



Appendix A – Scope of Services

Designated Operator will assume sole responsibility for the daily operations of the Marina and at a minimum be responsible for the following tasks:

1. Marina Operations Management

- a) Develop a comprehensive operation plan for managing, operating, and maintaining the Marina. The plan must also ensure a safe and enjoyable recreational facility for boaters in a cost-effective manner, as well as consideration for the surrounding public spaces such as Queen City Bike Ferry Landing, Wilkeson Pointe and the Buffalo Lighthouse, to name a few.
 - The Designated Operator shall implement Best Management Practices for operating a marina, which can be found in the United States Environmental Protection Agency's (EPA's) "Shipshape Shores and Waters – A Handbook for Marina Operators and Recreational Boaters [EPA -841-B-03-001]" and "Stormwater Runoff Best Management Practices for Marinas: A Guide for Operators" by Bill Hunt, NC State Biological and Agricultural Engineering, NC Cooperative Extension and Barbara Doll NC Sea Grant, based on the original manuscript written by Jay Tanski, NYS Sea Grant Extension Program, Cornell Cooperative Extension, NY Sea Grant Publication Number: NYSGI-G-98-002. The Designated Operator, on behalf of ECHDC, will be responsible for adherence to a Stormwater Pollution Prevention Plan (SWPPP), mandated by NYS Department of Environmental Conservation, regarding operations at the marina.
 - The Designated Operator's plan shall be consistent with existing and future marina operations that compete effectively in prevailing market conditions.
- b) Provide facility management to the Marina including, but not limited to, the vessel slips, dry boat storage, docks, and other facilities outlined in **Appendix B-Site Description**.
 - ECHDC reserves the right to utilize, at its sole discretion, the entire area immediately south of the grain elevators (approximately six acres), including the boat launch, for the purposes of enhancing the public experience and mitigating issues of public safety. ECHDC will maintain secure access for Designated Operators and its customers to their boat slips and equipment.
- c) Provide and maintain necessary equipment to perform Marina operations, which include, but are not limited to transporting vessels for winter storage and/or summer slip rentals, installation/removal of temporary floating docks (including those located within Queen City Bike Ferry landing), and general Marina maintenance as outlined herein.
 - The Designated Operator is permitted to utilize all ECHDC equipment (**See Appendix B - Site Description**) located at the Premises for work outlined herein to the extent that the equipment remains safe, functional and serviceable. ECHDC shall not be responsible for the repair and/or replacement of this equipment and any such replacement shall be at the sole discretion of ECHDC. The Designated Operator shall be responsible for the cost of parts and supplies and labor associated with the general maintenance and minor repairs of the equipment.
 - The Designated Operator shall be responsible for maintaining current licenses and registrations for all equipment and ensuring all personnel who operate such equipment that requires for licensure/certification, qualification, or competency as required by federal, state, and local laws, meet those requirements.
 - The Designated Operator shall submit verification and copies of all up-to-date licenses and certifications as requested by ECHDC.
- d) Maintain all records and reports that pertain to the management operation of the Marina including, but not limited to:
 - Wet slip tenants



