

DRAFT - SAMPLE

UPDATED 9-11-2024

LEASE DISPOSITION  
AND  
DEVELOPMENT AGREEMENT

by and between

United States Department of the Interior

National Park Service

and

[Insert Name of Lessee]

Dated as of [Insert Date]

## Sample Lease Disposition and Development Agreement

THIS LEASE DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is made as of [Insert Date] ("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, Virgin Islands National Park, a unit of the National Park Service, acting through the Interior Region 2 Regional Director, hereinafter, together with his or her successor or successors in office and his, her, and their duly appointed representatives (collectively, "NPS") and [Insert Lessee Name], a [Insert State of Incorporation] limited liability company ("Developer").

### RECITALS

This Agreement is entered into upon the following facts, understandings and intentions of NPS and Developer, sometimes collectively referred to herein as the "Parties," and individually as a "Party":

A. Virgin Islands National Park (VIIS) is administered by the Secretary of the Department of the Interior through the National Park Service pursuant to the National Park Service Organic Act, 54 U.S.C. 100101, and the Act to Authorize the Establishment of the Virgin Islands National Park, (Aug. 2, 1956, ch. 885, § 1, 70 Stat. 940, 16 U.S.C. 398), as amended, establishing the Virgin Islands National Park.

B. On July 26, 2023, NPS issued a Finding of No Significant Impact for the Caneel Bay Area Redevelopment and Management Environmental Assessment (EA) pursuant to the National Environmental Policy Act, 42 U.S.C. Sections 4321 *et seq.* (NEPA).

C. The NPS, in consultation with the Virgin Islands State Historic Preservation Office (VI SHPO), found the Caneel Bay Historic District, which generally has the same footprint as the area that was previously operated as the Caneel Bay Resort, to be eligible for inclusion on the National Registry of Historic Places in 2012.

D. Title 54 U.S.C. § 102102 and Title 36 C.F.R. 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.

E. Those buildings, lands, and improvements that were previously operated as the Caneel Bay Resort ("The Resort"), has been determined by the Regional Director of Interior Region 2 to be suitable for leasing under 36 C.F.R. Part 18.

F. It is because of the Developer's response to the Request for Qualifications (RFQ) and the Request for Proposals (RFP), including the qualifications and identity of Developer and its team comprised of [Enter details of the development team here] (collectively, the "Development Team"), and proposed redevelopment, construction, management, and operation plans that NPS is entering into this Agreement with Developer. The Development Team may be changed only with the prior written consent of the NPS.

G. NPS has determined that the use and occupancy of the Premises for the use contemplated in this Agreement is consistent with the purposes established by law for VIIS, the *General Management Plan / Development Concept Plan / Environmental Assessment*, dated September 1983, the EA, and the purposes

of the act to Authorize the Establishment of the Virgin Islands National Park (Aug. 2, 1956, ch. 885, § 1, 70 Stat. 940, 16 U.S.C. 398), and is compatible with the public interest.

H. Developer desires to lease a portion of The Resort, along with those areas identified in their response to the NPS RFP issued [INSERT DATE] (the "Premises," as defined below) for the purpose of redeveloping, managing, and operating the Premises as a resort in accordance with all Applicable Laws (as defined below) and all applicable covenants, conditions, restrictions, requirements, and limitations that exist now or that may exist in the future.

I. NPS has agreed to enter into this Agreement with Developer and to lease the Premises to Developer (i) in reliance on Developer's representations that (a) it, together with the Development Team, will secure leasehold financing to perform the redevelopment and construction of the Premises to facilitate its use as a resort, and (b) Developer will manage and operate the same in a first-class manner in accordance with all Applicable Laws and all applicable covenants, conditions, restrictions, requirements, and limitations; and (ii) in further reliance upon Developer's unique ability, skills and expertise to redevelop, construct, manage and operate a resort on the Premises.

J. [Optional condition to be used if phased development is determined to be appropriate] To facilitate the leasing, funding, financing, and completion of the capital improvements of the Premises, Developer and NPS have agreed to a phased redevelopment and capital improvement plan, on the terms, agreements, covenants, conditions and provisions set forth in this Agreement and for the purposes provided in this Agreement. The Parties intend that in accordance with the phasing plan, Developer (or its assignee approved in writing by NPS) will first lease and develop the Initial Phase (as defined below) of the Phased Improvements (as defined below) to establish and operate the Premises. As permitted by the EA, Developer may elect to perform the redevelopment and construction of additional phases of the resort, which may be accomplished over time and in a variety of configurations. As Developer elects to proceed with subsequent phases of the capital improvement program, the Parties will amend the Scope of Development (Exhibit G) and related schedules of performance, as they may be incorporated into the Lease, for each subsequent phase. Upon satisfaction of conditions precedent for subsequent phase, the Premises leased pursuant to the Lease (as defined below) may be expanded, as necessary, to include the applicable phase.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### INTENT, DEFINITIONS

Section 1.1 Purpose. The purpose of this Agreement is to set forth conditions precedent for the Lease Execution Date (as defined below) to ensure that, prior to the Lease Execution Date, Developer complies with certain terms and conditions for its due diligence, design, construction, financing, and redevelopment of the Initial Improvements and Phased Improvements (if applicable); and that, following the Lease Execution Date, the Initial Improvements and Phased Improvements (if applicable) will be constructed in accordance with the terms and conditions of this Agreement as they may be incorporated into the Lease.

Section 1.2 Definitions. In addition to the terms defined elsewhere in this Agreement, the following definitions will apply:

- (a) "Applicable Laws" means all present and future law or legal authority, including statutes, ordinances, regulations, and administrative or judicial orders or determinations, enacted, promulgated, or issued by federal, state, or local governmental entities or agencies having lawful jurisdiction over the Premises or the Lessee, that apply to and govern the Premises or the Lessee's activities on the Premises.
- (b) "Approved Development Budget" means the Proposed Development Budget that has been approved, in writing, by the NPS accordance with Section 2.2(f)(i)(B) below.
- (c) "Associated Property" means those areas that may be utilized by Developer for underground utilities serving the Premises.
- (d) "Certificate of Occupancy" means a document issued by NPS that confirms that NPS' requirements for full occupancy and use of the Initial or Phased Improvements pursuant to this Agreement and the Lease have been completed to the satisfaction of the NPS.
- (e) "Conditional Certificate of Occupancy" means a Certificate of Occupancy issued by NPS with conditions for final completion and allowing for partial occupation or partial use of the Initial or Phased Improvements.
- (f) "Construction Contracts" means each construction contract for the general contractor, each subcontractor who will perform landscape and site work and historic rehabilitation, and all other subcontracts.
- (g) "Construction Schedule" means the schedule for the construction of the Initial or Phased Improvements attached as Exhibit E.
- (h) "Construction Documents" means schematic design and review documents, design development review drawings, construction drawings, permit drawings, and any other documents upon which Developer and its contractors shall rely on in building the Initial or Phased Improvements. The Construction Documents include, without limitation, final architectural drawings, landscaping plans and specifications, final elevations, and building plans and specifications (also commonly known as "working drawings"). The Construction Documents must be based upon the Scope of Development (Exhibit G) and must not materially deviate from the Scope of Development without the express written approval of the NPS. In

addition, the Construction Documents must include any onsite or off-site mitigation measures required by the NPS as a condition of any permits or approvals required for the Project.

(i) "Development Cost" means the costs associated with the Initial or Phased Improvements, including, without limitation, the cost of all labor, materials, furniture, fixtures (but not trade fixtures) and equipment supplied by the contractor and subcontractors or other suppliers; taxes, permits, licenses, fees, 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; reasonable fees paid to attorneys in connection with drafting and approval of the Lease, subleases, financial documents and other related documents; the reasonable cost of on-site inspection, administration and supervision of the development and construction process, financing, and insurance; and recording and filing fees required by the construction.

(j) "Effective Date" will be the date first set forth above.

(k) "Environmental Assessment" means that certain environmental assessment entitled "Caneel Bay Redevelopment and Management Environmental Assessment," dated January 2023.

(l) "Excusable Delay" means delay in the performance of a Party's obligations due to causes beyond its reasonable control and without its fault or negligence, including, without limitation, Force Majeure, unavailability of necessary labor, tools, or materials, government restrictions, or litigation, but excluding Developer's inability to obtain financing. Where this Agreement provides for an extension of time for an Excusable Delay, the extension will be for such reasonable time as is necessary to compensate for the delay, as set forth in a written notice from the Party experiencing the delay to the other.

(m) "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 NPS and the Lessee under the Lease each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Fair Market Value Rent will be confirmed for the Initial Improvements and reconfirmed for subsequent phases in accordance with Section 2.2(d) below and the Lease.

(n) "Financing Plan" means the Developer's plan for financing the redevelopment, construction, operation, and maintenance of the Project and Premises developed in accordance with Section 2.2(f) below

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

(p) "Foundation Document" means that certain *Virgin Islands National Park | Virgin Islands Coral Reef National Monument Foundation Document*, December 2016, prepared by the NPS.

