 compliant.

c) Consecutive daily readings shall be taken from each cash register in each sales and tax category and posted to a daily sales report for each register location. The readings from these reports shall be reconciled and any discrepancies in cash or credit receipts shall be reported on the daily sales report. The daily sales report shall be provided to the Park Superintendent on a weekly basis. Licensee shall permit no reset of cumulative cash register readings. Keys for reset purposes shall be turned over to State Parks. If a cash register or point of sale system must be repaired, or otherwise removed from the Licensed Premises, the readings shall be recorded and verified by State Parks personnel both before the equipment leaves and when it re-enters the Licensed Premises. State Parks reserves the right to audit registers or point of sale readings at any time.

d) Licensee shall retain original records of all Gross Receipts and any other related records and supporting data required for audit of Licensee's business operation for a period of not less than six (6) years from the creation of the record. Such records and supporting data shall be maintained for ready access at the Licensed Premises or such other designated off-site location as may be mutually agreed to by the parties and shall not be destroyed without the prior written notice to, and consent of State Parks. All such records shall be stored in a watertight and/or weather-tight manner.

e) On or before the fifteenth day of April of each year, Licensee shall provide State Parks with a certified financial statement, in accordance with generally accepted accounting principles, pertaining to Licensee's operation of the Licensed Premises for the preceding year.

## **26. Insurance:**

a) State Parks shall retain approval over the form and adequacy of insurance coverage to be provided by Licensee in connection with this License. Throughout the entire term, Licensee shall procure at its sole cost and expense insurance providing coverage to Licensee and State Parks for claims for damage to property and personal injuries, including death, which may arise from the conduct of Licensee, its agents servants, employees, invitees and guests and/or the performance of any of the services authorized by this License or

undertaken by Licensee pursuant to this License. Prior to commencement of any operations for each year of this License, Licensee shall provide a current insurance certificate evidencing insurance coverage as follows:

- i. **General Liability** with minimum coverage for each event and in the aggregate as specified in the Special Conditions; and
  - ii. **Property Damage** with minimum coverage per accident or occurrence and in the aggregate as specified in the Special Conditions; and
  - iii. **Bodily Injury** with minimum coverage per accident and in the aggregate as specified in the Special Conditions; and
  - iv. **Worker's Compensation Insurance** providing coverage as required under the Workers Compensation Law of the State of New York; and
  - v. **Products Liability Insurance** with minimum coverage per accident or occurrence as specified in the Special Conditions; and
  - vi. **Fire Insurance** covering the Licensed Premises, including all structures, fixtures and equipment, with an Agreed Value Limit as specified in the Special Conditions; and
  - vii. **Comprehensive Automobile Insurance** including liability for hired and non-owned vehicles, comprehensive and collision coverage as specified in the Special Conditions; and
  - viii. **Excess Coverage** with coverage as specified in the Special Conditions.
- b) Insurance coverage shall be provided only by an insurer duly licensed in the State of New York. All insurance policies and certificates procured by Licensee shall name as additional insured "the People of the State of New York, the New York State Office of Parks, Recreation and Historic Preservation, the Niagara Frontier State Park, Recreation and Historic Preservation Commission, their commissioners, officers, agents and employees." Designating State Parks as a "certificate holder" shall not constitute compliance with this section. All insurance coverage shall be written such that State Parks is afforded at least thirty (30) days prior notice of cancellation of any insurance. This section shall not be construed to require Licensee to procure insurance coverage for equipment owned exclusively by Licensee.
- c) Licensee shall notify State Parks of any accidents and/or claims, including without limitation accidents or claims involving bodily injury, death or property damage, arising on or within the Licensed Premises. Such notice shall be provided in writing as soon as

practicable, however in any event within five days of Licensee's receipt of notice of the accident or claim.

**27. Indemnity & Claims:**

a) Licensee assumes all risks in the performance of all activities authorized by this License and agrees to defend, indemnify and hold harmless the State of New York, the Office of Parks, Recreation and Historic Preservation, Niagara Frontier State Park, Recreation and Historic Preservation Commission, their commissioners, officers, employees, agents and assigns (hereinafter, collectively the "Indemnitees") from and against any and all claims, suits, losses, damages or injury to persons or property of whatsoever kind and nature, whether direct or indirect, caused in whole or in part by Licensee or Licensee's contractors, vendors, materialmen, employees, agents, invitees and guests, and/or arising out of their conduct and/or Licensee's performance pursuant to this License, provided however that Licensee's indemnity shall not extend to any claims, liabilities, suits, losses, damages, expenses, accidents or occurrences arising out of, relating to, or in connection with: (i) the fault, negligence or willful misconduct of any Indemnitee; or (ii) the Indemnitees' breach of any duty or obligation required of them by this License. Licensee shall defend at its sole cost and expense any action commenced for the purpose of asserting any claim of whatsoever character arising out of this provision. Licensee's responsibility under this section shall not be limited to the required or available insurance coverage.

b) For all purposes hereunder, State Parks shall not be liable for any injury, loss or damage to Licensee, its agents, servants, contractors, vendors, invitees and guests, or to any person happening on, in or about the Licensed Premises or its appurtenances, nor for any injury or damage to the Licensed Premises or to any property belonging to Licensee or to any other person, that may be caused by fire, theft, breakage, or by use or misuse or abuse of any portion of the Licensed Premises, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Licensed Premises, or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which any such injury, loss or damage is determined to be caused by the negligence or willful misconduct of State Parks.

c) State Parks shall not be liable to Licensee, its agents, servants, contractors, vendors, invitees and guests, or any other person, for any failure of water supply, gas supply or electric current, nor for any injury or damage to any property of Licensee or any other person or to the Licensed Premises, caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity, or caused by leakage of any substance from pipes, appliances, sewers or plumbing works, or caused by hurricane, flood, tornado, wind or similar storm or disturbance, or caused by water, rain or snow that may leak or flow from the street, sewers or subsurface areas, or from any part of the Licensed Premises or any body of water within or adjacent to the Licensed Premises, or caused by any public or quasi-public work, unless,

and only to the extent of the proportion by which any such injury, loss or damage is determined to be caused by the negligence or willful misconduct of State Parks.

d) Licensee shall not create or cause to be created any lien, encumbrance or charge upon the Licensed Premises, the Park, or any part thereof. If any mechanics, laborers or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of Licensee by law or by a provision of this License) caused or created by Licensee is filed against the Licensed Premises, or if any public improvement lien created or caused to be created by Licensee is filed against any assets of, or funds appropriated by State Parks, then Licensee shall, within forty-five (45) days after receipt of notice of the lien, cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise. However, Licensee shall not be required to discharge any such lien if Licensee shall have: (a) furnished State Parks with, at Licensee's option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to State Parks), or other security reasonably satisfactory to State Parks in an amount sufficient to discharge the lien and all applicable interest, penalties and/or costs; and (b) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite Licensee's efforts to discharge the lien State Parks reasonably believes the lien is about to be foreclosed and so notifies Licensee, Licensee shall immediately cause such lien to be discharged of record or State Parks may use the security furnished by Licensee in order to discharge the lien.

**28. Rights Upon Loss from Casualty:**

a) If a loss or damage from casualty is suffered, Licensee shall give notice of the loss to State Parks. State Parks shall consult with Licensee prior to making a determination of whether or in what manner the loss or damage can or should be restored to substantially the same condition as existed prior to such loss from casualty.

b) If the loss from casualty is such that the Licensed Premises is totally or partially destroyed to the extent that Licensee's performance hereunder is substantially interrupted or impeded, then Licensee and State Parks shall each have the right, by notice to the other, to terminate this License. In the event of such termination, Licensee shall pay to State Parks all fees due for the period through and including the date of loss from casualty, and Licensee and State Parks shall otherwise finalize all open matters and obligations between them. Should State Parks elect to terminate this License under this section, within thirty (30) days of Licensee's receipt of such notice, Licensee shall have the right to elect, upon written notice to State Parks, to restore the Licensed Premises at Licensee's sole cost and expense. Licensee shall have the right to apply the proceeds of any policy of insurance procured by Licensee to the restoration of the Licensed Premises. If Licensee elects to restore the Licensed Premises, such restoration work shall be subject to the approval of State Parks pursuant to the same terms of this License as are applicable to capital improvement projects, including without limitation, the provisions of Attachment "C" hereof. Pending Licensee's

restoration of the Licensed Premises to reasonably serviceable condition consistent with the setting and architectural style prevailing in the Park, and provided that the Licensee diligently pursues all restoration work to completion within a reasonable time, the License fee accruing hereunder shall be abated and Licensee's rights hereunder reinstated.

c) If the loss from casualty does not totally destroy the Licensed Premises or otherwise substantially interrupt or impede Licensee's performance hereunder, Licensee shall proceed with performance of this License. In such event, State Parks and Licensee may agree to an equitably proportionate abatement of the License fee, but only to the extent reasonably feasible and to the proportionate extent that Licensee's operations are impeded or interrupted by such casualty loss.