- Vessel storage tenants
 - Launch/Retrieval operations
 - Security activities
 - Financial and management/operational issues
 - Maintenance records
 - Transient slips/subleases and interim rentals
 - Collection of rents, deposits, and any other related fees
 - Environmental and regulatory fees and permits
- Such records and reports shall be made available to the ECHDC upon request at any time during the term of the Agreement and shall be provided promptly to the ECHDC in the event of the termination of the Agreement.
- e) Maintain copies of, or have ready access to the latest federal, state, and local laws and/or regulations applicable to Marina and boating activities. The Designated Operator shall ensure compliance with all such laws and regulations.
- f) Ensure all vessels, vehicles, and equipment berthed and/or stored within the Marina are currently registered with, but not limited to, the United States Coast Guard, and documented and properly insured, as well as operated and maintained in a clean and safe condition at all times. All vehicles, vessels, and equipment that do not meet the above criteria, shall be promptly reported to the ECHDC and after receiving the ECHDC's written authorization, immediately removed from the premises. The Designated Operator shall request copies of each vessel's current registration and proof of insurance when preparing new and/or renewed winter storage and summer slip rental contracts. Such records shall be maintained by the Designated Operator and submitted to the ECHDC annually or upon request.
- g) Develop, establish, administer, and ensure compliance with wet slip and dry storage assignment contracts to be entered into by the Designated Operator with each Marina tenant. Such contracts shall be reviewed and approved by ECHDC. ECHDC reserves the right to amend these contracts at any time.
- The Designated Operator will be required to accept the assignment of any such slip holder agreements for the 2023 boating season. Revenue received from such slip holder agreements is expected to be payable to the selected operator. All other contracts (storage, maintenance, seasonal dry dock, etc.) will be the sole responsibility of the successful Respondent.
 - The Designated Operator may revise such contracts, subject to review and approval by ECHDC at least thirty (30) days prior to any suggested contract revision.
- h) Prepare a set of Marina policies, procedures, rules and regulations subject to ECHDC review and approval, within thirty (30) days of execution of this Agreement. Such approved rules and regulations shall be visibly displayed at the Marina's entrance and distributed to all Marina tenants. These rules shall be modified or amended as required by the ECHDC or other federal, state and local laws and regulations.
- i) The Designated Operator must submit a written request to the ECHDC, for the ECHDC's prior approval of any operations the Designated Operator wants to conduct that are outside of its normal Marina activities as specified in this Agreement. All requests must be submitted at least thirty (30) days prior to any suggested Designated Operator activity.
- j) The Designated Operator shall be responsible for all of its employees' and agents' wages, benefits, insurance, and taxes in accordance with ECHDC's policies and procedures.



- k) The Designated Operator shall be responsible for the cost of training and licensing staff, required to conduct Marina operations.
- l) The Designated Operator shall be responsible for all office furniture, operational supplies, materials, equipment and services utilized in the operation and management of the Marina.

2. Environmental Operational Requirements

- a) The Designated Operator shall adhere to all applicable federal, state, local environmental and safety laws, rules, regulations, policies, and requirements.
- b) The Designated Operator shall notify the ECHDC in order to obtain any necessary environmental permits that may be required as a result of activities at the Marina.
- c) A NYS Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity (GP-0-06-002) is required for all marinas that fuel or maintain vessels, i.e. power washing, performing repairs, painting, etc. The Designated Operator, in conjunction with an ECHDC environmental representative, shall comply with all regulations associated with said permit before engaging in these activities.
 - The New York State Department of Environmental Conservation's (DEC's) requirements for the MSGP are delineated in DEC's Stormwater Pollution Prevention Plan (SWPPP) Checklist for Marinas.
 - Direct discharges from power washing shall not enter the Buffalo River unless the Designated Operator obtains a State Pollutant Discharge Elimination System (SPDES) Permit.
 - Should the Designated Operator uncover or desire to install a direct discharge, the Designated Operator shall immediately notify ECHDC in order to obtain a SPDES permit.
 - Discharges from power washing may not infiltrate directly or pass through a filter medium prior to entering the groundwater. The aforesaid discharges shall be collected and transported, following notification to and receipt of written approval from the ECHDC, to a licensed wastewater treatment plant.
 - Ensure no illegal or illicit discharges occur from vessels, in accordance with all applicable federal, state, local environmental laws, rules, regulations, policies, and requirements.
- d) Establish and communicate an environmental policy (in accordance with SWPPP) for Marina operations and boater activity, including allowable and prohibited boater maintenance, to all Marina customers.
 - No maintenance activities that require welding or may lead to a release of liquid and/or gaseous discharges shall be permitted on site.
- e) Ensure that an area is designated for used oil, used oil filters, and used bilge pad. The Designated Operator shall maintain on site, sufficient quantities of absorbent materials for use in case of chemical or oil spills. In the event of any actual or suspected spill of any chemical, petroleum product, or waste water, the Designated Operator shall immediately notify ECHDC's designated representative and immediately take all measures necessary to control the spread of the spilled material, and to clean it up.
- f) This area shall be maintained by the Designated Operator, and all waste materials must be disposed of properly.
- g) Implement and maintain a recycling program for paper, plastics, glass, zinc and other metal anodes, used oil, and any other recycling materials.
- h) The Designated Operator shall not permit the storage of any hazardous substances or materials, including, but not limited to illuminating oils, oil lamps, turpentine, benzene, or other similar substances or explosives of any kind, or any substance or thing prohibited by the standard policies of fire insurance companies in New York State.



