UNITED STATES

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

# LEASE

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HISTORIC BOAT SHOP

at

GOLDEN GATE NATIONAL RECREATION AREA

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DATED _____, 2018

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# LEASE
(Historic Boat Shop)

THIS LEASE (Historic Boat Shop) ("**Lease**") is made and entered into and effective as of _____, 20__ ("**Effective Date**"), by and between the United States Department of the Interior, acting through the National Park Service, an agency of the United States of America, acting through the Regional Director, hereinafter, together with his or her successor or successors in office and his, her, or their duly appointed representatives (collectively, "**Landlord**" or sometimes "**NPS**") and _____, a _____ ("**Tenant**").

## RECITALS

This Lease is entered into upon the following facts, understandings and intentions of Landlord and Tenant, sometimes collectively referred to herein as the "**Parties**," and individually as a "**Party**":

A. Golden Gate National Recreation Area ("**GGNRA**") is administered by the Secretary of the Department of the Interior through the National Park Service pursuant to 54 U.S.C. Section 100101 et seq., and the Act Establishing the Golden Gate National Recreation Area in the State of California, 16 U.S.C. Section 460bb et seq, Public Law 92-589, 86 Stat. 1229 (1972).

B. Congress designated GGNRA as a unit of the national park system.

C. On June 9, 2000 NPS issued the Record of Decision (defined below) for the FEIS (defined below) for the Fort Baker Plan (defined below) pursuant to the National Environmental Policy Act, 42 U.S.C. Sections 4321-4370d ("**NEPA**").

D. On August 1, 2002, Fort Baker (defined below) was transferred from the jurisdiction of the United States Department of the Army ("**Army**") to the United States Department of the Interior for inclusion in GGNRA.

E. Fort Baker includes an Historic District listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, 16 U.S.C. Sections 470 et seq. ("**NHPA**").

F. 16 U.S.C. 460bb-3 note, Consolidated Appropriations Resolution, 2003, Pub. Law No. 108-7, Div F, Title I, Section 114,117 Stat. 11, 239 (2003); Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law No. 109-54, Title I, Section 131, 119 Stat. 499, 525 (2005) collectively authorize the Secretary of the Department of the Interior to negotiate and enter into agreements and leases with any person, firm, association, organization, corporation, or governmental entity for all or part of the property within Fort Baker.

G. 54 U.S.C. § 102102 and 35 Code of Federal Regulations ("**CFR**") Part 18 authorize the Secretary of the Department of the Interior to negotiate and enter into leases, under certain circumstances, for the use of buildings and associated property administered as part of the National Park System.

H. The Fort Baker Historic Boat Shop has been determined suitable for leasing under 36 CFR Part 18.

I. Based on Tenant's response to the RFP (defined below), Landlord entered into a Lease Disposition and Development Agreement (defined below) to negotiate the terms of this Lease. It is because of the qualifications and identity of the Tenant and its development team comprised of _____ (the "**Development Team**"), and satisfaction of the terms and conditions of the Lease Disposition and Development Agreement for the Rehabilitation (as defined below), development and operation of the project that Landlord is entering into this Lease with Tenant. The Development Team may be changed with the prior written consent of Landlord.

J. Landlord has determined that the use and occupancy of Fort Baker for the use contemplated in this Lease is consistent with the purposes established by law for GGNRA, the General Management Plan (defined below), the Fort Baker Plan (defined below), the FEIS (defined below), and the purposes of the Golden Gate National Recreation Area Authorization Act, and is compatible with the public interest.

K. Landlord has determined that this Lease will not result in degradation of the purposes and values of GGNRA, will not deprive GGNRA of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of GGNRA, and the Lease will insure the preservation of historic property located within GGNRA.

L. Tenant desires to lease a portion of Fort Baker (the "**Premises**," as defined below) for the purposes of renovating, Rehabilitating, constructing, developing, managing and operating the Premises as a waterfront center with community meeting and program space and supporting food and beverage service in accordance with all Applicable Laws and Requirements (as defined below) and all applicable covenants, conditions, restrictions, and limitations.

M. Landlord has retained certain space (referred to herein as the "**Retained Space**," as defined in Section 1.100 below). **[TBD WHETHER APPLICABLE]**

N. Landlord has agreed to enter into this Lease with Tenant and to lease the Premises to Tenant subject to the terms and conditions of this Lease, (1) in reliance on Tenant's representations that (a) it, together with the Development Team, shall secure leasehold financing to, and shall, perform the renovation, Rehabilitation, development, management and operation of the Historic Boat Shop (as defined below) to facilitate its use as a waterfront center with community meeting and program space and supporting food and beverage service, and (b) Tenant shall manage and operate the same in accordance with all Applicable Laws and

Requirements and all applicable covenants, conditions, restrictions and limitations; and (2) in further reliance upon Tenant's unique ability, skills and expertise so to renovate, Rehabilitate, develop, manage and operate the Premises.

O. Tenant has agreed to operate the Premises in accordance with the following principles to the extent it is reasonably feasible (both economically and programmatically) in a national park setting: **[TBD]**.

P. To facilitate the development, operation, financing and the Preservation, Restoration, and Rehabilitation of the Historic Boat Shop, Landlord and Tenant have agreed to a capital improvement plan and related milestones for the Initial Improvements (as defined below) which are set forth herein.

Q. Landlord has agreed to lease the Premises to Tenant on the terms, agreements, covenants, conditions and provisions set forth in this Lease for the purposes provided in this Lease.

R. This Lease is entered into under the authority of, and subject to, 16 U.S.C. 1a-2(k) and 36 CFR Part 18.

NOW THEREFORE, in consideration of the foregoing, the rents to be paid under this Lease and all of the terms, agreements, covenants, conditions and provisions contained in this Lease, the Parties hereby agree as follows (each provision of the foregoing Recitals is an integral part of this Lease and is incorporated as a part of this Lease as though fully set forth below):

1. DEFINITIONS

As used in this Lease, the following terms shall have the following meanings applicable, as appropriate, to both the singular and plural forms of the defined terms:

1.1 "**Additional Rent**" is as defined in Section 5.1 of this Lease.

1.2 "**Adjusted Gross Revenues**" means shall mean Gross Revenues less contributions by Tenant (pre-approved in writing by Landlord) to nonprofit cooperators for preservation, maintenance, restoration, improvement, or repair and related expenses furthering the programs and mission of NPS at Fort Baker.

1.3 "**Affected Property**" is as defined in Section 22.4 of this Lease.

1.4 "**Affiliate(s)**" means, all entities or persons controlled by or under common control, through one or more entities, with Tenant.

1.5 "**Agency**" means any federal, state, or local agency, department, commission, board, bureau, office or other governmental authority having jurisdiction.

1.6 "**Agents**" means directors, officers, partners, members, employees, contractors, consultants, or agents of a Party.

1.7 "**Alterations**" means any improvements and/or alterations (including demolition) of or to the Premises or any portion thereof made by or on behalf of Tenant, any Affiliate, or Occupants, other than the Initial Improvements. Alterations shall not include the construction of new buildings or structures.

1.8 "**Alterations Cost**" means the costs associated with the design and construction of the Alterations, including, without limitation, the cost of all labor, materials, and fixtures (but not Trade Fixtures) supplied by the contractor and subcontractors; taxes, permits, licenses, fees (including Design and Construction Monitoring Payments), charges and levies imposed by governmental authorities; fees paid to engineers, architects, interior designers, and space planners to prepare plans, specifications and drawings for the work; the reasonable cost of on-site inspection, administration and supervision of the design and construction process, financing, and insurance; and recording and filing fees required by the construction.

1.9 "**Annual Report**" means a report that is satisfactory to NPS, which may include but is not limited to (a) audited financial statements certified by a certified public accountant that is independent of Tenant and Affiliates, prepared on an annualized basis showing Gross Revenues and the Rent Roll for the preceding Lease Year for purposes of calculating Percentage Rent, in addition to accounting for all other payments made to Landlord, such as Base Rent, participation in refinancing proceeds, and accrued funds in the NPS Capital Improvement Fund; (b) a statement by Tenant that the use of the Premises by Tenant's Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term is consistent with this Lease, (c) a statement describing any material change in the status of Initial Improvements as of the end of such Lease Year, (d) analysis of the principal components and effectiveness of the Marketing Plan, including marketing materials and brochures; (e) statement and analysis of implementation and effectiveness of the TMP and TDM and all required mitigation measures in the FEIS; (f) report of fire safety, physical security, occupational health, and related matters; (g) statement of contractor diversity and workforce diversity, advancement, training, and educational opportunities, in addition to a report on training employees about issues pertaining to operating in the Park; (h) report on all Maintenance activities, including but not limited to Building Maintenance, the Preservation Plan, Preservation Maintenance, Alterations, and Improvements; (i) third-party certification of sustainable food programs **[TBD]**; (j) report on demonstration projects, public access, and community relations; (k) a statement describing material changes (including without limitation deposits and use during the reporting period and the balance at end of the reporting period) of the FF&E Reserve; and (l) a statement describing material changes (including without limitation deposits and use during the reporting period and the balance at end of the reporting period) of the NPS Capital Improvement Fund, together with projections over the subsequent three (3) Lease Year period, which identify all proposed Tenant use of the NPS Capital Improvement Fund pursuant to Section 5.6(b) below.

1.10 "**Applicable Laws and Requirements**" mean all present and future statutes, regulations, rules, guidelines, administrative and judicial determinations (that are applicable by their own terms to the Premises or the Tenant) ordinances, codes, orders, and the like, and all amendments thereto (collectively, "Laws"), of any Agency to the extent of its jurisdiction relating to or affecting this Lease, the design and construction of the Initial Improvements and/or Alterations and/or the management, use and operation of the Premises by Tenant, Affiliates, Agents, employees, guests, visitors, invitees, Occupants or other persons or entities, including, but not limited to:

a. Those Laws pertaining to GGNRA, including but not limited to 54 U.S.C. Section 100101 et seq., 16 U.S.C. Section 460bb et seq., and 36 CFR Chapter I;

b. Those Laws pertaining to reporting, licensing, permitting, investigation, remediation or abatement of emissions, discharges, or releases (or threatened emissions, discharges or releases) of Hazardous Materials in or into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials;

c. Those Laws pertaining to the protection of the environment and/or the health or safety of employees or the public, including without limitation the most current Food Code adopted by the U.S. Food and Drug Administration ("**FDA**");

d. Those Laws regarding alcohol sales, including without limitation, the State of California Alcoholic Beverage Control Act;

e. Those Laws pertaining to the protection or restoration of natural or cultural resources, including, without limitation the NHPA and the Secretary of the Interior's Standards, and that certain Memorandum of Agreement between the National Park Service and the California State Historic Preservation Office Regarding the Fort Baker Plan, Golden Gate National Recreation Area Submitted to the Advisory Council on Historic Preservation Pursuant to 36 CFR Part 800;

f. Those Laws pertaining to leasing, historic leasing, historic preservation tax certification, and the treatment of historic properties, including, but not limited to, 36 CFR Parts 18, 67, 68 and 800, and the Secretary of the Interior's Standards;

g. Those Laws pertaining to construction requirements listed in the GGNRA Project Handbook (defined below);

h. Those Laws pertaining to taxes, assessments, rates, charges, fees, municipal liens, levies, excises or imposts;

i. All licenses and permits issued by, and consistency and other determinations and approvals made by, governmental agencies pertaining to Fort Baker;

j. The General Management Plan, Record of Decision, FEIS, Fort Baker Plan, and the Army Transfer MOA (including any Hazardous Materials plan (such as the Petroleum Sites Management Plan (Section 6.3)) referenced therein);

k. All applicable mitigation measures (including the FEIS mitigation measures, potential mitigation measures from NHPA compliance, and if applicable, future NEPA review);

l. All plans required to be prepared by Tenant pursuant to Applicable Laws and Requirements or this Lease approved by Landlord, including, without limitation, the TDM and SWPPP;

m. All consistency determinations made by BCDC, which pertain to the Project;

n. Those Laws related to providing accessible facilities and services to the public;

o. Those Laws related to nondiscrimination, including nondiscrimination in employments; and

p. Those Laws related to distribution, possessions or use of controlled substances.

1.11 "**Approved Alterations Budget**" has the meaning given in Section 15.1(a)(ii) below.

1.12 "**Army**" is as defined in Recital D above and as defined in the Army Transfer MOA.

1.13 "**Army Retained Conditions**" shall have the meaning ascribed to it in the Army Transfer MOA, including, without limitation, as described in Sections 3 and 4.2.3 of the Army Transfer MOA.

1.14 "**Army Transfer MOA**" means that certain memorandum entitled, "Memorandum of Agreement between the United States Department of the Army and United States Department of the Interior the National Park Service Concerning the Interagency Transfer of Base Closure Property at East Fort Baker, Marin County, California," dated July 2002, attached hereto as **Exhibit K**, as amended, revised or superseded.

1.15 "**Assignment**" has the meaning given in Section 28.1(a)(i).

1.16 "**Assignment for Security**" has the meaning given in Section 28.1(a).

1.17 "**Associated Property**" means areas for underground utilities serving the Premises.

1.18 "**Base Rent**" is as defined in Section 5.2 of this Lease.

1.19 "**BCDC**" means the San Francisco Bay Conservation and Development Commission or its successor.

1.20 "**Building Maintenance**" means maintenance of the Premises, including but not limited to, the Fixtures and the Trade Fixtures, in such manner as to keep the Premises, including, but not limited to, the Fixtures and the Trade Fixtures, in good, safe, and sanitary order, condition, and repair (permitting reasonable wear and tear) in compliance with Applicable Laws and Requirements.

1.21 "**Certificate of Occupancy**" means a document issued by Landlord that confirms that Landlord's requirements for full occupancy and use of the Initial Improvements or Alterations, as applicable, have been completed.

1.22 "**CHAMP/IPM Plan**" is as defined in Section 11.2 of this Lease.

1.23 "**Commencement Date**" is as defined in Section 4.1 of this Lease.

1.24 "**Commercially Reasonable Insurance Rates**" means with respect to insurance coverage, that such coverage is commercially available from companies admitted or approved to do business in the state of California, with a financial rating of at least A-VIII, as rated by the A.M. Best Key Rating Guide, at rates and on terms such that it is/would be purchased by similarly situated owners or operators of similar properties that are historic properties listed on the National Register of Historic Places in the San Francisco Bay Area of California.

1.25 "**Construction Contracts**" is as defined in Section 13.1(g) of this Lease.

1.26 "**Construction Documents**" means schematic design and review documents, design development review drawings and construction documents and permit drawings as described in the GGNRA Project Handbook and any other documents upon which Tenant and its contractors shall rely in building the Initial Improvements or Alterations other than Minor Alterations, as applicable. The Construction Documents shall include, as applicable, (without limitation) final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications (also commonly known as "working drawings").

1.27 "**Controlling Interest**" means: (a) in the case of a corporate entity, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital (or, if applicable, the like applicable to a nonprofit corporation) of the Tenant, permitted assignee under Article 28 below, or Occupant so as to permit exercise of managerial authority over the actions and operations of the Tenant, permitted assignee, or Occupant, of a majority of the Board of

Directors of Tenant, permitted assignee or Occupant; and (b) in the instance of a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneurship, beneficial ownership of the capital assets of Tenant, permitted assignee or Occupant so as to permit exercise of managerial authority over the actions and operations of Tenant, permitted assignee or Occupant.

1.28 "**CPI**" means the Consumer Price Index – All Items for the San Francisco-Oakland-San Jose Area, All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor (Base Year 2015=100), or such successor index as may be established to provide a measure of the current purchasing power of the dollar in the San Francisco Bay area.

1.29 "**DAB**" means the NPS Development Advisory Board.

1.30 "**Development Team**" has the meaning given in Recital H above.

1.31 "**Environmental Damages**" means all claims, demands, damages, injuries, losses, penalties, fines, costs (including reasonable consultant fees and expert fees), liabilities, causes of action, judgments, expenses and the like, of any nature whatsoever and by whomever made, incurred at any time after Landlord leases and lets the Premises to Tenant that relate to the presence or release of any Hazardous Materials in, under or into the air, buildings, paved surfaces, sanitary sewers, stormwater drainage systems, surface water, groundwater, or land at, on, about, under or within the Premises and to the extent that they arise directly or indirectly from or in connection with the use of Premises by Tenant, Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term.

1.32 "**Event of Default**" is as defined in Section 31.1 of this Lease.

1.33 "**Excluded Contractor**" means any person or entity debarred, suspended, proposed for debarment or suspension, or declared ineligible by any agency or instrumentality of the United States or by the General Accounting Office or otherwise excluded from procurement or nonprocurement programs of the United States or any agency or instrumentality thereof, and (a) included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained by the United States General Services Administration, or successor compilation of similar information; or (b) which Landlord has advised Tenant within ten (10) days after request from Tenant would be an Excluded Contractor but which is not on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

1.34 "**Expiration Date**" is as defined in Section 4.1 of this Lease.

1.35 "**Fair Market Value Rent**" means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the property to be leased, under the terms and conditions of the Lease, should rent for its highest and best permitted use after reasonable

exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Landlord and the Tenant each acting prudently, knowledgeably, and for self interest, and assuming that neither is under undue duress. Fair Market Value Rent shall be confirmed for the Initial Improvements.

1.36 "**FF&E**" means all furniture, fixture and equipment place or installed by Tenant or its Occupants in, on or about the Premises, including, without limitation, all Fixtures, Trade Fixtures and Personal Property

1.37 "**Financing Plan**" is as defined in Section 15.1 of this Lease.

1.38 "**Fixtures**" means all fixtures, equipment, and machinery permanently attached to and forming a part of the Premises or the Retained Space, required or necessary for use and occupancy of the Premises or the Retained Space, as applicable, and including all parts of the operating systems of the Premises or the Retained Space, as applicable, such as heating, air conditioning, sprinkler, alarm, water, waste, and electrical, provided that the term "Fixtures" shall not include Trade Fixtures.

1.39 "**Force Majeure**" means reasons or causes reasonably beyond Tenant's control (excluding Tenant's financial inability), such as acts of nature or of public enemies, war, invasion, insurrection, rebellion, earthquake, riots, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather delays, or any similar cause.

1.40 "**Fort Baker**" means that certain area generally referred to as either East Fort Baker, or Fort Baker, in the Fort Baker Plan and other federal documentation and shown within the "Planning Area Boundary" depicted on **Exhibit A** attached hereto.

1.41 "**Fort Baker Plan**" means that certain Amendment to the 1980 Golden Gate National Recreation Area General Management Plan, dated September 1998, as amended.

1.42 "**General Management Plan**" means that certain 2014 Golden Gate National Recreation Area General Management Plan, as amended, revised, or superseded, and adopted by NPS.

1.43 "**GGNRA**" is as defined in Recital A above.

1.44 "**GGNRA Project Handbook**" means that certain Golden Gate Project Handbook, Park Partner Rehabilitation and New Construction Projects, as amended, revised, or superseded, and adopted by NPS. If a provision of the GGNRA Project Handbook conflicts with a provision of this Lease, the Lease provision shall control.

1.45 "**Gross Revenues**" means the entire amount of Lessee's revenues, income, and receipts (and the revenues of any Affiliate) derived from this Lease and Historic Boat Shop

operations, or any sublease of the Premises hereunder, such amount as determined in accordance with generally accepted accounting principles consistently applied. Gross revenues include, as applicable and without limitation, rental revenue, meeting room revenue, food revenue, beverage revenue, retail sales revenue, rent paid by Lessee's sub-tenants, sub-tenant payments in lieu of rent, sub-tenant reimbursements, and payments under a loss of rents insurance policy or provision. Also included in Gross Revenues are receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee. Gross Revenues shall not include, or if included there shall be deducted (but only to the extent the same have been included as Gross Revenues):

a. insurance proceeds (except any insurance proceeds received in reimbursement for lost revenues);

b. Net Refinancing Proceeds from refinancing events; and

c. Tenant's proceeds from a Transfer other than proceeds from subletting pursuant to Section 27.14 below.

1.46 "**Hazardous Materials**" means any material or other substance (including storage tanks and Preexisting Hazardous Materials):

a. The presence of which is governed by any Applicable Laws and Requirements as being hazardous or harmful to human health or the environment;

b. That is or becomes defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," "pollutant," "contaminant," "toxic contaminant" under any Applicable Laws and Requirements;

c. That is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or is or becomes regulated by any Agency under any Applicable Laws and Requirements;

d. The presence of which poses or threatens to pose a hazard to the environment or to the health or safety of persons

e. That contains, without limitation of the foregoing, gasoline, diesel fuel or other petroleum hydrocarbons or volatile organic compounds;

f. That contains, without limitation of the foregoing, polychlorinated biphenyls (PCBs), asbestos, asbestos-containing materials, lead-based paints, urea formaldehyde foam insulation; pesticides; or

g. That contains or consists of, without limitation of the foregoing, radon gas.

1.47 "**Historic Boat Shop**" means the complex of buildings referred to collectively, as the "Historic Boat Shop" comprised of approximately **[10,334]** gross square feet ("**gsf**") per the measurement standards established in the Fort Baker Plan and FEIS, including the main historic boat shop (Building 679 (8,250 gsf)), the related deck and boardwalk, the historic garage/workshop (Building 699 (1,200 gsf)), the historic storage shed (Building 665 (864 gsf)), **[and a storage shed (Building 664 (20 gsf**)), the guest dock, the marine railway (including substructures) and Associated Property (_____ acres)], as depicted on **Exhibit B** attached hereto. The term "Historic Boat Shop" shall mean the Premises (including the Associated Property).

1.48 "**Historic District**" means that portion of Fort Baker listed as an Historic District on the National Register of Historic Places pursuant to NHPA.

1.49 "**Historic Preservation Certification Requirements**" means those requirements set forth in 36 CFR Part 67.

1.50 "**Historical Valuation Coverage**" means the cost to repair or replace damaged components and/or materials of the Premises, using like materials and workmanship, giving consideration to duplicating the original texture, color, appearance and function, and as much as possible restoring the damaged property to the condition existing immediately prior to the loss consistent with the Historic Preservation Certification Requirements and the Secretary of the Interior's Standards.

1.51 "**Impositions**" are all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts, whether general or special, or ordinary or extraordinary, of every name, nature and kind whatsoever, if any, lawfully imposed by any Agency, or other authority or entity, that may be levied, assessed, charged or imposed or may be or become a lien or charge upon the Premises or any part thereof; or upon the rent or income of Tenant; or upon the use or occupancy of the Premises; or upon this transaction or any document creating or transferring an estate or interest of Tenant in the Premises; or upon any improvements or Fixtures; or upon the leasehold estate of Tenant; or upon Landlord by reason of its ownership of the fee underlying this Lease but excluding taxes on the revenue or income of Landlord from this Lease. Impositions also include, but are not limited to, the payment of any bonds or charges imposed or required by any Agency, or other authority or entity, by reason of the proposed or actual use, treatment, storage, discharge or disposal of Hazardous Materials on or from the Premises by Tenant, or any Occupant claiming through Tenant.

1.52 "**Improvements**" mean the Historic Boat Shop, together with all Fixtures, improvements and appurtenances of every kind and description now located or hereafter erected, newly constructed, or placed upon the Premises, including the seawall, bulkheads, retaining walls, guest dock, marine railway (including substructures), Initial Improvements, and any and all Alterations, renewals, and replacements thereof, additions thereto and substitutions therefor, including any basement and subgrade areas of the aforesaid Improvements, as any of the same may be reduced or diminished by any condemnation, excluding, however, Trade Fixtures and Tenant's Personal Property.

1.53 "**Initial Improvement Milestone**" means the date by which all conditions precedent for each phase of the Initial Improvements must be satisfied.

1.54 "**Initial Improvements**" means the improvements to be renovated, Rehabilitated, and developed pursuant to this Lease, including ancillary landscaping, parking, and other improvements as approved by NPS, as generally described in the design development documents and supplemental civil engineering drawings listed in the attached **Exhibit F** (Initial Improvements), as may be modified as reflected in the final Construction Documents for the Initial Improvements approved by Landlord pursuant to the Lease Disposition and Development Agreement and constructed in accordance with this Lease.

1.55 "**Inventory and Condition Report**" is a document that sets forth an inventory of certain equipment at the Commencement Date, at the completion of Initial Improvements, periodically during the Term to reflect changes, and at the Expiration Date with the latter inventory showing the condition of the equipment at that time for the purposes of Article 33 of this Lease. The Inventory and Condition Report prepared pursuant to the Lease Disposition and Development Agreement is attached hereto as **Exhibit D**.

1.56 "**Interest Rate**" means the percentage of interest charged based on the current value of funds to the United States Treasury as published periodically in the Treasury Financial Manual. If the Treasury Financial Manual is discontinued or revised during the term of this Lease, such other federal publication with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Treasury Financial Manual had not been discontinued.

1.57 "**Landlord's Agents**" means Landlord's employees, contractors, or agents.

1.58 "**Landlord's Share of Proceeds**" is as defined in Section 27.11 below.

1.59 "**Lead-Based Paint, Asbestos and Hazardous Materials Remediation Plan**" means collectively, the following specifications, drawings and plans prepared by _____; as approved by Landlord pursuant to the Lease Disposition and Development Agreement, as amended with Landlord's prior written consent.

1.60 "**Lease**" means this Lease, including all conditions, exhibits, modifications, amendments, and extensions thereof.

1.61 "**Lease Disposition and Development Agreement**" (sometimes referred to as the "**LDDA**") means that certain Lease Disposition and Development Agreement by and between Landlord and _____, a _____, dated as of _____, 2019, including all conditions, exhibits, modifications, amendments, and extensions thereof.