## **29. Termination:**

a) In addition to all other rights of termination provided by law and in this License, if any one or more of the following events shall occur, that is to say:

i. Licensee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all its property; or

ii. By order or decree of a court, Licensee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

iii. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Licensee and shall not be dismissed within forty-five (45) days after the filing thereof; or

iv. The actual or purported letting hereunder of the interest or estate of Licensee under this License shall be transferred to, pass to or devolve upon, by operation of law or otherwise, any other person, firm or corporation except upon the express written approval of State Parks; or

v. By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator shall take possession or control of all or substantially all the property of Licensee, or any execution or attachment shall be issued against

Licensee or any of its property, whereupon possession of the Licensed Premises shall be taken by someone other than Licensee, and any such possession or control shall continue in effect for a period of ten (10) days; or

**vi.** Any lien is filed against the Licensed Premises because of any act or omission of Licensee and is not removed or bonded as provided for in Paragraph "27" of the General Conditions of this License; or

**vii.** Licensee shall fail duly and punctually to make any payment or account contribution required hereunder when due to State Parks and such failure shall continue for a period of twenty (20) days after State Parks shall have given Licensee a written notice and demand therefore; or

**viii.** Licensee shall fail to keep, perform and observe any other material promise, covenant and agreement set forth in this License on its part to be kept, performed, or observed, within twenty (20) days after receipt of written notice of default thereunder from State Parks (except where fulfillment of its obligation requires activity over a period of time, and Licensee shall have commenced to perform whatever may be required for fulfillment within ten (10) days after receipt of notice and continues diligently such performance without interruption except for causes beyond its control); or

**ix.** Licensee shall cease to be duly authorized to conduct business in the State of New York.

Then upon the occurrence of any such event or at any time thereafter during the continuance thereof, State Parks may by ten- (10) days' notice to terminate this License, such termination to be effective upon the date specified in such notice.

**b)** No acceptance by State Parks of license fees, charges or other payments in whole or in part for any period or periods after a default in any of the terms, covenants and conditions to be performed, kept or observed by Licensee shall be deemed a waiver of any right on the part of State Parks to terminate this License.

**c)** No waiver by State Parks of any default on the part of Licensee in performance of any of the terms, covenants or conditions hereof to be performed, kept or observed by Licensee shall be or be construed to be a waiver by State Parks of any other or subsequent default in performance of any of the said terms, covenants and conditions.

**d)** The rights of termination described above shall be in addition to any other rights of termination provided in this License and in addition to any rights and remedies that State Parks would have at law or in equity consequent upon any breach of this License by

Licensee, and the exercise by State parks of any right of termination shall be without prejudice to any other such rights and remedies.

e) Licensee hereby waives its right to trial by jury in any summary or ejectment proceeding, or other action that may hereafter be instituted by State Parks against Licensee in respect of the Licensed Premises or in any action that may be brought by State Parks to recover fees, damages, or other sums payable hereunder. Licensee shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment that may be brought by State Parks unless such claims would be deemed waived if not so interposed.

**30. Force Majeure:**

If either State Parks or Licensee shall be delayed or prevented from the performance of any act required by this License by reason of acts of God, weather, earth movement, lockout or labor trouble, unforeseeable restrictive governmental laws or regulation, or acts of war, terrorism, riot or other similar causes, without fault and beyond the reasonable control of the party obligated, performance of such act shall be excused for the period of the delay and the period for the performance of such act (and/or the term of the License as applicable) shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this section shall excuse Licensee from the prompt payment of any and all license fees or other charges payable pursuant to this License.

**31. Compliance with all Laws, Codes Rules & Regulations:**

Licensee shall comply with all present and future federal and state laws, codes, rules and regulations applicable to the conduct of the activities authorized by this License, including all other applicable governmental regulations affecting the Licensed Premises in regard to the sale, use and storage of materials and shall procure at its own expense all permits, licenses or other approvals necessary for the performance of this License.

**32. Choice of Law/ Damages:**

This License shall be governed and interpreted in accordance with the laws of the State of New York. Any and all claims against State Parks arising out of this License shall be limited to money damages and commenced exclusively in, and subject to the jurisdiction of the New York State Court of Claims. All funds payable hereunder shall be in United States currency.

**33. Official Beverage/ Statewide Pouring Rights:**

State Parks reserves the right to require Licensee to purchase, for resale to patrons at the Licensed Premises, only those soft drinks and other beverage products as may be defined in



any future statewide or regional official beverage/ pouring rights contract that may be subsequently issued by State Parks. State Parks shall provide Licensee with a copy of any future statewide or regional official beverage/ pouring rights contract that may be subsequently issued by State Parks. Licensee shall not place soft drink vending machines at the Licensed Premises without the advance written approval of State Parks.

**34. Notices:**

Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this License (collectively "Notices") shall be in writing, signed by the party giving the same or such party's attorneys and shall be deemed to have been properly given and shall be deemed effective upon receipt when: (i) delivered by express overnight mail delivery service with receipt for delivery; or (ii) deposited in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party as set forth herein or at such other address as such party may designate by notice specifically designated as a notice of change of address and given in accordance herewith. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall constitute receipt. Notices and copies of all Notices shall be delivered to the addresses first set forth herein, unless otherwise specified in the Special Conditions of this License.

**35. Required Clauses:**

Appendix "A" - Standard Clauses for All New York State Contracts is annexed hereto and incorporated herein by reference.

**36. Integration Clause:**

This License shall not be materially amended, changed or otherwise modified except in writing signed by both parties and approved by the Attorney General and Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference, this License constitutes the entire agreement between the parties concerning the subject matter hereof and supercedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation or condition not expressed herein shall be effective to interpret, change or restrict the express provisions of this License.

**37. Rights of Third Parties**

Nothing contained in this agreement shall create or give to third parties any claim or right of action against the Indemnitees as defined in Paragraph "28" hereof, or any interest in real or personal property of the State of New York, beyond that as may legally exist without regard to this agreement.

**38. Agency**

Nothing contained herein shall constitute or be construed to create or constitute a partnership, joint venture or an agency relationship between the parties. The relationship of Licensee to State Parks shall be that of an independent contractor and Licensee shall act in accordance with that status. Licensee, its agents, servants and employees shall not hold themselves out or claim to be officers or employees of the State, and shall make no claim demand or application to or for any right or privilege applicable to an officer or employee of the State including, without limitation, workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement system membership or credit.

**39. Required Approvals:**

This License shall not become effective until the Attorney General and the Comptroller of the State of New York have approved it.

**\*Special Conditions Follow\***

## Special Conditions

### 1. Development Project:

a) The terms of this License are conditioned upon State Parks undertaking, pursuing and completing the construction, reconstruction and renovation of certain facilities in the Park for the use of Licensee to enhance the delivery of services to the public (herein defined as the "Development Project") as specified in the *Final Environmental Impact Study for the Niagara Gorge Access Project* completed April 23, 2001 and *Findings Statement* dated May 7, 2001 (Schedule "2"). State Parks has commenced the performance of the Development Project and anticipates (but does not guarantee) completion of Phase "1" on or about May 31, 2002 and completion of Phase "2" on or about December 1, 2002. In the event that the Development Project is for any cause cancelled, terminated, aborted or abandoned by State, the terms and conditions of this License shall be renegotiated specifically with respect to Licensee's capital improvement investment, the term, and the consideration to be paid to State Parks. State Parks agrees to use good faith efforts to diligently pursue the Development Project, however, under no circumstances shall State Parks be liable to Licensee for any claims, losses or damages arising from delay, interruption, or cancellation of the Development Project.

b) Within thirty (30) days of written notice to Licensee of substantial completion of the Development Project (or upon agreement of the parties, upon completion of a discrete portion or phase of the work) by State Parks, Licensee shall be afforded the opportunity to thoroughly examine, inspect and reasonably approve the Development Project and thereafter Licensee shall accept the Development Project in accordance with all terms and conditions of this License, subject only to any deficiencies and punch list items to be addressed or corrected as may specified in writing by the parties. In event that Licensee fails to inspect the Development Project or specify any deficiencies in writing within thirty (30) days of written notice, the right to object to the condition of the Development Project shall be deemed waived and Licensee shall be deemed to have accepted the Development Project in "as is" condition. Licensee acknowledges that it has not, and shall not in the future rely upon any oral representation or statement of State Parks or of its Commissioners, officers, agents or employees as to the suitability of the Development Project for the operations permitted thereon by this License.

c) After acceptance of the Development Project by Licensee, and completion of all agreed-upon punchlist items, State Parks shall have no obligation for finishing work or preparation of the Licensed Premises for Licensee's use, unless expressly agreed to in writing by State Parks. After acceptance of the Development Project, Licensee shall be responsible for all construction and installation work that it may require to finish off, outfit, or decorate the Licensed Premises in a manner suitable for the uses authorized by this License. The parties agree that all applicable warranties, manufacturer guarantees,

etc. shall be transferred to the party bearing responsibility for the item pursuant to this License.

d) Prior to acceptance of the Development Project by Licensee, Licensee shall continue to pay a flat fee of One Thousand (\$1,000) Dollars each year for utilities in accordance with License No. 190957. After completion of the Development Project and acceptance thereof by Licensee, Licensee shall pay the cost of all utilities associated with the Licensed Premises in accordance with Paragraph "17" of the General Conditions of this License.

**2. Ingress & Egress:**

a) Licensee for itself, its officers, employees and such business invitees as are at the Licensed Premises shall have the right of ingress and egress between the Licensed Premises and the public streets and park roads. Such right shall be exercised by means of such public areas and pedestrian or vehicular ways, and by means of such other facilities for movement of persons or property, to be used subject to all the provisions of this License and in common with others having rights of passage and movement within the Park as may from time to time be designated by State Parks for the use of the public. The use of any such facility, way or other area shall be subject to the rules and regulations of State Parks and the Park which are now in effect or which may hereafter be promulgated for the safe and efficient operation of the Park.

b) State Parks may, at any time, temporarily or permanently close, move change or limit the use of, or consent to or request the closing, moving, changing or limitation of the use of, any road, facility, way or any other area at or near the Licensed Premises presently or hereafter used as such, so long as reasonable notice is given to Licensee and/or a reasonably comparable means of ingress and egress remains or is made available to Licensee under the circumstances. Licensee shall endeavor not to do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Licensed Premises or in any areas, streets, ways, facilities and walks near the Licensed Premises.

