ATTACHMENT A: Sample Lease

LEASE

between

UNITED STATES OF AMERICA
UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

and

[INSERT NAME OF LESSEE HERE]

for the Premises known as

DUN GLEN ARK

NPS Lease# L-NERIDGA -2027

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THIS LEASE (Lease) is entered into by and between the United States of America (Lessor), acting through the National Park Service (NPS), an agency of the United States Department of the Interior, and _____(Lessee).

WITNESSETH THAT:

WHEREAS, the NPS administers New River Gorge National Park and Preserve (Park Area) as a unit of the National Park System in accordance with the NPS Organic Act, Act of Aug. 25, 1916, ch. 408, 39 Stat. 535, codified as amended in scattered sections of 54 U.S.C.; other laws applicable generally to units of the National Park System; and any laws applicable specifically to New River Gorge National Park and Preserve;

WHEREAS, the Park Area contains property that has been determined suitable for leasing under Part 18 of Title 36 of the Code of Federal Regulations;

WHEREAS, the Lessor is entering into this lease under the authority provided by 54 U.S.C. § 102102;

WHEREAS, the Lessor has determined that the use and occupancy of the property that is made available under this Lease is consistent with the Park Area's General Management Plan and the requirements of Part 18 of Title 36 of the Code of Federal Regulations; and

WHEREAS, the Lessee desires to lease the property on the terms and conditions set forth in this Lease.

NOW THEREFORE, in consideration of their mutual promises, the Lessor and the Lessee hereby agree as follows:

Section 1. DEFINITIONS

In this Lease, the following terms (whether appearing in the singular or plural form) have the following definitions:

1.1. **Additional Rent** means all forms of Rent required by this Lease other than the Rent required by Section 5.

1.2. **Alterations** means any construction, modifications, rehabilitation, reconstruction, or restoration of the Premises, or installation of Fixtures thereto, other than Initial Improvements.

1.3. **Applicable Laws** means all present and future law or legal authority, including statutes, ordinances, regulations, and administrative or judicial orders or determinations, enacted, promulgated, or issued by federal, state, or local governmental entities or agencies having lawful jurisdiction over the Premises or the Lessee, that apply to and govern the Premises or the Lessee's activities on the Premises.

1.4. **Annual Rent** means the annual fixed rent to be paid to the Lessor by the Lessee under Section 5 of this Lease.

1.5. **Assignment** means the transfer, whether it is direct or indirect, voluntary or by operation of law, of the Lessee's leasehold estate or the Lessee's rights under this Lease in whole or part. Such transfer may be designated as a sale, conveyance, or assignment. The sale, conveyance, or assignment (including by consolidation, merger, or reorganization) of a controlling interest in the Lessee (if

such entity is a corporation), or any sale or other transfer of a controlling interest in the partnership interests (if such entity is a partnership), whether in a single transfer or in a series of related transfers, and whether directly or by sales or transfers of underlying partnership or corporate ownership interests, is an Assignment. For a corporate entity, the term "controlling interest" means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee. For a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneur, "controlling interest" means the beneficial ownership of the capital assets of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee**.**

1.6. Commencement Date means the first day of the Lease term as stated in Section 4 of this Lease.

1.7. Construction Documents means all drawings, plans, specifications, or other documents that describe a proposed Improvement to the Premises in sufficient detail to enable the Lessor to approve construction of the Improvement.

1.8. Encumbrance means the direct or indirect, voluntary or by operation of law, encumbrance, pledge, mortgage, or other hypothecation of the Lessee's leasehold estate, some or all of the Lessee's interests or rights under this Lease, or the Premises themselves.

1.9. Expiration Date means the last day of the Lease Term as stated in Section 4 of this Lease.

1.10. Fixtures means items of personal property of independent form and utility necessary for the basic functioning of the Premises that are affixed to and considered to be an irremovable part of the Premises such that title is with the Lessor as real property once installed. Fixtures do not include removable trade fixtures.

1.11. Force Majeure means an act, event, or condition that can be neither anticipated nor controlled and that objectively prevents the Lessee from performing one or more of its obligations under this Lease. The term "Force Majeure" does not include any act, event, or condition that the Lessee reasonably may anticipate or control; it does not include market conditions, economic conditions, or the Lessee's financial inability to perform its obligations under this Lease; and it does not include changes in Applicable Laws, except that the Lessor may determine that it includes an order issued by a governmental entity with jurisdiction over the Premises that prevents the Lessee's use or occupancy of the Premises for the authorized purposes set forth in Section 6.1 of this Lease.

1.12. Hazardous Materials means any material or other substance: (a) that requires investigation, correction, or abatement under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) that contains radon gas. The term Hazardous Materials as used in this Lease includes Pre-existing Hazardous Materials unless otherwise stated in a particular provision of this Lease.

1.13. Hazardous Materials Occurrence means any use, treatment, keeping, storage, sale, release, disposal, migration, transport, or discharge of any Hazardous Materials from, on, under, or into the Premises or other Park Area property that occurs during the Lease Term.

1.14. Historic Property means building(s) and land located within the boundaries of the Park Area that are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

1.15. Improvements means permanent additions to the Premises that increase its value or utility or enhance its appearance, regardless of who makes the additions. The term "Improvements" includes both Alterations and Initial Improvements.

1.16. Initial Improvements means any construction, modification, rehabilitation, reconstruction, or restoration of the Premises, or installation of Fixtures thereto, that the Lessee is required to make upon commencement of this Lease in accordance with Section 8.

1.17. Interest Rate means the percentage of interest charged based on the Current Value of Funds to the United States Treasury that is published annually in the "Federal Register" or successor publication.

1.18. Inventory and Condition Report means the document attached to this Lease as Exhibit A that describes (a) the Personal Property owned by the Lessor that is made available to the Lessee for the Lessee's use and (b) the condition of the Premises, including Personal Property owned by the Lessor, as of the Commencement Date.

1.19. Lease Term means the term of this Lease as stated in Section 4 of this Lease.

1.20. Lease Year means a year of the Lease Term. The first Lease Year will commence on the Commencement Date and will end on the expiration of the twelfth full calendar month following thereafter. Each subsequent Lease Year will commence on the next day following the expiration of the preceding Lease Year and will end on the expiration of the twelfth full calendar month following thereafter or on the last day of the Lease Term, whichever occurs first.

1.21. Notice of Default means an instrument in writing from the Lessor to the Lessee providing notice of that the Lessee is in default of the Lease.

1.22. NPS 28 means the National Park Service document entitled "Cultural Resource Management Guideline," which is hereby made a part of this Lease by reference.

1.23. Park Area means New River Gorge National Park and Preserve.

1.24. Part 18 means Part 18 of Title 36 of the Code of Federal Regulations.

1.25. Personal Property means all furniture, trade fixtures, equipment, appliances, supplies, inventory, and any other movable things subject to ownership placed in or on the Premises that are neither permanently attached to nor form a part of the Premises.

1.26. Pre-existing Hazardous Materials means Hazardous Materials (including storage tanks) that existed in, on, or under the Premises or other lands or waters within the Park Area prior to the Commencement Date of this Lease.