1.62 "**Lease Year**" means a calendar year as follows:

a. The first Lease Year shall commence upon the Rent Commencement Date and shall end on December 31 of that calendar year.

b. Each subsequent Lease Year shall be a full calendar year and shall commence on the January 1 following the expiration of the preceding Lease Year, and shall end on the December 31 thereafter, or on the last day of the Term, whichever occurs first.

1.63 "**Leasehold Mortgage**" is as defined in Section 28.1(b) of this Lease.

1.64 "**Leasehold Mortgagee**" is as defined in Section 28.1(c) of this Lease.

1.65 "**Leasehold Mortgagee Affiliate**" means an entity controlled by Leasehold Mortgagee.

1.66 "**Maintenance**" means all maintenance activities required to be performed by Tenant pursuant to this Lease, including Building Maintenance, and Preservation Maintenance.

1.67 "**Marketing Plan**" means that certain "_____," dated _____, 2019, approved by Landlord pursuant to the Lease Disposition and Development Agreement and attached hereto as **Exhibit E**, including all conditions, exhibits, modifications, amendments, and extensions thereof with Landlord's prior written consent.

1.68 "**Minor Alterations**" means each Alteration (or group of Alterations, if occurring substantially at the same time and as part of a single project) of or to the Premises by Tenant made after completion of Initial Improvements applicable to the area of the Alterations, the Alterations Cost of which, as approved by Landlord, does not exceed Five Thousand Dollars ($5,000) **[TBD]**, stated in 2019 dollars, adjusted at the beginning of each Lease Year based on increases in the CPI during the period between the Commencement Date and the beginning of each such Lease Year; provided that such Alterations are limited to interior decoration (exclusive of historic property elements), repainting, re-carpeting, and installation of Trade Fixtures and equipment and shall not include Preservation Maintenance or Alterations of historic property.

1.69 "**Net Refinancing Proceeds**" has the meaning given in Section 28.5 below.

1.70 "**NHPA**" means the National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et seq., and all regulations promulgated thereunder as such statute and regulations may be amended, and any successor act or regulations.

1.71 "**NPS**" means the National Park Service.

1.72 "**NPS Capital Improvement Fund**" means the reserve fund maintained in a segregated bank account by Tenant pursuant to Section 5.6(b) below.

1.73 "**Occupant**" shall mean any Subtenant, operator, licensee, franchisee, concessionaire, permittee, or other party entitled to use or occupy the Premises by Sublease, operating agreement, license, franchise agreement, concession agreement, permit, or other agreement, other than Tenant. The term "Occupant" shall not include guests, patrons, and invitees.

1.74 "**Park**" means the GGNRA.

1.75 "**Party**" means one of the two parties to this Lease and their respective successors and assigns.

1.76 "**Percentage Rent**" is as defined in Section 5.3(a) below.

1.77 "**Permitted Areas**" means those areas of Fort Baker subject to the special use permits to be issued pursuant to the Lease Disposition and Development Agreement, or this Lease, if applicable, for construction of those Initial Improvements that will be off-Premises improvements, and to any other areas of Fort Baker subject to a special use permit(s) issued by Landlord to Tenant. The Permitted Areas shall not be part of the Premises.

1.78 "**Personal Property**" means all furniture, equipment, appliances, apparatus, inventory, supplies, and all other property placed on the Premises by Tenant, or its Occupants, that neither are permanently attached to nor form a part of the Premises, whether leased or owned by Tenant, or its Occupants, including without limitation, (a) all FF&E exclusive of Fixtures, and (b) all of Tenant's right, title and interest in any of Tenant's intangible and tangible personal property now or hereafter used in connection with the use and operation of the Premises, including, without limitation, the right to use any trade name now used pursuant to the Marketing Plan, names, licenses, franchises, permits, guest lists, advertising materials and other similar property and rights relating to the use and operation of the Historic Boat Shop.

1.79 "**Plans, Programs, and Studies**" has the meaning given in Section 2.2(i) below.

1.80 "**Preexisting Hazardous Materials**" means Hazardous Materials that existed in, on, adjacent to, or under the Premises prior to the Commencement Date, whether such substances were within the definition of Hazardous Materials as used in this Lease as of the Commencement Date or subsequently become included within such definition. The term "Preexisting Hazardous Materials" shall include "Army Retained Conditions." Notwithstanding anything to the contrary in the foregoing, Preexisting Hazardous Materials shall not include asbestos, asbestos-containing materials, lead-based paints, or pesticides.

1.81 "**Premises**" means that certain real property, together with the Improvements (the Historic Boat Shop) thereon to be leased pursuant to the Lease as shown on **Exhibit B** attached to the Lease, as such Exhibit may be amended from time to time. As of the Effective Date, the Premises will not include the Retained Space **[TBD]**. The term "Premises" shall include Associated Property.

1.82 "**Preservation**" means the act or process of applying measures necessary to sustain the existing form, integrity and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

1.83 "**Preservation Maintenance**" means the act or process of applying preservation treatment to a site or structure. It includes housekeeping and routine and cyclic work scheduled to mitigate wear and deterioration without altering the appearance of the resource, repair or replacement-in-kind of broken or worn-out elements, parts, or surfaces so as to keep the existing appearance and function of the site or structure, and emergency stabilization work necessary to protect damaged historic fabric from additional damage.

1.84 "**Preservation Plan**" is a document that sets forth a plan, including a time schedule, for Preservation Maintenance of the Historic Boat Shop, including, without limitation, Tenant's ongoing compliance with the Historic Preservation Certification Requirements and Applicable Laws and Requirements.

1.85 "**Proposed Alterations Budget**" has the meaning given in Section 15.1(a)(ii) below.

1.86 "**Reconstruction**" means the act or process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

1.87 "**Record of Decision**" means that certain record of decision dated June 9, 2000 entitled, "United States Department of the Interior, National Park Service, Record of Decision, Fort Baker Plan Final Environmental Impact Statement, Fort Baker, Golden Gate National Recreation Area".

1.88 "**Rehabilitation**" means the act or process of making possible an efficient compatible use for a property through repair, alterations and additions while preserving those portions or features that convey its historical, cultural or architectural values. Rehabilitation may, at NPS' direction, include Preservation, Reconstruction, or Restoration.

1.89 "**Rehabilitation Handbook**" means that certain GGNRA Park Partner Rehabilitation Handbook as amended, revised, or superseded and adopted by NPS.

1.90 "**Rent**" is as defined in Section 5.1 of this Lease.

1.91 "**Rent Commencement Date**" is as defined in Section 5.2(a) of this Lease.

1.92 "**Rent Roll**" means a full and complete list of all Occupants of Tenant, and all contractors and subcontractors of Tenant and its Occupants providing services by or on the Premises, including restaurant or café food services, if any, and for each Occupant, contractor or subcontractor a full and complete description of the Sublease or other occupancy agreement terms, including but not limited to term, annual rent, Occupant improvements, escalation clauses, concessions, inducements, options to renew, amendments to Sublease or other occupancy agreement, and any other information regarding a Sublease or other occupancy agreement as Landlord may from time to time reasonably prescribe.

1.93 "**Respond**" means investigate, remove, removal, remedy, remediate, remediation, and monitor Hazardous Materials, all such terms (including the terms "removal" and "remedial action") include enforcement activities related thereto. "Remove" or "removal" means the cleanup or removal of released Hazardous Materials from the environment, such actions as may be necessary taken in the event of the threat of release of Hazardous Materials into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of Hazardous Materials, the disposal of removed material, or taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The terms "remedy" or "remediate or remediation" mean those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a Hazardous Material into the environment, to prevent or minimize the release of Hazardous Materials so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. Notwithstanding anything to the contrary in the foregoing, the term "Respond" as applied to the Army with respect to Army Retained Conditions shall have the meaning ascribed to it in the Army Transfer MOA.

1.94 "**Response**" means the same as Respond as defined above. Notwithstanding anything to the contrary in the foregoing, the term "Response" as applied to the Army with respect to Army Retained Conditions shall have the meaning ascribed to it in the Army Transfer MOA.

1.95 "**Response Action**" means all actions taken to Respond, including, without limitation, investigations, removals, remediation, maintenance, notification, and monitoring. Notwithstanding anything to the contrary in the foregoing, the term "Response Action" as applied to the Army with respect to Army Retained Conditions shall have the meaning ascribed to it in the Army Transfer MOA.

1.96 "**Response Costs**" means all costs incurred while undertaking a Response Action.

1.97 "**Restoration**" means the act or process of accurately depicting the form, features and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical and plumbing

systems and other code-required work to make properties functional is appropriate within a restoration project.

1.98 "**Retained Space**" means approximately _____ gross square feet of space within the Historic Boat Shop reserved for use as [_____] by Landlord or its assignees and shall not be leased to Tenant. **[TBD WHETHER APPLICABLE]**

1.99 "**RFP**" means that certain Historic Boat Shop Request for Proposals, issued by NPS on _____, 2018.

1.100 "**Secretary of the Interior's Standards**" means collectively (a) the standards for historic preservation codified in 36 CFR Part 68, as amended; (b) the Secretary of the Interior's Standards for the Treatment of Historic Properties (U.S. Department of the Interior, Heritage Preservation Services, Washington, D.C. 1996); and (c) the Secretary's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, Heritage Preservation Services, Washington, D.C. 1997); as any of the same may be amended by the United States Department of the Interior from time to time.

1.101 "**Selling Tenant**" is as defined in Section 27.11(a) below.

1.102 "**Sublease**" shall mean any occupancy of all or a portion of the Premises pursuant to an occupancy agreement the substance of which constitutes a sublease (or sub-sublease) of this Lease.

1.103 "**Substantial Completion**" means the work of constructing Initial Improvements or Alterations, as applicable, is substantially complete and the applicable constructed facility and/or improvement is operable as a usable facility and/or improvement.

1.104 "**Subtenant**" shall mean a subtenant pursuant to a Sublease.

1.105 "**Sustainability Program**" means that certain sustainability program, entitled "_____," dated _____, 2018, as amended, and attached hereto as **Exhibit G**.

1.106 "**SWPPP**" means that certain storm water pollution prevention plan, entitled "_____," prepared by _____, dated _____, 2019, as updated or amended.

1.107 "**TDM**" means that certain transportation demand management plan, entitled "_____," prepared by _____, dated _____, 2019, as amended.

1.108 "**Temporary Certificate of Occupancy**" means a Certificate of Occupancy issued by Landlord with conditions for final completion and allowing for partial occupation or partial use of the Initial Improvements or Alterations, as applicable.

1.109 "**Tenant**" means _____, and its successors and assigns approved by Landlord in accordance with this Lease.

1.110 "**Tenant Sign Policy**" means the Tenant Sign Policy, prepared by the Presidio Project Office, GGNRA, dated September 1997, as amended.

1.111 "**Term**" is as defined in Section 4.1 of this Lease.

1.112 "**Term of Construction**" is as defined in Section 4.1 of this Lease.

1.113 "**Termination Date**" means the Expiration Date or such earlier date as this Lease is terminated pursuant to any provision of this Lease.

1.114 "**Trade Fixtures**" means those items, or categories of items, whether owned by Tenant or leased by Tenant from parties other than Landlord, listed on **Exhibit H** of this Lease, and all of the following items installed by Tenant or its Occupants, to the extent they are affixed to the Improvements and constitute fixtures (or would constitute fixtures but for Tenant's rights to remove them pursuant to this Lease) and are readily removable: kitchen equipment, audio-visual equipment, office equipment, and communications equipment, and all other equipment reasonably agreed to by Landlord and Tenant at the time of its installation; but in any event excluding the mechanical (including heating, ventilating and air conditioning), elevator, fire detection, alarm and sprinkler, illumination, electrical, and plumbing fixtures and systems in the Improvements, and components thereof, all of which shall be deemed to be Fixtures.

1.115 "**Transfer**" means, subject to Section 1.15(a), (c) and (d) below, the direct or indirect, voluntary or by operation of law, sale, assignment, subletting, encumbering, pledge or other transfer or hypothecation of Tenant's, or any permitted assignee's (under Article 28 below) or Occupant's interest in or rights with respect to the Premises or Tenant's leasehold estate therein. Any sale or other transfer, including by consolidation, merger or reorganization, of a Controlling Interest in Tenant or any permitted assignee under Article 28 below or Occupant, if such entity is a corporation, or any sale or other transfer of a Controlling Interest in the partnership interests of such entity, 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, shall be deemed a Transfer. Notwithstanding the foregoing definition of "Transfer," a "Transfer":

a. shall not include any transaction in connection with the granting of an Assignment for Security or Leasehold Mortgage pursuant to Section 28.2 below;

b. shall include a foreclosure or giving of a deed in lieu of foreclosure pursuant to an Assignment for Security or Leasehold Mortgage;

c. shall not include a Transfer through foreclosure or giving of a deed in lieu of foreclosure pursuant to an Assignment for Security or Leasehold Mortgage that is to Leasehold Mortgagee or its Leasehold Mortgagee Affiliate, provided such Leasehold Mortgagee has been approved in writing by Landlord; and

d. shall not include a transfer of an interest in Tenant to its Affiliate if there is no change in Controlling Interest and if Tenant provides written notice to Landlord of all such transfers.

1.116 "**Transfer of Entire Interest**" is as defined in Section 27.11 below.

## 2. LEASE OF THE PREMISES

### 2.1 Lease of the Premises

In accordance with the powers granted by Congress, Landlord hereby leases the Premises to Tenant, and Tenant hereby hires from Landlord, upon and subject to the terms agreements, covenants, conditions and provisions of this Lease, the Premises, excepting and reserving unto Landlord:

a. The Retained Space. **[TBD]**

b. Nonexclusive easements in the Premises as appurtenant to the Retained Space (i) for ingress and egress, including nonexclusive easements, in, on, over, and across the Fort Baker parking areas and drive aisles, including, without limitation, access through traffic control systems installed by Tenant, for purposes of vehicular and pedestrian access to, and use of the Retained Space; and (ii) to use, operate, maintain, repair, reconstruct, replace, install, construct, and inspect utilities serving the Retained Space, such as lighting, alarm systems, electrical, and telecommunications, and facilities, and all necessary and proper lines, ducts, measuring devices, and other related apparatus and equipment in and through the Premises; together with the right, at all reasonable times to access the Premises for the same; by Landlord, its employees, cooperators, concessionaires, tenants, permittees, or other parties entitled to use or occupy the Retained Space.

c. Nonexclusive easements, in, on, over, and across Fort Baker parking areas, drive aisles, deck, boardwalk, trails **[TBD]**, and walkways for purposes of public pedestrian and bicycle use.

d. Nonexclusive easements, in, on, over, and across the Fort Baker parking areas and drive aisles, including, without limitation, access through traffic control systems installed by Tenant, for purposes of vehicular ingress and egress of (i) emergency and law

enforcement vehicles, (ii) maintenance vehicles, (iii) transit use, and (iv) utility inspection, installation, maintenance, repair, replacement, and meter reading by Landlord and utility providers.

e. The right, at all reasonable times (and for areas closed to the public, upon reasonable prior written notice to Tenant under the circumstances, given by the Superintendent of GGNRA or his or her designee, reciting the reasons for the entry at least thirty (30) days in advance where feasible (except in case of emergency or if an Agency or public or private utility has access pursuant to Applicable Laws and Requirements)), and subject to the rights of Tenant's invitees in the Premises and guests in the Premises, to enter and to permit any Agency, public or private utilities and other persons to enter upon the Premises as may be necessary as determined in Landlord's reasonable judgment for the purposes of (i) using, operating, maintaining, replacing, inspecting, and relocating any existing underground wells, water, natural gas, steam, storm, storm sewer and sanitary sewer lines, telephone and electric power lines, conduits and facilities, and flood control facilities; (ii) using, installing, operating, maintaining, renewing, replacing, inspecting, and relocating underground wells, water, natural gas, steam, storm, storm sewer and sanitary sewer lines, telephone and electric power lines, conduits and facilities, and flood control facilities required by Applicable Laws and Requirements or mandated by governmental entities; (iii) using, installing, operating, maintaining, renewing, replacing, inspecting, and relocating wells and other equipment as reasonably required for environmental monitoring or Response purposes; or (iv) investigating or testing as is reasonably necessary in the opinion of Landlord and to Respond or undertake Response Actions in connection with Preexisting Hazardous Materials. Landlord shall use reasonable efforts to permit no such entry to materially interfere with the use or stability of any building or improvement on the Premises. Tenant shall comply with the GGNRA Project Handbook to provide emergency access to Landlord to any secured areas within the Premises. Tenant hereby waives any claims for damages for any injury or inconvenience to or interference with Tenant's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by Landlord's exercise of its rights under this Section 2.1(e), except to the extent caused by the negligence or willful misconduct of Landlord or Landlord's failure to substantially comply with this Section 2.1(e) and such failure is material.

f. The right at all times (and for areas within buildings or closed to the public, upon reasonable prior written notice to Tenant under the circumstances, given by the Superintendent of GGNRA or his or her designee) to enter upon the Premises at any reasonable time for the purpose of inspection and inventory and when otherwise deemed necessary for the protection of interests of Landlord, and Tenant shall have no claim of any character on account thereof against Landlord or any officer, agent, or employee thereof, except to the extent of any damage caused by the negligent or willful misconduct of the foregoing persons. Landlord shall have the right to make, without prior notice thereof, annual inspections for compliance with public health and safety standards. Landlord may make follow-up inspections to ensure compliance therewith. Landlord retains the right to close or otherwise secure the Premises, or close or secure access thereto, when immediate danger to life or property is discovered on such

inspections or follow-up inspections. To the extent feasible, Landlord will provide reasonable notice of such closure. Tenant hereby waives any claims for damages for any injury or inconvenience to or interference with Tenant's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by Landlord's exercise of its rights under this Section 2.1(f), except to the extent caused by the negligence or willful misconduct of Landlord.

g. Pursuant to Section 4.2.7 of the Army Transfer MOA, the right of the Army to enter upon the Premises for the purposes set forth in the Army Transfer MOA, including, without limitation, Response Actions undertaken by the Army with respect to Army Retained Conditions.

h. The right to enter upon the Premises at any reasonable time (and for areas closed to the public, upon not less than twenty-four (24) hours prior written notice), for the purpose of "touring" the facility with Landlord's guests for the purposes of showing and explaining the Historic Boat Shop. Landlord and Tenant shall cooperate to develop a mutually acceptable protocol for such tours.

i. The right to grant and transfer any and all utilities and/or utility services provided by Landlord to the Premises to utility service provider(s).

j. The right to install, operate, and maintain or cause to be installed, operated, and maintained, signs on the exterior of the Premises, including signs pertaining to the Retained Space, subject to Tenant's right to install signs pursuant to the Tenant Sign Policy.

k. The right from time to time, in Landlord's reasonable judgment, to relocate, expand, change, or modify road systems serving the Premises and to monitor and regulate use of such road systems; provided, however, any change to the road systems which would materially affect Tenant's operations of the Historic Boat Shop shall not be made without Tenant's prior written approval. Landlord shall make reasonable efforts to coordinate any proposed work or changes with Tenant prior to initiating changes or modifications.

2.2 Retained Space **[TBD]**

a. Landlord hereby grants to Tenant for the benefit of the Premises, subject to the other terms and conditions of this Lease, a nonexclusive easement appurtenant to the Premises for reasonable access through the Retained Space, for use by the Tenant, its employees, contractors, consultants, and agents, for the purposes of the use, operation, maintenance, repair, reconstruction, replacement, installation, construction, and inspection of utilities serving the Premises, such as heating, air conditioning, water, waste, electrical, and telecommunications, and facilities, and all necessary and proper lines, ducts, valves, fittings, pumps, measuring and protective devices, and other apparatus and equipment in and through the Retained Space; provided that (i) Tenant's access rights granted hereunder shall be limited to all reasonable times and for purposes other than mere inspection, upon reasonable prior notice under the

circumstances, given at least thirty (30) days in advance where feasible (except in the case of emergency), (ii) shall be for a reasonably minimum period of time, and (iii) Tenant's use shall not unreasonably interfere with the use of the Retained Space or reduce or unreasonably impair the usefulness or function of the Retained Space or utilities serving the Retained Space.

b. Landlord shall be obligated for the maintenance of the Retained Space, except that Tenant shall provide janitorial services for the Retained Space at no cost to Landlord.

c. Following completion of the Initial Improvements with respect to the Retained Space, Landlord shall operate, maintain, repair, reconstruct, and replace any and all utilities serving solely the Retained Space.

2.3 This Lease is subject to all Applicable Laws and Requirements, and all liens, encumbrances, restrictions, rights and conditions of law or of record or otherwise actually known to Tenant or reasonably ascertainable by inspection or survey, including the Permitted Exceptions attached hereto as **Exhibit O**.

2.4 The privileges granted herein are further expressly subject to all existing and future easements, licenses, and rights-of-way, including, without limitation, easements and rights-of-way granted by Landlord to Pacific Gas and Electric ("**PG&E**") and AT&T, and any other utility subsequent to the Commencement Date, which may be reflected on an amended **Exhibit O** attached hereto by mutual written consent of the Parties. Right-of-Way Permit No. RW-GOGA-BMO-06-002 was executed on June 28, 2006 by the U.S. Department of the Interior, National Park Service, Golden Gate National Recreation Area and PG&E for the ownership, operation and maintenance of a 12 kv primary electrical distribution system serving Fort Baker and the Premises.

2.5 Nothing contained in this Lease shall give or be deemed to give Tenant an independent right to grant easements or other rights-of-way over, under, on, or through the Premises.

## 3. ACCEPTANCE OF THE PREMISES

### 3.1 As Is Condition of the Premises

a. Tenant hereby expressly accepts the Premises and all improvements thereon in their existing "as is" condition and acknowledges that in entering into this Lease, Tenant does not rely on, and Landlord does not make, any express or implied representations or warranties as to any matters including, without limitation, the suitability of the soil or subsoil; any characteristics of the Premises or improvements thereon; the suitability of the Premises for the intended use; the likelihood of deriving trade from or other characteristics of the Park; the economic or programmatic feasibility of Tenant's use and occupancy of the Premises; title to the Premises; Hazardous Materials (including Preexisting Hazardous Materials) on or in the vicinity of the Premises; variations of weather, tides, and other conditions as a result of the Premises'

direct location on San Francisco Bay, which may also be affected by climate change and sea level rise during the Lease Term; or any other matter. Tenant has satisfied itself as to such suitability and other pertinent matters by Tenant's own inquiries and tests into all matters relevant in determining whether to enter into this Lease.

b. Tenant shall be responsible for all Design and Construction Documents, Initial Improvements, Alterations, FF&E, and Maintenance during the Term as necessary for complete operational functionality of the Premises during the Term, including but not limited to maintenance, repair, or replacement of bulkheads, retaining walls, decks, piers and related substructure, utilities, and site and landscape improvements that may be affected by weather, wave action, and sea level rise. Tenant understands and expressly agrees that Landlord's approval of Construction Documents and Landlord's provision of the Certificate of Occupancy or Temporary Certificate of Occupancy or any Landlord approval of Tenant's completion of Initial Improvements, Alterations, Building Maintenance, or Preservation Maintenance does not make nor imply any representation or warranty by Landlord that the Premises complies with all Applicable Laws and Requirements.

c. Tenant acknowledges that it has received copies, or copies have been made available to Tenant, of the environmental reports and studies listed on **Exhibit I** attached hereto.

4. TERM

4.1 The term of this Lease ("**Term**") shall be for a period of _____ (__) years, commencing on the date first above written ("**Commencement Date**") and expiring on the last day of _____, 20__ ("**Expiration Date**") or on such earlier date as this Lease may be terminated as hereinafter provided. The "Term of Construction" shall mean the period commencing on the Commencement Date and terminating on the Rent Commencement Date.

5. RENT AND RESERVES

5.1 Rent

a. In addition to all other amounts and charges due under this Lease, Tenant shall and hereby agrees to pay to Landlord each Lease Year as set forth herein, in lawful money of the United States of America, without deduction or offset except as specifically set forth in this Lease, an absolute net rental ("Rent"). As used in this Lease, the term "Rent" shall include Base Rent, Percentage Rent, Additional Rent, the NPS Capital Improvement Fund and/or any and all other charges and other amounts whatsoever payable by Tenant pursuant to this Lease. The term "**Additional Rent**" shall include, utility charges payable by Tenant to Landlord, and all payments, charges and other amounts whatsoever due and payable by Tenant to Landlord under this Lease after the Commencement Date.

5.2 Base Rent

a. In addition to all other amounts and charges due under this Lease, Tenant shall and hereby agrees to pay to Landlord beginning with the first day following issuance of the Certificate of Occupancy or Temporary Certificate of Occupancy for the Initial Phase of the Initial Improvements (the "**Rent Commencement Date**") and annually on the first day of the Lease Year thereafter, as part of the Rent, a base rent ("**Base Rent**") in the amount of _____ Dollars ($_____) per year for Lease Years _____.

b. Except as set forth in Section 5.2(a) above, Base Rent shall be payable in four (4) equal quarterly installments during each Lease Year, in advance, on the first day of each calendar quarter, without offset or deduction, commencing on the Rent Commencement Date. Should any Lease Year contain fewer than three hundred sixty-five (365) days then the Base Rent for said Lease Year shall be computed on a daily basis at an amount equal to one/three-hundred-sixty-fifths (1/365) of the Base Rent, and paid quarterly in advance, with any fractional calendar quarter paid at the beginning of the succeeding full calendar quarter.

