



# United States Department of the Interior

NATIONAL PARK SERVICE  
1849 C Street, N.W.  
Washington, D.C. 20240

IN REPLY REFER TO:

(2410)

FEB 01 2008

## Memorandum

To: Regional Directors

From: Acting Assistant Director, Business Services *Wate Stewm*

Subject: Reference Manual 38; Part 18 Leasing Reference Manual

Attached please find a copy of Reference Manual 38 (RM 38), the National Park Service (NPS) Reference Manual for leasing park area properties under the authority of 36 CFR Part 17 and 36 CFR Part 18. RM 38 is intended to give field guidance in the planning, execution and administration of park area leases. It incorporates applicable regulatory requirements and the policies set forth in Director's Order #38(DO-38), issued on January 6, 2006, as well as sample lease instruments and related documents. RM 38, by copy of this memorandum, is being distributed to all park areas that are engaged in property leasing.

**Delegations:** DO-38 places management responsibility for park area leasing with the Assistant Director for Business Services acting through the Office of Concessions Management. Under DO-38, the applicable Regional Director is delegated authority to execute Part 17 and Part 18 leases with general authority to delegate this responsibility to the applicable superintendent where appropriate. However, please be advised that, pending further policy development: (1) Regional Directors are not permitted to delegate to superintendents authority to execute leases that involve the replacement of a concession contract or commercial use authorization with a lease; and, (2) all decisions to enter into leases must be supported by and consistent with an approved fair market value appraisal unless otherwise approved in writing by this office.

Prior to their execution by the deciding official (Regional Director or superintendent), this office, in accordance with DO-38, must approve proposed leases with terms of more than 10 years; proposed leases or lease amendments that provide for a leasehold mortgage or similar encumbrance; and proposed amendments of existing leases that required the approval of this office prior to execution.

In addition to these requirements for approval by this office, please be advised that, pending development of further policy guidance, prior written approval by this office is required for: (1) leases that replace a concession contract or commercial use authorization with a lease as further described in Policy Memorandum 07-01; and, (2) proposed leases, proposed lease amendments,

or other proposed approvals that would authorize the construction of new buildings, structures or additions to existing buildings or structures under a lease at a cost exceeding \$10,000.

**Requests for Approval:** In order to obtain approval of proposed leases from this office, the following information must be provided to the Office of Concessions Management:

1. A memorandum signed by the deciding official and, if the deciding official is not the Regional Director, approved by the Regional Director, requesting approval of the proposed lease and stating that the proposed lease meets all applicable requirements of 36 CFR Part 18, NPS Management Policies 2006, and DO-38;
2. A copy of the analysis prepared to document compliance with the determination requirements of 36 CFR 18.4;
3. A written determination documenting why the proposed lease term, in accordance with 36 CFR 18.10, is as short as possible taking into account the financial obligations of the lessee and other relevant factors;
4. A clean and redlined copy of the proposed lease. The redlined copy is to show changes from the applicable sample lease contained in RM 38;
5. A copy of the prospectus (if applicable) that solicited the proposed lease;
6. A copy of the lease proposal that led to the proposed lease;
7. A copy of the approved appraisal that supports the lease; and,
8. A copy of the lease approval provided by the Office of the Solicitor.

**Rent Provisions:** Pending further policy development: (1) all leases with a term of 5 or more years must contain a CPI adjustment provision; and, (2) all leases with a term of 15 or more years must contain a rent reconsideration provision. See RM 38 for sample provisions.

If there are any questions, please contact Jo A. Pendry, Concession Program Manager at 202/513-7156.

Attachment

cc: Park areas with Leasing Programs

**RM38**  
**LEASING REFERENCE MANUAL**  
**FOR 36 CFR PART 18**

# **RM 38: LEASING REFERENCE MANUAL FOR 36 CFR PART 18**

## **TABLE OF CONTENTS**

### **Chapter I: Introduction**

### **Chapter II: Planning for a Part 18 Lease**

- A. Identification of Eligible Properties
- B. General Management Plan Considerations
- C. NEPA Considerations
- D. Feasibility Analysis
- E. Special Planning Procedures for Historic Properties

### **Chapter III: Explanation of 36 CFR Part 18**

### **Chapter IV: Explanation of the Sample Lease (Improvements)**

### **Chapter V: Explanation of the Sample Prospectus**

### **Chapter VI: Evaluation and Award of Lease Proposals**

### **Attachments:**

- A. Section 802 of P.L. 105-391
- B. 16 USC 470h-3
- C. 36 CFR Part 18
- D. DO-38
- E. Sample Lease (Improvements)
- F. Sample Lease (Long Term, No Improvements)
- G. Sample Lease (Short Term, No Improvements)
- H. Sample Request for Proposals (No Improvements)
- I. Sample Request for Proposals (Improvements)
- J. Sample Request for Qualifications
- K. Sample Letter of Intent
- L. Leasing Capacity Considerations
- M. Summary of Recommended Operating Procedures
- N. Policy Memorandum 07-01

## CHAPTER I. INTRODUCTION

**Background:** On December 27, 2001, the National Park Service (NPS) adopted a new regulation (by amending 36 CFR Part 18) that generally governs the leasing of park area real property to third parties. The new Part 18 (Attachment C to this Reference Manual) combines in one regulation the general NPS leasing authority provided by Section 802 of the National Park Omnibus Management Act of 1998 (16 U.S.C. § 1a-2(k)) (Attachment A to this Reference Manual) with the NPS leasing authority for historic property provided by Section 207 of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. § 470h-3) (Attachment B to this Reference Manual).

36 CFR Part 17 also permits the leasing of park area real property but only through a public bidding process. Part 17 leasing authority is limited to land acquired from non-federal sources within any unit of the national park system other than national parks and national monuments of scientific significance. This Reference Manual does not apply to Part 17 leases.

On January 19, 2006, the Director issued Director's Order-38 regarding NPS leasing of real property. A copy of DO-38 is attached to this Reference Manual as Attachment D.

This Reference Manual is intended to provide pertinent information and guidance to NPS personnel engaged in the leasing of NPS real property. In the event of any conflict between this Reference Manual and Part 18, Management Policies 2006, or DO-38, the latter documents control.

**Structure.** The general structure of this Reference Manual is as follows.

Chapter I describes the Part 18 leasing program and its legal framework.

Chapter II discusses planning considerations for a Part 18 lease.

Chapter III explains the provisions of Part 18.

Chapter IV explains the provisions of the Sample Lease (Improvements).

Chapter V explains the provisions of a Sample RFP.

Chapter VI provides guidelines for evaluating awarding lease proposals.

Attachments A, B, and C provide the legal framework for Part 18 leases.

Attachment D provides a copy of Director's Order 38.

Attachments E, F, and G provide three types of Sample Leases.

Attachment H provides a Sample Request for Proposals (Improvements).

Attachment I provides a Sample Request for Proposals (No Improvements).

Attachment J provides a Sample Request for Qualifications

Attachment K provides a Sample Letter of Intent for lease negotiations.

Attachment L provides guidance on determining a park area's capacity to undertake a leasing program.

Attachment M provides a summary of recommended operating procedures for leasing actions.

Attachment N provides a copy of Policy Memorandum 07-01.

**Authority to Enter into Part 18 Leases:** In accordance with DO-38 and *Management Policies 2006*, the following delegations apply to Part 18 leases.

The Assistant Director for Business Services, acting through the Office of Concessions Management, administers the NPS leasing program. Authority to execute Part 18 leases and make the related determinations required by Part 18 (i.e., to be the “deciding official”) is vested in the responsible regional director, with general authority to delegate this responsibility to the applicable superintendent where appropriate, provided that, a regional director may not delegate authority to execute Part 18 leases if the proposed lease involves the replacement of a concession contract or commercial use authorization with a lease. An authorizing signature from a warranted contracting officer is not required.

However, pending further policy development: (1) regional directors are not permitted to delegate to superintendents authority to execute leases that involve the replacement of a concession contract or commercial use authorization with a lease as further described in Policy Memorandum, 07-01 (Attachment N); and, (2) all decisions to enter into leases must be supported by and consistent with an approved fair market value appraisal unless otherwise approved in writing by the Director.

Prior to their execution by the deciding official (regional director or superintendent), the Director, in accordance with D.O. 38 and subsequent guidance, must approve proposed leases: (1) with terms of more than ten (10) years; (2) proposed leases or lease amendments that provide for a leasehold mortgage or similar encumbrance; (3) proposed amendments of existing leases that required the approval of this office prior to execution; (4) leases that replace a concession contract or commercial use authorization with a lease; and (5) proposed leases as further described in Policy Memorandum 07-01 (Attachment N), proposed lease amendments, or other proposed approvals that would authorize the construction of new buildings, structures or additions to existing buildings or structures under a lease at a cost exceeding \$10,000.

**Requirements for Obtaining the Director’s Approval of Part 18 Leases:**

In order to obtain the Director’s approval of proposed leases, the following information must be provided to the Assistant Director for Business Services through the Office of Concessions Management:

1. A memorandum signed by the deciding official, and, if the deciding official is not the regional director, approved by the regional director, requesting approval of the proposed lease and stating that the proposed lease meets all applicable requirements of 36 Part 18, NPS Management Policies 2006, and D.O. 38;
2. A copy of the analysis prepared to document compliance with the determination requirements of 36 CFR 18.4;
3. A written determination documenting why the proposed lease term, in accordance with 36 CFR 18.10, is as short as possible taking into account the financial obligations of the lessee and other relevant factors;
4. A clean and redlined copy of the proposed lease. The redlined copy is to show changes from the applicable sample lease contained in this Reference Manual;
5. A copy of the prospectus (if applicable) that solicited the proposed lease;
6. A copy of the lease proposal (as applicable) that led to the proposed lease;
7. A copy of the approved appraisal that supports the lease; and
8. A copy of the approval of the proposed lease provided by the Office of the Solicitor.

**Administration of Part 18 Leases:** This Reference Manual does not discuss in a separate chapter the administration of executed Part 18 leases. Each park area is expected to establish a lease administration program that fits its capabilities and the scope of the Part 18 leases that it manages. Chapter IV, the Explanation of the Sample Lease (Improvements), contains further information on lease administration, particularly with respect to construction of improvements and lessee maintenance. Matters to be considered in assessing the ability of a park area to undertake a leasing program are discussed in Attachment L to this RM.

In general, a park area should establish an “administration plan” for each Part 18 lease it awards. The plan should include, among other matters related to particular leases: a method for determining that rent payments are timely received; scheduling appropriate periodic inspections of the leased property; periodic review of insurance coverage to assure current adequacy; periodic review of lessee construction progress, if any; periodic review of maintenance and other required lessee plans to assure current adequacy; and, timetables for initiation of lease renewals.

**Summary Operating Procedures:** Attachment M to this RM provides a summary of recommended operating procedures to be considered by park areas when undertaking a leasing project:

## **CHAPTER II: PLANNING FOR A PART 18 LEASE**

There are a number of preliminary steps that need to be taken in order to initiate a Part 18 lease proposal. These include identifying properties that are eligible for leasing, completing applicable planning actions, determining the feasibility of a possible lease (including identification of permissible uses under the lease and estimating rehabilitation costs, if any), estimating fair market value rent, and, drafting a Request for Proposals (where applicable). Chapter V discusses the drafting of an RFP.

### **A. Identification of Eligible Properties.**

If there is reason to believe that a park area may contain real property that is suitable for leasing under Part 18, the park area should undertake a survey to identify eligible properties. Three objectives encourage the leasing of eligible properties. One is to have third parties pay for the maintenance and repair of park area property. Another is to obtain rent revenue for the park area. The third is to encourage uses that support park area management objectives.

Chapter III describes the types of park area property that are subject to leasing under Part 18.

### **B. General Management Plan Considerations.**

Part 18 does not require that the park area's General Management Plan (GMP) must expressly authorize a Part 18 lease action. However, as an initial step in considering a Part 18 lease action, the park area should review its current GMP to determine if the leasing action is consistent with the terms of the GMP, and, if not, to take steps or take other planning actions as appropriate.

In addition to GMP considerations, a Part 18 lease may not be issued unless the following park area protection determinations are made:

- That the lease will not result in the degradation of the purposes and values of the park area;
- That the lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or necessary for proper administration of the park area; and
- That the lease is compatible with the programs of the NPS.

These required determinations should be incorporated into the planning actions for a prospective lease. They are discussed further in Chapter III.

### **C. NEPA (National Environmental Policy Act of 1969).**

Part 18 leases, unless already sufficiently considered in a NEPA planning action, generally will require compliance with the National Environmental Policy Act in accordance with Director's Order 12 and the NPS DO-12 Handbook. Factors that should be considered in the NEPA process should include, among other matters, the determinations required for a Part 18 lease in Section 18.4 (discussed in Chapter III),



impacts to the property and to the park area from the proposed uses of the property to be leased, and the impacts of proposed alterations (if any) to the property.

The DO-12 Handbook includes a number of “categorical exclusions” to NEPA compliance, i.e., actions that have been determined not to require NEPA compliance. These include a categorical exclusion for the “leasing of historic properties in accordance with 36 CFR Part 18 and NPS-38.” See discussion below in Chapter III under Section 18.11 regarding treatment of historic properties in Part 18 leasing actions.

#### **D. Feasibility Analysis.**

As part of the park area’s planning for a proposed Part 18 lease, the feasibility of the lease proposal must be analyzed. Aspects of feasibility that should be reviewed include an assessment of the park area’s capacity to award and administer the lease (see Attachment L), the general suitability of the property for leasing (with reference to the required determinations for a Part 18 lease set forth above), the nature and type of uses that would be permitted under the terms of the lease, estimated costs of any alterations to the leased property necessary for its intended uses, estimated expenses for the ongoing repair and maintenance of the property, and, where applicable, estimates of the lessee’s projected revenue from the leased property. These considerations will assist in determining fair market value rent of the property.

If the property to be leased is historic property, there is a possibility that the lessee may be able to obtain a substantial federal income tax credit with respect to the lessee’s historic rehabilitation expenses, if any. The tax credit, however, is only available with respect to income producing properties and is otherwise subject to a number of qualifying conditions. The possibility of an historic rehabilitation tax credit should be considered in determining the financial feasibility of leases of historic properties for income producing uses. 36 CFR Part 67 describes the historic rehabilitation tax credit program (which is administered in part by NPS).

For information about the program, contact the NPS Preservation Technical Services office at (202) 513-2031 or on the Internet at [www.cr.nps.gov/tps/tax](http://www.cr.nps.gov/tps/tax).

#### **E. Special Planning Procedures for Historic Property.**

Special requirements apply when historic property in a park area is to be considered for leasing under Part 18. These include compliance with Section 106 of the National Historic Preservation Act, compliance with Section 8.12 of, and compliance with, applicable portions of NPS-28’s “Cultural Resource Management Guideline.” These procedures apply even if only a portion of the property proposed to be leased is historic property.

“Historic property” as used in Part 18 means building(s) and land located within the boundaries of a park area if the building(s) and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places. 36 CFR Part 60 describes the NPS procedures for listing property in the National Register and further defines what properties qualify as historic property. 36 CFR Part 63 describes the NPS procedures for determinations of eligibility for listing a property in the National Register.

To find out if park area properties are listed on or eligible for listing in the National Register, contact the National Register at (202) 354-2213 or on the Internet at [www.cr.nps.gov/nr](http://www.cr.nps.gov/nr).

Section 106 mandates that federal agencies take into account the effects of their actions on properties listed or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment. While it does not require the preservation of historic properties, it does require that their historic or prehistoric values be considered in weighing the

benefits and costs of federal undertakings to determine what is in the public interest. Compliance with Section 106 is normally integrated with the NEPA process.

Section 106 compliance procedures are contained in 36 CFR Part 800 and further described in Chapter 5 of NPS-28.

The 1995 Service-wide Programmatic Agreement among NPS, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers (SHPO) (appended to NPS-28), tailors the Section 106 process to NPS program needs in certain ways. Particularly, it provides for programmatic exclusions from the Section 106 process for certain types of NPS actions that are unlikely to have adverse effects on cultural resources. The leasing of historic properties consistent with Part 18 is a programmatic exclusion so that NPS internal review procedures for a lease need not be followed by SHPO or Advisory Council review if:

- The action is based on information adequate to identify affected cultural resources and evaluate their eligibility for the National Register, including not only archeological resources and historic structures but also cultural landscape and ethnographic values;
- NPS internal review finds that the action's effect on cultural resources will not be adverse;
- The undertakings will be carried out in conformity with applicable policies, guidelines, and standards; and
- The undertakings are to be documented and reviewed via appropriate procedures.

Chapter 8 of NPS-28, "Management of Historic and Prehistoric Properties," provides a number of policies and procedures applicable to the management of historic properties in national parks, including historic properties that may be leased under Part 18. It needs to be carefully reviewed as part of the planning process for a lease of an historic property.

## CHAPTER III: EXPLANATION OF PART 18

The following provides a discussion of the provisions of Part 18. **The Part 18 provisions are in bold.**

### TABLE OF CONTENTS

- Section 18.1. Authority and Purpose of Part 18.
- Section 18.2. Definitions.
- Section 18.3. Types of Park Area Property Eligible for Leasing.
- Section 18.4. Required Determinations for Award of a Lease.
- Section 18.5. Fair Market Value Rent.
- Section 18.6. Uses of Leased Property.
- Section 18.7. The Request for Bids (RFB) Process
- Section 18.8. The Requests for Proposals (RFP) Process.
- Section 18.9. Non-Competitive Lease Awards.
- Section 18.10. Term and Extension of Leases.
- Section 18.11. General Lease Provisions.
- Section 18.12. Specific Required Lease Provisions.

#### **Section 18.1. Authority and Purpose of Part 18.**

**16 U.S.C. §§ 1 et seq., particularly 16 U.S.C. § 1a-2(k) and 16 U.S.C. § 470h-3, are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part, except that, proposed leases that were solicited pursuant to this part prior to January 28, 2002, may be executed in accordance with the terms of the solicitation.**

**Discussion:** Section 18.1 states that, in addition to the NPS Organic Act (16 U.S.C. §§ 1 *et seq.*), there are two authorities for Part 18, 16 U.S.C. § 1a-2(k) and 16 U.S.C. § 470h-3. 16 U.S.C. 1a-2(k) is Section 802 of the National Parks Omnibus Management Act, Pub. L. 105-391, enacted in 1998. (Attachment A to this Reference Manual). Section 802 provides general authority to NPS to lease park area property under certain conditions. 16 U.S.C. § 470h-3 is Section 207 of the National Historic Preservation Act Amendments of 1980. (Attachment B to this Reference Manual). Section 207 gives all federal agencies authority to lease historic property under certain conditions.

Section 18.1 also states that all NPS leases entered into under the authority of 16 U.S.C. § 1a-2(k) or 16 U.S.C. § 470h-3 are subject to the requirements of the amended Part 18. However, an exception is made

for leases that were solicited under the old Part 18 prior to the effective date of its amendment (January 28, 2002).

## **Section 18.2. Definitions.**

**In addition to the definitions contained in 36 CFR Part 1, the following definitions apply to this part:**

- (a). Associated property means lands and/or structures (e.g., parking lots, retaining walls, walkways, infrastructure facilities, farm fields) related to a building or buildings and their functional use and occupancy.**
- (b). Building means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.**
- (c). Commercial use authorization means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105-191 and implementing regulations.**
- (d). Concession contract has the meaning stated in 36 CFR Part 51.**
- (e). 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 lease opportunity, with the lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.**
- (f). Determinations of fair market value rent under this part are to be made taking into account the considerations stated in Section 18.5.**
- (g). Historic building means a building or buildings located within the boundaries of a park area if the building is part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.**
- (h). Historic land means land located within the boundaries of an historic property.**
- (i). Historic property means building(s) and land located within the boundaries of a park area if the building(s) and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.**
- (j). Land means unimproved real property.**
- (k). Lease means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.**
- (l). Non-historic building is a building (or buildings) and its associated property located within the boundaries of a park area but not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.**
- (m). Non-historic land means land located within the boundaries of a park area that is not associated property and is not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.**

**(n). Non-historic property means building(s) and/or land that are located within the boundaries of a park area but are not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.**

**(o). Park area means a unit of the national park system.**

**(p). Property means both historic and non-historic property that is located within the boundaries of a park area and is federally owned or administered.**

**(q). Request for bids refer to the lease bid process described in Section 18.7.**

**(r). Request for proposals refers to the lease proposal process described in Section 18.8.**

**(s). Responsive bid or proposal means a timely submitted bid or proposal that meets the material requirements of a request for bids or a request for proposals.**

**Discussion:** Section 18.2 provides the definitions of a number of terms used in Part 18. These terms will be discussed below. When reading Part 18, it is important to refer back to these definitions in order to fully understand the regulation.

Part 18 refers to the NPS “Director” as the responsible official for Part 18 leases. However, the term encompasses subordinate officials that have been delegated Part 18 responsibilities.

### **Section 18.3. Types of Park Area Property Eligible for Leasing.**

**(a). In general. The Director may lease any property (except non-historic land) under this part if the Director makes the determinations required by Section 18.4.**

**(b). Non-historic land. Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR Part 17.**

**Discussion:** Section 18.3 describes the types of park area property that are eligible for leasing under Part 18 and applicable law. “Eligible for leasing” means that the type of property is eligible; however, a variety of conditions must be met before any otherwise “eligible” property could, in fact, be offered for lease (as discussed below).

With one exception, all types of park area property are eligible to be considered for leasing under Part 18. These include all park area buildings (historic and non-historic), the land that is “associated” with a particular building or buildings, and “historic land” even though not associated with a building. The exception regarding property eligible for leasing under Part 18 is “non-historic land.”

“Non-historic land” is “land located within the boundaries of a park area” that is not “associated property” (land related to a building and its functional use and occupancy), and is not “historic land” (land that is part of an historic district or site included on, or eligible for inclusion on, the National Register of Historic Places).

In short, park area land that is “vacant” (i.e., not “associated” with a building to be leased), and is not “historic,” is not eligible for consideration for leasing under Part 18. Certain categories of vacant land are eligible to be leased under 36 CFR Part 17.

### **Section 18.4. Required Determinations for Award of a Lease.**

**Before leasing property in a park area under this part, the Director must determine that:**

**(a). The lease will not result in degradation of the purposes and values of the park area;**

- (b). The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;**
- (c). The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;**
- (d). The lease is compatible with the programs of the National Park Service;**
- (e). The lease is for rent at least equal to the fair market value rent of the leased property as described in Section 18.5;**
- (f). The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and**
- (g). If the lease is to include historic property, the lease will adequately insure the preservation of the historic property.**

**Discussion:** Section 18.4, in accordance with applicable statutory requirements establishes seven required determinations before NPS may award a lease under Part 18. All of these determinations implement statutory mandates. With respect to the first required determination (that the proposed lease will not result in degradation of the purposes and values of the park area), the preamble to Part 18 makes clear that the term “degradation” of park area purposes and values provides the same protective standard as the terms “derogation” and “impairment” of park area resources used in other NPS authorities. Lease planning actions should provide a basis for making this determination.

The second required determination (that the proposed lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area) is a fundamental limitation on what park area properties may be considered for leasing. If use of a property is necessary for the proper management of the park area, it may not be leased. Lease planning actions should provide a basis for making this determination.

The third required determination (that the proposed lease contains such terms and conditions as will assure the leased property will be used for an activity and in a manner that is consistent with the purposes established by law for the park area) will generally be satisfied if the proposed lease follows the applicable Sample Lease contained in this Reference Manual. If a proposed lease involves unique circumstances, additional lease provisions may be necessary in order for the deciding official to make this required determination.

The fourth required determination (that the proposed lease is compatible with the programs of the NPS) should be a consideration in lease proposal planning actions.

The required fair market value rent determination is discussed under Section 18.5. The concession type activities determination is discussed under Section 18.6. Historic preservation issues are discussed under Section 18.11.

**Section 18.5. Fair Market Value Rent.**

**Property may be leased under this part only if the lease requires payment of rent to the government equal to or higher than the property’s fair market value rent. The determination of fair market value rent shall take into account:**

- (a). Any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and**

**(b). Any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.**

**Discussion:**

**In general.** Section 18.4 states that leases awarded under Part 18 must provide for payment to NPS of fair market value rent by the lessee. This applies no matter what type of entity the lessee is and no matter what type of activities the lessee intends to conduct on the leased property.

Section 18.2 defines “fair market value rent” as follows:

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 lessor and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

In short, NPS is required to obtain rent at “market rates” under all Part 18 leases; however, the “market rate” must be determined taking into account the special circumstances of Part 18 leases as discussed below.

**How is Fair Market Value Rent Determined?** The deciding official formally makes the determination that the rent for a lease is at least equal to fair market value rent. In most cases, this decision is to be based upon an appraisal of the property to be leased. Under Secretarial Order No. 3251, appraisals are to be obtained by NPS through the Department’s Appraisal Services Directorate (ASD). Regional concession chiefs are familiar with the process to obtain the assistance of ASD. Occasionally there may be circumstances where the time and expense of an appraisal is not warranted as a matter of prudent management. For example, the rent that could be obtained for the lease of a small garage in a park area may be so minimal that the expense of an appraisal may exceed the anticipated rent proceeds. In such cases, the deciding official may make a reasoned estimate of fair market value rent taking into account appropriate value considerations, e.g., comparable rents for similar properties near the park area. Such an estimate, however, is not an appraisal. When this type of estimate is made, the deciding official must document the basis of the estimate so as to be able to respond to concerns about the adequacy of the rent determined. A deciding official may not execute a lease without having obtained an approved fair market value appraisal except in special circumstances approved in writing by the Director.

**Particular Considerations in Fair Market Value Rent Determinations.** Section 18.5 makes clear that an NPS determination of fair market value rent is to take into account: (1) any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and (2) any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.

(1). **Restrictions on Use of the Property.** In usual circumstances, the fair market value rent for a property would be based on the “highest and best use” of the property, which is the use of the property that would provide the most economic value to the lessee. This is true even if at the time of the determination of fair market value rent the property was being used for a different purpose. For example, 10 acres of farmland may have a fair market value annual rent of \$100 an acre. However, if use of the same farmland were changed to a campground (and it was permissible to do so under applicable zoning and other governmental requirements), the anticipated revenue from the land may go up and therefore the fair market value rent would also go up.

However, if, in this example, the terms of the proposed lease required the property to continue to be used only for farming, the fair market value rent for the lease would take into account this limitation on use. The fair market value rent determination would be based on the use of the property as farmland even though not the highest and best use of the property.

Accordingly, under Section 18.5, if NPS limits the use of leased property to an activity that is not the highest and best use of the property, then that limitation will be taken into account in the determination of fair market value rent for the property.

(2). Requirements for Improvements. Section 18.5 also states that any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property will be taken into account in making fair market value rent determinations.

As a simplified example, suppose that an NPS building proposed to be leased is in need of rehabilitation estimated to cost \$20,000. It is also estimated that, after rehabilitation, the fair market value rent for the building would be a total of \$40,000 for the term of a ten-year lease. If the lease requires the lessee to undertake the rehabilitation, the \$20,000 cost would be taken into account in determining the fair market value rent of the building under the terms of the proposed lease. The determination would need to consider many factors, e.g., the time value of money, projected amortization of the investment in the rehabilitation, projected inflation, projected interest rates, etc. However, the bottom line would be that the rent would not be for the full \$40,000; it would be significantly less in consideration of the rehabilitation work to be undertaken by the lease.

**Fair Market Value Rent Formulations.** Part 18 requires the payment of at least fair market value rent. However, there is no requirement that the rent must be paid in equal installments during the term of the lease. Rent terms may be adjusted to reflect a variety of factors (e.g., lower rent for the early years of the lease when a lessee's revenues may be lower) so long as fair market value rent is obtained under the overall terms of the lease. The rent payments also do not have to be in fixed dollar amounts. If a leased property is to be used for commercial purposes, it may be appropriate for the rent to be in the form of a percentage of the lessee's gross receipts. (However, NPS should never enter into a lease for a percentage of the lessee's net receipts as net receipts are subject to manipulation).

In accordance with applicable policy guidance, (1) all leases with a term of five or more years must contain a CPI adjustment provision; and, (2) and all leases with a term of fifteen or more years must contain a rent reconsideration provision.

#### **Section 18.6. Uses of Leased Property.**

**(a). A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by Section 18.4 and the limitations on activities set forth in paragraph (b) of this section.**

**(b). Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related**



**guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization.**

**Discussion:**

**In General.** Section 18.6(a) provides that, in general, a Part 18 lease may authorize the use of the leased property for any lawful purpose, subject to the resource protection and other determinations required by Section 18.4. The preamble to Part 18 states that these uses may include, among others, office or other commercial uses. It also encourages innovative uses that are otherwise consistent with the requirements of Part 18.

Note that 36 CFR 18.12(i) does not allow the construction of new buildings or structures under Part 18 leases except for minor additions, buildings and structures determined by NPS to be necessary for support of the activities authorized by the applicable lease.

**Concession Contracts and Commercial Use Authorizations.**

Section 18.6(b) states that, unless otherwise authorized by law, a Part 18 lease may not authorize the lessee to engage in uses that are subject to authorization through a concession contract, commercial use authorization or similar instrument. This limitation applies to any subleases under a Part 18 lease.

A “concession contract” is defined in 36 CFR Part 51 as a binding written agreement between NPS and a concessioner to provide specified visitor services within a park area. “Visitor services” are defined in 36 CFR Part 51.3 as follows:

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director.

The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guest). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

A commercial use authorization is a written authorization to provide services to park area visitors issued by NPS under Section 418 of Public Law 105-391. There are no implementing regulations for commercial use authorizations as of the date of issuance of this Reference Manual. However, the Director issued interim guidance on the administration of commercial use authorizations by memorandum of November 18, 2005.

Section 18.6 states that proposed lease uses are subject to authorization under a concession contract if NPS determines in accordance with 36 CFR Part 51 (the NPS concession contracting regulations) and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. It also states that lease uses are subject to authorization under a commercial use authorization if NPS determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

In general, as stated in Section 8.12 of *Management Polices 2006*, if the leased property where the proposed services are to be provided is not near a particular visitor destination of the park area, and, if the patrons of the lessee are expected to be primarily persons who come to the park area only to utilize the lessee’s services, it is likely that the related uses under a Part 18 lease may be determined as not conflicting with Section 18.6(b).

In addition, Section 10.2.2 of *Management Policies 2006* states that a concession contract may only be issued when, among other matters, a determination is made that the proposed concession facilities or services:

- are consistent with the park area’s enabling legislation;
- are complementary to the park area’s mission and visitor services objectives;
- are necessary and appropriate for the public use and enjoyment of the park area; and
- are not, and cannot be, provided outside park area boundaries;

*Replacing a Concession Contract with a Lease.* Particular attention should be paid to the “not subject to authorization under a concession contract or commercial use authorization” determination if a lease is being considered that will authorize the conduct of activities that are currently authorized by a concession contract (or commercial use authorization). This is because NPS necessarily must have previously determined that the activities authorized by a current concession contract (or commercial use authorization) were “subject to authorization” under these instruments. Therefore, if a change to a lease is proposed, the administrative record must convincingly document why the proposed activities under the lease are no longer subject to authorization under a concession contract (or commercial use authorization). This discussion must be based on the existence of circumstances that have changed from the time the current contract or authorization was awarded. For example, it may be that food service in a park area currently authorized by a concession contract may no longer be determined as a necessary and appropriate visitor service (and thus subject to authorization by a concession contract) because, since the time of award of the concession contract, new food facilities have been opened outside the boundaries of the park area that adequately provide the needs of the park area’s visitors. A change from a concession contract (or commercial use authorization) to a lease cannot be justified on the basis of administrative ease or financial advantages. See Attachment N, “Policy Memorandum 07-01,” for further guidance.

#### **Agricultural Uses.**

Under Section 8.6.7 of *Management Policies 2006*, agricultural uses in park areas may be permitted in limited circumstances. Where agricultural uses are permissible, *Management Policies 2006* permits the use of a lease to authorize the activity (as opposed to a special use permit) only when (1) specifically authorized by the park area’s enabling legislation, (2) the agricultural activity is part of an historic leasing program authorized by 16 USC 470h-(3) (Attachment B to this Reference Manual) or (3), is associated with a building that is leased pursuant to 16 USC 1a-2(k) (Attachment A to this Reference Manual).

If agricultural uses are permitted, they are subject to a variety of conditions contained in *Management Policies 2006*, Director’s Order 53 and the DO-53 Reference Manual.

#### **New Construction.**

36 CFR 18.12(i) does not allow the construction of new buildings or structures under Part 18 leases except for minor additions, buildings and structures determined by NPS to be necessary for support of the activities authorized by the applicable lease.

#### **Section 18.7. The Request for Bids (RFB) Process**

- (a). If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If**

historic property is to be leased under the authority of this section, the Director must comply with 36 CFR Part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b). A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall be provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may specify a minimum rent and/or require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: "Bid on lease of property of the National Park Service" and shall note the date the bids are to be opened.

(c). Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease (subject to a determination of financial capability by the Director). A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d). When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

**Discussion:** Section 18.7 permits lease proposals to be solicited through issuance of a request for bids as described in this section only if the amount of the rent is the sole criterion for award of the lease. If further considerations are to be taken into account, such as the relative experience of the offerors, relative quality of the offerors' plans for the leased property, etc., then Section 18.8 or Section 18.9 procedures must be followed.

Examples of the types of leases that may be awarded through an RFB are short-term agricultural leases and short-term leases of buildings where the lessee is to assume no rehabilitation responsibilities.

An RFB under Section 18.7 must be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The choice of which newspapers to be used should be made taking into account the level of interest in the proposed lease. Generally, lease proposals carried out under the RFB will be of only local interest.

The notice must provide at least a thirty (30) day period from the last date of publication for the submission of bids. The notice will provide necessary information to prospective bidders. For example, the notice should specify the location and character of the property to be leased, information regarding where and how to submit bids, a general description of the terms and conditions of the proposed lease, and a description of how the winning bidder or bidders will be selected. The notice may attach or reference a lease document that the bidders must agree to execute if selected for award of the lease. The notice may, but does not have to, specify a minimum bid (minimum rent). It also may require submission of a rent deposit or advance rent payment.

Bids may be considered only if submitted on time and at the place designated in the request. Bids must be in the form specified by the notice, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: "Bid on lease of property of the National Park Service" and shall note the date the bids are to be opened.

Bids will be opened publicly by NPS at the time and place specified in the public notice. Bidders or their representatives may attend the bid opening.

The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease, subject to a determination of financial capability by NPS. A responsive bid is a bid that meets the material terms and conditions of the request for bids. A determination of financial capability is necessary to assure that the winning bidder has the financial resources to carry out the terms of the lease, including payment of rent. Credit reports may be obtained in this connection and the winning bidder may be asked to substantiate its financial capability through submission of bank statements or similar documents. NPS may also undertake a background check of the winning bidder if it chooses. Various companies (accessible online) provide credit reports and background checks for a small fee.

NPS cannot accept a bid in an amount less than the fair market rental value as determined by NPS. The respective amounts of the bids received may be taken into consideration in determining the fair market value rent for the property.

If two or more bids are equal, a drawing among the bidders that submitted the equal, responsive bids will be used to make the lease award.

The bidder that is determined by the NPS to be the high bidder is obligated to enter into the offered lease, unless the bid is rejected. If the high bidder fails to enter into the lease for any reason, NPS may enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value).

NPS may choose at any time to reject any or all of the bids and cancel or resolicit the RFB. This should occur, among other situations, where the winning bidder is determined to be financially incapable.