- (q) "Hazardous Materials" means any material or other substance: (a) that requires investigation, correction, or abatement under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) that contains radon gas. The term Hazardous Materials as used in this Agreement includes Pre-existing Hazardous Materials unless otherwise stated in a particular provision of this Agreement.
- (r) "Hazardous Materials Occurrence" means any use, treatment, keeping, storage, sale, release, disposal, migration, transport, or discharge of any Hazardous Materials from, on, under, or into the Premises or other VIIS property that occurs during the Lease Term.
- (s) "Hazardous Materials Laws" means all Applicable Laws relating to any Hazardous Materials or Pre-existing Hazardous Materials.
- (t) "Historic Property" means building(s) and land located within the boundaries of VIIS that are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.
- (u) "Improvements" means permanent additions to the Premises that increase its value or utility or enhance its appearance, regardless of who makes the additions. The term "Improvements" includes both Initial and Phased Improvements.
- (v) "Initial Improvements" means the Improvements to be constructed pursuant to this Agreement, 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 Scope of Development (Exhibit G), including, [the scope of the Initial Improvements will be dependent upon what is proposed by the Developer and accepted by the NPS as a result of the RFP process].
- (w) "Lease" means, prior to the Lease Execution Date, that certain lease to be executed by NPS and Developer or its assignee approved in writing by NPS, by which NPS will convey a leasehold interest in the Premises to Developer or its assignee approved in writing by the NPS pursuant to the terms and conditions of this Agreement. The Lease will be substantially in the form attached to this Agreement as Exhibit B. After the Lease Execution Date, the term "Lease" refers to the fully-executed Lease of the Premises for the redevelopment, construction of the Initial and Phased Improvements, management, and operation of the Premises including all conditions, exhibits, attachments, modifications, amendments, and extensions thereof.
- (x) "Lease Execution Date" means the date by which all conditions precedent for execution of the Lease have been satisfied and the Lease has been fully executed.
- (y) "Material Change" means a change in the Construction Documents, as approved by NPS, that affects NPS infrastructure, Historic Property elements, mitigation measures, or requires code review.
- (z) "Party" means one of the two parties to this Agreement and their respective successors and assigns.

(aa) "Permitted Areas" means those areas within VIIS for which VIIS has issued a Special Use Permit to the Developer for use by Developer in the conduct of due diligence activities or to aid in the construction of the Initial and Phased Improvements. The areas anticipated to be Permitted Areas for the Initial Phase of the Phased Improvements are depicted on Exhibit C attached hereto.

(bb) "Permitted Exceptions" means the exceptions to title listed in the attached Exhibit D (as may be amended prior to the Lease Execution Date) in accordance with any easements or rights-of-way granted, or to be granted, by the NPS to [Insert names utility companies that have, or may have, a Right of Way or others entities that have permitted or legal access to the Premises].

(cc) "Phased Improvements" means any construction or modification to the Improvements, other than Initial Improvements, pursuant to this Agreement, including ancillary landscaping, parking, and other improvements as approved by NPS, including:

[Details of the Phased Improvements will depend on what is proposed and excepted through the RFP process]

(dd) "Phased Improvement Milestone" means the date by which all conditions precedent for each phase of the Phased Improvements must be satisfied.

(ee) "Pre-existing Hazardous Materials" means Hazardous Materials (including storage tanks) that existed in, on, or under the Premises or other lands or waters within the Premises prior to the Effective Date.

(ff) "Premises" means that certain real property, together with the Improvements thereon, to be leased pursuant to the Lease, which includes portions of The Resort and those areas of VIIS necessary for the redevelopment project proposed by the Developer and further depicted on the map in Exhibit A to this Agreement.

(gg) "Project" means the construction of the Initial and Phased Improvements, including the modification of existing Improvements, to develop the Premises (including the installation of underground utilities in any Associated Property), pursuant to the terms and conditions of this Agreement and the Lease.

(hh) "Project Area" means the area(s) within the Premises where the Initial and Phased Improvements will take place.

(ii) "Proposed Development Budget" means a detailed itemization of the Development Cost of the applicable phase of the Initial and Phased Improvements developed in accordance with Section 2.2(f)(i)(B) of this Agreement.

(jj) "Response Action" means all actions taken to investigate, remove, remedy, remediate, maintain and monitor Hazardous Materials, all such terms include enforcement activities related thereto. For purpose of this definition, "remove" means the cleanup or removal of released Hazardous Materials from the environment, such actions as may be necessary 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. For purposes of this definition, "remedy" or "remediate" 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..

(kk) "Schedule of Performance" means the dates by which conditions precedent for Lease execution and for each phase of the Phased Improvements that must be met as generally described in Exhibit F attached hereto (subject to adjustment by the mutual written consent of the Parties).

(ll) "Scope of Development" means the development described in Exhibit G attached to this Agreement applicable to the Initial Improvements and further depicted in the design drawings, civil engineering drawings, and construction drawings listed in Exhibit G and reflected in the final Construction Documents for the Initial Improvements approved by NPS pursuant to this Agreement and to be constructed in accordance with the Lease.

(mm) "Substantial Completion" means the work of constructing the Initial or Phased Improvements, as applicable, is substantially complete such that the applicable facility and improvement(s) are operable as a usable facility(ies) or improvement(s) though "punch list" items may not yet be completed.



## ARTICLE 2

### TERM, CONDITIONS PRECEDENT

Section 2.1 Term. The term of this Agreement will commence upon the Effective Date and will terminate on upon the execution of the Lease or such earlier date as this Agreement may be terminated in accordance with its terms.

Section 2.2 Conditions Precedent. As conditions precedent to the occurrence of the Lease Execution Date or Phased Improvement Milestone, as applicable, the conditions set forth in this Section 2.2 must first be met by the times specified for such conditions for each phase of the Initial and Phased Improvements (as may be extended for Excusable Delay as determined by the Parties). A summary of the deadline for such conditions is provided under this Agreement as the Schedule of Performance (Pre-Lease Execution or Phased Improvement Milestones) attached hereto as Exhibit F.

(a) Subsequent Phases. The Parties acknowledge that additional phases may be accomplished over time and in a variety of configurations. If Developer elects to proceed with subsequent phases of the Phased Improvements, the Parties will meet and confer to amend the Lease to reflect any changes to the Scope of Development, Schedule of Performance and Phased Improvement Milestones, and Construction Schedules as incorporated in the Lease.

(d) Appraisal. An appraisal or similar determination to confirm the Fair Market Value Rent for the Initial Improvements will be completed by the NPS on or before the Lease Execution Date. An appraisal or similar determination may be conducted by the NPS as part of each phase of the Phased Improvements to reconfirm that the rent is consistent with Fair Market Value Rent. If an appraisal or similar determination is required, it will be conducted when the design development documents for each applicable phase of the Phased Improvements have been approved by NPS and may be conducted in accordance with the current Uniform Standards of Professional Appraisal Practice, commonly referred to as "USPAP," as amended, revised or superseded. If an appraisal is conducted the appraiser will be selected by NPS. To confirm (with respect to the Initial Phase of the Phased Improvements) or reconfirm (with respect to subsequent phases of the Phased Improvements) the Fair Market Value Rent NPS will require that the appraisal or similar determination take into consideration the applicable Scope of Development to be completed as part of such phase and the requirements of the leasing regulations (36 CFR Part 18, as amended, revised or superseded) and NPS guidelines as adopted and as amended, revised or superseded. If applicable, the Lease will be amended to memorialize any Rent adjustment as a result of any such appraisal. With respect to any Fair Market Value Rent reconfirmation conducted in connection with phases of the Phased Improvements subsequent to completion of the Initial Improvements, if no material change is made in the type of activities authorized by Section 6.1 of the Lease, conducted by the Developer under the Lease in any part of the Premises, then any such Fair Market Value Rent determination will be limited to the increment of such additional phase of the Phased Improvements.

(e) Application for Approvals.

(i) Developer must submit to the NPS and obtain written approval for the Initial and Phased Improvements Scope of Development (Design Drawings), and Schedule of Performance (Pre-Lease Execution or Phased Improvement Milestones), which, upon approval, will be attached hereto as Exhibits G and F, respectively.

(ii) Developer must obtain and submit to NPS evidence of any "will serve" letters from utilities necessary for construction of the Project in accordance with the Scope of Development and Schedule of Performance (Pre-Lease Execution or Phased Improvement Milestones) attached hereto as Exhibits G and F, respectively.

(f) Financing Plan.

(i) Developer must submit in writing a proposed Financing Plan to NPS within ten (10) days following Developer's submission of design development documents for each phase of the Initial and Phased Improvements pursuant to the Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement Milestones) attached hereto as Exhibit F. The Financing Plan must include the following:

(A) A ten-year cash flow projection of resort operations showing detailed summaries of anticipated income and expenses.

(B) A detailed itemization of the Development Cost of the applicable phase of the Initial and Phased Improvements (the "Proposed Development Budget"). The Proposed Development Budget must be based upon the applicable Scope of Development. Pursuant to Section 2.2(f)(iii) below, after preparation of the Construction Documents, Developer must update the Proposed Development Budget to reflect any changes between approval of the applicable Scope of Development and preparation of the Construction Documents. NPS will review the Proposed Development Budget to determine whether each of its work items is an appropriate Development Cost and whether each of the components of the Development Cost is reasonable and necessary for the construction of the applicable phase of the Initial and Phased Improvements. Upon such determination by NPS, NPS will provide Developer written approval of the Proposed Development Budget (the "Approved Development Budget"). If the Proposed Development Budget is not approved by NPS, then NPS must notify Developer in writing of the reasons for disapproval. Developer will thereafter submit to NPS a revised Proposed Development Budget within fourteen (14) days of the notification of disapproval, or, if applicable by the date (or within the period) specified on the Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement Milestones) attached hereto as Exhibit F. NPS will, within fifteen (15) days, approve or disapprove in writing the revised Proposed Development Budget. Provided Developer timely provides all required documentation for NPS' review, Developer may request in writing a shorter review period by NPS if the Proposed Development Budget is contingent upon contractors' bids which contractors will only hold open for a period less than thirty (30) days. Only upon NPS' approval in writing of an Approved Development Budget will this condition precedent be deemed met.

