

**Attachment B  
Sample Lease**



**LEASE**

Between

**U.S. DEPARTMENT OF INTERIOR**

**National Park Service**

And

**LESSEE**

For the Premises known as Jacob Riis Beach  
Bay 9 East Mall Building  
and  
Related Facilities

16702 Rockaway Beach Boulevard  
Queens, New York 11694

In the Jamaica Bay Unit of  
Gateway National Recreation Area

Contents

SECTION 1. DEFINITIONS..... 6
SECTION 2. LEASE OF PREMISES ..... 11
2.1. Lease of Premises; Reservation of Rights ..... 11
2.2 Waiver ..... 12
2.3 Easements or Right-of-Way Permits ..... 13
2.4 Ownership of the Premises ..... 13
2.5 Historic Property ..... 13
SECTION 3. ACCEPTANCE OF THE PREMISES ..... 13
3.1 As Is Condition of the Premises ..... 13
3.2 Lessee’s Due Diligence ..... 14
3.3 Inventory and Condition of the Premises ..... 14
SECTION 4. LEASE TERM AND ABANDONMENT ..... 14
4.1 Lease Term ..... 14
4.2 Abandonment ..... 14
SECTION 5. RENT ..... 15
5.1. Net Lease and Rent Payments ..... 15
5.2 Annual Rent..... 15
5.3 CPI Adjustment ..... 16
5.4 Rent Offsets..... 16
SECTION 6. USES OF PREMISES ..... 17
6.1 Authorized Uses ..... 17
6.2 Changes to Authorized Uses ..... 20
6.3 Applicable Laws..... 21
6.4 Forbidden Uses ..... 22
6.5 Site Disturbance ..... 22
6.6 Protection of Cultural and Archeological Resources. .... 22
6.7 Signs ..... 23

\* The final terms of any lease must be consistent with the requirements of the RFP

6.8 Permits and Approvals ..... 23

SECTION 7. RECORDS AND AUDITS ..... 24

SECTION 8. MAINTENANCE AND REPAIR ..... 25

8.1 Lessee’s Responsibilities ..... 25

8.3 Alterations to the Premises ..... 27

8.4 Maintenance Reserve Account ..... 27

SECTION 9. LESSOR IMPROVEMENTS ..... 28

SECTION 10. APPROVAL OF THE LESSEE'S PROPOSED IMPROVEMENTS ..... 29

10.1 In General..... 29

10.2 Enforced Delays ..... 30

10.3 Utilities During Construction..... 31

10.4 Approval of Construction ..... 31

10.5 Construction Documents ..... 31

10.6 General Scope of Lessor's Review..... 31

10.7 Changes to Approved Construction Documents..... 32

10.8 Special Considerations for Historic Property ..... 32

10.9 Evidence of Adequate Funds ..... 32

10.9 Notice to Proceed or Similar Authorization ..... 32

10.10 Site Conditions During Construction..... 33

10.11 Construction Completion Procedures..... 33

10.12 Lessor’s Right to Utilize Documents..... 34

SECTION 11. TAXES AND ASSESSMENTS ..... 35

SECTION 12. UTILITIES..... 35

12.1 Arrangements with Utility Providers. .... 35

12.2 Installation, Relocation, or Upgrades to Utilities..... 35

SECTION 13. HAZARDOUS MATERIALS ..... 36

SECTION 14. INSURANCE AND INDEMNIFICATION ..... 37

14.1 Insurance During the Lease Term ..... 37

14.2 Insurance Requirements Modification ..... 37

14.3 Disposition of Insurance Proceeds..... 37

\* The final terms of any lease must be consistent with the requirements of the RFP

14.4	Inadequate Insurance Coverage .....	37
14.5	Indemnity .....	38
SECTION 15. DAMAGE OR DESTRUCTION .....		38
15.1	Damage or Destruction .....	38
15.2	No Termination; No Effect on Rental Obligation .....	39
SECTION 16. LIENS .....		40
16.1.	No Power in Lessee to Create .....	40
16.2.	Discharge of Liens by Lessee .....	40
16.3	No Consent or Waiver by Lessor .....	40
SECTION 17. ASSIGNMENTS, ENCUMBRANCES AND SUBLEASES .....		41
17.1	Assignments .....	41
17.2	Encumbrances .....	41
17.3	Subleases .....	42
SECTION 18. DEFAULTS, LESSOR'S REMEDIES, AND LESSEE TERMINATION .....		42
18.1	Termination for Default .....	42
18.2	Bankruptcy .....	43
18.3	No Waiver .....	43
18.4	Lessor's Right to Cure Defaults .....	43
SECTION 19. SURRENDER AND HOLDING OVER .....		44
19.1	Surrender of the Premises .....	44
19.2	Holding Over .....	44
SECTION 20. EQUAL OPPORTUNITY LAWS .....		44
SECTION 21. NOTICES .....		45
SECTION 22. GENERAL PROVISIONS .....		45
EXHIBIT A: MAPS and LOCATION .....		50
EXHIBIT B: INSURANCE REQUIREMENTS .....		52
EXHIBIT C: PROPERTY DESCRIPTION/LAND ASSIGNMENT .....		56
EXHIBIT C-2: MOBILE VENDING LOCATIONS .....		57
EXHIBIT D: LESSEE'S RESPONSIBILITY FOR INITIAL IMPROVEMENTS .....		58
EXHIBIT E: PRESERVATION AND MAINTENANCE PLAN .....		59

\* The final terms of any lease must be consistent with the requirements of the RFP

EXHIBIT F: SAMPLE REQUEST FOR RENT OFFSET ..... 60

EXHIBIT G: TRANSITION BETWEEN LESSEES..... 61

EXHIBIT H: ANNUAL RENT PAYMENT SCHEDULE ..... 64

EXHIBIT I: CERTIFICATE OF COMPLETION OR SIMILAR NOTICE ..... 64

EXHIBIT J: SALE AND CONSUMPTION OF ALCOHOL..... 66

**THIS LEASE** is made and entered into by and between the United States Department of the Interior (DOI), acting through the National Park Service (NPS), an agency of the United States of America (Lessor), and \_\_\_\_\_ (Lessee) (with the named individuals being jointly and severally liable for the obligations of the Lessee).

**WITNESSETH THAT:**

**WHEREAS**, Congress designated Gateway National Recreation Area (GATE or Park Area) as a unit of the National Park System; and

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

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

**WHEREAS**, the Lessee desires to lease the property on the terms and conditions set forth in this Lease, including, without limitation, the terms and conditions of the Exhibits attached hereto as of the Commencement Date and those Exhibits which become attached to this Lease during its term as identified herein; and

**WHEREAS**, the Lessee was selected in response to “Request for Proposals: Jacob Riis Beach, Bay 9 East Mall Building and Related Facilities” dated September 1, 2020.

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

\* The final terms of any lease must be consistent with the requirements of the RFP

## **SECTION 1. DEFINITIONS**

As used in this Lease, the following defined terms are applicable to both singular and plural forms.

**1.1 Additional Rent** – means to all forms of Rent required by this Lease other than the Rent required by Section 5 hereof. Additional rent may include costs incurred by NPS related to matters and events requiring Law Enforcement response, failure to properly manage sale and consumption of alcohol, use of restrooms beyond park hours, NPS staff required to manage and monitor Lessee’s activities, costs to NPS for cleanup, repair, or maintenance resulting from Lessee’s use and occupancy of the Premises, or other costs imposed in connection with resulting deficiencies and violations.

**1.2 Affiliate of Lessee** – means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.

**1.3 Alterations** – means any Improvements made to the Premises by Lessee in accordance with the terms of this Lease other than Initial Improvements.

**1.4 Applicable Laws** – means all present and future laws, statutes, requirements, ordinances, judgments, regulations, and administrative and judicial determinations (that are applicable by their own terms to the Premises or the Lessee), even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Premises now or hereafter enacted or in effect (including, but not limited to, Part 18 and the Park Area’s General Management Plan, environmental laws and those relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Lessee or to all or any portion of the Premises, or to the use, occupancy, possession, operation, and maintenance, or alteration, repair or restoration of any portion of the Premises, even if compliance therewith necessitates structural changes to the Premises or results in interference with the use or enjoyment of all or any portion of the Premises.

**1.5 Approved Costs** – means costs (including, without limitation, General and Administrative Costs), approved by Lessor as being no higher than those prevailing in the locality of the Premises, required for the construction of Initial Improvements or Alterations, and, otherwise reasonable.

**1.6 Assignment** – means the transfer, whether it is direct or indirect, voluntary or by operation of law, assignment, sale, or conveyance, 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, a conveyance, or an 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(s), "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.

**1.7 Certificate of Completion** – A written document from the Lessor stating that Initial Improvements or Alterations are complete and acceptable.

**1.8 Certificate of Completion Report** – means the document that describes and identifies the Initial Improvements after issuance of a Certification of Completion, which, when issued, shall become part of this Lease as an Exhibit hereto. Such Report, among other matters will identify any Fixtures installed as part of the project.

**1.9 Commencement Date** – means the first day of the Lease Term as stated in Section 4 of this Lease.

**1.10 Construction Documents** – refers collectively to all drawings, plans, specifications, and similar documents associated with the construction of Initial Improvements or Alterations.

**1.11 Encumbrance** – means the direct or indirect, voluntary or by operation of law, encumbrance, pledge, mortgage, or other hypothecation of the Lessee's interest or rights under this Lease and/or the Premises or Lessee's leasehold estate.

**1.12 Exhibit(s)** – means documents which are attached to this Lease as additional terms and conditions of this Lease as of the Commencement Date and those documents which become attached hereto during its term as Exhibits as of the date of issuance by the Lessor.

**1.13 Expiration Date** – means the last day of the Lease Term as stated in Section 4 of

this Lease.

**1.14 Fixtures** – A Fixture is an article in the nature of Personal Property which has been so annexed to the Premises as to be regarded as a part of the realty.

**1.15 General and Administrative Costs** – or G&A, are costs necessary for the construction of Initial Improvements or Alterations that are not directly related to labor and building materials. Such costs may include, but are not limited to, architecture, engineering, planning, including compliance with the National Environmental Policies Act (NEPA, 42 USC 4321 et seq.), and permits.

**1.16 Hazardous Materials** – means any material or other substance: (a) that requires investigation or correction 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, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, 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.

**1.17 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.

**1.18 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.

**1.19 Improvements** – means physical changes to the Premises, including, without limitation, modification, rehabilitation, physical enhancement, and/or restoration of the Premises.

**1.20 Initial Improvements** – means the Improvements to the Premises to be made by Lessee upon commencement of this Lease as described in Exhibit D to this Lease.

**1.21 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.

**1.22 Lease Term** – is the term of this Lease as stated in Section 4 of this Lease.

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

**1.24 Lessor Improvements** – means Improvements to the Premises which may be made by Lessor during the term of this Lease.

**1.25 Maintenance, Repair, and Replace** – “Maintenance” means the preservation of, and prevention of a decline to the Premises from, existing conditions; “Repair” means mending, fixing, or restoring the Premises to good condition after decay, injury, or dilapidation; “Replace” (or “Replacement”) means providing a substitute in place of an item which is broken, worn out, or irreparable.

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

**1.27 NPS 28** – means the National Park Service document entitled “Cultural Resource Management Guidelines” which is hereby made a part of this Lease by reference.

**1.28 Park Area** – means Gateway National Recreation Area (GATE).

**1.29 Part 18** – means Part 18 of Title 36 of the Code of Federal Regulations.

**1.30 Personal Property** – means all furniture, equipment, appliances, and apparatus placed in or on the Premises that are neither permanently attached to or form a part of the Premises so as to be part of the realty.

**1.31 Pre-existing Hazardous Materials** – means hazardous materials (including storage tanks) that existed in, on, or under the Premises or other Park Area property prior to the Commencement Date.