5.3 Percentage Rent **[TBD]**

a. In addition to all other amounts and charges due under this Lease, Tenant shall pay to Landlord as part of the total Rent a percentage rent ("**Percentage Rent**") for the Premises for each Lease Year. Percentage Rent for each Lease Year shall be equal to _____.

b. Although the Percentage Rent due shall be reconciled by calculation on a yearly basis, the Percentage Rent shall be payable in four (4) quarterly installments on a projected basis during each Lease Year, in arrears, due on the twentieth (20th) day of April, July, October, and January, without offset or deduction, with the first payment due on the tenth (10th) day of the first applicable quarter following the Rent Commencement Date.

c. Within thirty (30) days after the end of each calendar quarter, Tenant shall furnish to Landlord a statement of Gross Revenues and Adjusted Gross Revenues for each month of that calendar quarter. Each quarterly statement shall be signed and certified to be correct by Tenant or its authorized representative.

d. At the end of each Lease Year, Tenant shall furnish to Landlord, in accordance with Section 7.2 of this Lease, the Annual Report, which report shall contain a certified report of Gross Revenues and Adjusted Gross Revenues for such Lease Year. Subject to the Freedom of Information Act, Landlord shall make available to the general public all or substantially all of the information contained in the Annual Report. Promptly after Tenant's submission of such Annual Report, the Parties shall make any adjustment necessitated by any deficiencies or overpayment in the quarterly payments (including quarterly payments of Participation Rent (if any)). If Tenant has not paid Landlord a sufficient Percentage Rent and/or Participation Rent for the Lease Year, then Tenant shall pay any deficiency(ies) at the time of submittal of the Annual Report. If Tenant's payments for the preceding Lease Year exceed the amount actually due to Landlord, the amount of the overpayment shall be credited to the next

installment(s) of Percentage Rent or Participation Rent, as applicable, or other amounts next due under this Lease.

5.4 All payments of Rent shall be in lawful money of the United States and payable by check without setoff, prior notice, deduction or demand, to Landlord at:

National Park Service
U.S. Department of the Interior
Golden Gate National Recreation Area
Building 201 Fort Mason
San Francisco, CA 94123
Attn: Superintendent

or at such other place or places as Landlord may designate in writing from time to time. At Landlord's option, after reasonable prior notice to Tenant, payments of Rent shall be payable by wire transfer or other electronic means to such account as Landlord may from time to time designate.

5.5 Late Charges

Tenant recognizes that late payment of any Base Rent, Percentage Rent, Additional Rent or other Rent due hereunder will result in administrative expenses to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if any Rent is not paid within five (5) days after it is due, the amount of such unpaid Rent shall be increased by a late charge to be paid to Landlord by Tenant, as Additional Rent, in an amount equal to five percent (5%) of the amount of the delinquent Rent. In addition, any outstanding Rent, late charges and other outstanding amounts shall accrue interest at the Interest Rate, or if there is a limitation upon the rate of interest which may legally be charged in the circumstances, the maximum legal rate of interest, until paid to Landlord. Tenant agrees that such amount is a reasonable estimate of the loss and expense to be suffered by Landlord as a result of such late payment by Tenant and may be charged by Landlord to defray such loss and expense. The provisions of this Section 5.5 shall not relieve Tenant of the obligation to pay Rent on or before the date it is due, or affect Landlord's remedies pursuant to Article 32 if any Rent is unpaid after it is due. In the event of nonpayment of interest or late charges on overdue Rent, Landlord shall have, in addition to all other rights and remedies, the rights and remedies provided in this Lease and by Applicable Laws and Requirements for nonpayment of rent.

5.6 Contributions to Reserves

a. FF&E Reserve

i. Tenant shall establish and maintain a segregated bank account established and maintained for the benefit of the Premises solely for the purpose of holding

reserves to be used for the replacement, substitution, repair, and restoration of FF&E located within the Premises (the "**FF&E Reserve**"). The FF&E Reserve may be used by Tenant at Tenant's sole discretion.

ii. Commencing on the Rent Commencement Date, Tenant shall make deposits into the FF&E Reserve in accordance with the following schedule: _____ **[TBD]**.

During Lease Years __ through __ (but not thereafter), at Tenant's written request to Landlord, the Parties shall meet and confer in good faith to determine if any temporary adjustment may be necessary to the foregoing FF&E Reserve deposit requirements as a result of temporary and unforeseen Historic Boat Shop Adjusted Gross Revenue decline caused by Force Majeure.

iii. Upon expiration or termination of this Lease, or the entry into any reinstated lease pursuant to Section 28.11 below, the funds in the FF&E Reserve shall be the property of Tenant.

b. Other Reserves

i. Tenant shall establish and maintain a segregated bank account established and maintained for the benefit of the Premises solely for the purpose of holding reserves to be used for the replacement, repair and restoration of buildings, landscape, site improvements, and infrastructure within the Premises (the "**NPS Capital Improvement Fund**"). Tenant, subject to Landlord's prior written approval and in accordance with Landlord established criteria, may use the NPS Capital Improvement Fund for the replacement, repair and restoration of buildings, landscape, site improvements, and infrastructure within the Premises, including without limitation, emergency repairs; roof and boiler replacement; exterior painting, electrical, plumbing, and mechanical systems replacement and repairs; tree and plantings replacement; road improvements; guest dock, boardwalk and deck improvements; site and drainage improvements.

ii. Commencing on the Rent Commencement Date, Tenant shall make deposits into the NPS Capital Improvement Fund in accordance with the following schedule:

| | |
|---|---|
| Lease Year 1: | at least 0.0% **[TBD]** of Adjusted Gross Revenues |
| Lease Year 2: | at least 0.5% **[TBD]** of Adjusted Gross Revenues |
| Lease Year 3: | at least 1.0% **[TBD]** of Adjusted Gross Revenues |
| Lease Year 4: | at least 1.75% **[TBD]** of Adjusted Gross Revenues |
| Thereafter: | at least 2.0% **[TBD]** of Adjusted Gross Revenues |

At Tenant's written request to Landlord, the Parties shall meet and confer in good faith to determine if any temporary adjustment may be necessary to the foregoing NPS Capital Improvement Fund deposit requirements as a result of temporary and unforeseen Historic Boat Shop Adjusted Gross Revenue decline caused by Force Majeure.

iii. Upon the expiration or termination of this Lease the funds in the NPS Capital Improvement Fund shall be the property of Landlord and shall be transferred promptly to Landlord; provided, however, if Landlord and any Leasehold Mortgagee enter into any reinstated lease pursuant to Section 28.11 below, then the funds in the NPS Capital Improvement Fund shall be available for the Leasehold Mortgagee's use as tenant under the reinstated lease during the term of such lease. Upon the expiration or termination of the reinstated lease the funds in the NPS Capital Improvement Fund shall be the property of Landlord.

c. Tenant shall deliver to Landlord within forty-five (45) days after the end of each Lease Year a statement setting forth the amount of funds held at the end of such Lease Year in each of the FF&E Reserve and the NPS Capital Improvement Fund and an accounting in reasonable detail of the flow of funds to and from such reserve accounts, and the use of the funds, during such quarter.

5.7 Tenant's obligations to make contributions to the NPS Capital Improvement Fund shall be deemed obligations on the part of Tenant to pay Rent.

5.8 Proceeds from Subletting, Assignments and Refinancing **[TBD]**

a. Proceeds from subletting shall be characterized in accordance with Section 27.14 below.

b. Landlord shall share in proceeds from certain Transfers pursuant to Section 27.11 below, which proceeds shall be part of Additional Rent.

c. Landlord shall share in proceeds from certain refinancing events pursuant to Section 28.5 below, which proceeds shall be part of Additional Rent.

## 6. IMPOSITIONS

6.1 Tenant's Obligation for Impositions

a. In addition to Rent and all other amounts and charges due under this Lease, Tenant covenants and agrees to bear, discharge and pay to the relevant Agency, in lawful money of the United States, without offset or deduction, as the same become due, before delinquency, all Impositions that may be assessed, levied, confirmed, imposed or become a lien upon the Premises or any part thereof that become payable from and after the Commencement Date until the later of (i) last day of the Term hereof, or (ii) the last day Tenant has possession of the Premises.

b. In addition, it shall be Tenant's sole responsibility to apply for and prosecute any exemption from any Impositions that may be imposed from and after the

Commencement Date, which Tenant shall pay if necessary and which shall be at no expense to Landlord. However, Landlord agrees to cooperate with Tenant's reasonable requests to assist in any such application for exemption.

c. If pursuant to a change in Applicable Laws and Requirements, a transient occupancy tax and/or an ad valorem property tax is/are assessed by a local jurisdiction on the Historic Boat Shop and if such local jurisdiction provides services previously provided by Landlord, which are covered by the Rent, then, at Tenant's written request to Landlord, the Parties shall meet and confer in good faith to assess the economic impact of such assessment(s) on the economic terms of this Lease, if any.

6.2 Tenant shall obtain and deliver to Landlord receipts or duplicate receipts or other satisfactory evidence of payment for all Impositions required to be paid by Tenant, promptly upon payment thereof in the case of any Impositions for which a failure to pay may result in a lien upon the Premises, and, in all other cases, upon request of Landlord.

## 7. AUDIT AND RECORDS

### 7.1 Books and Records

a. Tenant shall keep, or cause to be kept, true, accurate and complete records and double-entry books, consistently applied, from which Landlord at all times can determine the nature and amounts of Gross Revenues and Adjusted Gross Revenues by item, and the Rent Roll. Without limitation of the foregoing, such records shall show all transactions relative to the conduct and production of Gross Revenues, Adjusted Gross Revenues, and the Rent Roll and such transactions shall be supported by documents of original entry. Tenant shall include in any license or concession agreement or any other agreement with anyone occupying the Premises or any part thereof under Tenant whose gross receipts constitute a basis for the payment of rental or fees to Tenant a provision giving Landlord the same right of examination and audit of such licensees' and concessionaires' books and records as provided in this Article 7.

b. Tenant shall keep and make available to Landlord at all reasonable times, upon ten (10) days advance notice and during normal business hours, said books of account and records at a location on the Premises or within the limits of the City and County of San Francisco, California, or at the Premises, for a period of five (5) years after the Lease Year to which they relate and thereafter in the event of litigation concerning the same until such litigation terminates in final judgment. Any such inspection shall be scheduled as soon as possible upon the request of Landlord during normal business hours at a mutually acceptable time and shall be undertaken so as to minimize, to the extent reasonably possible, any interference with the conduct of Tenant's business.

c. If at any time during the Term, said books, records and accounts prove inadequate to record Gross Revenues, Adjusted Gross Revenues, and the Rent Roll or provide other information in the detail required under this Lease, Tenant shall, upon the request of

Landlord, procure and maintain such books, records and accounts as shall be of a character and form adequate for said purpose.

7.2 Tenant shall, at Tenant's sole cost and expense, prepare or cause to be prepared and furnished to Landlord an Annual Report within ninety (90) days of the end of each Lease Year.

7.3 Landlord's Audit

a. Upon prior notice and during normal business hours, Tenant shall provide Landlord access to those records relating to the Premises and Tenant's use and occupancy of the Premises under this Lease that are necessary for the purpose of conducting an audit of such records to verify the calculation and payment of Rent for any of the three (3) preceding Lease Years.

b. If Landlord determines as a result of such audit that there has been a deficiency in the payment of any Rent for any Lease Year, then such deficiency shall become immediately due and payable and shall bear interest at the Interest Rate from the date the payment should have been made until paid. If such audit determines that there has been an overpayment of any rentals, such overpayment shall be credited against the next rents and charges due to Landlord under this Lease.

c. If Tenant disputes the findings of the audit conducted by Landlord or if the amount of deficiency is estimated by Landlord to be greater than three percent (3%) of the amount due, then, at the request of the Landlord, upon not less than ten (10) days prior written notice and during normal business hours, Tenant shall provide Landlord access to those records relating to the Premises and Tenant's use and occupancy of the Premises under this Lease that are necessary for the purpose of conducting an audit of such records by an independent certified public accountant to verify the calculation and payment of Rent for any of the three (3) preceding Lease Years. The accountant shall consult with both parties during the audit process.

d. Should Landlord conduct an audit by an independent certified public accountant for the purposes of Section 7.3(c) above then Tenant shall reimburse Landlord in full for Landlord's reasonable out of pocket payments for the audit by the independent certified public accountant if such audit determines that Tenant owes additional sums to Landlord and the amount of such deficiency is greater than three percent (3%) of the amount due.

7.4 Access to Records

The Secretary of the Department of Interior and Comptroller General of the United States, or any of their duly authorized representatives, shall, upon not less than ten (10) days prior written notice, at any time up until the expiration of five (5) calendar years after the expiration of this Lease, have access to and the right to examine any of the Tenant's pertinent books, documents, papers, and records, and such documents of any entity or person related to

this Lease that are necessary to perform an audit and to verify Tenant's compliance with the terms and conditions of this Lease.

## 8. NET LEASE; NO COUNTERCLAIM OR ABATEMENT

8.1 All amounts and charges due to Landlord under this Lease shall be absolutely net to Landlord and shall be paid without assertion of any counterclaim, offset, deduction or defense and without abatement, suspension, deferment or reduction. Under no circumstances or conditions, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall Landlord be expected or required to make any payment of any kind whatsoever with respect to the Premises or be under any obligation or liability except as expressly set forth in this Lease.

8.2 Except as otherwise expressly provided in this Lease, this Lease shall continue in full force and effect, and the obligations of Tenant under this Lease shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any part thereof or any improvements thereon; (b) any restriction or prevention of or interference with any use of the Premises or the improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Landlord, Tenant or any constituent partner of Tenant or any Occupant or assignee or any action taken with respect to this Lease by a trustee or receiver, or by any court, in any proceeding; (d) any claim that Tenant or any other person has or might have against Landlord; (e) any failure on the part of Landlord to perform or comply with any of the terms, agreements, covenants, conditions and provisions in this Lease or of any other agreement with Tenant or any other person; (f) any failure on the part of any Occupant, Transferee, or other person to perform or comply with any of the terms of any Sublease or other agreement between Tenant and any such person; or (g) any termination of any Sublease, other occupancy agreement or other agreement, whether voluntary or by operation of law. Notwithstanding the foregoing, Tenant, by agreeing to the foregoing provision of this Section 8.2, does not waive its rights under Applicable Laws and Requirements to a claim for constructive eviction.

8.3 The obligations of Tenant under this Lease shall be separate and independent covenants and agreements except as otherwise expressly stated in this Lease. Tenant hereby waives, to the full extent permitted by Applicable Laws and Requirements, all rights now or hereafter conferred by such Applicable Laws and Requirements, to quit, terminate or surrender this Lease or the Premises or any part thereof, or to any abatement, suspension, deferment, diminution in or reduction of any monetary payments payable to Landlord under this Lease.

## 9. LANDLORD NOT OBLIGATED TO PAY TENANT EXPENSES

9.1 Landlord is not obligated by the terms of this Lease and does not agree to pay any expense or debt related to the obligations undertaken by or the operations conducted by the Tenant under the terms of this Lease. No provision of this Lease is intended to create such an obligation or agreement.

10. USE OF THE PREMISES; FORT BAKER PLAN

10.1 During the Term, Tenant shall use the Premises for the development and operation of the Historic Boat Shop as a waterfront center with community meeting and program space and supporting food and beverage service. **[TBD]**

10.2 Tenant shall implement all applicable mitigation measures and comply with all applicable provisions of the FEIS, including, but not limited to, implementing and complying with the TDM and TMP.

10.3 Tenant may amend or change the authorized uses for the Premises subject to the prior written approval of Landlord which approval or disapproval shall be given or withheld in Landlord's sole and absolute discretion.

10.4 The Parties hereby acknowledge and agree that Tenant's covenant that the Premises shall be used as set forth in this Section 10 is material consideration for Landlord's agreement to enter into this Lease.

10.5 Operation of the Premises

a. The Historic Boat Shop shall be operated by Tenant under the sole identifying name listed in **Exhibit J** attached hereto and shall have an identifying graphic logotype to be approved in writing by Landlord prior to use. Any change in the identifying name and or approved logotype of the Historic Boat Shop by Tenant shall be subject to the prior written approval of Landlord. Tenant represents that the identifying name provided on **Exhibit J** attached hereto will be part of Tenant's brand in terms of cooperative marketing and advertising, sales and reservations, group benefits, procurement, and systems and operations support.

b. After the Commencement Date, subject to the prior written approval of Landlord, Tenant may at its own expense, install necessary and appropriate identification and directional signs on the exterior of the Premises, consistent with the requirements of the GGNRA Project Handbook and the Tenant Sign Policy provided to Tenant by Landlord. Tenant shall cooperate with Landlord to develop a protocol and standard design, subject to the written approval of Landlord and consistent with the Tenant Sign Policy and any Landlord special event guidelines for Fort Baker, for any and all temporary (removable and demountable) identification and directional signs associated with meetings, conferences, and events managed by the Tenant.

c. Tenant shall implement the Marketing Plan to promote the identity and name recognition of the Historic Boat Shop, and advertise the Historic Boat Shop.

d. The Parties acknowledge and agree that the unique attributes and mission of the Historic Boat Shop make it particularly attractive to nonprofit and international non-governmental organization users and long-term NPS programmatic goals for use as a location for community and low-cost meetings and events. Tenant shall promote the use of the Historic Boat

Shop for nonprofit/government events, meetings, workshops, seminars and conferences even if such promotion reduces overall Gross Revenues (due to reduced rates) and Percentage Rent; provided, however, Tenant shall not be required to achieve any specified percentage mix of user category of the Historic Boat Shop.

e. The Parties acknowledge and agree that the San Francisco Bay Area has long enjoyed international acclaim and an identity as a destination for a vibrant environmentally sustainable food and dining culture. Landlord shares these regional values and strives to integrate them into park operations, including food and beverage service provided throughout the park. In an effort to ensure food and dining at Fort Baker reflect this sense of place, Tenant shall cooperate with Landlord to incorporate these values in its operation of the Historic Boat Shop, including but not limited to those concepts expressed in Tenant's RFP response as well as obtaining annual third-party certification of a sustainable food program. **[TBD]**

10.6 Retained Space **[TBD]**

a. Initially, Landlord anticipates using the Retained Space to _____ **[TBD]**.

10.7 Continuous Operation

a. Tenant covenants that Tenant shall continuously and uninterruptedly operate the Premises during the Term as set forth in this Section 10.7; provided however, that Tenant's obligations to operate the Premises under this Section 10.7 shall be suspended for construction of Initial Improvements or Alterations undertaken by Tenant pursuant to this Lease or Response Actions undertaken by Tenant, Landlord or the Army, and during periods of (i) modification of Subleased or other space for Occupant use or (ii) repair and reconstruction after damage or destruction to the Premises (or any part thereof) pursuant to Article 24 of this Lease; provided, however, all of the foregoing suspensions shall be limited to the portion of the Premises actually affected thereby and for such time as is reasonably required for such Initial Improvements (which shall be through issuance of Temporary Certificate(s) of Occupancy or Certificate(s) of Occupancy, as applicable), Alterations or Response Actions, and modification of Subleased or other space for Occupant use or repair and reconstruction after damage or destruction, and provided that Tenant complies with all other obligations under this Lease.

b. Further, Tenant's obligation of continuous operation under this Section 10.7 shall also be suspended to the extent reasonably necessary when such continuous operation is otherwise prevented by Force Majeure. The foregoing is limited to such time as reasonably required to resolve issues reasonably beyond Tenant's control and is conditioned upon Tenant's compliance with all other obligations under this Lease, including without limitation, payment of Rent and any other costs and expenses to Landlord.

10.8 Intentionally Omitted.

10.9 Tenant shall coordinate all Historic Boat Shop security systems and programs with Landlord. Tenant shall be responsible for all parking enforcement within the Premises, including without limitation, towing; provided, however, Landlord reserves the right, but not the obligation, to enforce illegal parking in spaces designated in accordance with the Americans with Disabilities Act, 42 U.S.C. Sections 12111 et seq., and obstruction of roadways (fire lanes) within the Premises.

10.10 Prohibited Uses.

a. Without limitation of the foregoing, or any other provision of this Lease, in no event shall the Premises be used for any purpose that is in violation of any Applicable Laws and Requirements; that may be dangerous to life, limb, property or public health; that in any manner causes, creates, 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 persons in the physical environment; or that results in any discharge of Hazardous Materials on the Premises in violation of Article 22 of this Lease, including but not limited to the disposing or discharging of such substances into, on or under the Premises.

b. Tenant shall not, without the prior written consent of Landlord which may be withheld in its sole and absolute discretion: (a) use or permit the use of the Premises for any unauthorized sales of any items, including but not limited to outlet, second-hand, distress, fire, bankruptcy, liquidation, relocation, closing, or "going out of business" sales; (b) construct, permit to construct, or attach any equipment or furnishings to the exterior of the Premises, or any telecommunications and data communications equipment, including but not limited to satellite dishes and cellular or digital communications towers and antennae; (c) use or permit the use of the Premises for commercial filming and photography, or any event not typically and directly associated with operation of the Premises, but excluding customary commercial filming and photography of conferences, meetings, and associated events at the Premises.

c. Tenant shall not, without the prior written consent of Landlord, which consent may be withheld in its sole and absolute discretion, sell items which in Landlord's judgment would compete with certain GGNRA-related merchandise or merchandise with GGNRA or Landlord's logos that may be exclusively provided or sold by Landlord or Landlord's nonprofit cooperating association, Golden Gate National Parks Conservancy.

10.11 Tenant's activities on the Premises shall be subject to the general supervision and inspection of Landlord and to such rules and regulations regarding ingress, egress, safety, sanitation and security as may be prescribed by Landlord from time to time. Moreover, Tenant shall maintain the Premises in good condition throughout the Term of this Lease.

10.12 Use of those portions of Fort Baker in the vicinity of the Historic Boat Shop, which are not within the Premises or leased by Landlord to other tenants or assigned by Landlord to cooperators, and in particular, all landscape areas and parking immediately adjacent to the

Premises shall be subject to NPS special event guidelines attached hereto as **Exhibit N**, as amended, revised, or superseded, and adopted by Landlord. Landlord shall meet and confer with Tenant regarding such amendments or revisions. In permitting such special events, Landlord shall take into consideration the operating requirements unique to the adjacent Historic Boat Shop, including, without limitation, the effect of noise and nighttime lighting.

10.13 Landlord shall notify Tenant of any significant changes to the Fort Baker Plan.

11. MAINTENANCE; PRESERVATION MAINTENANCE

11.1 Tenant shall, with due diligence, at its own cost and expense and without any cost or expense to Landlord promptly and continuously perform all Maintenance; provided that the performance of Preservation Maintenance is subject to the Preservation Plan approved in writing by Landlord pursuant to Section 11.6 below. Maintenance shall include the maintenance of security and life safety systems as required by Applicable Laws and Requirements.

11.2 Tenant acknowledges that Fort Baker is an area with sensitive natural habitat. Tenant shall use best efforts to: (a) minimize water run-off and pesticide and fertilizer application; and (b) maximize the use of alternatives to pesticides and herbicides. Tenant shall develop a Chemical Applications Management Plan ("**CHAMP**"), which also incorporates Integrated Pest Management ("**IPM**") (jointly, "**CHAMP/IPM Plan**"), so that the environmental impacts of the operation and maintenance of the Premises are minimized. The CHAMP/IPM Plan must be approved in writing by Landlord prior to any and all Tenant activities involving the storage, use, or application of chemical fertilizers, pesticides, herbicides, or other similar substances to the Premises and shall be considered hereunder as part of Maintenance. Tenant shall comply with the CHAMP/IPM Plan approved in writing by Landlord.

11.3 Tenant shall not: (a) allow any nuisances or safety hazards to exist or be maintained in, on, over, or around the Premises; or (b) commit or permit waste upon the Premises.

11.4 Landlord shall not be obligated to perform any Maintenance of any kind whatsoever of or to the Premises and Tenant hereby expressly waives any right under any Applicable Laws and Requirements that would otherwise permit Tenant to perform Maintenance or construct Alterations at Landlord's expense.

11.5 During the Term, Tenant shall schedule and perform Maintenance, and construct Alterations reasonably expected to be necessary to the Premises so as to avoid deterioration, keep the Premises in good order, condition and repair, and to comply with all Applicable Laws and Requirements.

11.6 No later than one hundred twenty (120) days after the issuance of the final Certificate of Occupancy or the Temporary Certificate of Occupancy for each phase of the Initial Improvements, Tenant shall submit to Landlord for approval a preliminary Preservation Plan for

the Premises. Landlord shall review the preliminary Preservation Plan and approve or disapprove it within thirty (30) days of receipt. If Landlord does not approve the preliminary Preservation Plan, then Landlord shall notify Tenant in writing of the reasons for disapproval. Tenant shall promptly revise the preliminary Preservation Plan to eliminate such objections made by Landlord and thereafter submit to Landlord a revised Preservation Plan within fifteen (15) days of the notification of disapproval. Landlord shall promptly approve or disapprove the revised Preservation Plan. The process shall repeat until Landlord approves the final Preservation Plan, which Preservation Plan shall, upon request by Landlord, be periodically amended during the Term. Tenant shall update the Preservation Plan annually, which updates will be subject to Landlord's approval procedures set forth in this Section 11.6.

12. UTILITIES

12.1 Landlord shall provide natural gas, potable water, irrigation or non-potable water (if available) and sanitary sewer to Fort Baker; PG&E shall provide electricity from a new 12 kv electrical distribution system; and AT&T shall provide telecommunications; provided that Tenant shall have the option to use another telecommunications provider which provides, or can provide, telecommunications services through AT&T's (or its successor's) infrastructure. Tenant will be charged for Landlord-provided utilities in accordance with NPS Director's Order 35B. During the Term, Landlord shall continue to provide natural gas, potable water, irrigation or non-potable water (if available) and sanitary sewer services or shall arrange to have such services provided by third parties in accordance with Section 12.10 below. Landlord shall use best efforts to minimize disruption during a transition to a third party service provider.