- i) The Designated Operator shall properly handle, store, and use all fuel, including propane tanks in a manner that meets all applicable building and fire codes, rules, and regulations.
- j) The use of fireworks, firework displays, or any pyrotechnics shall not be permitted on the Premises.

3. Maintenance and Repair of Facilities and Equipment

- a) The Designated Operator shall be responsible to provide any all tools, fixtures, furnishings, equipment and other appurtenances necessary to successfully operate the Marina in accordance with the terms set forth in this Agreement.
- b) Provide an annual inspection and maintenance schedule to prevent deterioration of facilities and equipment. Deficiencies shall be immediately reported to the ECHDC.
- c) Perform monthly scheduled inspections and accurately document conditions of the Marina facilities and equipment. Additional inspections may be performed as required or at the request of the ECHDC.
- d) Maintain Marina facilities and equipment including, but not limited to the following:
 - All docks/fingers and gangways
 - Interior/exterior of all ECHDC-owned buildings and improvements
 - Boat hoists
 - Boater restrooms and showers
 - Utility services
 - Storage facilities
 - Fencing, gates, and locks
 - Lighting systems
 - Parking and access road areas
 - Dry storage areas
- e) Groom and maintain the Marina landscape and water areas, including, but not limited to the following:
 - Marina parking lots, access roads, and lawn areas
 - Ensure that harbor waters are kept free of debris and obstructions
 - Snow removal
- f) Provide custodial/janitorial services to all Marina facilities. The Designated Operator shall ensure facilities are maintained in a clean and sanitary condition at all times. This includes coordination for maintenance and cleanup of all temporary bathroom facilities.
- g) Repair, replace, rebuild and paint all or any part of the premises as needed or directed by the ECHDC.
 - The Designated Operator shall submit a written request to the ECHDC for any proposed modification to the interior, exterior, or any surrounding areas on the Premises.
- h) Repair all damage to the Premises resulting from vandalism or other destructive acts. All such damage shall be immediately reported to the ECHDC. Such proposed repairs shall be subject to review and approval by the ECHDC.

4. Vessel Monitoring/Inspection

- a) Maintain records of all vessels berthed in the Marina, and ensure that no vessel is in such a condition that it may list, capsize, sink, or release fuel, motor oil, or any other hazardous material, or other pollutant into the water.
- b) Maintain a comprehensive list of slip occupant tenants that includes vessel information and slip assignments.
- c) Maintain a comprehensive list of dry storage tenants that will include a description of the stored items and ensure that they are registered and/or documented and insured.



- d) Perform visual inspections of all vessels upon initial and all subsequent slip assignments, and at appropriate frequencies thereafter, the Designated Operator is also required to ensure the vessel is registered and documented as well as in compliance with berthing requirements as set forth in the winter storage and summer slip assignment contracts.
- e) Immediately report any and all abandoned or derelict vessels to ECHDC in writing.

5. Hours of Operation

- a) The summer slip rental season routinely begins May 1st and ends October 15th of each year.
- b) Winter storage season routinely begins October 16th and ends April 30th of the following year.

6. Security

- a) Provide all necessary security measures to protect patrons, guests, employees, and all other individuals from any disturbance or other occurrence that may be attributable to the Marina operations.
- b) Monitor and maintain access to key-locked facilities and repair/replace locks as required. Copies of all keys shall be provided to the ECHDC.
- c) Any and all security breaches shall be immediately reported to the ECHDC in writing.

7. Utilities, Trash and Debris

- a) The Designated Operator shall be responsible for all utility costs including, but not limited to, electricity, fuel oil and gasoline, natural gas, and water and sewer services, as required by Marina operations. Reported utility costs for the last three calendar years are below, based upon former operator’s audit:

| <i>Utility</i> | <i>2019</i> | <i>2020</i> | <i>2021</i> | <i>Avg.</i> |
|-----------------|-------------|-------------|-------------|-------------|
| <i>Water</i> | \$1,104.00 | \$642.92 | \$988.37 | \$911.76 |
| <i>Gas</i> | \$1,082.62 | \$871.23 | \$1242.81 | \$1,065.55 |
| <i>Electric</i> | \$10,571.59 | \$14,854.61 | \$11,986.97 | \$12,471.05 |

- b) The Designated Operator shall be responsible for the cost of storage, removal and disposal of all refuse and garbage generated from the Marina operations. Disposal of all refuse left by patrons on the premises is the sole responsibility of the Designated Operator. For storage and disposal of environmentally-sensitive products, refer to Section 2-Environmental Operations and/or SWPPP.