**1.32 Premises** – means the property of the Park Area that is described in Section 2 of

this Lease, including, without limitation, all Improvements thereon as of the Commencement Date and all Initial Improvements, Alterations and other installations or physical changes made to the Premises during the term of this Lease by any party.

**1.33 Preservation and Maintenance Plan** – is a document that sets forth a plan for the Lessee’s Repair and Maintenance of Historic Property.

**1.34 Rent or Annual Rent** – means the Fixed Base Rent and the Percentage Rent to be paid to the to the Lessor by the Lessee as described in Section 5 of this Lease and any Additional Rent this Lease may require, to be paid to Lessor by Lessee as described in Section 5 hereof.

**1.35 Rent Offset** – means offsets to Annual Rent which Lessee may make pursuant to Section 5.4 hereof.

**1.36 Secretary’s Treatment Standards** – shall mean the Secretary of the Interior’s Standards for Treatment of Historic Properties (36 Code of Federal Regulations Part 68) that are hereby made a part of this Lease by reference.

**1.37 Sublease** – means an agreement under which the Lessee grants a person or entity (a Sublessee or other sub-occupant) the right to use, occupy, or possess the Premises in whole or in part.

**1.38 Substantially Damaged** – means the Premises has been damaged or destroyed to the extent that the cost of repair or replacement thereof shall exceed a sum constituting ninety percent (90%) of the total estimated Replacement cost of the entire Premises, as estimated by Lessor.

**1.39 Termination Date** – means the date this Lease may be terminated or cancelled in accordance with its terms prior to the Expiration Date.

**1.40 Utilities** – Include but are not limited to, electric, propane, water, and wastewater. Utilities are subject to Director’s Order #35B, or any applicable law, regulation, and policy, requiring National Parks to recover the cost of providing Utilities and maintaining Utility infrastructure, including pursuant to 36 CFR 18.12(g). Changes to the rate or the method of calculation may be modified by the Lessor in accordance with any change to existing law, regulation, and policy.

## SECTION 2. LEASE OF PREMISES

### 2.1. Lease of Premises; Reservation of Rights

(a) The Lessor hereby leases and demises to the Lessee under the authority of Part 18, and the Lessee hereby leases, upon and subject to the covenants and agreements contained in this Lease, the Premises described as follows and as depicted in **Exhibit C** to this Lease:

- The Historic 2-story Bay 9 East Mall Building and associated land located at 16702 Rockaway Beach Boulevard, Queens, New York 11694, at Jacob Riis Park;
- The Historic Bay 6 Clock Stand Building and associated land at Jacob Riis Park, Queens, New York;
- Bay 2 - Concrete pad site measuring 20' x 70' x 16". The Lessee will be solely responsible for restoring all connections to existing utilities
- Bay 6 - Concrete pad site measuring 14.6' x 21' x 16". The Lessee will be solely responsible for restoring all connections to existing utilities.
- *As deemed necessary by NPS: Additional adjacent lands necessary to manage the authorized use as further specified in Exhibit C.*

Additionally, NPS will issue any corresponding Permits and Rights of Way necessary to undertake the installation of utilities and related infrastructure the Lessor has deemed necessary in support of the authorized use. Lessee will be obligated to comply with any Terms and Conditions contained therein, including additional costs associated with same.

- The Premises do not include, but Lessee shall have the non-exclusive right to enjoy:
  - Corresponding ingress and egress
- The Premises do not include, but Lessee may have the non-exclusive right to enjoy:
  - Areas in which small mobile or temporary satellite food and beverage, and retail services such as but not limited to; push carts, mobile facilities, moveable cargo container food stands, and food trucks, and pop up tents, are authorized to operate, within the boundaries of Riis Beach. NPS reserves the right to review and modify the locations at which small mobile or temporary vending services are authorized as necessary. The Lessee may sub-lease these operations with prior written NPS approval subject to the conditions in Paragraph 17.3, Subleases.

(b) Otherwise, any activity proposed outside the areas identified above, or requests to conduct events and activities other than those authorized herein, will require separate approvals from the park, at the discretion of park management, and may be subject to additional costs.

(c) Subject to all Applicable Laws and all liens, Encumbrances, restrictions, rights and conditions of law or of record or otherwise; and

1. Excepting and reserving to the Lessor the right, at reasonable times and (except in case of emergency) following advance notice to the Lessee, to enter and to permit any governmental agency, public or private Utilities and other persons to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered or is otherwise required by law;
2. Excepting and reserving to the Lessor the right following advance notice to the Lessee to suspend Lessee's right to use and occupy the Premises in the event the Lessor has determined that public health or safety considerations require that use and occupancy of the Premises must be temporarily halted until such time as the Lessor, in its sole discretion, determines the authorized use and occupancy may safely resume. Examples of such public health and safety considerations which may result in suspension of a Lessee's right to use and occupy the Premises include Superstorm Sandy and COVID 19, both of which resulted in Presidential Declarations in response to circumstances beyond control of the Lessor
3. 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 applicable to the Premises.
4. Authorization to conduct the activities authorized herein may be immediately revoked, suspended, or terminated by the LESSOR without penalty for the LESSEE's failure to comply with health and safety considerations identified by the LESSOR, including but not limited to COVID 19 or other emergent safety conditions. The LESSEE will be required to implement and enforce and Safety/Operations Plans required by NPS until such time as the LESSEE is notified by NPS in writing that such measures may be relaxed or discontinued.

## **2.2 Waiver**

The Lessee hereby waives any 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 taken for the management and protection of the Park Area's resources and visitors.

### **2.3 Easements or Right-of-Way Permits**

Nothing contained in this Lease shall give or be deemed to give the Lessee a right to grant any type of easement or right-of-way permit affecting the Premises. Lessor agrees to execute, if otherwise appropriate as determined by the Lessor, such easements or right-of-way permits for Utilities as Lessee shall reasonably require in connection with the use and operation of the Premises.

### **2.4 Ownership of the Premises**

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

### **2.5 Historic Property**

(a) The Premises, identified as Historic Property in the NPS List of Classified Structures, must be preserved and maintained in accordance with the Secretary's Treatment Standards as identified in 36 C.F.R. Part 68, and as may be further identified in the Exhibit E to this Lease (Preservation and Maintenance Plan).

(b) Section 106 of the National Historic Preservation Act (recodified at 54 U.S.C. § 306108) requires all projects that may alter the Premises to be reviewed for conformance with these standards. Compliance may require the Lessee to submit formal plans and specifications. Such submittals shall be coordinated as directed by the Lessor in consultation with the New Jersey State Historic Preservation Office. Such review may include interior changes which include modifications to the layout of the Premises.

## **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 as of the Commencement Date 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, without limitation, any characteristics of the

Premises 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 the presence of the 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 of the Premises**

In the exercise of its due diligence, Lessee has taken into account the current condition of the Premises and acknowledges the Premises "as is" condition. The Lessor makes no representations as the conditions or inventory therein.

## **SECTION 4. LEASE TERM AND ABANDONMENT**

### **4.1 Lease Term**

The Lease Term shall be a period of five (5) years commencing on \_\_\_\_\_, 2021 (Commencement Date) and expiring on \_\_\_\_\_, 2026 (Expiration Date) or ending on such earlier date as this Lease may be terminated in accordance with its terms (Termination Date).

### **4.2 Abandonment**

The Lessee shall utilize and maintain the Premises in accordance with the terms of this Lease during the entire Lease Term. If Lessee fails to do so, the Lessee may be determined as in default for abandoning the Premises. Notwithstanding the foregoing, Lessee shall not be in violation of this provision for closures due to regularly scheduled school vacations, for weather related reasons, or due to a force majeure event. In the event a force majeure occurrence or any exercise of Lessor's rights under this Lease renders the Authorized Use or occupancy of the Premises infeasible for an extended period of time, the Lessee may terminate this Lease in accordance with the termination process set forth in Section 15 hereof.

## SECTION 5. RENT

### 5.1. Net Lease and Rent Payments

Except as provided in Section 5.4, all Rent shall be absolutely net to Lessor without any abatement, deduction, counterclaim, set-off or offset. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises, including, without limitation, all maintenance, taxes, and assessments applicable to the Premises promptly upon billing by Lessor.

(a) All Rent payments shall be deposited electronically by the Lessee in the manner identified by the Lessor. At Lessor's option, Rent payments shall be payable by wire transfer or other electronic means to such account as Lessor may from time to time designate. Interest at the Interest Rate will be assessed on overdue Rent payments. The Lessor may also impose penalties for late Rent payments to the extent authorized by Applicable Law.

(b) The Lessor may choose to, but is not obligated to, issue Lessee a bill of collection (BOC) identifying Rent due and owing, although any failure of the Lessor to do so shall not alleviate Lessee's obligation to remit Rent due and owing pursuant to the terms of this Lease.

### 5.2 Annual Rent

(a) During the Lease Term the Lessee shall pay to the Lessor as Annual Rent for the Premises an amount of money equal to (i) **Base Minimum Rent** of Seventy Thousand Dollars (\$70,000.00) for each Lease Year; plus (ii) a Percentage Rent equal to (*not less than the minimum percentage rent identified in the corresponding Request for Proposals*) \_\_\_\_\_% of the Lessee's gross sales under the Lease or any sub-Lease

(b) Annual Rent is due by the (day) of each (month, quarter, year), except as otherwise noted in Section 5.2 (a), and should include both the Annual Rent and the percentage fee for all gross sales conducted in the prior (month, quarter, year). In addition to the Annual rent, Lessee shall submit reports detailing the gross revenue generated by Lessee and each sublessee (or other sub-occupant) for the prior (month, quarter, year).

(c) The Percentage Rent is based on gross sales by the Lessee and any and all sub-Lessees or other sub-occupants for the preceding Lease Year of operations under the Lease Term. The Percentage Rent component of Annual Rent shall be subject to eligible Rent Offsets as described in Section 5.4 of the Lease. For the avoidance of doubt, in no event shall

Lessee be allowed to pay the NPS less than the \$70,000 Base Minimum Rent (as adjusted for CPI per Section 5.3 below) per Lease Year, regardless of the amount of Rent Offset for which the Lessee may be eligible for in any particular year, and said Base Minimum Rent shall not be subject to Rent Offset. Base Minimum Rent shall be due and payable in advance of each *month, quarter, year (negotiable)*, as adjusted for CPI per Section 5.3 below. The Percentage Rent shall be due and payable *monthly, quarterly, annually (negotiable)*, immediately after the close of operations for the applicable Lease Year during the Lease Term.

### **5.3 CPI Adjustment**

The Annual Rent will 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, from the last adjustment. 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 Gateway National Recreation Area (GATE).

### **5.4 Rent Offsets**

(a) The Lessee may offset against Annual Rent payments the Approved Costs of completed Initial Improvements and/or completed Alterations incurred by the Lessee in accordance with the requirements of Section 10 of this Lease. For the avoidance of doubt, the Lessee will always pay the Base Minimum Rent due for each Lease Year regardless of the amount of Rent Offset for which the Lessee may be eligible for as described in Section 5.2 of this Lease. Accordingly, the application of a Rent Offset against the Base Minimum Rent due for any Lease Year is strictly prohibited. The method and timing of such Rent Offset must be requested and approved in accordance with Exhibit F Pre-Construction Rent Offset Request Forms. No Rent Offsets may be made in the absence of the Lessor's written approval of any request from the Lessee pertaining to same, which Lessee is required to obtain prior to undertaking any Improvements.

(b) Lessee shall have 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 and/or Alterations have not been applied by Lessee to offset Annual Rent as of the date of such termination, Assignment or expiration of this Lease.