1.27. Premises means the real property of the Park Area that is described in Section 2 of this Lease, including all Improvements thereon as of the Commencement Date and all Improvements made to the Premises during the term of this Lease by either party. For the purposes of this Lease, "Premises" also includes any Personal Property owned by the Lessor that is made available to the Lessee for the Lessee's use under this Lease.

1.28. Preservation Maintenance Plan means a document that sets forth a plan for the Lessee's repair and maintenance of Historic Property.

1.29. Rent means the rent to be paid to the Lessor by the Lessee, as described in Section 5 of this Lease, and any Additional Rent this Lease may require.

1.30. Secretary's Treatment Standards means the Secretary of the Interior's Treatment Standards for Historic Property, codified at 36 C.F.R. pt. 68, which are hereby incorporated into and made a part of this Lease by reference.

1.31. Sublease means an agreement under which the Lessee transfers to a person or entity (a Sublessee) the right to possession to a portion or all of the Premises.

1.32. Termination Date means the date when this Lease is terminated or cancelled in accordance with its terms prior to the Lease's Expiration Date.

Section 2. LEASE OF PREMISES

2.1. Lease of Premises; Reservation of Rights

(a) The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, upon and subject to the covenants and agreements contained in this Lease, the Premises described as follows:

Dun Glen Ark, Mini Ark, and Boat Storage Rack: An approximately 3,276 SF two-story wood-frame structure located at located at 136 Dun Glen Parking Lot (McKendree Road), Thurmond, West Virginia, 25936 (37.95326077191746, -81.0755964412642). The lease premises solely includes the structural footprint of the Ark, all surrounding property will remain with the Park for public use.

The Mini Ark is a one-story approximately 984 sq. ft. structure built in a similar style to the Ark. The Mini Ark has three rooms, with inoperable restrooms in the back of the outside two. Room one is approximately 13' by 15'. Rooms two and three are approximately 12' by 20'.

The Boat Storage Rack is an open air approximately 224 sq. ft. structure. The underside of the roof is 7-8 feet off the ground and 28' long by 9' wide. There are three support posts with three storage racks on each post.

As depicted in Exhibit E: Lease Premises.

(b) Subject to all Applicable Laws and all easements, rights-of-way, liens or other encumbrances, or other matters of public record affecting the Premises;

(c) Excepting and reserving to the Lessor the right, at reasonable times and, except in case of emergency, following advance notice to the Lessee, (i) to enter onto the Premises, or to authorize other governmental entities, public or private utilities, or persons to enter upon the Premises, when necessary to administer this Lease or the Park Area, or (ii) to restrict access to or close the Premises to protect public health or safety or Park Area resources; and

(d) Excepting and reserving exclusive rights to all oil, gas, hydrocarbons, and other minerals in, under, or on the Premises and ownership of any current or future water rights appurtenant to the Premises.

2.2. Waiver of Claims

The Lessee hereby waives all claims for damages for any injury or inconvenience to or interference with the Lessee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises, or any other loss occasioned by the Lessor's exercise of its rights under this Lease or by the Lessor's actions to manage or protect the Park Area's resources and visitors.

2.3. Easements

The Lessee may not grant any type of easement or right-of-way affecting the Premises. The Lessor may grant such rights-of-way for utilities as the Lessee may require in connection with the use and occupancy of the Premises.

2.4. Ownership of the Premises

This Lease does not vest in the Lessee any fee interest in the Premises or Improvements thereon. Title to the Premises and Improvements at all times is with, and will remain solely with, the Lessor.

2.5. Historic Property

The Premises (or portions of the Premises) are not Historic Property.

Section 3. ACCEPTANCE OF THE PREMISES

3.1. "As Is" Condition of the Premises

The Lessee agrees to lease the Premises in their existing "as is" condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make, any express or implied representations or warranties as to any matters, including any characteristics of the Premises or Improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving trade from or other characteristics of the Park Area, the economic or programmatic feasibility of the Lessee's use and occupancy of the Premises, or Hazardous Materials on or in the vicinity of the Premises.

3.2. Lessee's Due Diligence

Prior to entering into this Lease, the Lessee, in the exercise of due diligence, has made a thorough, independent examination of the Premises and all matters relevant to the Lessee's decision to enter into this Lease, and the Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet the Lessee's needs.

3.3. Inventory and Condition Report

In the exercise of its due diligence, the Lessee has reviewed the Inventory and Condition Report (Exhibit A) and acknowledges that it is complete and accurate.

Section 4. LEASE TERM AND ABANDONMENT

4.1. Lease Term

The Lease Term will be a period of _____ ( ) years commencing on _____

(Commencement Date) and expiring on _____(Expiration Date) or ending on such earlier date as this Lease may be terminated in accordance with its terms (Termination Date); provided, however, that if the Lessee fails to timely complete Initial Improvements in accordance with the Construction Documents, this Lease will be for a term of ____( ) years, expiring on _____ unless terminated earlier in accordance with its terms.

4.2. Abandonment [May be modified to address seasonal use.]

The Lessee must occupy the Premises during the entire Lease Term. If it fails to do so, the Lessor may determine that the Lessee is in default of this Lease for abandoning the Premises. Occupancy is not required if the Lessor determines it is infeasible because of the construction of Improvements or a Force Majeure.

[If the circumstances of a particular lease warrant, a sentence could be added to this section stating that non-occupancy for no more than a specified number of days (e.g., seasonal use) will not be considered as abandonment.]

4.3. Right to Terminate upon Mutual Agreement

This Lease may be terminated upon mutual agreement of the Parties at any time. Upon execution of a written agreement to terminate, and within ninety (90) days of the date of such agreement, the Lessee must surrender the Premises in accordance with the provisions of Section 18.1 of this Lease. If the Lessee fails to remove all of its Personal Property from the Premises by the Termination Date or a later date specified by the Lessor, the Lessor may impound or otherwise dispose of such Personal Property in accordance with 36 C.F.R. § 2.22.

Section 5. RENT

5.1. Net Lease and Rent Payments

(a) All Rent will be absolutely net to the Lessor without any abatement, deduction, counterclaim, set-off or offset, except as may be provided for in accordance with the terms of this Lease. The Lessee must pay all costs, expenses, charges, and impositions of every kind and nature relating to the Premises, including all taxes and assessments.

(b) The Lessee must pay all Rent payments electronically or by other means as directed by the Lessor. Interest at the Interest Rate will automatically accrue on overdue Rent payments in accordance with Applicable Laws. The Lessor may also impose penalties for late Rent payments in accordance with Applicable Laws.

5.2. Annual Rent

During the Lease Term, the Lessee must pay to the Lessor Annual Rent for the Premises in the aggregate annual amount of ($) (as adjusted for CPI if provided below) payable in advance in equal monthly installments on the first day of each calendar month.

5.3. CPI Adjustment

The Annual Rent will automatically increase effective as of the beginning of the second Lease Year and annually thereafter during the Lease Term to reflect the proportionate cumulative increase in the CPI, if any, during the previous Lease Year. For purposes of this section, CPI means the United States

Department of Labor, Bureau of Labor Statistics, All Cities Average Consumer Price Index, or if such index is no longer published, a successor or substitute index designated by the Lessor, that shows changes in consumer prices in the locale of the Park Area.