12.2 Tenant shall enter into its own contractual arrangements with PG&E regarding the provision of electricity to the Premises, both during construction of the Initial Improvements and for all necessary service points which are not provided by Landlord.

12.3 Landlord shall cooperate with Tenant, on a reasonable basis, to make arrangements for utility services which are not provided directly by Landlord.

12.4 The location of any and all future utilities shall be subject to Landlord's prior written approval.

12.5 Tenant shall operate, maintain, repair, reconstruct, and replace any and all utilities serving the Historic Boat Shop from the point of distribution of such utilities on the Premises from the utilities shown as "NPS Owned Utility Line" on **Exhibit C** attached hereto. **[TBD]**

12.6 Commencing on the Commencement Date, Tenant shall pay for all utility services furnished to, or used at, the Premises, including: natural gas, electricity, water and sanitary sewer. Tenant shall pay for all other utilities furnished to, or used at the Premises, including without limitation, cable, telephone and other communication services, garbage, and any Impositions thereon. Landlord shall cooperate with Tenant to facilitate direct billing by utility providers to Tenant for the Premises.

12.7 With respect to utilities to be paid by Tenant pursuant to Section 12.6 above, Landlord is required to recover all actual and administrative costs relating to Tenant's utility services. The service providers and Landlord's billing practices described below may be amended from time to time. As of the Commencement Date, the GGNRA Budget and Finance Office submits utility bills to Park tenants on a quarterly basis utilizing rates established by the GGNRA Business Office.

12.8 If Tenant has a reasonable dispute regarding utility bills pertaining to utilities provided by Landlord, the Parties shall meet and confer in good faith to resolve the dispute. If within thirty (30) days, Landlord and Tenant cannot reach an agreement regarding the dispute, Tenant shall pay the disputed amount, however, within the next thirty (30) days the Parties shall continue to meet and confer in good faith to resolve the dispute. If Landlord determines as a result of meetings there has been a deficiency in the payment of any utilities, then such deficiency shall become immediately due and payable and shall bear interest as permitted by Applicable Laws and Requirements from the date the payment should have been made until paid. If Landlord determines that there has been an overpayment of any utilities, such overpayment shall be credited against the next applicable utility charges due to Landlord under this Lease.

12.9 Tenant shall make all necessary arrangements for telecommunications services for the Historic Boat Shop, Landlord shall cooperate with Tenant on a reasonable basis and as necessary to make arrangement for telecommunications services. Any such service provider shall be subject to Landlord's approval. Landlord shall use best efforts to cooperate with Tenant to determine potential locations for installation of satellite dishes (either on the Premises or off-site) which shall be used by Tenant to provide necessary service to the Historic Boat Shop. Landlord shall provide Tenant an opportunity to comment, consistent with the requirements of the Telecommunications Act of 1994 and the Park's wireless facility guidelines, on any locations of communications towers, satellite dishes, etc. proposed for Fort Baker.

12.10 Landlord reserves the right to substitute utility providers serving Fort Baker, including service providers which may include federal agencies.

12.11 Landlord reserves the right to contract with a third party to operate and maintain any utility systems operated and maintained by Landlord at Fort Baker.

12.12 Tenant, at its sole cost and expense, shall implement energy conservation and sustainability measures to reduce utility consumption as reasonably required by, or if proposed by Tenant, acceptable to, Landlord. Such measures may include installation of water low flow devices, stormwater inflow, infiltration and runoff reduction, and use, if available, of reclaimed water for irrigation and shall not be detrimental to the maintenance of historic or cultural resources. All such energy conservation sustainability measures shall be subject to Landlord's review and approval prior to installation and implementation.

## 13. IMPROVEMENTS OR ALTERATIONS CONDITIONS PRECEDENT

13.1 Initial Improvements Conditions Precedent

Except for those Initial Improvements which were approved pursuant to the Lease Disposition and Development Agreement, Tenant shall not undertake any construction of any other Initial Improvements, or other installation of any equipment, Fixtures, Trade Fixtures or other facilities on the Premises (including temporary equipment or facilities) necessary for other Initial Improvements, without the prior written approval of Landlord, which approval for construction of the Improvements shall be pursuant to this Section 13.1.

a. Design; Construction Documents; Building Permit.

i. Tenant shall design the Initial Improvements in accordance with Applicable Laws and Requirements and sound professional design practice for renovation and Rehabilitation of a historic property listed on, or eligible for inclusion on, the National Register of Historic Places, and in accordance with the requirements of this Lease.

ii. In accordance with the Scope of Development for the Initial Improvements, and the Schedule of Performance, Tenant shall complete and submit to Landlord each of the submittals referred to in the applicable Scope of Development and any additional materials specified in the Scope of Development, and shall apply to Landlord for a building permit for construction of the Initial Improvements. Landlord shall review and approve each submittal in accordance with the GGNRA Project Handbook. If Landlord notifies Tenant in writing of its disapproval, then Tenant shall promptly revise such drawings or plans and its application for a building permit to eliminate such inconsistency. Only upon approval by Landlord of the Construction Documents shall this condition precedent be deemed met.

13.2 Alterations Conditions Precedent

a. Except for Initial Improvements, which were approved pursuant to the Lease Disposition and Development Agreement, Tenant shall not undertake any construction of any Alterations (other than Minor Alterations) or the installation of any equipment, Fixtures, Trade Fixtures or other facilities on the Premises (including temporary equipment or facilities) necessary for Alterations (other than Minor Alterations) without the prior written approval of Landlord, which may include approval by the DAB, if required.

b. As part of the process of obtaining approval in accordance with this Section 13.2, Tenant, at Tenant's sole cost and expense, shall submit to Landlord (i) design and construction documents for approval by Landlord, (ii) a proposal for plan and construction review to meet the objectives of Section 14.2 below, (iii) evidence of availability of financing for such construction required pursuant to Article 15 of this Lease, (iv) evidence of insurance required pursuant to Article 23 of this Lease, and (v) other relevant data as may be reasonably required by Landlord.

c. All proposed changes or modifications to the approved Alterations (other than Minor Alterations) must be approved by Landlord in writing. Moreover, the Parties recognize that any Alterations of historic property may only be approved if the Landlord determines that the Alterations comply with the Secretary of the Interior's Standards, and further recognize that any improvements which are affixed to federal property, including without limitation, Fixtures (other than Trade Fixtures), made by or through the Tenant shall be the property of Landlord.

14. DESIGN OF ALTERATIONS

14.1 Tenant shall design Alterations in accordance with Applicable Laws and Requirements and sound professional design practice, and in accordance with the requirements of this Lease.

14.2 Construction Documents

a. All Construction Documents for Alterations shall be subject to the prior written approval of Landlord which approval shall not be unreasonably withheld or delayed.

b. All Construction Documents for Alterations shall be prepared in accordance with standards and submittal requirements set forth in NPS Director's Order No. 10A, Design and Construction Drawings, effective date April 15, 2003, as amended, and the GGNRA Project Handbook.

c. In the preparation of Construction Documents, Tenant shall review utility plans for the location of existing utilities that may be damaged by Tenant's construction on the Premises and shall prevent such damage during the construction process and shall promptly repair any damage that does occur. All existing "as-built" utility plans in Landlord's possession will be furnished by Landlord showing the locations of all Landlord utilities in the relevant areas. Tenant shall obtain all other necessary utility plans from the appropriate public utility companies.

14.3 Tenant shall pay Landlord for all costs for construction and compliance monitoring by Landlord during the term of this Lease, and design and environmental compliance review of all Alterations (other than Minor Alterations) by Landlord during the term of this Lease, consistent the GGNRA Tenant Handbook. Landlord may at its discretion issue a supplemental special use permit(s) to Tenant during the term of this Lease for the assessment and payment by Tenant of these Landlord costs in its review, approval, and monitoring of Alterations.

14.4 Tenant shall, upon request, furnish Landlord with a true and correct copy of Tenant's contracts with any architect, engineer, design consultant, and any general contractor engaged in connection with this Lease for design and construction of any Alterations (other than Minor Alterations) as applicable.

15. SUBMISSION OF EVIDENCE OF FINANCING FOR ALTERATIONS

15.1 Financing Plan

a. As required by Section 13.1 above and prior to undertaking Alterations (other than Minor Alterations), Tenant shall submit in writing a proposed Financing Plan (as defined below) to Landlord for construction of the Alterations, as applicable, and any necessary Fixtures, Trade Fixtures, and Personal Property. "Financing Plan" means Tenant's written plan for financing such Alterations, as applicable, as updated pursuant to Section 15.1(c) below, which Financing Plan may include the use of FF&E Reserves, and/or, with Landlord's approval, provided that if the sole source of funds for such Alterations will be the NPS Capital Improvement Fund, then Section 5.6(b) above shall govern and the provisions of this Section 15.1 shall not apply, however, if the NPS Capital Improvement Fund will not be the sole source of funds for such Alterations, then this Section 15.1 shall govern. The Financing Plan shall include the following:

i. A five-year cash flow projection of the Historic Boat Shop operations (or such lesser period of time as appropriate and commensurate with the scope of the Alterations, as applicable, as determined by Landlord) showing reasonably detailed estimates of anticipated income and expenses.

ii. A reasonably detailed estimate of the Alterations Cost for the Alterations (collectively, the "**Proposed Alterations Budget**"). Proposed Alterations Budget shall initially be based upon the scope of work of the proposed Initial Improvements or Alterations, as applicable. Pursuant to Section 15.1(c) below, after preparation of the Construction Documents, Tenant shall update the Proposed Alterations Budget to reflect any changes between approval of the scope of work and preparation of the Construction Documents. Landlord shall review the Proposed Alterations Budget to determine whether each of its work items is an appropriate Alterations Cost and whether each of the components of the Alterations Cost are reasonable and necessary for the construction of the Alterations, as applicable. Upon such determination by Landlord, Landlord shall provide Tenant its written approval of the Proposed Alterations Budget (the "**Approved Alterations Budget**"). If the Proposed Alterations Budget is not approved by Landlord, then Landlord shall notify Tenant in writing of the reasons for disapproval. Tenant shall thereafter submit to Landlord a revised Proposed Alterations Budget within fifteen (15) days of the notification of disapproval. Landlord shall promptly approve or disapprove in writing the revised Proposed Alterations Budget. Provided Tenant timely provides all required documentation for Landlord's review, Tenant may request in writing a shorter review period by Landlord if the Proposed Alterations Budget is contingent upon contractors' bids which contractors will only hold open for a period less than thirty (30) days. Only upon Landlord's approval in writing of an Approved Alterations Budget shall this condition precedent be deemed met.

iii. If applicable, a description of any joint ventures, limited liability companies, or partnerships that Tenant proposes to enter into in order to provide funds for

developing the Alterations, including copies of the proposed joint venture, operating agreements, or partnership agreements and other formation documents.

iv. A reasonably detailed description of the type and source of funding and appropriate supporting documents in form reasonably satisfactory to Landlord showing all sources and uses of funds, and sufficient to demonstrate that Tenant has, or will have, adequate funds to complete the Alterations in accordance with the Approved Alterations Budget and that such funds have been spent as described in the Approved Alterations Budget or are committed and available for that purpose. The description of the type and source of funds, shall be certified by Tenant to be true and correct, and shall include but not be limited to:

A. debt, such as construction, permanent, bond and other financing;

B. equity;

C. government appropriations, philanthropy and grants; and

D. any other source of funding (including, but not limited to the FF&E Reserve and the NPS Capital Improvement Fund).

v. To the extent of any debt financing, a copy of a bona fide commitment or commitments, with no conditions to funding other than standard and customary conditions and no provisions requiring acts of Tenant prohibited herein or prohibiting acts of Tenant required herein, for the financing of that portion of the Approved Alterations Budget intended to be borrowed by Tenant, certified by Tenant to be a true and correct copy or copies thereof. The commitment or commitments, if required by any construction lender, must include commitments for permanent financing. Tenant covenants to perform any and all conditions to funding in accordance with the commitments.

vi. A financial statement(s) certified by officers of Tenant or other evidence in form satisfactory to Landlord demonstrating that Tenant has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between the dollar amount of the Approved Alterations Budget and the amount available to Tenant from external sources.

b. Upon receipt by Landlord of the Approved Alterations Budget and proposed Financing Plan, Landlord shall review the proposed Financing Plan and approve or disapprove it in writing within thirty (30) days of receipt of complete documentation therefor. Landlord's review of the proposed Financing Plan shall consist of determining if the Financing Plan: (i) provides sufficient funds to complete the Alterations in accordance with the Approved Alterations Budget; (ii) is appropriately documented in accordance with Section 15.1(a) above; (iii) is consistent with this Lease; and (iv) is feasible. If the proposed Financing Plan is not approved by Landlord, then Landlord shall notify Tenant in writing of the reasons for

disapproval. Tenant shall thereafter submit to Landlord a revised proposed Financing Plan within thirty (30) days of the notification of disapproval. Landlord shall promptly approve or disapprove in writing the revised proposed Financing Plan. Provided Tenant timely provides all required documentation for Landlord's review, Tenant may request in writing a shorter review period by Landlord if the Financing Plan is contingent upon contactors' bids which the contractors will only hold open for a period less than thirty (30) days. Only upon Landlord's approval in writing of a Financing Plan shall this condition precedent be deemed met.

c. If applicable, Tenant shall update the approved Financing Plan to reflect any changes in the Approved Alterations Budget between approval of the scope of work for the Alterations and preparation of the Construction Documents. Tenant shall submit (i) a proposed updated Financing Plan to Landlord to (A) reflect any such changes in the Approved Alterations Budget, and (B) include firm commitments for any financing formerly committed through preliminary commitments in accordance with the requirements set forth in Section 15.1(a)(v) above; and (ii) all applicable loan documents. Landlord shall review and approve or disapprove in writing the proposed updated Financing Plan (together with the proposed updated Approved Alterations Budget) within thirty (30) days of receipt of complete documentation therefor using the same criteria applicable to review of the Approved Alterations Budget under Section 15.1(a)(ii) above and the Financing Plan under Section 15.1(b) above. If the proposed updated Approved Alterations Budget and the revised proposed updated Financing Plan are not approved by Landlord, then Landlord shall notify Tenant in writing of the reasons for disapproval. Tenant shall thereafter submit to Landlord a revised proposed updated Approved Alterations Budget and a revised proposed updated Financing Plan within fifteen (15) days of the notification of disapproval. Landlord shall promptly approve or disapprove in writing the revised proposed updated Approved Alterations Budget and the revised proposed updated Financing Plan and loan documents. Only upon Landlord's approval in writing of an updated Approved Alterations Budget and the updated Financing Plan and loan documents, shall this condition precedent be deemed met.

15.2 Prior to the commencement of construction of Alterations and after Landlord's approval of such construction as required by Section 13 of this Lease, Tenant shall submit to Landlord evidence reasonably satisfactory to Landlord that conditions to the release or expenditure of all necessary funds for the Alterations described in the applicable approved Financing Plan have been met or will be met as of commencement of construction, and that such funds will be available for commencing and completing the Alterations, as applicable.

a. To accomplish the financing of Alterations, the Parties may establish an escrow and, if established, shall execute and deliver to the escrow holder written instructions that are consistent with this Lease.

b. Tenant shall pay for any title insurance it requests or obtains. All other costs of escrow (including, without limitation, any escrow holder's fee, costs of title company document preparation, recording fees, and transfer tax) shall be borne by Tenant.

16. CONSTRUCTION OF INITIAL IMPROVEMENTS, ALTERATIONS

16.1 Initial Improvements

a. Tenant covenants and agrees to furnish and equip the Historic Boat Shop, with all FF&E of a quantity and quality and as necessary to operate the Historic Boat Shop. Tenant further agrees to take good care of such FF&E, to keep the same in good order and condition and promptly, at Tenant's own cost and expense, to make or cause to be made all necessary repairs, replacements and renewals thereof including any such as may be required as the result of any casualty.

b. It is a material part of the consideration to Landlord under this Lease that Tenant commence construction of Initial Improvements in accordance with this Section 16.1, that Tenant diligently prosecute to completion the construction of the Initial Improvements, and shall complete the construction in accordance with the schedule of performance attached hereto as **Exhibit P** (as extended for Force Majeure). As between Landlord and Tenant, the Tenant shall be solely responsible for the construction of the Initial Improvements, including all costs.

c. If granted permission to proceed pursuant to Section 13.1, Tenant shall commence the preservation, restoration, rehabilitation, and construction of the Initial Improvements no later than thirty (30) days after the Commencement Date.

d. Effective as of the Commencement Date, if necessary NPS shall issue a special use permit to Tenant and its employees, agents, consultants, and contractors, to enter the Permitted Areas to use for construction-related purposes or to construct any applicable portion of the Initial Improvements thereon in accordance with the Construction Documents and the terms and conditions of this Lease.

e. Tenant shall perform and complete, or cause the performance and completion of, of the Initial Improvements in accordance with Applicable Laws and Requirements, the Construction Documents, the GGNRA Project Handbook, and the terms and conditions of NPS and this Lease and all other applicable governmental determinations and approvals, including, without limitation, the Approved Alterations Budget.

f. Any proposed change in the Construction Documents shall require the prior written approval of Landlord and shall be timely submitted in writing by Tenant for Landlord's approval. Landlord shall approve or disapprove in writing a proposed change (including proposed changes to the Approved Alterations Budget) within fourteen (14) days after receipt by Landlord (or within seven (7) days after receipt by Landlord if at least seven (7) days prior to the receipt of the proposed change Landlord receives a written notice alerting Landlord that a material change will be proposed). If Landlord rejects the proposed change, then Landlord shall provide Tenant with the specific reasons therefor, and the approved Construction Documents shall continue to control. Landlord's approval of changes to the Approved Alterations Budget shall be given only if each of the proposed changes is reasonable and

necessary for the construction of the Initial Improvements and is an appropriate Construction Cost.

g. All preservation, restoration, rehabilitation, and construction of the Initial Improvements:

i. shall be performed by knowledgeable parties trained and experienced in the work to be done, and

ii. which so require, shall be performed by licensed contractors who meet applicable California licensing, bonding and certification requirements.

h. During construction of the Initial Improvements, Tenant shall use reasonable best efforts to maintain, or cause to be maintained, the safety, functioning and appearance of those areas of Fort Baker which are not subject to such construction, and to minimize the inconvenience of other persons using or occupying Fort Baker.

i. Tenant shall install utilities and sub-meters as specified in the Scope of Work and Construction Documents.

j. Until such time as Tenant is entitled to issuance of a Certificate of Occupancy, Tenant shall provide Landlord with periodic progress reports, as reasonably requested by Landlord, regarding the status of completion of the Initial Improvements.

16.2 Construction of Alterations

a. If granted permission to proceed pursuant to Articles 13, 14, and 15 of this Lease, Tenant hereby agrees and covenants to commence and prosecute diligently, at Tenant's sole cost and expense, the construction of Alterations (other than Minor Alterations) in accordance with the Construction Documents for the Alterations approved by Landlord, all in accordance with this Article 16.

b. Notwithstanding the foregoing, Tenant shall not be in default under this Section 16.2 in the event of an enforced delay in the performance of its obligations under this Section 16.2 due to Force Majeure provided that Tenant notifies Landlord in writing of the delay and of its reasonable estimate of the length of the delay. The purpose and intent of this provision is that, in the event of the occurrence of any such enforced delay, the time or times for performance of Tenant shall be extended for the period of the enforced delay, which period shall be determined by Landlord in the reasonable exercise of its discretion.

16.3 All design and construction of any Alterations shall be performed by knowledgeable parties trained and experienced in the work to be done and all construction of such Alterations which so require shall be performed by licensed contractors who meet applicable California licensing, bonding and certification requirements.

16.4 Initial Improvements and Alterations General Construction Requirements

a. All Initial Improvements and Alterations shall be done at Tenant's sole cost and expense (as between Landlord and Tenant). All construction and work shall be performed in a good and workmanlike manner. Tenant shall construct the Initial Improvements and Alterations in accordance with all Applicable Laws and Requirements and all approved Construction Documents and in accordance with this Article 16 and all other terms, agreements, covenants, conditions and provisions of this Lease. Tenant shall construct, install, and maintain equipment and any construction facilities as part of the Initial Improvements or Alterations, as applicable, in a safe, thorough and reliable manner and in accordance with all Applicable Laws and Requirements.

b. Tenant shall not construct any Initial Improvements or Alterations outside the boundaries of the Premises, except as approved by Landlord in the Construction Documents.

c. Any material change in approved Construction Documents for the Initial Improvements or any Alterations (other than Minor Alterations) or any material deviations in the actual construction of any of the Initial Improvements or any Alterations (other than Minor Alterations) from approved design elements shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed.

d. Tenant shall prepare and maintain on the Premises on a current basis during construction of Initial Improvements or Alterations (other than Minor Alterations), as applicable, approved annotated Construction Documents showing clearly all changes, revisions and substitutions during construction.

e. Tenant shall perform and complete, or cause the performance and completion of, the Initial Improvements and Alterations in accordance with Applicable Laws and Requirements, the Construction Documents, the GGNRA Project Handbook, and the terms and conditions of Landlord and all other applicable governmental determinations and approvals, including, without limitation, the Approved Alterations Budget.

16.5 Construction Completion Procedures for Initial Improvements or Alterations (other than Minor Alterations)

a. Upon Substantial Completion of the construction of Initial Improvements or Alterations, as applicable, on the Premises or any part thereof, Tenant shall submit to Landlord a written notice of such completion.

b. Upon completion of construction of Initial Improvements or Alterations, as applicable, Tenant shall deliver to Landlord evidence, satisfactory to Landlord, of payment of all costs, expenses, liabilities and liens arising out of or in any way connected with such construction (except for liens that are contested in the manner provided in this Lease).

c. On completion of the construction of the Initial Improvements and Alterations, Tenant shall provide to Landlord a complete set of "as-built" drawings showing clearly all changes, revisions and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions and other significant features of the Initial Improvements or Alterations, as applicable, all in a format approved by Landlord.

d. On completion of construction of any Initial Improvements or Alterations, as applicable, Tenant shall provide Landlord with a complete written inventory of all Fixtures and Trade Fixtures which inventories shall be subject to Landlord's approval. Landlord and Tenant shall amend this Lease as applicable to amend the Trade Fixtures following Landlord's approval of the inventory of Trade Fixtures.

e. Landlord will issue a Temporary Certificate of Occupancy after Substantial Completion of Initial Improvements or Alterations (other than Minor Alterations), as applicable, subject to "punch-list" items and upon final review to its reasonable satisfaction of the applicable construction documents, including all tests, inspections, progress reports, and other pertinent documents customarily required by the jurisdiction in which the Premises is located for the issuance of such a document. Landlord and Tenant shall coordinate and consult on final issues in advance of the completion of construction to enable Landlord to promptly issue the Certificate of Occupancy for the Initial Improvements or Alterations, as applicable.

f. Landlord may issue a Temporary Certificate of Occupancy for the Initial Improvements or Alterations, as applicable, at the request of the Tenant and when construction of Initial Improvements or Alterations (other than Minor Alterations), as applicable, is completed to the point that Tenant can commence pre-opening operations without threat to life or safety. Tenant may operate any portion of the Premises undergoing Initial Improvements or Alterations, as applicable, under a Temporary Certificate of Occupancy for the Initial Improvements or Alterations, as applicable, if the Temporary Certificate of Occupancy for the Initial Improvements or Alterations, as applicable, authorizes such operations and provided that all construction necessary for the safe operation of the Premises and the protection of the life and safety of all members of the public coming on the Premises has been completed, in accordance with all Applicable Laws and Requirements and the terms of this Lease.

g. If the Initial Improvements or Alterations, as applicable, necessitate closure of an area to occupancy during the construction of such Initial Improvements or Alterations, as applicable, then in no event shall Tenant open any portion of the Premises undergoing Initial Improvements or Alterations, as applicable, to the public without either (i) the issuance of a Certificate of Occupancy for the Initial Improvements or Alterations, as applicable, or (ii) the issuance of a Temporary Certificate of Occupancy for the Initial Improvements or Alterations, as applicable.

16.6 On Site Inspection

Landlord, through its employees, contractors and agents, shall have the right to be on the Premises at all reasonable times during construction of Initial Improvements or Alterations, to observe all aspects of the construction and to inspect the work of the Initial Improvements or Alterations to determine that such work is in substantial conformity with the approved Construction Documents or to inspect the area for compliance with this Lease. No inspection performed or not performed by Landlord under this Lease shall give or be deemed to give Landlord any responsibility or liability with respect to the work or the prosecution thereof or the design or construction of Initial Improvements or Alterations or constitute or be deemed to constitute a waiver of any of Tenant's obligations under this Lease or be construed as approval or acceptance of the work or the prosecution thereof or the design or construction of the Initial Improvements or Alterations. Approval and acceptance of the Initial Improvements or Alterations, as applicable, shall be pursuant to the provisions of this Lease pertaining to the construction approval process and issuance of Certificates of Occupancy. Landlord is under no obligation to (a) supervise the renovation, Rehabilitation, or construction, (b) inspect the Premises, or (c) except as provided in Section 22.5 below, inform Tenant of information obtained by Landlord during any inspection, and Tenant shall not rely upon Landlord for any supervision, inspection, or information.

16.7 NPS Construction Activities

Landlord shall give Tenant not less than sixty (60) days prior written notice of any scheduled construction projects planned for Fort Baker which materially affects Tenant's operations, and shall use best efforts to schedule construction to minimize the impacts on the Historic Boat Shop and Tenant's operations thereof.