(c) The Lessee agrees and acknowledges that in order to be eligible for a Rent Offset, the Lessee must provide detailed records including all invoices, billings, statements, receipts, canceled checks, and other such documentation that is determined sufficient at

Lessor’s sole discretion, to evidence the costs incurred in connection with the completed Initial Improvements and/or completed Alterations. The Lessee is required to submit documentation satisfactory to the Lessor in support of same.

(d) In the event of termination pursuant to the terms of the Lease, the Lessee is not eligible for any remaining rent offset otherwise applicable for Improvements already completed for the Premises.

**SECTION 6. USES OF PREMISES**

**6.1 Authorized Uses**

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

Location	Description	Authorized Use
Bay 9 East Mall Building	The building is a two-story brick and masonry structure. The first floor of the building contains approximately 6,000 square feet of usable space. The second floor has limited utility. The area includes adjacent land in front of and to the east of the Bay East Mall Building which is suitable for seating and small stage performances. The area also includes land behind the Bay 9 East Mall Building which has limited parking for Lessees staff/management and must also be used for trash management.	Full-Service Food and Beverage. Sale of Alcohol at the Bay 9 Building permitted in accordance with <b>Section III. A. 4.</b> below. Programming activities and events. Separate Permits may be required to authorize such events and activities. Minimum Lead Time associated with such requests is 45 days. May be subject to additional costs.
Bay 6 Clock Stand	Snack stand building and adjacent land. Approximately 400 sf.	At this time, food and beverage services are limited to prepackaged food and beverage items or

\* The final terms of any lease must be consistent with the requirements of the RFP

Location	Description	Authorized Use
		beach related merchandise though full-service use may be authorized once water and sewer services are restored at this location at the Lessee's sole cost and expense. Sale of Alcohol at the Bay 6 Clock Stand building permitted in accordance with terms of <b>Section III. A. 4.</b> below.
Bay 2	Concrete Pad.	Mobile Food and Beverage Service Mobile. <b>Sale of Alcohol is prohibited.</b>
Bay 14	Concrete Pad.	Mobile Food and Beverage Service. <b>Sale of Alcohol is prohibited.</b>
Mobile or Pop-up Vending (Boardwalk)	Mobile and temporary services may operate along the boardwalk subject to NPS approval of the type and number and location of such vendors on an annual basis.	Merchandise and other approved vending services. <b>Sale of Alcohol is prohibited.</b>
Additional Lands assigned by the Lessor	Lands necessary to support the use authorized herein	To be identified, if any, in Exhibit A or C to the Lease.

- Subleases or other types of sub-occupancy may be permitted for the duration of the Lease in accordance with the terms of Paragraph 17.3 - Subleases.
- Other uses of the Premises are subject to NPS approval pursuant to 6.2. Changes to Authorized Use.
- The Lessee is prohibited from interfering with the public's use of the Jacob Riis Park Promenade.

\* The final terms of any lease must be consistent with the requirements of the RFP

(a) Depending on the Premises' historic use, proposed use, any change in use, and corresponding legal limitations, the Premises may be subject to occupancy limits. Such occupancy limits may include determinations as to the minimum allowable occupancy period for short term residential use based on compliance with code requirements pertaining to matters such as but not limited to fire suppression and egress requirements, maximum occupancy limitations, and short term or seasonal use of the facility.

(b) Lessee's activities on the Premises shall be subject to the park's compendium (<https://www.nps.gov/gate/learn/management/upload/2019-Compendium-updated-and-signed.pdf>) and the general supervision and inspection of the NPS and to such directives regarding ingress, egress, safety, sanitation, and security as may be prescribed by the Superintendent. For the avoidance of doubt, the Lessee acknowledges the following:

- Consumption of alcohol on park beaches is prohibited.
- Parking for approximately 10,000 vehicles is available in the Riis Beach Parking Lot on a first come, first served basis. The Lessor is prohibited from waiving parking fees. Operating Hours: The park is open 5:00 AM – 8:00 PM from November 1 – March 31 and 5:00 AM – 10:00 PM from April 1 – October 31 however; certain areas of the park are subject to different hours of visitation/operation. Jacob Riis Park and the Riis Park Parking Lot are open from 6 a.m. to midnight. Events expected to go past 8:00 PM from November 1 – March 31, or past 10:00PM from April 1 – October 31 may require onsite Supervision, the cost of which may be considered additional rent.
- The Lessee is required to cooperate with restrictions on noise levels. Such restrictions may be found in the Compendium and may also be imposed by local governing authorities.
- The use of shade structures (such as umbrellas) on the beach is limited.
- The Compendium is updated on an annual basis. In the event of any conflict between the Lease and the Compendium, the Compendium shall control.

(c) Lessee is authorized to undertake the sale of alcohol in connection with Lessee's use and occupancy of the Premises. Sale and consumption of alcohol is limited to the Bay 9 East Mall Building, the Bay 6 Clock Stand Building, and lands assigned for use at those locations, and is subject to the terms and conditions contained in Exhibit J.

(d) Lessee shall pay to Lessor as Additional Rent all costs, fees, expenses, and charges of every kind and nature resulting from its use of the Premises, including but not limited costs incurred by the Park for services provided by NPS, including but not limited to, law enforcement, emergency services, use of rest rooms beyond park hours, NPS staff required to manage and monitor Lessee's activities, costs to NPS for cleanup, repair, or

maintenance resulting from Lessee's use and occupancy of the Premises, trash removal, Lessee's failure to monitor and manage sale and consumption of alcohol as required herein, Lessor's monitoring of alcohol sales and consumption policy, and any costs to remedy damages to Park resources resulting from action or inaction of the Lessee's activities. Lessee shall pay to Lessor Additional Rent for any use of additional storage space authorized by the Lessor.

(e) The Lessor retains the right, and the Lessor must provide access to the Lessor, to inspect the Premises at any time during the term of the lease, without prior notice, to ensure compliance with the negotiated Lease agreement, park regulations, and public laws. Additionally, the Lessee is required to submit to and comply with the results of a complete NPS federal health and sanitary inspection to the satisfaction of the NPS before the food and beverage business can open to the public. Gateway NRA will work with the Lessee to arrange this final inspection, conducted by a member of the Gateway staff, at the earliest convenient time. Lessee will be required to maintain and provide satisfactory inspection reports on site throughout the course of the Lease.

Based on these inspections, NPS may issue written notices of deficiencies and provide a timeframe in which the problem must be rectified. In the event the Lessee has not corrected noted deficiencies within the allotted timeframe noted in any corresponding written notice from the Lessor, the Lessor may take any all of the following actions:

- i. The Lessor may impose liquidated damages (payable by Lessee to Lessor as Additional Rent) in the amount of \$1,000 per violation per day (as adjusted by NPS annually) which shall accrue until such time as the Lessee makes the necessary corrections to the satisfaction of the Lessor;
- ii. The Lessor may undertake action necessary to remedy noted deficiencies at the Lessee's cost and expense, such costs and expenses shall be payable by the Lessee as Additional Rent;
- iii. The Lessor may terminate the Lease for default in accordance with the terms of Lease.

## **6.2 Changes to Authorized Uses**

(a) The Lessee may amend or change approved uses subject to the prior written approval of the Lessor. No change of the uses of the Premises shall be approved unless the Lessor, among other matters, determines the proposed use to be consistent with Part 18, GATE's General Management Plan, all other Applicable Laws, and that the proposed change will not have an adverse impact on the Lessor's ability to manage and protect GATE's resources and visitors.

(b) The Lessee shall be obligated for the cost of any appraisal required to determine the value of the Annual Rent corresponding to any proposed change in use of the premises. Such appraisals must be obtained in accordance with the requirements set forth by the Department of the Interior (DOI), and corresponding review and approval by the Office of Valuation Services (OVS) (or successor entity).

(c) Any adjustment to the value of the Annual Rent as a result of a change in the Authorized Use of the Premises under this section will be embodied in an amendment to this Lease.

### **6.3 Applicable Laws**

The Lessee shall comply with all Applicable Laws in its use and occupancy of the Premises. The Lessee will identify and limit the building's occupancy capacity for both indoor events and for indoor/outdoor events in accordance with applicable codes. Building and patio capacity as well as seating plans must be approved by the park Superintendent prior to commencing operations on site. Additionally, applicable laws, regulation and policies are stated in part in the definition of Applicable Laws set forth in this Lease, and include, but are not limited to:

- The National Historic Preservation Act (NHPA), including Section 106 of the Act (which address related State Historic Preservation Office (SHPO) Considerations).
- The National Environmental Policy Act (NEPA)
- Americans with Disabilities Act (ADA)
- The Architectural Barriers Act (ABBAS)
- International Existing Building Code (IEBC)
- International Residential Code (IRC)
- National Fire Protection Act (NFPA), particularly NFPA 13, NFPA 101, NFPA Section 914 Protection of Historical Structures, and the Uniform Fire Code,
- Department of the Interior (DOI) Secretary of the Interior (SOI) Standards for the Treatment and Rehabilitation of Historic Properties 36 C.F.R. 61 and 36 C.F.R. Part 68
- The Uniform Building Code, State of NJ Rehabilitation Sub-code
- The National Electric Code
- The Uniform Mechanical Code
- The Uniform Plumbing Code
- Uniform Federal Accessibility Standards
- Life-Safety Codes
- Uniform Code for Building Conservation and the Council of American

Building Officials' (CABO)

- NPS 28: Cultural Resource Management Guideline
- The Federal Fair Housing Act
- Local Building Codes adopted by the City of New York and the State of New York.
- Executive Order 13658 – Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause (<https://federalregister.gov/a/2014-23533>), which are incorporated by reference into this Lease.

#### **6.4 Forbidden Uses**

In addition to the prohibited activities listed in Section 6.1 above, in no event shall the Premises be used for any purpose that is not permissible under Part 18 or, even if so permissible, may be, all as determined by Lessor at Lessor's sole direction, 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, or that otherwise harms the health or welfare of Park Area resources and/or visitors; or that results in any discharge of Hazardous Materials in, on or under the Premises.

#### **6.5 Site Disturbance**

Lessee shall neither cut any timber nor remove any other landscape features of the Premises such as shrubs or bushes without Lessor's prior written consent. The Lessee shall conduct no mining or drilling operations, remove no sand, gravel or similar substances from the ground, and commit no waste of any kind.

#### **6.6 Protection of Cultural and Archeological Resources.**

The Lessee shall ensure that any protected sites and archeological resources on the Premises or within GATE 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 shall be immediately (within twenty-four (24) hours) reported to the Lessor. The Lessee shall cease work or other disturbance, which may impact any protected site or archeological resource until the Lessor may grant written 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 shall specify the type, size, and other appropriate conditions concerning its display. The Lessor will review the proposed layout, content, and will approve same so long as Lessor has determined same to be consistent with GATE's existing signage plan and Applicable Laws. 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 shall be solely responsible for obtaining, at its expense, any permit or other governmental action necessary to permit its activities under this Lease as approved by the Lessor. Permits are required for any event proposed outside of the Leased Premises. Park Management reserves the right to reject or cancel any event where it deems the activity a threat to the park's natural and cultural resources, the activity is unsafe or otherwise poses a threat to visitors, or conflicts with the park's mission and values. Park management also reserves the right to reject or cancel any event in case of emergency as determined by NPS, or in the event of parking restrictions and an inability to accommodate the proposed number of visitors or vehicles.

## **6.9 Alterations**

The Lessee shall not make any Alterations of any nature to the Premises without the express written approval of the Lessor. Any such approval that may be given will be subject to an amendment of this Lease to incorporate appropriate terms and conditions regarding the nature of the Alterations and construction requirements, including, without limitation, construction insurance requirements.

## **6.10 Smoking**

The smoking of tobacco products and/or the use of Electronic Nicotine Delivery Systems is prohibited in all interior spaces of the Premises and exterior spaces designated as non-smoking by the Lessor.