(C) A reasonably detailed description of the type and source of funding and appropriate supporting documents in a form satisfactory to NPS showing all sources and uses of funds, and sufficient to demonstrate that Developer has, or will have, adequate funds to complete the applicable phase of the Initial and Phased Improvements in accordance with the Approved Development Budget, and that such funds are committed and available for that purpose. The description of the type and source of funds, must be certified by Developer to be true and correct, and must include but not be limited to:

- (1) conventional debt, such as construction, permanent or other financing;
- (2) conventional equity; and
- (3) any other source of funding.

(D) NPS review and approval of any and all philanthropic capital campaigns pertaining to the Initial and Phased Improvements.

(E) 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 Developer prohibited herein or prohibiting acts of Developer required herein, for the financing of that portion of the Approved Development Budget intended to be borrowed by Developer, certified by Developer 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. Developer covenants to perform any and all conditions to funding in accordance with the commitments.

(F) An independently audited financial statement or other evidence in a form satisfactory to NPS demonstrating that Developer has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between the dollar amount of the Approved Development Budget for the applicable phase of the Initial and Phased Improvements and the amount available to Developer from external sources.

(ii) Upon receipt by NPS of the applicable Proposed Development Budget and proposed Financing Plan, NPS will review the proposed Financing Plan and approve or disapprove it in writing within thirty (30) days of receipt of complete documentation therefor. NPS' review of the proposed Financing Plan will consist of determining if the Financing Plan:

- (A) provides sufficient funds to complete the applicable phase of the Initial and Phased Improvements in accordance with the Approved Development Budget;
- (B) is appropriately documented in accordance with Section 2.2(f)(i) above;
- (C) is consistent with this Agreement and the Lease; and
- (D) is feasible.

If the proposed Financing Plan is not approved by NPS, then NPS will notify Developer in writing of the reasons for disapproval. Developer must thereafter submit to NPS a revised proposed Financing Plan within fifteen (15) days of the notification of disapproval. NPS will promptly approve or disapprove in writing the revised proposed Financing Plan. Only upon NPS' approval in writing of a Financing Plan will this condition precedent be deemed met.

(iii) Developer will update the approved Financing Plan to reflect any changes in the Approved Development Budget between approval of the Scope of Development and preparation of the Construction Documents. Developer must submit (A) a proposed updated Financing Plan to NPS

to (1) reflect any such changes in the Approved Development Budget, and (2) include firm commitments for any financing formerly committed through preliminary commitments in accordance with the requirements set forth in Section 2.2(f)(i)(E) above; and (B) all applicable loan documents. NPS will review and approve or disapprove in writing the proposed updated Financing Plan (together with the proposed updated Approved Development Budget) within thirty (30) days of receipt of complete documentation therefor or, if applicable by the date (or within the period) specified on the Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement Milestones attached hereto as Exhibit F) using the same criteria applicable to review of the Approved Development Budget under Section 2.2(f)(i)(B) above and the Financing Plan under Section 2.2(f)(ii) above. If the proposed updated Approved Development Budget and Financing Plan are not approved by NPS, then NPS must notify Developer in writing of the reasons for disapproval. Developer must thereafter submit to NPS a revised proposed updated Approved Development Budget and a revised proposed updated Financing Plan within fifteen (15) days of the notification of disapproval. NPS will, within fifteen (15) days, approve or disapprove in writing the revised proposed updated Approved Development Budget and the revised proposed updated Financing Plan. Only upon NPS' approval in writing of an updated Approved Development Budget and an updated Financing Plan and loan documents will this condition precedent be deemed met.

(g) Design; Construction Documents; Building Permit.

(i) Developer must design the Initial and Phased Improvements in accordance with Applicable Laws and sound professional design practice, including the Secretary of the Interior's Standards for the Treatment of Historic Properties, as may be applicable, and in accordance with the requirements of this Agreement, including all plans required to be prepared by the Developer and approved by the NPS.

(ii) In accordance with the Scope of Development for the applicable phase of the Initial and Phased Improvements, and the Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement Milestones), Developer must complete and submit to NPS the civil engineering drawings and construction drawings, referred to in the applicable Scope of Development, along with any additional materials that may be specified in the Scope of Development for NPS review and approval. Within (30) days of the receipt of civil engineering documents, Construction Documents, and additional materials specified in the Scope of Development, NPS will notify Developer, in writing, of its approval or disapproval of the documents. If the documents are not approved then the NPS will notify Developer of the reasons for disapproval and Developer will have thirty (30) days to revise such drawings or plans and resubmit. Only upon written approval by NPS of the civil engineering drawings, Construction Documents, and additional materials specified in the Scope of Development will this condition precedent be deemed met.

(iii) All Construction Documents must 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.

(iv) In the preparation of Construction Documents, Developer must review utility plans for the location of existing utilities that may be damaged by Developer's construction of the Initial and Phased Improvements and Developer must use its best efforts to prevent such damage during the construction process and must promptly repair any damage that does occur. All existing "as-built"

utility plans in NPS' possession will be furnished by NPS showing the locations of all NPS utilities in the relevant areas. Developer must make reasonable efforts to obtain all other necessary utility plans from utility companies and the previous operator.

(v) Developer must furnish NPS with a true and correct copy of Developer's contracts with any architect, engineer, design consultant, and any general contractor engaged in connection with this Agreement for design and construction of the Initial and Phased Improvements.

(h) Hospitality Management Agreement. The following provisions will be applicable to the extent an entity other than Developer will be managing and operating the Premises, in whole or in part.

(i) In accordance with the Schedule of Performance (Pre-Lease Execution), Developer must submit to NPS a proposed hospitality management agreement. Upon receipt by NPS of the proposed hospitality management agreement, NPS will review the proposed hospitality management agreement and approve or disapprove it in writing within thirty (30) days of receipt of complete information. NPS' review of the proposed hospitality management agreement will consist of determining if the proposed hospitality management company:

(A) has sufficient financial resources to manage and operate the resort property as proposed by the Developer;

(B) has acceptable experience managing resorts of a size and quality similar to, or higher than, the quality of The Resort as proposed by the Developer;

(C) is otherwise acceptable to NPS;

(D) has not been excluded under the nonprocurement or procurement debarment and suspension system from contracting with the government pursuant to 2 C.F.R. Parts 180 and 1400; and

(D) any management fee is either a flat fee, or a percentage fee based on gross income, as defined in the Lease, and within the range of resort industry standards. If the proposed hospitality management agreement is not approved by NPS, then, within thirty (30) days NPS will notify Developer in writing of the reasons for disapproval. Developer must thereafter submit to NPS a revised proposed hospitality management agreement within forty-five (45) days of the notification of disapproval. NPS will approve or disapprove the revised proposed hospitality management agreement within thirty (30) days of receipt of complete information. Only upon approval in writing of the proposed hospitality management agreement will this condition precedent be deemed met.

(ii) Prior to the Lease Execution Date, Developer must deliver to NPS the fully executed hospitality management agreement.

(i) Construction Contracts. Developer will enter into contracts for the performance and completion of the Initial and Phased Improvements with reputable contractors, which contracts must provide for the work to be performed for fixed and specified maximum amounts or allowances pursuant to the applicable approved Construction Documents and the applicable approved Financing Plan and Approved Development Budget. In accordance with the Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement

Milestones), Developer must submit a copy of each construction contract for the general contractor, each subcontractor who will perform landscape and site work and historic rehabilitation, and all other subcontracts (collectively, the "Construction Contracts") to NPS (on a confidential basis to the fullest extent permitted by Applicable Law), certified by Developer to be true and correct, for purposes of determining (i) that the scope and cost of work have been fixed and are consistent with the scope and cost set forth in the approved Construction Documents and the approved Financing Plan (and Approved Development Budget), and (ii) that no changes to the contract that would cause the contract to be out of compliance with this Agreement or the Lease may be made without the prior written consent of NPS. NPS will approve or disapprove each Construction Contract within fifteen (15) business days. If a construction contract or subcontract is not approved then the NPS will notify Developer, in writing, of the reasons for disapproval and Developer will have thirty (30) days to revise and resubmit the contract. The Construction Contracts subject to this Section 2.2(i) need not include contracts for furniture or equipment to be placed in the Initial and Phased Improvements. Only upon approval by NPS of all of the Construction Contracts will this condition precedent be deemed met.

j) Plans, Programs, and Studies. In accordance with the Schedule of Performance (Initial and Phased Improvement Milestones), Developer, at its sole cost and expense, must prepare, in accordance with Applicable Laws, and deliver to NPS and any other agencies, as applicable, the following plans, programs and studies with respect to the Initial Improvements and each phase of the Phased Improvements:

(i) A management and response plan for lead-based paint and asbestos or asbestos-containing materials.

(ii) A traffic management plan (TMP) which will include, without limitation, specifications on construction traffic scheduling, proposed haul routes, construction parking, staging area management, visitor safety, detour routes, speed controls, and various limitations including restrictions on the delivery times for equipment and materials to off-peak hours. Upon request, the draft TMP will be made available to other agencies for review and comment.

(iv) A stormwater pollution prevention plan (SWPPP) for construction activities. The SWPPP will prescribe best management practices to minimize potential soil erosion, minimize the transportation of soils into the marine environment, and include prescriptions for monitoring of conditions before and after the completion of work.

(v) A detailed, design-level, geotechnical engineering investigation to assist in the development of engineering design criteria for any grading activities, infrastructure facilities, and building foundations. The scope of the investigation must include site-specific subsurface testing, laboratory testing, and geologic/engineering analyses that address specific geologic conditions (including landslide potential), constraints on development, and performance standards.

(vi) Survey(s) to determine the presence of nesting birds of prey, nesting/migratory birds, and bats.

(vii) A detailed plan with specific conservation measures to ensure that turbidity standards are met and that provides erosion control necessary to protect Essential Fish Habitat (EFH), as that term is defined in 50 C.F.R. § 600.10, during all phases of the redevelopment of the resort, including but not limited to the redevelopment, demolition, construction, operation, and maintenance of the Premises.