## 17. PERMITS AND APPROVALS

17.1 Except as otherwise provided in this Lease, Tenant shall be solely responsible for obtaining, at its sole cost and expense, the approval of any Agency for any permit or other governmental action necessary to permit the activities under this Lease. Landlord, at no expense to itself, shall cooperate with Tenant to the extent reasonable to obtain all such permits and approvals. Notwithstanding the foregoing, Tenant shall not submit to any person or entity, including any Agency, information regarding Landlord or Landlord's lands without Landlord's prior written approval, unless the communication of information is in response to a valid order by a court or Agency or to obtain a permit, approval or financing or is otherwise required to be released by law, in which case Tenant shall immediately provide Landlord with written notice of such order or requirement, identifying the specific information released. In addition, Tenant may release such information that is necessary for Tenant to obtain insurance, and upon release of such information, Tenant shall provide Landlord with written notice indicating what information was so released.

17.2 Tenant shall comply with all Applicable Laws and Requirements governing construction, sanitation, licenses, and permits to do business on the Premises.

18. EXCAVATION, SITE, AND GROUND DISTURBANCE

18.1 Except as permitted as part of the Initial Improvements or Alterations, Tenant shall conduct no mining or drilling operations; remove no material amount of sand, gravel or similar substances from the ground (except for foundation and utilities work); commit no waste of any kind; or in any manner materially change the contour or condition of the Premises or other Park property. Tenant shall give Landlord not less than thirty (30) days written notice of the scheduled commencement of any material site and ground disturbance on or under any portion of the Premises. Written approval for excavation including, but not limited to, environmental and archaeological clearances are required prior to any digging or excavation on the Premises.

18.2 Except as permitted as part of the Initial Improvements or Alterations, Tenant shall not remove or disturb or cause to be removed or disturbed any utility maintained by Landlord or a utility service provider, Preexisting Hazardous Materials, or any historical, archeological, architectural, or other cultural artifacts, relics, remains, materials or objects of antiquity encountered during site or ground disturbance. Notwithstanding anything to the contrary in the foregoing, Tenant shall not remove or disturb or cause to be removed or disturbed any Army Retained Conditions. If any such items are encountered by Tenant, Tenant shall immediately halt work and notify Landlord so that Landlord may evaluate the situation and with respect to Army Retained Conditions, notify the Army and take such other actions as Landlord may be obligated to take pursuant to the Army Transfer MOA and/or Applicable Laws and Requirements. The affected activity shall not resume until written approval is issued by Landlord. Tenant acknowledges that, at Landlord's sole discretion, and except where indicated in approved Construction Documents and/or the Preservation Maintenance Plan or except as authorized in writing in advance by Landlord, Tenant may be required to alter work plans to avoid damage to utilities or cultural resources and to avoid disturbance of Preexisting Hazardous Materials, and the Parties agree that while Landlord shall not be liable for any costs or expenditures occasioned as a result of any delays or alterations associated therewith, Landlord will cooperate with Tenant, and if applicable, will request the Army to cooperate with Tenant, to minimize the impact of any such delays or alterations.

18.3 The prior written approval of Landlord is required for excavation and an archaeological clearance is required prior to any digging or excavation within GGNRA. Where excavation is to be in archaeologically sensitive areas, an archaeologist approved by Landlord shall be present at the excavation to monitor the process of digging. Hand digging shall be required around any known archaeological sites or any that may be discovered during the course of excavation. When an archaeological site is discovered during the course of excavation, all digging shall stop while the archaeologist records the site and recovers any information or objects that may be present. Any objects found during the course of excavation are the property of Landlord, and the recovery of these items is subject to federal law, with penalties imposed for violations.

18.4 Open excavation shall be barricaded when Tenant's personnel are not present in the immediate vicinity of the work site. Under no circumstances will open excavations be

allowed to remain at the completion of the work day without Landlord's prior written consent. At each location where excavation has been initiated, Tenant shall ensure backfilling operations are complete prior to the end of the work day unless Landlord otherwise consents in writing. No more than two hundred (200) linear feet of open excavation may exist at any time without Landlord's prior written approval.

18.5 Tenant shall maintain all excavations, embankments, stockpiles, roads, and all other work areas free from excess dust to such reasonable degree as to avoid causing a hazard or nuisance to personnel and surrounding facilities. Approved temporary methods consisting of sprinkling, or similar methods will be permitted to control dust. Dust control shall be performed as the work proceeds and whenever a dust nuisance or hazard occurs.

18.6 If applicable, damaged or backfilled areas shall be repaved, re-sodded or seeded and fertilized by Tenant in such a manner as to match the paving or vegetation existing prior to the damage. Paving, sod, seed, and fertilizer types and mixtures must be approved by Landlord.

## 19. OWNERSHIP OF IMPROVEMENTS

19.1 This Lease will vest in Tenant no property interest in the Premises or in the improvements or Fixtures thereon other than the leasehold estate created by this Lease. Title to real property and improvements and Fixtures thereon, including Initial Improvements, Alterations, Building Maintenance and Preservation Maintenance to Premises but excluding Trade Fixtures shall be and remain solely in Landlord. Except as provided in Section 33.2 below, Landlord shall have no interest in the Trade Fixtures and Tenant's Personal Property. Compliance with Applicable Laws and Requirements related to taxes is the sole responsibility of Tenant.

19.2 Landlord acknowledges that covenants which allow Landlord certain control and rights of approval over Trade Fixtures and Tenant's Personal Property items placed upon the Premises by Tenant are provided only to insure conformance with the terms of this Lease, but such covenants do not vest in, nor shall they be construed as vesting in Landlord an ownership interest in such items.

19.3 Upon removal of Trade Fixtures and/or Tenant's Personal Property at any time during the Term or upon expiration of this Lease, Tenant shall (a) repair all damage caused by such removal at Tenant's sole cost and expense and ensure that no safety hazard is created by such removal, (b) cause a neat appearance to remain in the area of removal, and (c) perform Preservation Maintenance of any damaged area of the Premises.

19.4 Landlord and Tenant agree that Occupants will install Personal Property related to their use of Premises and that the ownership, installation, and removal of such property by such Occupants shall be governed by the terms of the Sublease or other occupancy agreement between Tenant and its Occupant. At the termination of the Sublease or other occupancy agreement, Tenant shall, either at its own expense or its Occupants, remove or cause the removal of any such

Personal Property and to the extent necessary or appropriate by reason of such removal, shall perform Preservation Maintenance or cause the Preservation Maintenance of the applicable portion of the Premises and Building Maintenance of any affected major building systems in the manner described in Article 33 of this Lease. Tenant shall repair all damage caused by such property removal in accordance with the terms of Section 19.3 above. Tenant shall cause any proposed installation, improvements or alterations of the Premises by Occupants to comply with the terms and conditions of this Lease.

## 20. LIMITATION ON EFFECT OF APPROVALS

20.1 All rights of Landlord to review, comment upon, approve, inspect or take any other action with respect to the Premises, Building Maintenance, Preservation Maintenance, Initial Improvements, or Alterations, or the design or construction thereof, or Response Actions, or any other matter, are expressly for the benefit of Landlord and no other party.

20.2 No review, comment, approval, inspection, right or exercise of any right to perform Tenant's obligations, or similar actions required or permitted by, of, or to Landlord under this Lease, or actions or omissions of Landlord's Agents, or other circumstances shall give or be deemed to give Landlord any liability, responsibility or obligation for, in connection with, or with respect to, the design and construction of Initial Improvements or Alterations, Preservation Maintenance, Building Maintenance, or management and operation of the Premises or any Response Action on, in or from the Premises or other Park property by Tenant, nor shall any such approval, actions, information or circumstances relieve or be deemed to relieve Tenant of the sole obligation and responsibility for the design and construction of Initial Improvements and Alterations, Preservation Maintenance, Building Maintenance, and management and operation of the Premises and any Response Action under this Lease, if any, except as expressly provided in Section 22.7 of this Lease.

## 21. COMPLIANCE WITH APPLICABLE LAWS; NEPA; NHPA

21.1 Tenant, at Tenant's sole cost and expense, shall promptly comply with all Applicable Laws and Requirements. Tenant shall give Landlord immediate written notice of any notice of violation of Applicable Laws and Requirements received by or on behalf of Tenant and, at its sole cost and expense, Tenant shall promptly rectify any such violation but shall retain the right to appeal any non-final rulings prior to taking any action.

21.2 Where activities undertaken by Tenant require the preparation of compliance documents pursuant to NEPA or NHPA, Tenant shall supply all necessary information to Landlord and any Agency in a timely manner. No construction or installation activities shall occur until all applicable NEPA and NHPA requirements have been met.

## 22. HAZARDOUS MATERIALS

22.1 Landlord has furnished or made available to Tenant copies of any and all reports Landlord has in its possession or has obtained in connection with the presence of Hazardous Materials on the Premises, including the Army Transfer MOA.

22.2 Except as specifically permitted under Sections 22.8, 22.9, or 22.10 of this Lease, Tenant shall not, and Tenant shall ensure that Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term shall not bring, generate or otherwise use, handle, treat, store, sell, dispose of, discharge or release any Hazardous Material upon, about, beneath or from the Premises, except for limited quantities of standard office, personal care, and janitorial supplies containing chemicals categorized as Hazardous Materials brought, generated or otherwise used, handled, treated, stored, sold, disposed of, discharged and released in compliance with Applicable Laws and Requirements. All Hazardous Materials-related activities undertaken by Tenant, Affiliates, Agents, employees, guests, invitees, visitors, Occupants and other persons or entities under the control of Tenant during the Term shall comply with all Applicable Laws and Requirements. Tenant shall not, and Tenant shall ensure that Agents, Affiliates, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term shall not, permit Hazardous Materials to be commingled with the Hazardous Materials of Landlord or the Army or Hazardous Materials which are Army Retained Conditions, if any. Tenant agrees to be responsible for timely acquisition of any permit(s) required for its Hazardous Materials-related activities, if any, and shall provide to Landlord, upon request, inventories of all such Hazardous Materials and any supporting documentation, including but not limited to material safety data sheets, uniform waste manifest forms, and/or any other pertinent permits.

22.3 (a) If either Party becomes aware of, or reasonably suspects, or receives notice or other communication concerning (i) any actual, alleged or threatened violation of any Applicable Laws and Requirements (A) by Tenant, Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term and in connection with, or affecting, the Premises, or (B) from past or present activities of any person in connection with the Premises, or (ii) any liability of Tenant, Agents, Affiliates, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term for Environmental Damages in connection with, or affecting, the Premises, then such Party shall deliver to the other Party, immediately upon receipt of such notice or communication by Tenant, a written description of such alleged violation or liability together with copies of any documents evidencing same. Receipt of such notice shall not be deemed to create any obligation on the part of Landlord to defend or otherwise respond to any such notification.

(b) Pursuant to the Army Transfer MOA, the Army has retained the authority, responsibility and liability for Response Actions required with respect to the Army Retained Conditions and shall have the right to enter upon the Premises for the purposes of undertaking such Response Actions. If Hazardous Materials are encountered by Tenant, Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of

Tenant, Tenant shall immediately halt work and notify Landlord so that Landlord may evaluate the situation and, with respect to Army Retained Conditions, Landlord shall notify the Army and take such other actions as Landlord may be obligated to take pursuant to the Army Transfer MOA and/or Applicable Laws and Requirements. Tenant shall cooperate with the Landlord and the Army with respect to the Army's access rights and Response Actions. Landlord shall promptly notify Tenant of any notice it receives from the Army with respect to Army Retained Conditions and Army access and Response Actions.

(c) Each Party shall immediately advise the other in writing if at any time (i) it receives written notice of any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against that Party or the Premises pursuant to any Applicable Laws and Requirements relating to any Hazardous Materials or Preexisting Hazardous Materials ("**Hazardous Materials Law**"); (ii) it receives any claim made or threatened by any third party against that Party or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials or Preexisting Hazardous Materials (the matters set forth in clauses (i) and (ii) above are referred to as "**Hazardous Materials Claims**"); (iii) it discovers or becomes aware of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that is subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Law; or (iv) it discovers the presence of Preexisting Hazardous Materials on, under, or adjacent to the Premises or Fort Baker if, as to the latter (with respect to Landlord's notification to Tenant), it could affect the Premises.

(d) Landlord shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection with the proceedings or actions paid by Tenant.

(e) If during the Term, Tenant or its Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant, encounter evidence of Preexisting Hazardous Materials on the Premises, Tenant shall immediately notify Landlord and shall take all precautions and actions necessary to insure that any suspected Preexisting Hazardous Materials are not disturbed or exacerbated prior to clean up and remediation. Such notice shall describe, to the extent known by Tenant, the location and nature of the Preexisting Hazardous Materials discovered or believed likely to be present.

22.4 Except for Response Actions related to Preexisting Hazardous Materials, including Response Actions undertaken by the Army with respect to Army Retained Conditions, Tenant shall, at its sole cost and expense, promptly take all Response Actions required under Applicable Laws and Requirements by any Agency to remedy damage to the Premises or neighboring property that arises directly or indirectly from or in connection with the presence, or release of any Hazardous Materials introduced in, under, about or into the air, buildings, paved surfaces, sanitary sewers, stormwater drainage systems, surface water, groundwater, or land by

Tenant or Tenant's Affiliates, Agents, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term. Such Response Actions by Tenant may include but are not limited to Response Actions of the environmental condition of the areas adversely affected ("**Affected Property**") by Tenant's breach of any of the provisions of this Lease, whether on or off of the Affected Property. Except for Response Actions related to Preexisting Hazardous Materials, including Response Actions taken by the Army with respect to Retained Army Conditions, Tenant shall take all Response Actions required under this Lease and under Applicable Laws and Requirements and shall restore the Affected Property to a condition substantially equal to that existing prior to the introduction of the Hazardous Materials upon, about, in, into, or beneath the Affected Property, in accordance with the standard of Response imposed by Applicable Laws and Requirements. (To the extent of such impacted conditions, those portions of any Affected Property that cannot be restored to substantially the preexisting condition shall be restored in accordance with the standards or requirements imposed by Applicable Laws and Requirements to the degree deemed necessary or appropriate by the Agency with jurisdiction to enforce Applicable Laws and Requirements.) Tenant shall proceed continuously and diligently with such Response Actions and these Response Actions shall be performed in accordance with Applicable Laws and Requirements in a good, safe and workmanlike manner by one or more licensed and reputable contractors experienced in the conduct of Response Actions in areas containing significant natural and cultural resources or comparable experience. Such contractor shall not be an Excluded Contractor. Tenant shall pay all Response Costs in connection with such Response Actions chargeable to Tenant, including but not limited to the charges of such contractor(s), all power and utility costs, any and all taxes or fees that may be applicable to such activities, and all reasonable costs incurred by Landlord in connection with the monitoring or reviewing of such Response Actions. Tenant shall promptly provide to Landlord copies of all unprivileged testing results and reports generated in connection with the aforementioned activities unless Landlord shall be made a party to such Response Actions, in which case Tenant shall provide Landlord with any and all such testing results and reports. Promptly upon completion of such Response Action(s), Tenant shall remove all associated Personal Property, debris, materials and the like, to the reasonable satisfaction of Landlord.

22.5 Landlord, at Landlord's sole cost and expense, shall have the right, but not the obligation, at all reasonable times and, except in the case of emergency, following advance notice to Tenant, to enter upon the Premises, as may be necessary as determined by Landlord in its reasonable discretion (and for areas closed to the public, upon reasonable prior written notice under the circumstances, given by the Superintendent of GGNRA or his or her designee, reciting the reasons for the entry at least thirty (30) days in advance where feasible (except in case of emergency)), to conduct inspections and non-invasive tests of the Premises to determine whether Tenant is complying with all Applicable Laws and Requirements. In connection with such inspections, Landlord will use reasonable efforts to minimize disturbance or disruption of Tenant. Landlord shall have the right, but not the obligation, to retain independent professional consultants to enter the Premises to conduct such inspections and to review any report prepared by or for Tenant concerning such compliance. Upon Tenant's written request, Landlord will

make available to Tenant copies of all final reports and written data obtained by Landlord from such tests and investigations. Tenant expressly recognizes that it shall have no claim against Landlord for injury, loss, or other costs occasioned by any inconvenience to or interference with Agents, Affiliates, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant use of the Premises during the Term as a result of Landlord's exercise of the rights reserved to it under this Section 22.5, except to the extent such claims are covered by federal law.

22.6 In addition to all other indemnity requirements set forth in this Lease, and except as provided in Section 22.7 below, Tenant expressly agrees to indemnify, reimburse, defend save and hold harmless Landlord and Landlord's Agents for and from any and all Environmental Damages as set forth in, and accordance with, Sections 25.2, 25.4, and 25.5 of this Lease. This obligation to indemnify shall survive termination of this Lease. Notwithstanding the foregoing, this obligation to indemnify shall not apply, with respect to loss, damage, costs, expense, or liability arising out of or attributable to Preexisting Hazardous Materials except to the extent that: (i) the negligence or willful misconduct of Tenant's or its agents' and/or other persons or entities under the control of Tenant, causes an exacerbation or migration of such Preexisting Hazardous Materials, or (ii) Tenant or its agents' and/or other persons or entities under the control of Tenant, cause additional damage to the environment beyond such Preexisting Hazardous Materials.

22.7 This Lease does not create a separate obligation on the part of Tenant and in favor of Landlord to Respond to Preexisting Hazardous Materials or in favor of the Army to undertake a Response Action for Army Retained Conditions nor does it limit or expand the rights or defenses of Landlord, the Army or the Tenant with respect to such Preexisting Hazardous Materials (including Army Retained Conditions), as applicable. Consequently, the provisions of Sections 22.4 and 22.6 above and Section 22.8 below shall not apply to Preexisting Hazardous Materials except to the extent that: (a) the negligence or willful misconduct of Tenant's Agents, Affiliates, employees, guests, visitors, invitees, Occupants and/or other persons or entities under the control of Tenant during the Term causes an exacerbation or migration of such Preexisting Hazardous Materials, or (b) Tenant's Agents, Affiliates, employees, guests, visitors, invitees, Occupants and other persons or entities under the control of Tenant during the Term cause additional damage to the environment beyond such Preexisting Hazardous Materials due to a violation of any Applicable Laws and Requirements regarding such Preexisting Hazardous Materials, and (c) except as specifically stated in Sections 22.8 and 22.9 below. This Section does not relieve Tenant of any obligation it might have with regard to third parties or any Agency by operation of Applicable Laws and Requirements, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act.

22.8 Tenant shall be designated as the generator and shall arrange for the removal of any Hazardous Materials Tenant disturbs in connection with its use and operations of the Premises, in compliance with Applicable Laws and Requirements, except to the extent Landlord undertakes such designation and/or arrangement with respect to Preexisting Hazardous Materials

or the Army undertakes such designation and/or arrangement with respect to Army Retained Conditions. Tenant shall arrange for such removal and disposal of such soil with appropriate licensed contractors, at Tenant's sole cost and expense.

22.9 Tenant understands and acknowledges that the Premises may contain asbestos, asbestos-containing materials, lead-based paint, and pesticides. Therefore, Tenant hereby agrees that, during the Term, any necessary costs of Response Action with respect to asbestos, asbestos-containing materials, lead-based paint, or pesticides in the Premises or in areas adjacent to the Premises for which access is necessary by Tenant in order to complete the Initial Improvements and/or operate or maintain the Premises shall be the responsibility of Tenant and Landlord shall not be responsible for Response Costs associated therewith. Whenever Tenant constructs the Initial Improvements or Alterations, or performs Maintenance and/or installation on the Premises, Tenant shall comply with all Applicable Laws and Requirements, including without limitation, Applicable Laws and Requirements related to Response to asbestos, asbestos-containing materials, lead-based paint, and pesticides. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to remove asbestos, asbestos-containing materials, lead-based paint, or pesticides unless required to do so pursuant to Applicable Laws and Requirements or if an Agency having jurisdiction over the matter requires such removal.

22.10 Tenant shall implement the Lead-Based Paint, Asbestos and Hazardous Materials Remediation Plan during any construction activities and for ongoing Maintenance of the Premises. Tenant shall update the Lead-Based Paint, Asbestos and Hazardous Materials Remediation Plan annually as part of the Preservation Plan.

22.11 Should Tenant fail to perform or observe any of its obligations or agreements pertaining to Hazardous Materials for a period of thirty (30) days (or such longer period of time as is reasonably required) after notice, then Landlord shall have the right, but not the duty, without limitation of any other rights of Landlord under this Lease on its own behalf or through its agents, consultants or contractors, to enter the Premises and perform the same. Tenant agrees to reimburse Landlord for the costs thereof, and to indemnify Landlord for liabilities therefrom, as set in Section 22.6 of this Lease.

22.12 The provisions of this Section 22 shall survive any termination of this Lease. Article 23 of this Lease shall not limit in any way Tenant's or Landlord's obligations under this Article 22.

22.13 The provisions of this Article 22 shall apply to the Permitted Areas for the period of the permit issued to Tenant for such areas. If there is a conflict between the provisions of this Article 22 and the provisions of the Lease Disposition and Development Agreement regarding Hazardous Materials, the provisions of this Article 22 shall govern.

23. INSURANCE **[TBD]**

Tenant, at its sole cost and expense, shall procure and maintain in full force and effect the following insurance at all times during the Term, unless otherwise specified below:

23.1 Property Insurance

a. Commercial Property

Commercial property insurance insuring against perils equal to a "special form" (previously known as "all risk") or ISO special causes of loss form and covering the Premises, including existing Improvements, the finished Initial Improvements, Alterations, Fixtures, Trade Fixtures, and Tenant's and Landlord's Personal Property at full replacement cost (with like kind and quality/functional equivalent), together with, to the extent such coverage is available at Commercially Reasonable Insurance Rates, a "Difference in Conditions/Difference in Limits (DIC/DIL)" endorsement or, to the extent it is available at Commercially Reasonable Rates, a separate policy providing Historical Valuation Coverage in the amount of Two Million Dollars ($2,000,000) per occurrence. The replacement value shall be not less than _____ Dollars ($_____) **[TBD]**. Landlord, to the extent of its interest, shall be an additional insured and loss payee on the policy(ies). The property insurance shall include coverage for debris removal, demolition, building ordinance upgrades and shall have an agreed amount endorsement.

b. Boiler and Machinery

Comprehensive boiler and machinery insurance insuring against loss caused by equipment breakdown or explosion of steam boilers, pipes and other objects, and covering consequential business interruption losses. Coinsurance shall not apply to the coverage. Landlord, to the extent of its interest, shall be an additional insured and loss payee on the policy.

c. Builder's Risk

Prior to commencement of and during construction Tenant or Tenant's general contractor shall obtain and maintain builder's risk insurance for the construction of the entire work authorized as the Initial Improvements or Alterations, as applicable, naming as additional insureds the Landlord, Tenant, Tenant's contractors, subcontractors and agents performing construction on the Premises. Such insurance shall be written on a completed value form. If the estimated completed value of the project changes during construction, the policy shall be endorsed to reflect the new estimated value. Such builder's risk insurance shall insure against perils equal to a special causes of loss ("all risk") form, and include coverage for earthquake (to the extent such coverage is available at Commercially Reasonable Insurance Rates), flood (to the extent such coverage is available at Commercially Reasonable Insurance Rates), and collapse, including collapse resulting from design error. Such insurance shall cover the entire work, materials and equipment used in connection with the work, work in transit and stored off-site, and temporary buildings. The builder's risk insurance shall remain in effect until the earliest of: (i) the issuance of a Certificate of Occupancy for Initial Improvements or

Alterations, as applicable, by Landlord, (ii) when all insureds, including Landlord, under the policy agree it shall be terminated, (iii) when final payment under all Construction Contracts let in connection with the construction of Initial Improvements or Alterations, as applicable, have been made, or (iv) the date on which the insurable interests in the Premises of all insureds other than Landlord have ceased. At all times with respect to any portion of the Premises, either the insurance required by Sections 23.1(a) or 23.1(c) of this Lease shall be in effect. Landlord shall also be included as a loss payee.

d. Earthquake

To the extent such coverage is available at Commercially Reasonable Insurance Rates, earthquake coverage with limits as close to the full replacement cost of the Initial Improvements or Alterations, with like kind and quality/functional equivalent, together with, to the extent such coverage is available at Commercially Reasonable Insurance Rates, the "Difference in Conditions/Difference in Limits (DIC/DIL)" endorsement or separate policy providing Historical Valuation Coverage in the amount of Two Million Dollars ($2,000,000) per occurrence as required in Section 23.1(a) above. Landlord, to the extent of its interest, shall be an additional insured and loss payee on the earthquake policy required hereby.

e. Flood

To the extent such coverage is available at Commercially Reasonable Insurance Rates, flood coverage with limits as close to the full replacement cost of the Initial Improvements or Alterations, with like kind and quality/functional equivalent, together with, to the extent such coverage is available at Commercially Reasonable Insurance Rates, the "Difference in Conditions/Difference in Limits (DIC/DIL)" endorsement or separate policy providing Historical Valuation Coverage in the amount of Two Million Dollars ($2,000,000) per occurrence as required in Section 23.1(a) above. Landlord, to the extent of its interest, shall be an additional insured and loss payee on the flood policy required hereby.

f. Business Income

Business income and extra expense coverage insuring against perils equal to a special causes of loss ("all risk") form and "Difference in Conditions (DIC)" (if purchased), covering a period of reconstruction and/or restoration of no less than two (2) years.

g. Blanket Policy

The insurance required under this Section 23.1 may be part of blanket policies but only if the limits required herein will be available under such blanket policies for any event affecting the Premises.