8. Signage

- a) The Designated Operator may rename the First Buffalo Marina, subject to approval by the ECHDC. Such written requests shall be submitted to ECHDC for review and acceptance at least thirty (30) days prior to any suggested changes.
- b) ECHDC reserves the right to erect, remove, or change signs at the exterior of the Premises as it deems necessary and desirable for the convenience of the public. No exterior signs shall be erected or removed or changed by the Designated Operator without prior written approval of the ECHDC.

9. Sale or Distribution of Products & Services

- a) The Designated Operator is not permitted to sell or distribute any items, or to promote or provide any commercial services to the public at the Premises, except as specified in this Agreement or where prior approval has been obtained from ECHDC.



- b) The sale of new and/or used vessels, motors, or associated equipment and components shall not be permitted on the Premises, except as specified in this Agreement or where prior approval has been obtained from ECHDC.
- c) No alcoholic beverages or tobacco products may be sold or distributed at the Premises.

10. Accounting and Financial Reporting

- a) The Designated Operator shall keep books and records of account in accordance with generally accepted accounting principles and procedures. ECHDC reserves the right to inspect and audit all books and records at any reasonable time. The Designated Operator shall furnish copies of all records upon request by the ECHDC.
- b) The Designated Operator shall submit monthly revenue and expense statements to ECHDC, and maintain books and records in accordance with generally accepted accounting principles. The ECHDC reserves the right to audit all sales records. The Designated Operator must retain all such records and provide those records to the ECHDC upon its request.
- c) The Designated Operator will provide a yearly, independent audit, at the sole expense of the Designated Operator.
- d) The Designated Operator may submit an alternate method of submitting monthly revenue and expense statements, subject to review and approval by the ECHDC.
- e) The Designated Operator shall submit a written request to the ECHDC for any proposed changes in pricing. All requests must be submitted to the ECHDC for approval, at least thirty (30) days prior to any suggested changes in pricing.
- f) Gross receipts shall mean the total amount received by or accruing to, the Designated Operator, its agents, employees and contractors by reason of the privileges granted under this Agreement, from any and all sales for cash or credit, for consumption, or use on or off the Premises of any goods or services as outlined in this Agreement and approved by the ECHDC. Only the following may be excluded or deducted from the gross receipts for the purpose of computing the reports and payments due the ECHDC:
 - excise, sales or other taxes which are imposed upon the sale of goods or services and which are collected by the Designated Operator. This exclusion from gross receipts is not intended to apply to any franchise fees or taxes, capital gains taxes, income or similar taxes that are based upon profits of the Designated Operator;

11. Property Rent Fee

- a) ECHDC will receive an annual rent fee/structure from Designated Operator and payable to ECHDC on mutually agreed upon terms. This payment shall be distinct and separate from any maintenance, utility, operator capital improvement or operational obligations required by the proposed license.
- b) The Designated Operator shall provide storage of the following assets for ECHDC (as well as contracted vendors) on site at no additional charge: Queen City Bike Ferry and associated docks; Canalside docks; tall ship docking system. Additionally, Designated Operator will be responsible for providing all staff, equipment, vehicles and materials for the installation, removal and storage of all docks, gangways and associated parts with nearby Wilkeson Pointe floating and EZ dock system.

12. Insurances

- a) Designated Operator shall procure at its sole cost and expense insurance with limits not less than those described below or as required by law, whichever is greater and shall provide coverage to Designated Operator, the People of the State of New York, ESD and ECHDC for claims of damage to property and personal injuries, including death, which may arise from the conduct of Designated



Operator and/or the performance of the services authorized by this license. Limits may be provided through a combination of primary and umbrella/excess policies. If umbrella/excess policies are used, coverage will be at least as broad as and follow form to the underlying primary policies.