#### **Section 18.8. The Request for Proposals (RFP) Process.**

**(a). When the award of a lease is to be based on selection criteria in addition to or other than the amount of the rent, the Director must, subject to Section 18.9, solicit proposals for the lease through issuance of a public Request for Proposals (RFP).**

**(b). An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a "short list" of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only**

persons determined as qualified by the Director under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c). The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d). The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted responsive proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e). (1) The criteria to be used in selection of the best proposal are: (i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park; (ii) The financial capability of the offeror to carry out the terms of the lease; (iii) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease; (iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and (v) any other criteria the RFP may specify. (2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, then the amount of rent offered also shall be an additional selection criterion.

(f). The Director will evaluate responsive proposals received. The responsive proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, then the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection

**as the best amended proposal. If two or more proposals remain as substantially equal after amendment, the Director will select for negotiation of the lease from among these proposals the proposal that the Director determines on an overall basis will be most beneficial to effective management of the park area.**

**(g). The Director will provide the offeror that submitted the best overall responsive proposal as determined by the Director a specified period of time to negotiate the final terms of the lease (and may enter into a letter of intent to negotiate in this connection). The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best responsive proposal, or, cancel the solicitation.**

**(h). RFPs may state the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.**

**(i). The Director may execute a lease that includes historic property only after complying with 36 CFR Part 800 (commenting procedures of the Advisory Council on Historic Preservation).**

#### **Discussion:**

**In general.** NPS (subject to 18.9 below) must use the Section 18.8 Request for Proposal (RFP) process when the award of a lease is to be based on selection criteria in addition to or other than the amount of the rent.

**RFQs.** An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a “short list of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP.” If an RFQ is issued, only persons determined qualified under the terms of the RFQ are eligible to submit a proposal under the related RFP.

An RFQ should contain appropriate information about the property proposed for lease, including limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of qualifications, terms and conditions of the lease to the extent known at the time of publication, and the criteria under which the Director will evaluate submitted qualifications. An RFQ must allow at least sixty (60) days for submission of qualifications unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation. NPS is to provide public notice of the availability of the RFQ by publication at least twice in local and/or national newspapers of general circulation and/or through publication in “FedBizOpps ([www.fedbizopps.gov](http://www.fedbizopps.gov)). (The “Commerce Business Daily” referred to in the regulation is no longer published). The public notice contains general information about the leasing opportunity and advises interested persons how to obtain a copy of the RFQ. The decision as to whether to advertise in local newspapers, national newspapers, and/or the FedBizOpps should be based on the level of interest expected in the leasing proposal. It is recommended that FedBizOpps publication always be provided so as to ensure that all interested persons have an opportunity to be apprised of the leasing opportunity.

An RFQ, if used, should be as simple as possible in its information requirements so as to encourage potential lessees to participate. Generally, an RFQ will only call for submission of financial and

experience qualifications together with appropriate levels of substantiation. The RFQ should describe in reasonable detail the types of substantiation that is required. Also, if specific levels of financial resources or types of experience are sought, these should be identified in the RFQ.

Attachment L to this RM provides a Sample Request for Qualifications (RFQ).

**RFPs.** An RFP will contain appropriate information about the property proposed for lease, including limitations on the uses of the property to be leased, information concerning the leasing process, the information and materials that must be contained in a proposal, the time and place for submission of proposals, and the terms and conditions of the lease. (Attachment H contains a Sample RFP).

The RFP must also state the criteria under which NPS will evaluate proposals. The evaluation factors contained in the RFP inform offerors of the matters which should be addressed in their proposals. They also set out the “rules of the game,” the factors which NPS will use in conducting its evaluation of the proposals.

**Evaluation Criteria.** Under Section 18.8, the criteria to be contained in a RFP (and used in selection of the best proposal) are:

- (1). The compatibility of the proposal’s intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;
- (2). The financial capability of the offeror to carry out the terms of the lease;
- (3). The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;
- (4). The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and
- (5). Any other criteria the RFP may specify.

In addition, if the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property is to be an additional selection criterion.

Finally, if the RFP requires proposals to include the amount of rent offered, then the amount of rent offered also must be a selection criterion.

Criterion 5 is very important to officials that develop the terms of an RFP. The specific needs and requirements of the park area and the property to be leased should be addressed here. If an RFP does not contain park specific selection criteria, the generic criteria will control the selection.

The RFP may state the fair market value rent as the minimum acceptable rent if determined as of the time of publication. RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended.

The RFP must allow at least sixty (60) days for submission of proposals unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

NPS is to provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in FedBizOpps. (The “Commerce Business Daily” referred to in the regulation is no longer published). The public notice is to contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP. The decision as to whether to advertise in local newspapers, national newspapers, and/or FedBizOpps should be based on the level of interest expected in the leasing proposal. It is recommended

that FedBizOpps publication always be provided so as to ensure that all interested persons have an opportunity to be apprised of the leasing opportunity.

**Changes to Proposals after the Submission Date.** After the submission of proposals and prior to the selection of the best overall proposal, NPS may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted responsive proposals are given an opportunity to amend their proposals. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplement of a proposal.

**Evaluation of Proposals.** Although the authority to select the best proposal received in response to an RFP rests with the Director or an authorized representative (the “deciding official”), D.O. 38 requires the deciding official to establish an Evaluation Panel to make written recommendations as to the relative merits of the proposals under the evaluation criteria contained in the RFP. The Evaluation Panel’s recommendations document the basis of the decision in the event of challenge by a disappointed offeror or other inquiry. (Chapter VI of this Reference Manual provides recommended procedures for the establishment and conduct of Evaluation Panels.)

**Selection of the Best Proposal.** The responsive proposal determined by the deciding official (after reviewing the recommendations of an Evaluation Panel) to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease.

If two or more responsive proposals are determined to be substantially equal under the evaluation criteria, the deciding official will provide an opportunity for those proposals to be amended by their offerors as necessary in order to select the best amended proposal. In such circumstances, NPS will provide each offeror that submitted substantially equal proposals appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as substantially equal after amendment, then the deciding official will select for negotiation of the lease the proposal that the deciding official determines on an overall basis will be most beneficial to effective management of the park area. The deciding official may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of the RFP.

The deciding official may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

**Negotiation of Final Lease.** The deciding official is to provide the offeror that submitted the best overall responsive proposal a specified period of time to negotiate the final terms of the lease (and may enter into a letter of intent to negotiate in this connection). (See Attachment J, “Sample Letter of Intent.”) The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, then the deciding official may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best responsive proposal, or, cancel the solicitation.

#### **Section 18.9. Non-Competitive Lease Awards.**

**The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with Section 18.7**



**or Section 18.8. The Director under this part may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with Sections 18.7 or 18.8 if the Director determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with Sections 18.7 or 18.8 if the Director determines that to do so is in the best interest of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR Part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.**

**Discussion:**

**In general:** With two exceptions, Part 18 leases may only be awarded through a competitive solicitation under either Sections 18.7 or 18.8. Section 18.9 describes the two exceptions, leases with non-profit organizations or units of government, and, short-term leases.

**Leases with Non-Profit Organizations and Units of Government.** NPS may enter into leases with non-profit organizations or units of government without a competitive solicitation if NPS determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area. A non-profit organization, in order to be eligible for an award of lease under Section 18.9, must have its non-profit status recognized by the Internal Revenue Service. An organization may be incorporated as a “non-profit” under State law but this does not automatically qualify it as a non-profit organization recognized by the Internal Revenue Service.

The term “units of government” as used in this section includes all levels of government, i.e., federal, state, and local. It also includes Indian tribes that are recognized as such by the United States.

The regulation makes clear that non-competitive awards of leases to non-profit organizations or units of government may be made only when NPS determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area. This authority is considered necessary for appropriate implementation and integration of park area management and leasing program objectives. However, the deciding official should base any lease award under this authority on a written discussion as to why the lease will contribute to the purposes and programs of the applicable park area.

**Short-Term Leases (60 Days or Less).** NPS may also award leases non-competitively under Section 18.9 to any lessee if the term of the lease is sixty (60) days or less, and, if NPS determines that to do so is in the best interests of the administration of the applicable park area. Similar to awards to non-profit organization or units of government, any lease award under this authority should be based on a written discussion by the deciding official as to why the lease is in the best interests of the administration of the applicable park area.

This short term lease authority is not limited to non-profit organizations or units of government. Any qualified person or entity may be awarded a lease under this authority.

Attachment G to this Reference Manual provides a sample short-form lease. It should be utilized for leases with a term of sixty (60) days or less and where the lessee is not authorized to make improvements to the leased property.

**Limitations on Section 18.9 Non-Competitive Lease Awards.** Section 18.9 only exempts leases to non-profit organizations or units of government and short-term leases from Part 18's public solicitation requirements. All other requirements of Part 18 continue to apply. Particularly, such leases, even though awarded to a non-profit organization or a unit of government, must provide for fair market value rent. In addition, as with all other leases entered into under Part 18, non-historic land may not be leased under the authority of Section 18.9.

Finally, as stated in D.O. 38, in situations where a Part 18 lease could be awarded but the same uses could also be permitted under a special use permit or other authorization, the deciding official is to issue the form of authorization most appropriate in the circumstances. However, the deciding official must be consistent in this decision. That is, if a lease or special use permit is issued for a particular type of use, then the same form of authorization is to be issued in all instances of that type of use. This is to avoid the possibility that park area users may be issued differing types of use authorizations for the same type of use.

#### **Section 18.10. Term and Extension of Leases.**

**All leases entered into under this part shall have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. No lease shall have a term of more than 60 years. Leases entered under the authority of this part may not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period of not to exceed one (1) additional year if the Director determines that an extension is necessary because of circumstances beyond the Director's control.**

#### **Discussion:**

**Term of Leases.** Section 18.10 provides that all leases entered into under Part 18 are to have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. It also provides that a lease may not have a term of more than 60 years. Under D.O. 38, leases with a term of up to 60 years are permissible if the deciding official determines that a long term lease is necessary in order to provide a viable leasing opportunity in light of investment requirements and other relevant factors.

The deciding official should document the basis of the term of a proposed lease, explaining why it is as short as possible in the circumstances of the leasing proposal.

**Extension of Leases.** Section 18.10 provides that Part 18 leases may not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if NPS determines that an extension is necessary because of circumstances beyond NPS control.

The deciding official should document the basis for a lease extension, explaining why it is necessary because of circumstances beyond NPS control.

#### **Section 18.11. General Lease Provisions.**

**All leases entered into under this part must contain terms and conditions that are determined necessary by the Director to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property.**

**Discussion:** Section 18.11 requires that all leases must contain terms and conditions that are determined by NPS to be necessary (1) to assure use of the leased property in a manner consistent with the purposes of the park area as established by law, and (2), where applicable, to assure the preservation of leased historic property.

**Purposes of the Park Area.** Implementation of the first requirement of Section 18.11, that the terms of a lease are to be consistent with the purposes of the park area, is discussed under Section 18.4.

**Preservation of Historic Property.** The second requirement of Section 18.11 is that if a lease is to include historic property, then the deciding official must determine that the terms of the lease adequately insure the preservation of the historic property.

Meeting two basic requirements will generally assure that this determination can be made. The first is compliance with Section 106 as described above. The Section 106 process should result in appropriate protections and lease provisions that assure the preservation of the leased historic property. The second is compliance with Section 18.12(j)(2) which requires that the terms of a lease include appropriate provisions that require that improvements to or demolition of historic property by the lessee may only be approved if NPS determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68). Such provisions are to be included in all leases involving historic property.

#### **Section 18.12. Specific Required Lease Provisions.**

**All leases entered into under this part must contain:**

- (a). A termination for cause or default provision;**
- (b). Appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease;**
- (c). Appropriate provisions stating that subletting of a portion of the leased property and assignment of a lease, if permissible under the terms of the lease, must be subject to the Director's written approval. Such subleases and assignments shall be approved only if the director determines, among other relevant matters, that the proposed sub-lessee or assignee is financially and managerially capable of carrying out the terms of the lease. Assignment of a lease for the purpose of effectuating an encumbrance to the lease or the leased property is subject to approval pursuant to the requirements of paragraph (1) of this section;**
- (d). Appropriate provisions requiring the lessee to secure and maintain from responsible companies liability insurance sufficient to cover losses connected with or occasioned by the use and activities authorized by the lease. Types and amount of insurance coverage will be specified in writing and periodically reviewed by the Director;**
- (e). Appropriate provisions, unless the Director determines otherwise in the circumstances of a particular lease, requiring the lessee to obtain from responsible companies casualty insurance (including flood insurance if applicable) in an amount sufficient to protect the interests of the lessee and the government. In the event of casualty, the lessee shall be required to repair or replace damaged or destroyed property unless otherwise determined by the Director;**

- (f). Appropriate provisions requiring lessee to save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, or judgments and expenses resulting from personal injury, death or property damage of any nature arising out of the lessee's activities under the lease, and/or the activities of the lessee's employees, subcontractors, sub-lessees, or agents. No lease entered into under this part may contain provisions intended to provide indemnification or other assurances to the lessee regarding the conduct or activities of the Director concerning the lease or the administration of the applicable park area. Leases may contain appropriate provisions that commit the Director to accept responsibility for tortious actions of government officials to the extent authorized by the Federal Tort Claims Act or as otherwise expressly authorized by law;**
- (g). Appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee and to pay all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities;**
- (h). Appropriate provisions stating that the lessee has no rights of renewal of the lease or to the award of a new lease upon lease termination or expiration and that the lease is subject to cancellation by the Director in the exercise of the sovereign authority of the United States to the extent provided by applicable law;**
- (i). Appropriate provisions stating that the lessee may not construct new buildings or structures on leased property, provided that, a lease may contain appropriate provisions that authorize the lessee to construct, subject to the prior written approval of the Director, minor additions, buildings and/or structures determined by the Director to be necessary for support of the authorized activities of the lessee and otherwise to be consistent with the protection and purposes of the park area. Approval by the Director of new construction may only be granted if the Director makes the determinations required by Section 18.4;**
- (j). Appropriate provisions requiring that: (1) Any improvements to or demolition of leased property to be made by the lessee may be undertaken only with written approval from the Director; (2) That any improvements to or demolition of historic property may only be approved if the Director determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68); and (3) Any improvements made by a lessee shall be the property of the United States;**
- (k). Appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property. The types of activities described in a lease may be modified from time to time with the approval of the Director through an amendment to the lease. The Director may approve modified activities only if the determinations required by Section 18.4 remain valid under the proposed modified activities and the proposed activities are otherwise determined appropriate by the Director;**
- (l). Appropriate provisions, unless the Director determines not to permit pledges or encumbrances in the circumstances of a particular lease, authorizing the lessee to pledge or encumber the lease as security, provided that any pledge or encumbrance of the lease and the proposed holder of the pledge or encumbrance must be approved in writing in advance by the Director and that a pledge or encumbrance may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the lessee under the lease or to select a new lessee subject to the**

**approval of the Director. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of the lease;**

**(m). Appropriate provisions stating that fulfillment of any obligations of the government under the lease is subject to the availability of appropriated funds. No lease issued under authority of this part shall entitle the lessee to claim benefits under the Uniform Relocation Assistance Act of 1970 (Pub. L. 91-646) and all leases entered into under the authority of this part shall require the lessee to waive any such benefits; and**

**(n). Appropriate provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.**

**Discussion:** Section 18.12 describes fourteen specific provisions that all Part 18 leases must contain. They are discussed in Chapter IV of this Reference Manual.

# **CHAPTER IV: EXPLANATION OF THE SAMPLE LEASE (IMPROVEMENTS)**

## **TABLE OF CONTENTS**

### **Section 1. DEFINITIONS**

### **Section 2. LEASE OF PREMISES**

- 2.1. Lease of Premises; Reservation of Rights
- 2.2 Waiver
- 2.3 Easements
- 2.4 Ownership of the Premises
- 2.5 Historic Property

### **Section 3. ACCEPTANCE OF THE PREMISES**

- 3.1 As Is Condition of the Premises
- 3.2 Lessee's Due Diligence
- 3.3 Inventory and Condition Report

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

- 4.1 Lease Term
- 4.2 Abandonment

### **Section 5. RENT**

- 5.1 Net Lease and Rent Payments
- 5.2 Annual Rent
- 5.3 CPI Adjustment
- 5.4. Percentage Rent
- 5.5 Rent Reconsideration

### **Section 6. USES OF PREMISES**

- 6.1 Authorized Uses
- 6.2 Changes to Authorized Uses
- 6.3 Applicable Laws
- 6.4 Forbidden Uses
- 6.5 Site Disturbance
- 6.6 Protection of Cultural and Archeological Resources
- 6.7 Signs

6.8 Permits and Approvals

6.9 Alterations

**Section 7. RECORDS AND AUDITS**

**Section 8. INITIAL IMPROVEMENTS BY LESSEE**

**Section 9. CONSTRUCTION APPROVAL**

9.1 In General

9.2 Enforced Delays

9.3 Utilities During Construction

9.4 Approval of Construction

9.5 Site Inspection

9.6 Construction Documents

9.7 General Scope of Review

9.8 Changes to Approved Construction Documents

9.9 Special Considerations for Historic Property

9.10 Evidence of Adequate Funds

9.11 Building Permit

9.12 Construction Completion Procedures

9.13 Lessor's Rights to Utilize Construction Documents

**Section 10. MAINTENANCE AND REPAIR**

10.1 Lessee's Responsibilities

10.2 Maintenance Plan

10.3 Preservation Maintenance Plan

**Section 11. UTILITIES**

**Section 12. HAZARDOUS MATERIALS**

**Section 13. INSURANCE AND INDEMNIFICATION**

13.1 Insurance During the Lease Term

13.2 Insurance Requirements Modification

13.3 Disposition of Insurance Proceeds

13.4 Inadequate Insurance Coverage

13.5 Indemnity

**Section 14. DAMAGE OR DESTRUCTION**

14.1 Damage or Destruction; Duty to Restore

14.2 No Termination; No Effect on Rental Obligation

**Section 15. LIENS**

15.1 No Power in Lessee to Create

15.2 Discharge of Liens by Lessee

15.3 No Consent or Waiver by Lessor

**Section 16. ASSIGNMENTS AND ENCUMBRANCES**

16.1 Assignments

16.2 Encumbrances

**Section 17. DEFAULTS AND LESSOR'S REMEDIES**

17.1 Termination for Default

17.2 Bankruptcy

17.3 No Waiver

17.4 Lessor's Right to Cure Defaults

**Section 18. SURRENDER AND HOLDING OVER**

18.1 Surrender of the Premises

18.2 Holding Over

**Section 19. EQUAL OPPORTUNITY LAWS**

**Section 20. NOTICES**

**Section 21. GENERAL PROVISIONS**

**Exhibit A: Inventory and Condition Report**

**Exhibit B: Insurance Requirements**



## Sample Lease (Improvements)

The Sample Lease (Improvements) that is discussed below is contained in Attachment E to this Reference Manual. In order to protect the interests of NPS, this Sample Lease should be used for any Part 18 lease under which the Lessee is to make improvements to the leased property. Although this chapter discusses the Sample Lease (Improvements), the discussion is equally applicable to most of the provisions of the two other lease categories.

**The provisions of the Sample Lease are in bold.**

### **SAMPLE LEASE (Improvements)**

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

**Discussion:** The identifying paragraph states that the document is a lease and identifies the parties to the lease.

- The Lessor is the NPS.
- The Lessee is an individual, a legal entity (profit or non-profit), or governmental unit.
- For individuals, the blank space should include the person's (or persons') name(s) and address(es).
- For legal entities, the name of the entity (e.g., Smith, Inc.) should be inserted along with a statement as to the type of legal entity that it is, and, its legal home.
- For example:
  - Smith, Inc., a corporation organized under the laws of the State of Delaware;
  - The Smith Group, LLC, a limited liability company organized under the laws of the State of Florida; or
  - Smith Associates, a partnership with its principal place of business in the State of New Jersey.

**WITNESSETH THAT:**

**WHEREAS, Congress designated** \_\_ [name of Park Area] \_\_\_\_\_  
\_\_\_\_\_ **(Park Area) as a unit of the national park system;**

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

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

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

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

**Discussion:** These “recitation clauses” are only informational, explaining the background of why the parties entered the lease. This one may be used for all Part 18 leases. Additional clauses may be included if it is important that additional facts of particular significance be stated.

However, recitation clauses are not generally considered part of the contractual obligations made by the lease. If there is a fact or obligation to be “agreed upon” by the parties, the fact or obligation should be included in the main body of the lease.

## **Section 1. DEFINITIONS**

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

**Discussion:** The “Definitions” section is extremely important to the lease. The lease cannot be understood without knowing the meaning of its defined terms. Each defined term is used in the lease on at least several occasions. Wherever used, the term is capitalized to indicate that it is a defined term. Wherever a defined term is used in the lease, its definition is also there by reference. A mistake that is often made is to interpret a provision of a lease without referring back to the meaning of defined terms.

**1.1. Alterations – means any construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises other than Initial Improvements.**

**Discussion:** Included under the definition of Initial Improvements.

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

**Discussion:** The term “Applicable Laws” refers to all “laws” with which the lessee must comply (under the terms of the specific law) as they exist as of the start of the lease and as they may change (or new ones be adopted) over time. The “laws” that a lessee must comply with are not only statutes and regulations but also administrative documents such as the park’s GMP and NPS 28.

**1.3. Annual Rent – means the annual fixed rent to be paid to Lessor by Lessee under Section 5.**

**Discussion:** The Sample Lease provides for a fixed annual sum as rent, known as “Annual Rent.” As discussed below under the definition of “Rent,” the lessee under the lease may also pay other forms of rent.

**1.4. Assignment - means the transfer, whether it is direct or indirect, voluntary or by operation of law, assignment, sale, or conveyance, of the Lessee’s leasehold estate, or the Lessee’s rights under this Lease in whole or part. Such transfer may be designated as a sale, a conveyance, or an assignment. The sale, conveyance, or assignment (including by consolidation, merger or reorganization) of a controlling interest in the Lessee (if such entity is a corporation), or any sale or other transfer of a controlling interest in the partnership interests (if such entity is a partnership), whether in a single transfer or in a series of related transfers, and whether directly or by sales or transfers of underlying partnership or corporate ownership interests, is an Assignment. For a corporate entity, the term “controlling interest” means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee. For a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneur, “controlling interest” means the beneficial ownership of the capital assets of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee.**

**Discussion:** An “Assignment” is a sale of the lease by the lessee to a third party, i.e., a new person or entity becomes the lessee.

This definition is complicated because a lessee can, in effect, “sell” a lease indirectly. For example, if the lessee is a corporation, the owner of a majority of the stock of the corporation can sell the stock to a third party and the third party, in reality, becomes the new lessee as it controls the actions of the corporation.

In accordance with 36 CFR 18.12(c), an assignment (or sublease) may only be approved if NPS determines, among other relevant matters, that the proposed assignee is financially and managerially capable of carrying out the terms of the lease.

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

**Discussion:** The “Commencement Date” of a lease is the day the lease starts as stated in Section 4 of the lease. As discussed under Section 4, the date a lease is signed by the parties can be different than the lease’s commencement date.

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

**Discussion:** An “Encumbrance” of a lease is usually a mortgage of the interests of the lessee under the lease. It is different from an Assignment (a sale of the lease) because the lease is not sold, only pledged (mortgaged) and the lessee stays the same unless there is a foreclosure.

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

**Discussion:** The “Expiration Date” of the lease is the last day of its term. This is in contrast to the “Termination Date” (defined below), which refers to the termination of a lease prior to its intended expiration. For example, a lease may have a term of five years ending on February 14, 2009. February 14, 2009, is its expiration date. However, if the lease were to be terminated prior to this date, e.g., January 27, 2004, January 27, 2004 is the termination date of the lease.

This may seem to be a technical distinction but it is in fact important. Numerous provisions of the Sample Lease refer to the Expiration Date and the Termination date with very different legal results. The two should not be confused nor should one defined term of a lease apply collectively to both circumstances.

**1.8. FF&E – means all furniture, fixtures and equipment in or on the Premises.**

**Discussion:** FF&E that is personal property (see definition below) must be removed by the lessee at the expiration or termination of the lease.

**1.9. Hazardous Materials – means any material or other substance: (a) that requires investigation or correction under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, contains radon gas. The term Hazardous Materials as used in this Lease includes Pre-Existing Hazardous Materials unless otherwise stated in a particular provision of this Lease.**

**Discussion:** This or a similar definition is a standard provision in all contemporary commercial leases. It is intended to describe any material that is not legal to possess without a governmental permit of some kind.

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

**Discussion:** A Hazardous Material Occurrence is any event where a hazardous material becomes an immediate threat to health or safety.

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

**Discussion:** Historic Property refers to properties listed on or eligible to be listed in the National Register of Historic Places. Many park areas (usually those designated as an “historic park”) are listed on the National Register in their entirety. Other parks (usually natural areas), may only have a few (if any) properties within the park boundaries that are historic.

Under Part 18, park area property does not need to be historic to be leased. There are, however, special lease provisions that apply to historic property.

**1.12. Improvements – refers collectively to any Alterations and Initial Improvements.**

**1.13. Initial Improvements – means the construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises as may be described in Section 8 of this Lease that the Lessee is required to make at the commencement of this Lease.**

**Discussion:** The term “Improvements” as defined above collectively refers to both Initial Improvements and Alterations. Initial Improvements are the modifications to the premises the lessee is to make at the beginning of the lease. Alterations are any other modifications to the premises the lessee may make during the term of the lease.

**1.14. Interest Rate – means the percentage of interest charged based on the current value of funds to the United States Treasury that is published annually in the “Federal Register” or successor publication.**

**Discussion:** The term “Interest Rate” is defined in order to specify the interest to be paid by the lessee on overdue rent payments.

The Current Value of Funds Rate (CVFR), effective January 1 of each year, is based on the Treasury Tax and Loan (TT&L) rate for the 12 month period ending the previous September 30, rounded to the nearest whole percent. The CVFR is published annually in the Federal Register by October 31. The current rate can be found at [www.fms.treas.gov/prompt/cvfr%2Dhistory](http://www.fms.treas.gov/prompt/cvfr%2Dhistory).

**1.15. Inventory and Condition Report – means the document contained in Exhibit A to this Lease that describes the FF&E in the Premises and the condition of the Premises (including FF&E) as of the Commencement Date.**

**Discussion:** An Inventory and Condition Report documents the contents of the premises as of the commencement date, their condition, and the condition of the premises in general.

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

**Discussion:** The “term” of the lease is the length of time it is to be in place, from the Commencement Date to the Expiration Date.

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

**Discussion:** This term is defined because different events under a lease may occur during the lease term, e.g., the rent increases as of the beginning of the fifth lease year of the term.

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

**Discussion:** A notice of default tells the lessee that the lease will be terminated for default unless the lessee cures the default in the time period specified in the notice.

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

**Discussion:** NPS 28 is incorporated by reference into the lease as the lease does not separately contain detailed requirements for the protection of Historic Property in its main body.

**1.20. Park Area - means [state the name of the Park Area].**

**Discussion:** If the lease is for property located within a sub-unit of a larger park area, e.g., the Sandy Hook Unit of the Gateway National Recreation Area, this should be specified here.

**1.21. Part 18 – means Part 18 of Volume 36 of the Code of Federal Regulations.**

**1.22. Personal Property – means all furniture, fixtures, equipment, appliances, and apparatus placed in or on the Premises that are neither permanently attached to nor form a part of the Premises.**

**Discussion:** All leases distinguish between personal property and real property because at the expiration of a lease, the personal property of the lessee is generally removed while the real property remains.

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

**Discussion:** The Sample Lease defines hazardous materials that were on the leased property before the commencement date as there may be differing responsibilities in this regard. See discussion under Section 12.

**1.24. Premises – means the property of the Park Area that is described in Section 2 of this Lease.**

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

**Discussion:** The Sample Lease includes a requirement for this plan whenever Historic Property is under lease. As discussed under Section 12, the content of the plan reflects the requirements of NPS 28.

**1.26. Rent - means the rent to be paid Lessor by Lessee described in Section 5 of this Lease and any additional Rent this Lease may require.**

**Discussion:** “Rent” refers collectively to all forms of rent to be paid to NPS under the lease. This includes the specific rent or rents called for by Section 5 and several “additional” rents called for by other sections of the lease.

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

**Discussion:** As with NPS 28, the Secretary’s Treatment Standards are incorporated by reference as part of the lease. The content of NPS 28 implements the requirements of 36 CFR Part 68.

**1.28. Sublease - means an agreement under which the Lessee grants a person or entity (a Sublessee) the right to use, occupy, or possess a portion of the Premises.**

**Discussion:** A sublease is not an Assignment as the lessee remains the same; another party occupies only a portion of the premises. The lessee remains liable for performance of all the obligations of the lease even though subleases may be approved.

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

**Discussion:** As mentioned above, the distinction between Expiration Date and Termination Date must always be kept in mind.

## **Section 2. LEASE OF PREMISES**

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

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

**[Description of the leased property]**

**(b). Subject to all Applicable Laws, and all liens, encumbrances, restrictions, rights and conditions of law or of record or otherwise; and**

**(c). Excepting and reserving to the Lessor the right, at reasonable times and (except in case of emergency) following advance notice to the Lessee, to enter and to permit any governmental agency, public or private utilities and other persons to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered;**

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

**Discussion:** This section describes the leased premises. The description needs to be precise enough to assure that there can be no subsequent disagreement as to the boundaries of the premises. Survey descriptions are best. If the description is particularly lengthy, it can be contained in an exhibit to the lease referenced in this section. That is, replace “the Premises described as follows:” with “the Premises described in Exhibit \_\_ to this Lease.”

The “exceptions” are intended to make clear that certain interests of the NPS in the premises are “excepted” from the lease, that is, reserved to NPS notwithstanding the lease. Of particular concern is subsection (c). When NPS leases a property, it must retain its authority to continue to administer the property as part of the park area, including authority to enter the premises.

This is the place to include (as additional subsections) any other “exceptions” to the lease that may be required. For example, an exception permitting NPS to utilize a certain number of parking spaces on the premises or an exception permitting NPS to occupy a defined portion of the premises.

## **2.2. Waiver**

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

**Discussion:** This section is intended to foreclose the lessee from claiming damages from NPS because, for example, NPS closed a road for repairs that decreased access to the premises during the repair period.

## **2.3. Easements**

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

**Discussion:** This section makes clear that the lessee has no right to grant easements or rights-of way. NPS, as the landlord, however, has an obligation (subject to other park area management limitations) to grant easements or rights-of-way (e.g., for utilities) that are necessary for use of the premises by the lessee. However, the provision does provide that the lessor agrees to execute, if otherwise appropriate as determined by the lessor, such easements for utilities as the lessee shall require in connection with the use and operation of the premises.

## **2.4 Ownership of the Premises**

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

**Discussion:** Fundamental principals of any lease are that title to the premises remains with the lessor and that at some point in time the lessor will reoccupy the property. Importantly, unless a lease states otherwise, all improvements to the premises made by the lessee are titled in the lessor when made, and when the lease expires or is terminated, no compensation is due the lessee for any improvements it may have made. The Sample Lease contains no provisions that grant a right of compensation for improvements made by the lessee. NPS does not have statutory authority to include such provisions in a Part 18 lease.

## **2.5 Historic Property**

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



**[Delete the inapplicable bracketed statement and remove the brackets from the remaining one.]**

**Discussion:** The Sample Lease is drafted so as to be applicable to both historic and non-historic property with only this minor editing. This section states whether or not historic property is being leased. If so, certain special provisions of the lease (discussed below) apply. If not, those provisions remain in the lease but are not applicable.

Even if only a small portion of the premises (e.g., a cabin located on an otherwise non-historic farm property, is historic), the lease should state here that the “Premises (or portions of the Premises) are Historic Property.”

If only a portion of the premises is historic, this section describing the historic portion should be expanded to identify the historic portion.

### **Section 3. Acceptance of the Premises**

#### **3.1. As Is Condition of the Premises**

**The Lessee agrees to lease the Premises in their existing “as is” condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make, any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving trade from or other characteristics of the Park Area, the economic or programmatic feasibility of the Lessee’s use and occupancy of the Premises, or hazardous materials on or in the vicinity of the Premises.**

**Discussion:** This section is intended to avoid claims for damages by the lessee on the grounds that the premises are defective or that NPS failed to advise the lessee about some material defects in the premises or other relevant circumstances of the property.

#### **3.2. Lessee’s Due Diligence**

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

**Discussion:** This section is also intended to avoid claims from the lessee. It is important that the prospective lessee be given a reasonable opportunity to inspect the premises prior to the execution of the lease.

#### **3.3. Inventory and Condition Report**

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

**Discussion:** The Inventory and Condition report is a very important part of proper management of a Part 18 lease. Without it, it is very difficult upon expiration or termination of the lease to prove that the lessee caused damage to the premises, removed FF&E or, in general, failed to adequately maintain the premises. A complete and thorough report will assist in recovering damages from a lessee in these circumstances and should encourage the lessee to properly maintain the premises during the lease term. A complete condition report should include appropriate photographs of the property.

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

### **4.1. Lease Term**

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

**Discussion:** This section specifies the term of the lease. The dates inserted here are the effective dates of the lease regardless of the date of the execution of the lease.

The “proviso” clause included in this section specifies a shorter lease term if required Initial Improvements are not done in time or not completed in accordance with the approved construction documents. This means that in the event of these categories of default, NPS does not need to terminate the lease; instead it automatically expires. The “proviso” encourages the lessee to undertake construction in strict accordance with the terms of the lease. The proviso would not be included in a lease that does not call for Initial Improvements.

### **4.2. Abandonment**

**The Lessee shall occupy the Premises during the entire Lease Term. If it fails to do so, the Lessee may be determined as in Default for abandoning the Premises. Occupancy is not required if the Lessor determines it infeasible because of the construction of Improvements.**

**Discussion:** This clause requires the lessee to occupy the premises at all times (primarily to encourage proper repair and maintenance). Short periods of non-occupancy (e.g., seven days) would not normally be considered as abandonment.

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

## **Section 5. RENT**

### **5.1. Net Lease and Rent Payments**

**(a). All Rent shall be absolutely net to Lessor without any abatement, deduction, counterclaim, set-off or offset. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises, including, without limitation, all taxes and assessments.**

**(b). All Rent payments consisting of \$10,000 or more shall be deposited electronically by the Lessee using the Treasury Financial Communications System. At Lessor’s option, Rent payments shall be payable by wire transfer or other electronic means to such account as Lessor may from time to time designate. Interest at the Interest Rate will be assessed on overdue Rent payments. The Lessor may also impose penalties for late Rent payments to the extent authorized by Applicable Law.**

**Discussion:**

Subsection (a) makes clear that the lessee is to pay all expenses associated with the lease and that the lessee may not deduct from rent payments amounts of money the lessee may claim against the NPS for any reason.

Subsection (b) provides for electronic rent payments and interest and penalties on over late payments.

**5.2. Annual Rent**

**During the Lease Term, Lessee shall pay to Lessor Annual Rent for the Premises in the aggregate annual amount of \$\_\_\_\_\_(\$ )**

**(as adjusted for CPI if provided below) payable in advance in equal monthly installments on the first day of each calendar month.**

**Discussion:** This section provides for the payment of rent in a fixed dollar amount (Annual Rent, payable in equal monthly installments), subject to CPI adjustment if applicable.

**5.3. CPI Adjustment**

**The Annual Rent will increase effective as of the beginning of the second Lease Year and annually thereafter during the Lease Term to reflect the proportionate cumulative increase in the CPI, if any, during the previous Lease Year. For purposes of this section, CPI means the United States Department of Labor, Bureau of Labor Statistics, All Cities Average Consumer Price Index, or if such index is no longer published, a successor or substitute index designated by the Lessor, that shows changes in consumer prices in the locale of the Park Area.**

**Discussion:** This provision adjusts the established Annual Rent to reflect the CPI. It is to be included in all leases with a term of five or more years. Leases with a shorter term may include this provision if it is determined appropriate in the circumstances of the lease. If this provision is not to be included in a lease, Section 5.3 should be shown as “reserved.”