23.2 Liability Insurance

a. Environmental Liability **[TBD]**

i. Contractor's Pollution Legal Liability

Tenant shall maintain, or cause those of its contractors or agents who handle Hazardous Materials to maintain, contractor's pollution legal liability insurance during the construction of the Initial Improvements and Alterations. Such insurance shall cover liability, including Response Costs, (to parties other than Tenant, Tenant's Affiliates, and Agents) arising out of bodily injury and damage to and loss of use of property, Response Costs, investigation and defense arising from acts or omissions for which Tenant is liable under Sections 22.4 and 22.7 of this Lease, and to the extent available at Commercially Reasonable Insurance Rates, shall not exclude claims arising out of lead, creosote, or asbestos. Landlord shall be an additional insured on such policy, to the extent that such coverage is available at Commercially Reasonable Insurance Rates.

ii. Environmental Professional Liability

Tenant shall maintain, or cause those of its contractors, consultants or agents who provide professional environmental services to maintain professional errors and omissions and pollution liability insurance in the amount of One Million Dollars ($1,000,000) per occurrence during the construction of the Initial Improvements and Alterations. The policy shall be unique to this project/site. The policy shall cover liability arising out of testing, monitoring, measuring and laboratory analyses. Landlord shall be included as an insured under this policy.

iii. Hazardous Materials Disposal

Tenant shall ensure that any off-site disposal facility to which Tenant or Tenant's contractors ship Hazardous Materials maintains and furnishes evidence of pollution legal liability insurance. In addition, Tenant shall insure that the off-site disposal operator is duly licensed by the state where the disposal site is located and that the disposal site operator has the necessary valid permits to operate the disposal site and to receive the type of Hazardous Materials that Tenant intends to send there. In addition, Tenant shall maintain, or cause those of its contractors or agents who transport any Hazardous Materials to maintain on its automobile liability policy MCS-90 and CA 9948 endorsements, or the equivalent.

b. Commercial General Liability **[TBD]**

Broad form, commercial general liability insurance and if necessary commercial umbrella liability with a limit of not less than $10,000,000 each occurrence and in the aggregate. If more than one location is insured and the aggregate does not apply for each location/site, the aggregate limit shall be no less than $20,000,000. The general liability policy shall be endorsed to provide that the aggregate limit applies separately to this location. The commercial general liability policy shall cover liability arising out of bodily injury, property

damage, products and completed operations, personal and advertising injuries (as defined by the policy), innkeepers legal liability, police/security guard liability, and liquor liability if alcoholic beverages are served or sold on the Premises. Said policy shall cover the Landlord and Landlord's officers, directors, and employees as additional insureds with respect to liability arising out of Tenant's operations on the Premises and the ownership, and/or maintenance and use of the Premises, using ISO Additional Insured Endorsement Form CG2026 (or a substitute providing equivalent coverage).

c. Comprehensive Automobile Liability and Garagekeepers Legal Liability

Commercial automobile liability insurance covering owned, non-owned and hired automobiles ("any auto") with limits of not less than $1,000,000 per accident. If applicable, Tenant shall also maintain garagekeepers legal liability coverage with a limit of not less than $1,000,000 each occurrence. Said policies shall cover the Landlord with respect to liability arising out of the Premises as additional insureds, using ISO Additional Insured Endorsement Form CG2026 (or a substitute providing equivalent coverage).

23.3 Workers' Compensation and Employer's Liability

a. Workers' compensation insurance as required by Applicable Laws and Requirements.

b. Employer's liability insurance with limits no less than $1,000,000 for bodily injury by accident and $1,000,000 for bodily injury by disease.

23.4 General Insurance Program Requirements

a. Acceptable Insurance

All of the insurance required under this Lease and any reinstatement thereof pursuant to Section 28.11 below shall be issued by companies admitted or approved to do business in the state of California, with a financial rating of at least A-VIII, as rated by the A.M. Best Key Rating Guide. In addition, the carrier(s) providing all property insurance required pursuant to this Lease shall have a demonstrated record of insuring historic properties.

b. Deductibles and Self-Insured Retentions

Any deductibles and/or self-insured retentions must be on Commercially Reasonable Insurance Rates, but shall not exceed Fifty Thousand Dollars ($50,000) per occurrence without Landlord's prior written approval. Landlord shall not be responsible for any deductible or self-insured retention amount.

c. Tenant's Insurance is Primary

All of the insurance required under this Article 23 shall provide that it is primary and non-contributing with any insurance or self-insurance carried by Landlord.

d. Severability of Interests

To the extent available at Commercially Reasonable Insurance Rates, the policies required by Sections 23.2(b) and 23.2(c) of this Lease on which Landlord is an additional or named insured shall contain a severability of interests with respect to Landlord as additional insured (or separation of insureds) provision. All of the policies required pursuant to Section 23.1 of this Lease and to which Landlord is an additional insured shall provide on such additional insured endorsement the same protection to Landlord that is provided to a mortgagee under a standard mortgagee's clause, in that coverage as respects Landlord's interest will not be invalidated or suspended due to acts of the named insured, except as noted in the standard mortgagee's clause (lender's loss payable endorsement (Form 438BFU or equivalent)).

e. Notice of Cancellation

All policies required under this Article 23 of this Lease shall provide that coverage will not be cancelled or non-renewed except after a minimum of thirty (30) days prior notice to Landlord, or, in the event of nonpayment of policy premiums by Tenant, ten (10) days notice to Landlord.

f. Evidence of Insurance

Prior to the Commencement of Construction of the Initial Improvements, Tenant shall furnish Landlord with insurance certificates on ACORD forms, and within sixty (60) days after Commencement of Construction, certified copies of all insurance on which Landlord is a named insured, and along with copies of required endorsements, of other insurance required under this Article 23, including without limitation, the insurance required pursuant to Section 23.15 below.

g. Claims-Made Policies

Tenant's or its contractors' or agents' liability insurance shall be on occurrence forms unless the required coverage is not available on occurrence form. If the liability policy is a claims-made policy, the retroactive date must precede the date of Commencement of Construction of the Initial Improvements, or the date of the commencement of operations insured under the policy, whichever is earlier. Continuous coverage must be maintained under the claims-made policy, or the insured must purchase an extended reporting period of no less than five (5) years, to the extent available at Commercially Reasonable Insurance Rates, provided, however, the five (5) year extended reporting period shall not be required for environmental liability insurance required by Section 23.2(a)(ii) above.

23.5 Waiver of Subrogation

Tenant hereby waives any and all rights of recovery against Landlord and Landlord's employees for any loss or damage to the extent these damages are insured by insurance carried by Tenant, and the insurance proceeds are actually received by the insured, including amounts within any insurance deductible or self-insured retention.

23.6 Tenant's Contractors

Tenant shall be responsible for requiring that its contractors, all tiers of subcontractors, and vendors carry sufficient insurance, including, at a minimum workers' compensation and commercial general liability and business auto liability. No contractor, subcontractor, or vendor shall be allowed to commence work until evidence of the appropriate insurance coverage has been provided to Tenant and Landlord.

23.7 Changes in Insurance Requirements

All insurance required by this Article 23 shall be evaluated for adequacy by Landlord not less frequently than every five (5) years from the Commencement Date and shall be re-evaluated by Landlord as a condition to all Alterations (other than Minor Alterations) or reconstruction of or major repairs to the Premises.

23.8 No Premium Payments by Landlord

In no instance will Landlord be obligated to pay insurance policy premiums on the insurance required hereunder. The policies on which Landlord is a named insured shall provide that Landlord will not be obligated to pay insurance premiums.

23.9 Availability of Policies

Tenant shall provide to Landlord (a) certified copies of all insurance policies required in this Article 23 as soon as practicable, and (b) copies of insurance binders for all insurance required in this Article 23 within ten (10) business days of Landlord's written request for said copies.

23.10 Tenant's Failure to Comply

Tenant shall maintain and renew, as appropriate, all policies provided for in this Lease throughout the Term, and Tenant shall renew such policies before each such policy's expiration date.

23.11 Insurance Not Limit on Liability

a. Tenant assumes full risk and responsibility for any inadequacy of insurance coverage.

b. No approval by Landlord 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 Landlord of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible. By requiring insurance herein, Landlord does not represent that the stated coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord hereunder.

c. Failure of Landlord to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence that is provided shall not be construed as a waiver of Tenant's obligation to maintain such insurance.

23.12 Increase In Hazards/Conflict with Coverage

Tenant shall not do anything, or permit anything to be done that would: (a) invalidate or be in conflict with the provisions of any insurance policies covering the Premises or any property located therein, or (b) result in a refusal by insurance companies of good standing to insure the Premises or other property in amounts required under this Lease.

23.13 Performance and Payment Bonds

a. Scope of Requirement

Tenant shall, during construction of all Alterations be responsible for, at its sole cost and expense, payment of all obligations arising under all Construction Contracts, including but not limited to, amounts for cost overruns, price increases, change orders, Force Majeure delays and the like, and for guarantees of performance and payment under such Construction Contracts, and payment in full of all claims for labor performed and materials supplied under such Construction Contracts. Any performance and payment bonds, if any, used by Tenant for these purposes shall be issued by an admitted surety company licensed to do business in the State of California.

b. Notice of Claim

Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Construction Contract, if any, the Tenant shall promptly furnish a copy of all pertinent documentation substantiating the request to Landlord.

23.14 Landlord Review of Proposed Policies

To the extent then available to Tenant, at least thirty (30) days before the Commencement of Construction, Tenant shall provide to Landlord for its review and comment copies of all proposed insurance policies and endorsements required by this Article 23.

23.15 The provisions of this Article 23 shall apply to the Permitted Areas for the period of the permit issued to Tenant for such areas.

23.16 A Leasehold Mortgagee may be a named insured on any fire and other casualty insurance policies carried by Tenant and covering the Premises and Improvements thereon.

## 24. DAMAGE OR DESTRUCTION

### 24.1 No Termination; No Effect on Monetary Obligations

No loss or damage by fire or other causes resulting in either partial or total destruction of the Park, the Premises, the Improvements, or any other property on the Premises shall, except as otherwise provided herein, operate to terminate this Lease. No such loss or damage shall affect or relieve Tenant from Tenant's obligation to pay any monetary obligations under this Lease and Tenant shall not be entitled to any proration or refund of same and Tenant shall not be relieved or discharged from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed.

### 24.2 Evaluation of Extent and Effect of Damage

Upon the occurrence of any event of damage or destruction to the Premises, the Trade Fixtures, the Improvements or any portion thereof, Tenant shall promptly undertake to determine the extent of the same and the estimated cost and time to perform any necessary Building Maintenance and/or Preservation Maintenance of, or construct Alterations to, such property in accordance with the provisions of this Lease to repair, rebuild, or restore the damage or destruction. Tenant shall notify Landlord of its estimation of such cost and time as soon as is reasonably practicable but in no event later than ninety (90) days after the occurrence of the damage or destruction.

### 24.3 Damage or Destruction; Duty to Repair, Rebuild or Restore

If the Premises, the Trade Fixtures, the improvements or any portion thereof are damaged or destroyed at any time during the Term and this Lease is not terminated pursuant to and in accordance with the terms of Article 24 of this Lease, Tenant, as promptly as reasonably practicable and with all due diligence, at its sole cost and expense, and in accordance with all Applicable Laws and Requirements and the requirements of this Lease, shall repair, rebuild, or restore the damaged or destroyed portions of the Premises and such damaged or destroyed Fixtures, Trade Fixtures, and Personal Property necessary to operate the Premises for the purposes of this Lease. Tenant's obligations pursuant to this Section 24.3 shall be performed in

accordance with the provisions of Articles 12 through 16 and other applicable provisions of this Lease.

24.4 Proceeds of Insurance

a. All insurance proceeds received by or payable to any Party with respect to such damage (except proceeds of insurance covering loss or damage of Tenant's Personal Property and business interruption insurance), less actual costs and expenses incurred in connection with the collection thereof, shall be held by Tenant, or the Leasehold Mortgagee, if applicable, in an interest-bearing account, with all interest accrued thereon deemed proceeds of insurance for purposes of this Lease, and such proceeds shall be applied to the costs to perform any Building Maintenance and/or Preservation Maintenance, or construct Alterations of the Premises or the Fixtures, as the case may be, and in accordance with all Applicable Laws and Requirements and the requirements of this Lease to repair, rebuild, or restore the damage or destruction. Tenant shall pay any amount by which insurance proceeds received as a result of such damage or destruction, less the costs and expenses incurred in connection with the collection thereof, are insufficient to pay the entire cost to repair such damage or to carry out the obligations under Section 24.6 below. Notwithstanding the foregoing, if required by Landlord or (subject to the proviso below) the Leasehold Mortgagee, an insurance trustee mutually acceptable to Landlord and Tenant will hold and apply such proceeds in accordance with this Lease; provided, however, that the Leasehold Mortgagee shall be entitled to hold and apply such proceeds in accordance with this Lease.

b. If insurance proceeds are to used in accordance with Article 24 of this Lease to repair, rebuild, or restore damage or destruction, and if such proceeds are held by a Leasehold Mortgagee in accordance with this Section 24.4, the Leasehold Mortgagee may require disbursement conditions which include periodic progress payments (as the restoration and Rehabilitation proceeds, based upon certification(s) by Tenant, its architect or contractor, and/or an inspector representing Leasehold Mortgagee), subject to such reasonable retention requirements as Leasehold Mortgagee may impose pending completion of the work and satisfaction or expiration of lien claims.

c. Proceeds of any business or rental interruption insurance carried by Tenant with respect to the Premises shall be applied first to any obligations of Tenant that are due but unpaid under the Lease, then to any obligations of Tenant that are due but unpaid under the Leasehold Mortgage, including, without limitation, all Rent, with any remaining balance to be paid to Tenant so long as Tenant is not in default under the loan secured by such Leasehold Mortgage.

24.5 Option to Terminate upon Damage or Destruction

In the event of any damage to or destruction of the Premises or the improvements or any portion thereof at any time during the Term, if the cost of such repair, rebuilding, or restoration of the same to substantially the same condition as existed immediately prior to such

occurrence is reasonably estimated to exceed twenty-five percent (25%) of the cost to replace the Improvements on the Premises in their entirety then Tenant shall have, subject to Leasehold Mortgagee's rights as specified in Article 28 of this Lease, the option to terminate this Lease. Tenant shall not have the option to terminate this Lease in whole or in part or to surrender the Premises or any portion thereof pursuant to Article 24 of this Lease unless Tenant surrenders the Premises or portion thereof to Landlord free and clear of all occupancies, tenancies, Subleases and liens, and otherwise in accordance with Article 24 of this Lease.

24.6 Election to Terminate; Tenant's Obligation to Repair, Rebuild, or Restore Premises Upon Termination

Tenant shall exercise its right of termination pursuant to Article 24 of this Lease by giving written notice to Landlord within ninety (90) days after determination of the extent of damage and estimated cost to repair or replacement pursuant to Section 24.2 above. If Tenant elects to terminate this Lease pursuant to Article 24 of this Lease, Tenant, at Tenant's sole cost and expense (which may include, but shall not be limited to, insurance proceeds applied as set forth in this Section 24.6), and in accordance with all Applicable Laws and Requirements, shall promptly demolish and remove all damaged property, except any property Landlord elects to retain on the Premises (as provided in writing by Landlord), and shall cause the Premises to be in a clean, safe and sightly condition free from rubble and shall take all Response Actions to the extent required under Article 22 above and Applicable Laws and Requirements and shall surrender the Premises to Landlord in accordance with the provisions of Article 33 below and free and clear of any and all occupancies, tenancies, Subleases and liens. If this Lease is terminated pursuant to this Section 24.6, all proceeds of insurance payable with respect to such damage to, or destruction of, the Improvements and other property located on the Premises, after payment of actual costs and expenses of collection thereof, shall first be applied to the costs of such demolition and removal, and then to Response required by Article 22 above, as directed by Landlord. Tenant shall, to the extent of any remaining insurance proceeds, repair or replace any improvements Landlord elects to retain on the Premises. The balance, if any, of insurance proceeds shall be distributed as provided in Section 24.7 below. Tenant's obligations under Article 24 of this Lease shall survive the termination of this Lease.

24.7 Excess Insurance Proceeds

a. If there are proceeds of insurance in excess of that required to perform the obligations required under Article 24 of this Lease, upon receipt by Landlord of satisfactory evidence that the work of Building Maintenance, Preservation Maintenance, or Alterations and construction required under Article 24 of this Lease has been fully completed and paid for in accordance with the terms and conditions of this Lease and that the last day for filing any mechanics' or materialmens' liens has passed without the filing of any, or if filed, any such lien has been released, any remaining amount of such proceeds of insurance shall be paid first to Tenant to discharge the outstanding balance of any Leasehold Mortgage, then to Tenant.

b. In the event Tenant elects the option to terminate this Lease pursuant to Section 24.6 above, if there are proceeds of insurance in excess of that required to perform the obligations required under Article 24 of this Lease, upon receipt by Landlord of satisfactory evidence that the work required under Article 24 of this Lease has been fully completed and paid for in accordance with the terms and conditions of this Lease and that the last day for filing any mechanics' or materialmens' liens has passed without the filing of any, or if filed, any such lien has been released, any remaining amount of such proceeds of insurance shall be paid first to Tenant to discharge the outstanding balance of any Leasehold Mortgage, then to Landlord and Tenant in accordance with their interest in the property immediately prior to the time of termination.

24.8 If, after damage to or destruction of the Premises, or any part thereof, there is a substantial possibility that immediate emergency repairs ("Emergency Repairs") are required to eliminate defective or dangerous conditions or to comply with all Applicable Laws and Requirements, Tenant shall promptly undertake such Emergency Repairs after such damage or destruction as are necessary or appropriate under the circumstances to eliminate defective or dangerous conditions and to comply with all such Applicable Laws and Requirements.

24.9 If Landlord at any time, but no more often than every three (3) years, believes that the dollar amounts stated in Article 24 of this Lease are insufficient for a prudent owner of property of the nature of the Premises, the dollar amounts shall be adjusted by an amount equal to the percentage of change in the CPI from the Commencement Date or from the last Lease Year in which such adjustment was made to the date of the adjustment.

## 25. INDEMNITY

25.1 Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord and Landlord's Agents for, any damage to or destruction of the Premises or Permitted Areas, including improvements therein (including, without limitation, Trade Fixtures), or of the Park, or of Tenant's Personal Property or of other personal property, or for personal injuries or death sustained in connection with or as a result of the use of the Premises or Permitted Areas by Tenant, Affiliates, Agents, guests, visitors, invitees, Occupants and other persons.

25.2 Tenant shall protect, indemnify, defend and hold Landlord harmless of and from any and all loss, cost, damage, injury or expense arising out of or related to claims of injury to or death of persons, and/or damage to property (a) occurring in or on the Premises or the Permitted Areas to the extent resulting directly or indirectly from the use or occupancy of the Premises or Permitted Areas or activities of Tenant, Affiliates, Agents, guests, visitors, invitees, Occupants and other persons in or about the Premises or Permitted Areas, or (b) occurring in, on or about any other portion of the Park (other than the Premises or Permitted Areas) to the extent resulting directly or indirectly from the activities that are a part of or related to Historic Boat Shop business and operations of Tenant, its Affiliates or Agents; its directors, officers, partners, members, employees, contractors, consultants, or agents; and other persons under the control of

Tenant in or about the Park; such indemnity to include, without limitation, the obligation to provide all costs of defense against any such claims; provided, however, that the foregoing indemnity shall not apply to any claims arising by reason of the gross negligence or willful misconduct of Landlord, or Landlord's Agents. In addition, Tenant shall protect, indemnify, defend, and hold Landlord harmless from and against any and all loss, cost, damages, injury or expense arising out of or in any way related to (y) any breach of this Lease by Tenant; or (z) claims for work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with performance of any work done by or at the direction of Tenant in the Premises or Permitted Areas. Tenant expressly acknowledges and agrees that it has an immediate and independent obligation to defend Landlord from any claim that actually or potentially falls within this Article 25, regardless of whether such allegation is, or may be, groundless, fraudulent or false. Such obligation to defend and indemnify shall arise at the time such claim is tendered to Tenant by Landlord and shall continue until discharged through performance or judicial determination.

25.3 Landlord and Landlord's Agents shall be liable for acts and omissions related to this Lease only to the extent specifically allowed by federal law.

25.4 The obligations of Tenant under this Article 25 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises.

25.5 This Article 25 shall survive any termination of this Lease. The provisions of Article 23 of this Lease shall not limit in any way Tenant's obligations under this Article 25.

## 26. LIENS

26.1 Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of Landlord or of any interest of Landlord in the Premises, except for such actions or contracts contemplated and taken in accordance with this Lease or as otherwise expressly approved in writing by Landlord.

26.2 Tenant shall not suffer or permit any liens known to Tenant to stand against the Premises, the improvements thereon, or any part thereof by reason of any work, labor, or services performed for or materials supplied to, or claimed to have been supplied to Tenant. If any such lien shall at any time be filed against the Premises, the improvements thereon, or any part thereof, Tenant shall cause the same to be discharged of record within sixty (60) days after notice to Tenant of filing the same, by either payment, deposit or bond, unless such lien shall be contested. If Tenant fails to discharge or contest such lien within such period and such failure shall continue for a period of fifteen (15) days after notice by Landlord, then, in addition to any other right or remedy of Landlord, Landlord may to the extent permitted by Law, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due, by deposit in court, or by bonding. All amounts paid or deposited by Landlord for any of the

aforesaid purposes, and all other expenses of Landlord and all necessary disbursements in connection therewith in defending any such action or in procuring the discharge of such lien, shall become due and payable forthwith by Tenant to Landlord upon written demand therefor.

26.3 Nothing in this Lease shall be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, expressed or implied, by inference or otherwise, to any person, firm or corporation, for the performance of any labor or the furnishing of any materials for any Building Maintenance, Preservation Maintenance, Initial Improvements or Alterations of or to the Premises or any part thereof, or as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Landlord's interest in the Premises.

## 27. TRANSFER AND SUBLETTING

27.1 Landlord is entering into this Lease in reliance on the particular and unique skills and reputation of Tenant, and Landlord would not enter into this Lease except for such particular and unique skills and reputation of Tenant. Except as set forth in this Article 27, Tenant shall not make Transfers and enter into Subleases or other occupancy agreements or permit sub-Subleases or other similar occupancy agreements, without the express prior written permission of Landlord in its sole and absolute discretion; provided, however, that such prior written permission of Landlord shall be in its reasonable discretion, so long as the standards and conditions set forth in Sections 27.5 and 27.6 below are satisfied, to facilitate transition in the case of a Transfer following foreclosure (or deed in lieu thereof) if the Leasehold Mortgagee or its Leasehold Mortgagee Affiliate is then the tenant as a result of such foreclosure (or deed in lieu); provided, further however, any subsequent Transfer to a new tenant shall be subject to Landlord's approval pursuant to Section 27.5 and all other applicable provisions of this Article 27.

27.2 With respect to proposed Subleases or other occupancy agreements, as part of the written request for approval from Landlord pursuant to Section 27.1 above, Tenant shall furnish to Landlord the following information: (a) evidence satisfactory to Landlord that the proposed Occupant's use of the Subleased premises or occupied premises shall be in compliance with Article 10 hereof; (b) a copy of the proposed Sublease or other occupancy agreement with the proposed Occupant; and (c) evidence satisfactory to Landlord of the proposed Occupant's financial capacity to meet its commitments under the proposed Sublease or other occupancy agreement.

27.3 Landlord shall have the right to approve the form of any Transfer, Sublease, sub-Sublease, or other occupancy agreement.

27.4 (a) With respect to proposed Transfers, Subleases, sub-Subleases, or other occupancy agreements with a term (including all options and extensions) of three (3) year(s) or more, as part of the written request for approval for a Transfer, Sublease, sub-Sublease, or other occupancy agreement, Tenant shall furnish to Landlord the following information: (i) all

instruments proposed to implement the transaction; (ii) a statement as to the existence of any litigation questioning the validity of the proposed transaction; (iii) a description of the Historic Boat Shop property management qualifications and financial background of the proposed assignee or Occupant; (iv) a description of the ownership structure and general business standing of the proposed transferee or Occupant; (v) if the transaction may result in an encumbrance on the Premises, full particulars of the terms and conditions of the encumbrance; and (vi) such other information as Landlord may reasonably require.

(b) With respect to proposed Transfers, Subleases, sub-Subleases, or other occupancy agreements with a term (including all options and extensions) of less than three (3) year(s) (including month-to-month leases or other occupancy agreements), Landlord, in its sole discretion, may require less detailed information than described in Section 27.4(a) above. It is not the intention of the Parties that Landlord review and approve all occupancy agreements for occupancies which are short term in nature and of limited duration, such as, for example, special events, exhibits or conferences, however, Landlord reserves the right to do so. For such uses, the Parties may agree to the use of an approved form of occupancy agreement (which shall not be a Sublease) which Tenant shall then use for such activities, with Landlord's written approval required for revisions to the approved form of occupancy agreement.

27.5 With respect to a proposed Transfer (which for purposes of this Section 27.5 shall include any assignment or Sublease, or change in Controlling Interest of Tenant) and without otherwise limiting the criteria upon which Landlord may withhold its consent to any proposed Transfer, if Landlord withholds its consent where (a) the proposed transferee does not have (i) an average fund balance or retained earnings for the previous five (5) years equal to or greater than three (3) times the then-current monetary obligations under this Lease plus the monetary obligations related to the Transfer, or (ii) net annual operating income for each of the previous five (5) years equal to or greater than three (3) times the then-current monetary obligations under this Lease plus the monetary obligations related to the Transfer; (b) the proposed transferee has not demonstrated sufficient property management capability; or (c) the proposed transferee's use of the Premises is not in compliance with Article 10 hereof, such withholding of consent shall be presumptively reasonable. As part of the written request for approval from Landlord as set forth in Section 27.1 above, Tenant shall furnish to Landlord such information as Landlord may reasonably require.