**3. Rights of Entry Reserved:**

a) State Parks by its duly authorized officers, employees, agents, representatives and contractors shall have the right at all reasonable times during business hours and upon reasonable oral notice to Licensee's manager or his designee to enter upon the Licensed Premises for the purpose of inspecting the same, for observing the performance by Licensee of its obligations under this License, and for the doing of any official act or thing which State Parks may be obligated or have the right to do under this License or in accordance with law. In case of emergency or exigent circumstances threatening the health, safety or welfare of the public, or the integrity of physical structures of the

Licensed Premises, State Parks reserves an unrestricted right of entry to the Licensed Premises at all times.

b) Without limiting the obligations of Licensee to keep, maintain and repair the Licensed Premises as set forth in Section "10" of the Special Conditions and other provisions of this License, State Parks by its officers, employees, representatives and contractors, shall have the right, for its own benefit, for the benefit of the public, to maintain initially existing and future utility, mechanical, electrical, communication and other systems or portions thereof as may be on or adjacent to the Licensed Premises, and to enter upon the Licensed Premises at all reasonable times to make such repairs, alterations and replacements as may, in the opinion of State Parks, be deemed necessary or advisable and, from time to time, to construct or install over, in, under or through the Licensed Premises new lines, pipes, mains, wires, conduits, equipment and other such; and to use the Licensed Premises for access to such facilities not otherwise conveniently accessible; and to take all material into and upon the Licensed Premises that may be required for such repairs, alterations and replacements. The exercise of the rights reserved hereunder by State Parks for any such entry, repair, alteration, replacement, construction or access shall be whenever possible coordinated in advance with Licensee and shall not unreasonably interfere with the use of the Licensed Premises by Licensee or unreasonably affect the security of any property owned by Licensee.

**4. Right of Re-entry:**

State Parks shall, as an additional remedy upon the giving of a notice of termination as provided this License, have the right to re-enter the Licensed Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of Licensee under this License, and shall in no event constitute an acceptance of surrender.

**5. Remedies & Suits Against Licensee:**

All remedies provided in this License shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to State Parks at law or in equity. In the event of a breach by Licensee of any term, covenant, condition or provision of this License, State Parks shall have the right of injunction and the right to invoke any other remedy allowed by law or in equity as if termination, re-entry, summary proceedings and any other specific remedies including without limitation thereto, indemnity and reimbursement, were not mentioned herein, and neither the mention thereof nor the pursuance or exercise or failure to pursue or exercise any right or remedy shall preclude the pursuance or exercise of any other right or remedy.

**6. Surrender:**

a) Licensee covenants and agrees to yield and deliver peaceably to State Parks the Licensed Premises on the date of the termination or expiration of this License, whether such cessation be by termination, expiration or otherwise, promptly and in "broom clean" condition, reasonable wear excepted as would not adversely affect or interfere with the efficient and proper utilization of the Licensed Premises or any part thereof.

b) Unless the same are required for the performance by Licensee of its obligations hereunder, Licensee shall have the right at any time during the term hereof to remove from the Licensed Premises, and, on or before the expiration or earlier termination of the term, shall so remove its equipment, removable fixtures and other personal property, repairing all damages caused by such removal. If Licensee shall fail to remove such property on or before the termination or expiration of the term, State Parks shall have the right to so remove and dispose, or provide for the removal and disposal, of such property according to law.

**7. Capital Investment:**

a) Any capital improvement or substantial refurbishment project to be undertaken by Licensee shall be in accordance with the provisions of Attachment "C" Requirements for Capital Improvement Projects annexed hereto. Licensee shall submit for the approval of State Parks a written plan for any proposed capital improvements to the Licensed Premises.

b) Licensee acknowledges that the Park is listed or eligible for listing on the State and National Registers of Historic Places and is a National Historic Landmark. Any proposed modification of the interior or exterior structures or the surrounding landscape of the Licensed Premises must be specifically reviewed and approved in writing by the State Historic Preservation Office and State Parks.

c) Compliance with the State Environmental Quality Review Act and the State Historic Preservation Act are express conditions of the License. No performance under the License, alteration of the structure, or significant departure from the traditional use of the Licensed Premises shall be permitted by State Parks, except after review in compliance with the State Environmental Quality Review Act and the State Historic Preservation Act.

**8. Construction by Licensee:**

a) Except in accordance with an approved maintenance or capital improvement plan, Licensee shall not erect any structures, make any modifications, alterations, additions, improvements, capital repairs or replacements or do any construction work on or to the Licensed Premises, or install any fixtures in or on the Licensed Premises (other than trade

fixtures and or equipment removable without injury to the Licensed Premises) without the prior consent of State Parks. In the event any such construction, improvement, alteration, modification, addition, repair or replacement is made or done with or without such consent, and unless the consent of State Parks shall expressly provide otherwise, the same shall immediately become the property of State Parks and Licensee shall have no right to change or remove the same either during the term or at the expiration thereof. Notwithstanding the foregoing, immediately upon notice from State Parks given at any time during the term of this License, Licensee shall remove or change any improvements made or done by it without State Parks' consent.

b) Without limiting any obligation of Licensee to perform, Licensee agrees that no portion of the Licensed Premises will be used at any time if it is in an unsafe or improper condition for the conduct of Licensee's operations, or if there is a reasonable possibility of injury or damage to life or property.

c) Licensee shall require all of its construction consultants and contractors to indemnify and insure the Indemnitees (as defined in Paragraph "27" of the General Conditions) to the same extent that such consultants and contractors indemnify and insure Licensee (or to the same extent indemnification and insurance is required of Licensee by this License, whichever affords State Parks greater protection). Any consulting and construction contracts entered into by Licensee shall be in accordance with the terms of this License and nothing set forth in any such contract shall impair the rights of State Parks pursuant to this License, or shall create or be deemed to create a contractual or third-party beneficiary relationship between Licensee's contractor or consultant and State Parks.

**9. Licensee's Operations:**

a) Licensee shall conduct its operations in an orderly and proper manner and so as not to annoy, disturb or offend to others using the Park. Licensee shall use best efforts to control the conduct of its officers, members, employees, agents, representatives, contractors, customers, guests, invitees and those doing business with it. Upon objection from State Parks concerning any such conduct, Licensee shall immediately take all steps reasonably necessary to remove the cause of the objection.

b) Licensee shall not commit any nuisance on the Licensed Premises, or do or permit to be done anything which may result in the creation or commission of a nuisance on the Licensed Premises, and Licensee shall not cause or permit to be caused or produced upon the Licensed Premises, to permeate the same or to emanate therefrom, any unusual, noxious or objectionable smokes, gases, vapors odors or objectionable noises.

c) Licensee shall not use or connect any equipment or engage in any activity or operation in the Licensed Premises which will cause or tend to cause an overloading of

the capacity of any existing or future utility, mechanical, electrical, communication or other systems, or portion thereof, serving the Licensed Premises, nor shall Licensee do or permit to be done anything which may interfere with the effectiveness or accessibility of existing and future utility, mechanical, electrical communication or other systems or portions thereof on the Licensed Premises or elsewhere at the Park.

d) Licensee shall not overload any floor, roadway, passageway, pavement or other surface or any wall, partition, column or other supporting member, or any elevator or other conveyance, in the Licensed Premises or at the Park and without limiting any other provision of this License, Licensee shall repair, replace or rebuild any such damage caused by overloading.

e) Licensee shall not, without the prior written approval of State Parks, install, maintain or operate or permit the installation, maintenance or operation on the Licensed Premises of any vending machine or service designed to dispense or sell food, beverages, tobacco products or merchandise of any kind, whether or not included in the above categories, or any restaurant, cafeteria, kitchen, stand or other establishment for the preparation, dispensing or sale of food, beverages, tobacco or tobacco products, or merchandise of any kind or any equipment or device for the furnishing to the public of a service of any kind, including without limitation thereto any telephone pay stations.

f) Licensee's schedule of operations as mutually agreed upon by the parties shall include reasonable provision for elevator service for public access to the Niagara Gorge (weather permitting) during the "off-season" or other periods during which the "Maid of the Mist" boat excursion is closed.

#### **10. Maintenance & Repairs:**

a) Except for the responsibilities allocated to State Parks in Paragraph "11" hereof or any other provision of this License, upon acceptance of the Licensed Premises by Licensee, Licensee shall be solely responsible for the year 'round interior and exterior maintenance and repair of the Licensed Premises, including without limitation the Observation Tower, gift shop, Lower Landing comfort station, docks, landings, patron queuing areas, and comfort stations. Licensee's obligations shall include maintenance and repair of all water, sewer, gas, electric, HVAC, plumbing, fire control, and other systems, equipment, and functioning elements, components and conduits of such systems and equipment, whether currently existing or hereafter installed as part of the Licensed Premises. Licensee's obligations shall include all cleaning, painting and preventative maintenance and third-party service contracts for janitorial service, window washing, HVAC maintenance and elevator maintenance, provided however that State Parks shall bear all costs of the initial elevator maintenance contract for a period not to exceed three (3) years from date the new elevators are placed in service.