**5.4. Percentage Rent (Optional)**

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

**(b) Gross Revenues Defined**

**Gross Revenues means the entire amount of Lessor’s revenues (and the revenues of any Affiliate of Lessee) derived from this Lease or any Sublease hereunder, such amount as determined in accordance with generally accepted accounting principles consistently applied. Gross revenues include, as applicable and without limitation, rent paid by Tenants, Tenant payments in lieu of rent, Tenant reimbursements, and payments under a loss of rents insurance policy or provision. Also included in Gross Revenues are receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee. The term “Affiliate of Lessee” as used in this section means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.**

**Discussion:** A fixed annual dollar amount rent provision is the most basic form of rent for a lease. It is suitable for leases where the lessee is not to obtain revenue from the authorized uses under the lease or for leases where the revenue is expected to be minimal.

However, for leases where there the lessee is expected to derive significant revenues from the use of the property, it is prudent to require the lessee to pay a percentage of its gross receipts as an additional form of rent (Percentage Rent).

Even if a Percentage Rent provision is used, an Annual Rent provision also should always be included as assurance that some rent will be paid even if the gross receipts turn out to be minimal or non-existent. Where a Percentage Rent provision is included, the Annual Rent would necessarily be lower to reflect the anticipated Percentage Rent payments.

Percentage Rent provisions are encouraged in Part 18 leases where their use is appropriate. However, Percentage rent provisions should always be based on a percentage of the lessee's gross revenues, never on a percentage of the Lessee's net revenues. This is because even under otherwise legal transactions and accounting practices, the lessee may never show net revenue in its operations or net revenue than is far less from the lessee's real profits under the lease. Gross revenues are far less subject to manipulation than net revenues.

The definition of Gross Revenue included here is basic. If a Percentage Rent provision is to be included in a lease, it should be reviewed to see that it fits the circumstances of the types of revenue the lessee is expected to obtain. It also may be necessary to include "exclusions" from Gross Revenues in particular circumstances (e.g., if a lessee were selling state fishing licenses, the portion of the revenue from the sale of a license that goes to the state would not be included in the lessee's gross revenues). The definition of "Affiliate of Lessee" is included in the definition of Gross Revenue to assure that the lessee does not divert gross revenue through transactions with affiliates.

If a lease does not include the percentage rent provision, Section 5.4 is to be shown as "reserved."

## **5.5. Rent Reconsideration**

**(a). The Rent otherwise required by this Lease shall be subject to reconsideration at the request of the Lessor or the Lessee after the end of the \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ Lease Years of this Lease in order to maintain the Rent under this Lease in an amount and structure consistent with "fair market value rent." "Fair market value rent" for the purposes of this section means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the Premises, under the terms and conditions of this Lease, should rent for their highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Lessor and the Lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.**

**(b). To request a Rent reconsideration, the Lessor or Lessee (or both) must notify the other party in writing of its request within sixty (60) days after the end of the applicable Lease Year. Upon receipt of such notice, the Lessor and Lessee must negotiate in good faith a Rent adjustment. If, after the end of such sixty (60) day negotiation period, agreement as to a possible Rent adjustment has not been reached, either party may request that the matter be resolved by binding arbitration conducted by an arbitration panel. Such request must be made by written notice to the other party within thirty (30) days of the end of the negotiation period.**

**(c). One member of the arbitration panel is to be selected by the Lessor, one member is to be selected by the Lessee, and the two party-appointed members are to select the third (neutral) member. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Lessor**

**and the Lessee. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. A Rent adjustment determination must be made by a majority of the members of the panel and will be binding on the Lessor and the Lessee. The arbitration panel will determine an appropriate adjustment to Rent, if any, to reflect “fair market value rent” effective as of the beginning of the \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_ Lease Year, as applicable.**

**Discussion:** This provision requires periodic reconsideration of the rent terms to reflect changing market conditions. In the event that the lessor and the lessee cannot agree on a revised rent structure, binding arbitration is provided. This provision is to be included in all leases with a term of fifteen or more years. The time frames for reconsideration to be inserted (e.g., every fifth year, tenth year, etc.) should reflect the term of the lease. Generally, leases with a term of twenty or more years should provide for reconsideration every ten years while leases with a term of less than twenty years should provide for reconsideration after the seventh and fourteenth years of the lease term.

If a rent reconsideration provision is not to be included in a lease, Section 5.5 should be shown as “reserved.”

## **Section 6. USES OF PREMISES**

### **6.1. Authorized Uses**

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

**[Describe authorized uses.]**

**Discussion:** This section of the Sample Lease has no prescribed provisions because of the wide variety of lease uses that may be authorized. The most important thing to remember when developing a description of authorized uses is to make it as specific as possible. Vague descriptions only benefit the lessee (who may interpret the provision in a manner unsatisfactory to NPS).

When drafting authorized uses, the limitations on uses contained in Part 18 need to be considered.

### **6.2. Changes to Authorized Uses**

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

**Discussion:** The authorized uses contained in a lease may be amended by written agreement of NPS and the lessee. However, the Part 18 limitations on authorized uses apply to any new or amended uses. In addition to the determinations regarding the appropriateness of proposed new uses, the fair market value rent determination has to be reconsidered in light of the proposed new uses. For example, if a lessee wished to amend the uses from residential to commercial, it is likely that the fair market value rent would be higher under the new use. The higher rent would be a condition to NPS approval of the commercial use.

### **6.3. Applicable Laws**

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

**Discussion:** This provision simply means that the lessee must use the premises lawfully. The meaning of Applicable Laws is discussed under its definition in Section 1.

#### **6.4. Forbidden Uses**

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

**Discussion:** This provision establishes a specific list of forbidden lease uses. The drafter of a Part 18 lease should consider adding to this list particular activities pertinent to the park area that should be expressly forbidden, e.g., certain types of commercial uses.

Some of the uses on this list could be permitted by NPS (by amendment of the lease) if it determines they are appropriate and otherwise permissible under Part 18. The underlying effect of this provision is to make it easier for NPS to reject any proposed new use by the lessee use that is in conflict with this section.

#### **6.5. Site Disturbance**

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

**Discussion:** This is a standard provision of commercial leases.

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

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

**Discussion:** Both ARPA (Archaeological Resources Protection Act, 16 USC 470aa et seq.), and NAGPRA (Native American Graves Protection and Repatriation Act, 25 USC 3001 et seq.), apply to ground disturbing activities in park areas. If there is reason to believe that the activities of a lessee will involve ground-disturbance on the premises that may involve ARPA or NAGPRA resources, special lease provisions should be developed and included as an addition to this section to describe appropriate procedures for the conduct of the ground disturbance. See NPS 28 for further information. Also see the NAGPRA regulations at 43 CFR Part 10 and the ARPA regulations at 43 CFR Part 7.

#### **6.7. Signs**

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

**Discussion:** This section should be modified to include any existing park area restrictions on signage. In this connection, NPS Management Policies 2006, applicable to the Lessee as an "Applicable Law," includes a signage policy at Section 9.3.1.1. It also includes policies regarding advertising within park areas at Section 9.3.5.

## **6.8. Permits and Approvals**

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

**Discussion:** This section requires the lessee to obtain all governmental permits necessary to authorize its activities under the lease. Generally, only NPS approval is required. However, particular park areas may vary in this regard because of their jurisdictional status or special terms of their authorizing legislation. For a discussion of building permit requirements, see Section 8.10

## **6.9. Alterations**

**The Lessee shall not make any Alterations of any nature to the Premises without the express written approval of the Lessor.**

**Discussion:** This section implements the approval requirements for lessee construction activities under the procedures contained in Section 9.

## **Section 7. RECORDS AND AUDITS**

**The Lessee shall provide the Lessor and its agents and affiliates, including without limitation, the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease for any of the five (5) preceding Lease Years. The Lessee shall keep and make available to the Lessor these books and records at a location in the Premises or within the locale of the Park Area. The Lessee shall, if requested by the Lessor, provide the Lessor with complete information and data concerning the Lessee's operations and operating results, including without limitation, information and data regarding [specify particular types that relate to the lessee's particular operations.**

**Discussion:** In addition to the right to audit provided by the first sentence of this section, the second sentence provides NPS the right to require the lessee to provide NPS with annual reports on its activities and revenues. This is of particular importance for major revenue-producing leases so as to so as to accurate estimates of rental value. The section calls for the insertion of particular types of information relating to the lessee's operations.

## **Section 8. INITIAL IMPROVEMENTS BY LESSEE**

**If otherwise granted approval by the Lessor under the terms of this Lease, the Lessee hereby agrees to commence and engage diligently in the construction of the following Initial Improvements in accordance with Construction Documents approved by Lessor. The Lessee shall commence the construction of the Initial Improvements by \_\_\_\_\_ and shall complete construction by \_\_\_\_\_:**

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

### **Discussion:**

**In general.** A detailed, precise description of the improvements to be made will reduce disputes with the lessee about the scope of the required improvements. The description, if lengthy, may be included in an exhibit (referenced in this section). In addition, plans and specifications already developed and approved prior to the execution of the lease may be made an exhibit to the lease by reference in this section.

The applicable start and finish dates for the Initial Improvements should be inserted. Section 9 provides a “force majeure” clause (extension for unavoidable delays).

### **No Initial Improvements**

If the lease does not call for Initial Improvements by the lessee, Section 8 should be shown as “reserved” in the lease.

## **9. CONSTRUCTION APPROVAL**

### **9.1. In General**

**All Improvements (Initial Improvements and Alterations), if any, shall be undertaken at the Lessee’s sole expense and only with the Lessor’s prior written approval. All work shall be performed in a good and workmanlike manner and with materials of at least the quality and standard of materials used in comparable facilities in the locale of the Park Area. The Lessee shall undertake Improvements in strict accordance with Applicable laws and with approved Construction Documents. The Lessee shall, upon request, furnish the Lessor a correct copy of any contract with the Lessee’s general contractor, architects, or consultants. The Lessor shall require the Lessee not to occupy specified portions of or all of the Premises during the construction of Improvements if determined by the Lessor as necessary for the protection of health or safety.**

**Discussion:** This section establishes that all construction must be approved in advance by NPS. If the nature of the work requires, NPS may preclude occupation of the premises during construction. This section should be included in all Part 18 leases even if no improvements by the lessee are initially contemplated as these circumstances may change during the term of the lease.

### **9.2. Enforced Delays**

**The Lessee shall not be considered in default in the event of an enforced delay in the construction of Improvements due to unforeseeable causes beyond the Lessee’s control and without any fault or**



**negligence on the part of the Lessee. Such enforced delays include, without limitation, public enemies, war, invasion, insurrection, rebellion, riots, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather. In the event of an enforced delay, the time or times for construction of Improvements will be extended by the period of the enforced delay.**

**Discussion:** This is a standard “force majeure” clause. It excuses unavoidable delays in the completion of Improvements by extending the construction period by the length of the delay.

### **9.3. Utilities During Construction**

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

**Discussion:** In many instances, NPS itself may be the “public utility” from which a permit must be obtained. This function operates independently from the terms of the lease under park area policies and procedures.

### **9.4. Site Inspection**

**The Lessor shall be entitled to have on the Premises at any time during the construction of Improvements an inspector or representative who may observe all aspects of the work on the Premises. No inspection performed or not performed by the Lessor shall be deemed to give the Lessor any responsibility or liability with respect to the construction work, its prosecution or design, or, be deemed to constitute a waiver of any of the Lessee’s obligations under this Lease or be construed as approval or acceptance of the Improvements (or portions thereof). The Lessee shall maintain on the Premises during construction, current, annotated Construction Documents for inspection by the Lessor.**

**Discussion:** This provision, in addition to establishing NPS’ rights of inspection of the work, makes clear that the fact that NPS inspects a project does not mean that it has thereby approved any matters that were observed during the inspection.

### **9.5. Approval of Construction**

**The Lessee must request in writing advance permission from the Lessor to undertake Improvements. The request must include:**

- (a) proposed Construction Documents;**
- (b) if required by the Lessor, evidence of the availability of funding for the Improvements;**
- (c) documentation that required construction insurance is in effect; and**
- (d) other information as may be required by the Lessor.**

**Discussion:** The NPS, unless other arrangements have been made with local authorities, functions as the permitting authority for Improvements as if it were a local government. This section effectuates these responsibilities.

This section describes the information and documents that must accompany a request for approval of Improvements in order to allow for proper review by NPS. Funding and insurance considerations are discussed below. A lease may include in Subsection (d) any information of particular concern to a park area, e.g., plans for reduction of water usage.

## **9.6. Construction Documents**

**The proposed Construction Documents submitted to the Lessor must be complete and satisfactory to Lessor as showing all material elements of the Improvements. When proposed Construction Documents are approved by the Lessor, they become an Exhibit to this Lease without further action.**

**Discussion:** Approved Construction Documents become an Exhibit to the Lease. If the work is not carried out in accordance with the plans, there is a default under the lease.

Although NPS has a copy of the Construction Documents, it does not have a legal right to utilize the plans itself to undertake the project. This is because the lessee's architect holds the copyright to the plans. The following provision may be included at the end of Section 9 as Section 9.13. It gives NPS the right to utilize the construction documents in the event the lessee defaults.

## **9.7. General Scope of Lessor's Review**

**The Lessor will not approve proposed Construction Documents unless it is able to determine, among other matters, that the proposed Improvements are appropriate for the Park Area and consistent with the requirements of Part 18, the Park Area's General Management Plan and other Applicable laws. Review and approval of proposed Improvements is subject to any required compliance with the National Environmental Policies Act (NEPA, 42 USC 4321 et seq.) and, if the project affects Historic Property, Section 106 of the National Historic Preservation Act (Section 106, 16 USC 470f).**

**Discussion:** This section gives NPS broad authority to approve or disapprove Construction Documents. However, disapproval may not be based on considerations that conflict with the description of Initial Improvements under Section 8 as NPS has already approved that description.

The references to NEPA and Section 106 are to make clear that approval of Improvements by NPS is subject to legal requirements and procedures that are not detailed in the lease. See the discussion of NEPA and Section 106 compliance in Part II of the Part 18 Leasing Manual.

The "Americans with Disabilities Act Accessibility Guidelines" (ADAAG) are used to review construction by a lessee if the proposed use of the property is subject to federal accessibility requirements (generally, uses that provide accommodations and or services to the public). D.O. #42 discusses NPS policies and procedures for handicapped access to park area buildings.

## **9.8. Changes to Approved Construction Documents**

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

**Discussion:** Most construction work of any size will experience changes to the project as designed. "Change orders" document the approval of proposed changes.

### **9.9. Special Considerations for Historic Property**

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

**Discussion:** The provisions of this Sample Lease are not intended to detail all the special considerations that apply to improvements related to Historic Property. This section incorporates by reference the applicable preservation considerations and requirements.

### **9.10. Evidence of Adequate Funds**

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

**Discussion:** This provision helps assure that Improvements are not begun by the lessee and then left incomplete, possibly leaving NPS a practical obligation to complete the work at its expense (although a claim would lie against the lessee). (See also the right to require performance bonds under Exhibit B.)

“Appropriate documentation” should include credible estimates of the cost of the Improvements and, with respect to available funding, bank statements, letters of credit, etc.

### **9.11. Building Permit**

**Lessee shall not commence Improvements until such time as Lessor may issue a Building Permit as evidence of approval of the Construction Documents. The Building Permit shall contain necessary and appropriate terms and conditions for the construction of the Improvements.**

**Discussion:** NPS functions (unless arrangements with a local government have been made) as the approving authority for construction both as the lessor and as the responsible regulatory agency. Under 40 USC 619, NPS construction must comply, to the maximum extent feasible, with one of the nationally recognized model building codes and with other applicable nationally-recognized codes, including, electrical, fires and safety, and plumbing. D.O. 38 requires NPS to apply these codes when approving construction by a lessee.

There is no legal requirement that Part 18 leases comply with local zoning or that local building and use permits must be obtained. However, although technically not applicable to Part 18 leases, 40 USC 618 requires that construction or alteration of buildings by federal agencies be done only after consideration of all local zoning laws and requirements (other than procedural requirements) and local laws relating to landscaping, open space, setbacks, maximum heights historic preservation, esthetic quality and similar laws. To the extent that park area planning processes have not provided for consultation with local governments with respect to a Part 18 lease, appropriate consultation should occur.

### **9.12. Construction Completion Procedure**

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

- (a) a notice of completion;**
- (b) if requested by Lessor, satisfactory evidence of the payment of all expenses, liabilities, and liens arising out of or in any way connected with the Improvements;**
- (c) a complete set of “as built” drawings showing all revisions and substitutions during the construction period, including field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural member, walls, partitions and other significant features of the Improvements; and**
- (d) a complete inventory of all FF&E in or on the Premises as of the completion of the Improvements.**

**Upon approval by the Lessor of the completion of the Improvements, the Lessor will issue a Certificate of Completion, including, authorization to occupy the Premises.**

**Discussion:** “As built drawings” show the project work as actually constructed. Deviations from the approved Construction Documents are a default under the lease and may give rise to a claim against the lessee by NPS.

Evidence of payment of expenses should be requested if NPS has any reason to believe that there is a problem in this regard. This is to assist in avoiding liens on the premises.

Approved Construction Documents become an Exhibit to the Lease. If the work is not carried out in accordance with the plans, there is a default under the lease.

### **9.13. Lessor’s Right to Utilize Construction Documents (Optional)**

**In the event of expiration or termination of this Lease, the Lessee shall assign and deliver to the Lessor as Lessor’s sole property all architectural, engineering and other plans, drawings, specifications and studies relating to the Premises. In order to assure Lessor that it will have the legal right to use such plans, drawings, specifications and the like if Lessor becomes entitled to such items, Lessee shall include in its agreements with the architects, engineers and other professionals who prepared such items and who have any proprietary rights with respect to such items (including the rights to use thereof in connection with the Premises) provisions whereby Lessee and Lessor shall have the right to use such plans and other materials in connection with the Premises. In furtherance and not in limitation thereof, Lessee (referred to below as “Owner”) shall include in such agreements the following provisions:**

**The drawings, specifications and other documents prepared by the Architect for this Project (“Documents”) are instruments of the Architect’s service and, unless otherwise provided, the Architect shall be deemed the author of these Documents and shall retain all common law, statutory and other reserved rights, including the copyright. For the purpose of completing this Project or for any other purpose, Architect and its consultants hereby (i) grant to Owner and the National Park Service an irrevocable, fully paid-up, perpetual, worldwide license to copy and use such Documents for completion of this Project or for any other purpose and (ii) consent to the use by Owner and the National Park Service, and of the modification by other design professionals retained by Owner and the National Park Service, of the Documents. The Architect will have no responsibility or liability to the Owner or the National Park Service with respect to any modification to the Documents made by the Owner or National Park Service or any other design professional retained by the Owner or National Park Service. Furthermore, except where the Architect is found to be liable for such claim, damage or loss, the Owner shall hold**

Architect harmless from any such claim, damage or loss arising out of (a) the modification of the Documents by Owner or the National Park Service or another design professional. The Owner and the National Park Service shall be permitted to retain copies, including reproducible copies, of the Documents for information and reference in connection with the use and occupancy of the Project.

Notwithstanding the foregoing, Architect acknowledges and consents to the use and ownership by the National Park Service, or its designees or assignees, of said plans and specifications in accordance with the Lease between the Owner (as Lessee) and the National Park Service (as Lessor) for the Premises leased to Lessee associated the Documents and Architect agrees to deliver copies of said plans and specifications to the National Park Service upon written request from the National Park Service, provided that the National Park Service agrees to pay the Architect's reasonable duplication expenses.

**Discussion:** Although NPS is provided a copy of the Construction Documents, it does not have a legal right to utilize the plans itself to undertake the project. This is because the lessee's architect holds the copyright to the plans. The following provision may be included at the end of Section 9 as Section 9.13. It gives NPS the right to utilize the construction documents in the event the lessee defaults.

## **Section 10. MAINTENANCE AND REPAIR**

### **10.1. Lessee's Responsibilities**

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

- (a) the performance of all repairs, maintenance, replacement, upgrading, capital improvements, (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the improvements thereon in good order, condition, and repair in a manner consistent with the operation of comparable facilities in the locale of the Park Area and in compliance with all Applicable Laws;**
- (b) the replacement, as they become worn out or obsolete, of all FF&E;**
- (c) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Premises;**
- (d) the repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;**
- (e) scheduled inspections of all building systems on the Premises;**
- (f) maintaining the grounds of the Premises in good condition, including, without limitation, regular grass mowing, managed lawn and ornamental plantings, and avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles; and**
- (g) paying to the proper authority, when and as the same become due and payable, all taxes and assessments imposed by federal, state, or local agencies applicable to the Premises or the Lessee's activities on the Premises.**

**Discussion:** This provision places responsibility for maintenance and repair of the premises with the Lessee. How to divide repair and maintenance responsibilities is a decision that generally needs to be made on a case-by-case basis, taking into consideration the financial viability of the lease and the

respective repair and maintenance capabilities of the Lessor and Lessee. The determination of fair market value rent for the premises will take into account the placement of maintenance and repair responsibilities.

Accordingly, the division of maintenance responsibilities in this section may be changed to reflect the circumstances of a particular lease.

### **Section 10.2. Maintenance Plan**

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

**Discussion:** Maintenance plans are generally recommended as they reduce disputes with lessees regarding the scope and quality of their repair and maintenance activities. It is also recommended that NPS prepare a maintenance plan for the premises in advance of lease execution so that it is part of the lease as of the commencement date. This avoids disputes with the lessee over the content of a plan developed during the term of the lease.

The NPS concessions program has many examples of maintenance plans that are suitable for adaptation to Part 18 leases.

The last sentence permits NPS to make “reasonable” modifications to the plan from time to time. “Reasonable” necessarily includes financial considerations.

### **10.3. Preservation Maintenance Plan**

**If the Premises (or any part of the premises) are Historic Property, the Lessee shall repair and maintain all portions of the Premises that are Historic Property through a Preservation Maintenance Plan prepared by the Lessee and approved by the Lessee as appropriate and consistent with the requirements of the Secretary’s Treatment Standards and NPS 28. The Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises. The Lessee shall submit a proposed Preservation Maintenance Plan to the Lessor within thirty (30) calendar days of the Commencement Date.**

**Discussion:** Unlike the non-historic property maintenance plan discussed above, a Preservation Maintenance Plan is required for historic property under the Sample Lease. This is to assure the ability of NPS to apply the Secretary’s Treatment Standards and NPS 28 to upkeep of the premises.

The other maintenance plan considerations discussed above also apply to Preservation Maintenance Plans.

### **10.4. Maintenance Reserve Account (Optional)**

**(a) The Lessee shall establish and manage a Maintenance Reserve Account. The funds in the Maintenance Reserve Account shall be used to carry out, on a project basis, repair and maintenance needs of the Premises that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, sub floors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. The Lessee will carry out projects as the Lessor shall direct in writing in advance of any**

expenditure being made and in accordance with project proposals approved by the Lessor. No projects may be commenced until the Lessee receives written approval from the Lessee in accordance with Section 10 of this Lease.

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

(c) The Lessee shall establish the Maintenance Reserve Account within its accounting system. The Lessee shall debit to this account within fifteen calendar (15) days after the last day of each month during the Lease Term a sum equal to: \_\_\_\_\_ percent (\_\_\_\_%) of the Lessee's gross receipts (as defined in Section \_\_\_\_ ) for the previous month. If the Lessee fails to make timely debits to the account, the Lessor may terminate this Lease for default or may require the Lessee to post a bond in an amount equal to the estimated annual account debiting based on the preceding year's gross receipts. The Lessee shall periodically at times prescribed by the Lessor submit written reports to the Lessor containing such information as the Lessor may require concerning the Maintenance Reserve Account and the related activities of the Lessee.

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

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

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

**Discussion:** Many commercial leases require that the lessee set aside a percentage of its gross receipts (generally 4 –6 %) in a "Maintenance Reserve Account" to provide a funding source for the lessee's long-term, cyclical repair and maintenance responsibilities. If the funds are inadequate, the lessee is still obliged to repair and maintain the premises.

A Maintenance Reserve Account provision may be included in any Part 18 lease. The provision is recommended for long term, revenue-producing leases. This Maintenance Reserve Account provision establishes a Maintenance Reserve Account in circumstances where rent is paid based upon a percentage of gross receipts. Where a lease calls only for Annual Rent (i.e., a fixed amount of rent), this provision should be amended to provide for a fixed cash contribution to the Maintenance Reserve Account by the Lessee.

## **Section 11. UTILITIES**

The Lessee at its sole expense shall make all arrangements with appropriate utility providers (including the Lessor where applicable), for all utilities furnished to the Premises, including, without limitation, gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any utility service provided by Lessor will be subject to the Lessor's established policies and procedures for provision of utility services to third parties.

**Discussion:** NPS frequently provides NPS-produced utilities to third parties in park areas. Special Directive 83-2 presently guides this activity. A new D.O. 35b, "Sale of NPS Provided Utilities," is under development.

## **Section 12. HAZARDOUS MATERIALS**

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

**(a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on about, under or into the Premises except in compliance with all Applicable Laws and as approved by the Lessor in writing;**

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

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

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

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

### **Discussion:**

**In General:** Hazardous materials provisions such as this one are now standard in most commercial leases.

This particular provision requires the lessee to abate hazardous materials on the premises (whether or not they were on the premises prior to commencement of the lease or introduced afterwards). This provision is ideal from the NPS point of view but may not be obtainable in many circumstances, i.e., NPS may have to assume responsibility for the abatement of hazardous materials that pre-existed the lease because the financial burden realistically cannot be borne by the lessee.

The projected costs of abatement to be undertaken by the lessee must be taken into account in the determination of fair market value rent. In some circumstances, NPS may have to pay for abatement in order for a lease to be financially feasible for the lessee. Accordingly, the division of abatement expenses contained in this section may be modified to reflect the particular circumstances of the lease.

**Lead Paint and Asbestos.** Under 40 USC 619, NPS is generally subject to applicable state law regarding the abatement of lead paint in park area buildings. Asbestos abatement is required under applicable national building codes. If lead paint or asbestos needs to be abated, this can either be done by NPS prior to the commencement date of the lease. The sample lease requires the lessee to undertake the abatement of hazardous materials in accordance with applicable laws.

However, if a lead paint problem does exist, NPS should review the applicable state law to ascertain its particular obligations under that law. Lead paint abatement laws vary from state to state.



Chapter 2 of NPS 77, "Natural Resources Management Guidelines," contains detailed policies and procedures for the treatment of hazardous materials in park areas.

## **Section 13. INSURANCE AND INDEMNIFICATION**

### **13.1. Insurance During the Lease Term**

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

**Discussion:** The technical insurance requirements for this Sample Lease are contained in a separate Exhibit as the coverages are subject to change from time to time. If changes are made, it is easier to attach a new revised exhibit than to amend the main body of the lease.

### **13.2. Insurance Requirements Modification**

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

**Discussion:** This provision permits NPS to modify the insurance requirements, including coverage limitations, as circumstances change over time.

### **13.3. Disposition of Insurance Proceeds**

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

**Discussion:** This provision states that insurance proceeds generally are to be held by the lessee. NPS, however, in appropriate circumstances (e.g., pending insolvency of the lessee) may require an independent trustee to hold the funds.

### **13.4. Inadequate Insurance Coverage**

**The Lessee's responsibilities under this Lease for the repair or replacement of the Premises assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.**

**Discussion:** This section provides that the fact that insurance proceeds may not be adequate to repair or replace the premises does not relieve the lessee of its obligations to do so.

### **Section 13.5. Indemnity**

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

**Discussion:** This indemnity clause requires the lessee to indemnify NPS against any claims made against NPS arising out of the lease. For example, if a guest on the premises tripped on the stairs and sued NPS for damages arguing that the stairs had been negligently maintained, the lessee would have to defend the lawsuit and reimburse NPS if damages were awarded.

The clause is not reciprocal. NPS does not have legal authority to indemnify the lessee. However, the clause does state (reflecting otherwise applicable legal requirements) that NPS will be responsible for tort claims torts under the terms of the Federal Torts Claims Act.

### **Section 14. DAMAGE OR DESTRUCTION**

#### **14.1. Damage or Destruction; Duty to Restore**

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

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

**(b) the Lessor may terminate this Lease without liability and the Lessee shall pay to the Lessor as additional rent the insurance proceeds resulting from the damaged or destroyed Premises.**

**Discussion:** This section makes clear that the lessee must repair or replace damaged or destroyed property to its condition prior to the damage or destruction. In the alternative, NPS may terminate the lease and receive the applicable insurance proceeds as additional rent. This section, in order to avoid undue financial risk to the lessee, may be amended to permit the lessee to retain an appropriate share of the insurance proceeds in the event a decision not to repair or replace is made.

Many standard leases only call for repair or replacement in the event of damage or destruction of the premises. However, this section provides NPS the right to terminate because reconstruction of a destroyed building may not be an acceptable park area resource management decision. In addition, reconstruction of historic properties is generally not permissible under *NPS Management Policies 2006*.

## **14.2. No Termination; No Effect on Rental Obligation**

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

**Discussion:** This section provides that, unless the lease is terminated by NPS, the lessee, despite damage to or destruction of the premises, must continue to pay rent and otherwise comply with the terms and conditions of the lease.

## **15. LIENS**

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

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

**Discussion:** This section makes clear that the lessee cannot "mortgage" the premises unless expressly approved by NPS in writing. (See Section 16).

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

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

**Discussion:** A "lien" is a claim or charge on property for the payment of a debt. With respect to private property, once a lien is filed, it operates like a mortgage so that the property cannot be sold without satisfaction of the underlying debt.

In theory, liens cannot be filed against federally-owned property. However, such liens are frequently filed anyway. This section makes clear that the lessee is responsible for satisfying or otherwise dealing with any liens that may be filed against the premises. It also gives NPS a right of "self-help" in the event a lien is filed.

### 15.3. No Consent or Waiver by Lessor

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

**Discussion:** This section makes clear that even though the NPS is the owner of the premises, NPS is not responsible in any manner for materials or services that may be provided to the lessee by third parties.

## Section 16. ASSIGNMENTS AND ENCUMBRANCES

### 16.1. Assignments

**The Lessee shall not effectuate an Assignment of this Lease, in whole or in part, or any real property on the Premises, nor Sublease the Premises to a Sublessee or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Lease, without the express prior written permission of the Lessor. Approval of any Assignment is in the discretion of the Lessor and in no event shall the Lessor grant an approval unless it is able to determine that the proposed assignee or Sublessee is financially and managerially capable of carrying out the terms of this Lease. The Lessor has an unconditional right to assign this Lease or any or all of its rights and obligations under it at any time.**

**Discussion:** This section makes clear that the lessee may not assign the lease in total to a third party or enter in subleases without the express written approval of NPS. Financial and managerial capabilities are the primary requirements for approval.

### 16.2. Encumbrances

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

#### **Discussion:**

**In general.** This section provides that the lessee may not encumber the premises (e.g., mortgage it), without the written approval of the NPS. NPS may approve an encumbrance but only on the condition, among other considerations, that the encumbrance only grants its holder in the event of a foreclosure the right to assume the responsibilities of the lessee under the lease or to select a qualified new lessee subject to the written approval of the lessor.

Of particular importance is the statement that a lender has no right to alter or amend the terms of the lease. In commercial leases, in the event of a foreclosure, a lender may be free to change the uses of the property to whatever it wished (subject to zoning limitations) in order to maximize revenues. This is not the case with Part 18 leases. There is no right of a lender to change the uses (without the approval of NPS made in accordance with Part 18).

**Leasehold Mortgages.** Part 18 leases that involve a lender from the beginning (to finance lessee improvements) normally will include complicated additional provisions that describe the mortgage and the rights of the lender in great detail. Such provisions are not contained in this Sample Lease as they

vary widely. Lease terms regarding leasehold mortgages need to be negotiated on a case by case with legal assistance.

## **Section 17. DEFAULTS AND LESSOR'S REMEDIES**

### **17.1. Termination for Default**

**The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least fifteen (15) calendar days in the case of monetary defaults and thirty (30) calendar days in the case of non-monetary defaults of the Lessor's intention to terminate if the default is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate.**

**Discussion:** This is a standard termination for default provision. Monetary defaults are defaults for failing to make rent or other required payments to the lessee or third parties. Non-monetary defaults are anything else.

### **17.2. Bankruptcy**

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

**Discussion:** This section gives NPS the right but not the obligation to terminate the lease in the event of the lessee's bankruptcy or similar circumstances. A lessee bankruptcy creates very complicated legal circumstances for NPS. The Solicitor's office should be notified immediately whenever a bankruptcy occurs or is likely so that the interest of NPS can be protected in the bankruptcy proceedings.

### **17.3. No Waiver**

**No failure by the Lessor to insist upon the strict performance of any of the terms and conditions of this Lease or to exercise any right or remedy upon a default, and no acceptance by the Lessor of full or partial rent during the continuance of any default shall constitute a waiver of any default or of such terms and conditions. No terms and conditions of this Lease may be waived or modified except by a written instrument executed by the Lessor. No waiver of any default shall affect or alter this Lease, but each and every term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.**

**Discussion:** This section provides that the fact that NPS may not choose to initiate a termination in the event of a default or otherwise strictly enforce the terms of the lease does not mean that NPS has waived the default or any rights it has under the lease.

### **17.4. Lessor's Right to Cure Defaults**

**If a default occurs under the terms of this Lease and the Lessee fails to correct the default within the applicable grace period, the Lessor may choose to correct the default (entering upon the**

**Premises for such purposes if necessary), and the Lessor shall not be liable or in any way responsible for any loss, disturbance, inconvenience, or damage resulting to the Lessee as a result, and the Lessee shall pay to the Lessor upon demand the entire expense of the correction as additional Rent, including, without limitation, compensation to the agents, consultants and contractors of the Lessor and related expenses. The Lessor may act upon shorter notice or no notice at all if necessary in the Lessor's judgment to meet an emergency situation or governmental time limitation or to protect the Lessor's interest in the Premises.**

**Discussion:** This section permits NPS to cure a default and charge the lessee for the costs as additional rent. Doing so may be high risk to NPS as the lessee, if it does not choose to cure a default, is likely to be insolvent.

## **Section 18. SURRENDER AND HOLDING OVER**

### **18.1. Surrender of the Premises**

**(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the FF&E, to as good an order and condition as that existing upon the Commencement Date, or, if applicable, as that existing upon completion of any Improvements by the Lessee.**

**(b) For these purposes, the Lessor and Lessee shall prepare an inventory and condition report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's FF&E, or elements of the Premises shown to be lost, damaged or destroyed. Any such FF&E, or other elements of the Premises shall be either replaced or returned to the condition required under this Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefor by the Lessee at the then current market value thereof.**

**Discussion:** Section (a) requires the lessee to vacate the premises on expiration or termination of the lease and to leave them in as good condition as they were at the start of the lease, subject to normal wear and tear. Section (b) requires the lessee to correct any damage or reimburse NPS.

The "inventory and condition report" called for by this section is used to assess the condition of the property. Unless NPS prepared a good Inventory and Condition report at the start of the lease, it will be difficult to force repairs or reimbursement by the lessee because of lack of proof of damage.

### **18.2. Holding Over**

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

**Discussion:** This is a standard lease provision. Under some state laws, unless otherwise expressly stated in the lease (as here), failure to vacate the premises after the expiration or termination of lease may result in a legally recognized new tenancy for the lessee.