(viii) All necessary information for the preparation of compliance documents pursuant to NEPA or other Applicable Laws.

(ix) Historic American Building Survey (HABS) and Historic American Engineering Record (HAER) recordation documents for buildings to be demolished by Developer as part of the Initial and Phased Improvements. All documentation must be completed by Developer and accepted by HABS and HAER prior to demolition.

(x) In cooperation with NPS, develop an energy system management program that will track energy use throughout the Premises.

(xi) A sustainability program, which must include sustainability performance measures for all existing, new, and historic buildings, including building envelope and interior systems strategies; sustainability measures for site infrastructure and utility development; and demonstration projects that include both applied technology demonstration projects and interpretive demonstration projects.

(xii) A resort pre-opening marketing plan, which will include the naming and branding of the resort and methods to ensure that the NPS will predominate as the site owner, steward, and principal interpreter. The resort marketing plan will provide for planning, publicity and advertising, internal and external corporate communications, and budgeting of activities, which may include: (A) production, distribution, and placement of general promotional materials; (B) production and distribution of educational materials designed to inform resort staff and promote resort employee understanding of the resort and the Premises unique place in the history of the island of St. John; (C) preparation and distribution mechanisms of news releases that describe, in language approved by NPS, the resort and the relationship between NPS and Developer, and if applicable, hospitality management company; and (D) production and maintenance of an internet website describing the resort.

(xiii) Management plan for the resort, that includes, without limitation, (A) operation of a toll-free reservations and information line, and (B) operation of a room and meetings reservations system, maintained with current room inventories and associated current rates and tariffs.

(xiv) Surveys and legal descriptions of the Premises and Associated Property.

(xv) Only upon completion and submission to NPS of all of the plans, programs, and studies in this section j, as applicable, shall this condition precedent be deemed met.

(k) Evidence of Availability of Funds for Initial and Phased Improvements. Prior to the Lease Execution Date or Phased Improvement Milestone, as applicable, Developer must submit to NPS evidence satisfactory to NPS that any conditions to the release or expenditure of all necessary funds for the applicable phase of the Phased Improvements described in the approved Financing Plan (and Approved Development Budget) have been met or will be met at the Lease Execution Date or Phased Improvement Milestone, as applicable, and that such funds will be available at the Lease Execution Date or Phased Improvement Milestone, as applicable, for commencing and completing the Initial or applicable phase of the Phased Improvements.

(l) Insurance. Prior to the Lease Execution Date or Phased Improvement Milestone, as applicable, Developer must submit to NPS evidence that the insurance requirements of Exhibit B (Draft Lease) will be satisfied at the time of the Lease Execution Date or Phased Improvement Milestone, as applicable.

(m) Guarantees. Prior to the Lease Execution Date or Phased Improvement Milestone, as applicable, Developer must submit for NPS review and approval executed guarantees for the construction and completion of the Initial or applicable phase of the Phased Improvements from approved guarantors with enforceability opinions from counsel to the approved guarantors in a form satisfactory to NPS.

(n) Lease and Other Project Documentation.

(i) Prior to the Lease Execution Date or Phased Improvement Milestone, as applicable, Developer and NPS must have negotiated the Lease and other transaction documents necessary for the performance and completion of the Initial Improvements or Phased Improvements.

(ii) Prior to the Lease Execution Date, Developer must provide to NPS for NPS' written approval, all proposed agreements; subleases; operating, management, or financing arrangements between Developer and nonprofit entities affiliated with VIIS commonly referred to as "VIIS Park Partners." Such agreements with entities approved by NPS in writing prior to the Lease Execution Date will be referred to as the "Resort Agreements."

(o) Other Developer Obligations. Developer must have performed all obligations hereunder required to be performed prior to the Lease Execution Date or Phased Improvement Milestone, as applicable.

(p) NPS Responsibilities.

(i) NPS will provide to Developer all documents, information, and timely review of Developer's design and engineering submittals in accordance with the Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement Milestones) attached hereto as Exhibit F.

(ii) Subject to Section 10.2 below, NPS will provide a management plan for NPS' activities and responsibilities at the Premises which may include on-site and off-site staffing allocations, maintenance, operations, and anticipated schedule for future capital improvements.

(vi) NPS may issue permits and approvals of Developer's design document submissions for Developer's final proposal for cutting, clearing and trimming of trees and vegetation within the Premises as set forth in the design development documents listed in Scope of Development (Exhibit G) attached hereto.

Section 2.3 Occupancy Conditions Precedent. The following are conditions precedent to occupancy of the Project Area by the Lessee under the Lease:

(a) NPS Obligations. Subject to Section 10.2 below, NPS will complete the following at its sole cost and expense:

(i) Complete additional infrastructure and site improvements mutually agreed to by the Parties in writing per schematic plans prepared by the Developer for the Initial and Phased Improvements.



(ii) Remove (including stumps) non-historic trees located within the Premises in conformance with applicable natural resource requirements.

(iii) Complete the environmental clean-up and mitigation measures on the Premises identified in the "Action Memorandum" dated October 1, 2021.

(iv) Comply with those requirements of the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (ESA) which are identified as NPS' obligations on Exhibit I attached hereto.

(b) Developer Obligations. The Lessee under the Lease may not occupy the Premises described in the Lease until issuance of all applicable Certificates of Occupancy for completion of the Initial Improvements. In addition to other requirements set forth in this Agreement and the Lease, the following are conditions precedent to NPS' issuance of the initial Certificate of Occupancy for the Initial Improvements. Developer must at its sole cost and expense:

(i) Complete all mitigation measures, including such measures that are requirements of the ESA, which are identified as Developer's obligations on Exhibit I, attached hereto.

(ii) Have delivered, and NPS must have approved, all insurance requirements, agreements, contracts, plans, programs, studies, and other information required by this Agreement and the Lease in the period described in this agreement and in accordance with Schedule of Performance (Pre-Lease Execution or Initial and Phased Improvement Milestones) attached hereto as Exhibit F.

### ARTICLE 3

#### DUE DILIGENCE, ACCESS, GENERAL CONDITIONS

Section 3.1 Developer's Due Diligence. During the period commencing with the Effective Date until the Lease Execution Date, Developer must, at Developer's sole cost and expense, investigate the developmental and use potential of the Premises, and approve any conditions associated therewith, as Developer will deem necessary to satisfy itself that the Project may be developed in an economically feasible manner, and will have inspected the Project Area and Premises and investigated the development cost and potential thereof and satisfied itself, in Developer's sole discretion, that all physical and legal aspects of the Project Area and Premises are acceptable to Developer, including without limitation, size, soils condition, flood and earthquake fault locations, improvement costs (both on-site and off-site), development entitlements, availability of utilities, and the Project Area and Premises otherwise meets Developer's development and use criteria and may be developed in an economically feasible manner. In the event prior to the Lease Execution Date, Developer determines any aspect of the Project Area or Premises to be unacceptable to Developer, Developer may terminate this Agreement by giving written notice to NPS.

Section 3.2 Entry. During the period commencing with the Effective Date until the Lease Execution Date, NPS will provide Developer with reasonable access to and entry upon the Premises, during normal business hours and in accordance with the terms and conditions of a special use permit issued by the Park, for the purposes of conducting such inspections, tests and studies, as may be approved by the NPS, of the physical condition of the Premises, including, without limitation, inspection and testing for the presence of Hazardous Materials, and for structural, mechanical, seismic, electrical and other physical and

environmental conditions and characteristics of the Premises for preparation of the Plans, Programs, and Studies. Such access, inspections, tests, and studies will be permitted and conducted under the terms and conditions of a special use permit and on the following additional terms and conditions:

- (a) Developer must pay for all inspections, tests and studies ordered by Developer.
- (b) Developer will not contact any governmental officials regarding the potential development and uses of all or portions of the Premises without giving NPS reasonable prior written notice and the opportunity to participate with Developer in any such contacts.
- (c) Developer must maintain, and ensure that its contractors maintain, the following insurance:
  - (i) Developer must maintain commercial general liability and property damage insurance, contractual liability and worker's compensation insurance as follows:
    - (A) Broad form commercial general liability insurance, in an amount not less than Three Million Dollars (\$3,000,000), combined single limit. At least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage.
    - (B) Workers' compensation, as required by law, and employer's liability in an amount not less than One Million Dollars (\$1,000,000).
    - (C) Automobile liability insurance for owned, hired or non-owned vehicles, in an amount not less than Two Million Dollars (\$2,000,000), combined single limit. At least \$1,000,000 shall be primary and the remainder may be maintained, as applicable, as umbrella or excess liability coverage.
  - (ii) All insurance provided for under this Agreement must be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A- and a Financial Size Category of at least VII according to the most current edition of Best's Key Rating Guide (Property-Casualty edition), unless otherwise authorized by the NPS.
  - (iii) All liability policies required hereunder must be written on an occurrence form of coverage. The required coverage may be provided by a blanket, multi-location policy, if such policy provides a separate aggregate limit per occurrence for the benefit of the Premises.
  - (iv) Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregates limit must double the occurrence or claims limits specified.
  - (v) Commercial general liability and automobile liability insurance policies must be endorsed or otherwise provide the following:
    - (A) Name NPS and its agents and employees, as additional insureds, using ISO Additional Insured Endorsement Form CG2026 (or a substitute providing equivalent coverage).