- **Commercial General Liability Insurance** with a limit of not less than one million dollars (\$1,000,000) for Each Occurrence and two million dollars (\$2,000,000) General Aggregate
 - a) Policy shall be written on form CG 00 01 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form.
 - b) General Liability shall include the products/completed operations and personal/advertising coverage.
 - c) These limits should apply per location.
 - d) Coverage shall include coverage for Independent Contractors.
 - e) Policy shall also include Contractual Liability for liability assumed under this Contract and all other Contracts relative to the location.

- **Umbrella Liability Insurance** of ten million dollars (\$10,000,000)

- **Automobile Liability Insurance** with a Bodily Injury/Property Damage combined single limit of \$1,000,000 each accident to cover all vehicles including owned, non-owned and hired

- In accordance with Sections 57 and 220(8) of the Workers' Compensation Law, State Parks requires annual proof of both **Workers' Compensation Insurance and Disability Insurance**. Workers Compensation Insurance must include coverage for Longshoremen and Harbor Workers in the amount of one million dollars (\$1,000,000) per occurrence
 - a) Employers Liability Limits:
 - \$1,000,000 Bodily Injury each Accident

 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee

- **Marine General Liability** with a limit of \$1 million dollars (\$1,000,000) for each occurrence and two million (\$2,000,000) in the aggregate

- **Marina Operators Legal Liability** with a limit of one million (\$1,000,000) per occurrence with respect to the loss of or damage to vessels or craft, including all equipment customarily used therewith, and the property of others, while in the Designated Operators care, custody or control.

- **Non-Owned and Owned Watercraft Liability – Protection and Indemnity** with a limit not less than five million (\$5,000,000) per occurrence with respect to bodily injury, or property damage arising out of the use, or ownership of vessels.



- **Boat Dealers Commercial Property** covering the Site and ancillary structures, including piers, docks, wharves, bulkheads and seawalls, fixtures, equipment including coverage for vessels and marine supplies for sale, insuring the same for replacement value, with all risk coverage, in which ECHDC/ESD is named as “loss payee.”
- **Ship Repairer’s Legal Liability** If providing services as outlined in Section VI. Scope of Services 5) Optional Services, the Designated Operator shall provide Ship Repairer’s Legal Liability covering watercraft and equipment in their care, custody and control; damage to third party property and personal injury, arising in the course of their operations; pollution, including clean-up costs and consequential loss and loss of use of damaged watercraft including wreck removal
- **Environmental Liability Insurance** including sudden and accidental pollution coverage to include all bodies of water, with a limit of not less than five million dollars (\$5,000,000) for each occurrence
- **Liquor Liability Insurance** in the amount of five million dollars (\$5,000,000) per occurrence for in-house beverage facilities, third party events, and any other offerings.
- **Fidelity/Crime Insurance** with a limit of not less than five million dollars (\$5,000,000) per occurrence with respect to employee theft, forgery or alteration, inside the premises – theft of money and securities, inside the premises – robbery or safe burglary of other property, outside the premises, computer fraud, funds transfer fraud, and money orders/counterfeit money.
- **Security Guard Insurance** with a limit of not less than one million dollars (\$1,000,000) and a two million dollar aggregate (\$2,000,000) with respect to assault & battery, false arrest, and personal injury.
- **Certificates of Insurance** - Certificates of insurance reasonably acceptable to the ESD/ECHDC shall be filed with the ESD/ECHDC within ten (10) days after award of the contract to the Designated Operator and prior to commencement of the lease. All required insurance shall be maintained without interruption from the date of

commencement of the lease. These certificates and the insurance policies shall contain a provision that coverages afforded under the policies will not be materially modified, cancelled or allowed to expire until at least thirty (30) days’ prior written notice has been given to ESD/ECHDC. The provisions of this Section shall apply to all policies of insurance required to be maintained by the Designated Operator, pursuant to the Contract Documents. The People of the State of New York, ESD & ECHDC are to be included as additional insureds, on a primary & non-contributory basis, on ALL liability policies. All policies are to contain a full waiver of subrogation in favor of the People of the State of New York, ESD & ECHDC. Final insurance requirements may vary based on the operating plan of the Designated Operator. In the event the Designated Operator chooses to move forward with any type of capital improvements such as dredging, major construction, etc., the State of New York, UDC/ESD & ECHDC reserve the exclusive right to expand the insurance requirements as they see fit before the commencement of work to correspond to the increased exposure and risks associated with the subject work.