- b) Prior to acceptance of the Licensed Premises by Licensee, the obligations of the parties with respect to maintenance and repairs shall be governed by the terms and conditions of License No. 190957.
- c) Licensee shall repair, replace, rebuild and/or restore all or any part of the Licensed Premises which may be damaged or destroyed by the acts or omissions of Licensee, its officers, members, employees, agents, representatives, contractors, customers, guests, invitees or other persons who are doing business with Licensee or who are on or at the Licensed Premises with the consent of Licensee.
- d) Licensee acknowledges and agrees to the necessity of a program of preventive maintenance in order to keep the Licensed Premises, including all elements for which Licensee is responsible hereunder, in good working order and appearance. Within ninety (90) days after completion of the Development Project and acceptance of the Licensed Premises by Licensee, Licensee shall submit to State Parks for approval a written maintenance plan. Licensee's plan for preventive maintenance shall provide for the periodic examination and repair of all systems and equipment (by qualified personnel) for which Licensee is responsible pursuant to this License. The plan shall include a schedule including, without limitation, all HVAC, refrigeration, compressors, ducts, pumps, water heaters, motors, fire extinguishers and alarm systems, elevators, and other major mechanical, plumbing and electrical equipment requiring periodic maintenance, painting or operational check. The plan shall include a maintenance schedule that shall, among other things, take into account the changing repair and replacement requirements of the equipment over the time period covered by its service life.
- e) Licensee shall promptly inform State Parks of any impending failure or need for replacement or repair of any item enumerated in this Section that is known to Licensee. Licensee shall prepare and keep proper maintenance and repair records, and to make these records available as business records for State Parks' audit and review.
- f) If it is reasonably determined by State Parks that deficiencies exist with respect to Licensee's maintenance of the Licensed Premises, Licensee shall be provided with written notice. Licensee shall initiate and diligently undertake the correction of such deficiencies within twenty (20) days of such notice, at which time a follow-up inspection shall be conducted. If the deficiencies have not been corrected at the time of such follow-up inspection following written notice, State Parks shall retain the right to correct such deficiencies and charge the Licensee for the actual cost of labor and materials. Such charges shall be paid by Licensee upon presentation, and shall not be a credit against any obligation owed by Licensee to State Parks. Nothing contained in this Section shall limit any other rights of State Parks or the obligations of Licensee pursuant to this License. Repeated failure of Licensee to properly maintain the Licensed Premises after notice shall constitute a material breach of this License.

**11. Maintenance & Capital Responsibilities of State Parks:**

a) State Parks shall maintain full responsibility for the maintenance, repair and replacement of the following: (i) the structural integrity, including load bearing members and components of the Observation Tower and other buildings comprising the Licensed Premises (including any necessary structural repairs to the façade of the Lower Gorge comfort station; (ii) architectural sheathing and window panels on the Observation Tower (except painting and window washing which shall be the responsibility of Licensee); (iii) utility systems and equipment servicing the Licensed Premises, but only to extent located outside the delineation of the Licensed Premises and under the jurisdiction and control of State Parks; and (iv) roadways to and from the Licensed Premises to major roads, but only to the extent that they are located outside of the Licensed Premises and are under the jurisdiction and control of State Parks.

b) State Parks shall continue routine outdoor maintenance services in accordance the Park schedule established by State Parks including: (i) sweeping, cleaning, snow plowing and sanding of parking lots and park roads adjacent to the Licensed Premises; (ii) mowing of grassy areas adjoining the Licensed Premises; and (iii) care and maintenance of existing trees, plantings, gardens and natural areas adjoining the Licensed Premises.

**12. Capital Refurbishment Account**

a) Upon acceptance of the Licensed Premises by Licensee, Licensee shall set aside each month an amount equal to one (1%) percent of annual Gross Receipts from boat excursion sales only, for new, replacement, or the refurbishment of equipment, and capital refurbishment of the Licensed Premises. This amount shall be distinct and separate from the license fees to be paid to State Parks and any other capital, maintenance or other obligation required of Licensee. Licensee shall establish a separate interest bearing checking account in a bank approved by State Parks for the sole purpose of maintaining these funds, and the account shall be titled "**Maid of the Mist Capital R&R Account**" (hereinafter referred to as "Capital Account"). The principal of the Capital Account and all interest shall be vested in State Parks and the principal and interest shall be utilized in the same manner. The account shall be established to restrict withdrawals only upon the signature of State Parks' and the Licensee's authorized designees. The account checkbook shall be maintained in State Parks' Niagara Frontier Regional Office.

b) Licensee shall make deposits in the Capital Account on the 15<sup>th</sup> day of each month during the term of this License based on Gross Receipts for the month immediately preceding such payment dates. Licensee shall provide copies of all deposit receipts to State Parks, and failure to make timely deposits shall be a material breach of this License.

c) The purpose of the Capital Account shall be to provide dedicated funds for the purchase of new, replacement, or the refurbishment of equipment, and for minor repair or

refurbishment of the Licensed Premises and any related Park infrastructure. The Capital Account shall not be used as a fund for routine maintenance and repair expenses or business overhead that are the sole responsibility of Licensee.

d) Licensee shall, on or about October 1<sup>st</sup> of each calendar year, provide to State Parks for approval, a budget and schedule of any anticipated or proposed expenditures to be made from the Capital Account during the following calendar year. The budget shall allow for planning of projects and for the orderly scheduling and performance of work prior to the succeeding operating season.

e) Upon approval of a project expenditure by State Parks and unless State Parks' procurement guidelines require otherwise, Licensee shall obtain and submit to State Parks, three (3) written price quotations for the expenditure. Upon State Parks' approval of the vendor, and following delivery and acceptance of the product or service and audit of the vendor's invoice, State Parks shall prepare a check from the Capital Account for co-signature by State Parks and Licensee, as provided herein. Licensee acknowledges that no funds from the Capital Account may be encumbered, expended or otherwise committed unless specifically authorized in advance by State Parks.

f) Title to all equipment or other improvements furnished and accepted through the Capital Account shall immediately vest in State Parks.

g) Upon the expiration or termination of this License, any balance in the Capital Account shall be withdrawn and paid to State Parks within ten (10) days.

h) Nothing contained herein shall restrict or limit Licensee from purchasing necessary or additional equipment for the operation of the Licensed Premises at Licensee's expense. Any such equipment furnished by Licensee shall remain the property of Licensee, except if said equipment constitutes a fixture and is permanently attached to the Licensed Premises, title to such equipment shall vest in State Parks at the expiration or termination of this license.

### 13. **Performance Bond & Insurance:**

a) Pursuant to the General Conditions, Licensee shall procure a performance bond in the amount of Three Hundred Thousand (\$300,000.00) Dollars at its sole cost and expense.

b) Unless otherwise agreed to by State Parks in writing, pursuant to the General Conditions, Licensee shall procure insurance in the following minimum amounts by category procure at its sole cost and expense:

i. **Commercial General Liability** (or equivalent) with a minimum of One Million (\$1,000,000) Dollars per accident or occurrence for personal injury;

- ii. **Property Damage** coverage with a minimum of One Million (\$1,000,000) Dollars per accident or occurrence;
- iii. **Bodily Injury** coverage with a minimum of One Million (\$1,000,000) Dollars per accident or occurrence;
- iv. **Worker's Compensation Insurance** providing coverage as required under the Workers Compensation Law of the State of New York;
- v. **Products Liability Insurance** in the amount of One Million (\$1,000,000) Dollars per accident or occurrence;
- vi. **Fire Insurance** covering the Licensed Premises and ancillary structures, fixtures and equipment with an agreed value limit of Five Million (\$5,000,000) dollars; and
- vii. **Comprehensive Automobile Insurance** including liability for hired and non-owned vehicles, comprehensive and collision coverage in the amount of One Million (\$1,000,000) Dollars per accident or occurrence;
- viii. **Excess Liability** coverage (or equivalent) in an umbrella form of insurance not less than Twenty Million (\$20,000,000) dollars per accident or occurrence.

**14. Notices:**

Notices provided in accordance with paragraph "34" of the General Conditions shall be delivered to the following:

**If to State Parks:**

Assistant Deputy Commissioner/ Regional Director  
NYS OPRHP  
Niagara Frontier State Parks Regional Headquarters  
Prospect Park  
P.O. Box 1132  
Niagara Falls, NY 14303-1132

A copy shall be delivered to:

Director, Concessions & Contract Administration  
NYS Office of Parks, Recreation and Historic Preservation  
Agency Bldg. #1  
Empire State Plaza  
Albany, NY 12238-0001

Niagara Reservation State Park  
Maid of the Mist Corp.  
License # X000457 Final 08-20-02

**If to Licensee:**

Christopher M. Glynn, President  
Maid of the Mist Corporation  
151 Buffalo Avenue  
Niagara Falls, NY 14303