## **Section 19. EQUAL OPPORTUNITY LAWS**

**The Lessee and Lessee's Agent's shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 (as amended), which prohibits**

discrimination on the basis of disability and requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals; (c) 41 C.F.R. Chapter 60, which prescribes affirmative action requirements for government contractors and subcontractors; (d) the Age Discrimination in Employment Act of December 15, 1967 (as amended); (e) the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.; (f) and all other Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

**Discussion:** This section recites particular equal opportunity statutes that may be applicable to the lease.

## **Section 20. NOTICES**

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

**If to the Lessor:**

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

**If to the Lessee:**

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

**Discussion:** NPS as a matter of good management must notify the lessee in writing at any time it perceives a failure to perform by lessee. The written record or lack thereof is critical to winning a challenge to a default termination.

## **Section 21. GENERAL PROVISIONS**

The following general provisions apply to this Lease:

- (a) The Lessor is not for any purpose a partner or joint venture participant of the Lessee in the development or operation of the Premises or in any business conducted on the Premises. The Lessor under no circumstances shall be responsible or obligated for any losses or liabilities of the Lessee. The Lessee shall not publicize, or otherwise circulate, promotional or other material of any nature that states or implies endorsement of the Lessee or its services or products by the Lessor or any other governmental agency.
- (b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.
- (c) This Lease provides no right of renewal or extension to the Lessee, nor does it provide the Lessee with the right to award of a new lease upon termination or expiration of this Lease. No rights shall be acquired by virtue of this Lease entitling the Lessee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

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

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

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

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

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

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

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

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

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

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

**(n) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. Nothing in this Lease shall be construed as preventing the cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.**

**Discussion:** The "general provisions" are required by Part 18 or are standard government and commercial lease and contract provisions. Subsection 21(n) implements 36 CFR 18. 12 (i) that provides that Part 18 leases may not authorize the construction of new buildings or structures on park area lands except for minor additions, buildings or structures determined by NPS to be necessary for support of the uses authorized by the lease.



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

**LESSOR**

**THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE**

**By** \_\_\_\_\_  
\_\_\_\_\_, **Regional Director,**  
\_\_\_\_\_ **Region**

**LESSEE**

( \_\_\_\_\_ )

**By** \_\_\_\_\_

**Title** \_\_\_\_\_

**Discussion:** The reference to the Regional Director is by way of example only. Delegations of authority to execute Part 18 leases are contained in D.O. #38.

The signatures do not need to be notarized unless either NPS or the lessee wants to record it. Recording a Part 18 lease is of no particular benefit to NPS. Holders of leasehold mortgages, however, may require recordation to protect their interests.

If the lease is with a corporation, an attestation clause should be included.

**EXHIBIT A: Inventory and Condition Report**

## **EXHIBIT B: Insurance Requirements**

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

### **1. Types of Insurance (Non-Construction)**

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

(b) **Boiler and Machinery Insurance** – At full replacement cost. The policy shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt. The policy shall include an endorsement that waives any provision of the policy that requires a building or structure to be replaced at its original site, provided that, such endorsement shall not operate to increase the insurance company's liability under the policy.

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

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

(e) **Business Interruption and Extra Expense Insurance** - Business interruption and extra expense to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of the Premises, including, without limitation and, with respect to the interests of the Lessor, the loss (or reduction) of Rent payments to the Lessor by the Lessee. Coverage amounts shall be as required by the Lessor but in no event less than \_\_\_\_\_ (\$ \_\_\_\_\_) per incident and \_\_\_\_\_ (\$ \_\_\_\_\_) in the aggregate.

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

## **2. Insurance During Construction**

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

**(a) If requested by Lessor at any time, performance and payment bonds approved by the Lessor, which bonds shall cover payment of all obligations arising under all contracts let in connection with a Construction and guaranteeing performance and payment under the applicable contracts, and payment in full of all claims for labor performed and materials supplied under such contracts. The bonds shall be issued by a responsible surety company, licensed to do business in the state where the Park Area is located, in an amount not less than the amount of the respective contracts, including without limitation, amounts for cost overruns, price increases, change orders, forced delays and the like, and shall remain in effect until the entire work under the contracts is completed; and**

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

## **3. Conditions of Insurance**

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

**(b) All property and liability insurance policies shall name the Park Area as an additional insured.**

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

**(d) All insurance policies shall provide that such policies shall not be cancelled, terminated or altered without thirty (30) days prior written notice to the Lessor. The Lessee must provide to the**

**Lessor a copy of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect on or before the Commencement Date, and annually thereafter. The Lessee shall maintain all policies provided throughout the Lease Term and the Lessee shall renew such policies before the expiration of the term of the policy.**

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

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

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

**Discussion:**

**In general.** The insurance requirements contained in Section 13 and Exhibit B are intended to be applicable in most Part 18 lease circumstances. However, the insurance requirements for each Part 18 lease need to be individually reviewed to determine appropriate insurance requirements for the particular lease, including, appropriate coverage minimums. For example, a lease that authorizes the sale of alcoholic beverages may need a special insurance policy for this activity.

**Changes.** Section 13.2 and Exhibit B permit NPS to require changes to the lessee's insurance coverage at any time during the term of the lease. Insurance coverage for long term leases should be periodically reviewed to see that they continue to be appropriate in light of changing circumstances.

**Minimum Coverages.** It is not appropriate to include fixed liability insurance coverage amounts in a sample lease. The amount of liability insurance a lessee should have is dependent on a number of factors, including, the type and scope of uses authorized under the lease (e.g., they may be extensive or dangerous), the State in which the park area is located (States vary greatly with respect to the amount of money awarded in successful tort claims), and the willingness of insurance carriers to provide high insurance coverage in particular circumstances.

The best way to ascertain what levels of coverage is appropriate with respect to a particular lease is to ask several local insurance agencies what coverage levels they consider to be customary in the area and suitable in light of the uses authorized by the lease.

Minimum coverages adopted by other public agencies for specific categories of contractors may be found on-line. For example, the University of Wisconsin has a number of recommended minimum coverages for specific types of contractors, including food service. See [www.uwsa.edu/osip/rm/manual/part4d](http://www.uwsa.edu/osip/rm/manual/part4d). Its

standard minimums for non-high risk contractors are: Workmen's Compensation – statutory limits; Commercial General Liability - \$1,000,000 per occurrence; and Automobile Liability - \$1,000,000. For another example, the United States Air Force Housing Privatization Program provides recommended minimum coverages for its contractors. See [www.afcee.brooks.af.mil/dc/dcp/news/outreach](http://www.afcee.brooks.af.mil/dc/dcp/news/outreach).

For further information regarding insurance coverage and minimums, contact the WASO Concessions Program Asset Manager at (202) 513 – 7150.

## CHAPTER V: EXPLANATION OF THE SAMPLE RFPs

The Sample Requests for Proposals discussed below are contained in this Reference Manual as Attachments E and F. Attachment E is the sample RFP that applies when the lessee is not required to make improvements to the leased property: Sample RFP (No Improvements). Attachment F is the Sample RFP that applies when the lessee is required to make improvements to the leased property: Sample RFP (Improvements). The provisions of the RFPs are in bold.

### LEASING OPPORTUNITY AT [PARK AREA];

#### REQUEST FOR PROPOSALS

##### A. Summary.

**This Request for Proposals (RFP) provides the opportunity for interested individual and organizations to submit proposals to the National Park Service (NPS) to lease NPS property at [name of park area] under the following general terms and conditions.**

##### 1. Property Offered for Lease.

**[Describe the property to be leased. State whether or not the property or portions of it are historic property].**

**Discussion:** The description should include information as to the nature of the property, e.g. residential or commercial, size, condition, and other relevant factors.

##### 2. Uses of the Leased Property.

**The lessee will use the property for the following authorized uses:**

**[Describe the authorized uses under the proposed lease.]**

**Discussion:** The RFP may be general or specific with respect to authorized uses under the lease. For example, it may broadly state that any use lawful under Applicable Laws is permissible or it may limit the uses. Or, it may limit uses to particular types (such as residential only). In many cases, NPS planning documents, e.g., the GMP, will limit the permissible uses.

##### 3. Term of Lease.

**Alternatives:**

**The lease will have a term of \_\_\_\_\_ years, commencing approximately \_\_\_\_\_, 2007.**

**Or:**

**The term of the lease will be negotiated with the selected applicant. The lease term will commence on or about \_\_\_\_\_, 2007.**

**Discussion:** The Sample RFP (No Improvements) incorporates the first alternative. The lease term is 10 years. The lessee is not required to undertake any rehabilitation of the premises.

The Sample RFP (Improvements) incorporates the second alternative, as it requires significant improvements by the lessee. In this case, the negotiation of the term of the lease will be part of the negotiation of the fair market value rent.

Either alternative may be used for either category of RFP if circumstances warrant.

#### **4. Fair Market Value Rent.**

**Alternatives:**

**The lessee will be required by the lease to pay at least fair market value rent to the NPS. The fair market value rent has been determined to be \$\_\_\_\_\_ annually, payable in equal monthly installments.**

**Or:**

**The lessee will be required by the lease to pay at least fair market value rent to the NPS. The fair market value rent will be determined by NPS after selection of the best proposal.**

**Discussion:** The Sample RFP (No Improvements) incorporates the first alternative. The fair market value rent has been determined to be \$12,000 annually, \$1000 a month.

The Sample RFP (Improvements) incorporates the second alternative. This is because fair market value rent generally cannot be determined without detailed information on the scope of improvements and estimated costs.

However, if a good scope of work and cost estimate is available, permitting an accurate appraisal, the first alternative may be used in RFPs calling for improvements.

#### **5. Other Terms and Conditions.**

**Alternatives:**

**Other proposed terms and condition of the offered lease are contained in a Draft Lease that is attached to this RFP as Exhibit A. Final terms and conditions will be negotiated between NPS and the selected applicant.**

**Or:**

**The proposed terms and conditions of the offered lease are as described in this RFP and 36 CFR Part 18. Final terms and conditions will be negotiated between NPS and the selected applicant.**

**Discussion:** The Sample RFP (No Improvements) incorporates the first alternative. The Sample RFP (Improvements) incorporates the second alternative.

Generally, it is advisable to use the second alternative in more complex leases, particularly where lessee improvements are required. The first alternative, however, is easier to implement because all terms of the lease are established up-front, thereby limiting negotiation of final lease terms.



**6. Competitive Process.**

**This lease opportunity is open to all interested persons on a competitive basis. Whoever submits the proposal judged best under the proposal selection criteria will be given an opportunity to negotiate a final lease agreeable to both the Applicant and NPS.**

**Discussion:** The Evaluation Procedures section (see Chapter VI of this Reference Manual) describes suggested evaluation procedures.

**7. Site Tour and Pre-Submittal Conference.**

**A pre-submittal conference and site tour of the offered property will be held on \_\_\_\_\_, 2007, at the property. Please contact \_\_\_\_\_ by e-mail at \_\_\_\_\_ or by telephone at \_\_\_\_\_ to make a reservation.**

**Discussion:** A site tour and pre-submittal conference is highly recommended for all leasing opportunities. Providing tours on an individual basis is not recommended as it sets up the possibility of different information being provided by NPS to potential applicants. This can result in a legal challenge to the lease award.

It is important that questions asked during the tour (and their answers) are recorded and a formal "Question and Answer" document be sent out to all interested persons after the tour. In this manner, all interested persons will receive the same information regarding the proposed lease.

**8. Proposal Submission Date.**

**Proposals under this RFP must be received by close of business on \_\_\_\_\_, 2007, in the form and at the address stated below.**

**9. Authority.**

**This RFP is issued under the authority of 36 CFR Part 18. This RFP and the offered lease are subject to and incorporate all terms and conditions of Part 18 as applicable. In the event of any conflict between the terms of this RFP and Part 18, Part 18 controls.**

**For Further Information Please Contact:**

**[Include name, address, phone number and e-mail of NPS contact person.]**

**B. The National Service and the [Park Area].**

**1. The National Park Service and its Mission.**

**America's National Park Service was created by Congress to "conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be "preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.**

**To learn more about the National Park Service, visit our website at [www.nps.gov](http://www.nps.gov). This site includes information about who we are, our mission, NPS policies and individual parks.**

## **2. The Park Area**

**[Describe the park area, including location, features, legislated purposes, management objectives, etc.]**

**Discussion:** This portion of the RFP will vary from park to park.

The following is a sample of this kind of description:

Lost River National Park (park area) was established by Act of Congress in 1967. It comprises approximately 900,000 acres. The park is particularly significant because of its unspoiled natural resources, including the pristine waters of the Lost River and its tributaries, its extensive wildlife and native fish populations, and numerous archeological sites. Park visitors are especially attracted to the general natural area experience of the park and its fish and wildlife resources. The park has approximately 575,000 visitors a year. It also contains a number of historic buildings that have been determined to be suitable for adaptive reuse under the park area's General Management Plan.

The purposes of the park area, as stated in its General Management Plan, are:

To preserve the nationally significant and special cultural and natural features, distinctive patterns of human activity, and ambience that characterize the Lost River region, along with its associated scenic, cultural, historic, scientific, and recreational values; and

To provide opportunities for current and future generations to experience, enjoy, and understand these features and values.

## **C. Proposal Selection Criteria.**

**The NPS will select the best responsive proposal received under this RFP under the following selection criteria:**

- 1. The compatibility of the proposal's intended use of the offered property with respect to preservation, protection, and visitor enjoyment of the park area;**
- 2. The financial capability of the Applicant to carry out the terms of the lease;**
- 3. The experience of the Applicant demonstrating the managerial capability to carry out the terms of the lease;**
- 4. The ability and commitment of the Applicant to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling;**
- 5. The compatibility of the proposal with the historic qualities of the property [included only if the property is historic]; and**
- 6. The benefit to NPS of the financial and other terms and conditions of the proposal, including, without limitation, the scope of proposed improvements (if applicable), the amount of rent proposed, the proposed term of the lease, and other proposed lease terms and conditions;**

**7. Special Selection Criteria.** [Any special selection criteria related to the park area, lease uses, etc., should be included here.]

**Discussion:**

Part 18 requires the first four criteria. The fifth criterion is required for historic property. The sixth criterion is needed for proposal evaluation purposes and should always be included.

The Sample RFPs do not include any special selection criteria. However, special selection criteria are a valuable tool for the park area manager to assure that the particular needs and objectives of the area are reflected in the RFP.

**D. Proposal Content.**

**1. In General.**

**Proposals submitted in response to this RFP should follow the format described below. You are asked to answer questions or supply specific information in response to specified items. Please label your responses correspondingly, and respond fully and accurately to all questions/requests.**

**2. Information Requested.**

**a. Applicant Identification**

**Please provide the identification and credit information described in Attachment A to this RFP if the applicant is not a business. If the applicant is a business, please provide the identification and credit information described in Attachment B to this RFP under the applicable category (sole proprietorship, partnership, or corporation).**

**b. Proposed Uses.**

**Please describe your proposed use or uses of the property and explain why it is compatible with the preservation, protection and visitor enjoyment of the park area. If the proposed use or uses are revenue producing, describe the business in detail.**

**If the proposed use or uses are revenue producing, please provide the financial information described in Attachment C to this RFP.**

**Discussion:** The RFP may include under this topic questions related to particular possible uses, e.g., parking spaces required, customer levels, hours of operation, etc.

**c. Financial Capability.**

**Please submit documentation of the source and availability of the funds necessary to carry out your obligations under the terms of the proposed lease, including, without limitation, any improvement requirements, through bank statements, bank financing commitment letters, or similar documents that convincingly substantiate your financial capability.**

**d. Experience.**

**Please explain how your experience and background qualifies you as managerially capable of satisfactorily performing the terms and conditions of the offered lease.**

**e. Environmental Enhancement.**

**Please explain your proposal for managing and using the property in an environmentally enhancing manner through, among other programs and actions you may propose, energy conservation, waste reduction, and recycling.**

**Discussion:** This is a generic request for information with respect to environmental enhancement. RFPs should expand upon this request to reflect the environmental concerns and objectives of the applicable park area.

**f. Rent Offered**

**Alternatives:**

**Please state how much annual rent you offer to pay. Your offer must at least equal \$\_\_\_\_\_ annually, the fair market annual rental value of the property.**

**Or**

**Please state how much annual rent you offer to pay. The amount of rent will be negotiated with the selected applicant, provided that, the final rent must at least equal fair market rental value as determined by NPS.**

**Discussion:** The first alternative applies to the Sample RFP (No Improvements) as it specifies the rent to be paid. The second applies to the Sample RFP (Improvements) as it does not specify rent.

**g. Term Requested [Included only in the Sample RFP (Improvements).]**

**Please state the term of the lease that would be acceptable to you. When considering the term, please keep in mind that NPS is required to award leases with as short a term as possible, taking into account the financial obligations of the lease and other related factors.**

**Shorter terms are considered as more desirable to NPS in the evaluation of lease proposals.**

**Discussion:** This section could a maximum term, e.g. 30 years, if circumstances permit. Under Part 18, the maximum lease term is 60 years.

**h. Improvement Plan [Included only in the Sample RFP (Improvements)].**

**Please submit an improvement plan specifying how the applicant intends to improve the leased property. The plan should comprehensively describe the proposed improvements which the applicant will accomplish and outline a detailed schedule for program development, construction, completion, and opening for operation. Appropriate preliminary plans and drawings should be included in the plan. Detailed cost estimates should also be included.**

**E. Proposal Submission Requirements.**

Please submit six (6) copies of your proposal accompanied by a transmittal letter signed by a principal of the proposed lessee. The copies should be on 8-1/2" x 11" paper punched with 3 holes and unstapled (suitable for NPS to put in binders) with double-sided copying.

The proposal must be enclosed in sealed envelope(s), and received at the following NPS office by the close of business on the date specified in Section A above. The face of the sealed envelope shall show the Applicant's name and address, and the receiver's address as shown here:

[Include appropriate NPS address.]

Telephonic proposals, faxes, e-mail, and other means of transmittal will not be considered. Proposals will not be returned.

**Discussion:** The number of copies of each proposal may vary depending on the evaluation needs of NPS.

**F. Additional Information and Modifications of Proposals.**

NPS may request from any Applicant after the submission date additional information or written clarification of a proposal. However, proposals may not be amended after the submission date unless permitted by NPS. NPS may not permit amendment of a proposal unless all Applicants that submitted responsive proposals are given an opportunity to amend their respective proposals.

**Discussion:** This section tracks applicable provisions of Part 18. See the Evaluation Procedures (Chapter VI) for further information.

**G. NPS Evaluation and Selection of the Best Proposal.**

NPS will review all responses to this RFP through an evaluation panel assisted by technical consultants as appropriate.

All proposals will first be screened for adherence to the requirements of this RFP. NPS will not consider non-responsive proposals. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of this RFP as determined by NPS.

It is the intention of the NPS to select the best-submitted proposal as determined under the selection criteria without further submittals or presentations. If this cannot be done, NPS will select those lease proposals that appear most suitable under the selection criteria, and from that group will request additional information or presentations so that the best proposal can be selected.

NPS will negotiate the terms of the final lease with the Applicant determined to have submitted the best proposal under the selection criteria. Award of a lease to that Applicant is dependent on successful negotiation of the final terms of the lease. If negotiations fail, NPS may negotiate with other Applicants for award of the offered lease or terminate this solicitation without liability to any person.

**Discussion:** See the Evaluation Procedures document (Chapter VI) for further information as to how NPS evaluates proposals.

## **H. Lease Terms and Conditions.**

### **1. Term of Lease**

The lease to be awarded under this RFP is to have a term that is as short as possible. The lease will not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if the deciding official determines that an extension is necessary because of circumstances beyond the control of NPS.

### **2. Lease Provisions**

The lease to be awarded under this RFP will contain the provisions required by Part 18 as well as other provisions determined by NPS to be necessary to assure use of the leased property in a manner consistent with the purposes of the park area, and where applicable, to assure the preservation of historic property. Required provisions include, without limitation:

- (a) A termination for cause or default provision;
- (b) Appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease;
- (c) Appropriate provisions stating that subletting of a portion of the leased property and assignment of a lease, if permissible under the terms of the lease, must be subject to the written approval of NPS;
- (d) Appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee and to pay all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities;
- (e) Appropriate provisions stating that the lessee has no rights of renewal of the lease or to the award of a new lease upon lease termination or expiration;
- (f) Appropriate provisions stating that the lessee may not construct new buildings or structures on leased property except in limited circumstances;
- (g) Appropriate provisions requiring that any improvements to or demolition of leased property to be made by the lessee may be undertaken only with written approval from the NPS; and
- (h) Appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property.

**If a Draft Lease is attached to this RFP, it incorporates these terms.**

**Discussion:** The above terms and conditions are some but not all of provisions required by Part 18. They are included in the RFPs for purposes of emphasis even though technically incorporated into the RFPs by reference to Part 18. The Sample Leases included in this Reference Manual include all required provisions.

**I. Confidentiality of Proposals.**

If you believe that a proposal contains trade secrets or confidential commercial and financial information that you do not want to be made public, please include the following sentence on the cover page of each copy of the proposal:

**“This proposal contains trade secrets and/or confidential commercial or financial information that the Applicant believes to be exempt from disclosure under the Freedom of Information Act. The Applicant requests that this information not be disclosed to the public, except as may be required by law.”**

In addition, you must specifically identify what you consider to be trade secret information or confidential commercial and financial information on the page of the proposal on which it appears, and you must include the following sentence on each such page:

**“This page contains trade secrets, or confidential commercial or financial information that the Applicant believes to be exempt from disclosure under the Freedom of Information Act, and which is subject to the non-disclosure statement on the cover page of this proposal.”**

**Information so identified will not be made public by NPS except in accordance with the requirements of the Freedom of Information Act.**

**Discussion:** This provision in effect states that proposals are subject to release under FOIA subject to any FOIA exemptions that may apply.

**Attachment A: Identification and Credit Information (Individual)**

**Attachment B: Identification and Credit Information (Business)**

**Attachment C: Financial Information for Revenue-Producing Uses**

**Discussion:** Attachment A, B and C of the Sample RFPs state identification, credit and financial information to be provided by applicants as applicable.

# **Chapter VI: GUIDELINES FOR EVALUATION AND AWARD OF LEASE PROPOSALS**

## **Table of Contents**

### **A. Introduction.**

1. Evaluation
2. Selection
3. Use of These Guidelines

### **B. Evaluation Panel**

1. Task
2. Panel Composition
3. Role of the Chair
4. Role of the Panel
5. Role of Technical Advisors
6. Objectivity

### **C. General Evaluation and Selection Ground Rules**

1. Confidentiality
2. Conflicts of Interest
3. Material to Be Considered
4. Additional Information from Offerors
5. Contacts with Offerors
6. "Non-Responsive" Proposals
7. Notes
8. Administrative Record
9. Release of Proposals and Evaluation Documents

### **D. The Evaluation**

1. First Steps
2. Panel Meeting
3. First Reading of Proposals
4. Thorough Review of Each Proposal
5. Discussion Meeting(s)



**E. Ratings**

1. Selection Factors
2. Subfactors
3. Rating Proposals
4. The Financial Capability Selection Factor
5. Final Ratings and Recommendations

**F. The Evaluation Summary**

1. Drafting
2. Evaluation Summary Format

**G. Selection of the Best Proposal**

1. Final Evaluation Summary
2. Submission of the Evaluation Summary
3. Review by Deciding Official
4. Selection

**H. Notification and Award**

1. Notification
2. Award
3. Letters of Intent

**I. Optional Procedures**

1. Park Area Issues
2. Office of the Solicitor Participation

## **A. Introduction**

### **1. Evaluation**

In accordance with 36 CFR 18.8, competitive proposals for a Part 18 lease are evaluated under standard selection factors (see below) and any special factors that may be contained in a particular prospectus. Each proposal is evaluated through a written discussion of the quality of the proposal's response to each selection factor. A summary describes which proposal is considered best overall and explains the basis of this determination.

### **2. Selection**

The best responsive proposal is selected for the award of the lease. If two or more proposals are determined to be substantially equal, the deciding official provides an opportunity for those proposals to be amended by their offerors as necessary for the deciding official to select the best amended proposal.

### **3. Use of These Guidelines**

These guidelines describe how an evaluation panel (panel) may evaluate lease proposals under the selection factors stated in the applicable Request for Proposals (RFP) and how the deciding official may then make the selection of the best proposal in accordance with the requirements of 36 CFR 18.8. D.O. 38 requires the establishment of an evaluation panel in circumstances where lease proposals are solicited under an RFP issued under Part 18. The guidelines are not mandatory. However, the requirements of 36 CFR 18.8 must be met in any other evaluation and selection process that may be used. In the event of any inconsistency between these guidelines and the requirements of 36 CFR 18.8, 36 CFR 18.8 controls.

## **B. Evaluation Panel**

### **1. Task**

The panel's task is to review lease proposals received in response to an RFP and then to submit an evaluation summary to the deciding official on the merits of the proposals. The evaluation summary provides recommendations as to the relative merits of the proposals and a narrative explanation of the basis of the recommendations.

### **2. Panel Composition**

The panel is appointed by the deciding official and headed by a designated chairperson (chair).

There should be at least two panel members in addition to the chair. All panel members must be federal employees. The panel members should have appropriate professional qualifications (with support from technical advisors when necessary to allow competent assessment of the subject matter of the proposals). In circumstances where an RFP concerns an existing lease that is to be renewed and the incumbent lessee submits a proposal in response to the RFP, the evaluation panel, in accordance with D.O. 38, shall not include any officials of the applicable park area. An official of the applicable park area may serve as a technical advisor to the evaluation panel.

Technical advisors may also be appointed to assist the panel as appropriate. Technical advisors do not need to be federal employees but must be under NPS contract.

### **3. Role of the Chair**

The chair establishes administrative and housekeeping procedures to facilitate the evaluation process, manages the proposal documents, directs the deliberations of the panel, and provides for the drafting of the evaluation summary. The chair also ensures the security of the documentation, data, and proposals during the evaluation process.

### **4. Role of the Panel**

The panel reviews all proposals received, applies the selection factors to the information contained in the proposals, and, in a discussion format, develops ratings and recommendations for each selection factor for each proposal. The panel or panel members may also participate in the drafting of the evaluation summary when requested by the chair.

### **5. Role of Technical Advisors**

Technical advisors review proposals as directed by the chair and, when requested, provide technical information and advice to the panel (e.g., the scope of existing lease operations, environmental regulations, financial analysis). Technical advisors may also participate in the drafting of the evaluation summary when requested by the chair. Technical advisors do not participate in the panel's discussions as to the merits of the proposals.

### **6. Objectivity**

The panel, and technical advisors in providing advice and assistance to the panel, is to be objective in their consideration of proposals. Pre-judgments about the merits of the proposals should not be made. The deciding official should not meet with the panel or members of the panel to discuss the proposals or the evaluation process so as to avoid the appearance of interference in the panel's deliberations.

## **C. General Evaluation and Selection Ground Rules**

### **1. Confidentiality**

The panel (and technical advisors) will not provide any information regarding the evaluation process, proposals, or results to any third person, including management or staff of the applicable park area. The chair may provide this information only as directed by the deciding official. The chair will establish a policy for the sharing of documents that will avoid improper disclosure. For example, documents should be mailed or faxed rather than transmitted electronically.

All discussions will take place during the on-site deliberations. Should additional discussions be necessary after the panel has been disbursed they should be done via conference call or the panel should be reconvened. There should be no electronic discussion of the proceedings, and the proposals should not be removed from the panel deliberation site.

These confidentiality requirements may be implemented through a Confidentiality Agreement to be signed by all panel members and technical advisors, as follows:

### **Confidentiality Agreement**

The undersigned has been advised and agrees that the materials to be reviewed in connection with the evaluation of lease proposals under the \_\_\_\_\_ RFP may contain confidential information. Accordingly, such materials and all information contained in them, and all panel discussions concerning such materials, are not to be provided or divulged to any person at any time in whole or part except as directed by the evaluation panel chair or as required by law.

Agreed: (Panel Member or Technical Advisor) Date: \_\_\_\_\_

### **2. Conflicts of Interest**

The panel and technical advisors must be able to perform their responsibilities without conflicts of interest or the appearance of conflicts of interest. Accordingly, the panel chair should ascertain that each panel member and technical advisor does not have a conflict of interest or the appearance of conflict of interest.

### **3. Material to Be Considered**

The panel will base its evaluation only on the information provided by offerors in their proposals (and any additional publicly available information, e.g., published industry data, credit reports, background reports), that the panel chair or technical advisors may provide). The panel is not to be influenced by personal knowledge or to obtain information from non-public sources.

### **4. Additional Information from Offerors**

The written proposals provide the basis of the selection decision. Only the chair may seek additional information from an offeror, whether a clarification, supplementation or amendment of its proposal. This should be done only if absolutely necessary and only after consultation with the panel and the Office of the Solicitor. 36 CFR 18.8 limits the circumstances in which this may occur.

### **5. Contacts with Offerors**

Under no circumstances is a panel member or technical advisor to contact an offeror regarding the content of its proposal. The chair may do so only in accordance with 36 CFR 18.8.

## 6. “Non-Responsive” Proposals

(a) **What is a “Non-Responsive” Proposal?** A “responsive” lease proposal is a timely submitted proposal that is determined to meet the material terms and conditions of the prospectus. A non-responsive proposal is a proposal that does not meet this test.

(b) **Panel Responsibility.** The panel may consider that one or more proposals are “non-responsive” within the meaning of 36 CFR 18.8. In these circumstances, the panel is nonetheless to evaluate and score to the extent possible all proposals that may be considered non-responsive and include the evaluation and rating in the evaluation summary. This includes proposals that appear to have been submitted late. The evaluation summary may advise the deciding official as to why the panel considers that a proposal may be non-responsive. However, a decision on the responsiveness of proposals is to be made only by the deciding official (in consultation with the Office of the Solicitor). The panel does not have the authority to make this determination.

(c) **Are “Inadequate” Proposals Necessarily “Non-Responsive”?** The fact that a proposal provides an inadequate response to one or more selection factors does not mean by itself that the proposal is “non-responsive.” In these circumstances, a low rating for the selection factor may be warranted, but not necessarily a determination of non-responsiveness. Likewise, a failure of a proposal to submit some information requested by a prospectus does not necessarily result in a determination of non-responsiveness. Rather, the deciding official must determine whether the requested information that was not provided is material to an appropriate, well-reasoned evaluation of the proposal under the applicable selection factor.

## 7. Notes

The panel and technical advisors may make notes and analyses to the extent appropriate to assist in proposal review. At the conclusion of the evaluation, the chair will collect all copies of the proposals and any notes, analyses, drafts and working diskettes from the panel and technical advisors. These materials will be destroyed by the chair as extraneous except to the extent considered necessary by the chair for support of the final evaluation summary. Destruction of extraneous material is necessary to avoid the unauthorized release of confidential financial or other proprietary information contained in proposals.

## 8. Administrative Record

The chair should maintain an administrative record of the evaluation that includes a copy of the prospectus, all proposals, the final panel evaluation summary, the memorandum forwarding the summary to the deciding official, credit reports the chair may have obtained, and any other documents the chair determines are not extraneous and should be maintained as support for the evaluation summary.

## **9. Release of Proposals and Evaluation Documents**

Lease proposals and evaluation documents are subject to release under the Freedom of Information Act, subject to non-disclosure of pre-decisional, proprietary or confidential information and to other FOIA exemptions.

### **D. The Evaluation**

#### **1. First Steps**

**(a) Opening Proposals.** The chair should open the proposals for administrative purposes (copying, inventory, etc.) after receipt. Substantive review of the proposals generally should not occur until the panel's first meeting. However, if circumstances warrant because of the number or complexity of the proposals, the chair may permit advance review by the panel or technical advisors with the understanding that no pre-judgments are to be made.

**(b) Proposal Inventory.** Prior to the first meeting of the panel, the chair should develop a brief written inventory of each proposal. The inventory may be in chart format, including the name of the offeror, date received, etc.

**(c) Numbering Documents.** Each copy of a proposal and accompanying documents should be numbered so as to assure accountability for all copies.

**(d) Establishment of Specific of Panel Procedures.** Prior to or at the first meeting of the panel, the chair should establish administrative and housekeeping procedures for evaluation of proposals as necessary. These may include assigning individual panel members primary responsibility for detailed evaluation of particular proposals or particular selection factors for all of the proposals. When particular panel members are assigned primary evaluation responsibility for a particular proposal or particular selection factors, their findings and recommendations must be reviewed and discussed by the full panel.

#### **2. Panel Meeting**

At the first meeting of the panel, the chair should describe the evaluation procedures to be followed and request that each panel member and technical advisor execute the Confidentiality Agreement. Administrative and housekeeping procedures should also be discussed. At the completion of these discussions, proposal documents should be distributed to the panel and technical advisors for review as appropriate. The panel should meet in circumstances where the members will not be distracted (no other routine work, limited telephone calls, etc.).

### **3. First Reading of Proposals**

The panel should first read all of the proposals in turn to gain an overall perspective of their content.

### **4. Thorough Review of Each Proposal**

After the first reading, each panel member should more thoroughly review each proposal, and, if requested by the chair, focus on a particular proposal or selection factor. Information in a proposal that addresses a particular selection factor or subfactor may be found not only under the selection factor itself but also elsewhere in the proposal. All information contained in the proposal that addresses a particular selection factor should be considered.

### **5. Discussion Meeting(s)**

**(a) Process.** After the panel has thoroughly reviewed the proposals, the panel meets to discuss the relative strengths and weaknesses of each proposal under each selection factor. The panel should agree during the discussions as to what information and analysis is to be included in the evaluation summary to support the panel's ratings and recommendations.

**(b) Technical Advisors.** Technical advisors may be invited to attend the discussion meeting(s) but may only comment, if requested by the chair, on technical matters under consideration by the panel. They may not participate in the panel's discussions of the merits of the proposals.

**(c) Initial Draft of the Summary Evaluation.** The chair may conduct these discussions in a manner that permits the initial draft of the evaluation summary to be developed during the discussions. For example, panel member notes may be electronically displayed and edited by the panel after discussion so as to form the basis of narrative elements of the initial draft of the evaluation summary.

## **E. Ratings**

### **1. Selection Factors**

There are five possible selection factors for lease proposals. They are:

- (a) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;
- (b) The financial capability of the offeror to carry out the terms of the lease;
- (c) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;

- (d) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and
- (e) Any other criteria the RFP may specify.

## **2. Subfactors**

An RFP may include “subfactors” under one or more of the selection factors. Subfactors may be in a variety of formats, including questions and requests for information. Subfactors are intended to further specify what information is necessary for evaluation of the proposal with respect to the more general selection factors described above.

## **3. Rating Proposals**

The panel should qualitatively rate each proposal for each selection factor. For example, the panel may use the terms “excellent, good, fair, poor” to qualitatively evaluate the responses. Subfactors are not separately rated.

## **4. The Financial Capability Selection Factor**

The “financial capability” test of this selection factor encompasses two separate aspects, the offeror’s ability to provide funds, and, the offeror’s ability to understand and deal with financial aspects of the lease. These two aspects generally are addressed by separate subfactors under this selection factor.

With respect to “financial capability” in terms of the amount of funds available, an offeror should not be considered as better just because it has more funds available than the amount necessary to acquire and maintain/operate the property available for lease. In other words, No Name Hotels should not be rated higher than a local business (that has the necessary funds available) because No Name’s resources are unlimited. However, the scope of No Name’s resources may be a factor when considering whether the necessary funds are in fact available to offerors.

## **5. Final Ratings and Recommendations**

The panel is to seek to reach a consensus among its members on the recommended rating for each selection factor. It is suggested that the panel first develop preliminary ratings for all selection factors for all proposals and then revisit the ratings to assure consistency. If a consensus cannot be reached on a particular rating, then the chair is to determine the appropriate rating upon application of the applicable selection factor to the information contained in the proposals, taking into account the views of the other panel members.



