

## **APPENDIX D.**

### **LEGAL AND FINANCIAL LEASE DETAILS**

#### **Lease Terms and Rent Determination**

This REI is issued in accordance with the terms of 36 CFR Part 18 (see Appendix E), hereafter called Part 18. Program Partner activities must be in conformance with the 1999 *Site Plan and Environmental Assessment for the former North Truro Air Force Station* ([http://www.nps.gov/caco/planyourvisit/upload/NTAFS\\_EA\\_1999.pdf](http://www.nps.gov/caco/planyourvisit/upload/NTAFS_EA_1999.pdf)). The National Park Service anticipates that most initial program partnerships will involve leasing buildings in “as-is condition,” with the organizations responsible for all required building rehabilitation, but with the NPS responsible for the provision of campus-wide utility services. Utility hook-ups to available central water, wastewater, electrical, and phone systems will be required. The water treatment system and a core area wastewater system are in place for the quadrangle area buildings.

Program Partner leases must meet the requirements of Part 18. Leases are expected to have customary lease provisions regarding performance requirements, lease rates, sub-leasing (if applicable), maintenance standards, and insurance as set forth at 36 CFR Section 18.12. Leases and sub-leases will also provide for the collection by the NPS of “annual cost recovery rental charge” or minimum charge from all tenants to support common, campus-wide operations and services.

Please note that Program Partner leases are likely to contain specific use provisions that would potentially limit an organization’s activities at Highlands Center facilities (particularly with respect to commercial activities). A Program Partner may not utilize its leased building to provide housing to the general public or staff, although some of the buildings available for lease are suitable for housing and dormitory space. Occupancy of buildings for housing purposes is intended for people who have a programmatic relationship with the activities of the Program Partner.

Part 18 specifies that the lease term may be up to 60 years but directs that the term be as short as possible, taking into account the financial obligations of the lessee and other relevant factors. The NPS seeks to authorize lease terms of 30 years unless it is demonstrated that a longer term is necessary to obtain financing and allow return on investment. A new lease can be considered at the expiration of the initial leasing period, but extending or granting a preferential right of renewal is not possible.

Program Partner leases will require payment of fair market value rent to NPS. The NPS determination of fair market value rent will take into account the rehabilitation costs associated with the leased property and the limitations on the uses of the property described in the applicable lease. In general, prospective Program Partners should anticipate paying rent comparable to rents for similar space in the Cape Cod area used for educational, non-profit purposes, subject to appropriate downward adjustment to reflect rehabilitation costs. Leases will provide for the collection by the NPS of “annual cost recovery rental charge” or minimum charge from all tenants to support common, campus-wide operations and services. Leases will contain appropriate provisions requiring periodic reconsideration of fair market value rent.

Land cannot be leased for new construction under Part 18.

#### **Commercial Services**

Commercial services for the general public are not permissible uses under the terms of the Program Partner leases. Part 18 states Program Partner leases may not authorize activities by the lessee that are subject to authorization by an NPS concession contract, that is, activities that provide services to visitors of the Park. Accordingly, food service, overnight lodging or other services made available to

the general public (visitors) are generally not permitted uses under NPS leases. However, it is expected that lessees could provide food service and overnight lodging to their staff and program participants.

### **Annual Cost Recovery Rental Charge**

Program Partners will be responsible for all of their own operating costs, such as insurance and utility usage for their leased building(s). Program Partners will also pay a pro-rata share of utilities and common services through an annual cost recovery rental charge under the terms of the leases. The annual cost recovery rental charge is a charge to recover costs associated with making facilities and services available to Program Partners. NPS expects to assess the annual cost recovery rental charge billed to Program Partners on a periodic basis. This charge will defray NPS capital and operational costs of providing community services, such as utility systems to individual facilities not provided by a utility company, and public safety and grounds maintenance services. Examples include security, lawn care, and snow removal.