## **6.11 Trash Removal and Recycling**

The Lessee shall, at the Lessee's cost and expense, remove trash generated at the Leased Premises (including recyclables arrange for independent trash and recycling services. The Lessor reserves the right to make any determinations as to the frequency with which

such obligations will be undertaken. Should Lessor determine additional trash pickup or specialty removal services (e.g., bulk) are required. The Lessee must identify the manner by which rubbish removal will be managed, including the number and location of all trash and recycling bins and the logistics for emptying these bins, waste removal, and the separation and processing of recyclable materials. Additionally, Lessee must provide a proactive and preventive pest control strategy including but not limited to regular inspections of the premises. Pest control strategies should consider products and services that limit negative environmental impacts. The Lessee must submit a pest management control plan for review by the Lessor not less than thirty (30) days prior to the anticipated date of commencement of operations.

### **6.12 Maintaining Clean Facilities**

All facilities must be kept clean and well-maintained. Tables, chairs, and umbrellas must be clean and washed on a frequent and consistent basis. Maintenance of grease traps and other kitchen elements is required. Lessee is also required to maintain and provide satisfactory inspection reports and cleaning logs on site throughout the course of the Lease.

## **SECTION 7. RECORDS AND AUDITS**

(a) In addition to the requirements of Paragraph 5.4(a), the Lessee shall provide the Lessor and its agents, including without limitation, the Comptroller General of the United States, access to all Lessee books and records relating to the Premises and the Lessee's use of the Premises under this 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 shall keep and make available to the Lessor these books and records at a location in the Premises or within the locale of the Park Area. The Lessee shall, if requested by the Lessor, provide the Lessor with complete information and data concerning the Lessee's use and occupancy of the Premises. Such records include but are not limited to:

1. Detailed records of costs and expenditures associated with Repair and Maintenance projects in Excel or compatible format.
2. Copies of all warranties which must include a provision that all warranties are transferable to the United States, as well as operation and maintenance records, manuals, and schedules provided by the manufacturer.
3. Point of Sale records of all gross receipts, invoices and records of cost of goods sold, customer counts, and revenue per sales category. Additionally, The Lessee must maintain a Point of Sale management information system and provide the

Superintendent a monthly report, no later than ten (10) days after the end of the month, which will reflect the following information:

- a. Lessee's Total Monthly Gross Revenue by Departmental Category (food and bar sales, retail, rentals, as applicable).
- b. Each sub-Lessee's or other sub-occupant's Total Monthly Gross Revenue by Departmental Category (food, bar, retail, rental, as applicable).

(b) The Lessee shall, if requested by the Lessor, provide the Lessor in writing with complete information and data concerning the Lessee's operations and operating results, including without limitation, information and data requested by Lessor relating to the Lessee's particular operations.

## **SECTION 8. MAINTENANCE AND REPAIR**

### **8.1 Lessee's Responsibilities**

The Lessee shall be solely responsible, at the Lessee's sole expense, for the Repair and Maintenance of the Premises during the Lease Term. This responsibility includes, without limitation:

(a) Ensuring the Premises are safe, habitable, and code compliant at all times. This includes but is not limited to the following:

1. **Maintaining Clean Facilities:** All facilities must be kept clean and well-maintained. Tables, chairs, and umbrellas must be clean and washed on a frequent and consistent basis. Lessee will be required to maintain and provide satisfactory inspection reports and cleaning logs on site throughout the course of the Lease.
2. **Trash Removal:** Scheduled trash removal is required on a frequent basis at the Lessee's cost and expense. The NPS reserves the right to demand additional trash pickup at the Lessee's cost and expense. The Lessee must identify the manner by which rubbish removal will be managed, including the number and location of all trash and recycling bins and the logistics for emptying these bins, waste removal, and the separation and processing of recyclable materials. Additionally, Lessee must provide a proactive and preventive pest control strategy including but not limited to monthly inspections of the premises. Pest control strategies should consider products and services that limit negative environmental impacts.
3. **Restrooms:** Restrooms are open during park hours. In the event Lessee is authorized to conduct activity at the Leased Premises beyond park hours, Lessee will be required to address the related need and cost for use of restrooms beyond park hours with the Superintendent or her designee.

- (b) The performance of all Repair and Maintenance, including Replacements (whether foreseen or unforeseen) necessary to maintain the Premises 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;
- (c) Replacing, as they become worn out or obsolete, all Fixtures.
- (d) Housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Premises;
- (e) The Repair or Replacement of in-kind or broken or worn out elements, parts, or surfaces so as to keep the existing appearance of the Premises;
- (f) Scheduled inspections of all building systems on the Premises;
- (g) Maintaining the grounds of the Premises in good condition, including, without limitation, avoidance or removal of unsightly storage or parking of materials, equipment, vehicles, and to the extent same is not undertaken by Lessor, managed lawn and ornamental plantings;
- (c) Reimbursement of the Lessor's Utility costs and Lessor's costs of infrastructure maintenance and necessary upgrades, in accordance with NPS Director's Order #35B, any modifications thereto, and other Applicable Laws. Lessor will provide Lessee with bills of collection identifying Lessee's pro-rata share of costs pertaining to same;
- (h) Ensuring the Unit Coordinator and his/her representative has keys to the Premises or that locks are installed upon the Premises as Lessor directs, and that nothing impedes Lessor's access to the Premises or any government or other Lessor property.

## **8.2 Preservation and Maintenance Plan**

Within sixty (60) days of Lease execution, the Lessee is required to provide a Preservation and Maintenance Plan that sets forth the Lessee's Maintenance responsibilities with regard to the Premises to ensure that the Premises are maintained to the Lessor's satisfaction during the Lease Term. The Preservation and Maintenance Plan, when approved by the Lessor, shall be as Exhibit E hereto without further action and the Lessee shall comply with its terms. In the event the Lessee does not comply with the conditions of the Preservation and Maintenance Plan, the Lessor will require the Lessee

to take corrective action and the Lessor will consider the Lessee in default for failure to comply within the specified period of time.

### **8.3 Alterations to the Premises**

Any Alterations to the Premises made in the course of Lessee's Maintenance and Repair obligations described in this Lease shall be the property of the Lessor and must be approved in advance by the Lessor in accordance with Section 10 hereof. The Approved Costs of elements of Maintenance Reserve projects that qualify as costs of Alterations under the terms of this Lease are eligible for Rent Offset pursuant to Section 5.4 hereof. In the event of termination, the Lessee is not eligible for any remaining rent offset otherwise applicable for Improvements already completed for the Premises.

### **8.4 Maintenance Reserve Account**

(a) The Lessee may be required to establish and manage a Maintenance Reserve Account. If required, the funds in the Maintenance Reserve Account shall be used to carry out, on a project basis, repair and maintenance needs of the Premises that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, sub floors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects as approved by the Lessor. The Lessee will carry out projects as the Lessor shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Lessor. No projects may be commenced until the Lessee receives written approval from the Lessor in accordance with the Lessor's project review and approval process requirements of Section 10 of this Lease.

(b) Projects paid for with funds from the Maintenance Reserve Account will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this Section shall lessen the responsibility of the Lessee to carry out the maintenance and repair of the Premises from funds other than those in the Maintenance Reserve Account.

(c) If required by the Lessor, the Lessee shall establish the Maintenance Reserve Account within its accounting system. Within sixty (60) days of the execution of this Lease, Lessee shall deposit funds in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to the Maintenance Reserve Account. The Lessee shall add funds to the Maintenance Reserve Account by January 1st of every year this Lease is in effect, to

account for funds depleted over the course of the previous year. If the Lessee fails to make timely deposits to the account, the Lessor may terminate this Lease for default or may require the Lessee to post a bond in an amount equal to the amount of the required Maintenance Reserve. The Lessee shall periodically at times prescribed by the Lessor submit written reports to the Lessor containing such information as the Lessor may require concerning the Maintenance Reserve Account and the related activities of the Lessee. The Lessor reserves the right to adjust the Maintenance Reserve Account dollar requirement from time to time at his sole discretion in order to meet any future maintenance needs or requirement associated with the Premises.

(d) The balance in the Maintenance Reserve Account shall be available for projects in accordance with its purpose. For all expenditures made for each project from the Maintenance Reserve Account, the Lessee shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Lessor. Withdrawals from the account shall not be made without the Lessor's prior written approval.

(e) Failure to expend Maintenance Reserve Account funds when directed by the Lessor shall be considered as a material breach of this Lease in accordance with Section 18.1 for which the Lessor may seek monetary damages and other legal relief, including, without limitation, termination of this Lease.

(f) Any Maintenance Reserve Account funds not duly expended by the Lessee as of the termination or expiration of this Lease shall be paid by the Lessee to the Lessor as Additional Rent.

(g) In the event of an Assignment of this Lease by Lessee, any balance in the Maintenance Reserve Account shall be returned to the Lessee, provided that the Lessee has completed to the satisfaction of Lessor all Maintenance Reserve Account projects required by Lessor. If not, any such balance shall be remitted to the successor lessee by Lessee as of the effective date of the Assignment, or, if there is no successor lessee, such balance shall be remitted to the Lessor by Lessee as Additional Rent.

## **SECTION 9. LESSOR IMPROVEMENTS**

(a) Lessor Improvements made to the Premises such as, but not limited to, structural repairs, replacement of or upgrades to HVAC, mechanical, or electrical systems, repairs to or replacement of the roof, or repairs to windows, as well as any fire prevention system upgrades, and Improvements required by federal, state or local law or regulations (i.e. Americans with Disabilities Act, building codes) may be undertaken by the Lessor at any

time during the Lease Term with thirty (30) days prior notice to the Lessee.

(b) In no event shall Lessor be obligated to make Improvements or to Repair or Maintain the Premises.

## **SECTION 10. APPROVAL OF THE LESSEE'S PROPOSED IMPROVEMENTS**

### **10.1 In General**

- (a) Construction of new or additional facilities is prohibited.
- (b) Any Improvements to the Premises shall become the property of the United States.
- (c) All Initial Improvements and Alterations made by the Lessee shall be undertaken pursuant to the requirements of this Section 10 at the Lessee's sole expense and only with prior written notice to the Lessor and the Lessor's prior written approval. The Lessee will consult with the Lessor at all times prior to undertaking any such Improvements to the Premises in order to ensure compliance with Section 106 of the National Historic Preservation Act of 1966, as amended.
- (d) If Lessee undertakes any portion of the Initial Improvements or Alterations without Lessor's prior written approval, Lessee shall, if Lessor directs it to do so, deconstruct, uninstall, or otherwise undo, as appropriate, such portion of the Initial Improvements or Alterations and return each part of the Premises impacted by such portion of the Initial Improvements or Alterations to its condition before Lessee undertook such portion of the Initial Improvements or Alterations, all at Lessee's sole cost and expense. Such costs and expenses shall not be eligible for offset in accordance with Section 5.4. In the event Lessee fails to remedy unauthorized improvements within any period of time identified by the Lessor in any corresponding written notification issued to the Lessee, the Lessor may terminate this Lease for default in accordance with the terms of Lease and/or impose liquidated damages (payable by Lessee to Lessor as Additional Rent) in the amount of \$1,000 per violation per day (as adjusted by NPS annually) which shall accrue until such time as the Lessee makes the necessary corrections to the satisfaction of the Lessor or until the Lease is terminated by the Lessor.
- (e) The Lessee shall undertake Initial Improvements and Alterations in strict accordance with approved Construction Documents, including any proposed change orders. The Lessee must also comply with the following requirements for the construction of Initial Improvements and Alterations:

#### **Pre-Construction Planning & Design**

- Submission of Qualified Team Members - All construction projects are required to be led by a qualified team of project managers, design and construction professionals at the expense of the Lessee. Upon initiation of a new project, the Lessee shall identify the Lessee's project manager, architect(s), historical architect(s), engineer(s) and any known construction contractor who will be working on the project. All consultants and contractors must be licensed and/or registered to perform work in the State of New York and if required by the Lessor must have experience working on historical buildings. Key team members, if required by the Lessor, must meet the requirements specified in 36 CFR Appendix A, Professional Qualification Standards and the intent of 54 U.S.C., 306131 of the National Historic Preservation Act of 1966 as amended. Lessee shall provide to the Lessor, upon request. Lessee must provide resumes and summary of work for team members if available.
- Code Assessment completed by an architect licensed in the State of New York.
- Annotated Construction Drawings signed and sealed by a licensed design professional (engineer, architect, etc.), including but not limited to architectural, civil - site, structural, electrical, plumbing, HVAC/mechanical, fire suppression system installations, modifications to account for accessibility requirements, etc.
- Construction Specifications signed and sealed by a licensed design professional (engineer, architect, etc.).
- Designs shall account for installing all critical systems (electrical panels, boilers, water heaters, etc.) above the FEMA Base Flood Elevation.
- Buildings be open to the public must be made accessible in accordance with ADA-ABA Accessibility Guidelines or current Federal standards.
- The Lessee is required to comply with Lessor's determination, if any, that the services of other professionals are required in order to identify and abate hazardous materials such as, but not limited to mold, asbestos, and lead.
- The Lessee shall, upon request, furnish the Lessor a correct copy of any contract with the Lessee's contractors, subcontractors, architects, engineers, or consultants. The Lessor may require the Lessee not to occupy specified portions of or all of the Premises during the construction of Initial Improvements or Alterations if determined by the Lessor as necessary for the protection of health or safety.