**15. Acceptance of Credit Cards**

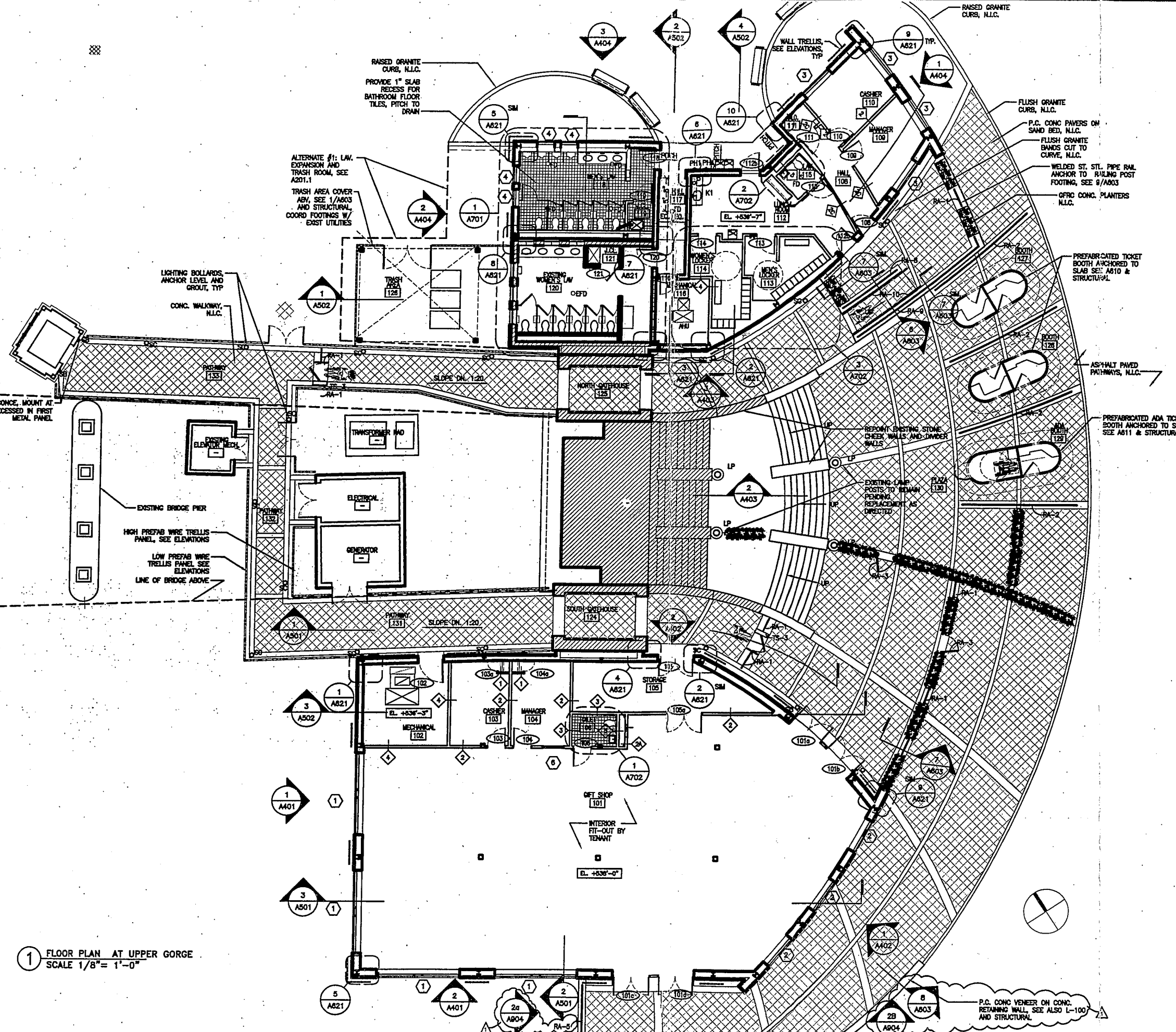
Licensee shall accept credit cards for payment for all services offered to the public pursuant to this License, including but not limited to boat excursion and elevator tickets, merchandise and all other sales. Licensee shall make appropriate arrangements at its sole cost and expense with Master Card, Visa and such other vendors as may be mutually agreed upon by State Parks and Licensee.

**\*Attachments, Appendices & Schedules Follow\***

Niagara Reservation State Park  
Maid of the Mist Corp.  
License # X000457 Final 08-20-02

**Attachment "A"**  
**Description of the Licensed Premises**

**"Attached"**



1 FLOOR PLAN AT UPPER GORGE  
SCALE 1/8" = 1'-0"

- NOTE:**
1. SEE A901 FOR DOOR SCHEDULE.
  2. SEE SHEET A902 FOR FINISH ACCESSORIES AND EQUIPMENT SCHEDULE.
  3. SEE A803 FOR WINDOW TYPES.
  4. SEE A904 FOR RAILINGS AND TURNSTILE TYPES.
  5. SEE MEP DRAWINGS FOR PLUMBING FIXTURES.
  6. SEE MEP DRAWINGS FOR POWER AND COMMUNICATION DEVICES.
  7. SEE LANDSCAPE DRAWINGS (N.L.C.) FOR PLAZA LAYOUT AND DETAILS.
  8. SEE SHEETS A201B & C FOR DIMENSIONING.

- LEGEND**
- EXISTING CONSTRUCTION TO REMAIN
  - ELECTRICAL FIXTURE OF TYPE SHOWN, SEE ELECTRICAL
  - FLOOR DRAIN, SEE PLUMBING
  - PREFABRICATED WIRE TRELLIS



STATE OF NEW YORK - EXECUTIVE DEPARTMENT  
OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION  
WESTERN DISTRICT - NIAGARA REGION  
NIAGARA RESERVATION STATE PARK  
NIAGARA FALLS, NEW YORK 14303-0132  
(716) 278-1770 FAX: (716) 278-1716

**WARNING:**  
ANY ALTERATIONS TO THIS DOCUMENT NOT CONFORMING TO SECTION 7501, SUBSECTION 2, NEW YORK STATE EDUCATION LAW, ARE STRICTLY PROHIBITED.

**ERDMAN ANTHONY**  
CONSULTING ENGINEERS  
Buffalo, NY - Rochester, NY - Manhattan, NY - Albany, NY

**HHPA**  
HARRY H. HOFFMAN PROFESSIONAL ASSOCIATES, P.C.  
1000 N. GORGE BLVD., SUITE 100  
NIAGARA FALLS, NY 14303  
TEL: (716) 278-1770  
FAX: (716) 278-1716  
www.hhpa.com

**GROUND FLOOR PLAN**  
NIAGARA GORGE ACCESS PROJECT  
PHASE III  
UPPER GORGE MODIFICATIONS  
BUILDING WORK

DESIGNED	HHPA	No. 1/2/13/02
DRAWN		
CHECKED		
AS NOTED		
SCALE		
DATE	02-28-02	No. DATE
		REVISIONS

**A-201A**  
SHEET NO.  
DWG  
FILE NO.

BLUEPRINT DATE:

LOWER GOOSE FACILITIES

← DOCK

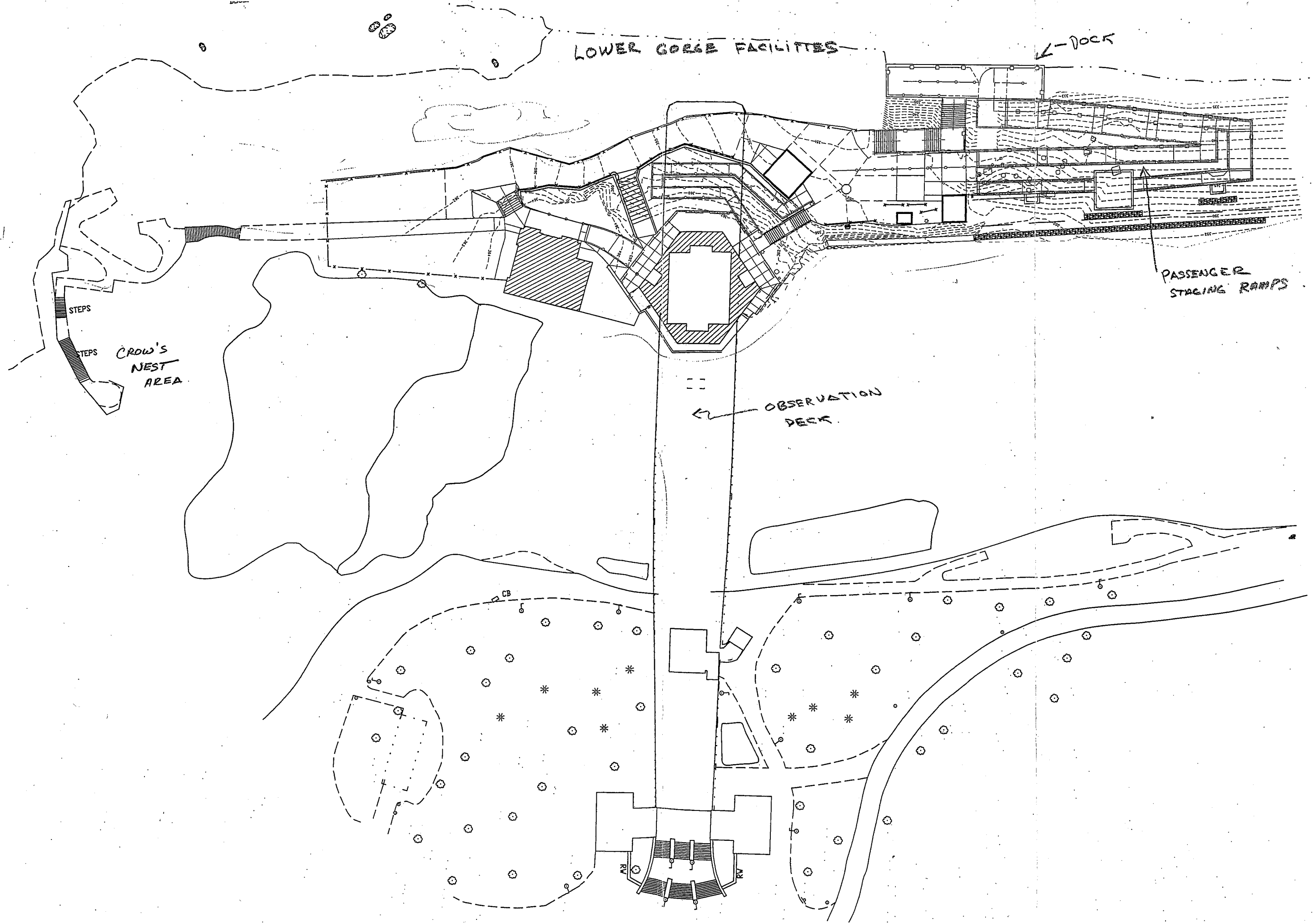
PASSENGER STAGING RAMPS

← OBSERVATION DECK

CROW'S NEST AREA

STEPS

STEPS





Niagara Reservation State Park  
Maid of the Mist Corp.  
License # X000457 Final 08-20-02