The amount of the charge will be determined on a per-square-foot of occupied space basis based on a fiscal impact analysis of the incremental public service costs and revenue generated by the project. The annual cost of the recovery rental charge has not been calculated at this time.

Parking will be allocated, and alternative transportation modes are encouraged. NPS may charge for parking under Program Partner leases to manage supply and demand.

### **Applicable Building Codes**

NPS policies stipulate that construction meet nationally recognized model codes. These codes include the Uniform Building Code, National Electric Code, Uniform Mechanical Code, Uniform Plumbing Code, Uniform Fire Code, Uniform Federal Accessibility Standards, National Fire Protection Association Life-Safety Code, Uniform Code for Building Conservation, and International (or CABO) One and Two Family Dwelling Code. In addition, NPS may give consideration to local land-use provisions and consult with state and local building officials. The NPS will review and approve building design and construction plans and may collect charges from Program Partners to reimburse the NPS for its related expenses (such as reviewing plans and monitoring code compliance and construction to ensure conformity to approved designs). No construction may be undertaken unless the NPS has issued a written approval to proceed.

### **Americans With Disabilities Act**

Leased buildings must meet the requirements of the Americans with Disabilities Act (ADA) to assure that accessibility is provided throughout the facility. The ADA establishes federal guidelines that define requirements for disabled access to parking facilities, pathways, and buildings.

### **Use and Disclosure/Freedom of Information Act**

The NPS may disclose and make public all proposals only after final selection of qualified proposals to any person upon request. The provisions of the Freedom of Information Act apply. Respondents may request that trade secrets proprietary financial information or other confidential information be exempt from disclosure in the manner set forth in the Act, including the identification of this information at the time of submission to the National Park Service.

### **Limitations**

This is not a solicitation under the National Historic Preservation Act, the Concessions Reform Act of 1998, or the Office of Federal Procurement Policy Act.

National Park Service reserves the right, consistent with the National Park Service authorities and policies to enter into a variety of agreements with non-profit organizations and government agencies on a non-competitive basis for tenancy at the Highlands Center.

## **National Environmental Policy Act**

Cape Cod National Seashore completed a master plan and environmental assessment for the proposed Highlands Center in 1999. Respondents should be aware that all occupancies and activities at the Highlands Center will be contingent upon demonstration of consistency with the Environmental Assessment prior to occupancy. Some of the responses may be inconsistent with the Environmental Assessment, but NPS reserves the right to enter into discussions regarding future tenancy with these respondents to find ways to bring proposals into compliance or to specify that additional environmental review of the proposal is needed.

## **Minimum Business Terms**

*Subordination:* Fee ownership will not be subordinated.

*Rent:* The National Park Service will require fair market value rent that reflects existing building conditions, required level of investment by lessee, and length of term. Re-approval of fair market value will be undertaken at periodic intervals to adjust to changing market conditions.

*Annual Cost Recovery Rental Charge:* The National Park Service will assess an annual cost recovery rental charge on a per-square-foot basis for capital and operational costs of providing community services.

*Permitted Uses:* All uses shall be consistent with the 1998 *General Management Plan* and 1999 *Site Plan and Environmental Assessment for the former North Truro Air Force Station* (Highlands Center) and are subject to approval by the NPS.

*Assignment and Subleases:* The NPS will have the right to approve any assignment of the leases or subleases.

*Performance Benchmarks:* The lease will contain time and performance benchmarks with clear termination provisions for non-performance.

*Assurances:* The lease agreement will include provisions such as performance bonds or other remedies to assure completion of the lessee's obligations.

*Taxes:* Lessees will be responsible for all taxes and assessments imposed by federal, state, and local agencies on leasehold property and interests, if applicable.

*Anti-discrimination:* The lease will contain provisions to prohibit discrimination based on race, color, sex, age, physical handicap, religious creed, nation of origin, or sexual orientation, in accordance with applicable laws.

*Handicapped Access:* The lease will ensure that the lessee is in compliance with the Americans with Disabilities Act and other applicable laws.