(B) All policies must be endorsed to provide thirty (30) days' advance written notice to NPS of cancellation, except in the case of cancellation for nonpayment of premium, in which case cancellation must not take effect until ten (10) days after written notice has been given. Developer covenants and agrees to give NPS reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

(vi) All insurance provided under this Agreement must be primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought. All policies must include provisions denying such respective insurer the right of subrogation and recovery against NPS. Such policies must also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage must not reduce or void the coverage as to any insured, and must afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(vii) Developer must deliver to NPS certificates of insurance in form reasonably satisfactory to NPS, evidencing the coverages required hereunder ("Evidence of Insurance"), on or before the Effective Date of this Agreement, and Developer must provide NPS with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Developer must deliver to NPS complete copies of the relevant policies upon request therefor from NPS.

(viii) Notwithstanding anything to the contrary in this Agreement, Developer's compliance with this Section 3.2(c) will in no way relieve or decrease liability of Developer under Section 3.2(g) below, or any other provision of this Agreement, and no insurance carried by NPS will be called upon to satisfy Developer's indemnification obligations under Section 3.2(g) or any other obligations of Developer or its employees, agents, consultants, and contractors under this Agreement.

(d) Developer hereby waives any and all rights of recovery against NPS and its employees for any loss or damage to the extent these damages are insured by insurance carried by Developer, and the insurance proceeds are actually received by the insured, including amounts within any insurance deductible or self-insured retention. Developer must, upon obtaining policies of insurance required in this Agreement, give notice to the insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Agreement.

(e) Developer must restore any area of the Premises disturbed during Developers due diligence activities, at Developer's sole cost and expense, except as otherwise approved in writing by NPS. Until restoration is complete, Developer will take all steps necessary to ensure that any conditions on the Premises created by Developer's due diligence activities will not interfere with the normal operation of VIIS or create any dangerous, unhealthy, unsightly or noisy conditions on the Premises. The foregoing covenant will survive any termination of this Agreement.

(f) In connection with any and all entry by Developer or its employees, agents, consultants, and contractors on the Premises, Developer must keep the Premises free of all liens by mechanics,

materialmen, laborers, architects, engineers, and any other persons or firms engaged by Developer to perform any work in connection with the Premises.

(g) Developer must indemnify and hold NPS harmless from and against any costs, damages, liabilities, losses, expenses, liens or claims (including, without limitation, reasonable attorneys' fees) arising out of or relating to any entry on the Premises by Developer, its agents, employees, consultants or contractors in the course of performing the inspections, tests or inquiries provided for in this Agreement, or to any conditions on the Premises created by Developer's entry or testing. The foregoing indemnity will survive beyond the termination of this Agreement.

(h) Upon termination of this Agreement in the event of a failure to consummate the conveyance of the leasehold interest in the Premises, Developer must promptly deliver to NPS copies of any reports relating to any testing or other inspection of the Premises performed by Developer or its agents, employees or contractors which NPS may request. The foregoing covenant will survive any termination of this Agreement.

- (i) Developer's activities on the Premises will be subject to the general supervision and inspection of NPS and to such rules and regulations regarding ingress, egress, safety, sanitation and security as may be prescribed by NPS from time to time.

Section 3.3 Disclosures. The Resort and the Premises can be hazardous in their existing un-rehabilitated and non-code compliant condition. By way of example, and not intended to be exhaustive or all inclusive, potential hazardous existing conditions include, but are not limited to, all problems inherent in dilapidated and abandoned buildings, including, without limitation, rot; water damage; broken and missing steps; broken, inadequate or missing electrical outlets and fixtures; inadequate or nonexistent lighting; inadequate, non-code compliant or nonexistent exiting; unreinforced masonry; outdated and non-code compliant electrical and other utility wiring, piping, apparatus, mechanisms, or services; broken glass; possible Hazardous Materials; rodent droppings; and insects and other organisms.

Section 3.4 Inspections. No inspection performed or not performed by NPS hereunder will give or be deemed to give NPS any responsibility or liability with respect to the activities relating to, or the design and construction of, the Project or constitute or be deemed to constitute a waiver of any of Developer's obligations hereunder or be construed as approval or acceptance of the work or the prosecution thereof or the design or construction of the Project.

Section 3.5 Requirements and Approvals. Developer further recognizes that any activities of Developer upon the Premises may be subject to requirements and approvals not ordinarily imposed by state, territorial, and local authorities.

Section 3.6 Safety and Function. Developer must use best efforts to ensure that the safety, functioning and appearance of the Premises and the convenience and safety of other persons is not adversely affected by the activities of Developer, its employees, contractors, consultants or other agents.

Section 3.7 Environmental Studies. Prior to the Effective Date, NPS will make available to Developer the studies and reports listed in Exhibit H and attached hereto.

Section 3.8 Maintenance. When conducting due diligence activities during the term of this Agreement, Developer must at all times maintain any Permitted Areas in good condition and repair and must be kept

free of trash, debris and unnatural material. Equipment and other materials may not be stored on Permitted Areas without NPS' prior written consent. Prior to the Effective Date of this Agreement NPS will, subject to NPS' infrastructure construction activities, maintain the Premises in its as is condition.

Section 3.9 Lawn Areas. Lawn areas rutted by equipment or otherwise damaged during the conduct of due diligence activities by Developer, its employees, contractors, consultants or other agents, must be leveled by the addition of topsoil or otherwise repaired by tilling and leveling. These areas must then be seeded to match the existing vegetation or the vegetation that existed before the damage. All such work will be subject to the prior written approval and acceptance of NPS.

Section 3.10 Prohibited Activities. Without limitation of the foregoing, or any other provision of this Agreement, in no event will Developer conduct activities on the Premises, or any other area of the Virgin Islands National Park (VIIS), that are prohibited by Applicable Laws; that may be dangerous to life, limb, property or public health; that in any manner cause, create, or result in a nuisance; that is of a nature that involves substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode, that otherwise harms the health or welfare of persons in the physical environment; that results in any discharge or release of Hazardous Materials on the Premises, any other area of VIIS, or any neighboring property including but not limited to the disposing or discharging of such substances into, on, or under the Premises, any other area of VIIS, or any neighboring property.

Section 3.11 Oversight. Developer recognizes as part of its responsibility that the activities herein permitted are in fact on NPS property and, as such, must be maintained in accordance with the directions of NPS.

Section 3.12 No Waste. Except as may be permitted in writing under the terms of this Agreement, during the term of this Agreement, Developer will cut no timber nor remove any other landscape features such as shrubs or bushes; conduct no mining or drilling operations; remove no sand, gravel or similar substances from the ground; commit no waste of any kind; or in any manner substantially change the contour or condition of the Premises or other areas of VIIS.

Section 3.13 Excavation. (a) Except as may be permitted in writing under the terms of this Agreement, Developer will not remove or disturb or cause to be removed or disturbed any utility maintained by NPS or a utility service provider, Pre-existing Hazardous Materials, or any historical, archeological, architectural, or other cultural artifacts, relics, remains, materials or objects of antiquity encountered during any site or ground disturbance. If any such items are encountered by Developer, Developer must immediately halt work and notify NPS so that NPS may take such actions as NPS may be obligated to take pursuant to Applicable Laws. The affected activity may not resume until written approval is issued by NPS. Developer acknowledges that, at NPS' sole discretion, Developer may be required to alter work plans to avoid damage to utilities, cultural resources, or to avoid disturbance of Pre-existing Hazardous Materials, and the Parties agree that NPS will not be liable for any costs or expenditures occasioned as a result of any delays or alterations associated. NPS will cooperate with Developer to minimize the impact of any such delays or alterations.

(b) The prior written approval of NPS is required for excavation and an archaeological clearance is required prior to any digging or excavation within VIIS. Where excavation is to be in archaeologically sensitive areas, an archaeologist approved by NPS must be present at the excavation to monitor the process of digging. Hand digging will 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 must 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 NPS, and the recovery of these items is subject to federal law, with penalties imposed for violations.

(c) Open excavation must be barricaded when Developer'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 workday without NPS' prior written consent. At each excavation site, Developer must ensure backfilling operations are complete prior to the end of the workday unless NPS otherwise consents in writing. No more than two hundred (100) linear feet of open excavation may exist at any time without prior written approval of the NPS.

(d) Developer must 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 may be permitted to control dust. If dust control is permitted, it must be performed as the work proceeds and whenever a dust nuisance or hazard occurs. Developer must control all runoff associated with dust control to ensure that no runoff enters or impacts the marine environment.

(e) If applicable, damaged or backfilled areas must be repaved, re-sodded or seeded and fertilized by Developer in such a manner as to match the paving or vegetation existing prior to the damage. All paving, sod, seed, and fertilizer types and mixtures must be approved in writing by NPS.

Section 3.14 Utilities. During the term of this Agreement, Developer must arrange and pay for all utility services for the Premises necessary for Developer's due diligence investigation and for any of Developer's activities in preparation of the Construction Documents and plans set forth in the Scope of Development.

Section 3.15 VIIS Administration and Management. During the term of this Agreement, Developer's activities on the Premises or any other portion of VIIS may not unduly interfere with the management and administration of VIIS.

## ARTICLE 4

### DISPOSITION OF PREMISES

Section 4.1 Opening Escrow. To accomplish the conveyance of the leasehold interest in the Premises from NPS to Developer (or its assignee approved in writing by NPS), the Parties may establish an escrow, and if established will execute and deliver to the escrow holder written instructions that are consistent with this Agreement.

Section 4.2 Close of Escrow; Building Permit; Leasehold Conveyance. No later than fifteen (15) days after all conditions precedent set forth in Section 2.2 above have been satisfied for the Lease Execution Date, or the Phased Improvement Milestone, as applicable, the Lease will be executed or the applicable phase of the Phased Improvements will commence, as applicable. Also, on the Lease Execution Date or the Phased Improvement Milestone, as applicable, NPS will issue a building permit for construction of the Initial or Phased Improvements.

Section 4.3 Condition of Title. NPS will convey the leasehold interest in the Premises free of all liens, encumbrances, clouds, conditions, and rights of occupancy and possession, except for those permitted exceptions included in the attached Exhibit D.