## **10.2 Enforced Delays**

The Lessee shall not be considered in default in the event of an enforced delay in the construction of Initial Improvements or Alterations due to, as determined by Lessor, unforeseeable causes beyond the Lessee's control for which, as determined by Lessor, there was no fault or negligence on the part of the Lessee. Such enforced delays include, without limitation, public enemies, war, invasion, insurrection, rebellion, riots, terrorism,

fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, shortages of material, and unusually severe weather. In the event of an enforced delay, the time or times for construction of Initial Improvements or Alterations may be extended by Lessor for the period of the enforced delay as determined by Lessor.

### **10.3 Utilities During Construction**

In the preparation of proposed Construction Documents, the Lessee shall review utility plans for the location of existing utilities that may be affected by any Initial Improvements or Alterations. The Lessee is required to obtain all necessary Utility plans and permits from the appropriate public utility companies.

### **10.4 Approval of Construction**

The Lessee must request in writing advance permission from the Lessor to undertake Initial Improvements and/or Alterations. Such requests must include:

- (a) Proposed Construction Documents as described in this Section;
- (b) Evidence of the availability of funding for the project;
- (c) Documentation that required construction and other insurance is in effect; and
- (d) Other information as may be required by the Lessor.

### **10.5 Construction Documents**

The proposed Construction Documents submitted to the Lessor must be complete and satisfactory to Lessor as showing all material elements of the Initial Improvements and/or Alterations and related matters. When proposed Construction Documents are approved by the Lessor, the said documents shall become an Exhibit to this Lease without further action.

### **10.6 General Scope of Lessor's Review**

- (a) The Lessor will not approve proposed Construction Documents unless it is able to determine, among other matters, that the proposed Initial Improvements and/or Alterations are appropriate for the Park Area and consistent with the requirements of Part 18, the Park Area's General Management Plan and other Applicable Laws. Review and approval of proposed projects is subject to any required compliance with the National Environmental Policies Act (NEPA, 42 USC 4321 et seq) and, if the project affects Historic Property, Section 106 of the National Historic Preservation Act (Section 106, 54 U.S.C. § 306108).

- (b) No inspection performed or not performed by the Lessor shall be deemed to give the Lessor any responsibility or liability with respect to the construction work, its execution or design, or, be deemed to constitute a waiver of any of the Lessee's obligations under this Lease or be construed as approval or acceptance of the Initial Improvements or Alterations (or portions thereof).

### **10.7 Changes to Approved Construction Documents**

Any material change in the approved Construction Documents and any deviation in actual construction from these documents are subject to the Lessor's prior written approval under the procedures stated in this Section. An approved change order will be issued by Lessor if proposed changes are approved. The Lessee shall prepare and maintain on the Premises during construction, current, annotated Construction Documents.

### **10.8 Special Considerations for Historic Property**

If proposed Initial Improvements and/or Alterations relate to Historic Property, the Lessor will not approve proposed Construction Documents unless it is able to determine that the proposed Initial Improvements and/or Alterations comply with the Secretary of Interior's Standards, NPS 28, and any conditions that may be imposed on the proposed projects through the operation of other Applicable Laws, including, without limitation, NEPA and Section 106 of NHPA.

### **10.9 Evidence of Adequate Funds**

- (a) The Lessor will not approve proposed Initial Improvements and/or Alterations unless the Lessee has demonstrated to the satisfaction of the Lessor with appropriate documentation that it has available to it funds adequate to undertake and complete the project. The Lessee must comply with Lessor's requests for additional documentation evidencing the availability of the required funding.
- (b) The Lessee will make Initial Improvements and Improvements identified in Exhibit D hereto. Such Initial Improvements include the required minimum investment of \$160,000 as well as the completion of additional Improvements proposed by the Lessee and approved in writing by the Lessor.

### **10.9 Notice to Proceed or Similar Authorization**

Lessee shall not commence Initial Improvements or Alterations until such time as Lessor

may issue a notice to proceed or similar written authorization. The notice to proceed or similar written authorization shall contain terms and conditions necessary and appropriate for the construction to commence. The notice to proceed or similar written authorization may be issued by the GATE Superintendent or his or her designee.

### **10.10 Site Conditions During Construction**

At its cost and expense, the Lessor shall be entitled to have on the Premises at any time during the construction of Initial Improvements and Alterations an inspector or representative who may observe all aspects of the work on the Premises. The Lessee shall maintain on the Premises during construction, current, annotated Construction Documents for Initial Improvements and Alterations for inspection by the Lessor.

### **10.11 Construction Completion Procedures**

(a) Upon completion of Initial Improvements or Alterations, the Lessee shall submit to the Lessor (in formats specified by the Lessor):

(i) a notice of completion, which shall include, a written assessment prepared by an independent third-party inspector, hired by the Lessee, concluding that the Initial Improvements and/or Alterations have been completed in compliance with the requirements of applicable local building codes;

(ii) satisfactory evidence of the payment of all costs, expenses, liabilities, and liens arising out of or in any way connected with the Initial Improvements and/or Alterations.

(iii) if there are project drawings, 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 Initial Improvements and/or Alterations; and

(iv) a complete inventory of all Fixtures and equipment in or on the Premises, as well as operations and equipment manuals, and copies of warranties upon the completion of the Initial Improvements and/or Alterations.

(b) Upon approval by the Lessor of the satisfactory completion of the Initial Improvements or Alterations, the Lessor will issue a Certificate of Completion stating the Initial Improvements or Alterations, are acceptable and authorizing the Lessee's

occupancy (or continued occupancy, if applicable) of the Premises.

(c) As part of the Certificate of Completion or after its issuance, Lessor will also provide Lessee with Lessor's determination of the total Approved Cost(s) of the Initial Improvements or Alterations for purposes of this Lease.

#### **10.12 Lessor's Right to Utilize Documents**

(a) In the event of expiration or termination of this Lease, the Lessee shall assign and deliver to the Lessor any and all of Lessee's rights to all architectural, engineering and other plans, drawings, specifications and studies relating to the Premises. In order to assure Lessor that it will have the legal right to use such plans, drawings, specifications and the like if Lessor becomes entitled to such items, Lessee shall 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 Lessee and Lessor shall have the right to use such plans and other materials in connection with the Premises.

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

"The drawings, specifications and other documents prepared by the Architect for this Project ("Documents") are instruments of the Architect's service and, unless otherwise provided, the Architect shall be deemed the author of these Documents and shall retain all common law, statutory and other reserved rights, including the copyright. For the purpose of completing this Project or for any other purpose, 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 and 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 shall 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 shall be 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, Architect acknowledges and consents to the use and ownership by the National Park Service, or its designees or assignees, of said plans and specifications in accordance with the Lease between the Owner (as Lessee) and the National Park Service (as Lessor) for the Premises leased to Lessee associated with the Documents; and Architect agrees to deliver copies of said plans and specifications 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.”

## **SECTION 11. TAXES AND ASSESSMENTS**

The Lessee shall be responsible for the payment 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. Lessees are not exempt from the payment of local real estate taxes to the local municipality absent any law to the contrary.

## **SECTION 12. UTILITIES**

### **12.1 Arrangements with Utility Providers.**

The Lessee at its sole expense shall make all arrangements with appropriate Utility providers (including the Lessor where applicable), for all Utilities furnished to the Premises, including, without limitation, gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any Utility service provided by Lessor will be subject to the Lessor’s established policies and procedures for provision of Utility services to third parties. To the extent such Utilities are provided by the NPS, the Lessee shall remit payment for costs of all Utilities in accordance with NPS Director’s Order #35B, any modifications thereto, and other applicable law, regulation, and policy. NPS will provide the Lessee with separately billed statements or Bills of Collection (BOC) identifying the Lessee’s costs, if any, pertaining to same.

### **12.2 Installation, Relocation, or Upgrades to Utilities.**

With respect to Lessee’s installation, relocation, or upgrades to Utilities, and subject to the Lessor’s prior review and approval:

Lessee must install all Utilities such as but not limited to electrical panels, water heaters, etc., at an elevation sufficient to comply with FEMA and NPS flood consideration guidelines.

(a) Work associated with repair to or installation of any underground Utilities requires monitoring by a qualified licensed archaeologist. Lessee is required to obtain the services of a qualified archaeologist in connection with the installation of utilities at Lessee's sole cost and expense, however in the event Lessor has a qualified archaeologist available at the time of the project, NPS may elect to undertake the necessary review. The archaeologist will have to obtain an ARPA permit. An ARPA permit may take up to 90 days to review.

(b) Approved Costs of Lessee Alterations resulting from Utility relocation, installation and upgrade projects may be used by Lessor as a Rent Offset pursuant to Section 5.4 hereof.

### **SECTION 13. HAZARDOUS MATERIALS**

The Lessee shall comply the following provisions concerning Hazardous Materials:

(a) No Hazardous Materials shall 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 shall 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 Lessee results in any contamination of the Premises, other Park Area property or neighboring property, the Lessee shall 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;

(d) Except in cases of emergency, the Lessor's written approval of such actions shall first be obtained; Lessee at its expense shall be 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 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 shall immediately notify the Lessor.

## **SECTION 14. INSURANCE AND INDEMNIFICATION**

### **14.1 Insurance During the Lease Term**

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

### **14.2 Insurance Requirements Modification**

If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, conditions, deductibles or self-insurance retention, with respect to any of the insurance required by this Lease are insufficient for a prudent owner of property of the nature of the Premises, the Lessor may determine, by giving the Lessee thirty (30) days written notice, the proper and reasonable limits and extent of coverage, deductibles, conditions, and self-insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this section.

### **14.3 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, shall be distributed in the manner described in Section 15 of the Lease. Distributions to Lessor shall be made as Additional Rent.

### **14.4 Inadequate Insurance Coverage**

As detailed in Exhibit B attached hereto, the Lessee's responsibilities under this Lease for the Repair or Replacement of the Premises assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. Lessor shall not be responsible for any omissions or

inadequacies of insurance coverages and amounts in the event the insurance purchased by Lessee proves to be inadequate or otherwise insufficient for any reason whatsoever.