5.4. Percentage Rent [Optional]

(a) In addition to Annual Rent, the Lessee must pay to the Lessor as "Percentage Rent" an amount of money equal to .% of the Gross Revenues for the preceding month of the Lease Term. The Percentage Rent will be due on a monthly basis at the end of each month of the applicable Lease Year during the Lease Term and must be paid by the Lessee within fifteen (15) calendar days after the last day of the applicable month.

(b) Gross Revenues Defined

Gross Revenues means the entire amount of the Lessee's revenues (and the revenues of any Affiliate of the Lessee) derived from this Lease, and any Sublessee's revenues derived from any Sublease, such amount as determined in accordance with generally accepted accounting principles consistently applied. Also included in Gross Revenues are receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee. As used in this section, the term "Affiliate of the Lessee" means any person or entity directly or indirectly controlling, controlled by, or under common control with the Lessee, or, any entity owned in whole or part, directly or indirectly, by the Lessee.

5.5. Rent Reconsideration [May be deleted in leases with terms of less than fifteen years.]

(a) The Rent required by this Lease is subject to adjustment at the request of the Lessor or the Lessee after the end of the __, _____ and ___Lease Years of this Lease in order to maintain the Rent under this Lease in an amount and structure consistent with "fair market value rent." "Fair market value rent" for the purposes of this section means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the Premises, under the terms and conditions of this Lease, should rent for its highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Lessor and the Lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Once the "fair market value rent" is adjusted, the amount will be subject to the provisions of Section 5.3 above. [This last sentence must be deleted if Section 5.3 is deleted as described above]

(b) Within sixty (60) days after the applicable Lease Year, either the Lessor or the Lessee may request a Rent adjustment by providing written notice to the other party. Within thirty (30) days after providing or receiving a written request for a Rent adjustment, the Lessor will, as applicable, either submit an appraisal request to the Department of the Interior's Appraisal and Valuation Services Office, or its successor, for an appraisal to determine the "fair market value rent" of the Premises, or initiate a market study or other valuation process allowed for under NPS policy to determine "fair market value rent." Regardless of the method used to determine "fair market value rent," the determination must take into consideration any restrictions on the use of the Premises or terms of the Lease that limit the value and/or the highest and best use of the Premises; any past Improvements constructed or installed by the Lessee prior to Rent adjustment, with the Lessor's approval, and consistent with the terms of this Lease; and, any future Improvements to be constructed or installed by the Lessee after Rent adjustment.

5.6. Excusal of Rent

In the event of a Force Majeure, the Lessor may excuse the Lessee from its obligation to pay [Rent; Annual Rent; Percentage Rent] for a period of time that the Lessor deems appropriate under the

circumstances.

5.7. Rent Offsets

Lessor Approved Initial Improvements: The Lessor may offset Rent for the costs of completed Initial Improvements incurred by the Lessee in accordance with the requirements of this Lease. Before the Lessee's initiation of the construction of Initial Improvements, the parties will enter into a written agreement specifying the method and timing of such Rent offsets. In no event will Rent offsets be made in the absence of such an agreement. The eligibility and approval of any requested Rent offset shall be determined by Lessor in its sole discretion.

Lessor Approved Alterations: The Lessee may request and, the Lessor may approve, Rent offsets for the costs of completed Alterations incurred by the Lessee as part of an agreed upon maintenance plan or on a project-by-project basis in accordance with the requirements of this Lease. Before the Lessee's initiation of the construction of Alterations, the parties will enter into a written agreement specifying the method and timing of such Rent offsets. In no event will Rent offsets be made in the absence of such an agreement. The eligibility and approval of any requested Rent offset shall be determined by Lessor in its sole discretion.

Rent offsets that the Lessee accrues in accordance with this section may exceed the amount of Rent the Lessee owes for a given Lease Year in excess of the required Rent and, in that event, will rollover and be applied to Rent in excess of the Rent that the Lessee owes for future Lease Years.

The Lessee has no right or claim of compensation of any nature from the Lessor in the event of a termination, assignment, or expiration of this Lease in circumstances where the approved costs of Initial Improvements or Alterations have not been applied to offset Rent as of the date of such termination, assignment, or expiration of this Lease.

Section 6. USES OF PREMISES

6.1. Authorized Uses

The Lessee may use the Premises only for the following purposes:

[Describe authorized uses.]

6.2. Changes to Authorized Uses

The Lessee may not use the Premises for a purpose other than the purposes described in Section 6.1 above without the Lessor's prior written approval. The Lessor may, but is not obligated to, approve a requested change to authorized uses only if the Lessor has determined that the proposed use is consistent with all Applicable Laws, including Part 18 and the Park Area's General Management Plan, and that the use will not have an adverse impact on the Lessor's ability to manage and protect the Park Area's resources and visitors.

6.3. Compliance with Applicable Laws

The Lessee must comply with all Applicable Laws in its use and occupancy of the Premises.

6.4. Prohibited Uses

In no event may the Premises be used for any purpose that is not permissible under Part 18 or, even if so permissible, may be dangerous to life, limb, property, or public health; that in any manner causes or results in a nuisance; that is of a nature that it involves substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode; that otherwise harms the health or welfare of Park Area resources or visitors; or that results in any discharge of Hazardous Materials in, on, or under the Premises.

6.5. Site Disturbance

The Lessee may not cut any timber or remove any other landscape features of the Premises such as shrubs or bushes without the Lessor's prior written approval. The Lessee may not conduct mining or drilling operations, remove sand, gravel, or similar substances from the ground, or commit waste of any kind on the Premises.

6.6. Protection of Cultural and Archeological Resources.

The Lessee must ensure that any protected sites and archeological resources within the Park Area are not disturbed or damaged by the Lessee except in accordance with Applicable Laws and only with the prior written approval of the Lessor. Discoveries of any archeological resources by the Lessee must be promptly reported to the Lessor. The Lessee must cease work or other disturbance, which may impact any protected site or archeological resource until the Lessor may grant approval to continue upon such terms and conditions as the Lessor deems necessary to protect the site or resource.

6.7. Signs

The Lessee may not post signs on the Premises of any nature without the Lessor's prior written approval. Any approval of a sign that may be given by the Lessor will specify the type, size, and other appropriate conditions concerning its display. The Lessor may post signs on the Premises as appropriate for the administration of the Park Area.

6.8. Permits and Approvals

Except as otherwise may be provided in this Lease, the Lessee is solely responsible for obtaining, at its expense, any permit or other governmental action necessary to permit its activities under this Lease.

6.9. Alterations

The Lessee may not make any Alterations of any nature to the Premises without the Lessor's prior written approval.

6.10. Public Health Protection

The Lessee must follow Director's Order - 83A Public Health Protection and Disease Prevention and Reference Manual-83A Public Health and Prevention for all public health matters. To ensure adherence to Applicable Laws, the Office of Public Health (OPH) conducts inspections, specifically by USPHS Commissioned Corps Officers. Public health assessments are conducted of facilities and focus on water and wastewater. Food safety surveys (FSS) are conducted to reduce the risk of foodborne illness and are normally conducted twice a year. FSS follow the U.S. Food and Drug Administration Food Code as the minimum operational and performance evaluation standard. All public health emergencies and outbreaks shall be reported to Lessor.