(a) Condition. NPS has provided Developer with access to, or copies of, the environmental studies listed in the attached Exhibit H.

(b) "As Is" Conveyance. The Premises will be leased to Developer (or its assignee approved in writing by NPS) pursuant to the Lease in "as is" condition, and NPS will not be responsible for demolition, site preparation, any other removal or placement of improvements, soil conditions, or removing any subsurface obstruction or correcting any subsurface condition except pertaining to Pre-existing Hazardous Materials pursuant to Applicable Laws. NPS does not make any express or implied representations or warranties as to any characteristics of the Premises or the suitability of the Premises for the development of the Project. If the conditions of the Premises are not entirely suitable for the development of the Project, then subject to NPS' approval, Developer may put the Premises in a condition suitable for the Initial or Phased Improvements to be constructed. Developer waives any right of reimbursement or indemnification from NPS for Developer's costs related to any physical conditions on the Premises. This waiver will survive termination of this Agreement.

Section 4.4 Title Insurance and Costs of Escrow. Developer will 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) will be borne by Developer.

Section 4.5 Real Estate Commissions. Both NPS and Developer warrant that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Developer will defend and hold NPS harmless from all damages resulting from any claims that may be asserted against NPS by any other broker, finder or other person with whom the other party has or purportedly has dealt. The provisions of this Section 4.5 will survive termination of this Agreement.

## ARTICLE 5

### CONSTRUCTION OF INITIAL AND PHASED IMPROVEMENTS

Section 5.1 Commencement of Construction.

(a) Developer must commence the construction of the Initial or Phased Improvements no later than thirty (30) days after the Lease Execution Date or Phased Improvement Milestone, as applicable. This Article 5 will be incorporated into the Lease.

(b) Effective as of the Lease Execution Date or Phased Improvement Milestone, as applicable, if necessary, NPS may issue permits to Developer and its employees, agents, consultants, and contractors, to enter Permitted Areas to facilitate the construction of the Initial or Phased Improvements, as applicable, in accordance with the Construction Documents and the terms and conditions of this Agreement and the Lease.

Section 5.2 Completion of Construction. Developer must diligently prosecute to completion the construction of the Initial Phase of the Phased Improvements and each subsequent phase of the Phased Improvements that Developer elects to undertake, in accordance with the applicable Schedule of Performance (Phased Improvements - Construction), as may be extended for Excusable Delay(s) as determined by the parties. Developer must complete the construction of the Initial Phase of the Phased Improvements no later **insert completion date for construction** after commencement of construction thereof, as may be extended for Excusable Delay(s) as determined by the parties. As between NPS and Developer, Developer will be solely responsible for the performance and completion of the Initial and Phased Improvements, including all costs.

Section 5.3 Construction Pursuant to Documents.

(a) Developer must perform and complete, or cause the performance and completion, of the Initial and Phased Improvements in accordance with Applicable Laws, the Construction Documents, the terms and conditions of the Lease, and all other applicable governmental determinations and approvals, including, without limitation, the Approved Development Budget. In addition, Developer must perform the mitigation measures set forth in the attached Exhibit I, for which Developer is responsible, in the construction of the Initial and Phased Improvements.

(b) Any proposed Material Change in the Construction Documents will require the prior written approval of the NPS and must be timely submitted in writing by Developer for NPS approval. NPS will approve or disapprove in writing a proposed Material Change (including proposed changes to the Approved Development Budget following satisfaction of the conditions precedent set forth in Section 2.2(f) above) within fourteen (14) days after receipt by NPS. If NPS rejects the proposed Material Change, then NPS will provide Developer with the specific reasons therefor, and the approved Construction Documents will continue to control. NPS' approval of changes to the Approved Development Budget following satisfaction of the conditions precedent set forth in Section 2.2(f) above may be given only if each of the proposed changes is reasonable and necessary for the construction of the Initial or applicable phase of the Phased Improvements and is an appropriate Development Cost.

(c) Unless otherwise specified in this Agreement or the Lease, an immaterial change does not require advance NPS approval. However, Developer must submit to NPS any immaterial change within ten (10) days after making such change, and such change will become a part of the approved Construction Documents, binding on Developer.

Section 5.4 Credentials. All design and construction of the Initial and Phased Improvements must be performed by knowledgeable parties trained and experienced in the work to be done and all construction of Initial and Phased Improvements which so require must be performed by licensed contractors who meet applicable territorial or local licensing, bonding and certification requirements.

Section 5.5 Construction Completion Procedures.

(a) Upon Substantial Completion of the Initial or Phased Improvements, Developer must submit to NPS a notice of such completion.

(b) Upon completion of the construction of the Initial Improvements and each phase of the Phased Improvements, Developer must deliver to NPS evidence, satisfactory to NPS, 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 for in this Agreement).

(c) Upon completion of the construction of the Initial Improvements and each phase of the Phased Improvements, Developer must provide to NPS 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 (including shut-offs or disconnects), ducts, outlets, structural members, walls, partitions and other significant features constructed or installed in an electronic format acceptable to the NPS.

(d) Upon completion of the Initial Improvements and each phase of the Phased Improvements, Developer must provide NPS with a complete written inventory of all fixtures (as defined in the Lease) which inventory will be subject to NPS' written approval.

(e) NPS will issue a Certificate of Occupancy after Substantial Completion of Initial Improvements and each phase of the Phased Improvements subject to "punch-list" items and upon final review to NPS' satisfaction of the applicable Construction Documents, including all tests, inspections, progress reports, and other pertinent documents customarily required by the jurisdiction in which the Project is located for the issuance of such a document. NPS and Developer must coordinate and consult on final issues in advance of the completion of the Initial Improvements and each phase of the Phased Improvements to enable NPS to promptly issue the Certificate of Occupancy.

(f) NPS may issue a Conditional Certificate of Occupancy at the request of Developer when the Initial Improvements or each phase of the Phased Improvements is completed to the point that Developer can commence pre-opening operations in the applicable area without threat to life or safety. Developer may operate the applicable portion of the Premises under a Conditional Certificate of Occupancy if the Conditional Certificate of Occupancy authorizes such operations and provided that all construction necessary for the safe operation of the applicable portion of the Premises and the protection of the life and safety of all members of the public coming on the applicable portion of the Premises has been completed, in accordance with all Applicable Laws, the terms of this Agreement, and the Lease.

(g) Except as expressly permitted by NPS' prior written approval, in no event will Developer open any applicable portion of the Premises to the public without either (i) the issuance of a Certificate of Occupancy or (ii) the issuance of a Conditional Certificate of Occupancy.

**Section 5.6 Progress Reports.** Until such time as Developer is entitled to issuance of a Certificate of Occupancy, Developer must provide NPS with periodic progress reports, as reasonably requested by NPS, regarding the status of completion of the Initial Improvements and for each phase of the Phased Improvements.

**Section 5.7 On-Site Documents.** Developer must prepare and maintain at the Project Area, on a current basis during the Initial Improvements and each phase of the Phased Improvements, approved annotated Construction Documents clearly showing all changes, revisions and substitutions made during construction.

**Section 5.8 Entry by NPS.** Developer must permit NPS, through its employees, contractors and agents, to enter the Project Area at all reasonable times during construction of the Initial and Phased Improvements

to observe all aspects of the construction and to inspect the work of the Initial and Phased Improvements to determine that such work is in substantial conformity with the approved Construction Documents or to inspect the Project and the Project Area for compliance with this Agreement. No inspection performed or not performed by NPS under this Agreement will give or be deemed to give NPS any responsibility or liability with respect to the work or the prosecution thereof or the design or construction of the Initial or Phased Improvements or constitute or be deemed to constitute a waiver of any of Developer's obligations under this Agreement or be construed as approval or acceptance of the work or the prosecution thereof or the design or construction of the Initial or Phased Improvements. Approval and acceptance of the Initial or Phased Improvements will be pursuant to the provisions of this Agreement and the Lease pertaining to the construction approval process and issuance of Certificates of Occupancy. NPS is under no obligation to (a) supervise the construction, (b) inspect the Project or the Project Area, or (c) inform Developer of information obtained by NPS during any inspection, and Developer must not rely upon NPS for any supervision, inspection, or information.

Section 5.9 Compliance with Applicable Laws. Developer must cause all work performed pursuant to this Agreement to be performed in compliance with all Applicable Laws. The work may proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and Developer will be responsible to NPS for the procurement and maintenance thereof, as may be required of Developer and all entities engaged in work on the Project.

## ARTICLE 6

### SECURITY FINANCING

Section 6.1 Encumbrances for Initial and Phased Improvements. Notwithstanding any other provision of this Agreement, only the following encumbrances are permitted to be placed upon the Premises:

- (a) Easements of utility providers and similar encumbrances imposed in the ordinary course of business and approved in writing by NPS; and
- (b) Other encumbrances specifically approved in writing by NPS pursuant to or permitted by Article 8 of this Agreement.

## ARTICLE 7

### GENERAL OBLIGATIONS

Section 7.1 Applicability. Except as otherwise provided, Developer must comply with the provisions of this Article 7 until the termination of this Agreement.

Section 7.2 Compliance. Developer, at Developer's sole cost and expense, must promptly comply with all Applicable Laws, which compliance is the responsibility of Developer under this Agreement or otherwise. Developer must give NPS immediate written notice of any notice of violation of Applicable Laws received by or on behalf of Developer and, at its sole cost and expense, Developer must promptly rectify any such violation but must retain the right to appeal any non-final rulings prior to taking any action.

Section 7.3 Hazardous Materials.