## **F. The Evaluation Summary**

### **1. Drafting**

Based on the deliberations and recommended ratings of the panel, the chair provides for the drafting (or continuation of the drafting) of the evaluation summary document. The chair, panel members, and/or technical advisors may only do the drafting.

### **2. Evaluation Summary Format**

The evaluation summary should analyze the proposals under the following format:

**(a) Selection Factor.** State the Selection Factor.

**(b) Selection Subfactors.** State the subfactors (if any) contained in the prospectus under the applicable selection factor.

**(c) Proposal Descriptions.** Under each subfactor (or selection factor if there are no subfactors), include a Proposal Description for each proposal in turn that provides factual information about the proposal's response to the subfactor in sufficient detail to allow an understanding of the information provided by the proposal and to permit comparisons with other proposals. Each Proposal Description should include page references to the proposal to allow other readers to readily find the source of information contained in the description.

**(d) Narrative Analysis.** After all the Proposal Descriptions are complete, an overall Narrative Analysis should be included that discusses the strengths and weaknesses of the proposals with respect to the overall selection factor, discussing subfactors where applicable, and, in comparison to the other proposals. Reference to the information contained in the Proposal Descriptions or to particular proposals should be made as appropriate.

**(e) Recommended Rating.** A recommended rating for each selection factor for each proposal must then be included along with a description of the rationale for each rating (if not otherwise stated in the Narrative Analysis).

**(f) Cumulative Rating.** A cumulative rating for all the proposals should be included at the end of the evaluation summary.

## **G. Selection**

### **1. Final Evaluation Summary**

After the panel's evaluation is complete, a final evaluation summary is prepared at the direction of the chair. The evaluation summary may include attachments such as spreadsheets or technical data when appropriate to support the information contained in the main body of the evaluation summary. The chair sends the proposed final evaluation summary to the Solicitor's office for legal review.

### **2. Submission of the Evaluation Summary**

After review by the Solicitor's Office, the chair, by separate memorandum, forwards the final evaluation summary to the deciding official as the recommendation of the panel as to the selection of the best proposal received in response to solicitation. The evaluation summary is to be accompanied by copies of the prospectus and copies of the proposals.

### **3. Review by Deciding Official**

The deciding official reviews the evaluation summary and accompanying documents. The deciding official, unless the deciding official asks the chair to provide more information, then makes a final decision on the selection, and, if necessary, in consultation with the Office of the Solicitor, whether any of the proposals are non-responsive within the meaning of 36 CFR 18.8. The deciding official may disagree with the recommendations of the panel. However, the basis of any disagreement must be documented and the deciding official must state in writing the basis of any ratings given that differ from those recommended in the evaluation summary.

### **4. Selection for Award**

After review by the deciding official, the best responsive proposal as determined by the deciding official is selected for the award of the lease. If two or more responsive proposals are determined as substantially equal, the deciding official shall provide an opportunity for those proposals to be amended by their offerors as necessary to select the best amended proposal. In these circumstances, the deciding official will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposal may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain substantially equal after amendment, the deciding official will select for negotiation of the lease from among these proposals the proposal determined on an overall basis to be most beneficial to effective management of the park area.

## **H. Notification and Award**

### **1. Notification**

The deciding official notifies the offerors of the selection in writing. This may be delegated but should be done within 14 days of the final approval. Express mail is recommended.

## **2. Award**

The notification must provide the selected offeror(s) a specified period of time to negotiate the final terms of the lease. (A lease is not “awarded” until formal execution by both NPS and the selected offeror.) The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, NPS may extend the negotiations, terminate the negotiations and negotiate with the offeror that submitted the next best responsive proposal, or cancel the solicitation.

## **3. Letters of Intent**

It is usual in more complex lease negotiations for NPS and the selected offeror to enter into a Letter of Intent to negotiate the final terms of the lease. A Letter of Intent is helpful as it expressly states the terms of the negotiations, including the expiration date. A Letter of Intent is also often helpful as it provides credibility to the offeror’s efforts to seek financing and related approvals for its project. In other words, lenders and related entities will know from the Letter of Intent that the possibility of an award of a lease is real and will also know the express conditions to the award.

If a Letter of Intent is to be used, the notification letter to the selected offeror should either be in the form of a Letter of Intent, or, the notification letter should enclose a Letter of Intent and state that the selection and negotiation are conditioned upon agreement to the terms of the negotiations as stated in the Letter of Intent.

A Sample Letter of Intent is contained in Attachment J to this Reference Manual.

## **I. Optional Procedures**

### **1. Park Area Issues**

During the evaluation process the chair may compile a list of issues that should be considered by the park area manager and other NPS officials. These include commitments made in the winning proposal that enhance the lease (that may be incorporated into the final lease) and/or planning or program issues raised in proposals.

### **2. Office of the Solicitor Participation**

The deciding official or chair may request that a representative of the Office of the Solicitor counsel the panel during the evaluation process as to relevant legal matters.

## ATTACHMENT A: GENERAL STATUTE

### Section 802 of P.L. 105-391

#### 16 USC 1a-2(k)

##### (1) In general

Except as provided in paragraph (2) and subject to paragraph (3), the Secretary may enter into a lease with any person or governmental entity for the use of buildings and associated property administered by the Secretary as part of the National Park System.

##### (2) Prohibited activities

The Secretary may not use a lease under paragraph (1) to authorize the lessee to engage in activities that are subject to authorization by the Secretary through a concessions contract, commercial use authorization, or similar instrument.

##### (3) Use

Buildings and associated property leased under paragraph (1) --

- (A) shall be used for an activity that is consistent with the purposes established by law for the unit in which the building is located;
- (B) shall not result in degradation of the purposes and values of the unit; and
- (C) shall be compatible with National Park Service programs.

##### (4) Rental amounts

###### (A) In general

With respect to a lease under paragraph (1)--

- (i) payment of fair market value rental shall be required; and
- (ii) section 1302 of title 40 shall not apply.

###### (B) Adjustment

The Secretary may adjust the rental amount as appropriate to take into account any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, or repair and related expenses.

###### (C) Regulation

The Secretary shall promulgate regulations implementing this subsection that includes provisions to encourage and facilitate competition in the leasing process and provide for timely and adequate public comment.

##### (5) Special account

###### (A) Deposits

Rental payments under a lease under paragraph (1) shall be deposited in a special account in the Treasury of the United States.

###### (B) Availability

Amounts in the special account shall be available until expended, without further appropriation, for infrastructure needs at units of the National Park System, including--

- (i) facility refurbishment;
- (ii) repair and replacement;
- (iii) infrastructure projects associated with park resource protection; and
- (iv) direct maintenance of the leased buildings and associated properties.

(C) Accountability and results

The Secretary shall develop procedures for the use of the special account that ensure accountability and demonstrated results consistent with this Act.

## **ATTACHMENT B: HISTORIC STATUTE**

### **16 USC 470h-(3)**

Sec. 470h-3. Lease or exchange of historic property

(a) Authorization; consultation with Council

Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

(b) Proceeds of lease for administration, etc., of property; deposit of surplus proceeds into Treasury

The proceeds of any lease under subsection (a) of this section may, notwithstanding any other provision of law, be retained by the agency entering into such lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to such property or other properties which are on the National Register which are owned by, or are under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

(c) Contracts for management of historic property

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of the historic property.

## **Attachment C: PART 18**

### **36 CFR Part 18**

#### **PART 18--LEASING OF PROPERTIES IN PARK AREAS –**

##### **Table of Contents**

###### **Sec.**

- 18.1 What is the authority and purpose for this part?
- 18.2 What definitions do you need to know to understand this part?
- 18.3 What property may be leased?
- 18.4 What determinations must the Director make before leasing property?
- 18.5 May property be leased without receiving fair market value rent?
- 18.6 Are there limitations on the use of property leased under this part?
- 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?
- 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?
- 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?
- 18.10 How long can the term of a lease be?
- 18.11 What general provisions must a lease contain?
- 18.12 What specific provisions must a lease contain?

**Authority:** 16 U.S.C. 1 et seq., particularly 16 U.S.C. 1a-2(k), and, 16 U.S.C. 470h-3.

**Source:** 66 FR 66759, Dec. 27, 2001, unless otherwise noted.

###### **Sec. 18.1 What is the authority and purpose for this part?**

16 U.S.C. 1 et seq., particularly 16 U.S.C. 1a-2(k), and, 16 U.S.C. 470h-3 are the authorities for this part. These authorities allow the Director (or delegated officials) to lease certain federally owned or administered property located within the boundaries of park areas. All leases to be entered into by the Director under these authorities are subject to the requirements of this part, except that, proposed leases that were solicited pursuant to this part prior to January 28, 2002, may be executed in accordance with the terms of the solicitation.

###### **Sec. 18.2 What definitions do you need to know to understand this part?**

In addition to the definitions contained in 36 CFR Part 1, the following definitions apply to this part:

(a) Associated property means land and/or structures (e.g., parking lots, retaining walls, walkways, infrastructure facilities, farm fields) related to a building or buildings and their functional use and occupancy.

(b) Building means an enclosed structure located within the boundaries of a park area and constructed with walls and a roof to serve a residential, industrial, commercial, agricultural or other human use.

(c) Commercial use authorization means a written authorization to provide services to park area visitors issued by the Director pursuant to Section 418 of Public Law 105-391 and implementing regulations.

(d) Concession contract has the meaning stated in 36 CFR part 51.

(e) 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 lesser and the lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Determinations of fair market value rent under this part are to be made taking into account the considerations stated in Sec. 18.5.

(f) Historic building means a building or buildings located within the boundaries of a park area if the building is part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(g) Historic land means land located within the boundaries of an historic property.

(h) Historic property means building(s) and land located within the boundaries of a park area if the building(s) and land are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(i) Land means unimproved real property.

(j) Lease means a written contract entered into under the authority of this part through which use and possession of property is granted to a person for a specified period of time.

(k) Non-historic building is a building (or buildings) and its associated property located within the boundaries of a park area but not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(l) Non-historic land means land located within the boundaries of a park area that is not associated property and is not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(m) Non-historic property means building(s) and/or land that are located within the boundaries of a park area but are not part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

(n) Park area means a unit of the national park system.

(o) Property means both historic and non-historic property that is located within the boundaries of a park area and is federally owned or administered.

(p) Request for bids refers to the lease bid process described in Sec. 18.7.



(q) Request for proposals refers to the lease proposal process described in Sec. 18.8.

(r) Responsive bid or proposal means a timely submitted bid or proposal that meets the material requirements of a request for bids or a request for proposals.

### **Sec. 18.3 What property may be leased?**

(a) In general. The Director may lease any property (except non-historic land) under this part if the Director makes the determinations required by Sec. 18.4.

(b) Non-historic land. Non-historic land may not be leased under this part. Certain non-historic land is eligible for leasing under 36 CFR part 17.

### **Sec. 18.4 What determinations must the Director make before leasing property?**

Before leasing property in a park area under this part, the Director must determine that:

(a) The lease will not result in degradation of the purposes and values of the park area;

(b) The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;

(c) The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;

(d) The lease is compatible with the programs of the National Park Service;

(e) The lease is for rent at least equal to the fair market value rent of the leased property as described in Sec. 18.5;

(f) The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument; and

(g) If the lease is to include historic property, the lease will adequately insure the preservation of the historic property.

### **Sec. 18.5 May property be leased without receiving fair market value rent?**

Property may be leased under this part only if the lease requires payment of rent to the government equal to or higher than the property's fair market value rent. The determination of fair market value rent shall take into account:

(a) Any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and

(b) Any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.

#### **Sec. 18.6 Are there limitations on the use of property leased under this part?**

(a) A lease issued under this part may authorize the use of the leased property for any lawful purpose, subject to the determinations required by Sec. 18.4 and the limitations on activities set forth in paragraph (b) of this section.

(b) Unless otherwise authorized by law, a lease issued under this part may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if the Director determines in accordance with 36 CFR part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization if the Director determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization.

#### **Sec. 18.7 How are lease proposals solicited and selected if the Director issues a Request for Bids?**

(a) If the amount of the rent is the only criterion for award of a lease, the Director may solicit bids through issuance of a request for bids as described in this section. If historic property is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) at an appropriate time during the leasing process.

(b) A request for bids under this section shall be advertised by public notice published at least twice in local and/or national newspapers of general circulation. The notice shall provide at least a thirty (30) day period from the last date of publication for the submission of sealed bids. The notice will provide necessary information to prospective bidders. It may specify a minimum rent and/or require submission of a rent deposit or advance rent payment. Bids will be considered only if timely received at the place designated in the request. Bids must be in the form specified by the Director, or, if no form is specified, a bid must be in writing, signed by the bidder or authorized representative, state the amount of the bid, and refer to the applicable public notice. If the notice requires submission of a rent deposit or advance rent payment, the bids must include the required funds in the form of a certified check, post office money order, bank drafts, or cashier's checks made out to the United States of America. The bid (and payment where applicable) must be enclosed in a sealed envelope upon which the bidder shall write: "Bid on lease of property of the National Park Service" and shall note the date the bids are to be opened.

(c) Bids will be opened publicly by the Director at a time and place specified in the public notice. Bidders or their representatives may attend the bid opening. The bidder submitting a responsive bid offering the highest rent will be selected for award of the lease (subject to a determination of financial capability by the Director). A responsive bid is a bid that meets the material terms and conditions of the request for bids. The Director shall accept no bid in an amount less than the fair market rental value as determined by the Director. If two or more bids are equal, a drawing shall make the lease award by lot limited to the equal responsive bids received.

(d) When a property is to be leased through a request for bids, the bidder that is declared by the Director to be the high bidder shall be bound by his bid and this part to execute the offered lease, unless the bid is rejected. If the declared high bidder fails to enter into the lease for any reason, the Director may choose to enter into the lease with the next highest bidder (if that bidder offered to pay at least the fair market rent value). The Director may reject any and all bids in his discretion and resolicit or cancel a lease solicitation under this part at any time without liability to any person.

### **Sec. 18.8 How are lease proposals solicited and selected if the Director issues a Request for Proposals?**

(a) When the award of a lease is to be based on selection criteria in addition to or other than the amount of the rent, the Director must, subject to Sec. 18.9, solicit proposals for the lease through issuance of a public Request for Proposals (RFP).

(b) An RFP may be preceded by issuance of a public Request for Qualifications (RFQ). The purpose of an RFQ is to select a "short list" of potential offerors that meet minimum management, financial and other qualifications necessary for submission of a proposal in response to an RFP. If the Director issues an RFQ, only persons determined as qualified by the Director under the terms of the RFQ shall be eligible to submit a proposal under the related RFP.

(c) The Director must provide public notice of the leasing opportunity by publication at least twice in local and/or national newspapers of general circulation and/or through publication in the Commerce Business Daily. The public notice shall contain general information about the leasing opportunity and advise interested persons how to obtain a copy of the RFP (or RFQ where applicable). The RFP (and RFQ where applicable) shall contain appropriate information about the property proposed for lease, including limitations on the uses of the property to be leased, information concerning the leasing process, information and materials that must be contained in a proposal, the time and place for submission of proposals, terms and conditions of the lease, and the criteria under which the Director will evaluate proposals. The RFP may state the fair market value rent as the minimum acceptable rent if determined by the Director at that time. The RFP (and RFQ where applicable) must allow at least sixty (60) days for submission of proposals (or qualifications under an RFQ) unless a shorter period of time is determined to be sufficient in the circumstances of a particular solicitation.

(d) The Director may determine that a proposal is non-responsive and not consider it further. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of the RFP. After the submission of offers and prior to the selection of the best overall proposal, the Director may request from any offeror additional information or written clarification of a proposal, provided that proposals may not be amended after the submission date unless all offerors that submitted responsive proposals are given an opportunity to amend their proposals. The Director may choose to reject all proposals received at any time and resolicit or cancel a solicitation under this part without liability to any person.

(e) (1) The criteria to be used in selection of the best proposal are:

(i) The compatibility of the proposal's intended use of the leased property with respect to preservation, protection, and visitor enjoyment of the park;

(ii) The financial capability of the offeror to carry out the terms of the lease;

(iii) The experience of the offeror demonstrating the managerial capability to carry out the terms of the lease;

(iv) The ability and commitment of the offeror to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling; and

(v) Any other criteria the RFP may specify.

(2) If the property to be leased is an historic property, the compatibility of the proposal with the historic qualities of the property shall be an additional selection criterion. If the RFP requires proposals to include the amount of rent offered, the amount of rent offered also shall be an additional selection criterion.

(f) The Director will evaluate all responsive proposals received.

The responsive proposal determined by the Director to best meet on an overall basis the evaluation criteria will be selected for negotiation of the lease. If two or more responsive proposals are determined by the Director to be substantially equal under the evaluation criteria, the Director shall provide an opportunity for those proposals to be amended by their offerors as necessary for the Director to select the best amended proposal. In such circumstances, the Director will provide each offeror that submitted a substantially equal proposal appropriate information as to how their proposals may be amended in order to enhance the possibility of selection as the best amended proposal. If two or more proposals remain as substantially equal after amendment, the Director will select for negotiation of the lease from among these proposals the proposal that the Director determines on an overall basis will be most beneficial to effective management of the park area.

(g) The Director will provide the offeror that submitted the best overall responsive proposal as determined by the Director a specified period of time to negotiate the final terms of the lease (and may enter into a letter of intent to negotiate in this connection). The final terms of the lease must be consistent with the requirements of the RFP. If the negotiations do not result in an executed lease within the specified time period, the Director, in his discretion, may extend the negotiation period, terminate negotiations and negotiate with the offeror that submitted the next best responsive proposal, or, cancel the solicitation.

(h) RFPs may state that the amount of rent to be paid will be negotiated subsequently with the offeror that submitted the best proposal, initially or as amended. The Director may execute a lease only if the Director determines that it requires the lessee to pay at least the fair market value rent of the leased property.

(i) The Director may execute a lease that includes historic property only after complying with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation).

### **Sec. 18.9 When may the Director lease property without issuing a request for bids or a request for proposals?**

The Director, except as provided in this section, may not lease property without issuing a request for bids or a request for proposals in compliance with Sec. 18.7 or Sec. 18.8. The Director under this part

may enter into leases with non-profit organizations (recognized as such by the Internal Revenue Service) or units of government without complying with Sec. Sec. 18.7 or 18.8 if the Director determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area. All other requirements of this part are applicable to leases entered into or to be entered into under authority of this section. The Director may enter into leases under this part with a term of sixty (60) days or less without complying with Sec. Sec. 18.7 or 18.8 if the Director determines that to do so is in the best interests of the administration of the park area. If historic land is to be leased under the authority of this section, the Director must comply with 36 CFR part 800 (commenting procedures of the Advisory Council on Historic Preservation) before entering into the lease.

#### **Sec. 18.10 How long can the term of a lease be?**

All leases entered into under this part shall have as short a term as possible, taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. No lease shall have a term of more than 60 years. Leases entered under the authority of this part may not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if the Director determines that an extension is necessary because of circumstances beyond the Director's control.

#### **Sec. 18.11 What general provisions must a lease contain?**

All leases entered into under this part must contain terms and conditions that are determined necessary by the Director to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property.

#### **Sec. 18.12 What specific provisions must a lease contain?**

All leases entered into under this part must contain:

- (a) A termination for cause or default provision;
- (b) Appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease;
- (c) Appropriate provisions stating that subletting of a portion of the leased property and assignment of a lease, if permissible under the terms of the lease, must be subject to the Director's written approval. Such subleases and assignments shall be approved only if the Director determines, among other relevant matters, that the proposed sub-lessee or assignee is financially and managerially capable of carrying out the terms of the lease. Assignment of a lease for the purpose of effectuating an encumbrance to the lease or the leased property is subject to approval pursuant to the requirements of paragraph (1) of this section;
- (d) Appropriate provisions requiring the lessee to secure and maintain from responsible companies liability insurance sufficient to cover losses connected with or occasioned by the use and activities authorized by the lease. Types and amounts of insurance coverage will be specified in writing and periodically reviewed by the Director;

(e) Appropriate provisions, unless the Director determines otherwise in the circumstances of a particular lease, requiring the lessee to obtain from responsible companies casualty insurance (including flood insurance if applicable) in an amount sufficient to protect the interests of the lessee and the government. In the event of casualty, the lessee shall be required to repair or replace damaged or destroyed property unless otherwise determined by the Director;

(f) Appropriate provisions requiring the lessee to save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, or judgments and expenses resulting from personal injury, death or property damage of any nature arising out of the lessee's activities under the lease, and/or the activities of the lessee's employees, subcontractors, sub-lessees, or agents. No lease entered into this part may contain provisions intended to provide indemnification or other assurances to the lessee regarding the conduct or activities of the Director concerning the lease or the administration of the applicable park area. Leases may contain appropriate provisions that commit the Director to accept responsibility for tortious actions of government officials to the extent authorized by the Federal Torts Claim Act or as otherwise expressly authorized by law;

(g) Appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee and to pay all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities;

(h) Appropriate provisions stating that the lessee has no rights of renewal of the lease or to the award of a new lease upon lease termination or expiration and that the lease is subject to cancellation by the Director in the exercise of the sovereign authority of the United States to the extent provided by applicable law;

(i) Appropriate provisions stating that the lessee may not construct new buildings or structures on leased property, provided that, a lease may contain appropriate provisions that authorize the lessee to construct, subject to the prior written approval of the Director, minor additions, buildings and/or structures determined by the Director to be necessary for support of the authorized activities of the lessee and otherwise to be consistent with the protection and purposes of the park area. Approval by the Director of new construction may only be granted if the Director makes the determinations required by Sec. 18.4;

(j) Appropriate provisions requiring that:

- (1) Any improvements to or demolition of leased property to be made by the lessee may be undertaken only with written approval from the Director;
- (2) That any improvements to or demolition of historic property may only be approved if the Director determines that the improvements or demolition complies with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR part 68); and
- (3) Any improvements made by a lessee shall be the property of the United States;

(k) Appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property. The types of activities described in a lease may be modified from time to time with the approval of the Director through an amendment to the lease. The Director may approve modified activities only if the determinations required by Sec. 18.4 remain valid under the proposed modified activities and the proposed activities are otherwise determined appropriate by the Director;

(l) Appropriate provisions, unless the Director determines not to permit pledges or encumbrances in the circumstances of a particular lease, authorizing the lessee to pledge or encumber the lease as security, provided that any pledge or encumbrance of the lease and the proposed holder of the pledge or encumbrance must be approved in writing in advance by the Director and that a pledge or encumbrance

may only grant the holder the right, in the event of a foreclosure, to assume the responsibilities of the lessee under the lease or to select a new lessee subject to the approval of the Director. Pledges or encumbrances may not grant the holder the right to alter or amend in any manner the terms of the lease;

(m) Appropriate provisions stating that fulfillment of any obligations of the government under the lease is subject to the availability of appropriated funds. No lease issued under authority of this part shall entitle the lessee to claim benefits under the Uniform Relocation Assistance Act of 1970 (Public Law 91-646) and all leases entered into under the authority of this part shall require the lessee to waive any such benefits; and

(n) Appropriate provisions granting the Director and the Comptroller General access to the records of the lessee as necessary for lease administration purposes and/or as provided by applicable law.

## ATTACHMENT D: DIRECTOR'S ORDER 38: REAL PROPERTY LEASING

Approved: 1/19/06 /s/ Director

Effective Date: 1/19/06

### Table of Contents

- I. Background and Purpose
- II. Authority to Issue this Director's Order
- III. Delegation of Authority
- IV. Policy Guidance
- V. Administrative Record
- VI. Use of Leased Property
- VII. Part 18 Leasing Requirements

### I. BACKGROUND AND PURPOSE

This Director's Order applies to the leasing of National Park Service real property under the authority of 36 CFR Part 17 (Part 17) and 36 CFR Part 18 (Part 18). It supersedes any conflicting guidance with respect to leasing, including section 5.3.3 of NPS *Management Policies*, which became obsolete when Part 18 was adopted.

**A. Relationship between Part 17 and Part 18 Leases.** 36 CFR Part 17 provides NPS authority to lease certain park area lands through a competitive bidding award process. However, as Part 17 is limited in its application (see Section IV below) and as NPS does not have authority to retain rent proceeds under Part 17 leases, most NPS leases will be accomplished under Part 18. Part 18 provides effective leasing authority (including a competitive bidding award process comparable to that of Part 17) without the limitations of Part 17.

Accordingly, this Director's Order focuses on Part 18 leases and does not establish separate policies for Part 17. However, the provisions of this Director's Order apply to Part 17 leases to the extent indicated in the text.

**B. Limitations.** The issuance of Part 17 or Part 18 leases by NPS is discretionary and may be undertaken only when the deciding official has determined that the proposed lease is in the best interests of the management of the applicable park area and is otherwise consistent with the requirements of 36 CFR Part 17 or 18 (as applicable) and this Director's Order. In general, in order for NPS real property to be eligible for Part 17 or 18 leasing, the deciding official must determine that the property is not needed for park area purposes and that the lease will not result in degradation of the purposes and values of the park area. Specific required determinations for Part 17 and 18 leases are set forth below.

**C. Regulations Control.** The purpose of this Director's Order is to provide summary and supplemental guidance to assist in the implementation of Parts 17 and 18. Since these regulations contain many additional procedures and requirements not described or only partially described in this Director's Order, it is imperative that NPS managers who wish to engage in leasing activities take the time to read and follow the requirements of Parts 17 or 18 (as applicable). In the event of any inconsistency between this



Director's Order and the applicable regulation, the regulation will control. In addition, the discussion of leases contained in Section 5.3.3 of NPS *Management Policies 2001* was superseded by the subsequent adoption of Part 18. Therefore, Section 5.3.3 is no longer in effect with respect to leases. (However, the cooperative agreement guidance in Section 5.3.3 remains in effect.)

**D. Enforceability.** This Director's Order is intended only to improve NPS internal management and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, officers or employees, or any other person.

## II. AUTHORITY TO ISSUE THIS DIRECTOR'S ORDER

The authority to issue this Director's Order is contained in 16 USC §§ 1 through 4, and in delegations of authority contained in Part 245 of the Department of the Interior Manual.

## III. DELEGATION OF AUTHORITY

**A. Management Responsibility.** The Associate Director for Administration, Business Practices and Workforce Development, through the Office of Concessions Management, will manage the NPS leasing program. The Associate Director will prepare and make available a Leasing Reference Manual for Part 18. It will contain model leases, model prospectuses, and guidelines for issuing and managing Part 18 leases. It will also provide information that would be useful to any Part 17 leases that may be considered.

**B. "Deciding Official."** Authority to execute Part 17 and 18 leases and make the related determinations required by the applicable regulation (i.e., to be the "deciding official") is hereby vested in the responsible regional director, with authority to delegate this responsibility to the applicable superintendent where appropriate. An authorizing signature from a warranted contracting officer is not required.

**C. Prior Approval.** Prior to their execution by the deciding official, the Director must approve—

- Proposed leases with terms of more than ten (10) years;
- Proposed leases or lease amendments that provide for a leasehold mortgage or similar encumbrance; and
- Proposed amendments of existing leases that required the Director's approval prior to execution.

**D. Format.** A Part 17 or 18 lease may be in any form acceptable to the deciding official, provided that it meets the requirements of Part 17 or 18 (as applicable) and this Director's Order.

**E. Solicitor's Review.** A Part 17 or 18 lease may not be awarded or amended without the written approval of the applicable unit of the Solicitor's Office as to the legal sufficiency of the lease document or amendment and its award process under the terms of Part 17 or 18 (as applicable).

## IV. POLICY GUIDANCE

**A. Property Subject to Part 17 Leasing.** Only federally owned property that was acquired from non-federal sources and that is located within the boundaries of a park area that is not designated as a national park or as a national monument of scientific significance is eligible for Part 17 leasing. In addition, the park area's General Management Plan must designate property proposed to be leased under Part 17 leased as a Special Use Zone for the proposed uses under the lease and other conditions of Part 17 and this Director's Order must be met. The award of a Part 17 lease is discretionary. A decision to issue a Part 17

lease is subject to applicable compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA).

**B. Property Subject to Part 18 Leasing.** All types of real property owned or administered by NPS (except non-historic land as defined in Part 18 ) are subject to leasing under the authority of 36 CFR Part 18 if all conditions of 36 CFR Part 18 and this Director's Order are met. The award of a Part 18 lease is discretionary. A decision to issue a Part 18 lease is subject to applicable compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA).

**C. Required Determinations.** A Part 17 or 18 lease requires the following determinations to be made by the deciding official:

- (1) The lease will not result in degradation of the purposes and values of the park area;
- (2) The lease will not deprive the park area of property necessary for appropriate park protection, interpretation, visitor enjoyment, or administration of the park area;
- (3) The lease contains such terms and conditions as will assure the leased property will be used for activity and in a manner that are consistent with the purposes established by law for the park area in which the property is located;
- (4) The lease is compatible with the programs of the NPS;
- (5) The lease is for rent at least equal to the fair market value rent of the leased property;
- (6) The proposed activities under the lease are not subject to authorization through a concession contract, commercial use authorization or similar instrument;
- (7) If the lease is to include historic property, the lease will adequately insure the preservation of the historic property. (In addition, a lease that includes historic property may be executed by NPS only after compliance with the CFR Part 800, the commenting procedures of the Advisory Council on Historic Preservation); and,
- (8) Specific required determinations of Part 17 or 18 (as applicable).

## **V. ADMINISTRATIVE RECORD**

An appropriate administrative record of each Part 17 or 18 lease transaction must be developed and maintained. The record must be in writing and contain, as appropriate, dates, discussions and the rationale involved in the decision process. In addition, the administrative record must contain all letters, compliance documentation, important notes, and other documents concerned with the issuance of the lease, including a copy of the executed lease and any amendments to the lease. The administrative record will be maintained in the park area files for at least six years and three months following expiration or termination of the lease. (See also Director's Order #19: Records Management, and Director's Order #88: Documents Needed for Litigation.)

## VI. USE OF LEASED PROPERTY

**A. In General.** A Part 17 or 18 lease may authorize the use of the leased property for any lawful purpose, subject to the required determinations set forth above and the limitation described in section VI.B., below. A Part 17 or 18 lease may also limit the use of the leased property to specific uses.

**B. Concession Activities.** A Part 17 or 18 lease may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if NPS determines in accordance with 36 CFR Part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization or similar instrument if NPS determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization or similar instrument.

## VII. PART 18 LEASING REQUIREMENTS

### A. Award of Part 18 Leases.

- (1) **In General.** There are three methods available for processing awards of Part 18 leases: (a) issuance of a Request for Bids (RFB); (b) issuance of a Request for Proposals (RFP); and (c) non-competitive award in limited circumstances. "Award" of a Part 18 lease under any of these methods occurs only when the lease is fully executed by both parties.
- (2) **Request for Bids.** If the amount of the rent is the only criterion for award of a Part 18 lease, NPS may solicit bids through issuance of a Request for Bids under the procedures described in 36 CFR 18.7.
- (3) **Request for Proposals.** When the award of a lease is to be based on selection criteria in addition to or other than the amount of the rent, NPS, except as described below, must solicit proposals for the lease through issuance of a public Request for Proposals in accordance with the terms of 36 CFR 18.8. The criteria to be used in selection of the best proposal for award of the lease are contained in 36 CFR 18.8.

Where multiple properties are offered for separate leases under a single RFP, the RFP must advise offerors as to how to specify the property or properties the offeror wishes to lease and of any special procedures NPS will use to evaluate proposals with respect to the multiple properties available for lease under the terms of the RFP.

When a lease award is to be made through an RFP process, all lease proposals received will be reviewed by an evaluation panel that is to make written recommendations to the deciding official as to the relative merits of the proposals. An evaluation panel should have a chairperson appointed by the deciding official and at least two other members. All members of the evaluation panel must be federal officials. The chair may retain technical advisors to the panel. Technical advisors do not need to be federal officials.

In circumstances where an RFP concerns an existing or prior lease that is to be reissued and the incumbent or prior lessee submits a proposal in response to the RFP, the evaluation panel shall not

include any officials of the applicable park area. An official of the applicable park area may serve as a technical advisor to the evaluation panel.

(4) **Non-Competitive Award.** NPS generally may not enter into a Part 18 lease without issuing an RFB or RFP in accordance with 36 CFR 18.7 or 36 CFR 18.8. NPS may, however, enter into Part 18 leases in accordance with the terms of 36 CFR 18.9 on a non-competitive basis in two circumstances:

(a) The Part 18 lease is with a non-profit organization (recognized as such by the federal Internal Revenue Service) or a unit of government and the NPS determines that the non-profit or governmental use of the property will contribute to the purposes and programs of the park area; or

(b) The Part 18 lease is short-term (sixty (60) continuous days or less) and NPS determines that to award the lease non-competitively is in the best interests of the administration of the park area.

All other requirements of 36 CFR Part 18 are applicable to Part 18 leases, even though awarded non-competitively. This includes the requirement that a lessee is not entitled to renewal of its lease or to the award of a new lease upon lease termination or expiration.

In situations where a Part 18 lease could be awarded but the same uses could also be permitted under a special use permit or other authorization, the deciding official is to issue the form of authorization most appropriate in the circumstances. However, the deciding official must be consistent in this decision. That is, if a Part 18 lease or special use permit is issued for a particular type of use, then the same form of authorization is to be issued in all instances of that type of use. This is to avoid the possibility that park area users may be issued differing types of use authorizations for the same type of use.

## **B. Part 18 Lease Provisions.**

### **(1) Term of Leases and Lease Extensions and Renewals**

(a) Term of Lease. A Part 18 lease is to have a term that is as short as possible taking into account the financial obligations of the lessee and other factors related to determining an appropriate lease term. A lease may not have a term of more than sixty (60) years. Sixty year leases are permissible if the deciding official determines that such a term is necessary in order to provide a viable leasing opportunity in light of investment requirements and other relevant factors.

(b) Extensions. Part 18 leases may not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if the deciding official determines that an extension is necessary because of circumstances beyond the control of NPS.

(c) Renewals. A lessee is not entitled to renewal of its lease or to the award of a new lease upon lease termination or expiration. Unless otherwise qualified for non-competitive award under Part 18, renewal of a lease (or issuance of a new lease replacing a prior lease) must be accomplished in accordance with the competitive processes set forth in Part 18.

**(2) Specific Lease Provisions**

All Part 18 leases must contain the required provisions set forth in 36 CFR 18.12. In addition, all Part 18 leases must contain terms and conditions that are determined necessary by the deciding official to assure use of the leased property in a manner consistent with the purposes of the applicable park area as established by law, and where applicable, to assure the preservation of historic property.

**C. Rent.**

(1) **Payment of Rent.** Part 18 leases must contain appropriate provisions requiring the lessee to pay NPS at least the fair market value rent of the leased property. In accordance with Part 18, the determination of fair market value rent for a lease must take into account (a) any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property, and (b) any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property. “Fair market value rent” is defined in 36 CFR 18.2.

(2) **Use of Rent Proceeds.** Except as otherwise provided by law, including, 16 USC 470h-3 with respect to historic properties, rent proceeds from Part 18 leases are to be deposited in a special account in the Treasury of the United States and will be available until expended for infrastructure needs of the applicable park area, including, without limitation, facility refurbishment, repair and replacement, infrastructure projects associated with park resource protection, and direct maintenance of the leased property.