Section 7. RECORDS AND AUDITS

The Lessee must provide the Lessor and its agents and affiliates, including the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease for any of the five (5) preceding Lease Years. The Lessee must keep and make available to the Lessor these books and records at a location on the Premises or within the locale of the Park Area. The Lessee must, if requested by the Lessor, provide the Lessor with complete information and data concerning the Lessee's operations and operating results, including information and data regarding [specify particular types that relate to the Lessee's particular operations].

Section 8. INITIAL IMPROVEMENTS BY LESSEE

As a condition of this Lease and in accordance with Section 9 below, the Lessee must commence and engage diligently in the construction of the following Initial Improvements in accordance with Construction Documents approved by the Lessor. The Lessee must commence the construction of the Initial Improvements by_____ and must complete construction by____:

> [Describe the Initial Improvements to be constructed. The description should be as detailed as possible and include a completion schedule or phasing schedule where applicable.]

Section 9. CONSTRUCTION APPROVAL

9.1. In General

The Lessee may undertake Improvements to the Premises only with the Lessor's prior written approval and only at the Lessee's sole expense. The Lessee must undertake and complete all Improvements in strict accordance with all Applicable Laws and approved Construction Documents, and must ensure that all work is performed in a good and workmanlike manner and with materials of at least the quality and standard of materials used in comparable facilities in the locale of the Park Area. To ensure compliance with this requirement, the Lessee must designate a construction manager who will be the Lessor's principal point of contact for the project and who must be physically present at the work site or readily available during all ongoing work. The Lessee must, upon request, furnish the Lessor a copy of any contract with the Lessee's general contractor, architects, or consultants. The Lessor may restrict access to or close part or all of the Premises during the construction of Improvements if the Lessor determines that doing so is necessary to protect public health or safety or Park Area resources.

Improvements made by the Lessee without the Lessor's prior written approval as described in this section are prohibited. In the event any non-compliant Improvements are made by the Lessee, the Lessor may terminate this Lease for default and require the Lessee to remove the non-compliant Improvements at the Lessee's sole expense. The Lessee's costs for non-compliant Improvements are not eligible for Rent offset.

9.2. Delay Caused by a Force Majeure

The Lessee will not be considered in default for a delay in the completion of Improvements that the Lessor determines is caused by a Force Majeure. If the Lessor determines that the completion of Improvements is delayed by a Force Majeure, the Lessor and the Lessee will execute an amendment to this Lease granting the Lessee an additional period of time to complete the Improvements equal to the period of the delay caused by the Force Majeure.

9.3. Utilities During Construction

In the preparation of proposed Construction Documents, the Lessee must review plans for the location of existing utilities that may be affected by any Lessee Improvements. The Lessee must obtain all necessary utility plans and permits from the appropriate public utility companies.

9.4. Site Inspection

At any time during the performance of work on Improvements to the Premises, the Lessor's inspector or representative may inspect or observe ongoing work or the work site. Notwithstanding the foregoing, the Lessor is not responsible for supervising or overseeing ongoing work or ensuring the safety of the work site. During the performance of all work on Improvements, the Lessee must maintain on the Premises a copy of the current, annotated Construction Documents for inspection by the Lessor.

9.5. Approval of Construction

Before commencing construction of any Improvements to the Premises, the Lessee must obtain the Lessor's written approval of the proposed Improvements. The Lessee's request for the Lessor's approval of the proposed Improvements must be in writing and must include:

(a) proposed Construction Documents;

(b) if required by the Lessor, evidence of the availability of funding for the Improvements;

(c) documentation that required construction insurance is in effect; and

(d) other information as required by the Lessor.

9.6. Construction Documents

The proposed Construction Documents submitted to the Lessor must be complete and must show all material elements of the proposed Improvements to the Lessor's satisfaction. When the proposed Construction Documents are approved by the Lessor, they will become an exhibit to this Lease without further action by either party.

9.7. General Scope of Lessor's Review

The Lessor will not approve proposed Construction Documents unless it has determined that the proposed Improvements are appropriate for the Park Area and consistent with all Applicable Laws, including Part 18 and the Park Area's General Management Plan. The Lessor's approval of the proposed Improvements is subject to any required compliance with the National Environmental Policies Act (NEPA, 42 U.S.C. §§ 4321 et seq.) and Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108).

9.8. Changes to Approved Construction Documents

Any material changes to the approved Construction Documents and any deviations in actual construction from these documents are subject to the Lessor's prior written approval under the procedures stated in this Section. If the Lessor approves the proposed changes, the Lessor will issue the Lessee a written change order that will become an exhibit to this Lease without further action by either party.

9.9. Special Considerations for Historic Property

If proposed Improvements relate to Historic Property, the Lessor will not approve proposed Construction Documents unless it has determined that they comply with the Secretary's Treatment Standards; NPS 28; and any conditions that may be imposed on the Improvements through compliance with other Applicable Laws, including NEPA and Section 106.

9.10. Evidence of Adequate Funds

As a condition to the approval of the construction of Improvements, the Lessee must demonstrate to the Lessor's satisfaction with appropriate documentation that it has available to it funds adequate to undertake and complete the project in accordance with all terms and conditions of the approved Construction Documents.

9.11. Notice to Proceed

The Lessee may not commence construction of the Improvements until the Lessor has issued a written notice to proceed as evidence of its approval of the Construction Documents. The notice to proceed will contain terms and conditions for construction of the Improvements that the Lessor deems necessary and appropriate.

9.12. Construction Completion Procedures

Upon completion of the Improvements, the Lessee must submit to the Lessor (in formats specified by the Lessor):

(a) a notice of completion;

(b) if requested by the Lessor, satisfactory evidence of the payment of all expenses, liabilities, and liens arising out of or in any way connected with the Improvements;

(c) a complete set of "as built" drawings showing all revisions and substitutions during the construction period, including field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural member, walls, partitions and other significant features of the Improvements; and

(d) any modifications to the Inventory and Condition Report (Exhibit A) as of the completion of the Improvements.

Upon the Lessor's approval of the completion of the Improvements, the Lessor will issue a "Certificate of Occupancy" or similar document authorizing the Lessee to occupy the Premises.

9.13. Lessor's Right to Utilize Construction Documents

Upon expiration or termination of this Lease, the Lessee must assign and deliver to the Lessor as the Lessor's sole property all architectural, engineering, and other drawings, plans, specifications, and studies relating to the Premises. In order to assure the Lessor that it will have the legal right to use such drawings, plans, specifications, and studies, the Lessee must include in its agreements with the architects, engineers, and other professionals who prepared such items and who have any proprietary rights with respect to such items (including the rights to use thereof in connection with the Premises) provisions whereby the Lessee and the Lessor will have the right to use such materials in connection with the Premises. In furtherance

and not in limitation thereof, the Lessee (referred to below as the "Owner") must include in such agreements the following provisions:

> The drawings, plans, specifications, and studies prepared by the Architect for this Project ("Documents") are instruments of the Architect's service and, unless otherwise provided in writing, the Architect will be deemed the author of these Documents and will retain all common law, statutory, and other reserved rights, including the copyright. For the purpose of completing this Project or for any other purpose, the Architect and its consultants hereby (i) grant to Owner and the National Park Service an irrevocable, fully paid-up, perpetual, worldwide license to copy and use such Documents for completion of this Project or for any other purpose and (ii) consent to the use by Owner and the National Park Service, and of the modification by other design professionals retained by Owner or the National Park Service, of the Documents. The Architect will have no responsibility or liability to the Owner or the National Park Service with respect to any modification to the Documents made by the Owner or National Park Service or any other design professional retained by the Owner or National Park Service. Furthermore, except where the Architect is found to be liable for such claim, damage or loss, the Owner will hold Architect harmless from any such claim, damage or loss arising out of the modification of the Documents by Owner or the National Park Service or another design professional. The Owner and the National Park Service are permitted to retain copies, including reproducible copies, of the Documents for information and reference in connection with the use and occupancy of the Project.
>
> Notwithstanding the foregoing, the Architect acknowledges and consents to the use and ownership by the National Park Service, or its designees or assignees, of said Documents in accordance with the Lease between the Owner (as the Lessee) and the National Park Service (as the Lessor) for the Premises leased to the Lessee, and the Architect agrees to deliver copies of the Documents to the National Park Service upon written request from the National Park Service, provided that the National Park Service agrees to pay the Architect's reasonable duplication expenses. The Architect represents and warrants that the Documents will not infringe or misappropriate the rights of any third party, and the Architect indemnifies and will defend and hold harmless the Owner and the National Park Service, and their officers, directors, employees, representatives, and agents from and against any lawsuit, legal proceeding, action, claim, cause of action, demand or liability that arises from any act or omission of the Architect or its officers, directors, employees, representatives, agents, or contractors related to any alleged violation, infringement, unauthorized use or misappropriation of any intellectual property of any third parties arising from or in conjunction with the use and ownership of the Documents.

Section 10. MAINTENANCE AND REPAIR

10.1. Lessee's Responsibilities

The Lessee is solely responsible for the repair and maintenance of the Premises during the Lease Term. This responsibility includes, without limitation:

> (a) the performance of all repairs, maintenance, and replacement (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the Improvements thereon in good order, condition, and repair in a manner consistent with the operation of comparable facilities in the locale of the Park Area and in compliance with all Applicable Laws;
>
> (b) the replacement, as it becomes worn out or obsolete, of all Personal Property;

(c) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Premises;

(d) the repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;

(e) scheduled inspections of all building systems on the Premises;

(f) maintaining the grounds of the Premises in good condition, including regular grass mowing, managed lawn and ornamental plantings, and avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles; and

(g) paying to the proper authority, when and as the same become due and payable, all taxes and assessments imposed by federal, state, or local agencies applicable to the Premises or the Lessee's activities on the Premises.

10.2. Maintenance Plan

If requested by the Lessor, the Lessee must submit to the Lessor for its approval a Lessee Maintenance Plan satisfactory to the Lessor. The plan, when approved by the Lessor, will become an exhibit to this Lease without further action, and the Lessee must comply with its terms. After consulting with the Lessee, the Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises.

10.3. Preservation Maintenance Plan

If the Premises (or any part of the Premises) are Historic Property, the Lessee must repair and maintain all portions of the Premises that are Historic Property through a Preservation Maintenance Plan prepared by the Lessee and approved by the Lessor as appropriate and consistent with the requirements of the Secretary's Treatment Standards and NPS 28. The Lessee must submit a proposed Preservation Maintenance Plan to the Lessor within thirty (30) calendar days of the Commencement Date. The plan, when approved by the Lessor, will become an exhibit to this Lease without further action, and the Lessee must comply with its terms. After consulting with the Lessee, the Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises.

Section 11. UTILITIES

At its sole expense the Lessee must make all arrangements with appropriate utility providers (including the Lessor, where applicable), for all utilities furnished to the Premises, including gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any utility service provided by the Lessor will be subject to the Lessor's established policies and procedures, including NPS Director's Order #35B, for the provision of utility services.

Section 12. HAZARDOUS MATERIALS

The following provisions apply to Hazardous Materials associated with the Premises:

(a) No Hazardous Materials may be used, treated, kept, stored, sold, released, discharged or disposed of from, on, about, under, or into the Premises, except in compliance with all Applicable

Laws and as approved by the Lessor in writing;

(b) The Lessee must use, manage, treat, keep, store, release, discharge and dispose of its approved Hazardous Materials in accordance with all Applicable Laws. The Lessee is responsible for timely acquisition of any permits required for its Hazardous Materials and related activities and will be fully responsible for compliance with the provisions and conditions of such permits;

(c) If any Hazardous Materials Occurrence caused by the Lessee results in any contamination of the Premises, other Park Area property or neighboring property, the Lessee must promptly take all actions at its sole expense as are required to comply with Applicable Laws and to allow the Premises or such other property to be used free of any use restriction imposed under Applicable Laws as a result of the Hazardous Materials Occurrence. Except in cases of emergency, the Lessor's written approval of such actions must first be obtained;

(d) The Lessee at its expense is responsible for the abatement of Hazardous Materials in accordance with Applicable Laws in, on, or under the Premises as of the Commencement Date and thereafter; and

(e) If the Lessee discovers any unapproved Hazardous Materials in or on the Premises or becomes aware of a Hazardous Materials Occurrence related to the Premises, the Lessee must immediately notify the Lessor.

Section 13. INSURANCE AND INDEMNIFICATION

13.1. Insurance During the Lease Term

At all times during the Lease Term and at the Lessee's sole expense, the Lessee must obtain and keep in force for the benefit of the Lessee and the Lessor the insurance coverages set forth in Exhibit B to this Lease under the terms and conditions set forth in Exhibit B.

13.2. Insurance Requirements Modification

No more often than once per Lease Year, the Lessor may review the insurance coverages required by Exhibit B of this Lease to determine whether those coverages are sufficient to protect the Lessor's interests as owner of the Premises. If the Lessor determines that the insurance coverages are not sufficient, then the Lessor may adjust or change the required insurance, and the Lessee, at its sole expense, must obtain insurance that meets the new requirements.

13.3. Disposition of Insurance Proceeds

All insurance proceeds received by or payable with respect to damage or destruction of the Premises (except proceeds of insurance covering loss or damage of the Lessee's Personal Property), less actual expenses incurred in connection with their collection, must be held by the Lessee in one or more federally insured, interest-bearing accounts, with all interest accrued thereon deemed proceeds of insurance for purposes of this Lease. However, if required by the Lessor, an insurance trustee acceptable to the Lessor may hold such proceeds for use in accordance with this Lease.

13.4. Inadequate Insurance Coverage

The Lessee is solely responsible for any inadequacy of insurance coverage or any failure of insurers. Nothing in this Lease and no oral or written statement or communication by the Lessor acknowledging

that the Lessee's insurance satisfies the requirements in Exhibit B to this Lease constitutes the Lessor's approval of the Lessee's insurer or insurance coverage; or alters in any way the Lessee's sole responsibility and liability for any inadequacy of insurance coverage or any failure of insurers.