(a) Developer must keep and maintain the Project Area in compliance with, and may not cause or permit the Project Area to be in violation of, Hazardous Materials Laws relating to conditions on, under, or about the Project Area; provided, however, in no event will Developer have any responsibility for Pre-existing Hazardous Materials except to the extent that:

(i) the negligence or willful misconduct of Developer or its agents' or other persons or entities under the control of Developer, causes an exacerbation or migration of such Pre-existing Hazardous Materials, or

(ii) Developer or its agents or other persons or entities under the control of Developer, cause additional damage to the environment beyond such Pre-existing Hazardous Materials. If Hazardous Materials are encountered by Developer, Developer must immediately halt work and notify NPS so that NPS may evaluate the situation. Neither NPS, nor Developer, will use, generate, manufacture, store, release, or dispose of on, under, or about the Project Area or transport to the Project Area any Hazardous Materials, except in compliance with Hazardous Materials Laws.

(b) Each Party must 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 it or the Project Area pursuant to Hazardous Materials Law; (ii) it receives any claim made or threatened by any third party against it or the Project Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials or Pre-existing Hazardous Materials (the matters set forth in clauses (i) and (ii) above are referred to as "Hazardous Materials Claims"); (iii) it discovers any occurrence or condition on any real property adjoining or in the vicinity of the Project Area that is subject to any restrictions on the ownership, occupancy, transferability or use of the Project Area under any Hazardous Materials Law; or (iv) it discovers the presence of Pre-existing Hazardous Materials on, under, or adjacent to the Project Area.

(c) NPS will 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 Developer. Developer must indemnify and hold harmless NPS and its employees, contractors, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials (other than Pre-existing Hazardous Materials) on, under, or about the Project Area, including without limitation: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup or detoxification of the Project Area and the preparation and implementation of any closure, remedial or other required plans; and (iii) all reasonable costs and expenses incurred by NPS in connection with clauses (i) and (ii), including, but not limited to, reasonable attorneys' fees. This obligation to indemnify will survive termination of this Agreement. Notwithstanding the foregoing, this obligation to indemnify will not apply, with respect to loss, damage, costs, expense, or liability arising out of or attributable to Pre-existing Hazardous Materials except to the extent: (i) Developer's or its agents' or other persons or entities under the control of Developer, negligence or willful misconduct causes an exacerbation or migration of such Pre-existing Hazardous Materials, or (ii) Developer or its agents or other persons or entities under the control of Developer, cause additional damage to the environment beyond such Pre-existing Hazardous Materials.

(d) Without NPS' prior written consent, which will not be unreasonably withheld, Developer must not take any action in response to the presence of any Hazardous Materials on, under, or about the Premises, nor enter into any settlement agreement, consent decree, or other compromise with respect to any Hazardous Material Claims, which Response Action, settlement, consent, decree, or compromise might, in NPS' reasonable judgment, impair the value of NPS' interest in the Project Area. However, NPS' prior consent will not be necessary if the presence of Hazardous Materials on, under, or about the Project Area either poses an imminent threat to the health, safety, or welfare of any individual, or is of such a nature that an immediate response is necessary and it is not reasonably possible to obtain NPS' consent before taking such action, and in such event Developer must notify NPS within twenty four (24) hours of any Response Action taken. NPS agrees not to withhold its consent if either (i) a particular Response Action is ordered by a court of competent jurisdiction, (ii) Developer will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action, or (iii) Developer establishes to the satisfaction of NPS that there is no reasonable alternative to such Response Action which would result in less impairment of NPS' interest in the Project Area.

Section 7.4 Non-Discrimination. Developer covenants by and for itself and its successors and assigns that there will be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the transfer, use, occupancy, tenure or enjoyment of the Project and Project Area nor will Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of contractors, subtenants, or vendees in the Project and Project Area.

Section 7.5 Changes. Developer must promptly notify NPS in writing of any changes in the location of any place of business or material assets of Developer, and of any other change in fact or circumstance represented or warranted at any time by Developer to NPS.

Section 7.6 Insurance. Developer must not do anything, or permit anything to be done, in or about the Project Area that would (a) invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Project Area, or any property located therein, or (b) result in a refusal by insurance companies of good standing to insure the Project Area or any such property in amounts required hereunder.

## ARTICLE 8

### ASSIGNMENT AND TRANSFERS

Section 8.1 Purpose of Restrictions on Transfer. This Agreement is entered into for the purposes of negotiating the terms and conditions of leasing the Premises and the performance and completion of the Initial and Phased Improvements in accordance with the terms of this Agreement and the Lease. The qualifications and identity of Developer are of particular concern to NPS, in view of the importance of the development of the Project to NPS. It is because of the qualifications and identity of Developer that NPS is entering into this Agreement with Developer and that a transfer or assignment of this Agreement is permitted only as provided in this Agreement.

Section 8.2 Transfers Prohibited. Developer must not make or create any transfer or assignment, either voluntarily or by operation of law, without the prior written approval of NPS, which may be granted or denied in NPS' sole discretion. Any assignment or transfer made in contravention of this Section 8.2 will be void and will be deemed to be a default of the Developer, whether or not Developer knew of, or participated in, such transfer.

#### Section 8.3 Identity of Developer.

(a) Developer represents and warrants as follows: [The following is provided only as an example]

- (i) Developer is a duly existing Virgin Islands limited liability company in good standing and qualified to do business in the Territory of the Virgin Islands and each of its members and managers are duly existing and in good standing in their respective states of formation;
- (ii) Developer's sole manager is "ABC LLC", [Insert Developers Managing Entity Name and Company Type if applicable];
- (iii) the sole members of Developer are: (A) "Jane Smith" Manager LLC; (B) "XYZ", LLC, a Virgin Islands limited liability company ("XYZ"); (C) "123", LLC, a Virgin Islands limited liability company;
- (iv) ABC is a Virgin Islands limited liability company whose sole members and managers are the following individuals: [e.g. J. Smith, S. Jones, and John C. Doe], each with a thirty-three and one third percent (33 1/3%) interest;
- (v) 123 is a Virgin Islands S corporation whose sole shareholder and President is the following individual: S. Jones; and
- (vi) XYZ is a Delaware limited liability company whose sole member and manager is the following individual: John C. Doe; and
- (vii) Developer has not made or created any assignment or transfer, either voluntarily or by operation of law. Developer represents that the foregoing description of Developer's identity is complete, true, and correct.

(b) Developer further represents that the person signing below on its behalf has the authority to bind Developer and that all necessary board of directors', shareholders', partners', and member's or other approvals have been obtained for such authority.

**Section 8.4 Effectuation of Permitted Transfers.**

(a) In the absence of specific written agreement by NPS, no assignment or transfer permitted by Article 8 of this Agreement will be deemed to relieve Developer from any obligations under this Agreement.

(b) No assignment or transfer of this Agreement or of all or a portion of the Project that is otherwise permitted by this Agreement will be permitted unless at the time of the assignment or transfer, the person or entity to which such assignment or transfer is made, by a written instrument satisfactory to NPS, expressly assumes the obligations of Developer under this Agreement arising on or after the date of such assignment or transfer, and agrees to be subject to the conditions and restrictions to which Developer is subject arising during this Agreement, as well as any restrictions imposed by NPS on development of the Project subsequent to the date of this Agreement to the full extent that such obligations, conditions, and restrictions are applicable.

**ARTICLE 9**

**REMEDIES PRIOR TO LEASE EXECUTION DATE OR PHASED IMPROVEMENT MILESTONE**

**Section 9.1 Application of Remedies.** This Article 9 will govern the Parties' remedies for breach or failure under this Agreement prior to the Lease Execution Date or Phased Improvement Milestone, as applicable; thereafter the terms and provisions of the Lease will apply.

**Section 9.2 No Fault of Parties.**

(a) The following events constitute a basis for a Party to terminate this Agreement without the fault of either Party:

(i) Developer, despite good faith efforts, is unable to obtain any "will serve" letters within the time and in the manner specified in Section 2.2(e)(ii) above.

(ii) NPS, despite using best efforts, is unable, due to causes beyond its control and without its fault or negligence, including (without limitation) Force Majeure and acts of governmental bodies other than NPS, to convey the leasehold interest in the Premises to Developer within the time and in the manner specified for the Lease Execution Date in the Schedule of Performance (Lease Execution Date or Phased Improvement Milestone), and Developer is otherwise entitled to such conveyance.

(iii) A termination by Developer pursuant to Section 3.1 above.

(b) Upon the happening of an event described in Section 9.2(a) above, and at the election of either Party, this Agreement may be terminated by written notice to the other Party.

(c) After a termination pursuant to this Section 9.2, any costs incurred by a Party in connection with this Agreement and the Project must be completely borne by such Party and neither Party will have any rights

against or liability to the other, except the delivery of plans and documents as set forth in this Agreement and those provisions of this Agreement that recite that they survive termination of this Agreement.

Section 9.3 Fault of NPS.

(a) Except as to events constituting a basis for termination under Section 9.2 above, each of the following events, if uncured after expiration of the applicable cure period, will constitute a default of the NPS:

- (i) Subject to Section 10.2 below, NPS fails to satisfy any condition provided in Sections 2.2(p) and 2.3(a) above, which are material to timely completion of the Initial Phase of the Phased Improvements within the times and in the manner set forth in Sections 2.2(p) and 2.3(a) above.
- (ii) Except as provided in Section 9.2 above, NPS without good cause fails to convey the leasehold interest in the Premises within the time and in the manner specified in Article 4, and Developer is otherwise entitled to such conveyance.
- (iii) NPS breaches any other material provision of this Agreement.

(b) Upon the happening of an event described in Section 9.3(a) above, Developer must first notify NPS in writing of its purported breach or failure, and NPS will have thirty (30) days from receipt of such notice to cure such breach or failure. If NPS does not cure within such period, then the event will constitute a default of the NPS and Developer will be entitled to terminate, in writing, this Agreement.