## **14.5 Indemnity**

The Lessee shall indemnify, defend, save and hold the United States of America, its employees, successors, agents and assigns, harmless from and against, and reimburse the United States of America for any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation expenses incurred in connection with or arising in any way out of this Lease, the use, occupancy or manner of use or occupancy of the Premises by the Lessee or any other person or entity, the design, construction, maintenance, the condition of the Premises, and/or any accident or occurrence on the Premises from any cause whatsoever; provided, however, that the Lessee shall not be liable to the extent that the damages, expenses, claims or suits result from the willful misconduct or gross negligence of the United States of America, or its employees, contractors, or agents; provided, further, that the United States of America shall be liable only to the extent such claims are covered by the Federal Tort Claims Act (28 U.S.C. §2671 et seq.).

## **SECTION 15. DAMAGE OR DESTRUCTION**

### **15.1 Damage or Destruction**

If the Premises or any portion thereof are Substantially Damaged or destroyed at any time during the Lease Term as a result of causes determined by Lessor as beyond Lessee's control, or the Premises are rendered inaccessible resulting in the Lessee's inability to undertake its primary use of the Premises as a result of significant damage or destruction to the Park Area which has resulted from circumstances determined by Lessor as beyond Lessee's control, one of the following sequences of events set forth in (a), (b), or (c) below may occur:

(a) The Lessee, if so directed by Lessor, shall 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; unless Lessor terminates the Lease in accordance with its provisions, in which case Lessee shall not be obligated to Repair or Replace the damaged or destroyed Premises, but will remain obligated to comply with Section 15.1(d) hereof. Funds (insurance proceeds or other sources of funding) used to Repair or Replace the damaged or destroyed Premises to the condition that existed prior to the damaged or destroyed Premises are not eligible for Rent Offset.

(b) The Lessor may terminate this Lease by providing sixty (60) days written notice to the Lessor within 360 days of the date of casualty, and the Lessee shall utilize its own funds or any insurance proceeds or proceeds distributed as a result of any bond related obligations to secure, repair, rehabilitate, or demolish the damaged or destroyed Premises to the extent, if any, as directed by Lessor. Any such proceeds not so utilized shall be distributed as directed by Lessor pursuant to Section 14.3 hereof; or

(c) The Lessee may terminate this Lease without liability by providing sixty (60) days written notice to the Lessor within 360 days of the date of casualty, and the Lessee shall utilize its own funds or any insurance proceeds or proceeds distributed as a result of any bond related obligations to secure, repair, rehabilitate, or demolish the damaged or destroyed Premises to the extent, if any, as directed by Lessor. Any such proceeds not so utilized shall be distributed as directed by Lessor pursuant to Section 14.3 hereof. In the event Lessee fails to vacate the Premises within sixty days of providing notice as described above, Lessee shall continue to be obligated for Rent as required by this Lease.

(d) In the event of that Lessor terminates this Lease pursuant to Section 15.1(b) or Lessee terminates this Lease pursuant to Section 15.1(c), the Lessee shall be obligated to secure and stabilize the Premises and any property thereon, and take all necessary actions to make the Premises safe and free of debris, obstruction, or hazardous condition until Lessor takes possession of the Premises, which Lessor, shall do on or before the Termination Date assuming stabilization efforts identified above have been completed to the satisfaction of Lessor.

(e) In the event of damage to or destruction of the Premises in whole or in part by any cause whatsoever, nothing herein contained shall be deemed to require Lessor to replace or repair the Premises. If Lessor reasonably determines in writing, delivered to Lessee, that damage to the Premises or portions thereof renders the Premises unsuitable for continued use by the Lessee, Lessor shall assume sole control over such Premises or portions thereof. If the Premises or portions thereof rendered unsuitable for use are essential for conducting operations authorized under this Lease, then failure to substitute and assign other facilities acceptable to Lessee will constitute termination of this Lease by Lessor. Lessor shall not be liable to Lessee for losses resulting from the termination of this Lease in accordance with its provisions. Any Improvements or other investments made to the Premises by the Lessee remain the property of the United States.

## **15.2 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 Fixtures and Equipment thereon, or any other property on the Premises,

shall operate to terminate this Lease except as provided in Section 15.1 of this Lease. No such loss or damage shall affect or relieve the Lessee from the Lessee's obligation to pay the Rent required by this Lease and in no event shall the Lessee be entitled to any refund, return, or rebate of Rent required hereunder. No such loss or damage shall relieve or discharge the Lessee from the payment of taxes, assessments, or other charges as they become due and payable, or from performance of other the terms and conditions of this Lease. The costs of Improvements made in response to damage or destruction to the Premises are not eligible for Rent Offset

## **SECTION 16. LIENS**

### **16.1. No Power in Lessee to Create**

The Lessee shall have no power to take any action that may create or be the foundation for any lien, mortgage or other rights 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.

### **16.2. Discharge of Liens by Lessee**

The Lessee shall not suffer or permit any liens known to the Lessee to stand against the Premises for any reason. If a lien is filed against the Premises, the Lessee shall 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 shall continue 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 shall not be 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, shall become due and payable forthwith by the Lessee to the Lessor upon written demand therefore as Additional Rent.

### **16.3 No Consent or Waiver by Lessor**

Nothing in this Lease shall be deemed to be or be construed in any way as constituting the consent or request of the Lessor, expressed or implied, by inference or otherwise, to any person, firm or corporation, for performance of any labor or the furnishing of any materials in connection with the Premises.

## **SECTION 17. ASSIGNMENTS, ENCUMBRANCES AND SUBLEASES**

### **17.1 Assignments**

(a) The Lessee may effectuate an Assignment (including sale) of this Lease, in whole or in part, or any real property on the Premises, or any part thereof or any property thereon, or grant any interest, privilege or license in connection with this Lease, only with the express prior written permission of the Lessor. Approval of any such transactions is in the discretion of the Lessor and the Lessor shall not grant an approval unless it is able to determine that the proposed assignee is financially and managerially capable of carrying out the terms of this Lease.

(b) With respect to such proposed Assignments and without otherwise limiting the criteria upon which the Lessor may withhold consent to any proposed Assignment, the Lessee shall furnish to the Lessor the following information: [1] all instruments proposed to implement the transaction; [2] a statement as to the existence of any litigation questioning the validity of the proposed transaction; [3] a description of the management qualifications and financial background of the proposed transferee, if any; [4] a detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial forecast statements that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Lessor that terms of the transfer do not impede or interfere with the financial ability of the Lessee to perform the requirements of this Lease; [5] if the transaction may result in an Encumbrance on the Lessee's assets, full particulars of the terms and conditions of the Encumbrance; and [6] such other information as the Lessor may require. The Lessor shall have the right to approve the form of any such proposed transaction.

(a) Except as identified in accordance with Section 8.4 (Maintenance Reserve Account), any consideration received by the Lessee resulting from an Assignment shall be payable to the Lessor as Additional Rent, or, to a successor Lessee as directed by the Lessor.

(c) The Lessor has an unconditional right to assign this Lease or any or all of its rights and obligations under it at any time.

### **17.2 Encumbrances**

The Lessee may not effectuate an Encumbrance on the Premises except with the prior written permission of the Lessor. Approval of any Encumbrance is in the discretion of the

Lessor and in no event shall an Encumbrance be approved unless the Lessor is able to determine that it only grants its holder, in the event of a foreclosure, to assume the responsibilities of the Lessee under this Lease or to select a qualified new lessee subject to the written approval of the Lessor, and that it does not grant its holder any rights to alter or amend in any manner the terms and conditions of this Lease.

### **17.3 Subleases**

(a) The Lessee must obtain written approval from the Lessor prior to entering into Subleases (including approval of the proposed Sublessee) of all or part of the Premises or the transfer of a Sublease to a new Sublessee. Lessee shall submit such documentation of the proposed Sublease and proposed Sublessee as the Lessor may require in connection with a request for an approval of a Sublease or Sublessee. Approval of proposed Subleases and Sublessees is in the discretion of Lessor taking into consideration the financial and managerial qualifications of the proposed Sublessee.

(b) NPS review and approval of sublease (or similar authorization) terms and conditions is required prior to Lessee's use or issuance of same. NPS reserves the right to terminate any sublease in the event any sub-lessee fails to keep and perform any of the terms and conditions of the sublease or the Superintendent has determined the Sublessee is engaging in activity inconsistent with the park's mission and values. Additionally, NPS reserves the right to remove individuals from the Premises, or to require the Lessee to remove individuals from the Premises, in accordance with applicable law, regulation, and policy, upon 24 hours' notice, or without prior notice if damage to resources or facilities occurs or is threatened, in the event the Superintendent determines it necessary in the interest of public safety, public health, general welfare, or in the event the Superintendent has determined there has been conduct unbecoming the mission and values of the NPS, notwithstanding any other term or condition of this Lease to the contrary.

## **SECTION 18. DEFAULTS, LESSOR'S REMEDIES, AND LESSEE TERMINATION**

### **18.1 Termination for Default**

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least thirty (30) calendar days in the case of monetary defaults and forty-five (45) calendar days in the case of non-monetary defaults of the Lessor's intention to terminate if the default is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the

Premises shall terminate.

## **18.2 Bankruptcy**

The Lessor may terminate this Lease, in its discretion, 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 calendar (90) 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.

## **18.3 No Waiver**

No failure by the Lessor 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, and no acceptance by the Lessor of full or partial Rent during the continuance of any default shall 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 shall affect or alter this Lease, but each and every term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

## **18.4 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 grace period, the Lessor may choose to correct the default (entering upon the Premises for such purposes if necessary), and the Lessor shall not be liable or in any way responsible for any loss, disturbance, inconvenience, or damage resulting to the Lessee as a result (except to the extent authorized by applicable federal law, including the Federal Tort Claims Act, codified as amended primarily at 28 USC 2671-80 (2018)), and the Lessee shall pay to the Lessor upon demand the entire expense of the correction as Additional Rent, including, without limitation, compensation to the agents, consultants and contractors of the Lessor 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 or governmental time limitation or to protect the Lessor's interest in the Premises.

## **SECTION 19. SURRENDER AND HOLDING OVER**

### **19.1 Surrender of the Premises**

On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property and Equipment, and return the Premises to good order and condition.

For these purposes, the Lessee shall prepare prior to the Expiration or Termination Date, a written report to Lessee that shall constitute the basis for settlement by the Lessee to the Lessor for elements of the Premises (including Fixtures), shown to be lost, damaged, destroyed, inoperable or in bad repair. Any such elements of the Premises shall 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 therefore by the Lessee to the Lessor as Additional Rent at the then current market value thereof. The costs of any Improvements made by Lessee in complying with the report are not eligible for Rent Offset.

### **19.2 Holding Over**

This Lease shall 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 shall not constitute a renewal of this Lease or give the Lessee any rights under this Lease or in or to the Premises.

## **SECTION 20. EQUAL OPPORTUNITY LAWS**

The Lessee and Lessee's Affiliates shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 (as amended), which prohibits discrimination on the basis of disability and requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals; (c) 41 C.F.R. Chapter 60, which prescribes affirmative action requirements for government contractors and subcontractors; (d) the Age Discrimination in Employment Act of December 15, 1967 (as amended); (e) the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.; (f) and all other Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such

employment.

## **SECTION 21. NOTICES**

(a) Except as otherwise provided in this Lease, any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the parties may designate by notice given in accordance with this section):

**If to the Lessor:**

Superintendent  
Gateway National Recreation Area  
210 New York Avenue  
Staten Island, New York 10305  
718-354-4665  
[gate\\_superintendent@nps.gov](mailto:gate_superintendent@nps.gov) and  
[gate\\_bmd@nps.gov](mailto:gate_bmd@nps.gov)

and to

Unit Coordinator  
Jamaica Bay Unit  
The Ryan Center  
1 Floyd Bennet Field  
Brooklyn, New York 11234

**If to the Lessee:**

[Insert name and address of person to whom the notice should be addressed]

(a) Electronic notification to the Lessor is permitted; though such notification will not have been deemed received until Lessor issues a written response.