-----*End of Director's Order*-----

**Attachment E: SAMPLE LEASE (IMPROVEMENTS)**

**SAMPLE LEASE (IMPROVEMENTS)**

**TABLE OF CONTENTS**

**Section 1. DEFINITIONS**

**Section 2. LEASE OF PREMISES**

- 2.1. Lease of Premises; Reservation of Rights
- 2.2 Waiver
- 2.3 Easements
- 2.4 Ownership of the Premises
- 2.5 Historic Property

**Section 3. Acceptance of the Premises**

- 3.1 As Is Condition of the Premises
- 3.2 Lessee's Due Diligence
- 3.3 Inventory and Condition Report

**Section 4. LEASE TERM AND ABANDONMENT**

- 4.1 Lease Term
- 4.2 Abandonment

**Section 5. RENT**

- 5.1 Net Lease and Rent Payments
- 5.2 Annual Rent
- 5.3 CPI Adjustment
- 5.4. Percentage Rent
- 5.5 Rent Reconsideration

**Section 6. USES OF PREMISES**

- 6.1 Authorized Uses
- 6.2 Changes to Authorized Uses
- 6.3 Applicable Laws
- 6.4 Forbidden Uses
- 6.5 Site Disturbance

6.6 Protection of Cultural and Archeological Resources

6.7 Signs

6.8 Permits and Approvals

6.9 Alterations

**Section 7. RECORDS AND AUDITS**

**Section 8. INITIAL IMPROVEMENTS BY LESSEE**

**Section 9. CONSTRUCTION APPROVAL**

9.1 In General

9.2 Enforced Delays

9.3 Utilities During Construction

9.4 Approval of Construction

9.5 Site Inspection

9.6 Construction Documents

9.7 General Scope of Review

9.8 Changes to Approved Construction Documents

9.9 Special Considerations for Historic Property

9.10 Evidence of Adequate Funds

9.11 Building Permit

9.12 Construction Completion Procedures

9.13 Lessor's Right to Utilize Construction Documents

**Section 10. MAINTENANCE AND REPAIR**

10.1 Lessee's Responsibilities

10.2 Maintenance Plan

10.3 Preservation Maintenance Plan

10.4 Maintenance Reserve Account

**Section 11. UTILITIES**

**Section 12. HAZARDOUS MATERIALS**

**Section 13. INSURANCE AND INDEMNIFICATION**

13.1 Insurance During the Lease Term

13.2 Insurance Requirements Modification

13.3 Disposition of Insurance Proceeds

13.4 Inadequate Insurance Coverage

13.5 Indemnity

**Section 14. DAMAGE OR DESTRUCTION**

14.1 Damage or Destruction; Duty to Restore

14.2 No Termination; No Effect on Rental Obligation

**Section 15. LIENS**

15.1 No Power in Lessee to Create

15.2 Discharge of Liens by Lessee

15.3 No Consent or Waiver by Lessor

**Section 16. ASSIGNMENTS AND ENCUMBRANCES**

16.1 Assignments

16.2 Encumbrances

**Section 17. DEFAULTS AND LESSOR'S REMEDIES**

17.1 Termination for Default

17.2 Bankruptcy

17.3 No Waiver

17.4 Lessor's Right to Cure Defaults

**Section 18. SURRENDER AND HOLDING OVER**

18.1 Surrender of the Premises

18.2 Holding Over

**Section 19. EQUAL OPPORTUNITY LAWS**

**Section 20. NOTICES**

**Section 21. GENERAL PROVISIONS**

**Exhibit A: Inventory and Condition Report**

**Exhibit B: Insurance Requirements**



## SAMPLE LEASE (Improvements)

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

**WITNESSETH THAT:**

**WHEREAS, Congress designated \_\_ [name of Park Area] \_\_\_\_\_  
\_\_\_\_\_ (Park Area) as a unit of the national park system;**

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

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

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

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

### **Section 1. DEFINITIONS**

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

**1.1. Alterations** – means any construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises other than Initial Improvements.

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

**1.3. Annual Rent** – means the annual fixed rent to be paid to Lessor by Lessee under Section 5.

**1.4. Assignment** - means the transfer, whether it is direct or indirect, voluntary or by operation of law, assignment, sale, or conveyance, of the Lessee's leasehold estate, or the Lessee's rights under this Lease in whole or part. Such transfer may be designated as a sale, a conveyance, or an assignment. The sale, conveyance, or assignment (including by consolidation, merger or reorganization) of a controlling interest in the Lessee (if such entity is a corporation), or any sale or other transfer of a controlling interest in the partnership interests (if such entity is a partnership), whether in a single transfer or in a series of related transfers, and whether directly or by sales or transfers of underlying partnership or corporate ownership interests, is an Assignment. For a corporate entity, the term "controlling interest" means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee. For a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneur, "controlling interest" means the beneficial ownership of the capital assets of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee.

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

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

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

**1.8. FF&E** – means all furniture, fixtures and equipment in or on the Premises.

**1.9. Hazardous Materials** – means any material or other substance: (a) that requires investigation or correction under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, contains radon gas. The term Hazardous Materials as used in this Lease includes Pre-Existing Hazardous Materials unless otherwise stated in a particular provision of this Lease.

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

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

**1.12. Improvements** – refers collectively to any Alterations and Initial Improvements.

**1.13. Initial Improvements** – means the construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises as may be described in Section 8 of this Lease that the Lessee is required to make at the commencement of this Lease.

**1.14. Interest Rate** – means the percentage of interest charged based on the current value of funds to the United States Treasury that is published annually in the “Federal Register” or successor publication.

**1.15. Inventory and Condition Report** – means the document contained in Exhibit A to this Lease that describes the FF&E in the Premises and the condition of the Premises (including FF&E) as of the Commencement Date.

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

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

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

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

**1.20. Park Area** - means [state the name of the Park Area].

**1.21. Part 18** – means Part 18 of Volume 36 of the Code of Federal Regulations.

**1.22. Personal Property** – means all furniture, fixtures, equipment, appliances, and apparatus placed in or on the Premises that are neither permanently attached to nor form a part of the Premises.

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

**1.24. Premises** – means the property of the Park Area that is described in Section 2 of this Lease.

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

**1.26. Rent** - means the rent to be paid Lessor by Lessee described in Section 5 of this Lease and any additional Rent this Lease may require.

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

**1.28. Sublease** - means an agreement under which the Lessee grants a person or entity (a Sublessee) the right to use, occupy, or possess a portion of the Premises.

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

## **Section 2. LEASE OF PREMISES**

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

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

[Description of the leased property]

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

(c) Excepting and reserving to the Lessor the right, at reasonable times and (except in case of emergency) following advance notice to the Lessee, to enter and to permit any governmental agency, public or private utilities and other persons to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered;

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

### **2.2. Waiver**

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

### **2.3. Easements**

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

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

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

### **2.5. Historic Property**

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

[Delete the inapplicable bracketed statement and remove the brackets from the remaining one.]

## **Section 3. ACCEPTANCE OF THE PREMISES**

### **3.1. As Is Condition of the Premises**

The Lessee agrees to lease the Premises in their existing “as is” condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make, any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving trade from or other characteristics of the Park Area, the economic or programmatic feasibility of the Lessee’s use and occupancy of the Premises, or hazardous materials on or in the vicinity of the Premises.

### **3.2. Lessee’s Due Diligence**

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

### **3.3. Inventory and Condition Report**

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

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

### **4.1. Lease Term**

The Lease Term shall be a period of \_\_\_\_\_ ( ) years commencing on \_\_\_\_\_ (Commencement Date) and expiring on \_\_\_\_\_ (Expiration Date) or ending on such earlier date

as this Lease may be terminated in accordance with its terms (Termination Date); provided, however, that if the Lessee fails to timely complete Initial Improvements in accordance with the Construction Documents, this Lease shall be for a term of \_\_\_\_\_( ) years, expiring on \_\_\_\_\_ unless terminated earlier in accordance with its terms.

#### **4.2. Abandonment**

The Lessee shall occupy the Premises during the entire Lease Term. If it fails to do so, the Lessee may be determined as in Default for abandoning the Premises. Occupancy is not required if the Lessor determines it infeasible because of the construction of Improvements.

### **Section 5. RENT**

#### **5.1. Net Lease and Rent Payments**

(a) All Rent shall be absolutely net to Lessor without any abatement, deduction, counterclaim, set-off or offset. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises, including, without limitation, all taxes and assessments.

(b) All Rent payments consisting of \$10,000 or more shall be deposited electronically by the Lessee using the Treasury Financial Communications System. At Lessor's option, Rent payments of shall be payable by wire transfer or other electronic means to such account as Lessor may from time to time designate. Interest at the Interest Rate will be assessed on overdue Rent payments. The Lessor may also impose penalties for late Rent payments to the extent authorized by Applicable Law.

#### **5.2. Annual Rent**

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

#### **5.3. CPI Adjustment** [May be deleted for leases with a term of less than five years.]

The Annual Rent will increase effective as of the beginning of the second Lease Year and annually thereafter during the Lease Term to reflect the proportionate cumulative increase in the CPI, if any, during the previous Lease Year. For purposes of this section, CPI means the United States Department of Labor, Bureau of Labor Statistics, All Cities Average Consumer Price Index, or if such index is no longer published, a successor or substitute index designated by the Lessor, that shows changes in consumer prices in the locale of the Park Area.

#### **5.4. Percentage Rent [Optional]**

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

(b) Gross Receipts Defined

Gross Revenues means the entire amount of Lessor's revenues (and the revenues of any Affiliate of Lessee) derived from this Lease or any Sublease hereunder, such amount as determined in accordance with generally accepted accounting principles consistently applied. Gross revenues include, as applicable and without limitation, rent paid by Tenants, Tenant payments in lieu of rent, Tenant reimbursements, and payments under a loss of rents insurance policy or provision. Also included in Gross Revenues are receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee. The term "Affiliate of Lessee" as used in this section means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.

**5.5. Rent Reconsideration [May be deleted in leases with a term less than fifteen years.]**

(a) The Rent otherwise required by this Lease shall be subject to reconsideration at the request of the Lessor or the Lessee after the end of the \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ Lease Years of this Lease in order to maintain the Rent under this Lease in an amount and structure consistent with "fair market value rent." "Fair market value rent" for the purposes of this section means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the Premises, under the terms and conditions of this Lease, should rent for their highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Lessor and the Lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

(b) To request a Rent reconsideration, the Lessor or Lessee (or both) must notify the other party in writing of its request within sixty (60) days after the end of the applicable Lease Year. Upon receipt of such notice, the Lessor and Lessee must negotiate in good faith a Rent adjustment. If, after the end of such sixty (60) day negotiation period, agreement as to a possible Rent adjustment has not been reached, either party may request that the matter be resolved by binding arbitration conducted by an arbitration panel. Such request must be made by written notice to the other party within thirty (30) days of the end of the negotiation period.

(c) One member of the arbitration panel is to be selected by the Lessor, one member is to be selected by the Lessee, and the two party-appointed members are to select the third (neutral) member. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Lessor and the Lessee. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. A Rent Adjustment determination must be made by a majority of the members of the panel and will be binding on the Lessor and the Lessee. The arbitration panel will determine an appropriate adjustment to Rent, if any, to reflect "fair market value rent" effective as of the beginning of the \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_ Lease Year, as applicable.

**Section 6. USES OF PREMISES**

**6.1. Authorized Uses**

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

[Describe authorized uses.]

## **6.2. Changes to Authorized Uses**

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

## **6.3. Applicable Laws**

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

## **6.4. Forbidden Uses**

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

## **6.5. Site Disturbance**

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

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

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

## **6.7. Signs**

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



## **6.8. Permits and Approvals**

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

## **6.9. Alterations**

The Lessee shall not make any Alterations of any nature to the Premises without the express written approval of the Lessor.

## **Section 7. RECORDS AND AUDITS**

The Lessee shall provide the Lessor and its agents and affiliates, including without limitation, the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease for any of the five (5) preceding Lease Years. The Lessee shall keep and make available to the Lessor these books and records at a location in the Premises or within the locale of the Park Area. The Lessee shall, if requested by the Lessor, provide the Lessor with complete information and data concerning the Lessee's operations and operating results, including without limitation, information and data regarding [specify particular types that relate to the lessee's particular operations].

## **Section 8. INITIAL IMPROVEMENTS BY LESSEE**

If otherwise granted approval by the Lessor under the terms of this Lease, the Lessee hereby agrees to commence and engage diligently in the construction of the following Initial Improvements in accordance with Construction Documents approved by Lessor. The Lessee shall commence the construction of the Initial Improvements by \_\_\_\_\_ and shall complete construction by \_\_\_\_\_:

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

## **9. CONSTRUCTION APPROVAL**

### **9.1. In General**

All Improvements (Initial Improvements and Alterations), if any, shall be undertaken at the Lessee's sole expense and only with the Lessor's prior written approval. All work shall be performed in a good and workmanlike manner and with materials of at least the quality and standard of materials used in comparable facilities in the locale of the Park Area. The Lessee shall undertake Improvements in strict accordance with Applicable laws and with approved Construction Documents. The Lessee shall, upon request, furnish the Lessor a correct copy of any contract with the Lessee's general contractor, architects, or consultants. The Lessor shall require the Lessee not to occupy specified portions of or all of the Premises during the construction of Improvements if determined by the Lessor as necessary for the protection of health or safety.

### **9.2. Enforced Delays**

The Lessee shall not be considered in default in the event of an enforced delay in the construction of Improvements due to unforeseeable causes beyond the Lessee's control and without any fault or negligence on the part of the Lessee. Such enforced delays include, without limitation, public enemies, war, invasion, insurrection, rebellion, riots, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather. In the event of an enforced delay, the time or times for construction of Improvements will be extended by the period of the enforced delay.

### **9.3. Utilities During Construction**

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

### **9.4. Site Inspection**

The Lessor shall be entitled to have on the Premises at any time during the construction of Improvements an inspector or representative who may observe all aspects of the work on the Premises. No inspection performed or not performed by the Lessor shall be deemed to give the Lessor any responsibility or liability with respect to the construction work, its prosecution or design, or, be deemed to constitute a waiver of any of the Lessee's obligations under this Lease or be construed as approval or acceptance of the Improvements (or portions thereof). The Lessee shall maintain on the Premises during construction, current, annotated Construction Documents for inspection by the Lessor.

### **9.5. Approval of Construction**

The Lessee must request in writing advance permission from the Lessor to undertake Improvements. The request must include:

- (a) proposed Construction Documents;
- (b) if required by the Lessor, evidence of the availability of funding for the Improvements;
- (c) documentation that required construction insurance is in effect; and
- (d) other information as may be required by the Lessor.

### **9.6. Construction Documents**

The proposed Construction Documents submitted to the Lessor must be complete and satisfactory to Lessor as showing all material elements of the Improvements. When proposed Construction Documents are approved by the Lessor, they become an Exhibit to this Lease without further action.

### **9.7. General Scope of Lessor's Review**

The Lessor will not approve proposed Construction Documents unless it is able to determine, among other matters, that the proposed Improvements are appropriate for the Park Area and consistent with the requirements of Part 18, the Park Area's General Management Plan and other Applicable laws. Review and approval of proposed Improvements is subject to any required compliance with the National

Environmental Policies Act (NEPA, 42 USC 4321 et seq.) and, if the project affects Historic Property, Section 106 of the National Historic Preservation Act (Section 106, 16 USC 470f).

### **9.8. Changes to Approved Construction Documents**

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

### **9.9. Special Considerations for Historic Property**

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

### **9.10. Evidence of Adequate Funds**

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

### **9.11. Building Permit**

Lessee shall not commence Improvements until such time as Lessor may issue a Building Permit as evidence of approval of the Construction Documents. The Building Permit shall contain necessary and appropriate terms and conditions for the construction of the Improvements.

### **9.12. Construction Completion Procedures**

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

- (a) a notice of completion;
  
- (b) if requested by Lessor, satisfactory evidence of the payment of all expenses, liabilities, and liens arising out of or in any way connected with the Improvements;
  
- (c) a complete set of "as built" drawings showing all revisions and substitutions during the construction period, including field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural member, walls, partitions and other significant features of the Improvements; and

(d) a complete inventory of all FF&E in or on the Premises as of the completion of the Improvements.

Upon approval by the Lessor of the completion of the Improvements, the Lessor will issue a Certificate of Completion, including, authorization to occupy the Premises.

### **9.13. Lessor's Right to Utilize Construction Documents (Optional)**

(a). In the event of expiration or termination of this Lease, the Lessee shall assign and deliver to the Lessor as Lessor's sole property all architectural, engineering and other plans, drawings, specifications and studies relating to the Premises. In order to assure Lessor that it will have the legal right to use such plans, drawings, specifications and the like if Lessor becomes entitled to such items, Lessee shall include in its agreements with the architects, engineers and other professionals who prepared such items and who have any proprietary rights with respect to such items (including the rights to use thereof in connection with the Premises) provisions whereby Lessee and Lessor shall have the right to use such plans and other materials in connection with the Premises. In furtherance and not in limitation thereof, Lessee (referred to below as "Owner") shall include in such agreements the following provisions:

The drawings, specifications and other documents prepared by the Architect for this Project ("Documents") are instruments of the Architect's service and, unless otherwise provided, the Architect shall be deemed the author of these Documents and shall retain all common law, statutory and other reserved rights, including the copyright. For the purpose of completing this Project or for any other purpose, Architect and its consultants hereby (i) grant to Owner and the National Park Service an irrevocable, fully paid-up, perpetual, worldwide license to copy and use such Documents for completion of this Project or for any other purpose and (ii) consent to the use by Owner and the National Park Service, and of the modification by other design professionals retained by Owner and the National Park Service, of the Documents. The Architect will have no responsibility or liability to the Owner or the National Park Service with respect to any modification to the Documents made by the Owner or National Park Service or any other design professional retained by the Owner or National Park Service. Furthermore, except where the Architect is found to be liable for such claim, damage or loss, the Owner shall hold Architect harmless from any such claim, damage or loss arising out of (a) the modification of the Documents by Owner or the National Park Service or another design professional. The Owner and the National Park Service shall be permitted to retain copies, including reproducible copies, of the Documents for information and reference in connection with the use and occupancy of the Project.

Notwithstanding the foregoing, Architect acknowledges and consents to the use and ownership by the National Park Service, or its designees or assignees, of said plans and specifications in accordance with the Lease between the Owner (as Lessee) and the National Park Service (as Lessor) for the Premises leased to Lessee associated the Documents and Architect agrees to deliver copies of said plans and specifications to the National Park Service upon written request from the National Park Service, provided that the National Park Service agrees to pay the Architect's reasonable duplication expenses.

## **Section 10. MAINTENANCE AND REPAIR**

### **10.1. Lessee's Responsibilities**

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

- (a) the performance of all repairs, maintenance, replacement, upgrading, capital improvements, (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the improvements thereon in good order, condition, and repair in a manner consistent with the operation of comparable facilities in the locale of the Park Area and in compliance with all Applicable Laws;
  
- (b) the replacement, as they become worn out or obsolete, of all FF&E;
  
- (c) housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Premises;
  
- (d) the repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;
  
- (e) scheduled inspections of all building systems on the Premises;
  
- (f) maintaining the grounds of the Premises in good condition, including, without limitation, regular grass mowing, managed lawn and ornamental plantings, and avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles; and
  
- (g) paying to the proper authority, when and as the same become due and payable, all taxes and assessments imposed by federal, state, or local agencies applicable to the Premises or the Lessee's activities on the Premises.

### **Section 10.2. Maintenance Plan**

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

### **10.3. Preservation Maintenance Plan**

If the Premises (or any part of the premises) are Historic Property, the Lessee shall repair and maintain all portions of the Premises that are Historic Property through a Preservation Maintenance Plan prepared by

the Lessee and approved by the Lessee as appropriate and consistent with the requirements of the Secretary's Treatment Standards and NPS 28. The Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises. The Lessee shall submit a proposed Preservation Maintenance Plan to the Lessor within thirty (30) calendar days of the Commencement Date.

#### **10.4. Maintenance Reserve Account [Optional]**

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

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

(c) The Lessee shall establish the Maintenance Reserve Account within its accounting system. The Lessee shall debit to this account within fifteen calendar (15) days after the last day of each month during the Lease Term a sum equal to: \_\_\_\_\_ percent (\_\_\_\_\_% ) of the Lessee's gross receipts (as defined in Section \_\_\_\_ ) for the previous month. If the Lessee fails to make timely debits to the account, the Lessor may terminate this Lease for default or may require the Lessee to post a bond in an amount equal to the estimated annual account debiting based on the preceding year's gross receipts. The Lessee shall periodically at times prescribed by the Lessor submit written reports to the Lessor containing such information as the Lessor may require concerning the Maintenance Reserve Account and the related activities of the Lessee.

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

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

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

## **Section 11. UTILITIES**

The Lessee at its sole expense shall make all arrangements with appropriate utility providers (including the Lessor where applicable), for all utilities furnished to the Premises, including, without limitation, gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any utility service provided by Lessor will be subject to the Lessor's established policies and procedures for provision of utility services to third parties.

## **Section 12. HAZARDOUS MATERIALS**

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

(a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on about, under or into the Premises except in compliance with all Applicable Laws and as approved by the Lessor in writing;

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

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

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

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

## **Section 13. INSURANCE AND INDEMNIFICATION**

### **13.1. Insurance During the Lease Term**

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

### **13.2. Insurance Requirements Modification**

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

### **13.3. Disposition of Insurance Proceeds**

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

### **13.4. Inadequate Insurance Coverage**

The Lessee's responsibilities under this Lease for the repair or replacement of the Premises assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.

### **Section 13.5. Indemnity**

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

## **Section 14. DAMAGE OR DESTRUCTION**

### **14.1. Damage or Destruction; Duty to Restore**

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



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

(b) the Lessor may terminate this Lease without liability and the Lessee shall pay to the Lessor as additional rent the insurance proceeds resulting from the damaged or destroyed Premises.

#### **14.2. No Termination; No Effect on Rental Obligation**

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

### **15. LIENS**

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

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

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

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

#### **15.3. No Consent or Waiver by Lessor**

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

## **Section 16. ASSIGNMENTS AND ENCUMBRANCES**

### **16.1. Assignments**

The Lessee shall not effectuate an Assignment of this Lease, in whole or in part, or any real property on the Premises, nor Sublease the Premises to a Sublessee or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Lease, without the express prior written permission of the Lessor. Approval of any Assignment is in the discretion of the Lessor and in no event shall the Lessor grant an approval unless it is able to determine that the proposed assignee or Sublessee is financially and managerially capable of carrying out the terms of this Lease. The Lessor has an unconditional right to assign this Lease or any or all of its rights and obligations under it at any time.

### **16.2. Encumbrances**

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

## **Section 17. DEFAULTS AND LESSOR'S REMEDIES**

### **17.1. Termination for Default**

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least fifteen (15) calendar days in the case of monetary defaults and thirty (30) calendar days in the case of non-monetary defaults of the Lessor's intention to terminate if the default is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate.

### **17.2. Bankruptcy**

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

### **17.3. No Waiver**

No failure by the Lessor to insist upon the strict performance of any of the terms and conditions of this Lease or to exercise any right or remedy upon a default, and no acceptance by the Lessor of full or partial rent during the continuance of any default shall constitute a waiver of any default or of such terms and conditions. No terms and conditions of this Lease may be waived or modified except by a written instrument executed by the Lessor. No waiver of any default shall affect or alter this Lease, but each and

every term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

#### **17.4. Lessor's Right to Cure Defaults**

If a default occurs under the terms of this Lease and the Lessee fails to correct the default within the applicable grace period, the Lessor may choose to correct the default (entering upon the Premises for such purposes if necessary), and the Lessor shall not be liable or in any way responsible for any loss, disturbance, inconvenience, or damage resulting to the Lessee as a result, and the Lessee shall pay to the Lessor upon demand the entire expense of the correction as additional Rent, including, without limitation, compensation to the agents, consultants and contractors of the Lessor and related expenses. The Lessor may act upon shorter notice or no notice at all if necessary in the Lessor's judgment to meet an emergency situation or governmental time limitation or to protect the Lessor's interest in the Premises.

### **Section 18. SURRENDER AND HOLDING OVER**

#### **18.1. Surrender of the Premises**

(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the FF&E, to as good an order and condition as that existing upon the Commencement Date, or, if applicable, as that existing upon completion of any Improvements by the Lessee.

(b) For these purposes, the Lessor and Lessee shall prepare an inventory and condition report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's FF&E, or elements of the Premises shown to be lost, damaged or destroyed. Any such FF&E, or other elements of the Premises shall be either replaced or returned to the condition required under this Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefor by the Lessee at the then current market value thereof.

#### **18.2. Holding Over**

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

### **Section 19. EQUAL OPPORTUNITY LAWS**

The Lessee and Lessee's Agent's shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 (as amended), which prohibits discrimination on the basis of disability and requires government contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals; (c) 41 C.F.R. Chapter 60, which prescribes affirmative action requirements for government contractors and subcontractors; (d) the Age Discrimination in Employment Act of December 15, 1967 (as amended); (e) the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.; (f) and all other Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee shall

do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

## **Section 20. NOTICES**

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

If to the Lessor:

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

If to the Lessee:

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

## **Section 21. GENERAL PROVISIONS**

The following general provisions apply to this Lease:

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

(b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the

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

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

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

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

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

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

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

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

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

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

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

(n) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. Nothing in this Lease shall be construed as preventing the cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.

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

**LESSOR**

**THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE**

**By \_\_\_\_\_  
\_\_\_\_\_, Regional Director,  
\_\_\_\_\_ Region**

**LESSEE**

**( \_\_\_\_\_ )  
By \_\_\_\_\_  
Title \_\_\_\_\_**

**EXHIBIT A: Inventory and Condition Report**

## **EXHIBIT B: Insurance Requirements**

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

### **1. Types of Insurance (Non-Construction)**

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

(b) Boiler and Machinery Insurance – At full replacement cost. The policy shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt. The policy shall include an endorsement that waives any provision of the policy that requires a building or structure to be replaced at its original site, provided that, such endorsement shall not operate to increase the insurance company’s liability under the policy.

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

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

(e) Business Interruption and Extra Expense Insurance - Business interruption and extra expense to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of the Premises, including, without limitation and, with respect to the interests of the Lessor, the loss (or reduction) of Rent payments to the Lessor by the Lessee. Coverage amounts shall be as required by the Lessor but in no event less than \_\_\_\_\_ (\$\_\_\_\_\_) per incident and \_\_\_\_\_ (\$\_\_\_\_\_) in the aggregate.



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

## **2. Insurance During Construction**

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

(a) If requested by Lessor at any time, performance and payment bonds approved by the Lessor, which bonds shall cover payment of all obligations arising under all contracts let in connection with a Construction and guaranteeing performance and payment under the applicable contracts, and payment in full of all claims for labor performed and materials supplied under such contracts. The bonds shall be issued by a responsible surety company, licensed to do business in the state where the Park Area is located, in an amount not less than the amount of the respective contracts, including without limitation, amounts for cost overruns, price increases, change orders, forced delays and the like, and shall remain in effect until the entire work under the contracts is completed; and

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

## **3. Conditions of Insurance**

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

(b) All property and liability insurance policies shall name the Park Area as an additional insured.

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

(d) All insurance policies shall provide that such policies shall not be cancelled, terminated or altered without thirty (30) days prior written notice to the Lessor. The Lessee must provide to the Lessor a copy

of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect on or before the Commencement Date, and annually thereafter. The Lessee shall maintain all policies provided throughout the Lease Term and the Lessee shall renew such policies before the expiration of the term of the policy.

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

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

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

**Attachment F: SAMPLE LEASE (Over One Year/No Improvements)**

The Over One Year/No Improvements Sample Lease is to be used for leases with a term of more than one year that do not require the lessee to make improvements to the leased property.

**LEASE**

**INDEX**

**Section 1. DEFINITIONS**

**Section 2. LEASE OF PREMISES**

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

**2.2 Waiver**

**2.3 Easements**

**2.4 Ownership of the Premises**

**2.5 Historic Property**

**Section 3. ACCEPTANCE OF THE PREMISES**

**3.1 As Is Condition of the Premises**

**3.2 Lessee's Due Diligence**

**3.3 Inventory and Condition Report**

**Section 4. LEASE TERM AND ABANDONMENT**

**4.1 Lease Term**

**4.2 Abandonment**

**Section 5. RENT**

**5.1. Net Lease**

**5.2 Annual Rent**

**Section 6. USE OF PREMISES**

**6.1 Authorized Uses**

**6.2 Changes to Authorized Uses**

**6.3 Applicable Laws**

**6.4 Forbidden Uses**

**6.5 Site Disturbance**

**6.6 Protection of Cultural and Archeological Resources**

**6.7 Signs**

6.8	Permits and Approvals
6.9	Alterations
Section 7.	RECORDS AND AUDITS
Section 8.	MAINTENANCE AND REPAIR
8.1	Lessee's Responsibilities
8.2	Maintenance Plan
8.3	Preservation Maintenance Plan
Section 9.	UTILITIES
Section 10.	HAZARDOUS MATERIALS
Section 11.	INSURANCE AND INDEMNIFICATION
11.1	Insurance During the Lease Term
11.2	Insurance Requirements Modification
11.3.	Disposition of Insurance Proceeds
11.4	Inadequate Insurance Coverage
11.5	Indemnity
Section 12.	DAMAGE OR DESTRUCTION
12.1	Damage or Destruction; Duty to Restore
12.2	No Termination; No Effect on Rental Obligation
Section 13.	LIENS
13.1.	No Power in Lessee to Create
13.2.	Discharge of Liens by Lessee
13.3	No Consent or Waiver by Lessor
Section 14.	ASSIGNMENTS AND ENCUMBRANCES
14.1	Assignments
14.2	Encumbrances
Section 15.	DEFAULTS AND LESSOR'S REMEDIES
15.1	Termination for Default
15.2	Bankruptcy
15.3	No Waiver
15.4	Lessor's Right to Cure Defaults
Section 16.	SURRENDER AND HOLDING OVER
16.1	Surrender of the Premises
16.2	Holding Over
Section 17.	EQUAL OPPORTUNITY LAWS

**Section 18. NOTICES**

**Section 19. GENERAL PROVISIONS**

**EXHIBIT A: Inventory and Condition Report**

**EXHIBIT B: Insurance Requirements**

**1. In general.**

- (a) Property Insurance**
- (b) Worker's Compensation and Employer's Liability**
- (c) General Liability**
- (d) Other**

**2. Conditions of Insurance**

## **Section 1. DEFINITIONS**

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

**1.1. Alterations** - means any construction, physical modifications, rehabilitation, reconstruction, and/or restoration of the Premises.

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

**1.3. Annual Rent** - means the annual fixed rent to be paid to Lessor by Lessee under Section 5.

**1.4. Assignment** - means the transfer, whether it is direct or indirect, voluntary or by operation of law, assignment, sale, or conveyance, of the Lessee's leasehold estate, or the Lessee's rights under this Lease in whole or part. Such transfer may be designated as a sale, a conveyance, or an assignment. The sale, conveyance, or assignment (including by consolidation, merger or reorganization) of a controlling interest in the Lessee (if such entity is a corporation), or any sale or other transfer of a controlling interest in the partnership interests (if such entity is a partnership), whether in a single transfer or in a series of related transfers, and whether directly or by sales or transfers of underlying partnership or corporate ownership interests, is an assignment. For a corporate entity, the term controlling interest means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee. For a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneur, controlling interest means the beneficial ownership of the capital assets of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee.

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

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

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

**1.8. FF&E** - means all furniture, fixtures and equipment in or on the Premises.

**1.9. Hazardous Materials** - means any material or other substance: (a) that requires investigation or correction under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, contains radon gas. The term Hazardous Materials as used in this Lease includes Pre-Existing Hazardous Materials unless otherwise stated in a particular provision of this Lease.

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

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

**1.12. Interest Rate** - means the percentage of interest charged based on the current value of funds to the United States Treasury that is published annually in the Federal Register or successor publication.

**1.13. Inventory and Condition Report** - means the document contained in Exhibit A to this Lease that describes the FF&E in the Premises and the condition of the Premises (including FF&E) as of the Commencement Date.

**1.14. Lease Term** - is the term of this Lease as stated in Section 4 of this Lease.

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

**1.16. Notice of Default** - means an instrument in writing from the Lessor to the Lessee providing notice of that the Lessee is in default of the lease.

**1.17. NPS 28** - means the National Park Service document entitled, A Cultural Resource Management Guideline that is hereby made a part of this Lease by reference.

**1.18. Park Area** - means [state the name of the Park Area].

**1.19. Part 18** - means Part 18 of Volume 36 of the Code of Federal Regulations.

**1.20. Personal Property** - means all furniture, fixtures, equipment, appliances, and apparatus placed in or on the Premises-that are neither permanently attached to or form a part of the Premises.

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

**1.22. Premises** - means the property of the Park Area that is described in Section 2 of this Lease

**1.23. Preservation Maintenance Plan** - is a document that sets forth a plan for the Lessee's repair and maintenance of Historic Property.

**1.24. Rent** - means the rent to be paid Lessor by Lessee described in Section 5 of this Lease and any additional Rent this Lease may require.

**1.25. Secretary's Treatment Standards** - shall mean the Secretary of the Interior's Treatment Standards for Historic Property (36 Code of Federal Regulations Part 68) that are hereby made a part of this Lease by reference.

**1.26. Sublease** - means an agreement under which the Lessee grants a person or entity (a Sublessee) the right to use, occupy, or possess a portion of the Premises.

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

## **Section 2. LEASE OF PREMISES**

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

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

[Description of the leased property]



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

(c) Excepting and reserving to the Lessor the right, at reasonable times and (except in case of emergency) following advance notice to the Lessee, to enter and to permit any governmental agency, public or private utilities and other persons to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered;

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

## **2.2. Waiver**

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

## **2.3. Easements**

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

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

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

## **2.5. Historic Property**

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

[Delete the inapplicable bracketed statement and remove the brackets from the remaining one.]

## **Section 3. Acceptance of the Premises**

### **3.1. As Is Condition of the Premises**

The Lessee agrees to lease the Premises in their existing "as is" condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make, any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for the intended use, the

likelihood of deriving trade from or other characteristics of the Park Area, the economic or programmatic feasibility of the Lessee's use and occupancy of the Premises, or hazardous materials on or in the vicinity of the Premises.

### **3.2. Lessee's Due Diligence**

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

### **3.3. Inventory and Condition Report**

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

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

### **4.1. Lease Term**

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

### **4.2. Abandonment**

The Lessee shall occupy the Premises during the entire Lease Term. If it fails to do so, the Lessee may be determined as in Default for abandoning the Premises.

## **Section 5. RENT**

### **5.1. Net Lease and Rent Payments**

(a) All Rent shall be absolutely net to Lessor without any abatement, deduction, counterclaim, set-off or offset. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises, including, without limitation, all taxes and assessments.

(b) All Rent payments consisting of \$10,000 or more shall be deposited electronically by the Lessee using the Treasury Financial Communications System. At Lessor's option, Rent payments of shall be payable by wire transfer or other electronic means to such account as Lessor may from time to time designate. Interest at the Interest Rate will be assessed on overdue Rent payments. The Lessor may also impose penalties for late Rent payments to the extent authorized by Applicable Law.

### **5.2. Annual Rent**

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

### **5.3. CPI Adjustment [May be deleted from leases with a term of less than five years.]**

The Annual Rent will increase effective as of the beginning of the second Lease Year and annually thereafter during the Lease Term to reflect the proportionate cumulative increase in the CPI, if any, during the previous Lease Year. For purposes of this section, CPI means the United States Department of Labor, Bureau of Labor Statistics, All Cities Average Consumer Price Index, or if such index is no longer published, a successor or substitute index designated by the Lessor, that shows changes in consumer prices in the locale of the Park Area.