**Attachment "B"**  
**Inventory of Equipment**

**"To Be Updated and Added"**

## Attachment "C" Requirements for Capital Improvement Projects

- a) All capital improvement investment projects to be undertaken by Licensee ("Concessionaire") shall be approved in advance by State Parks in accordance with the Concession License. Upon approval of a capital improvement project by State Parks, the Concessionaire shall fully implement the approved project and all its individual elements at the direction of State Parks pursuant to the requirements contained herein. The Concessionaire shall be solely responsible for the full cost of implementing all approved projects, including all costs and expenses of construction that exceed the Concessionaire's minimum capital investment required by the Concession License.
- b) Unless otherwise agreed in writing by State Parks, the Concessionaire expend its required minimum capital investment within the first three (3) years of approval of the Concession License. All work undertaken by the Concessionaire shall be in accordance with, and pursuant to plans, specifications and an implementation schedule duly approved in writing by State Parks.
- c) Designs for all projects proposed by Concessionaire shall be in compliance with the NYS Uniform Building and Fire Code, and the standards of the American Disabilities Act. Designs shall be developed and signed by architectural and/or engineering consultants licensed to practice in New York State. All architectural, engineering and environmental consultants engaged by the Concessionaire shall have a minimum of five (5) years professional experience, and demonstrable prior experience with projects similar to that to be undertaken by Concessionaire. Selection of consultants, including consultants selected to prepare any required environmental impact statements and supporting studies, shall be subject to the written review and approval of State Parks. Design and engineering fees chargeable to the capital investment required by the Concession License shall not exceed fifteen (15%) percent of total project cost approved by the State Parks. All designs for capital improvements shall be subject to the written review and approval of State Parks with respect to aesthetics and compliance with the Concessionaire's approved Capital Investment Plan, the NYS Uniform Building and Fire Code, the standards of the American Disabilities Act, the State Historic Preservation Act, and the State Environmental Quality Review Act, prior to any bidding or award of contracts for such construction, or commencement of construction.  
  
If State Parks determines that a proposed project so requires, Concessionaire shall be responsible for the preparation of a Draft Environmental Impact Statement (DEIS), a Final Environmental Impact Statement (FEIS), and a draft Statement of Findings pursuant to State Environmental Quality Review Act (SEQR) procedures and within 12 months of the award of the License. Concessionaire shall be responsible for the administration of the EIS process, including the arrangements for, and preparation/ maintenance of records of a scoping meeting and public hearing. The EIS process and compliance aspects of the SEQR will be undertaken under the direct supervision of State Parks. In accordance with SEQR, Concessionaire must adequately address alternatives, including the "no build" alternative. Concessionaire must fulfill its SEQR obligations under the License at its own cost and will not look to reimbursement by State Parks even if the plans for the proposal are not implemented as a result of the SEQR process. The time period for the SEQR process may be extended by State Parks beyond the specified period. In no event, however, shall the SEQR review be unduly delayed by the acts of omissions of Concessionaire.
- d) All contracts for construction or improvement of the Licensed Premises shall provide for the payment of prevailing wage rates set by the New York State Department of Labor. The Concessionaire is solely responsible to ensure the payment of prevailing wage rates on all capital improvement projects. Upon request by the Concessionaire, State Parks shall provide prevailing wage rate sheets to the Concessionaire.
- e) The Concessionaire shall undertake construction work only after soliciting and documenting competitive bids from subcontractors and materialmen. All advertisements, bids, bid certifications and related documentation shall be reviewed and approved by State Parks prior to the award of contracts by the Concessionaire. The Concessionaire shall submit documentation, in a form and manner as directed by State Parks, to permit the audit and verification of the bidding procedures and costs of all work to be undertaken. Title to all improvements shall vest in the State of New York only upon final acceptance of the work by State Parks.
- f) All construction and material costs and expenses in excess of original estimates for the approved project shall be the sole responsibility of the Concessionaire, and State Parks shall have no liability whatsoever for any additional expenses either to the Concessionaire or the Concessionaire's contractors, subcontractors, and/or suppliers. The Concessionaire assumes any and all additional and extra costs, including but not limited to costs

and expenses associated with the upgrade of utilities, security and fire control systems, code compliance, delay for whatever cause, weather, and unknown or unforeseen conditions associated with the Licensed Premises. State Parks shall have no obligation in law or in fact to expend funds or undertake any capital improvements as a result or consequence of any project undertaken, or condition encountered by the Concessionaire.

**g) Additional Insurance Required for Capital Improvements**

In addition to the insurance required by the Concession License, the Concessionaire shall require its contractors to carry Contractor's Liability Insurance which names State Parks and the Concessionaire as additional insured. Such insurance shall include the following coverage:

(1) Liability (including contractual liability) and Protective Liability to protect the Concessionaire and State Parks from any suits, actions, damages and costs of every name and description, with respect to all work performed by the Concessionaire's contractor's and subcontractors;

(2) Owner's Protective Liability to protect State Parks with respect to all operations undertaken by the Concessionaire's contractors and subcontractors, including omissions and supervisory acts; and

(3) Completed Operations/Products Liability covering liability and damages arising between the date of final cessation of construction work and the date of final acceptance of the construction by State Parks; and

(4) Builder's Risk Insurance:

(i) Unless otherwise provided for in the concession License the Concessionaire's contractor shall maintain builder's risk insurance for the completed value of the Licensed Premises on the All Risk Form.

(ii) In the event that State Parks occupies all or any part of any building included in the Licensed Premises prior to the issuance of the final certificate of occupancy, the Concessionaire's Contractor shall notify the fire insurance company or companies. Such occupancy by State Parks shall not require consent of the insurer nor shall the insurer require any rate adjustment as a result of such occupancy.

**h) Labor and Materials Bond:**

Prior to the commencement of any construction work hereunder, Concessionaire shall furnish State Parks with evidence that it has procured a labor and materials payment bond from a corporate surety authorized to transact business in the State of New York, in a form satisfactory to State Parks, naming Concessionaire as principal, in an amount not less than one hundred (100%) percent of the total cost of the construction work to be undertaken by Concessionaire as approved by State Parks. Such bond shall guarantee payment for all materials, provisions, supplies, and equipment used in, upon, for, or about the performance of said construction work, and/or labor performed thereon of any kind whatsoever, and which unconditionally protects State Parks from any claims, liability, losses, or damages arising therefrom.

i) It is expressly understood that failure of the Concessionaire to comply with the requirements for capital improvement projects, including maintaining the required insurance and bonds in full force throughout the performance of the approved project, shall be deemed a material breach of the Concession License and may, at the election of State Parks, result in termination of the Concession License without further notice. The Concessionaire shall notify State Parks immediately of any change in insurance or bonding status including, but not limited to, any change in carrier or surety.

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## APPENDIX A

### STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance law.

3. **COMPTROLLER'S APPROVAL** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for

employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and

Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contractors execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii)

designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers. (B) PRIVACY NOTIFICATION. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purpose and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease "the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend

funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then: (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the Work) except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any

business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from: Department of Economic Development Division for Small Business 30 South Pearl Street Albany, New York 12245 Tel. 518-292-5220 A directory of certified minority and women-owned business enterprises is available from: Department of Economic Development Minority and Women's Business Development Division 30 South Pearl Street Albany, New York 12245 <http://www.empire.state.ny.us> the Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable; Contractors certify that whenever the total bid amount is greater than \$1 million: (a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383 respectively) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street; Albany New York 12245, for a current list of jurisdictions subject to this provision.

Niagara Reservation State Park  
Maid of the Mist Corp.  
License # X000457 Final 08-20-02