Section 9.4 Fault of Developer.

(a) Except as to events constituting a basis for termination under Section 9.2 above, each of the following events, if uncured after expiration of the applicable cure period (including any cure period agreed to in writing by the Parties as a result of the meet and confer provisions of Sections 9.4(a)(i) and (vi) below), will constitute a default of the Developer:

- (i) Developer fails to satisfy any condition in Article 2 above (exclusive of Sections 2.2(p) and 2.3(a) above) within the times and in the manner specified in Article 2 above; provided, however, Developer will have the right, at Developer's written request and Developer's sole cost and expense, to meet and confer in good faith with the Regional Director, Interior Region 2, to discuss the reasons for such failure and, if possible, to develop (with NPS' written approval) a cure for such failure.
- (ii) Developer does not attempt diligently and in good faith to cause satisfaction of all conditions in Article 2 above.
- (iii) Developer (or its assignee approved in writing by NPS) refuses for any reason (including, but not limited to, lack of funds) to accept conveyance from NPS of the leasehold interest in the Premises within the time and in the manner specified in Article 4 above after all conditions to such conveyance have been satisfied or waived.
- (iv) Developer attempts or completes an assignment or transfer except as permitted in Article 8 above.

(v) Developer fails to commence promptly, or after commencement fails to prosecute diligently to completion (except when the NPS determines the failure is due to Excusable Delay or Force Majeure), the construction of the Initial and Phased Improvements pursuant to the applicable Scope of Development within the times set forth in the Schedule of Performance (Initial and Phased Improvements Milestones) for more than ten (10) consecutive days, and such failure continues for a period of thirty (30) days from the date of written notice thereof from NPS as to such failure to commence or perform the redevelopment or construction; provided, however, Developer will have the right, at Developer's written request and Developer's sole cost and expense, to meet and confer in good faith with the Regional Director, Interior Region 2, to discuss the reasons for such failure and, if possible, to develop (with NPS' written approval) a cure for such failure.

(vi) Except when caused by an Excusable Delay or Force Majeure, as determined by the NPS, Developer abandons or substantially suspends construction of the Initial and Phased Improvements for more than sixty (60) consecutive days, and such abandonment or suspension continues for a period of sixty (60) days from the date of written notice thereof from NPS as to such abandonment or suspension of the construction of the Initial or Phased Improvements.

(viii) Developer breaches any other material provision of this Agreement.

(b) Upon the happening of any event described in Section 9.4(a) above, NPS will first notify Developer in writing of its purported breach or failure, and Developer will have thirty (30) days from receipt of such notice to cure such breach or failure. If Developer does not cure within such period, then the event will constitute a default of the Developer and NPS will be afforded all of the following rights and remedies: (i) terminating, in writing, this Agreement; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Agreement; (iv) obtaining plans, data, and approvals pursuant to Section 9.5 below; and (v) any other remedy permitted by Applicable Laws.

**Section 9.5 Documents, Data and Approvals.** If this Agreement is terminated pursuant to Section 9.2 or 9.4 above, then Developer must promptly deliver to NPS copies of the following items in the possession of Developer (or of Developer's, contractors, subcontractors, consultants or agents, to the extent that Developer has a right to receive such items and deliver them to NPS): all plans and specifications for the Project; all permits and approvals obtained in connection with the Project; all applications for permits and approvals not yet obtained but needed in connection with the Project, and all reports from investigations, as well as data, inventories, surveys, and other materials prepared pursuant to this Agreement or related to the Project.

## ARTICLE 10

### GENERAL PROVISIONS

**Section 10.1 Notices, Demands and Communications.** Formal notices, demands, and communications between NPS and Developer will be sufficiently given if, and will not be deemed given unless, stated in writing and delivered personally, or dispatched by certified mail, return receipt requested, or reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of NPS and Developer as follows:

NPS: National Park Service



Attn: [Insert Park Contract]  
100 Alabama Street, SW  
1924 Building  
Atlanta, GA 30303  
Attn: Regional Director

With copies to:

National Park Service  
Virgin Islands National Park  
1300 Cruz Bay Creek  
St. John, VI 00830  
Attn: Superintendent

Developer: [Insert Developer Name Here]  
[Insert Developer Address]  
[City, State Zip]  
Attn:

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Agreement.

Section 10.1. Delivery. Delivery will be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 10.2 Anti-Deficiency Act. Nothing contained in this Agreement will be construed as binding NPS 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 Agreement, or to involve NPS in any contract or other obligation for the future expenditure of money in excess of such appropriations.

Section 10.3 No Congressional Conflict of Interest. No member or delegate to Congress or Resident Commissioner will be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom, but this provision will not be construed to extend to this Agreement if made with a corporation for its general benefit.

Section 10.4 Exhibits. Each of the exhibits referenced in this Agreement is attached hereto and incorporated herein.

Section 10.5 Time of the Essence. Time is hereby expressly declared to be of the essence of this Agreement and of each and every term, covenant, agreement, condition and provision of this Agreement.

Section 10.6 Non-Liability of Officials, Trustees, and Employees.

(a) Notwithstanding anything to the contrary in this Agreement, no elective or appointive board member, trustee, officer, or employee of Developer will be personally liable to NPS, in the event of any default or breach by Developer or for any obligation of Developer under this Agreement, nor will any employee of

NPS be personally liable to Developer, its successors or assigns, in the event of any default or breach by NPS or for any obligation of NPS under this Agreement, except as provided in Section 10.6(b) below.

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

Section 10.7 Inspection of Books and Records. NPS has the right at all reasonable times to inspect and copy the books, records and all other documentation of Developer pertaining to Developer's obligations under this Agreement.

Section 10.8 Headings. Section and subsection headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way limiting or amplifying the provisions of this Agreement.

Section 10.9 Applicable Law. The laws of the United States shall govern the validity, construction, and effect of this Agreement.

Section 10.10 Severability. In case any one or more of the provisions of this Agreement 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, then the remaining terms will continue in full force unless the rights and obligations of the Parties have been materially altered by such holding of invalidity, illegality or unenforceability.

Section 10.11 Binding Upon Successors. This Agreement 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 Developer except as permitted in Article 8. Any reference in this Agreement to a specifically named Party will 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 Agreement and under law.

Section 10.12 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 10.13 Approvals.

(a) Whenever this Agreement calls for NPS approval, consent, or waiver, the written approval, consent, or waiver of NPS, NPS Interior Region 2 Regional Director or his/her delegate will constitute the approval, consent, or waiver of NPS.

(b) All approvals under this Agreement will be subject to a reasonableness standard, except where a sole discretion standard is specifically provided.

Section 10.14 Amendments. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by both Parties.

Section 10.15 Estoppels. Promptly upon a request by Developer, NPS will provide an estoppel certificate certifying to a proposed lender or investor as to Developer's compliance with this Agreement.

Section 10.16 Time Periods. Any time period to be computed pursuant to this Agreement will 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 will be extended until the next business day that NPS is open for business, but in no event will the extension be for more than three (3) calendar days. All references to days means calendar days unless otherwise specifically stated.

Section 10.17 Joint and Several Liability. If there is one or more entity named as Developer hereunder, the obligations and liabilities of Developer hereunder will be joint and severable.

Section 10.18 Entire Agreement. Prior to the Lease Execution Date, this instrument, together with the exhibits hereto and any special use permits, or comparable written authorizations, constitutes the entire agreement between NPS and Developer with respect to the subject matter of this Agreement and supersedes all prior offers, negotiations, communications, discussions, correspondence oral and written. After the Lease Execution Date, this Agreement together with the exhibits hereto, and the Lease and the exhibits thereto and any special use permits or comparable written authorizations issued to Developer will constitute the entire agreement between NPS and Developer with respect to the subject matter of this Agreement and the Lease and will supersede all prior offers, negotiations, communications, discussions, and correspondence, oral and written, other than as set forth in this Agreement and the exhibits hereto, the Lease and the exhibits thereto and any special use permits or comparable written authorizations issued to Developer. None of the provisions of this Agreement will be merged by the Lease or any other instrument transferring an interest in any portion of the Premises, and neither the Lease nor any other instrument transferring an interest in any portion of the Premises will affect this Agreement, except that after the Lease Execution Date in the event a provision of the Lease conflicts with a provision of this Agreement, the Lease provision will be controlling.

Section 10.19 No Third-Party Beneficiaries. This Agreement will 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 Agreement.

Section 10.20 Multiple Originals; Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the terms of this Agreement by signing below:

NPS:

NATIONAL PARK SERVICE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

DEVELOPER:

[Insert Developer Name Here]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit A**

### **Premises**

(General Area Map)

(Include all land and improvements, for which the Developer will have a leasehold interest, and identify any land or improvements which Developer explicitly does not have a leasehold interest)

DRAFT - SAMPLE

## **Exhibit B**

### Draft Lease

## **Exhibit C**

### **Permitted Areas**

(Areas that the Developer is allowed to use through a Special Use Permit, such as construction staging areas that are outside of the Premises)

## **Exhibit D**

### Permitted Exceptions



## **Exhibit E**

### **Construction Schedule**

Initial Improvements  
Phased Improvements

## **Exhibit F**

### **Schedule of Performance**

Pre-Lease Execution Milestones  
Initial Improvements Milestones  
Phased Improvement Milestones

**Exhibit G -**  
**Scope of Development**

Design Drawings  
Civil Engineering Drawings  
Construction Drawings

DRAFT - SAMPLE

## **Exhibit H**

### Environmental Reports

## **Exhibit I**

Endangered Species Act Mitigation Measures

NPS Responsibilities

NPS Mitigation

Developer's Obligations

If applicable, requirements related to the Marine Mammal Protection Act

Essential Fish Habitat