13.5. Indemnification of Lessor

The Lessee hereby agrees to save, hold harmless and indemnify the Lessor and its employees, agents, successors, and assigns for all losses, damages, or judgments and expenses resulting from personal injury, death, or property damage of any nature arising out of the Lessee's activities under this Lease, or the activities of the Lessee's employees, agents, Sublessees, or contractors; out of the design, construction, maintenance, or condition of Improvements on the Premises; or out of the condition of the Premises. Notwithstanding the foregoing, the Lessor may be liable for the negligent or wrongful acts or omissions of its employees to the extent authorized by the Federal Tort Claims Act (codified as amended primarily at 28 U.S.C. §§ 2671 et seq.) or as otherwise expressly authorized by Applicable Laws. The provisions of this section will survive the Expiration Date or Termination Date of this Lease.

Section 14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction; Duty to Restore

If the Premises or any portion thereof are damaged or destroyed at any time during the Lease Term, one of the following will occur as directed by the Lessor:

(a) the Lessee, subject to the Lessor's prior written approval, must as promptly as reasonably practicable and with all due diligence repair or replace the damaged or destroyed Premises to the condition that existed prior to the damage or destruction; or

(b) the Lessor may terminate this Lease without liability and the Lessee must pay the Lessor as Additional Rent the insurance proceeds resulting from the damaged or destroyed Premises.

14.2. No Termination; No Effect on Rental Obligation

No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the Improvements thereon, or any other property on the Premises will operate to terminate this Lease except as provided in Section 14.1 of this Lease. Except as otherwise may be provided for in this Lease, no such loss or damage will affect or relieve the Lessee from the Lessee's obligation to pay the Rent required by this Lease and in no event will the Lessee be entitled to any prorated return or refund of Rent paid hereunder. Unless this Lease is terminated under Section 14.1, no such loss or damage will relieve or discharge the Lessee from the payment of taxes, assessments, or other charges as they become due and payable, or from performance of the other terms and conditions of this Lease.

Section 15. LIENS

15.1. No Power in Lessee to Create

The Lessee has no power to take any action that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Lessor or of any interest of the Lessor in the Premises, except as otherwise may be expressly approved by the Lessor in writing in accordance with the terms of this Lease.

15.2. Discharge of Liens by Lessee

The Lessee may not permit any liens to be filed or to stand against the Premises for any reason. If a lien is filed against the Premises, the Lessee must cause it to be discharged of record within sixty calendar (60) days after notice to the Lessee of filing the lien. If the Lessee fails to discharge or contest the lien within this period and the failure continues for a period of fifteen calendar (15) days after notice by the Lessor, then, in addition to any other right or remedy of the Lessor, the Lessor may, but is not required to, procure the discharge of the lien either by paying the amount claimed to be due, by deposit in court, or by bonding. All amounts paid or deposited by the Lessor for any of these purposes, and all other expenses of the Lessor and all necessary disbursements in connection with them, will become due and payable forthwith by the Lessee to the Lessor upon written demand therefore as Additional Rent.

15.3. No Consent or Request by Lessor

Nothing in this Lease constitutes the Lessor's express or implied consent, request, or authorization for any person or entity to perform any labor or furnish any materials in connection with the Premises.

Section 16. ASSIGNMENTS AND ENCUMBRANCES

16.1. Assignments

The Lessee may not effectuate an Assignment or Sublease of this Lease, in whole or in part, or grant any right, interest, privilege, or license whatsoever in connection with this Lease, without the Lessor's prior written approval. The Lessor may, but is not obligated to, approve or disapprove a requested Assignment or Sublease. In no event, however, will the Lessor approve an Assignment or Sublease unless the Lessor has determined that the proposed assignee or Sublessee is financially and managerially capable of carrying out the terms of this Lease.

The Lessor may assign this Lease or any or all of its rights or obligations under this Lease at any time.

16.2. Encumbrances

The Lessee may not effectuate an Encumbrance on the Premises without the Lessor's prior written approval. The Lessor may, but is not obligated to, approve or disapprove any requested Encumbrance. In no event, however, will the Lessor approve an Encumbrance unless the Lessor has determined that the Encumbrance only grants its holder, in the event of a foreclosure, the right to assume the Lessee's responsibilities under this Lease or to select a qualified new lessee, subject to the Lessor's written approval, and that it does not purport to grant its holder any rights to alter or amend the Lease's terms or conditions.

Section 17. DEFAULTS AND LESSOR'S REMEDIES

17.1. Termination for Default

The Lessor may terminate this Lease for default if the Lessee fails to perform any of its responsibilities or obligations under this Lease. Before terminating this Lease for default, the Lessor will provide the Lessee with a Notice of Default giving the Lessee fifteen (15) calendar days to cure a monetary default or thirty (30) calendar days to cure a non-monetary default. Notwithstanding the foregoing, if the Lessor determines that the Lessee is in default of the Lease and the Lessor has provided the Lessee two (2) or more Notices of Default of any nature within the preceding twelve (12) months, then the Lessor may immediately terminate this Lease for default without providing the Lessee with further Notice of Default

or the opportunity to cure the default.

If the Lessee does not cure its default within the applicable cure period, or if a cure period is not required, then the Lessor may terminate this Lease through written notice to the Lessee and require the Lessee to immediately remove its Personal Property from, and to vacate, the Premises. If the Lessee fails to remove all of its Personal Property from the Premises by the Termination Date or a later date specified by the Lessor in the notice of termination, then the Lessor may impound or otherwise dispose of that property in accordance with 36 C.F.R. § 2.22.

17.2. Bankruptcy

The Lessor may terminate this Lease in the event of a filing or execution of: (a) a petition in bankruptcy by or against the Lessee which is not dismissed within ninety (90) calendar days of its filing; (b) a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor; (c) an assignment for the benefit of creditors; (d) a petition or other proceeding against the Lessee for the appointment of a trustee, receiver, or liquidator; or (e) the taking by any person of the leasehold created by this Lease or any part thereof upon execution, attachment, or other process of law.

17.3. No Waiver

Neither the Lessor's failure to insist upon the strict performance of any of the terms and conditions of this Lease or to exercise any right or remedy upon a default nor the Lessor's acceptance of full or partial Rent during the continuance of any default will constitute a waiver of any default or of such terms and conditions. No terms and conditions of this Lease may be waived or modified except by a written instrument executed by the Lessor. No waiver of any default will affect or alter this Lease, but each and every term and condition of this Lease will continue in full force and effect with respect to any other then existing or subsequent default.

17.4. Lessor's Right to Cure Defaults

If a default occurs under the terms of this Lease and the Lessee fails to correct the default within the applicable cure period, the Lessor may choose to correct the default (entering upon the Premises for such purposes if necessary), and the Lessor will not be liable or in any way responsible for any loss, disturbance, inconvenience, or damage resulting to the Lessee as a result, and the Lessee must pay to the Lessor upon demand the entire expense of the correction as Additional Rent, including the cost of consultants or contractors hired by the Lessor to correct the default and related expenses. The Lessor may act upon shorter notice or no notice at all if necessary in the Lessor's judgment to meet an emergency situation, governmental time limitation, or to protect the Lessor's interest in the Premises.

Section 18. SURRENDER AND HOLDING OVER

18.1. Surrender of the Premises

(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee must surrender and vacate the Premises; remove the Lessee's Personal Property from the Premises; and return the Premises, including the Lessor's Personal Property, to as good an order and condition as that existing upon the Commencement Date, or, if applicable, as that existing upon the completion of any Improvements by the Lessee, ordinary wear and tear excepted.