27.6 Except as provided above, Landlord shall approve or disapprove any written request for approval of a Transfer, Sublease, sub-Sublease, or other occupancy agreement which written request shall include all the evidence required under this Article 27, within forty-five (45) days from the date of receipt by Landlord of complete documentation supporting such written request. Any disapproval by Landlord shall set forth a written explanation of the grounds for such disapproval.

27.7 Each Sublease shall contain provisions in form and substance substantially as set forth below in this Section 27.7. By executing its Sublease, each Subtenant shall be deemed to

have agreed to these provisions, which reflect the definitions in this Lease. All such defined terms shall be modified in the Sublease as appropriate to reflect the applicable definitions in the Sublease.

> "All terms, covenants, and provisions of this Sublease and all rights, remedies and remedies of Subtenant under this Sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease and the leasehold estate created thereby terminate, then this Sublease shall terminate. In that event, Subtenant, only at the election and request of Landlord (except as Landlord has agreed otherwise in writing) and to the extent lawful under Applicable Laws and Requirements, shall attorn to Landlord, and recognize Landlord as Subtenant's direct landlord under this Sublease, except that Subtenant acknowledges that Landlord shall not be liable to the Subtenant for any security deposit or prepaid rent or funds previously paid by such Subtenant to Tenant unless such deposits are transferred to Landlord. Subtenant shall execute and deliver, at any time and from time to time, upon the request of Tenant, Landlord, or any Mortgagee, any instrument necessary or appropriate to evidence such attornment."

27.8 Provided that Landlord has consented to a Transfer in writing, upon such approved Transfer, Tenant shall be released from its obligations hereunder which arise subsequent to the effective date of the Transfer to the extent of the interest of Tenant transferred and to the extent the transferee of the Transfer assumes, in writing, Tenant's obligations under this Lease.

27.9 If Landlord so requests, Tenant shall pay to Landlord the reasonable cost of attorneys' and other professional fees in connection with any request for assignment or subletting.

27.10 Proceeds from Subletting

Tenant shall be entitled to retain any rent or other consideration paid to Tenant directly or indirectly by any Subtenant or any other amount received by Tenant from or in connection with any subletting, including, but not limited to, sums paid for the sale or rental, or consideration received on account of any contribution, of Tenant's Personal Property or Trade Fixtures or sums paid in connection with the supply of utilities.

27.11 No Transfer (including a Transfer of Entire Interest) or Sublease shall be effective or have any validity unless and until such transfer or Sublease otherwise complies with this Lease and Landlord has received: (i) in the case of an assignment, an executed counterpart of the assignment and an assumption of this Lease by the assignee, effective as of the date of

assignment; (b) in the case of a Sublease, a copy of the executed Sublease complying with this Lease; and (iii) written notice of the assignee or Subtenant.

27.12 This Lease shall be binding upon, inure to the benefit of, and be enforceable by assigns and/or any successor in interest.

28. LEASEHOLD MORTGAGES

28.1 Additional Definitions. For purposes of this Article 28, the following terms shall have the meanings hereinafter set forth:

a. "**Assignment for Security**" shall mean a transaction or transactions in which Tenant:

i. assigns all or any portion of its interest hereunder for the purpose of security ("**Assignment**"); and/or

ii. executes a deed of trust ("**Deed of Trust**") with respect to all or any portion of its interest hereunder; and/or

iii. executes a mortgage ("**Mortgage**") with respect to all or any portion of its interest hereunder.

b. "**Leasehold Mortgage**" shall mean the encumbrance created by and all of the instruments of encumbrance in connection with an Assignment for Security, including, without limitation, a Mortgage, Deed of Trust, Assignment, reassignment or other instrument regardless of the form of the transaction.

c. "**Leasehold Mortgagee**" shall mean the secured party under a Leasehold Mortgage regardless of the type of interest created in such secured party by the Assignment for Security under such Leasehold Mortgage.

d. "**Mortgaged Premises**" shall mean Tenant's interest under this Lease encumbered by a Leasehold Mortgage.

28.2 Tenant may, subject to the requirements of this Lease, mortgage its interest in the leasehold estate created by this Lease and may grant a security interest in the Trade Fixtures and Tenant's Personal Property situated thereon by a Leasehold Mortgage. Tenant shall have the right, subject to the terms and conditions of this Article 28, to enter into Assignments for Security so long as Tenant (or a successor taking by assignment) remains liable, to the extent provided for in this Lease, for performance of all Tenant obligations hereunder. A Leasehold Mortgage shall cover no interest in any real or personal property other than (a) Tenant's interest in the Premises and the Trade Fixtures or some portion thereof, (b) any Subleases or other occupancy agreements thereon, and (c) any Personal Property of Tenant. With the exception of

the rights expressly granted to Leasehold Mortgagees in this Lease, the execution and delivery of a Leasehold Mortgage shall not give a Leasehold Mortgagee any greater rights than those granted Tenant hereunder. Pursuant to 36 CFR Section 18.12(l), any pledge or encumbrance of this Lease, including a Leasehold Mortgage, and the proposed holder of such pledge or encumbrance must be in writing in advance by Landlord.

28.3 Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Leasehold Mortgagees shall not apply to more than two (2) Leasehold Mortgagees at any one time. Once a Leasehold Mortgagee is designated by Tenant, Tenant shall not designate different or additional Leasehold Mortgagees without the written consent of the Leasehold Mortgagee first designated, or the earlier termination of such Leasehold Mortgage. In the event that at any time there are more than two (2) Leasehold Mortgagees, Tenant shall notify Landlord in writing of the two (2) Leasehold Mortgagees to which such rights should apply.

28.4 Amount and Purpose of Loan

a. At no time may the total of all Leasehold Mortgages on the Premises in the form of construction or permanent term loans held by Mortgagees which are commercial lenders, as of the date that the latest Leasehold Mortgage is granted, exceed eighty percent (80%) of the total value of the Premises as estimated by the appraiser for the latest Leasehold Mortgagee at or about such time, except that when combined with financing from non-conventional sources such as non-secured or secured private or institutional "bridge loans," program related investment loans from foundations and community loan funds, and equipment/vehicle leases, the total financing may equal a maximum of ninety percent (90%) of the total value of the Premises as estimated by the appraiser. The appraiser shall be a current member in good standing of either the American Society of Appraisers ("**ASA**") or the Appraisal Institute ("**MAI**"), and shall also be a member of either the Counselors of Real Estate ("**CRE**") or the International Society of Hospitality Consultants ("**ISHC**"), or their successor organizations. Promptly upon demand, Tenant shall cause a complete copy of such appraisal, together with all supporting documentation, to Landlord for determination of compliance with the terms and conditions of this Lease. Tenant shall bear all costs of any such appraisal.

b. No Leasehold Mortgage will be approved by Landlord or will be entered into by Tenant that has a maturity date beyond the Term.

c. From the Commencement Date until issuance of a Certificate of Occupancy or Temporary Certificate of Occupancy for the Initial Improvements, a Leasehold Mortgage shall be made only for the purposes of:

(i) short-term, interim or construction financing incurred to finance Rehabilitation, demolition and Development Cost (as such term is defined in the Lease Disposition and Development Agreement) relating to the Premises and Fixtures, or to acquire and install the Personal Property and supplies;

(ii) interim, long-term or take-out financing of the completed development referred to in Section 28.4(c)(i) above; or

(iii) long-term or permanent financing of the take-out loans referred to in Section 28.4(c)(ii) above.

d. From the date of issuance of a Certificate of Occupancy a Leasehold Mortgage can be made for any purpose consistent with this Lease.

28.5 Landlord's prior written approval shall be required for any refinancing. Landlord shall be provided with copies of any such draft Leasehold Mortgage instruments prior to their execution and shall approve or shall make any objections to such draft instruments within thirty (30) days from the date of the receipt of the complete documentation of the Leasehold Mortgage. Landlord shall review the drafts for the purpose of evaluating their conformity with this Lease, acceptability of the encumbrance instruments, and consistency with the refinance commitment. Landlord shall have an additional five (5) business days to review and approve or disapprove any revisions to the final Leasehold Mortgage documentation made after the Tenant and Leasehold Mortgagee have negotiated the refinancing of the Leasehold Mortgage, but prior to the scheduled closing of escrow of the refinance of the Leasehold Mortgage. Landlord shall be paid two percent (2%) of the amount of any increased Leasehold Mortgage over and above the amount of the then-existing balance of the existing Leasehold Mortgage(s) ("**Net Refinancing Proceeds**") of all refinancing events occurring on or after the date which is three (3) years after the issuance of the Certificate of Occupancy for the Initial Improvements.

28.6 Tenant shall deliver to Landlord, promptly after execution by Tenant, a copy, certified by Tenant as a true copy, of any Leasehold Mortgage and any subsequent amendment, modification or extension thereof, together with the name and address of the owner(s) and holder(s) thereof.

28.7 A Leasehold Mortgage shall contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards with respect to the Premises in the manner provided in this Lease.

28.8 Rights Subject to Lease.

All rights acquired by a Leasehold Mortgagee under any Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of Landlord hereunder, none of which covenants, conditions and restrictions is or shall be waived by Landlord by reason of the giving of such Leasehold Mortgage, except as expressly provided in this Lease or otherwise specifically waived by Landlord in writing.

28.9 Required Provisions of any Leasehold Mortgage.

Tenant agrees to have any Leasehold Mortgage provide:

a. that the Leasehold Mortgagee shall by registered or certified mail give written notice to Landlord of the occurrence of any event of default under the Leasehold Mortgage;

b. that Landlord shall be given notice at the time any Leasehold Mortgagee initiates any foreclosure action.

28.10 Notices to Mortgagee

a. If Tenant shall have granted any Leasehold Mortgage and if the Leasehold Mortgagee thereunder shall have given to Landlord written notice substantially in the form provided in Section 28.10(b) below, Landlord shall give to Leasehold Mortgagee a copy of any and all notices of default or of the occurrence of an Event of Default from time to time given to Tenant by Landlord at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, addressed to such Leasehold Mortgagee at the address last furnished to Landlord. No such notice by Landlord shall be deemed to have been given to Tenant unless and until a copy thereof shall have been so given to Leasehold Mortgagee. Further, in the event Tenant shall not have remedied such default within the applicable cure period therefore under this Lease, Landlord shall deliver to Leasehold Mortgagee a further written notice regarding such failure to remedy by Tenant. Following any failure to cure by Tenant, Leasehold Mortgagee shall have the cure rights set forth in Section 28.11 below. Any such notices to Leasehold Mortgagee shall be given in the same manner as provided in Article 38 of this Lease.

b. The Leasehold Mortgagee under any Leasehold Mortgage shall be entitled to receive notices from time to time given to Tenant by Landlord under this Lease in accordance with Section 28.10(a) above provided such Leasehold Mortgagee shall have delivered a notice to Landlord in substantially the following form:

> "The undersigned does hereby certify that it is a Leasehold Mortgagee, as such term is defined in that certain Lease entered into by and between the United States Department of the Interior, acting through the National Park Service, an agency of the United States of America, Golden Gate National Recreation Area, a unit of the National Park Service, acting through the Regional Director, hereinafter, together with his or her successor or successors in office and his or her and their duly appointed representatives, as Landlord, and _____, a _____, as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by Landlord be sent

to the undersigned at the following address:
_____."

c. The Leasehold Mortgagee shall be entitled to written notice by Landlord and Tenant of, and shall have the right to intervene in, any arbitration or other legal proceeding between Landlord and Tenant pertaining to this Lease or the rights, duties or obligations of the parties under this Lease.

d. Tenant shall not claim any offset against any amount owing to Landlord under this Lease without prior written notice and consent of each Leasehold Mortgagee whose consent is required pursuant to the terms of its Leasehold Mortgage.

e. If Tenant shall have granted any Leasehold Mortgage and if the Leasehold Mortgagee thereunder shall have given to Landlord written notice substantially in the form provided in Section 28.10(b) above, notwithstanding anything to the contrary in Section 44.2 below, so long as any such Leasehold Mortgage shall remain unsatisfied of record, such Leasehold Mortgagee shall be a third party beneficiary of this Lease solely with respect to the rights and obligations given to a Leasehold Mortgagee in this Lease and for no other purpose whatsoever.

28.11 Leasehold Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions of this Section, then, so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

a. In the case of any notice of default given by Landlord to Tenant and Leasehold Mortgagee in accordance with Section 28.10 above, the Leasehold Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of such cure period, or (ii) the date that Landlord has served a notice of default upon Leasehold Mortgagee, and Landlord shall accept such performance by or at the instance of the Leasehold Mortgagee as if the same had been made by Tenant; provided, however, if such default cannot reasonably be cured or remedied by the Leasehold Mortgagee within such additional thirty (30) day period, such cure period shall be extended (and no Event of Default shall be deemed to have occurred under this Lease) so long as the Leasehold Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure and delays caused by foreclosure, bankruptcy or insolvency proceedings.

b. Anything herein contained to the contrary notwithstanding, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Leasehold Mortgagee obtaining possession, Landlord shall take no action to effect a termination of this Lease if, within

thirty (30) days after notice of such Event of Default is given to each Leasehold Mortgagee, a Leasehold Mortgagee shall have (A) (i) obtained possession of the Premises (including possession by a receiver), or (ii) notified Landlord of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease, and (B) thereafter promptly commences and prosecutes such proceedings with diligence and dispatch (subject to Force Majeure and delays caused by bankruptcy or insolvency proceedings). Upon such a foreclosure or other acquisition of Tenant's interest under the Lease, Landlord shall recognize such Leasehold Mortgagee, or, subject to approval by the Director of the NPS as required by Article 27 above, any other foreclosure or trustee sale purchaser or recipient of any deed in lieu as Tenant hereunder, which successor tenant shall take Tenant's interest in the Premises subject to all of the terms, agreements, covenants, conditions and provisions in this Lease and shall accept and agree in writing to be bound by all the terms and conditions of this Lease and assume Tenant's obligations hereunder. A Leasehold Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required to promptly cure all other defaults.

c. Nothing herein contained shall preclude Landlord, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings.

d. In the event of the termination of this Lease prior to the expiration of the Term, except as the result of damage or destruction as provided in Article 24 of this Lease, Landlord shall serve upon the Leasehold Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to Landlord. As permitted by Applicable Laws and Requirements, the Lease may be reinstated for a Leasehold Mortgagee in accordance with and upon the following terms and conditions:

i. The Leasehold Mortgagee shall submit its request for reinstatement of the Lease to Landlord no later than ninety (90) days after the date of Landlord's notice pursuant to Section 28.11(d) above;

ii. Such reinstated Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions of this Lease; and

iii. Such reinstated Lease shall require the Leasehold Mortgagee to perform any unfulfilled obligation of Tenant under this Lease. Upon the execution of such reinstated Lease, the Leasehold Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including reasonable attorneys' fees, court costs and other costs incurred by Landlord in connection with such termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such reinstated Lease.

e. To the extent permitted by Applicable Laws and Requirements, effective upon the reinstatement of the Lease pursuant to this Section 28.11, all Subleases or other occupancy agreements then in effect shall be assigned and transferred by Landlord to Leasehold Mortgagee and all monies on deposit with Landlord which Tenant would have been entitled to use but for the termination or expiration of this Lease may be used by Leasehold Mortgagee for the purposes of and in accordance with the provisions of the reinstated lease. Between the date of termination of this Lease and commencement of the reinstated lease, Landlord shall not (i) enter into any new Subleases or other occupancy agreements, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Leasehold Mortgagee if Leasehold Mortgagee enters into the reinstated Lease, (ii) cancel or materially modify any of the existing Subleases or other occupancy agreements, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (iii) accept any cancellation, termination or surrender thereof without the written consent of Leasehold Mortgagee, which consent shall not be unreasonably withheld or delayed.

f. Anything herein contained to the contrary notwithstanding, the provisions of this Section 28.11 shall inure only to the benefit of the holders of the Leasehold Mortgages which are permitted hereunder.

g. No agreement between Landlord and Tenant amending, terminating or surrendering this Lease, or election by Tenant not to continue this Lease as provided for herein, shall be valid or effective without Leasehold Mortgagee's written consent.

h. No union of the interests of Landlord and Tenant herein shall result in a merger of this Lease in the fee interest, so long as any Leasehold Mortgage shall be unsatisfied.

28.12 Assignment by Leasehold Mortgagee

If a Leasehold Mortgagee shall acquire Tenant's interest in this Lease as a result of a sale under said Leasehold Mortgage pursuant to a power of sale contained therein, pursuant to a judgment of foreclosure, through any transfer in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure, bankruptcy or insolvency action, or in the event a Leasehold Mortgagee becomes Tenant under this Lease or any reinstated Lease obtained pursuant to Section 28.11 above, such Mortgagee's right thereafter to assign or transfer this Lease or such reinstated Lease shall be subject to the restrictions of Article 27 of this Lease. In the event Leasehold Mortgagee subsequently assigns or transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure, and in connection with any such assignment or transfer, Leasehold Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Leasehold Mortgagee for such assignment of transfer, then such mortgage or deed of trust shall be considered a Leasehold Mortgage, and Leasehold Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 28 and any other provisions of this Lease intended for the benefit of the holder of a Leasehold Mortgage.

28.13 Execution of Documents

a. Landlord shall, upon request from Tenant, execute and deliver from time to time any agreement or document which may reasonably be deemed necessary to implement the provisions of this Article 28, provided that subordination of Landlord's fee interest shall not be required.

b. Subject to the conditions set forth below and Applicable Laws and Requirements, Landlord and Tenant shall cooperate to include in this Lease by suitable amendment from time to time any provision which may reasonably be requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee protection provisions contained in this Lease and allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage or to avoid the impairment of its security on the occurrence of a default under the terms of this Lease.

c. Subject to Applicable Laws and Requirements, Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement reasonably necessary to effect any such amendment; provided, however, that any such amendment shall not, except as specifically provided in this Lease, in any way:

i. affect the Term, require the subordination of Landlord's fee simple title or reversionary interest, or affect the Rent and other monetary obligations under this Lease, nor

ii. otherwise in any material respect adversely affect any rights or obligations of Landlord or its mortgagee under this Lease.

d. Tenant shall reimburse Landlord for all reasonable fees, including non-affiliate attorneys' fees incurred by Landlord in connection with any agreement or document which Landlord is requested to execute pursuant to this Section 28.13.

## 29. TRANSFER BY LANDLORD

29.1 Landlord shall have the right to transfer any or all of its rights and obligations under this Lease. This Lease shall not be affected by any such transfer, and Tenant agrees to attorn to the purchaser or transferee.

29.2 If this Lease is transferred by Landlord, Landlord will, as a condition of such transfer, cause the transferee to recognize Tenant's and any Leasehold Mortgagee's rights hereunder.

29.3 In the event of any transfer of Landlord's interest in and to the Premises, Landlord, subject to the provisions hereof, (and in case of any subsequent transfers, the then transferor) will automatically be relieved from and after the date of such transfer of all liability

with regard to the performance of any covenants or obligations on the part of Landlord (or such transferor, as the case may be) contained in this Lease thereafter to be performed, but not from liability incurred by Landlord (or such transferor, as the case may be) on account of covenants or obligations to be performed by Landlord (or such transferor, as the case may be) hereunder prior to the date of such transfer.

30. RIGHT TO ESTOPPEL CERTIFICATES

30.1 Each party, within twenty (20) days written request from the other party, shall execute and deliver to the other party, in reasonable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications. The certificate also shall state the amount of Rent by category, such as Base Rent, Percentage Rent, Participation Rent, and Additional Rent, the dates to which the Rent has been paid in advance, and the amount of any security deposits or prepaid rent and such other matters as may be reasonably or customarily requested.

31. DEFAULTS

31.1 The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, in law, in equity or before any administrative tribunal which has or might have the effect of preventing Tenant from complying with the terms of this Lease):

a. Tenant fails to pay any Rent within five (5) days of the date when due to Landlord;

b. Tenant fails to perform or comply with any other term hereof, and such failure shall continue beyond the applicable cure period, if any, or, if none, for more than thirty (30) days after written notice thereof from Landlord, or if such default cannot reasonably be cured within such thirty (30) day period, Tenant has not within such period commenced with due diligence and dispatch the curing of such default, or having so commenced, has ceased, failed or neglected to prosecute or complete with diligence and dispatch the curing of such default;

c. The filing by or against Tenant of any proceedings under any state or federal insolvency or bankruptcy law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

d. The entry of an order for relief against Tenant under any bankruptcy or reorganization case;

e. The appointment of a receiver, trustee or custodian of all or any part of the property of Tenant which appointment with respect to Tenant is not dismissed within sixty (60)

days; provided, however, that the appointment of a receiver pursuant to the exercise by a Leasehold Mortgagee of its rights under a Leasehold Mortgage shall not be an Event of Default hereunder;

f. The assignment of all or any part of the property, if any, of Tenant for the benefit of creditors;

g. The failure of Tenant to give written notice to Landlord of Tenant's intention to commence proceedings under any state or federal insolvency, bankruptcy or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, at least thirty (30) days prior to the commencement of such proceedings;

h. A writ of attachment or execution is levied on this Lease which is not released within thirty (30) days;

i. The Premises are abandoned or cease to be used for the uses permitted hereunder, which abandonment or cessation is not cured within thirty (30) days after notice thereof from Landlord (provided, however, that no such thirty (30) day cure period shall be applicable to any such abandonment or cessation from and after the first occurrence of any such abandonment or cessation); provided, a reasonable temporary cessation of use as permitted under Section 10.7(a) above shall not be deemed a cessation of use of these purposes; or

j. Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease, or sublets all or any portion of the Premises in violation of this Lease, which violation is not remedied within thirty (30) days after notice thereof from Landlord.

32. REMEDIES

32.1 Upon an Event of Default, Landlord shall have the following rights and remedies in addition to any rights or remedies available to Landlord at law or inequity, or under this Lease.

a. All rights and remedies provided by federal and any applicable state law;

b. The rights to continue this Lease in effect after Tenant's breach of this Lease and abandonment and to enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate Tenant's right to possession; provided, however, if Landlord elects to exercise its remedies described in this Section 32.1 and Landlord does not terminate this Lease, and if Tenant requests Landlord's consent to an assignment of this Lease or a Sublease of the Premises at such time as Tenant is in default, Landlord shall not unreasonably withhold its consent to such assignment or Sublease. Acts of Maintenance, efforts to relet the Premises or the appointment of a receiver upon Landlord's initiative to protect its interest under this Lease shall not constitute a termination of Tenant's rights to possession;

c. The right to recover from Tenant:

i. The worth at the time of the award of the unpaid Rent that had been earned at the time of termination of this Lease;

ii. The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

iii. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount, including, without limitation, court costs, expert witness fees, document copying expenses, exhibit preparation costs, courier expenses, postage and communication expenses necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including, without limitation, the costs incurred by Landlord in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile and long distance expenses, brokers' fees or commissions, the costs of removing and storing the property of Tenant, costs incurred by Landlord in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new Tenant, and the costs of restoration and of repairing and maintaining the Premises.

"The worth, at the time of the award," as used in Sections 32.1(c)(i) and (ii) above is to be computed by allowing interest at the Interest Rate. The "worth at the time of award" of the amount referred to in Section 32.1(c)(iii) above shall be computed by discounting such amount at the "discount rate" of the Federal Reserve Bank of San Francisco in effect as of time of award plus one percent (1%) and, where rental value is a material issue, shall be based upon competent appraisal evidence. Recovery of the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that the Tenant proves could be reasonably avoided shall be computed pursuant to Section 32.1(c)(ii) above.

d. The right to terminate this Lease by giving written notice to Tenant in accordance with Applicable Law;

e. If Landlord elects to terminate this Lease, the right and power to enter the Premises and remove therefrom all persons and property and, to store such property in a public

warehouse or elsewhere at the cost of and for the account of Tenant, and to sell such property and apply such proceeds therefrom pursuant to Applicable Law.

32.2 No act by Landlord allowed by this Article 32 shall terminate this Lease unless Landlord notifies Tenant in writing that Landlord elects to terminate this Lease.

32.3 In the event Landlord terminates Tenant's right to possession of the Premises pursuant to this Article 32, Tenant hereby expressly waives any and all rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future federal or state law.

32.4 Upon the occurrence of an Event of Default, Landlord shall have the right, but not the obligation, to take such action as reasonably necessary to cure such default.

32.5 The remedies given to Landlord in this Section shall be in addition and supplemental to all other rights or remedies which Landlord may have at law or in equity.

32.6 Liability Between the Parties

a. Tenant's liability pursuant to this Lease is limited to Tenant's interest in the Premises; provided that such limitation shall not apply to damages that arise out of or in connection with (i) damages for any breach of this Lease, (ii) reimbursement for any insurance premiums which Tenant failed to pay in violation of this Lease and which Landlord paid, (iii) any proceeds from insurance recoveries and condemnation awards of settlements in lieu of awards which Tenant has misapplied in violation of this Lease, (iv) any Impositions not paid by Tenant; (v) uninsured losses; (vi) any damages suffered by Landlord as the result of the breach by Tenant of the covenants contained in Article 22 of this Lease, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile and long distance expenses; (vii) any expenses in enforcing the limited recourse provisions of this Section 32.6, whether or not any action or proceeding is commenced, including, without limitation, reasonable attorney fees and all costs, disbursements and expenses of Landlord's outside counsel, expert witness fees, transcript preparation fees and costs and document copying, exhibit preparation, courier, postage, facsimile and long distance expenses; and (viii) waste committed or permitted by Tenant.

b. Tenant agrees that it will have no recourse with respect to any obligation of Landlord under this Lease, or for any claim based upon this Lease or otherwise, against any employee, representative or attorney, past, present or future, of Landlord, or against any person other than Landlord, or against Landlord except as permitted under Applicable Law and Requirements, whether by virtue of any constitution, statute, rule of law, rule of equity, enforcement of any assessment as penalty, or by reason of any matter prior to the execution and delivery of this Lease, or otherwise.