**Schedule "1"**  
**Licensee's *Pro-forma* Projection of Revenues Dated May 6, 2002**

**"Attached"**



**PRO-FORMA**  
**Maid of the Mist Corporation**  
**Tower Renovation**

Revised: 5/6/2002

Number of Years Year	0 2002	1 2003	2 2004	3 2005	4 2006	5 2007	6 2008	7 2009	8 2010	9 2011	10 2012	11 2013	12 2014	13 2015	14 2016	15 2017
<b>Revenue:</b>																
<b>Elevator</b>	325,000	800,000	848,000	873,440	882,174	890,996	1,124,883	1,136,131	1,147,493	1,158,968	1,170,558	1,170,558	1,170,558	1,170,558	1,170,558	1,404,669
<b>Souvenir Shop</b>		1,000,000	1,250,000	1,500,000	1,530,149	1,560,906	1,592,280	1,624,285	1,656,933	1,690,237	1,724,212	1,741,454	1,758,868	1,776,457	1,794,221	1,812,164
<b>Boats</b>	3,506,777	4,668,832	5,469,905	5,631,068	5,971,438	6,031,150	6,393,830	6,457,765	6,850,063	6,918,564	7,335,168	7,335,168	7,702,254	7,702,254	8,089,006	8,089,006
<b>Total</b>	3,831,777	6,468,832	7,567,905	8,004,508	8,383,761	8,483,052	9,110,993	9,218,181	9,654,489	9,767,769	10,229,938	10,247,180	10,631,680	10,649,269	11,053,785	11,305,839
% Change Prior Year	2%	69%	17%	6%	5%	1%	7%	1%	5%	1%	5%	0%	4%	0%	4%	2%
<b>Operating Expenses:</b>																
Cost of Goods Sold	0	400,000	500,000	600,000	512,060	624,362	636,912	649,714	662,773	676,095	689,685	696,582	703,547	710,583	717,688	724,866
Boats (Operating & SGA)	3,776,160	3,851,684	3,967,234	4,086,251	4,208,839	4,335,104	4,465,157	4,599,112	4,737,085	4,879,198	5,025,573	5,176,341	5,331,631	5,491,580	5,656,327	5,826,017
Facility Staffing (Incl Benefits)	247,860	1,070,937	1,092,355	1,114,202	1,136,486	1,159,216	1,182,400	1,206,048	1,230,169	1,254,772	1,279,867	1,305,464	1,331,573	1,358,204	1,385,368	1,413,075
Utilities		228,000	232,560	237,211	241,955	246,794	251,730	256,765	261,900	267,138	272,481	277,931	283,490	289,160	294,943	300,842
Elevator Maintenance		25,000	25,500	26,010	26,530	27,061	27,602	28,154	28,716	29,288	29,861	30,444	31,037	31,640	32,253	32,876
Restrooms & Grounds		19,200	19,584	19,976	20,376	20,784	21,200	21,624	22,056	22,497	22,947	23,406	23,874	24,351	24,838	25,335
Tower Window Washing		18,000	18,360	18,727	19,102	19,484	19,874	20,271	20,676	21,090	21,512	21,942	22,381	22,829	23,286	23,752
Inventory Warehousing/Support		34,000	34,680	35,374	36,081	36,803	37,539	38,290	39,056	39,837	40,634	41,447	42,276	43,122	43,984	44,864
Repairs & Maint. Structures		5,000	10,000	10,000	10,000	15,000	15,300	15,606	15,918	16,236	16,561	16,892	17,230	17,575	17,927	18,286
Systems/Technical Support		35,000	20,000	20,400	20,808	21,224	21,648	22,081	22,523	22,973	23,432	23,901	24,379	24,867	25,364	25,871
Advertising		25,000	10,000	10,200	10,404	10,612	10,824	11,040	11,261	11,486	11,716	11,950	12,189	12,433	12,682	12,936
Insurance	20,000	50,000	51,000	52,020	53,060	54,121	55,203	56,307	57,433	58,582	59,754	60,949	62,168	63,411	64,679	65,973
Performance Bond		20,000	25,000	30,000	30,603	31,218	31,846	32,486	33,139	33,805	34,484	34,829	35,177	35,529	35,884	36,243
Credit Card Fees	19,925	50,457	59,030	62,435	65,393	66,168	71,066	71,902	75,305	76,189	79,794	79,928	82,927	83,064	86,220	88,186
Legal Fees	5,000	5,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
<b>Total Expenses</b>	4,068,946	5,837,277	6,067,303	6,324,806	6,493,697	6,720,951	6,902,321	7,084,459	7,274,132	7,466,392	7,666,626	7,861,471	8,064,509	8,270,168	8,484,480	8,703,401
% to Sales	106%	90%	80%	79%	77%	79%	76%	77%	75%	76%	75%	77%	76%	78%	77%	77%
<b>Profit/Loss From Operation</b>	-237,169	631,555	1,500,602	1,679,702	1,890,064	1,762,101	2,208,672	2,133,722	2,380,357	2,301,377	2,563,312	2,385,709	2,567,171	2,379,101	2,569,305	2,602,438
<b>NYS Commissions (Boats)</b>	350,678	186,753	218,796	225,243	238,858	241,246	255,753	258,311	274,003	276,743	293,407	293,407	308,090	308,090	323,560	323,560
% of Gross Boat Sales	10%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%
<b>NYS Commissions (Souvenirs)</b>	0	100,000	125,000	156,250	160,772	165,386	170,092	174,893	179,790	184,786	189,882	192,468	195,080	197,719	200,383	205,142
% of Gross Souvenir Sales		10%	10.0%	10.4%	11%	11%	11%	11%	11%	11%	11%	11%	11%	11%	11%	11%
<b>NYS Commissions (Elevator)</b>	118,533	200,000	212,000	218,360	220,544	222,749	281,221	284,033	286,873	289,742	292,640	292,640	292,640	292,640	292,640	351,167
% of Gross Elevator Sales		25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%
<b>Capital Refurbishment Acct</b>	0	46,688	54,699	56,311	59,714	60,312	63,938	64,578	68,501	69,186	73,352	73,352	77,023	77,023	80,890	80,890
% of Gross Boat Sales		1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
<b>EBITDA</b>	-706,379	98,114	890,107	1,023,538	1,210,176	1,072,408	1,437,668	1,351,907	1,571,190	1,480,920	1,714,032	1,533,842	1,694,338	1,503,630	1,671,832	1,641,678
<b>Capital Improvement Expenses:</b>																
Interest Expense @ 8.5%	212,500	450,500	425,000	391,000	357,000	323,000	289,000	255,000	221,000	187,000	153,000	119,000	85,000	42,500	17,000	8,500
Depreciation (straight line 39 years)	128,205	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590
<b>Profit/Loss After Capital Expenses:</b>	-1,047,084	-495,976	321,517	488,948	709,586	605,818	1,005,078	953,317	1,206,600	1,150,330	1,417,442	1,271,252	1,465,748	1,317,540	1,511,242	1,489,588
<b>Profit %</b>	-27%	-8%	4%	6%	8%	7%	11%	10%	12%	12%	14%	12%	14%	12%	14%	13%
Capital Investment	5,000,000	600,000														
<b>Summary:</b>																
Total Income		6,468,832	7,567,905	8,004,508	8,383,761	8,483,052	9,110,993	9,218,181	9,654,489	9,767,769	10,229,938	10,247,180	10,631,680	10,649,269	11,053,785	11,305,839
Total Expenses		6,964,808	7,246,388	7,515,560	7,674,175	7,877,234	8,105,915	8,264,864	8,447,889	8,617,439	8,812,496	8,975,928	9,165,932	9,331,729	9,542,543	9,816,251
Total Profit/Loss		-495,976	321,517	488,948	709,586	605,818	1,005,078	953,317	1,206,600	1,150,330	1,417,442	1,271,252	1,465,748	1,317,540	1,511,242	1,489,588
Total Profit/Loss %		-8%	4%	6%	8%	7%	11%	10%	12%	12%	14%	12%	14%	12%	14%	13%

## PRO-FORMA Maid of the Mist Corporation Tower Renovation

Number of Years	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<b>Revenue:</b>																
<b>Elevator</b>	1,404,669	1,404,669	1,404,669	1,404,669	1,404,669	1,404,669	1,404,669	1,404,669	1,638,781	1,638,781	1,638,781	1,638,781	1,638,781	1,638,781	1,638,781	1,638,781
<b>Souvenir Shop</b>	1,830,285	1,848,588	1,867,074	1,885,745	1,904,602	1,923,648	1,942,885	1,962,314	1,981,937	2,001,756	2,021,774	2,041,991	2,062,411	2,083,035	2,103,866	2,124,904
<b>Boats</b>	8,495,423	8,495,423	8,921,505	8,921,505	9,367,252	9,367,252	9,832,665	9,832,665	10,324,298	10,324,298	10,842,152	10,842,152	11,386,226	11,386,226	11,956,521	11,956,521
<b>Total</b>	11,730,377	11,748,680	12,193,248	12,211,919	12,673,523	12,695,569	13,180,219	13,199,648	13,945,016	13,964,835	14,502,707	14,522,924	15,087,418	15,108,042	15,699,168	15,720,206
<b>% Change Prior Year</b>	4%	0%	4%	0%	4%	0%	4%	0%	6%	0%	4%	0%	4%	0%	4%	0%
<b>Operating Expenses:</b>																
Cost of Goods Sold	732,114	739,435	746,830	754,298	761,841	769,459	777,154	784,926	792,775	800,702	808,710	816,796	824,964	833,214	841,546	849,962
Boats (Operating & SGA)	6,000,797	6,180,821	6,366,246	6,557,233	6,753,950	6,956,569	7,165,266	7,380,224	7,601,631	7,829,680	8,064,570	8,306,507	8,555,702	8,812,373	9,076,745	9,349,047
Facility Staffing (Incl Benefits)	1,441,337	1,470,164	1,499,567	1,529,558	1,560,149	1,591,352	1,623,179	1,655,643	1,688,756	1,722,531	1,756,982	1,792,122	1,827,964	1,864,523	1,901,813	1,939,849
Utilities	306,859	312,996	319,256	325,641	332,154	338,797	345,573	352,484	359,534	366,725	374,060	381,541	389,172	396,955	404,894	412,992
Elevator Maintenance	97,058	98,999	100,979	102,999	105,059	107,160	109,303	111,489	113,719	115,993	118,313	120,679	123,093	125,555	128,066	130,627
Restrooms & Grounds	25,842	26,359	26,886	27,424	27,972	28,531	29,102	29,684	30,278	30,884	31,502	32,132	32,775	33,431	34,100	34,782
Tower Window Washing	24,227	24,712	25,206	25,710	26,224	26,748	27,283	27,829	28,386	28,954	29,533	30,124	30,726	31,341	31,968	32,607
Inventory Warehousing/Support	45,761	46,676	47,610	48,562	49,533	50,524	51,534	52,565	53,616	54,688	55,782	56,898	58,036	59,197	60,381	61,589
Repairs & Maint. Structures	18,652	19,025	19,406	19,794	20,190	20,594	21,006	21,426	21,855	22,292	22,738	23,193	23,657	24,130	24,613	25,105
Systems/Technical Support	26,388	26,916	27,454	28,003	28,563	29,134	29,717	30,311	30,917	31,535	32,166	32,809	33,465	34,134	34,817	35,513
Advertising	13,195	13,459	13,728	14,003	14,283	14,569	14,860	15,157	15,460	15,769	16,084	16,406	16,734	17,069	17,410	17,758
Insurance	67,292	68,638	70,011	71,411	72,839	74,296	75,782	77,298	78,844	80,421	82,029	83,670	85,343	87,050	88,791	90,567
Performance Bond	36,606	36,972	37,341	37,715	38,092	38,473	38,858	39,246	39,639	40,035	40,435	40,840	41,248	41,661	42,077	42,498
Credit Card Fees	91,497	91,640	95,107	95,253	98,877	99,025	102,806	102,957	108,771	108,926	113,121	113,279	117,682	117,843	122,454	122,618
Legal Fees	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
<b>Total Expenses</b>	8,929,625	9,158,812	9,397,628	9,639,604	9,891,726	10,147,231	10,413,423	10,683,239	10,966,180	11,251,135	11,548,026	11,848,996	12,162,562	12,480,476	12,811,675	13,147,514
<b>% to Sales</b>	76%	78%	77%	79%	78%	80%	79%	81%	79%	81%	80%	82%	81%	83%	82%	84%
<b>Profit/Loss From Operation</b>	2,800,752	2,589,868	2,795,620	2,572,315	2,784,797	2,548,338	2,766,796	2,516,409	2,978,836	2,713,700	2,954,681	2,673,928	2,924,856	2,627,566	2,887,493	2,572,692
<b>NYS Commissions (Boats)</b>	339,817	339,817	356,860	356,860	374,690	374,690	393,307	393,307	412,972	412,972	433,686	433,686	455,449	455,449	478,261	478,261
<b>% of Gross Boat Sales</b>	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%
<b>NYS Commissions (Souvenirs)</b>	210,941	209,510	212,653	215,827	213,032	222,270	225,540	228,843	232,179	235,988	244,395	245,748	250,853	256,009	261,217	266,476
<b>% of Gross Souvenir Sales</b>	12%	11%	11%	11%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	13%
<b>NYS Commissions (Elevator)</b>	351,167	351,167	351,167	351,167	351,167	351,167	351,167	351,167	409,695	409,695	409,695	409,695	409,695	409,695	409,695	409,695
<b>% of Gross Elevator Sales</b>	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%	25%
<b>Capital Refurbishment Acct</b>	84,954	84,954	89,215	89,215	93,673	93,673	98,327	98,327	103,243	103,243	108,422	108,422	113,862	113,862	119,565	119,565
<b>% of Gross Boat Sales</b>	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
<b>EBITDA</b>	1,813,873	1,604,420	1,785,726	1,559,246	1,745,234	1,506,538	1,698,455	1,444,764	1,520,746	1,551,803	1,758,483	1,476,377	1,694,998	1,392,551	1,618,756	1,298,695
<b>Capital Improvement Expenses:</b>																
Interest Expense @ 8.5%	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Depreciation (straight line 39 years)	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590	143,590
<b>Profit/Loss After Capital Expenses:</b>	1,670,283	1,460,830	1,642,136	1,415,656	1,602,644	1,362,948	1,554,865	1,301,174	1,677,156	1,408,213	1,614,893	1,332,787	1,551,408	1,248,961	1,475,166	1,155,105
<b>Profit %</b>	14%	12%	13%	12%	13%	11%	12%	10%	12%	10%	11%	9%	10%	8%	9%	7%
<b>Capital Investment</b>																
<b>Summary:</b>																
Total Income	11,730,377	11,748,680	12,193,248	12,211,919	12,673,523	12,695,569	13,180,219	13,199,648	13,945,016	13,964,835	14,502,707	14,522,924	15,087,418	15,108,042	15,699,168	15,720,206
Total Expenses	10,060,094	10,287,850	10,551,112	10,796,263	11,073,879	11,332,621	11,625,354	11,898,474	12,267,860	12,556,622	12,887,814	13,190,137	13,536,010	13,859,081	14,224,002	14,565,101
Total Profit/Loss	1,670,283	1,460,830	1,642,136	1,415,656	1,602,644	1,362,948	1,554,865	1,301,174	1,677,156	1,408,213	1,614,893	1,332,787	1,551,408	1,248,961	1,475,166	1,155,105
Total Profit/Loss %	14%	12%	13%	12%	13%	11%	12%	10%	12%	10%	11%	9%	10%	8%	9%	7%