- b) As respects General Liability, the additional insured endorsements shall be on a form at least as broad as ISO Forms CG2010 07 04 & CG2037 07 04 combined and shall not include any exclusions that limit the scope of coverage beyond that provided to the named insured. This requirement applies to all policies under which ESD & ECHDC, are required to be named as Additional Insureds. Designated Operator shall, by specific endorsement to its primary commercial general liability policy, and automobile liability policy, cause the coverage afforded to the Additional Insureds thereunder to be primary to and not concurrent with any other valid and collectible insurance available to the Additional Insureds.
- c) Designated Operator shall, by specific endorsement to its umbrella/excess liability policy, cause the coverage afforded to the Additional Insureds thereunder to be first tier umbrella/excess coverage above the primary coverage afforded to the Additional Insureds and not concurrent with or excess to any other valid and collectible insurance available to the Additional Insureds whether provided on a primary or excess basis.
- d) Designated Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, cause the coverage afforded thereunder to include blanket written contractual liability covering all indemnity agreements;
- e) Designated Operator shall, by specific endorsement to its primary and umbrella/excess liability policies, provide that defense costs are not be considered as damages so as to erode the policy limits required under sections 1 – 5 above.
- f) All policies shall contain a waiver of subrogation in favor of ESD and all others
- g) Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by ESD
- h) Designated Operator shall require all subcontractors to include Additional Insured endorsement CG 2038 04 13 and CG 20 37 07 04 with respect to General Liability.
- i) **DIRECTIVES**
 - No party subject to the provisions of this contract shall violate or knowingly permit to be violated any of the provisions of the policies of insurance described herein.
 - All insurance required to be procured and maintained must be procured from insurance companies licensed to do business in the State of New York and rated at least A- VII by A.M. Best and Company, or meet such other requirements as are acceptable to the ESD/ECHDC.
 - Should the Designated Operator fail to provide or maintain any insurance required by this contract, the ESD/ECHDC may, after providing written notice to the Designated Operator, purchase insurance complying with the requirements of this Article and charge back such purchase to the Manager.
 - The Designated Operator shall secure, pay for, and maintain Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Designated Operator. Failure of the Designated



Operator to secure such insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

- Neither the procurement nor the maintenance of any type of insurance by the ESD/ECHDC or the Designated Operator shall in any way be construed or deemed to limit, discharge, waive or release the Designated Operator from any of the obligations or risks accepted by the Designated Operator or to be a limitation on the nature or extent of said obligations and risks of the Designated Operator.
 - The Contract may, at the sole option of the ESD/ECHDC, be declared void and of no effect if the Designated Operator fails to comply with the provisions of this Article.
 - The Designated Operator shall not violate, or permit to be violated, any term or condition of their insurance policies, and shall at all times satisfy the safety requirements of the ESD/ECHDC and of the insurance companies issuing such policies.
- j) **Other Insurance** - Any type of insurance or any increase of limits of liability not described in this section which the Designated Operator requires for their own protection or on account of any statute shall be their own responsibility and at their own expense.

13. Indemnification

- a) Designated Operator will assume all risks in the performance of all activities authorized by the license and agree to defend, indemnify and hold harmless the People of the State of New York, ESD and ECHDC (hereinafter, the "Indemnitees") from and against any and all claims, suits, losses, damage or injury to persons or property of whatsoever kind and nature, whether direct or indirect, caused or contributed to by Designated Operator and Designated Operator's contractors, vendors, materialmen, employees, agents, invitees and guests, and/or arising out of Designated Operator's conduct and/or Designated Operator's performance pursuant to the license, provided however that Designated Operator's indemnity shall not extend to any claims, liabilities, losses, damages, expenses, accidents or occurrences arising out of, relating to, or in connection with: (i) the negligence of any Indemnitee; or (ii) the Indemnitees' ordinary upkeep and maintenance of the Site and its grounds and facilities outside of the Site. Designated Operator shall defend at its sole cost and expense any action commenced for the purpose of asserting any claim of whatsoever character arising out of the license. Designated Operator's responsibility under this section shall not be limited to the required or available insurance coverage.