### **5.4. Percentage Rent [Optional.]**

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

(b) Gross Receipts Defined: Gross Revenues means the entire amount of Lessor's revenues (and the revenues of any Affiliate of Lessee) derived from this Lease or any Sublease hereunder, such amount as determined in accordance with generally accepted accounting principles consistently applied. Gross revenues include, as applicable and without limitation, rent paid by Tenants, Tenant payments in lieu of rent, Tenant reimbursements, and payments under a loss of rents insurance policy or provision. Also included in Gross Revenues are receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee. The term "Affiliate of Lessee" as used in this section means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.

### **5.5. Rent Reconsideration [May be deleted from leases with a term of less than fifteen years.]**

(a) The Rent otherwise required by this Lease shall be subject to reconsideration at the request of the Lessor or the Lessee after the end of the \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ Lease Years of this Lease in order to maintain the Rent under this Lease in an amount and structure consistent with "fair market value rent." "Fair market value rent" for the purposes of this section means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the Premises, under the terms and conditions of this Lease, should rent for their highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Lessor and the Lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.

(b) To request a Rent reconsideration, the Lessor or Lessee (or both) must notify the other party in writing of its request within sixty (60) days after the end of the applicable Lease Year. Upon receipt of such notice, the Lessor and Lessee must negotiate in good faith a Rent adjustment. If, after the end of such sixty (60) day negotiation period, agreement as to a possible Rent adjustment has not been reached, either party may request that the matter be resolved by binding arbitration conducted by an arbitration panel. Such request must be made by written notice to the other party within thirty (30) days of the end of the negotiation period.

(c) One member of the arbitration panel is to be selected by the Lessor, one member is to be selected by the Lessee, and the two party-appointed members are to select the third (neutral) member. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the Lessor and the Lessee. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. A Rent adjustment determination must be made by a majority of the members of the panel and will be binding on the Lessor and the Lessee. The arbitration panel will determine an appropriate adjustment to Rent, if any, to reflect "fair market value rent" effective as of the beginning of the \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_ Lease Year, as applicable.

## **Section 6. USE OF PREMISES**

### **6.1. Authorized Uses**

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

[Describe authorized uses.]

### **6.2. Changes to Authorized Uses**

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

### **6.3. Applicable Laws**

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

### **6.4 Forbidden Uses**

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

### **6.5. Site Disturbance**

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

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

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

## **6.7. Signs**

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

## **6.8. Permits and Approvals**

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

## **6.9. Alterations**

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

## **Section 7. RECORDS AND AUDITS**

The Lessee shall provide the Lessor and its agents and affiliates, including without limitation, the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease for any of the five (5) preceding Lease Years. The Lessee shall keep and make available to the Lessor these books and records at a location in the Premises or within the locale of the Park Area. The Lessee shall, if requested by the Lessor, provide the Lessor with complete information and data concerning the Lessee's operations and operating results, including without limitation, information and data regarding [specify particular types that relate to the lessee's particular operations.]

## **Section 8. MAINTENANCE AND REPAIR**

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

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

(a) The performance of all repairs, maintenance, replacement, upgrading, capital improvements, (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the improvements thereon in good order, condition, and repair in a manner consistent with the operation of comparable facilities in the locale of the Park Area and in compliance with all Applicable Laws;

(b) the replacement, as they become worn out or obsolete, of all FF&E;

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

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

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

(f) maintaining the grounds of the Premises in good condition, including, without limitation, regular grass mowing, managed lawn and ornamental plantings, and avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles.

Any repair and maintenance actions that may result in Alterations to the Premises require the prior written approval of the Lessor.

## **8.2. Maintenance Plan**

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

## **8.3. Preservation Maintenance Plan**

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

## **Section 9. UTILITIES**

The Lessee at its sole expense shall make all arrangements with appropriate utility providers (including the Lessor where applicable), for all utilities furnished to the Premises, including, without limitation, gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any utility service provided by Lessor will be subject to the Lessor's established policies and procedures for provision of utility services to third parties.

## **Section 10. HAZARDOUS MATERIALS**

The Lessee shall comply with the following provisions concerning Hazardous Materials:

(a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on, about, under, or into the Premises except in compliance with all Applicable Laws and as approved by the Lessor in writing;

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

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

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

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

## **Section 11. INSURANCE AND INDEMNIFICATION**

### **11.1. Insurance During the Lease Term**

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

### **11.2. Insurance Requirements Modification**

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

### **11.3. Disposition of Insurance Proceeds**

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

### **11.4. Inadequate Insurance Coverage**

The Lessee's responsibilities under this Lease for the repair or replacement of the Premises assume full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.

### **11.5. Indemnity**

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

The provisions of this section shall survive the Expiration Date or Termination Date of this Lease.

## **Section 12. DAMAGE OR DESTRUCTION**

### **12.1. Damage or Destruction; Duty to Restore**

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



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

(b) the Lessor may terminate this Lease without liability and the Lessee shall pay to the Lessor as additional rent the insurance proceeds resulting from the damaged or destroyed Premises.

## **12.2. No Termination; No Effect on Rental Obligation**

No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the improvements thereon, any other property on the Premises shall operate to terminate this Lease except as provided in Section 12.1 of this Lease. No such loss or damage shall affect or relieve the Lessee from the Lessee's obligation to pay the Rent required by this Lease and in no event shall the Lessee be entitled to any prorated return or refund of Rent paid hereunder. Unless this Lease is terminated under Section 12.1, no such loss or damage shall relieve or discharge the Lessee from the payment of taxes, assessments, or other charges as they become due and payable, or from performance of other the terms and conditions of this Lease.

## **13. LIENS**

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

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

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

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

### **13.3. No Consent or Waiver by Lessor**

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

## **Section 14. ASSIGNMENTS AND ENCUMBRANCES**

### **14.1. Assignments**

The Lessee shall not effectuate an Assignment of this Lease, in whole or in part, or any real property on the Premises, nor Sublease the Premises to a Sublessee or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Lease, without the express prior written permission of the Lessor. Approval of any Assignment is in the discretion of the Lessor and in no event shall the Lessor grant an approval unless it is able to determine that the proposed assignee or Sublessee is financially and managerially capable of carrying out the terms of this Lease.

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

Any consideration for transfers of leasehold interests (as such costs are approved by the Lessor) received by the Lessee from an assignee for or in connection with an assignment of this Lease shall be payable to the Lessor.

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

### **14.2. Encumbrances**

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

## **Section 15. DEFAULTS AND LESSOR'S REMEDIES**

### **15.1. Termination for Default**

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least fifteen (15) calendar days in the case of monetary defaults and thirty calendar (30) days in the case of non-monetary defaults of the Lessor's intention to terminate if the default is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate.

## **15.2. Bankruptcy**

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

## **15.3. No Waiver**

No failure by the Lessor to insist upon the strict performance of any of the terms and conditions of this Lease or to exercise any right or remedy upon a default, and no acceptance by the Lessor of full or partial rent during the continuance of any default shall constitute a waiver of any default or of such terms and conditions. No terms and conditions of this Lease may be waived or modified except by a written instrument executed by the Lessor. No waiver of any default shall affect or alter this Lease, but each and every term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

## **15.4. Lessor's Right to Cure Defaults**

If a default occurs under the terms of this Lease and the Lessee fails to correct the default within the applicable grace period, the Lessor may choose to correct the default (entering upon the Premises for such purposes if necessary), and the Lessor shall not be liable or in any way responsible for any loss, disturbance, inconvenience, or damage resulting to the Lessee as a result, and the Lessee shall pay to the Lessor upon demand the entire expense of the correction as additional Rent, including, without limitation, compensation to the agents, consultants and contractors of the Lessor and related expenses. The Lessor may act upon shorter notice or no notice at all if necessary in the Lessor's judgment to meet an emergency situation or governmental time limitation or to protect the Lessor's interest in the Premises.

## **Section 16. SURRENDER AND HOLDING OVER**

### **16.1. Surrender of the Premises**

(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the FF&E, to as good an order and condition as that existing upon the Commencement Date.

(b) For these purposes, the Lessor and Lessee shall prepare an inventory and condition report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's FF&E, or elements of the Premises shown to be lost, damaged or destroyed. Any such FF&E, or other elements of the Premises shall be either replaced or returned to the condition required under this Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefore by the Lessee at the then current market value thereof.

## **16.2 . Holding Over**

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

## **Section 17. EQUAL OPPORTUNITY LAWS**

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

## **Section 18. NOTICES**

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

If to the Lessor:

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

If to the Lessee:

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

## **Section 19. GENERAL PROVISIONS**

The following general provisions apply to this Lease:

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

(b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.

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

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

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

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

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

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

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

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

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

(l) Any and all remedies available to Lessor for the enforcement of the provisions of this Lease are cumulative and are not exclusive, and Lessor shall be entitled to pursue either the rights enumerated in this Lease or remedies authorized by law, or both. Lessee shall be liable for any costs or expenses

incurred by Lessor in enforcing any term of this Lease, or in pursuing legal action for the enforcement of Lessor's rights, including, but not limited to, court costs.

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

(n) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. Nothing in this Lease shall be construed as preventing the cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.

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

**LESSOR**

**THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE**

**By** \_\_\_\_\_  
\_\_\_\_\_ **Regional Director**  
\_\_\_\_\_ **Region**

**LESSEE**

\_\_\_\_\_  
**By** \_\_\_\_\_  
**Title** \_\_\_\_\_

**EXHIBIT A: Inventory and Condition Report**

[Include a Condition and Inventory Report as described in Section 3.3.]

## **EXHIBIT B: Insurance Requirements**

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

### **1. Types of Insurance**

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

**(b) Boiler and Machinery Insurance** – At full replacement cost. The policy shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt. The policy shall include an endorsement that waives any provision of the policy that requires a building or structure to be replaced at its original site, provided that, such endorsement shall not operate to increase the insurance company's liability under the policy.

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

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

**(e) Business Interruption and Extra Expense Insurance** - Business interruption and extra expense to cover the loss of income and continuation of fixed expenses in the event of damage to or loss of the Premises, including, without limitation and, with respect to the interests of the Lessor, the loss (or reduction) of Rent payments to the Lessor by the Lessee. Coverage amounts shall be as required by the Lessor but in no event less than \_\_\_\_\_ (\$\_\_\_\_\_) per incident and \_\_\_\_\_ (\$\_\_\_\_\_) in the aggregate.

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



## 2. Conditions of Insurance

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

(b) All property and liability insurance policies shall name the Park Area as an additional insured.

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

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

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

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

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

**Attachment G: SAMPLE LEASE (Short Term, No Improvements)**

The Short Term/No Improvements Sample Lease is to be used for leases with a term of one year or less that do not require the lessee to make improvements to the leased property and only require the lessee to perform housekeeping type repair and maintenance. It is particularly appropriate to use in connection with the short-term leases (sixty (60) days or less) that may be awarded under 36 CFR 18.9.

**LEASE**

**THIS LEASE** is made and entered on \_\_\_\_\_ [insert signature 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 (Lessor), and \_\_\_\_\_ (Lessee).

**WITNESSETH:** That the Lessor and Lessee, in consideration of their mutual promises set forth herein, agree to enter into a lease of certain real property located within the boundaries of \_\_\_\_\_ [insert park area name] \_\_\_\_\_ (Park Area) pursuant to 36 C.F.R. Part 18 and under the following terms and conditions:

**1. Term of Lease.** The term of this lease shall be for a period of \_\_\_\_\_ days commencing on \_\_\_\_\_ and expiring on \_\_\_\_\_.

**2. Description of Premises.** The leased property (Premises) is described as follows:

[Insert description of the Premises.]

**3. Use of the Premises.** The Lessee may utilize the Premises only for the following purposes:

[Describe authorized uses.]

**4. Rent.** The Lessee shall pay to the Lessor rent in the following amounts:

[Insert amount of rent and payment dates.]

**5. Park Area Conditions.** This Lease is subject to the following special conditions:

[Specify special park area conditions, e.g., operational requirements, special maintenance requirements, etc. If there are none, enter "None" to so indicate.]

**6. General Terms and Conditions.** This Lease is subject to the General Terms and Conditions contained in Exhibit A to this Lease, hereby incorporated by reference.

**IN WITNESS WHEREOF,** \_\_\_\_\_, an official of the National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Interior, as Lessor; and the Lessee have executed this Lease by proper persons thereunto duly authorized as of the date heretofore written.

**LESSOR**

THE NATIONAL PARK SERVICE

By \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**LESSEE**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Attest: \_\_\_\_\_

## **EXHIBIT A: GENERAL TERMS AND CONDITIONS**

### **Section 1. RESERVATION OF RIGHTS**

**(a) In general.** This Lease is subject to all Applicable laws, and all liens, encumbrances, restrictions, rights and conditions of law or of record or otherwise; and excepts to the Lessor the right, at reasonable times to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered.

**(b) Applicable Laws Defined.** For purposes of this Lease, “Applicable Laws” are defined as all present and future laws, statutes, requirements, ordinances, judgments, regulations, and administrative and judicial determinations that are applicable by their own terms to the Premises or the Lessee, even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Premises now or hereafter enacted or in effect and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Lessee or to all or any portion of the Premises, or to the use, occupancy, possession, operation, maintenance, and repair of the Premises.

### **Section 2. HISTORIC PROPERTY**

The Premises (or portions of the Premises) [are] [are not] historic property within the meaning of 36 C.F.R. Part 18.

[Delete the inapplicable bracketed statement and remove the brackets from the remaining one.]

### **Section 3. SITE DISTURBANCE**

Lessee shall neither cut any timber nor remove or alter any other landscape features of the Premises such as shrubs or bushes without Lessor’s prior written consent.

### **Section 4. PERMITS AND IMPOSITIONS**

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

Lessee shall pay all costs, expenses and charges of every kind and nature resulting from its use of the Premises.

## **Section 5. ALTERATIONS**

The Lessee shall not make any alterations of any nature to the Premises. "Alterations" means any construction, physical modifications, rehabilitation, reconstruction, and/or restoration of the Premises.

## **Section 6. RECORDS AND AUDITS**

The Lessee shall provide the Lessor and its agents and affiliates, including without limitation, the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease.

## **Section 7. MAINTENANCE AND REPAIR**

**(a) In general.** The Lessee shall be solely responsible for the repair and maintenance of the Premises during the Lease Term. This responsibility includes, without limitation, the performance of all repairs and maintenance necessary to maintain the Premises and the improvements thereon in good order, condition, and repair and in compliance with all applicable laws.

**(b) Historic Property.** If the Premises (or any part of the Premises) are historic property as indicated in Section 2 of this Exhibit A, the Lessee shall repair and maintain all portions of the Premises that are so designated property in accordance with a Preservation Maintenance Plan prepared by the Lessor under the requirements of the Secretary's of the Interior's Treatment Standards (36 C.F.R. Part 68).

## **Section 8. UTILITIES**

The Lessee at its sole expense shall make all arrangements with appropriate utility providers (including the Lessor where applicable) for all utilities furnished to the Premises, including, without limitation, gas, electricity, other power, water, cable, telephone and other communication services, sewage, and waste removal. Any utility service provided by Lessor will be subject to the Lessor's established policies and procedures for provision of utility services to third parties.

## **Section 9. HAZARDOUS MATERIALS**

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

**(a) In general.** No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on, about, under, or into the Premises except as approved by the Lessor in writing;

**(b) Hazardous Materials Defined.** “Hazardous Materials” means any material or other substance: (a) that requires investigation or correction under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, contains radon gas.

## **Section 10. INSURANCE AND INDEMNIFICATION**

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

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

The provisions of this section shall survive the expiration or termination of this Lease.

## **Section 11. ASSIGNMENTS AND ENCUMBRANCES**

The Lessee may not assign, sublease or encumber this Lease in whole or in part.

## **Section 12. DEFAULTS AND LESSOR’S REMEDIES**

**(a) Termination for Default.** The Lessor may terminate this lease for Default if the Lessee fails to keep and perform any of the terms and conditions of this Lease. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate.

**(b) No Waiver.** No failure by the Lessor to insist upon the strict performance of any of the terms and conditions of this Lease or to exercise any right or remedy upon a default, and no acceptance by the Lessor of full or partial rent during the continuance of any default shall constitute a waiver of any default or of such terms and conditions. No terms and conditions of this Lease may be waived or modified except by a written instrument executed by the Lessor. No waiver of any default shall affect or alter this Lease, but each and every term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default.

### **Section 13. SURRENDER AND HOLDING OVER**

**(a) Surrender of the Premises.** On or before the expiration or termination of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's personal property, and return the Premises, including its furniture, fixtures and equipment to as good an order and condition as that existing upon the commencement of this Lease.

**(b) Holding Over.** This Lease shall end upon its expiration or termination and any holding over by the Lessee or the acceptance by the Lessor of any form of payment of rent or other charges after such date shall not constitute a renewal of this Lease or give the Lessee any rights under this Lease or in or to the Premises.

### **Section 14. EQUAL OPPORTUNITY LAWS**

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

### **Section 15. INTEREST AND PENALTIES**

Interest means the percentage of interest charged based on the current value of funds to the United States Treasury that is published annually in the "Federal Register" or successor publication. Interest based on the current value of funds to the United States Treasury that is published annually in the "Federal Register" or successor publication will be assessed against the Lessee by the Lessor on any overdue rent payments. The Lessor may also impose penalties for late payment to the extent authorized by Applicable Laws.

## **Section 16. NOTICES**

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

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

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

## **Section 17. OTHER PROVISIONS**

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

(b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.

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

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

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



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

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

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

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

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

(k) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. Nothing in this Lease shall be construed as preventing the cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.

## **Exhibit B: INSURANCE REQUIREMENTS**

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

### **1. Types of Coverage.**

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

(b) Boiler and Machinery Insurance – At full replacement cost. The policy shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt. The policy shall include an endorsement that waives any provision of the policy that requires a building or structure to be replaced at its original site, provided that, such endorsement shall not operate to increase the insurance company's liability under the policy.

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

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

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

## **2. Conditions of Insurance**

(a) All insurance policies of the Lessor shall name the Park Area as an additional insured.

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

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

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

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

**ATTACHMENT H: SAMPLE REQUEST FOR PROPSALS (NO IMPROVEMENTS)**

**LEASING OPPORTUNITY AT [PARK AREA];**

**REQUEST FOR PROPOSALS**

**A. Summary.**

**This Request for Proposals (RFP) provides the opportunity for interested individual and organizations to submit proposals to the National Park Service (NPS) to lease NPS property at [name of park area] under the following general terms and conditions.**

**1. Property Offered for Lease.**

**[Describe the property to be leased. State whether or not the property or portions of it are historic property].**

**2. Uses of the Leased Property.**

**The lessee will use the property for the following authorized uses:**

**[Describe the authorized uses under the proposed lease.]**

**3. Term of Lease.**

**The lease will have a term of \_\_\_\_\_years, commencing approximately \_\_\_\_\_, 2007.**

**4. Fair Market Value Rent.**

**The lessee will be required by the lease to pay at least fair market value rent to the NPS. The fair market value rent has been determined to be \$\_\_\_\_\_annually, payable in equal monthly installments.**

**5. Other Terms and Conditions.**

**Other proposed terms and condition of the offered lease are contained in a Draft Lease that is attached to this RFP as Exhibit A. Final terms and conditions will be negotiated between NPS and the selected applicant.**

**6. Competitive Process.**

This lease opportunity is open to all interested persons on a competitive basis. Whoever submits the proposal judged best under the proposal selection criteria will be given an opportunity to negotiate a final lease agreeable to both the Applicant and NPS.

**7. Site Tour and Pre-Submittal Conference.**

A pre-submittal conference and site tour of the offered property will be held on \_\_\_\_\_, 2007, at the property. Please contact \_\_\_\_\_ by e-mail at \_\_\_\_\_ or by telephone at \_\_\_\_\_ to make a reservation.

**8. Proposal Submission Date.**

Proposals under this RFP must be received by close of business on \_\_\_\_\_, 2007, in the form and at the address stated below.

**9. Authority.**

This RFP is issued under the authority of 36 CFR Part 18. This RFP and the offered lease are subject to and incorporate all terms and conditions of Part 18 as applicable. In the event of any conflict between the terms of this RFP and Part 18, Part 18 controls.

**For Further Information Please Contact:**

[Include name, address, phone number and e-mail of NPS contact person.]

**B. The National Service and the [Park Area].**

**1. The National Park Service and its Mission.**

America's National Park Service was created by Congress to "conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be "preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.

To learn more about the National Park Service, visit our website at [www.nps.gov](http://www.nps.gov). This site includes information about who we are, our mission, NPS policies and individual parks.

**2. The Park Area**

[Describe the park area, including location, features, legislated purposes, management objectives, etc.]

**C. Proposal Selection Criteria.**

The NPS will select the best responsive proposal received under this RFP under the following selection criteria:

- 1. The compatibility of the proposal's intended use of the offered property with respect to preservation, protection, and visitor enjoyment of the park area;**
- 2. The financial capability of the Applicant to carry out the terms of the lease;**
- 3. The experience of the Applicant demonstrating the managerial capability to carry out the terms of the lease;**
- 4. The ability and commitment of the Applicant to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling;**
- 5. The compatibility of the proposal with the historic qualities of the property [included only if the property is historic]; and**
- 6. The benefit to NPS of the financial and other terms and conditions of the proposal, including, without limitation, the scope of proposed improvements (if applicable), the amount of rent proposed, the proposed term of the lease, and other proposed lease terms and conditions;**
- 7. Special Selection Criteria.** [Any special selection criteria related to the park area, lease uses, etc., should be included here.]

**D. Proposal Content.**

**1. In General.**

Proposals submitted in response to this RFP should follow the format described below. You are asked to answer questions or supply specific information in response to specified items. Please label your responses correspondingly, and respond fully and accurately to all questions/requests.

**2. Information Requested.**

**a. Applicant Identification**

Please provide the identification and credit information described in Attachment A to this RFP if the applicant is not a business. Please provide the identification and credit information described in Attachment B to this RFP under the applicable category (sole proprietorship, partnership, or corporation).

**b. Proposed Uses.**

Please describe your proposed use or uses of the property and explain why it is compatible with the preservation, protection and visitor enjoyment of the park area. If the proposed use or uses are revenue producing, describe the business in detail.

If the proposed use or uses are revenue producing, please provide the financial information described in Attachment C to this RFP.

**c. Financial Capability.**

Please submit documentation of the source and availability of the funds necessary to carry out your obligations under the terms of the proposed lease, including, without limitation, any improvement requirements, through bank statements, bank financing commitment letters, or similar documents that convincingly substantiate your financial capability.

**d. Experience.**

Please explain how your experience and background qualifies you as managerially capable of satisfactorily performing the terms and conditions of the offered lease.

**e. Environmental Enhancement.**

Please explain your proposal for managing and using the property in an environmentally enhancing manner through, among other programs and actions you may propose, energy conservation, waste reduction, and recycling.

**f. Rent Offered**

Please state how much annual rent you offer to pay. Your offer must at least equal \$\_\_\_\_\_ annually, the fair market annual rental value of the property.

**h. Improvement Plan**

Please submit an improvement plan specifying how the applicant intends to improve the leased property. The plan should comprehensively describe the proposed improvements which the applicant will accomplish and outline a detailed schedule for program development, construction, completion, and opening for operation. Appropriate preliminary plans and drawings should be included in the plan. Detailed cost estimates should also be included.

**E. Proposal Submission Requirements.**

Please submit \_\_\_\_\_( ) copies of your proposal accompanied by a transmittal letter signed by a principal of the proposed lessee. The copies should be on 8-1/2" x 11" paper punched with 3 holes and unstapled (suitable for NPS to put in binders) with double-sided copying.

**The proposal must be enclosed in sealed envelope(s), and received at the following NPS office by the close of business on the date specified in Section A above. The face of the sealed envelope shall show the Applicant's name and address, and the receiver's address as shown here:**

**[Include appropriate NPS address.]**

**Telephonic proposals, faxes, e-mail, and other means of transmittal will not be considered. Proposals will not be returned.**

**F. Additional Information and Modifications of Proposals.**

**NPS may request from any Applicant after the submission date additional information or written clarification of a proposal. However, proposals may not be amended after the submission date unless permitted by NPS. NPS may not permit amendment of a proposal unless all Applicants that submitted responsive proposals are given an opportunity to amend their respective proposals.**

**G. NPS Evaluation and Selection of the Best Proposal.**

**NPS will review all responses to this RFP through an evaluation panel assisted by technical consultants as appropriate.**

**All proposals will first be screened for adherence to the requirements of this RFP. NPS will not consider non-responsive proposals. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of this RFP as determined by NPS.**

**It is the intention of the NPS to select the best-submitted proposal as determined under the selection criteria without further submittals or presentations. If this cannot be done, NPS will select those lease proposals that appear most suitable under the selection criteria, and from that group will request additional information or presentations so that the best proposal can be selected.**

**NPS will negotiate the terms of the final lease with the Applicant determined to have submitted the best proposal under the selection criteria. Award of a lease to that Applicant is dependent on successful negotiation of the final terms of the lease. If negotiations fail, NPS may negotiate with other Applicants for award of the offered lease or terminate this solicitation without liability to any person.**

**H. Lease Terms and Conditions.**

**1. Term of Lease. The lease to be awarded under this RFP is to have a term that is as short as possible. The lease will not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if the deciding official determines that an extension is necessary because of circumstances beyond the control of NPS.**



## **2. Lease Provisions**

The lease to be awarded under this RFP will contain the provisions required by Part 18 as well as other provisions determined by NPS to be necessary to assure use of the leased property in a manner consistent with the purposes of the park area, and where applicable, to assure the preservation of historic property. Required provisions include, without limitation:

- (a) A termination for cause or default provision;
- (b) Appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease;
- (c) Appropriate provisions stating that subletting of a portion of the leased property and assignment of a lease, if permissible under the terms of the lease, must be subject to the written approval of NPS;
- (d) Appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee and to pay all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities;
- (e) Appropriate provisions stating that the lessee has no rights of renewal of the lease or to the award of a new lease upon lease termination or expiration;
- (f) Appropriate provisions stating that the lessee may not construct new buildings or structures on leased property except in limited circumstances;
- (g) Appropriate provisions requiring that any improvements to or demolition of leased property to be made by the lessee may be undertaken only with written approval from the NPS; and
- (h) Appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property.

If a Draft Lease is attached to this RFP, it incorporates these terms.

### **I. Confidentiality of Proposals.**

If you believe that a proposal contains trade secrets or confidential commercial and financial information that you do not want to be made public, please include the following sentence on the cover page of each copy of the proposal:

**“This proposal contains trade secrets and/or confidential commercial or financial information that the Applicant believes to be exempt from disclosure under the Freedom of Information Act. The Applicant requests that this information not be disclosed to the public, except as may be required by law.”**

In addition, you must specifically identify what you consider to be trade secret information or confidential commercial and financial information on the page of the proposal on which it appears, and you must include the following sentence on each such page:

**“This page contains trade secrets, or confidential commercial or financial information that the Applicant believes to be exempt from disclosure under the Freedom of Information Act, and which is subject to the non-disclosure statement on the cover page of this proposal.”**

**Information so identified will not be made public by NPS except in accordance with the requirements of the Freedom of Information Act.**

**Attachment A: Identification and Credit Information (Individual)**

**Attachment B: Identification and Credit Information (Business)**

**Attachment C: Financial Information for Revenue-Producing Uses**

## **Attachment A: Identification and Credit Information (Individual)**

### **Identification**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

### **Credit Information**

1. List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the past 10 years. (If none, so indicate). Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.
  
2. Describe any fines or penalties levied by government agencies during the past 10 years. (If none, so indicate)
  
3. Describe any pending litigation or current lawsuits which if adversely resolved would materially impact the financial position of the Applicant.
  
4. Attach:
  - a. Personal Financial Statement documenting assets and liabilities.
  - b. Credit Reports for the individual(s) from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attachment B: Identification and Credit Information (Business)**

1. BUSINESS IDENTIFICATION AND CREDIT INFORMATION:  
 PARTNERSHIP OR SOLE PROPRIETOR

Name of Entity	
Address	
Telephone Number	
Fax Number	
Email Address	
Contact Person	
Title	
Tax ID #	
Form of Business: <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Other (please describe) _____	
Years in Business	

OWNERSHIP			
Names And Addresses Of Each Partner Or Sole Proprietor	Percentage Ownership	Current Value of Business	Role in Lease Operations

Credit Information

Has Applicant ever defaulted from or been terminated from a management contract or lease, or been forbidden from contracting by a public agency or private company?

If YES, provide full details of the circumstances.

List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, so indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

Describe any fines or penalties levied by government agencies during the *past 10 years*. (If none, so indicate)

Describe any pending litigation or current lawsuits which if adversely resolved would materially impact the financial position of the Applicant.

**Attach:**

Personal Financial Statements

Latest Financial Statement for business for past 2 years

Credit Reports for the entity and key principals, from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attach Resumes of Principals as follows:**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

**2. BUSINESS IDENTIFICATION AND CREDIT INFORMATION:  
CORPORATION**

*Complete separate form for the submitting corporation and the parent corporation (include all partners in a joint venture).*

Name of Entity	
Address	
Telephone Number	
Fax Number	
Email Address	
Contact Person	
Title	
Tax ID#	
State of Incorporation	
Date of Incorporation	

OWNERSHIP	NUMBER AND TYPE OF SHARES OR PERCENTAGE OF OWNERSHIP	CURRENT VALUE OF INVESTMENT
Names and Addresses of those with controlling interest or key principals of corporation		
Total of All		
Total Shares Outstanding		

CORPORATE OFFICERS AND BOARD OF DIRECTOR	ADDRESS	TITLE AND/OR AFFILIATION

**Credit Information**

Has Applicant ever defaulted from or been terminated from a management contract or lease, or been forbidden from contracting by a public agency or private company?

If YES, provide full details of the circumstances.

List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, so indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

Describe any fines or penalties levied by government agencies during the past 10 years. (If none, so indicate)

Describe any pending litigation or current lawsuits (other than those covered adequately by insurance) which if adversely resolved would materially impact the financial position of the Applicant.

**Attach:**

Personal Financial Statements of any owners or partners of the parent company, if applicable.

Latest Financial Statement for business for past 2 years (Audited, if available)

Credit Reports for the entity and key principals, from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attach Resumes of Principals as follows:**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role



**Attachment C: Financial Information for Revenue-Producing Uses**

**1. START UP COSTS**

Working Capital: \$ \_\_\_\_\_  
Utility Hookups: \$ \_\_\_\_\_  
Improvements: \$ \_\_\_\_\_  
FF&E: \$ \_\_\_\_\_  
Marketing: \$ \_\_\_\_\_  
Legal: \$ \_\_\_\_\_

Total Start Up Costs: \$ \_\_\_\_\_

**Explain the basis of all estimates.** The estimates must credibly demonstrate your understanding of the start-up costs associated with this lease opportunity.

**2. Stabilized Operating Proforma**

Revenue: \_\_\_\_\_  
Expenses: \_\_\_\_\_  
General/Admin.: \_\_\_\_\_  
Operations: \_\_\_\_\_  
Building Maintenance: \_\_\_\_\_  
Grounds Upkeep: \_\_\_\_\_  
HVAC: \_\_\_\_\_  
Utilities: \_\_\_\_\_  
Security: \_\_\_\_\_  
Other: \_\_\_\_\_  
Other: \_\_\_\_\_  
Other: \_\_\_\_\_  
  
Total Expenses: \_\_\_\_\_

Net Income After

Expenses: \_\_\_\_\_

Annual Cost of

Debt and Equity: \_\_\_\_\_

Rent to NPS: \_\_\_\_\_

Net Cash flow: \_\_\_\_\_

**Explain the basis of all estimates.** These estimates must credibly demonstrate that your net revenue will be sufficient to permit payment of the proposed rent and otherwise demonstrate that your proposal is financially viable.

## **ATTACHMENT I: SAMPLE RFP (IMPROVEMENTS)**

**LEASING OPPORTUNITY AT [PARK AREA];**

### **REQUEST FOR PROPOSALS**

#### **A. Summary.**

**This Request for Proposals (RFP) provides the opportunity for interested individual and organizations to submit proposals to the National Park Service (NPS) to lease NPS property at [name of park area] under the following general terms and conditions.**

#### **1. Property Offered for Lease.**

**[Describe the property to be leased. State whether or not the property or portions of it are historic property].**

#### **2. Uses of the Leased Property.**

**The lessee will use the property for the following authorized uses:**

**[Describe the authorized uses under the proposed lease.]**

#### **3. Term of Lease.**

**The term of the lease will be negotiated with the selected applicant. The lease term will commence on or about \_\_\_\_\_, 2007.**

#### **4. Fair Market Value Rent.**

**The lessee will be required by the lease to pay at least fair market value rent to the NPS. The fair market value rent will be determined by NPS after selection of the best proposal.**

#### **5. Other Terms and Conditions.**

**The proposed terms and conditions of the offered lease are as described in this RFP and 36 CFR Part 18. Final terms and conditions will be negotiated between NPS and the selected applicant.**

**6. Competitive Process.**

This lease opportunity is open to all interested persons on a competitive basis. Whoever submits the proposal judged best under the proposal selection criteria will be given an opportunity to negotiate a final lease agreeable to both the Applicant and NPS.

**7. Site Tour and Pre-Submittal Conference.**

A pre-submittal conference and site tour of the offered property will be held on \_\_\_\_\_, 2007, at the property. Please contact \_\_\_\_\_ by e-mail at \_\_\_\_\_ or by telephone at \_\_\_\_\_ to make a reservation.

**8. Proposal Submission Date.**

Proposals under this RFP must be received by close of business on \_\_\_\_\_, 2007, in the form and at the address stated below.

**9. Authority.**

This RFP is issued under the authority of 36 CFR Part 18. This RFP and the offered lease are subject to and incorporate all terms and conditions of Part 18 as applicable. In the event of any conflict between the terms of this RFP and Part 18, Part 18 controls.

**For Further Information Please Contact:**

[Include name, address, phone number and e-mail of NPS contact person.]

**B. The National Service and the [Park Area].**

**1. The National Park Service and its Mission.**

America's National Park Service was created by Congress to "conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be "preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.

To learn more about the National Park Service, visit our website at [www.nps.gov](http://www.nps.gov). This site includes information about who we are, our mission, NPS policies and individual parks.

**2. The Park Area**

[Describe the park area, including location, features, legislated purposes, management objectives, etc.]

**C. Proposal Selection Criteria.**

The NPS will select the best responsive proposal received under this RFP under the following selection criteria:

- 1. The compatibility of the proposal's intended use of the offered property with respect to preservation, protection, and visitor enjoyment of the park area;**
- 2. The financial capability of the Applicant to carry out the terms of the lease;**
- 3. The experience of the Applicant demonstrating the managerial capability to carry out the terms of the lease;**
- 4. The ability and commitment of the Applicant to conduct its activities in the park area in an environmentally enhancing manner through, among other programs and actions, energy conservation, waste reduction, and recycling;**
- 5. The compatibility of the proposal with the historic qualities of the property [included only if the property is historic]; and**
- 6. The benefit to NPS of the financial and other terms and conditions of the proposal, including, without limitation, the scope of proposed improvements (if applicable), the amount of rent proposed, the proposed term of the lease, and other proposed lease terms and conditions;**
- 7. Special Selection Criteria.** [Any special selection criteria related to the park area, lease uses, etc., should be included here.]

**D. Proposal Content.**

**1. In General.**

Proposals submitted in response to this RFP should follow the format described below. You are asked to answer questions or supply specific information in response to specified items. Please label your responses correspondingly, and respond fully and accurately to all questions/requests.