## PRO-FORMA Maid of the Mist Corporation Tower Renovation

Number of Years Year	32 2034	33 2035	34 2036	35 2037	36 2038	37 2039	38 2040	39 2041	40 2042	Total
<b>Revenue:</b>										
<b>Elevator</b>	1,638,781	1,872,892	1,872,892	1,872,892	1,872,892	1,872,892	1,872,892	1,872,892	1,872,892	57,414,061
<b>Souvenir Shop</b>	2,146,153	2,167,615	2,189,291	2,211,184	2,233,296	2,255,629	2,278,185	2,300,967	2,323,977	75,705,278
<b>Boats</b>	12,553,036	12,553,036	13,182,326	13,182,326	13,844,392	13,844,392	14,539,234	14,539,234	15,266,851	389,909,159
<b>Total</b>	16,337,970	16,593,543	17,244,509	17,266,402	17,950,580	17,972,913	18,690,311	18,713,093	19,463,720	523,028,498
<b>% Change Prior Year</b>	4%	2%	4%	0%	4%	0%	4%	4%	4%	
<b>Operating Expenses:</b>										
Cost of Goods Sold	858,461	867,046	875,716	884,474	893,318	902,252	911,274	920,387	929,591	30,282,112
Boats (Operating & SGA)	9,629,518	9,918,404	10,215,956	10,522,435	10,838,108	11,163,251	11,498,149	11,498,149	11,843,093	293,497,716
Facility Staffing (Incl Benefits)	1,978,646	2,018,219	2,058,583	2,099,755	2,141,750	2,184,585	2,228,277	2,228,277	2,272,843	64,844,420
Utilities	421,252	429,677	438,271	447,036	455,977	465,097	474,399	474,399	483,887	13,752,528
Elevator Maintenance	133,240	135,905	138,623	141,395	144,223	147,107	150,049	150,049	153,050	4,155,667
Restrooms & Grounds	35,478	36,188	36,912	37,650	38,403	39,171	39,954	39,954	40,753	1,158,195
Tower Window Washing	33,259	33,924	34,602	35,294	36,000	36,720	37,454	37,454	38,203	1,085,774
Inventory Warehousing/Support	62,821	64,077	65,359	66,666	67,999	69,359	70,746	70,746	72,161	2,050,873
Repairs & Maint. Structures	25,607	26,119	26,641	27,174	27,717	28,271	28,836	28,836	29,413	813,821
Systems/Technical Support	36,223	36,947	37,686	38,440	39,209	39,993	40,793	40,793	41,609	1,198,006
Advertising	18,113	18,475	18,845	19,222	19,606	19,998	20,398	20,398	20,806	606,538
Insurance	92,378	94,226	96,111	98,033	99,994	101,994	104,034	104,034	106,115	3,035,861
Performance Bond	42,923	43,352	43,786	44,224	44,666	45,113	45,564	46,019	46,480	1,514,106
Credit Card Fees	127,436	129,430	134,507	134,678	140,015	140,189	145,784	145,962	151,817	4,069,663
Legal Fees	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	88,000
<b>Total Expenses</b>	13,497,355	13,853,989	14,223,598	14,598,475	14,988,985	15,385,100	15,797,710	15,807,457	16,231,821	422,153,280
<b>% to Sales</b>	83%	83%	82%	85%	84%	86%	85%	84%	83%	81%
<b>Profit/Loss From Operation</b>	2,840,615	2,739,554	3,020,911	2,667,927	2,961,595	2,587,813	2,892,601	2,905,636	3,231,899	100,875,218
<b>NYS Commissions (Boats)</b>	502,121	502,121	527,293	527,293	553,776	553,776	581,569	581,569	610,674	15,806,774
% of Gross Boat Sales	4%	4%	4%	4%	4%	4%	4%	4%	4%	
<b>NYS Commissions (Souvenirs)</b>	271,788	277,154	282,573	288,046	293,574	299,157	304,796	310,492	316,244	8,978,947
% of Gross Souvenir Sales	13%	13%	13%	13%	13%	13%	13%	13%	14%	
<b>NYS Commissions (Elevator)</b>	409,695	468,223	468,223	468,223	468,223	468,223	468,223	468,223	468,223	14,390,797
% of Gross Elevator Sales	25%	25%	25%	25%	25%	25%	25%	25%	25%	
<b>Capital Refurbishment Acct</b>	125,530	125,530	131,823	131,823	138,444	138,444	145,392	145,392	152,669	3,864,026
% of Gross Boat Sales	1%	1%	1%	1%	1%	1%	1%	1%	1%	
<b>EBITDA</b>	1,531,480	1,366,526	1,610,999	1,252,542	1,507,578	1,128,213	1,392,621	1,399,960	1,694,089	57,834,674
<b>Capital Improvement Expenses:</b>										
Interest Expense @ 8.5%	0	0	0	0	0	0	0	0	0	3,536,000
Depreciation (straight line 39 years)	143,590	143,590	143,590	143,590	143,590	143,590	143,590	15,375		5,600,000
<b>Profit/Loss After Capital Expenses:</b>	1,387,890	1,222,936	1,467,409	1,108,952	1,363,988	984,623	1,249,031	1,384,585	1,684,089	48,698,674
<b>Profit %</b>	8%	7%	9%	6%	8%	5%	7%	7%	9%	9%
<b>Capital Investment</b>										
<b>Summary:</b>										
Total Income	16,337,970	16,593,543	17,244,509	17,266,402	17,950,580	17,972,913	18,690,311	18,713,093	19,463,720	519,196,721
Total Expenses	14,950,080	15,370,807	15,777,100	16,157,450	16,586,592	16,988,290	17,441,280	17,328,508	17,779,631	469,450,962
Total Profit/Loss	1,387,890	1,222,936	1,467,409	1,108,952	1,363,988	984,623	1,249,031	1,384,585	1,684,089	49,745,759
Total Profit/Loss %	8%	7%	9%	6%	8%	5%	7%	7%	9%	10%

Niagara Reservation State Park  
Maid of the Mist Corp.  
License # X000457 Final 08-20-02

**Schedule "2"**  
**Development Project FEIS and Findings Statement**

**"The FEIS and Findings Statement are on file in the  
NYS Office of Parks, Recreations and Historic  
Preservation Environmental Management Bureau"**