(b) For these purposes, the Lessor and the Lessee will prepare an Inventory and Condition Report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for the Lessor's Personal

Property, or elements of the Premises shown to be lost, damaged or destroyed. Any such Personal Property, or other elements of the Premises must be either replaced or returned to the condition required under this Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefor by the Lessee at the then current market value thereof.

18.2. Holding Over

This Lease will end upon the Expiration Date or Termination Date and any holding over by the Lessee or the acceptance by the Lessor of any form of payment of Rent or other charges after such date will not constitute a renewal of this Lease or give the Lessee any rights under this Lease or in or to the Premises.

Section 19. NONDISCRIMINATION AND EMPLOYMENT LAWS

The Lessee and the Lessee's contractors must comply with the requirements of all Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee will do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment. The Lessee must comply with all provisions of Executive Order 13706 of September 30, 2016, (Establishing Paid Sick Leave for Federal Contractors) and its implementing regulations, including the applicable contract clause, codified at 29 C.F.R. pt. 13, all of which are incorporated by reference into this Lease as if fully set forth in this Lease. The Lessee must comply with all provisions of Executive Order 13496 of January 30, 2009, (Notification of Employee Rights Under Federal Labor Laws) and its implementing regulations, including the applicable contract clause, codified at 29 CFR part 471, appendix A to subpart A, all of which are incorporated by reference into this Lease as if fully set forth in this Lease. The Lessee certifies that it does not operate any programs promoting diversity, equity, and inclusion that violate any applicable Federal anti-discrimination laws. The Lessee agrees that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of the False Claims Act, 31 U.S.C. § 3729(b)(4).

Section 20. NOTICES

Except as otherwise provided in this Lease, any notice, consent, or other communication required or permitted under this Lease must be in writing and must be delivered by hand, by email, sent by courier, or sent by prepaid registered or certified mail with return receipt requested to the following addresses (or to such other or further addresses as the parties may designate by notice given in writing to the other party). Communications sent to the Lessor by email will not be considered received until receipt has been acknowledged by the Lessor via an email reply:

If to the Lessor:

New River Gorge National Park and Preserve
ATTN: Superintendent
P.O. Box 246
Glen Jean, WV 25846

Email: NERI_Leasing@nps.gov

If to the Lessee:

[Lessee's address and name of person to whom the notice should be addressed]

Section 21. GENERAL PROVISIONS

The following general provisions apply to this Lease:

(a) The Lessor is not for any purpose a partner or joint venture participant of the Lessee in the development or operation of the Premises or in any business conducted on the Premises. Under no circumstances will the Lessor be responsible or obligated for any losses or liabilities of the Lessee. The Lessee may not publicize, or otherwise circulate, promotional or other material of any nature that states or implies endorsement of the Lessee or its services or products by the Lessor or any other governmental agency.

(b) This Lease is not intended to, and does not, confer upon any person or entity, other than the parties hereto, any right or interest, including any third party beneficiary status or any right to enforce any provision of this Lease.

(c) This Lease provides no right of renewal or extension to the Lessee, nor does it provide the Lessee with the right to award of a new lease upon termination or expiration of this Lease. No rights will be acquired by virtue of this Lease entitling the Lessee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

(d) The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Lessor will have the right to immediately terminate this Lease for default.

(e) If one or more provisions of this Lease are held to be invalid for any reason, such invalidity will not affect any other provision of this Lease, and this Lease will be construed as if the invalid provisions had not been contained in this Lease.

(f) All exhibits that may be referenced in this Lease are hereby attached to and incorporated in this Lease.

(g) Time is of the essence to this Lease and all of its terms and conditions.

(h) The laws of the United States govern the validity, construction, and effect of this Lease.

(i) This Lease constitutes the entire agreement between the Lessor and the Lessee with respect to its subject matter and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified except by a written instrument executed by the Lessor and the Lessee.

(j) The voluntary sale or other surrender of this Lease by the Lessee to the Lessor, or a mutual cancellation, or the termination by the Lessor pursuant to any provision of this Lease, will not work a merger, but, at the option of the Lessor, may either terminate any or all existing Subleases hereunder or operate as an Assignment to the Lessor of any or all Subleases.

(k) If more than one lessee is named in this Lease, each lessee is jointly and severally liable for performance of the obligations of this Lease.

(l) Any and all remedies available to the Lessor for the enforcement of the provisions of this Lease are cumulative and are not exclusive, and the Lessor may pursue either the rights enumerated in this Lease or remedies authorized by law, or both. The Lessee will be liable for any costs or expenses incurred by the Lessor in enforcing any term of this Lease, or in pursuing legal action for the enforcement of the Lessor’s

rights, including court costs.

(m) The Lessee may not construct new buildings or structures on the Premises, except that, with the prior written approval of the Lessor, the Lessee may construct minor additions, buildings, or structures determined by the Lessor to be necessary for support of the uses authorized by this Lease.

(n) Nothing contained in this Lease binds the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. This Lease is subject to cancellation by the Lessor in the exercise of its sovereign authority to the extent provided by Applicable Laws.

Section 22. INTELLECTUAL PROPERTY [This section may be removed with solicitor approval]

22.1. Overview and Definitions

The NPS administers an assortment of treasured American properties and resources across the National Park System (System). The NPS's responsibilities in administering the System include the protection of associated Intellectual Property. The following definitions apply for purposes of this Section:

> "Intellectual Property" means all rights protecting tangible or intangible contributions, products, inventions (whether or not patentable, whether or not patented, and whether or not reduced to practice), marks (whether or not registerable, whether or not registered, and whether or not used in commerce), works of authorship (whether or not copyrightable), or other creations of the human mind; this term includes copyrights (in all media now known or hereinafter devised), Marks, patents or patent applications, patents to be issued pursuant thereto, and all divisions, continuations, reissues, substitutes, and extensions thereof, trade secrets, confidential business information, technical data, computer software, rights of publicity or privacy, name, image or likeness rights, and similar protections.
>
> "Marks" means all trademarks, service marks, trade dress, corporate and brand identifications, and indicia, including without limitation word marks, logos and other picture marks, names, phrases, symbols, composite marks, institutional images, look and feel, images of such party's employees, taglines, web content, domain names, and other identifiers, used by such party to distinguish its goods or services, whether registered or not and whether in use or not.
>
> "NPS Marks" means all Marks belonging to the Lessor, including those that are of System-wide significance, such as the National Park Service name and the Arrowhead symbol, or specific to the Park Area, including the name of such System unit and unit-specific locations, facilities, or programs, and all derivatives and variations thereof.

22.2. Rights and Ownership of NPS Marks

The Lessee acknowledges that the Lessor is the sole and exclusive owner of all right, title, and interest in and to all NPS Marks, as well as to all combinations, forms, and derivatives. The Lessee further acknowledges, represents, and warrants that it has not acquired and will not acquire (whether by operation of law, by this Lease, or otherwise) any right, title, interest, or ownership (collectively "Ownership Rights") in or to any NPS Marks or any part thereof. Should any Ownership Rights become vested in the Lessee, the Lessee agrees to assign, and hereby assigns, all such Ownership Rights to the Lessor free of consideration. The Lessee must immediately provide and execute all documents reasonably requested by the Lessor to

effectuate and record each such assignment. The Lessee shall not, during the Lease Term or at any time thereafter, do anything which, in the Lessor's sole judgment, could in any way damage the validity and subsistence of the NPS Marks, such as opposing, disputing, attacking, or challenging any NPS Marks or any application for registration or registration thereof, or filing a conflicting application for registration with respect to any NPS Marks, or assisting others in doing so. The Lessee may not use any NPS Marks without the separate written approval of the Lessor or the Lessor's official designee for intellectual property or brand management.