32.7 No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease or to exercise any right or remedy upon an Event of Default, and no acceptance by Landlord of full or partial monetary obligation during the continuance of any such Event of Default, shall constitute a waiver of any such Event of Default or of such term, covenant, agreement, provision, condition or limitation. No term, covenant, agreement, provision, condition or limitation of this Lease and no Event of Default under this Lease may be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any Event of Default shall affect or alter this Lease, but each and every term, covenant, agreement, provision, condition and limitation of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Event of Default.

32.8 No expiration or termination of this Lease pursuant to the terms hereof or by operation of law or otherwise and no repossession of the Premises or any part thereof pursuant to the terms hereof or by operation of law or otherwise, shall relieve Tenant of its liabilities and obligations hereunder arising prior to termination of this Lease, all of which shall survive such expiration, termination or repossession, including, without limitation, the rights of Landlord for indemnification for liability, personal injuries or property damage, nor shall anything in this Lease be deemed to affect the right of Landlord to equitable relief.

## 33. SURRENDER AND VACATE THE PREMISES

33.1 On the Termination Date or other termination of the Term, Tenant shall surrender and vacate the Premises and the Fixtures, remove the Trade Fixtures and Tenant's Personal Property therefrom, and return the Premises and Improvements and all of Landlord's personal property, if any, on the Premises to good order and condition (normal wear and tear excepted). All Fixtures shall be in good working order and shall remain attached to the Premises. Notwithstanding the removal of any Trade Fixtures, all major building systems including heating, air conditioning, electrical, security lighting, fire detection, smoke detection, building fire suppression, alarm, drainage, water supply, elevator, escalator, and sewer shall be complete and in good working order and shall function as designed. Tenant shall execute all documents as Landlord may deem necessary to evidence any such other termination.

33.2 If Tenant shall fail or neglect to remove the Trade Fixtures or Tenant's Personal Property and shall fail to leave the Premises in good order as described in this Article 33, then, at Landlord's option, the Trade Fixtures and/or Tenant's Personal Property shall either become the property of Landlord without compensation therefor, or Landlord may cause it to be removed and the Premises to be repaired at the expense of Tenant, and no claim for damages against Landlord or Landlord's Agents, shall be created by or made on account of such removal and repair work and all major building systems shall be returned to working order at the expense of Tenant.

33.3 Ninety (90) days prior to the Termination Date, Tenant and Landlord shall jointly, or Landlord shall in the absence of Tenant, prepare an Inventory and Condition Report of the

Premises to constitute the basis for materials and work that may be necessary to meet the conditions of this Article 33.

34. HOLDING OVER

34.1 This Lease shall terminate upon the Termination Date and any holding over by Tenant after the Termination Date shall not constitute a renewal of this Lease or give Tenant any rights under this Lease or in or to the Premises.

35. REPRESENTATIONS AND WARRANTIES OF TENANT

35.1 Tenant hereby represents and warrants to Landlord as follows:

a. Tenant is a _____ **[TBD]** duly formed and validly existing under the laws of the State of California.

b. The Person(s) executing this Lease on behalf of Tenant has full right, power and authority to execute and deliver this Lease as Tenant's act and deed and to bind Tenant hereto.

c. Tenant has the right, power, legal capacity and authority to enter into and perform its obligations under this Lease, and to renovate, Rehabilitate, demolish, construct, develop, operate and maintain the Premises as contemplated by this Lease; all approvals or consents of any person(s) required in connection with the execution and performance of this Lease have been obtained.

d. The Lease is a legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms.

e. The execution and delivery of this Lease by Tenant will not result in a breach of the terms or provisions of, or constitute a default or condition or event that would, with notice or lapse of time or both, be a default, breach or violation of Tenant's organizational documents or any indenture, agreement or obligation by which Tenant is bound or any order or decree of any court or Agency to which Tenant is a party or to which it is subject, and will not constitute a violation of any law, order, rule or regulation applicable to Tenant.

f. No litigation is being threatened or prosecuted against Tenant or its members that might impair Tenant's ability to execute and deliver this Lease or perform any of its obligations hereunder.

g. Tenant has taken all necessary action to authorize the execution, delivery and performance of this Lease and this Lease constitutes the legal, valid and binding obligation of Tenant.

36. REPRESENTATIONS AND WARRANTIES OF LANDLORD

36.1 Landlord hereby represents and warrants to Tenant as follows:

a. Landlord is an Agency of the United States of America.

b. Landlord has taken all necessary action to authorize the execution, delivery and performance of this Lease, and this Lease constitutes the legal, valid and binding obligation of Landlord.

36.2 Landlord has made no representations or warranties, direct or implied, written or verbal, with respect to the Premises or any other property owned by Landlord.

37. COMPLIANCE WITH CIVIL RIGHTS AND EQUAL OPPORTUNITY LAWS

37.1 To the extent that the following Orders, Acts, Laws, and regulations apply to this Lease then Tenant shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order No. 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, P.L. 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 CFR 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 12111 et seq.; (f) Architectural Barriers Act of 1968, 42 U.S.C. Sections 4151 et seq.; and (g) all other Applicable Laws and Requirements relating to nondiscrimination in employment and in providing facilities and services to the public, and Tenant shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

38. NOTICES

38.1 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 shall be deemed to have been given on the earliest of (a) receipt, (b) one (1) business day after delivery to a courier for overnight expedited delivery service, or (c) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), 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 Article 38):

If to Landlord: National Park Service
U.S. Department of the Interior
Golden Gate National Recreation Area
Building 201 Fort Mason
San Francisco, CA 94123
Attention: Superintendent

If to Tenant: _____
_____
_____
_____
Attention: _____

And to: Tenant's Leasehold Mortgagee pursuant to Article 28 of this Lease.

39. LANDLORD'S RIGHT TO CURE DEFAULTS

39.1 If Tenant shall fail or neglect to do or perform any act or thing herein provided by it to be done or performed and such failure shall not be cured within the applicable grace period provided in Article 31 above, then Landlord may, but shall not be required to, do or perform or cause to be done or performed any other act or thing (entering upon the Premises for such purposes, if Landlord so elects), and Landlord shall not be or be held liable or in any way responsible for any loss, disturbance, inconvenience, annoyance or damage resulting to Tenant, Agents, Occupants, invitees or visitors on account thereof, and Tenant shall repay to Landlord upon demand the entire cost and expense thereof, including, without limitation, compensation to the agents, consultants and contractors of Landlord and expenses. Landlord may act upon shorter notice or no notice at all if necessary in Landlord's judgment to meet an emergency situation or governmental time limitation or to protect Landlord's interest in the Premises. Any act or thing done by Landlord pursuant to the provisions of this Article 39 shall not be or be construed as a waiver of any such Default by Tenant, or as a waiver of any term, covenant, agreement or condition herein contained or of the performance thereof.

40. LANDLORD'S RIGHT TO EXHIBIT THE PREMISES

40.1 During the final two (2) years of the Term, Landlord shall have the right to enter the Premises at all reasonable times during normal business hours and after giving twenty-four (24) hours prior notice for the purposes of exhibiting the same to prospective Tenants or developing plans for conversion of the same to full Park use after expiration of the Term. Landlord shall not take any action under this Article 40 that causes or is likely to cause material interference with Tenant's use and/or occupancy of the Premises under the terms of this Lease.

41. NO PARTNERSHIP OR JOINT VENTURE

41.1 Landlord is not for any purpose a partner or joint venturer of Tenant in the development or operation of the Premises or in any business conducted on the Premises. Landlord shall not under any circumstances be responsible or obligated for any losses or liabilities of Tenant.

42. NO SUBORDINATION

42.1 Landlord's fee interest in the Premises and this Lease, as the same may be modified, amended or reinstated pursuant to Section 28.11 above, shall not be subject or subordinate (a) to any Leasehold Mortgage now or hereafter placed upon Tenant's interest in this Lease, or (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease.

43. ANTI-DEFICIENCY ACT

43.1 In accordance with the Anti-Deficiency Act, 31 U.S.C. Section 1341, Tenant and Landlord agree that nothing contained in this Lease shall be construed as binding Landlord to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year in furtherance of the subject matter of this Lease, or to involve Landlord in any contract or other obligation for the future expenditure of money in excess of such appropriations.

44. GENERAL PROVISIONS

44.1 No Congressional Conflict of Interest

No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

44.2 No Third Party Beneficiaries

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 any right to enforce any provision of this Lease.

44.3 No Preferential Renewal and Relocation Assistance

This Lease provides no right of renewal, and Tenant hereby waives any preferential right of renewal of this Lease or otherwise. No rights shall be acquired by virtue of this Lease entitling Tenant to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

44.4 Memorandum of Lease

Tenant may record a Memorandum of Lease, at Tenant's cost and expense, in the Official Records of Marin County, California. If Tenant so elects, Tenant shall at Tenant's sole expense prepare the document(s) necessary for recordation and provide such documents to Landlord for Landlord's prior written approval. Following recordation, Tenant shall file a copy of the recorded Memorandum of Lease with the Superintendent of GGNRA and the Regional Director, Pacific West Region.

44.5 Broker's Commissions

Tenant 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. Tenant shall defend and hold Landlord harmless from all damages resulting from any claims that may be asserted against Landlord by any other broker, finder or other person with whom the other party has or purportedly has dealt. The provisions of this Section 44.5 shall survive any termination of this Lease.

44.6 Severability

In case any one or more of the provisions of this Lease shall for any reason be held in a final disposition by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, or inapplicable due to assignment of this Lease by Landlord to any person or entity other than another governmental entity of the United States Government, such invalidity, illegality or unenforceability, or inapplicability of provisions solely applicable to a governmental entity of the United States Government shall not affect any other provision of this Lease, and this Lease shall be construed as if such invalid, illegal, unenforceable, or inapplicable provisions had not been contained in this Lease unless the rights and obligations of the Parties have been materially altered by such holding of invalidity, illegality or unenforceability.

44.7 Exhibits

Each of the exhibits referenced in this Lease is attached hereto and incorporated herein.

44.8 Time of the Essence

Time is hereby expressly declared to be of the essence of this Lease and of each and every term, covenant, agreement, condition and provision of this Lease.

44.9 Headings

Section and Subsection headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way limiting or amplifying the provisions of this Lease.

44.10 Lease Construed as a Whole

The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landlord or Tenant. The Parties acknowledge that each party and its counsel have reviewed this Lease and participated in its drafting and therefore that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed or applied in the interpretation of this Lease.

44.11 Meaning of Terms

Whenever the context so requires, the neuter gender shall include the masculine and the feminine, and the singular shall include the plural and vice versa.

44.12 Applicable Law

The laws of the United States shall govern the validity, construction and effect of this Lease.

44.13 Entire Lease

This instrument, together with the exhibits hereto, constitutes the entire agreement between Landlord and Tenant with respect to the subject matter of this Lease and supersedes all prior offers, negotiations, communications, discussions, correspondence oral and written. The Lease Dispositions and Development Agreement shall be terminated as of the Effective Date of this Lease and shall have no further force or effect, except for provisions which expressly survive such termination.

44.14 Amendments

This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.

44.15 Termination Not Merger

The voluntary sale or other surrender of this Lease by Tenant to Landlord, or a mutual cancellation thereof, or the termination thereof by Landlord pursuant to any provision contained in this Lease, shall not work a merger, but, at the option of Landlord, shall either terminate any or all existing Subleases or other occupancy agreements on the Premises, or operate as an assignment to Landlord of any or all of such Subleases or other occupancy agreements.

44.16 Time Periods

Any time period to be computed pursuant to this Lease shall be computed by excluding the first day and including the last day. If the last day falls on a Saturday, Sunday or holiday, the last day shall be extended until the next business day that the Landlord is open for business, but in no event shall the extension be for more than three (3) calendar days. All references to days shall mean calendar days unless otherwise specifically stated.

44.17 Joint and Several Liability

If there is one or more entity named as Tenant hereunder, the obligations and liabilities of the Tenant hereunder shall be joint and several.

44.18 Non-Liability of Officials, Trustees, and Employees

a. Notwithstanding anything to the contrary in this Lease, no elective or appointive board member, trustee, officer, or employee of Tenant shall be personally liable to Landlord, in the event of any default or breach by Tenant or for any obligation of Tenant under this Lease, nor shall any employee of Landlord be personally liable to Tenant, its successors or assigns, in the event of any default or breach by Landlord or for any obligation of Landlord under this Lease, except as provided in Section 44.18(b) below.

b. The limitation on liability in this section does not in any way affect any rights Landlord or Tenant may have to recover any funds, damages or costs incurred as a result of fraud.

44.19 Binding Upon Successors.

This Lease shall be binding upon and inure to the benefit of the administrators, executors, successors in interest, and assigns of each of the Parties. However, there shall be no assignment or transfer by Tenant except as permitted in Article 27 of this Lease. Any reference in this Lease to a specifically named Party shall be deemed to apply to any successor, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Lease or under law.

44.20 Approvals

a. Whenever this Lease calls for Landlord's approval, consent, or waiver, the written approval, consent, or waiver of the NPS Director or his/her delegate shall constitute the approval, consent, or waiver of Landlord. For any matters requiring reasonable action on the part of Landlord, the term "reasonable" shall mean the standard applied to review of agency actions under the federal Administrative Procedure Act, 5 U.S.C. Section 706.

b. All approvals under this Lease shall be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

44.21 Counterparts

This Lease may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

IN WITNESS WHEREOF, Regional Director of the Pacific West Region of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary, as Landlord, and Tenant have executed this Lease by proper persons thereunto duly authorized.

LANDLORD:

NATIONAL PARK SERVICE

By: _____
Name: _____
Title: _____

TENANT:

_____,
a _____

By: _____
Name: _____
Title:: _____

**EXHIBIT A**

FORT BAKER

[Insert map depicting Fort Baker prior to Lease execution]

**EXHIBIT B**

PREMISES

[Insert Depiction of Premises]

**EXHIBIT C**

NPS Primary Utilities

[To be attached]

**EXHIBIT D**

INVENTORY AND CONDITION REPORT

[To be attached]

**EXHIBIT E**

MARKETING PLAN

[Attach prior to Lease execution]

# EXHIBIT F

INITIAL PHASE OF THE PHASED IMPROVEMENTS

All terms not defined herein shall have the meaning ascribed to them in the Lease to which this **Exhibit F** is attached to and a part thereof.

[To be inserted]

**EXHIBIT G**

SUSTAINABILITY PROGRAM

[To be attached prior to Lease execution]

**EXHIBIT H**

TRADE FIXTURES

[To be inserted]

# EXHIBIT I

ENVIRONMENTAL INFORMATION

"Environmental Condition of Property - Final, East Fort Baker, Marin County, California," prepared by Department of Army, BRAC Environmental Office, March 2002.

"Final Lead-Based Paint Report, East Fort Baker, Marin County, CA," U.S. Army BRAC Office, Hamilton Army Airfield, Novato CA 94949, May 2002.

Fort Baker Letter of Transfer between the Department of the Army and the National Park Service, including "Environmental Condition of Property for East Fort Baker, Marin County California – Final," "US Army Corps of Engineers Sacramento District and Department of Army BRAC Environmental Office, March 2002," and "Memorandum of Agreement between the United States Department of the Army and United States Department of the Interior the National Park Service Concerning the Interagency Transfer of Base Closure Property at East Fort Baker, Marin County, California," July 2002.

Letter dated May 14, 2002 from Edward Keller, US Army Forces Command to Brian Ullensvang, National Park Service regarding "Forwarding Statement of Work and Cost Estimates for Lead-Based Paint Hazard Abatement; East Fort Baker, Marin County, CA," with referenced attachment/document "Lead Hazard Abatement Statement of Work for East Fort Baker, Sausalito, Marin County, California," prepared for DECAM Fort Carson Colorado by Engineering-Environmental Management, Inc., February 2002.

"Level 1 Pre-Acquisition Environmental Site Assessment. East Fort Baker, Marin County, California," prepared by Erler & Kalinowski, Inc., 1730 So. Amphlett Blvd., Suite 320, San Mateo, CA 94402. February 16, 2001.

"Petroleum Sites Management Plan - Final, East Fort Baker, Marin County, California," prepared by Department of Army, BRAC Environmental Office, November 2000.

"Project Work Plan, Lead in Soil Abatement, East Fort Baker, Sausalito California," prepared by Allied Technology Group, USACE Contract No. DACA05-97-D-0002, Task Order No. 0006, September 1997.

"Transformer and Lead Sites Closure Report, East Fort Baker, Marin County, California, Final," U.S. Army Corps of Engineers Sacramento District; Department of the Army BRAC Environmental Office, October 2001.

**EXHIBIT J**

HISTORIC BOAT SHOP NAME

All terms not defined herein shall have the meaning ascribed to them in the Lease to which this **Exhibit J** is attached to and a part thereof.

The sole identifying name of the Historic Boat Shop shall be: _____.

**EXHIBIT K**

ARMY TRANSFER MOA

[To be attached]

**EXHIBIT L**

RESERVED

# EXHIBIT M

Initial Improvements

All terms not defined herein shall have the meaning ascribed to them in the Lease to which this **Exhibit M** is attached to and a part thereof.

**[TO BE DETERMINED]**

**EXHIBIT N**

NPS Special Event Guidelines

[To be attached]

**EXHIBIT O**

Permitted Exceptions

**[NOTE: TO BE UPDATED]**

**1.** **Property taxes**, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2006-2007.

Property not currently assessed on the Assessor's Tax Rolls

**2.** **The lien of supplemental taxes**, if any, assessed pursuant to the provisions of Chapter 3.5 (Commencing with Section 75) of the Revenue and Taxation code of the State of California.

**3.** Any rights in favor of the public which may exist on said land for access, parking, beach or recreational uses, if said land or portions thereof were at any time used by the public for such purposes.

**4.** The terms, conditions, reservations and provisions of the Act of the Legislature of April 16,1859 (Chap. 334, Stats 1859, Page 33) and any amendments thereto and the effect of any failure to comply therewith.

**5.** The terms, conditions, reservations and provisions of the Act of the Legislature of March 2, 1897 (Chap. 81, Stats 1897, Page 74) and any amendments thereto and the effect of any failure to comply therewith.

**6.** **Intentionally deleted**

**7.** **Intentionally deleted**

**8.** **Intentionally deleted**

**9.** **Intentionally deleted**

**10.** The terms, conditions, reservations and provisions of the Act of the Legislature of July 8, 1976 (Chap. 351, Stats 1976, Page 996) and any amendments thereto and the effect of any failure to comply therewith.

**11.** **Covenants,** conditions, restrictions and easements upon the terms, provisions and conditions provided in the unrecorded agreement by and between the Secretary of War and the Golden Gate Bridge and Highway District dated February 13, 1931 and on subsequent dates as said agreement was amended, as disclosed in document recorded December 10, 1953, in Book 840 of Official Records, page 148, Marin County Records.

And as said document may be further amended

Reference is made to said document for full particulars

**12.** **Covenants,** conditions, restrictions and easements in the document by and between the Secretary of the Army and the State of California, upon the terms, provisions and conditions provided therein as set forth in document recorded December 10, 1953, in Book 840 of Official Records, page 148, Marin County Records.

And as amended by unrecorded Amendment No. 1, dated May 3, 1955, as disclosed by document recorded January 22, 1963, in Book 1650, page 544 of Official Records.

And as amended by Amendment No. 2, dated November 30, 1961, and recorded January 22, 1963, in Book 1650, page 544 of Official Records.

And as amended by Amendment No. 3, dated July 3, 1968, and recorded August 14, 1968, in Book 2232, page 247 of Official Records.

And as said document may be further amended

Reference is made to said document for full particulars.

**13.** **Intentionally deleted**

**14.** **Easement** in favor of Pacific Gas and Electric Company, a California corporation for construction, maintenance, and operation of a pole line for the transmission and distribution of electricity upon the terms, provisions and conditions in the unrecorded agreement dated July 23, 1953, as disclosed in document recorded December 11, 1961, in Book 1525 of Official Records, page 7, Marin County Records.

No representation is made as to the present ownership of said easement

**15.** **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any

covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: December 11, 1961, Book 1525, Page 7, of Official Records

Does provide for reversion or forfeiture of title in the event of a breach thereof.

**16.** **COVENANTS,** CONDITIONS, RESTRICTIONS, RESERVATIONS, CONVEYANCES, TRANSFERS, RIGHTS, INTERESTS, EASEMENTS, AND APPURTENANCES AS SET FORTH IN AND UPON THE TERMS AND PROVISIONS OF THAT CERTAIN UNRECORDED DOCUMENT DISCLOSED TO COMPANY

.

ENTITLED : LETTER OF TRANSFER AND TRANSFER REPORT
DATED : September 14, 1965

SAID DOCUMENT, AMONG OTHER MATTERS, PROVIDES FOR THE TRANSFER OF
JURISDICTION, CUSTODY AND CONTROL OF LAND FROM THE DEPARTMENT OF THE ARMY TO THE UNITED STATES COAST GUARD TOGETHER WITH RIGHTS
OF INGRESS AND EGRESS THROUGH ADJOINING LANDS, THE RIGHT TO MAINTAIN, OPERATE, REPAIR, _____, AND REMOVE

(1) OVERHEAD AND UNDERGROUND POWER LINES, THE RIGHT TO TIE INTO THE ARMY POWER SYSTEM

(2) A 2 INCH WATER PIPELINE TOGETHER WITH THE RIGHT TO TIE INTO THE ARMY WATER SYSTEM

SAID DOCUMENT, ALSO DISCLOSES AN UNRECORDED ARMY PERMIT SFR___9 (S) 666 BY AND BETWEEN THE ARMY AND THE COAST GUARD PROVIDING FOR POWER LINES AND WATER PIPELINES OWNED BY THE COAST GUARD WHICH ARE LOCATED ON ARMY LAND

NO REPRESENTATION IS MADE AS TO THE PRESENT OWNERSHIP OF SAID INTERESTS

REFERENCE IS MADE TO THE RECORD FOR FULL PARTICULARS

**17.** **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national

origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: December 15, 1967, Book 2179, Page 503, of Official Records

**18.** **Easement(s)** for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: State of California
Purpose: Access, power lines, etc.
Recorded: December 15, 1967, Book 2179, Page 503, of Official Records

No representation is made as to the present ownership of said easement

**19.** **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: United States of America
Purpose: Underground communication cable
Recorded: August 21, 1968, Book 2234, Page 108, of Official Records

No representation is made as to the present ownership of said easement

**20.** **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Granted to: State of California, Department of Transportation
Purpose: Underground water lines, etc.
Recorded: April 21, 1975, Book 2886, Page 595, of Official Records

No representation is made as to the ownership of said ea

**21.** **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: April 29, 1977, Book 3194, Page 400, of Official Records

Does provide for reversion or forfeiture of title in the event of a breach thereof.

**22.** **Covenants, conditions and restrictions** in the declaration of restrictions but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law.

Recorded: October 16, 1978, Book 3448, Page 234, of Official Records

Does provide for reversion or forfeiture of title in the event of a breach thereof

**23.** COVENANTS, CONDITIONS, RESTRICTIONS RESERVATIONS, CONVEYANCES, TRANSFERS, RIGHTS, INTERESTS, EASEMENTS, AND APPURTENANCES AS SET FORTH IN AND UPON THE TERMS AND PROVISIONS OF THOSE CERTAIN UNRECORDED DOCUMENTS DISCLOSED TO COMPANY

A. ENTITLED: LETTER OF TRANSFER
DATED: JULY 25, 2002
ACCEPTED: AUGUST 1, 2002

B. ENTITLED: MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF THE ARMY AND THE UNITED STATES DEPARTMENT OF THE INTERIOR THE NATIONAL PARK SERVICE CONCERNING THE INTERAGENCY TRANSFER
OF BASE CLOSURE PROPERTY AT EAST FORT BAKER, MARIN COUNTY, CALIFORNIA
EXECUTED BY AND BETWEEN: UNITED STATES DEPARTMENT OF THE ARMY AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE
DATED: JULY 25, 2002
ACCEPTANCE: AUGUST 1, 2002

SAID DOCUMENTS, AMONG OTHER MATTERS, PROVIDE FOR THE TRANSFER OF
JURISDICTION, CUSTODY AND CONTROL OF THE LAND FROM THE DEPARTMENT OF THE ARMY TO THE DEPARTMENT OF THE INTERIOR

No representation is made as to the present ownership of said interests.

Representation is made to the record for full particulars

**24.** An unrecorded Right of Way Permit No. RW-GOGA-BMO-06-002 executed on June 28, 2006 by the U.S. Department of the Interior, National Park Service, Golden Gate Recreation

Area and Pacific Gas and Electric Company for ownership, operation and maintenance of a 12 kv Primary electrical distribution system serving Fort Baker and the land as disclosed to the Company.

**25.** **Matters** set forth on and disclosed by that certain Final Project Map of the Fort Baker Military Reservation, Department of the Army, Office of Chief Engineers, Washington, Drawing No. 15 -02 147, File No. 1-12-35.

**26.** **Rights** and easements for ingress, egress, utilities and roadway purposes and rights in connection with the maintenance thereof over that portion of the herein described land lying within all roads, rights of way, drives and streets in favor of the public, the State of California and the County of Marin.

**27.** **Intentionally deleted**.

**28.** **Water rights, claims or title to water**, whether or not disclosed by the public records.

**29.** **Any** claims of lien that may be filed against said land by reason of work of improvement thereon

**EXHIBIT P**

Schedule of Performance
(Subsequent Phases)

[To be attached]

**EXHIBIT Q**

Scope of Development
(Subsequent Phases)

[To be attached]

**EXHIBIT R**

Construction Schedule
(Subsequent Phases)

[To be attached]