## **SECTION 22. 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. The Lessor under no circumstances shall be responsible or obligated for any losses or liabilities of the Lessee. The Lessee shall 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 shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or 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 shall 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 shall have the right to terminate this Lease for default.
- (e) In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this Lease, and this Lease shall 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 considered as attached to and incorporated in this Lease as of the Commencement Date or on the date when additional Exhibits referenced in this Lease are issued by Lessor.
- (g) Time is of the essence to this Lease and all of its terms and conditions.
- (h) The laws of the United States shall govern the validity, construction and effect of this Lease.
- (i) This Lease constitutes the entire agreement between the Lessor and Lessee with respect to its subject matter and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect except by an instrument in

writing signed by the Lessor.

(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, shall not work a merger, but, at the option of the Lessor, shall either terminate any or all existing Subleases hereunder or operate as an Assignment to the Lessor of any or all Subleases or similar authorizations.

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

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

(m) The Lessee shall not construct new buildings or structures on the Premises.

(n) Nothing contained in this Lease shall be construed as binding 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. Nothing in this Lease shall be construed as preventing the cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.

(o) This Lease excepts to the Lessor the right, at reasonable times, to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life, health, or safety, or property is discovered. The Lessor will give reasonable notice to Lessee prior to entry; provided that, in the event the Lessor is required to enter the Premises when immediate danger to life, health, or safety, or property is discovered, the Lessor will thereafter immediately notify Lessee.

(p) Initial Improvements or Alterations made by the Lessee without required notification and approvals from Lessor described in this Lease are prohibited. In the event such any Initial Improvements or Alterations are made by the Lessee without such required notice and approvals, the Lessor may terminate this Lease for default and/or

impose liquidated damages (payable by Lessee to Lessor as Additional Rent) in the amount of \$1,000 per violation per day (as adjusted by NPS annually) and require removal by the Lessee at its expense of the non-compliant Initial Improvements or Alterations. Lessee costs for non-compliant Initial Improvements or Alterations are not eligible for Rent Offset.

(q) Notwithstanding any provision to the contrary, in the event of expiration or earlier termination of this Lease, or destruction of the Premises where Lessor has determined the Premises will not be rebuilt, the Lessee shall secure and stabilize the Premises and any property thereon, and take all necessary actions to make the Premises safe and free of debris, obstruction, or hazardous condition. This condition shall survive the termination or expiration of the Lease.

(r) In the event of a government shutdown, access to leased facilities may be prohibited. In the event access is authorized during a government shutdown, no use outside of the inholding/leased facility is permitted on park lands and waters.

(s) All paragraph headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Lease or to define, limit, or describe the scope or intent of this Lease or the particular paragraphs hereof to which they refer.

(t) This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted.

**IN WITNESS WHEREOF**, the, Regional Director, Region 1 - 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 Lessor; and \_\_\_\_\_ the Lessee/s, 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**

By \_\_\_\_\_  
**Jennifer T. Nersesian** **Date**  
**Superintendent**  
**Gateway National Recreation Area**  
**National Park Service**  
**Interior Region 1, North Atlantic - Appalachian**

**LESSEE/S**

By \_\_\_\_\_ **Date:**

\* The final terms of any lease must be consistent with the requirements of the RFP

## EXHIBIT A: MAPS and LOCATION

Riis Beach Facilities Building information, site locations, and proposed land assignment/s\



Note: NPS reserves the right to assign additional Lands associated with the use of the Leased Premises which may be necessary in support of the Authorized Use. Such lands will be identified in any Lease negotiated with the Selected Applicant.



\* The final terms of any lease must be consistent with the requirements of the RFP

**EXHIBIT A: MAPS and LOCATION continued**



\* The final terms of any lease must be consistent with the requirements of the RFP

## **EXHIBIT B: INSURANCE REQUIREMENTS**

During the term of this Lease, the Lessee shall obtain and maintain during the entire term of this Lease, at its sole cost and expense, 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.

No act of the Lessee, its agents, servants, or employees may impair any and all insurance coverage provided for the benefit of or evidenced to the Lessor. The Lessee must ensure that its insurance carriers provide the Lessor, solely for the benefit of the Lessor, an unconditional thirty (30) days' advance notice of cancellation in coverage or policy terms for all property insurance. Lessee must provide the Service with a 30-day notice of cancellation on all liability and workers compensation insurance policies.

The amounts of insurance, limits of liability, and coverage terms included are not intended as a limitation of the Lessee's responsibility or liability under the Lease. In the event the Lessee purchases insurance in addition to the limits set forth herein, the Lessor shall receive the benefit of the additional amounts of insurance without additional cost to the Lessor.

### **B.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 shall be the full insurable value of the Premises. All such policies shall specify that proceeds shall be payable whether or not any damaged or destroyed Premises or elements thereof are actually rebuilt. All such policies shall waive any requirement that a building or structure be replaced at its original site. Property Insurance must include but is not limited to:
- (b) Automobile Liability- if applicable.
- (c) Excess Liability or "Umbrella" Liability the Lessee may use an Excess or "Umbrella" liability policy to achieve the Commercial General Liability and automobile liability limits set forth above. The limit of liability under the excess policy must be in an amount that together with the subordinate policy meets the minimum limit of liability required.

- (d) The Lessee is not required to obtain Excess Liability or “Umbrella” liability coverage but may use it to supplement any insurance policies obtained to meet the minimum requirements of the Lease. If maintained, the Lessee will provide coverage for bodily injury, property damage, personal injury, or advertising injury liability in excess of any scheduled underlying insurance. In addition, coverage must be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or "Umbrella" Liability policy.
- (e) Liquor Liability - Proof of Liquor Liability is required, if alcohol is permitted to be served or made available at the Premises in connection with the proposed use of the Premises. The Lessee must provide coverage for bodily injury and property damage including damages for care, loss of services, or loss of support arising out of the selling, serving, or furnishing of any alcoholic beverage in amounts as may be required by the Lessor, but in any event not less than \$2,000,000 Each Common Cause Limit/ \$3,000,000 Aggregate Limit.

Other - All other insurance that the Lessor believes the Lessee must maintain to adequately protect the Premises, Lessor, and Lessee.

## **B.2 Insurance During Construction**

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

- (a) If requested by Lessor at any time, performance and payment bonds approved by the Lessor, which bonds shall 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 shall 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 without limitation, amounts for cost overruns, price increases, change orders, forced delays and the like, and shall 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.

### **B.3 Conditions of Insurance.**

(a) The policy or policies required by this Exhibit shall provide that in the event of loss, the proceeds of the policy or policies shall be payable to the Lessee to be used solely for the repair or replacement of the property damaged or destroyed to the extent as approved and directed by the Lessor, with any balance of the proceeds not required for repair or replacement to be distributed in a manner identified by the Lessor in writing; 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 shall name the Lessor as an additional insured.

(c) All of the insurance required by this Exhibit and all renewals shall 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 A- (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 shall provide that such policies shall 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 shall maintain all policies provided throughout the Lease Term and the Lessee shall renew such policies before the expiration of the term of the policy.

(e) If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, deductibles or self-insurance retention, with respect to any of the insurance required by this Exhibit are insufficient for a prudent owner of property of the nature of the Premises, the Lessor may determine the proper and reasonable limits and

extent of coverage, deductibles and self-insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this Exhibit.

(f) The Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.

(g) The Lessee and Lessee's Agents shall 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: PROPERTY DESCRIPTION/LAND ASSIGNMENT**

- The Historic 2-story Bay 9 East Mall Building and associated land located at 16702 Rockaway Beach Boulevard, Queens, New York 11694, at Jacob Riis Park;
- The Historic Bay 6 Clock Stand Building and associated land at Jacob Riis Park, Queens, New York;
- Bay 2- Concrete pad site measuring 20' x 70' x 16". The Lessee will be solely responsible for restoring all connections to existing utilities
- Bay 6 - Concrete pad site measuring 14.6' x 21' x 16". The Lessee will be solely responsible for restoring all connections to existing utilities.

The Premises do not include, but Lessee shall have the non-exclusive right to enjoy:

- Corresponding ingress and egress

The Premises do not include, but Lessee may have the non-exclusive right to enjoy:

- Areas in which small mobile or temporary satellite food and beverage, and retail services such as but not limited to; push carts, mobile facilities, moveable cargo container food stands, and food trucks, and pop up tents, are authorized to operate, within the boundaries of Riis Beach. NPS reserves the right to review and modify the locations at which small mobile or temporary vending services are authorized as necessary. The Lessee may sub-lease these operations with prior written NPS approval subject to the conditions in Paragraph 17.3, Subleases.

## **EXHIBIT C-2: MOBILE VENDING LOCATIONS**

RESERVED

Pushcart, pop up, or other types of vending may be authorized, but are not guaranteed, subject to NPS approval of the type, number, and location of such vendors on an annual basis. NPS may consider the use of such amenities on an as-needed basis, at NPS discretion. In the event such amenities are authorized, NPS reserves the right to scale back and/or discontinue such services at its discretion, without penalty. If such operations are authorized, the Lessee may sub-lease these operations with prior written NPS approval.

Such use, if authorized, may not interfere with park and visitor use of the Boardwalk or other designated location.

**EXHIBIT D: LESSEE’S RESPONSIBILITY FOR INITIAL IMPROVEMENTS**

**REQUIRED INITIAL IMPROVEMENTS** - Lessee is obligated to make the following Initial Improvements in an amount not less than \$160,000. Any Improvements proposed by the Lessee require Lessor approval in accordance with Section 10 of the Lease before Lessee may undertake same.

<b>Required Improvements*</b>	
<b>Location</b>	<b>Item/Description</b>
Bay 9 East Mall Building	Installation of a new roof or ongoing repairs to the roof over the term of the Lease.
	Upgrades to the electric system
	Upgrades to exhaust hood mechanics
	Repair and upgrade overhead doors
	Replace roll gates
	Replace hot water heater
	Replace Drywall
	Upgrades to walk-in refrigeration units
Bay 6 Clock Stand Building	Installation/Repair of water/sewer line
	Installation of three new roll gates
	Updates to exhaust hood components and related fire suppression system
	Installation of a new roof or ongoing repairs to the roof over the term of the Lease
All Locations	Installation of Wi-Fi or other Telecommunications service.
Total Required Minimum Investment (Estimated cost of required Initial Improvements)	\$160,000.00

**Life, Safety, and Health Issues: Immediately upon discovery whether by NPS or the Lessee**, Life, safety, and health issues have not been identified by NPS however, such issues, if later discovered must be corrected by the Lessee as a condition of use and occupancy of the Leased Premises.