22.3. Rights and Ownership of Other Intellectual Property

The Lessor recognizes the importance of the Lessee's ownership, maintenance, and protection of its own Intellectual Property. The parties acknowledge and agree that each party owns all rights, title, and interest in its respective Intellectual Property, and that neither party will acquire and will not claim rights in or title to the other party's respective Intellectual Property. To use the other party's Intellectual Property in furtherance of the purposes of the Lease, a party must obtain the other party's prior written approval. A party will promptly provide the other party written notice of any action, claim, or demand brought or threatened by a third party against it when arising out of its use of any Intellectual Property in furtherance of the purposes of the Lease. The Lessee represents and warrants that any Lessee Intellectual Property used to carry out the purposes of this Lease will not infringe or misappropriate the rights of the Lessor or any third party, and Lessee indemnifies and will defend and hold harmless the Lessor and its officers, employees, and agents from and against any lawsuit, legal proceeding, action, claim, cause of action, demand or liability that arises from any act or omission of the Lessee or its officers, directors, employees, representatives, agents, or contractors related to any alleged violation, infringement, unauthorized use or misappropriation of any Intellectual Property of any third parties arising from or in conjunction with activities performed to carry out the purposes of this Lease or as part of Lessee's business, programs, operations, or other activities occurring upon or related to the Premises.

IN WITNESS WHEREOF, the, Regional Director, Interior Region 1, North Atlantic-Appalachian, National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Interior, as the Lessor; and the Lessee have executed this Lease by proper persons thereunto duly authorized as of the date heretofore written.

LESSOR:

THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

David Alberg Regional Director Interior Region 1, North Atlantic-Appalachian	Date

LESSEE:

[Name of Business Entity]

[Name] [Title]	Date

EXHIBIT A: Inventory and Condition Report

(Insert Inventory and Condition Report)

EXHIBIT B: Insurance Requirements

During the term of this Lease, the Lessee must maintain the following insurance coverage (where applicable as determined by the Lessor) under the following general terms and conditions and under such specific terms and conditions as the Lessor may further require with respect to each particular insurance policy.

1. Types of Insurance (Non-Construction)

(a) Property Insurance - An all risk or special form, including fire, vandalism and malicious mischief insurance. The amount of such insurance must be the full insurable value of the Premises. All such policies must specify that proceeds shall be payable whether or not any damaged or destroyed Improvements are actually rebuilt. All such policies must waive any requirement that a building or structure be replaced at its original site.

(b) Worker's Compensation and Employer's Liability Insurance - Worker's compensation insurance in the statutory amounts and coverage required under worker's compensation, disability and similar employee benefit laws applicable to the Premises and to the Lessee's use and occupancy of the Premises; and employer's liability insurance, with limits of not less than One Million Dollars ($1,000,000.00) for bodily injury per incident and Three Million Dollars ($3,000,000.00) aggregate, or such higher amounts as may be required by law.

(c) General Liability - Comprehensive Farm Liability and/or Commercial General Liability through one or more primary and umbrella liability policies against claims for bodily injury and property damage occurring on the Premises, the Improvements thereon, or the streets, curbs or sidewalks adjoining the Premises, with such limits as may be required by the Lessor, but in any event not less than One Million Dollars ($1,000,000.00) per incident and Three Million Dollars ($3,000,000.00) aggregate for the Premises. Such insurance must insure the performance by the Lessee of its indemnity obligations under this Lease.

(d) Business Interruption and Extra Expense Insurance - Business interruption and extra expense to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of the Premises, including, with respect to the interests of the Lessor, the loss (or reduction) of Rent payments to the Lessor by the Lessee. Coverage amounts will be as required by the Lessor but in no event less than One Million Dollars ($1,000,000.00) per incident and Three Million Dollars ($3,000,000.00) in the aggregate.

(e) Other - All other insurance that the Lessee should maintain to adequately protect the Premises, the Lessor, and the Lessee.

2. Insurance During Construction

At all times during Construction, the Lessee at its sole expense, must obtain and keep in force for the benefit of the Lessee and the Lessor the following insurance coverages:

(a) If requested by the Lessor at any time, performance and payment bonds approved by the Lessor, which bonds must cover payment of all obligations arising under all contracts let in connection with a Construction and guaranteeing performance and payment under the applicable contracts, and payment in full of all claims for labor performed and materials supplied under such contracts. The bonds must be issued by a responsible surety company, licensed to do business in the state where the Park Area is located, in an amount not less than the amount of the respective contracts, including amounts for cost overruns, price increases, change orders, forced delays and the like, and must remain in effect until the entire work under the contracts is completed; and

(b) To the extent not covered by other property insurance maintained by the Lessee, comprehensive "all risk" or "special form" builder's risk insurance, including vandalism and malicious mischief, covering the Construction, all materials and equipment stored at the Premises and furnished under a construction contract, and all materials and equipment that are in the process of fabrication at the Premises of any third party or that have been placed in due course of transit to the Premises when such fabrication or transit is at the risk of, or when title to or an insurable interest in such materials or equipment, has passed to the Lessee, such insurance to be written on a completed value basis in an amount not less than the full estimated replacement cost of the Construction.

3. Conditions of Insurance

(a) The policy or policies required under this section must provide that in the event of loss, the proceeds of the policy or policies will be payable to the Lessee to be used solely for the repair or replacement of the property damaged or destroyed, as approved and directed by the Lessor, with any balance of the proceeds not required for repair, replacement, or removal paid to the Lessor; provided, however, that the insurer, after payment of any proceeds to the Lessee, will have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee.

(b) All property and liability insurance policies must name the United States of America, on behalf of the National Park Service, as an additional insured.

(c) All of the insurance required by this section and all renewals must be issued by one or more companies of recognized responsibility licensed to do business in the state in which the Park Area is located with a financial rating of at least a Class B+ (or equivalent) status, as rated in the most recent edition of Best's Insurance Reports (or equivalent) or as otherwise acceptable to the Lessor.

(d) All insurance policies must provide that such policies may not be cancelled, terminated, or altered without thirty (30) days prior written notice to the Lessor. The Lessee must provide to the Lessor a copy of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect on or before the Commencement Date, and annually thereafter. The Lessee must maintain all policies provided throughout the Lease Term and the Lessee must renew such policies before the expiration of the term of the policy.

(e) The Lessee and the Lessee's agents may not do anything, or permit anything to be done, in or about the Premises or on adjacent or nearby property that would invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises or result in a refusal by insurance companies of good standing to insure the Premises in the amounts required under this Exhibit.

EXHIBIT C: Maintenance Plan

(Insert Maintenance Plan Upon Completion and Acceptance)

EXHIBIT D: Preservation Maintenance Plan

(Insert Preservation Maintenance Plan upon Completion and Acceptance)

EXHIBIT E: Lease Premises