**2. Information Requested.**

**a. Applicant Identification**

**Please provide the identification and credit information described in Attachment A to this RFP if the applicant is not a business. If the applicant is a business, please provide the identification and credit information described in Attachment B to this RFP under the applicable category(sole proprietorship, partnership, or corporation).**

**b. Proposed Uses.**

**Please describe your proposed use or uses of the property and explain why it is compatible with the preservation, protection and visitor enjoyment of the park area. If the proposed use or uses are revenue producing, describe the business in detail.**

**If the proposed use or uses are revenue producing, please provide the financial information described in Attachment C to this RFP.**

**c. Financial Capability.**

**Please submit documentation of the source and availability of the funds necessary to carry out your obligations under the terms of the proposed lease, including, without limitation, any improvement requirements, through bank statements, bank financing commitment letters, or similar documents that convincingly substantiate your financial capability.**

**d. Experience.**

**Please explain how your experience and background qualifies you as managerially capable of satisfactorily performing the terms and conditions of the offered lease.**

**e. Environmental Enhancement.**

**Please explain your proposal for managing and using the property in an environmentally enhancing manner through, among other programs and actions you may propose, energy conservation, waste reduction, and recycling.**

**f. Rent Offered**

**Please state how much annual rent you offer to pay. The amount of rent will be negotiated with the selected applicant, provided that, the final rent must at least equal fair market rental value as determined by NPS.**

**g. Term Requested**

**Please state the term of the lease that would be acceptable to you. When considering the term, please keep in mind that NPS is required to award leases with as short a term as possible, taking into account the financial obligations of the lease and other related factors.**

**Shorter terms are considered as more desirable to NPS in the evaluation of lease proposals.**

**h. Improvement Plan**

**Please submit an improvement plan specifying how the applicant intends to improve the leased property. The plan should comprehensively describe the proposed improvements which the applicant will accomplish and outline a detailed schedule for program development, construction, completion, and opening for operation. Appropriate preliminary plans and drawings should be included in the plan. Detailed cost estimates should also be included.**

**E. Proposal Submission Requirements.**

**Please submit \_\_\_\_ ( ) copies of your proposal accompanied by a transmittal letter signed by a principal of the proposed lessee. The copies should be on 8-1/2" x 11" paper punched with 3 holes and unstapled (suitable for NPS to put in binders) with double-sided copying.**

**The proposal must be enclosed in sealed envelope(s), and received at the following NPS office by the close of business on the date specified in Section A above. The face of the sealed envelope shall show the Applicant's name and address, and the receiver's address as shown here:**

**[Include appropriate NPS address.]**

**Telephonic proposals, faxes, e-mail, and other means of transmittal will not be considered. Proposals will not be returned.**

**F. Additional Information and Modifications of Proposals.**

**NPS may request from any Applicant after the submission date additional information or written clarification of a proposal. However, proposals may not be amended after the submission date unless permitted by NPS. NPS may not permit amendment of a proposal unless all Applicants that submitted responsive proposals are given an opportunity to amend their respective proposals.**

**G. NPS Evaluation and Selection of the Best Proposal.**

**NPS will review all responses to this RFP through an evaluation panel assisted by technical consultants as appropriate.**

**All proposals will first be screened for adherence to the requirements of this RFP. NPS will not consider non-responsive proposals. A non-responsive proposal is a proposal that was not timely submitted or fails to meet the material terms and conditions of this RFP as determined by NPS.**

**It is the intention of the NPS to select the best-submitted proposal as determined under the selection criteria without further submittals or presentations. If this cannot be done, NPS will select those lease proposals that appear most suitable under the selection criteria, and from that group will request additional information or presentations so that the best proposal can be selected.**

NPS will negotiate the terms of the final lease with the Applicant determined to have submitted the best proposal under the selection criteria. Award of a lease to that Applicant is dependent on successful negotiation of the final terms of the lease. If negotiations fail, NPS may negotiate with other Applicants for award of the offered lease or terminate this solicitation without liability to any person.

#### **H. Lease Terms and Conditions.**

**1. Term of Lease.** The lease to be awarded under this RFP is to have a term that is as short as possible. The lease will not be extended, except that, leases with an initial term of one (1) year or more may be extended once for a period not to exceed one (1) additional year if the deciding official determines that an extension is necessary because of circumstances beyond the control of NPS.

#### **2. Lease Provisions**

The lease to be awarded under this RFP will contain the provisions required by Part 18 as well as other provisions determined by NPS to be necessary to assure use of the leased property in a manner consistent with the purposes of the park area, and where applicable, to assure the preservation of historic property. Required provisions include, without limitation:

- (a) A termination for cause or default provision;**
- (b) Appropriate provisions requiring the lessee to maintain the leased property in good condition throughout the term of the lease;**
- (c) Appropriate provisions stating that subletting of a portion of the leased property and assignment of a lease, if permissible under the terms of the lease, must be subject to the written approval of NPS;**
- (d) Appropriate provisions requiring the lessee to pay for use of all utilities used by the lessee and to pay all taxes and assessments imposed by federal, state, or local agencies applicable to the leased property or to lessee activities;**
- (e) Appropriate provisions stating that the lessee has no rights of renewal of the lease or to the award of a new lease upon lease termination or expiration;**
- (f) Appropriate provisions stating that the lessee may not construct new buildings or structures on leased property except in limited circumstances;**
- (g) Appropriate provisions requiring that any improvements to or demolition of leased property to be made by the lessee may be undertaken only with written approval from the NPS; and**



**(h) Appropriate provisions that describe and limit the type of activities that may be conducted by the lessee on the leased property.**

**If a Draft Lease is attached to this RFP, it incorporates these terms.**

**I. Confidentiality of Proposals.**

**If you believe that a proposal contains trade secrets or confidential commercial and financial information that you do not want to be made public, please include the following sentence on the cover page of each copy of the proposal:**

**“This proposal contains trade secrets and/or confidential commercial or financial information that the Applicant believes to be exempt from disclosure under the Freedom of Information Act. The Applicant requests that this information not be disclosed to the public, except as may be required by law.”**

**In addition, you must specifically identify what you consider to be trade secret information or confidential commercial and financial information on the page of the proposal on which it appears, and you must include the following sentence on each such page:**

**“This page contains trade secrets, or confidential commercial or financial information that the Applicant believes to be exempt from disclosure under the Freedom of Information Act, and which is subject to the non-disclosure statement on the cover page of this proposal.”**

**Information so identified will not be made public by NPS except in accordance with the requirements of the Freedom of Information Act.**

Attachment A

Attachment B

Attachment C

## **Attachment A: Identification and Credit Information (Individual)**

### **Identification**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

### **Credit Information**

1. List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the past 10 years. (If none, so indicate). Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.
  
2. Describe any fines or penalties levied by government agencies during the past 10 years. (If none, so indicate)
  
3. Describe any pending litigation or current lawsuits which if adversely resolved would materially impact the financial position of the Applicant.
  
4. Attach:
  - a. Personal Financial Statement documenting assets and liabilities.
  - b. Credit Reports for the individual(s) from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attachment B: Identification and Credit Information (Business)**

1. BUSINESS IDENTIFICATION AND CREDIT INFORMATION:  
 PARTNERSHIP OR SOLE PROPRIETOR

Name of Entity	
Address	
Telephone Number	
Fax Number	
Email Address	
Contact Person	
Title	
Tax ID #	
Form of Business: <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Other (please describe) _____	
Years in Business	

OWNERSHIP			
Names And Addresses Of Each Partner Or Sole Proprietor	Percentage Ownership	Current Value of Business	Role in Lease Operations

Credit Information

Has Applicant ever defaulted from or been terminated from a management contract or lease, or been forbidden from contracting by a public agency or private company?

If YES, provide full details of the circumstances.

List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, so indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

Describe any fines or penalties levied by government agencies during the *past 10 years*. (If none, so indicate)

Describe any pending litigation or current lawsuits which if adversely resolved would materially impact the financial position of the Applicant.

**Attach:**

Personal Financial Statements

Latest Financial Statement for business for past 2 years

Credit Reports for the entity and key principals, from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attach Resumes of Principals as follows:**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

**2. BUSINESS IDENTIFICATION AND CREDIT INFORMATION:**

**CORPORATION**

*Complete separate form for the submitting corporation and the parent corporation (include all partners in a joint venture).*

Name of Entity	
Address	
Telephone Number	
Fax Number	
Email Address	
Contact Person	
Title	
Tax ID#	
State of Incorporation	
Date of Incorporation	

OWNERSHIP	NUMBER AND TYPE OF SHARES OR PERCENTAGE OF OWNERSHIP	CURRENT VALUE OF INVESTMENT
Names and Addresses of those with controlling interest or key principals of corporation		
Total of All		
Total Shares Outstanding		

CORPORATE OFFICERS AND BOARD OF DIRECTOR	ADDRESS	TITLE AND/OR AFFILIATION

--	--	--

**Credit Information**

Has Applicant ever defaulted from or been terminated from a management contract or lease, or been forbidden from contracting by a public agency or private company?

If YES, provide full details of the circumstances.

List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, so indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

Describe any fines or penalties levied by government agencies during the past 10 years. (If none, so indicate)

Describe any pending litigation or current lawsuits (other than those covered adequately by insurance) which if adversely resolved would materially impact the financial position of the Applicant.

**Attach:**

Personal Financial Statements of any owners or partners of the parent company, if applicable.

Latest Financial Statement for business for past 2 years (Audited, if available)

Credit Reports for the entity and key principals, from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attach Resumes of Principals as follows:**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role



**Attachment C: Financial Information for Revenue-Producing Uses**

**1. START UP COSTS**

Working Capital: \$ \_\_\_\_\_  
Utility Hookups: \$ \_\_\_\_\_  
Improvements: \$ \_\_\_\_\_  
FF&E: \$ \_\_\_\_\_  
Marketing: \$ \_\_\_\_\_  
Legal: \$ \_\_\_\_\_

Total Start Up Costs: \$ \_\_\_\_\_

**Explain the basis of all estimates.** The estimates must credibly demonstrate your understanding of the start-up costs associated with this lease opportunity.

**2. Stabilized Operating Proforma**

Revenue: \_\_\_\_\_  
Expenses: \_\_\_\_\_  
General/Admin.: \_\_\_\_\_  
Operations: \_\_\_\_\_  
Building Maintenance: \_\_\_\_\_  
Grounds Upkeep: \_\_\_\_\_  
HVAC: \_\_\_\_\_  
Utilities: \_\_\_\_\_  
Security: \_\_\_\_\_  
Other: \_\_\_\_\_  
Other: \_\_\_\_\_  
Other: \_\_\_\_\_

Total Expenses: \_\_\_\_\_

Net Income After

Expenses: \_\_\_\_\_

Annual Cost of

Debt and Equity: \_\_\_\_\_

Rent to NPS: \_\_\_\_\_

Net Cash flow: \_\_\_\_\_

**Explain the basis of all estimates.** These estimates must credibly demonstrate that your net revenue will be sufficient to permit payment of the proposed rent and otherwise demonstrate that your proposal is financially viable.

## **ATTACHMENT J: SAMPLE REQUEST FOR QUALIFICATIONS**

**LEASING OPPORTUNITY AT [PARK AREA];**

### **REQUEST FOR QUALIFICATIONS**

#### **A. Summary.**

**This Request for Qualifications (RFQ) provides the opportunity for interested individual and organizations to submit their qualifications to the National Park Service (NPS) to be determined eligible to submit a proposal to lease NPS property (Offered Property) at [name of park area] under a Request for Proposals (RFP) to be subsequently issued by NPS.**

#### **1. Property Offered for Lease.**

**[Describe the Offered Property. State whether or not it or portions of it are historic property. Discuss whether the lessee is to make improvements to the Offered Property.]**

#### **2. Uses of the Offered Property.**

**[Describe the authorized uses of the Offered Property under the proposed lease to the extent known.]**

#### **3. Term of Lease.**

**[State that the proposed lease will have a fixed term of \_\_\_\_\_ years, commencing approximately \_\_\_\_\_, 2007, or, that the term of the lease has not been determined but will be identified or further discussed in the RFP.]**

#### **4. Fair Market Value Rent.**

**The lessee will be required by the lease to pay at least fair market value rent to the NPS for the Offered Property. Rent will be further described and discussed in the RFP.**

#### **5. Open Opportunity.**

**This opportunity to submit qualifications in response to this RFQ is open to all interested persons. All applicants that submit qualifications considered by NPS to be acceptable under the selection criteria described below will be given an opportunity to submit a lease proposal to NPS under an RFP for the Offered Property. Only persons so qualified will be permitted to submit a proposal in response to the RFP.**

**6. Site Tour and Pre-Submittal Conference. [Optional]**

A pre-submittal conference and site tour of the Offered Property will be held on \_\_\_\_\_, 2007, at the property. Please contact \_\_\_\_\_ by e-mail at \_\_\_\_\_ or by telephone at \_\_\_\_\_ to make a reservation.

**7. Qualifications Submission Date.**

Submissions under this RFQ must be received by close of business on \_\_\_\_\_, 2007, in the form and at the address stated below.

**8. Authority.**

This RFQ is issued under the authority of 36 CFR Part 18. This RFQ is subject to and incorporates all terms and conditions of Part 18 as applicable. In the event of any conflict between the terms of this RFP and Part 18, Part 18 controls.

**9. For Further Information Please Contact:**

[Include name, address, phone number and e-mail of NPS contact person.]

**B. The National Service and the [Park Area].**

**1. The National Park Service and its Mission.**

America's National Park Service was created by Congress to "conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be "preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.

To learn more about the National Park Service, visit our website at [www.nps.gov](http://www.nps.gov). This site includes information about who we are, our mission, NPS policies and individual parks.

**2. The Park Area**

[Describe the park area, including location, features, legislated purposes, management objectives, etc.]

**C. Selection Criteria.**

The NPS will determine applicants as qualified to submit a proposal in response to an RFP for the Offered Property under the following criteria:

1. The financial capability of the applicant to carry out the terms of the lease;
2. The experience of the applicant demonstrating the managerial capability to carry out the terms of the lease;
3. Special Selection Criteria. [Any special selection criteria related to the park area, lease uses, etc., should be included here.]

**D. Submission Content.**

**1. In General.**

Information submitted in response to this RFQ should follow the format described below. You are asked to answer questions or supply specific information in response to specified items. Please label your responses correspondingly, and respond fully and accurately to all questions/requests.

**2. Information Requested.**

**a. Applicant Identification**

Please provide the identification and credit information described in Attachment A to this RFQ if the applicant is not a business. If the applicant is a business, please provide the identification and credit information described in Attachment B to this RFQ under the applicable category (sole proprietorship, partnership, or corporation).

**b. Financial Capability.**

Please submit documentation (bank statements, commitment letters, etc.) that convincingly substantiates your financial capability. [Specific dollar amounts may be specified based on an assessment of the financial requirements of the proposed lease.]

**d. Experience.**

Please explain how your experience and background qualifies you as managerially capable of satisfactorily performing the terms and conditions of the proposed lease.

**E. Submission Requirements.**

Please submit \_\_\_\_\_( ) copies of your qualifications accompanied by a transmittal letter signed by a principal of the applicant. The copies should be on 8-1/2" x 11" paper punched with 3 holes and unstapled (suitable for NPS to put in binders) with double-sided copying.

The proposal must be enclosed in sealed envelope(s), and received at the following NPS office by the close of business on the date specified in Section A above. The face of the sealed envelope shall show the applicant's name and address, and the receiver's address as shown here:

[Include appropriate NPS address.]

Telephonic proposals, faxes, e-mail, and other means of transmittal will not be considered. Proposals will not be returned.

**E. Confidentiality of Submissions.**

If you believe that a submission contains trade secrets or confidential commercial and financial information that you do not want to be made public, please include the following sentence on the cover page of each copy of the submission:

**“This submission contains trade secrets and/or confidential commercial or financial information that the applicant believes to be exempt from disclosure under the Freedom of Information Act. The applicant requests that this information not be disclosed to the public, except as may be required by law.”**

In addition, you must specifically identify what you consider to be trade secret information or confidential commercial and financial information on the page of the submission on which it appears, and you must include the following sentence on each such page:

**“This page contains trade secrets, or confidential commercial or financial information that the applicant believes to be exempt from disclosure under the Freedom of Information Act, and which is subject to the non-disclosure statement on the cover page of this submission.”**

Information so identified will not be made public by NPS except in accordance with the requirements of the Freedom of Information Act.

Attachment A

Attachment B

Attachment C

## **Attachment A: Identification and Credit Information (Individual)**

### **Identification**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

### **Credit Information**

1. List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the past 10 years. (If none, so indicate). Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.
  
2. Describe any fines or penalties levied by government agencies during the past 10 years. (If none, so indicate)
  
3. Describe any pending litigation or current lawsuits which if adversely resolved would materially impact the financial position of the Applicant.
  
4. Attach:
  - a. Personal Financial Statement documenting assets and liabilities.
  - b. Credit Reports for the individual(s) from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attachment B: Identification and Credit Information (Business)**

**1. BUSINESS IDENTIFICATION AND CREDIT INFORMATION:  
PARTNERSHIP OR SOLE PROPRIETOR**

Name of Entity	
Address	
Telephone Number	
Fax Number	
Email Address	
Contact Person	
Title	
Tax ID #	
Form of Business: <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Other (please describe) _____	
Years in Business	

OWNERSHIP			
Names And Addresses Of Each Partner Or Sole Proprietor	Percentage Ownership	Current Value of Business	Role in Lease Operations

Credit Information

Has Applicant ever defaulted from or been terminated from a management contract or lease, or been forbidden from contracting by a public agency or private company?

If YES, provide full details of the circumstances.



List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, so indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

Describe any fines or penalties levied by government agencies during the *past 10 years*. (If none, so indicate)

Describe any pending litigation or current lawsuits which if adversely resolved would materially impact the financial position of the Applicant.

**Attach:**

Personal Financial Statements

Latest Financial Statement for business for past 2 years

Credit Reports for the entity and key principals, from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attach Resumes of Principals as follows:**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

**2. BUSINESS IDENTIFICATION AND CREDIT INFORMATION:**

CORPORATION

*Complete separate form for the submitting corporation and the parent corporation (include all partners in a joint venture).*

Name of Entity	
Address	
Telephone Number	
Fax Number	
Email Address	
Contact Person	
Title	
Tax ID#	
State of Incorporation	
Date of Incorporation	

OWNERSHIP	NUMBER AND TYPE OF SHARES OR PERCENTAGE OF OWNERSHIP	CURRENT VALUE OF INVESTMENT
Names and Addresses of those with controlling interest or key principals of corporation		
Total of All		
Total Shares Outstanding		

CORPORATE OFFICERS AND BOARD OF DIRECTOR	ADDRESS	TITLE AND/OR AFFILIATION


**Credit Information**

Has Applicant ever defaulted from or been terminated from a management contract or lease, or been forbidden from contracting by a public agency or private company?

If YES, provide full details of the circumstances.

List any Foreclosures, Bankruptcies, Transfers in Lieu of Foreclosure and/or Work-Out/Loan Modification Transactions during the *past 10 years*. (If none, so indicate)

Name of Property	City State	Property Type	Approximate Loan Amount	Lender	Year of Event

Attach an explanation of circumstances, including resolution, bankruptcy plan, and/or other documentation as appropriate.

Describe any fines or penalties levied by government agencies during the past 10 years. (If none, so indicate)

Describe any pending litigation or current lawsuits (other than those covered adequately by insurance) which if adversely resolved would materially impact the financial position of the Applicant.

**Attach:**

Personal Financial Statements of any owners or partners of the parent company, if applicable.

Latest Financial Statement for business for past 2 years (Audited, if available)

Credit Reports for the entity and key principals, from a major credit reporting company such as Equifax, Experient and Dunn & Bradstreet.

**Attach Resumes of Principals as follows:**

Name

Address

Telephone Number

Fax Number

Education, Degrees, Licenses, Designations, Special Skills

Name of Current Employer

Address

Nature of Business

Dates of Employment

Title of Position Most Recently Held

Description of Duties and Responsibilities (Include number of people supervised)

Proposed Role in Lease Operations

Qualifications for that Role

Estimated Time per Week Dedicated to that Role

## **Attachment K: SAMPLE LETTER OF INTENT**

Dear \_\_\_\_\_:

By letter of June 23, 2003, the Newlands Redevelopment Corporation (“NRD”) was notified by the National Park Service (“NPS”) that your organization has been selected for negotiation of a Proposed Lease of certain property at the Lost River National Park under the terms of the March 22, 2003, Lost River National Park Request for Lease Proposals (“RFP”). As mentioned in the notification letter, this Letter of Intent establishes the terms and conditions of the negotiations, as follows:

1. NPS and NRD agree to enter into good faith negotiations for a proposed lease (the “Proposed Lease”) of certain property (the “Premises” as described in Exhibit A to this Letter of Intent) at Lost River National Park (“park area”).
2. NRD shall make a thorough, independent examination of the Premises and all matters relevant to NRD’s decision to enter into the Proposed Lease such that NRD will be thoroughly familiar with all aspects of the Premises and satisfied that they are in an acceptable condition and meet NRD’s needs. The inspection and review will include, to the extent that NRD in its sole discretion deems necessary or appropriate: all matters relating to title, together with all legal requirements such as taxes, assessments, use permit requirements and building codes; the physical condition of the Premises, including the soils and the presence or absence of hazardous materials on, under or in the vicinity of the Premises and all other physical and functional aspects of such property; all easements and access rights; NRD’s ability to obtain appropriate permits and satisfy all permitting requirements under applicable laws; NRD’s ability to design and construct improvements to the Premises; the economics of the Proposed Lease; and NRD’s ability to finance the Proposed Lease.
3. During the term of this Letter of Intent, NRD shall have a right of access to and entry upon the Premises during normal business hours when approved by the park area Superintendent for the purpose of conducting due diligence activities. Any request for access must be at least 48 hours in advance. NRD shall ensure that the safety, functioning and appearance of the Premises and the convenience and safety of other persons are not adversely affected by the activities of NRD, its employees, contractors, consultants or other agents.
4. NRD’s activities on the Premises shall be subject to the general supervision and inspection of the NPS and to such rules and regulations regarding ingress, egress, safety, sanitation and security as may be prescribed by the Superintendent from time to time.
5. During the term of this Letter of Intent, NRD shall cut no timber or 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 change the contour or condition of the Premises.
6. NRD, its officer, directors, partners, members, employees and agents shall indemnify, defend, save and hold the NPS, its employees, successors, agents and assigns, harmless from and against, and reimburse the NPS for any and all claims, demands, damages, injuries, losses, penalties,

finances, costs, liabilities, causes of action, judgments, and expenses, including without limitation expenses incurred in connection with or arising in any way out of this Letter of Intent, the use, occupancy or manner of use or occupancy of the Premises by NRD or any other person or entity, the condition of the Premises, and/or any accident or occurrence on the Premises from any cause whatsoever.

7. During the term of this Letter of Intent, NPS and NRD will negotiate all matters necessary to achieving execution of the Proposed Lease, including, without limitation, the fair market value rent for the Premises [if not established by the RFP], the plans of NRD for making improvements to the Premises, the scope of activities NRD will be permitted to conduct on the Premises, and other terms and conditions of the Proposed Lease. All requirements of the RFP and 36 CFR Part 18 shall apply to these negotiations.

8. The obligation of NPS to execute the Proposed Lease for the Premises is subject to all NPS determinations required by 36 CFR Part 18, any other required regulatory or statutory actions or determinations, and, to NPS determinations that NRD has achieved the following goals prior to execution of the Proposed Lease:

[Describe goals appropriate in the circumstances of the particular lease that must be achieved by the potential lessee as conditions to execution of the lease, e.g., evidence of financing, managerial competence, plan development and approval, etc.]

9. This Letter of Intent shall expire on March 24, 2004, unless extended by written agreement of NPS and NRD. Either party may terminate this Letter of Intent and the negotiations for the Proposed Lease at any time in its discretion by written notice to the other party. No compensation of any nature shall be due NRD or NPS in the event that the good faith negotiations called for by this Letter of Intent fail to result in the execution of the Proposed Lease for the Premises or in the event this Letter of Intent expires or is terminated in accordance with its terms.

10. Any notice, consent or other communication required or permitted under this Letter of Intent shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested, and shall be deemed to have been given on the earliest of (a) receipt, (b) one business day after delivery to a courier for overnight expedited delivery service, or (c) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), and addressed as appropriate to the following addresses (or to such other or further addresses as the parties may designate by notice given in accordance with this Section):

If to the NPS:

Superintendent, Lost River National Park

\_\_\_\_\_  
\_\_\_\_\_ -

If to NRD:

[\_\_\_\_\_ address]

11. This Letter of Intent constitutes the entire agreement between NPS and NRD with respect to the Proposed Lease of the Premises and supersedes all prior offers or negotiations, whether oral or written. This Letter of Intent may not be amended or modified except by an instrument in writing signed by NPS and NRD.

If these terms and conditions are acceptable to you, please so indicate by signing below.

Sincerely,

\_\_\_\_\_  
Regional Director, \_\_\_\_\_ Region  
National Park Service

Agreed:

Newlands Redevelopment Corporation

By \_\_\_\_\_

Title \_\_\_\_\_

Attest: \_\_\_\_\_

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



## ATTACHMENT L: LEASING CAPACITY ASSESSMENT

### Leasing Capacity Assessment

NPS leasing is frequently a complex, time-consuming and expensive process, requiring technical expertise, professional consultation, extended reviews, and sustained management attention. Before becoming involved in leasing, park area managers are encouraged to consider the following assessment of park area capacities.

1. Do you have a trained, qualified person who can manage the leasing program? If you don't, are you willing to commit the resources to obtain the requisite training and/or on-the-job training?

Leasing is a challenging program, involving an understanding of law and policy, complex organizational procedures, appraisal processes, legal concepts and language, etc. Leasing managers need to be well-grounded in all these and also need to have field experience if possible.

2. Are you able to fund the program?

While some leasing programs generate moderate to significant revenues, most do not, at least in the short term. This is because most NPS leases require the lessee to spend a considerable sum on upgrading facilities and those sums are considered in establishing fair market value rent.

3. Do you have ready access – either on staff or generally available as needed – to technical experts, including a historical architect and/or preservation specialist (for historical structures) and cultural resource specialist (for determinations of eligibility, SHPO notifications, etc.)?

The leasing of historic structures requires considerable advance work, plus consultation during rehabilitation of a property and monitoring thereafter.

4. Are you prepared to dedicate qualified staff to a program of regular monitoring and technical evaluations throughout the life of the lease?

Getting a lease signed is just the first step in a long term relationship. You will need to conduct regular site visits to assure compliance with the terms of the lease and provide consultation on proposals for additional work to the property.

5. Are there individuals or organizations in your area with the venture capital and interest requisite for investing in a potential leasing property needing significant work? That is, do you have a market?

6. Is there support for a leasing program in your park and community?

Leasing can be controversial, particularly among those who believe that no private entities should be permitted to lease and use park facilities. Leasing programs have accordingly run afoul of local opposition on occasion. You need to be sure that you have support for your program before you begin it.

## **ATTACHMENT M: SUMMARY OF RECOMMENDED OPERATING PROCEDURES**

### **1. Preliminary Considerations**

Park area Superintendent considers whether there are properties in the park that are suitable for leasing and determines that to do so would be in the best interest of the park. Some considerations could be inquiries from the general public. Determinations should be in accordance with 36 CFR Part 18.4 and RM 38.

Park area Superintendent should determine whether the park has the required resources to sustain a park leasing program.

Once this has been determined, the Superintendent should consider all park area planning documents to determine whether the documents permit the leasing action.

If further NEPA/106/GMP actions are required, ensure that the proper actions occur to meet the requirements.

Determine the condition of the property to be leased. This may include informal evaluations, the park area's Comprehensive Condition Assessment data, or a formal contracted building inspection.

If the property requires capital improvements, prepare an estimate of the cost of the improvements.

If the property does not require capital improvements, conduct an informal survey of possible rent receipts of the local area to determine that the possibility of leasing the building is financially viable.

If the structure is historic, ensure that the applicable requirements for preservation of the structure are upheld. Refer to NPS 28.

If the property is historic, the regional or park cultural compliance/ historic preservation officer should discuss the planned action with the State Historic Preservation Officer (SHPO).

### **2. Pre-Solicitation Steps**

Park area should determine if there are any specific or forbidden uses for leasing the property. If the park area determines that no specific uses are preferred, the park should make an assessment that the determinations in 36 CFR Part 18.4 can be made.

Determine whether to solicit using a Request for Bids (RFB), Request for Proposals (RFP), Request for Qualifications (RFQ) or a non-competitive lease negotiation with a non-profit or government agency is appropriate.

Determine at what stage the request for appraisal should be initiated. See RM 38 and ARRTS User's Guide for further guidance.

### **3. Request for Bids (RFB)**

Prepare a request for appraisal services through the ARRTS system.

Draft the Request for Bids, including draft lease.

Obtain legal review and approval of the RFB.

After the fair market rental value has been determined through the appraisal system, advertise the leasing opportunity in accordance with RM 38.

### **4. Request for Proposals (RFP)**

Prepare a request for appraisal services through the ARRTS system.

Draft the Request for Proposal including:

Develop specific evaluation criteria;

Park area description and map; and

Describe detailed required capital improvements, including NPS Class C cost estimates, if available and appropriate

Hold scheduled site visits as prescribed in RM 38.

Respond to written questions and send to all interested parties.

Obtain legal review and approval of the RFP.

Advertise the leasing opportunity.

Establish evaluation panel per RM 38.

Proposals or bids should be secured until evaluation panel meets.

### **5. Evaluation Panel**

See instruction in RM 38.

Submit ARRTS Request for appraisal

Chairperson prepares Evaluation Summary Report (ESR).

Once legal approval is received, Chairperson forwards ESR to Deciding Official.

Deciding Official selects best proposal to negotiate a final lease.

Negotiate final lease.

Send final lease to Appraiser through ARRTs system.

Once the rental value has been received -

If WASO approval is required, prepare administrative in accordance with D.O. 38 and RM 38 and forward to WASO.

Deciding official executes.

Forward lease to prospective Lessee for signature.

## **6. Non-Competitive Lease Negotiations**

Identify interested appropriate non-profit organizations or Government entities.

Select the non-profit organization or government entity using the criteria as outlined in RM 38.

Prepare and negotiate the Letter of Intent (LOI).

Obtain legal review of the LOI.

RD signature on LOI.

Monitor the requirements of the LOI

Once requirements have been met, request appraisal Services through ARRTS

Proceed with signature of final lease.

## **7. Lease Administration**

Set up lease administration file.

Set up compliance matrix for all initial and annual lease required submittals.

Set up budget accounts for rental receivables and expenditures.

Designate Property Manager

Designate Project Manager for capital improvements and/or preservation project.

Final approval of capital improvements and/or preservation project.

Periodic property, maintenance, and Secretary's Standards compliance inspections, if applicable.

Monitor any required rent reconsiderations and start proceedings for rent reconsideration.

**ATTACHMENT N:**

**Policy Memorandum 07-01**

**To: Regional Directors**

**From: Director**

**Subject: Authorizing activities through leases versus concession contracts or commercial use authorizations**

The guidance contained in this memorandum is to be used in making a determination as to whether an activity proposed to be authorized under a lease must be authorized, instead, by a concession contract, commercial use authorization (CUA) or similar instrument. This guidance will be incorporated at a later date into the appropriate Director's Order (s) applicable to commercial park uses.

**Background**

36 CFR Part 18 (Leasing of Properties in Park Areas) and Director's Order #38 (Real Property Leasing) describe NPS regulatory and policy requirements for the award and management of leases of park area property. Among other matters, these documents incorporate applicable provisions of the authorizing statutes for Part 18 leases. Of particular significance in this connection is the requirement of Section 802 of P.L. 105-391 (16 U.S.C. 1a-2(k)) that prohibits the utilization of leases for activities that are subject to authorization through a concession contract, CUA, or similar instrument. Section VI.B. of Director's Order #38 discusses this prohibition as follows:

**B. Concession Activities.** A Part 17 or 18 lease may not authorize the lessee to engage in activities that are subject to authorization through a concession contract, commercial use authorization or similar instrument. Proposed lease activities are subject to authorization under a concession contract if NPS determines in accordance with 36 CFR Part 51 and park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a concession contract. Proposed activities are subject to authorization under a commercial use authorization or similar instrument if NPS determines in accordance with park area planning documents and related guidelines and policies that the proposed activities meet applicable requirements for issuance of a commercial use authorization or similar instrument.

To promote a better understanding of these requirements and to avoid potential violations of Section 802 of P.L. 391, this memorandum amplifies the distinctions between concession contracts, commercial use authorizations, and leases.

### **Concession Contracts and Commercial Use Authorizations.**

A “concession contract” is defined in 36 CFR Part 51 as a binding written agreement between NPS and a concessioner to provide specified visitor services within a park area. “Visitor services” are defined in 36 CFR Part 51.3 as follows:

Visitor services mean accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guest). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

A “commercial use authorization” is a written authorization to provide services to park area visitors issued by NPS under Section 418 of Public Law 105-391. There are no implementing regulations for CUAs as of the date of this memorandum. However, interim guidance has been issued through a previous memorandum, November 18, 2005.

In accordance with 36 CFR 18.6(b), proposed activities of a commercial nature must be reviewed in accordance with 36 CFR Part 51, park area planning documents, and related guidelines and policies. Upon review:

- if the proposed activity meet applicable requirements for issuance of a concession, then a concession contract (and not a lease) must be used to authorize the activity;
- if the proposed activity meets applicable requirements for issuance of a CUA, then a CUA (and not a lease) must be used to authorize the activity.

Supplemental to the 36 CFR Part 51 conditions for issuing concession contracts, Section 10.2.2 of *Management Policies 2006* states that a concession contract may be issued only when (among other factors) a determination is made that the proposed concession facilities or services:

- are consistent with the park area’s enabling legislation;
- are complementary to the park area’s mission and visitor services objectives;
- are necessary and appropriate for the public use and enjoyment of the park area; and
- are not, and cannot be, provided outside park area boundaries.

In general, when a determination is made that neither a concession contract nor a CUA is appropriate, it is likely that (as provided in Section 8.12 of the *Management Policies 2006*) a lease may be used to authorized the activity if:

- the property where the proposed services are to be provided is not near a particular visitor destination of the park areas; and
- the patrons of the lessee are expected to be primarily persons who come to the parks area only to utilize the lessee’s services.

### **Replacing a Concession Contract or Commercial use Authorization with a Lease**

Particular attention must be paid to the “not subject to authorization under a concession contract or commercial use authorization” determination if a lease is being considered that will authorize the conduct of an activity that was previously authorized by a concession contract or CUA. If the activity had previously taken place under a concession contract or CUA, it necessarily means that the NPS had previously determined that the activity was “subject to authorization” under one of those instruments. Therefore, if a change to a lease from one of the other instruments is proposed, the administrative record must convincingly document why the proposed activity under the lease is no longer subject to authorization under a concession contract or CUA. This discussion must be based on the existence of circumstances that have changed from the time the concession contract or CUA was awarded.

For example, a finding could be that food service in a park area currently authorized by a concession contract is no longer a necessary and appropriate visitor service (and thus not subject to authorization by a concession contract). This could occur when, for example, new food facilities open outside the boundaries of the park are after the award of the contract, and the new facilities adequately meet the needs of the park area’s visitors.

A change from a concession contract or CUA to a lease cannot be justified on the basis of administrative ease or financial advantage to NPS.

### **Approval by the Director**

In order to achieve national program consistency and in light of the potential for conflict with Section 802 of P.L. 105-391, in circumstances where a lease is being considered to authorize activities previously authorized by a concession contract or CUA, all proposed leases of this nature must be approved in writing by the Washington Concession Management Program in advance of the issuance of the lease solicitation and, in addition, in advance of the lease award.

If there are any questions, please call Ms. Jo A. Pendry, Concession Program Manager, at 202/513-7156.