\* The final terms of any lease must be consistent with the requirements of the RFP

**EXHIBIT E: PRESERVATION AND MAINTENANCE PLAN**

[To become part of the Lease when approved by Lessor in accordance with Section 8.2 of the Lease]

## EXHIBIT F: SAMPLE REQUEST FOR RENT OFFSET

### Rent-Offset Request Pre-Construction:

Today's Date: [Click here to enter a date.](#)

Lessee Name:	<a href="#">Click here to enter text.</a>
Lease Number:	<a href="#">Click here to enter text.</a>
Building Number/Address:	<a href="#">Click here to enter text.</a>
Contact Information (POC, E-mail, Phone)	<a href="#">Click here to enter text.</a>

Description of proposed task/improvement, etc.: Description of work to be done; Detail costs; and identify any subcontractors or other entities; Identify the location at which the work is expected to take place. <a href="#">Click here to enter text.</a>
--

Analysis of why these tasks/improvements are not routine maintenance, routine repairs/replacement, and why the structure/equipment qualifies for Rent-Offset. SPECIFIC SECTIONS of the CONTRACT must be cited. <a href="#">Click here to enter text.</a>
---

Proposed Work Dates	
Work to begin on: <a href="#">Click here to enter a date.</a>	Work to be completed by: <a href="#">Click here to enter a date.</a>

#	Important Questions	Yes	No
1	Are negotiations complete and the work contract or agreement already established?	<input type="checkbox"/>	<input type="checkbox"/>
2	Is this a short-notice urgent need for work, the need emerged with <30 days to desired start?	<input type="checkbox"/>	<input type="checkbox"/>
3	Does this work qualify for a manufacturer warranty claim?	<input type="checkbox"/>	<input type="checkbox"/>
4	Does this work qualify for an insurance claim?	<input type="checkbox"/>	<input type="checkbox"/>
5	Will this work result in any increase in capacity or potential for additional revenue?	<input type="checkbox"/>	<input type="checkbox"/>
6	Have you provided NPS cost estimates, drawings, plans, specifications, or related materials for review?	<input type="checkbox"/>	<input type="checkbox"/>
7	Will this work result in a new service or capacity different from anything previously available?	<input type="checkbox"/>	<input type="checkbox"/>
8	Will the work disrupt current use of the property as anticipated under the Lease?	<input type="checkbox"/>	<input type="checkbox"/>
9	City or State Agency/Dept. (DEP, DEC, DNR, etc.) Permit, Inspection, or Notification required?	<input type="checkbox"/>	<input type="checkbox"/>
10	Will the work be limited to the land assignment authorized in the Lease?	<input type="checkbox"/>	<input type="checkbox"/>
11	Will the work proposed result in ground disturbance?	<input type="checkbox"/>	<input type="checkbox"/>

Additional Commentary/Questions for NPS, and notes for questions answered Yes Above <a href="#">Click here to enter text.</a>
--

Submitted by (Signature):	
Submitted by (Title):	

#	GATE BMD Rent Offset Approval/Disapproval	Yes	No		
1	Is project approved for rent offset? (subject to proof of payment and reconciliation requirements)	<input type="checkbox"/>	<input type="checkbox"/>		
#	Compliance is Complete (if required)	Yes	PEPC #	No	N/A
2	Are all required reviews complete? (PEPC, NEPA, NHPA, 106, etc.)	<input type="checkbox"/>	#	<input type="checkbox"/>	<input type="checkbox"/>
3	Date Approved:	<a href="#">Click here to enter a date.</a>			
4	Approved by (Signature):	<a href="#">Click here to enter text.</a>			
5	Approved by (Title):	<a href="#">Click here to enter text.</a>			

\* The final terms of any lease must be consistent with the requirements of the RFP

## **EXHIBIT G: TRANSITION BETWEEN LESSEES TRANSITION REQUIREMENTS**

### **SEC 1. GENERAL**

The Lessor and the Lessee hereby agree that, in the event of the expiration or termination of this legal authorization for any reason permitted hereunder (hereinafter "Termination" for purposes of this Exhibit) and the Lessee is not to continue the operations authorized under this current legal authorization after the Termination Date, the Lessor and the Lessee in good faith will fully cooperate with one another and with the new Lessee or Lessees selected by the Lessor to continue such operations ("New Lessee" for purposes of this Exhibit), to achieve an orderly transition of operations in order to avoid disruption of services to park area visitors and minimize transition expenses.

### **SEC 2. COOPERATION PRIOR TO THE TERMINATION DATE**

At such time as the Lessor may notify the Lessee that it will not continue its operations upon the Termination of this current legal authorization, the Lessee, notwithstanding such notification, shall undertake the following tasks.

#### **(a) Continue Operations**

The Lessee shall continue to provide services and otherwise comply with the terms of the current legal authorization in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

#### **(b) Continue Bookings**

(1) The Lessee shall continue to accept all future bookings for any facilities and services for which advance reservations are taken; not divert any bookings to other facilities managed or owned by the Lessee or any affiliate of the Lessee; and notify all guests with bookings for any period after the Termination Date that the New Lessee will operate the facilities and services.

(2) Promptly following notification to the Lessee by the Lessor of the selection of the New Lessee, the Lessee shall provide the New Lessee with a copy of Lessee's reservation log for services as of the last day of the month prior to the selection of the New Lessee, and thereafter the Lessee shall update such log on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's address, contact information, dates of stay, rate quoted, amount of advance deposit received and confirmation number,

if applicable.

**(c) Designating a Point of Contact and Other Actions**

(1) The Lessee shall designate one of the Lessee's executives as the point of contact for communications between the Lessee and the New Lessee.

(2) Upon receipt of written request from either the Lessor or the New Lessee, the Lessee shall provide the Lessor and the New Lessee with copies of all maintenance agreements, equipment leases (including short-wave radio), service contracts and supply contracts, including current legal authorizations for on-order merchandise (collectively, "current legal authorizations"), and copies any other licenses and permits (collectively, "licenses") as applicable.

(3) The Lessee shall not enter into any current legal authorizations or agreements that would be binding on the Premises in general after the Termination Date without the prior written agreement of the New Lessee and the Lessor.

**(d) Other Information and Reports**

The Lessee shall provide the New Lessee with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Lessee's operations for the period of one year prior to notification of the selection of the New Lessee. The Lessee must also provide complete information on the following to the New Lessee: utilities, including gas and electric; telephone service; water service; and specific opening and closing procedures. The Lessee must provide all such information within thirty (30) days after receipt of notification of the selection of the New Lessee and update the information periodically (but no less frequently than thirty (30) days) until the Termination Date.

**(g) Other Cooperation**

The Lessee shall provide the Lessor and the New Lessee with such other cooperation as reasonably may be requested.

**SEC 3. COOPERATION UPON THE TERMINATION DATE**

Upon the Termination Date, the Lessee shall undertake the following activities.

**(a) Transfer of current legal authorizations and Licenses**

The Lessee shall cooperate with the transfer or assignment of all current legal authorizations and Licenses entered into by the Lessee that the New Lessee elects to assume, as applicable.

(b) Reservation Systems

(1) The Lessee shall provide the New Lessee with an update of the reservation log through the Termination Date.

(2) The Lessee shall disconnect its operations from the Lessee's centralized reservation system, if any.

(3) The Lessee shall assist the New Lessee in transitioning to the New Lessee's reservation system.

(c) Fees and Payments

No later than ten (10) days after the Termination Date, the Lessee shall provide the Lessor with an itemized statement of all fees and payments due to the Lessor under the terms of the current legal authorization as of the Termination Date, including, without limitation, all deferred, accrued and unpaid fees and charges. The Lessee, within ten (10) days of its delivery to the Lessor of this itemized statement, shall pay such fees and payments to the Lessor. The Lessee and the Lessor acknowledge that adjustments may be required because of information that was not available at the time of the statement.

(e) Other Cooperation

The Lessee shall provide the Lessor and the New Lessee with such other cooperation as reasonably may be requested.

## EXHIBIT H: ANNUAL RENT PAYMENT SCHEDULE

This initial Annual Rent Payment Schedule is for illustrative purposes only and is based on the assumptions that the fair market value rent is stated therein, and that the Lessee's required minimum \$160,000 investment in Initial Improvements described in Exhibit D, and the Lessee's proposed investment in Improvements to the Premises described in Exhibit D, are completed in the first Lease Year. The initial Annual Rent Payment Schedule will be revised after the first Lease Year to account for Percentage Rent, actual figures for the cost of the Initial Improvements and any proposed Improvements undertaken by the Lessee and annually as necessary thereafter. In the event the Lessee does not undertake proposed investment in Improvements that results in Rent Offsets sufficient to credit the balance due and owing (which, as described in Section 5.2 of this Lease, is the difference between the Annual Rent and the Base Minimum Rent), the Lessee will be obligated for the Annual Rent for the Premises in the amount of Minimum Base Rent (as adjusted for CPI per Section 5.3 of this Lease) plus Percentage Rent as defined in Section 5.2 of this Lease, or such portion thereof as to which there are no Rent Offsets available, payable within thirty (30) days of the end of the prior Lease Year in a manner consistent with the example in Table 5.2.1 provided in Section 5.2 of this Lease. The initial Annual Rent Payment set forth below will be revised after the first Lease Year to account for actual figures and annually as necessary thereafter.

YEAR	Gross Revenues	Annual Rent (base rent + percentage rent)	Base Rent	Percentage Rent	NPS Approved Offset Balance	NPS Approved Offset Balance -Year End (NPS Approved Offset Balance minus Percentage Rent)	Annual Rent Balance
1: 2021	\$ 1,000,000.00	\$ 120,000.00	\$ 70,000.00	\$ 50,000.00	\$ 160,000.00	\$ 110,000.00	\$ 70,000.00
2: 2022	\$ 1,030,000.00	\$ 122,900.00	\$ 71,400.00	\$ 51,500.00	\$ 110,000.00	\$ 58,500.00	\$ 71,400.00
3: 2023	\$ 1,060,900.00	\$ 125,873.00	\$ 72,828.00	\$ 53,045.00	\$ 58,500.00	\$ 5,455.00	\$ 72,828.00
4: 2024	\$ 1,092,727.00	\$ 128,920.91	\$ 74,284.56	\$ 54,636.35	\$ 5,455.00	\$ -	\$ 123,465.91
5: 2025	\$ 1,125,508.81	\$ 132,045.69	\$ 75,770.25	\$ 56,275.44	\$ -	\$ -	\$ 132,045.69
<b>ASSUMPTIONS</b>							
Revenue Growth of 3% per year							
CPI increase of 2% per year (CPI used for annual base rent adjustment)							
Initial improvement in the amount of \$160,000 completed in the first year							
Minimum Percentage Rent equals 5% for purposes of this example							

**EXHIBIT I: CERTIFICATE OF COMPLETION OR SIMILAR NOTICE**

RESERVED

## **EXHIBIT J: SALE AND CONSUMPTION OF ALCOHOL**

- 1) Lessee will be required to monitor and manage areas on or adjacent to the Premises at which Alcohol is sold and consumed.
- 2) The Lessee is required to submit an alcohol management plan within 60 days prior to the commencement of the operating season, but not less than annually. The alcohol management plan should address the following considerations locations, hours, plan to prevent patrons from taking alcohol off premises, procedures to deal with intoxicated patrons, procedures to prevent minors from consuming alcohol, methods of identifying patrons of the Premises such as wrist bands or stamps.
- 3) Terms and conditions identified in Paragraph 5.2 Annual Rent
- 4) The Lessee must comply with applicable State laws and local ordinances controlling alcoholic beverages. The Lessee must investigate such laws, ordinances and regulations as may apply to alcoholic beverage sales conducted pursuant to this Lease and obtain such licenses and permits, and pay all applicable taxes and fees. Lessee is required to obtain the necessary authorizations and approvals from the City or State of New York or local governing bodies prior to conducting any alcohol sales.
- 5) Both the Lessor and local authorities may enforce such laws and ordinances.
- 6) The Lessee may not conduct any promotional activities that center on alcoholic beverages (i.e., happy hours, two-for-one sales, alcoholic product promotions, etc. Lessee will be required to monitor the area where alcohol is sold to ensure and enforce same.
- 7) Lessee must post signs stating “NO ALCOHOL BEYOND THIS POINT” at locations identified by NPS. Signs must meet NPS sign standards.
- 8) Lessees will be required to provide a method of surveillance that can be reviewed by Law Enforcement.
- 9) Lessees will be required to pay costs related to management and additional rent for failing to monitor and manage sale and consumption of alcohol as required herein.
- 10) In any case, Lessor reserves the right to withdraw permissions allowing sale and consumption of alcohol on the Premises under the Terms of the Lease notwithstanding any other condition to the contrary, in the event Lessor has determined the Lessee has failed to properly manage the sale and consumption of alcohol under the terms of the Lease.