

**CC-GATE015-03**

**AMENDMENT NO. 5**

**This Amendment No.5 to CC-GATE015-03 is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service or his designee (hereinafter referred to as the “Director”), and ARKLOW-FBF, LLC, a limited liability company organized and existing under the laws of the State of Delaware (hereinafter referred to as the “Concessioner”):**

**WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner’s predecessor entered into Concession Contract No. CC-GATE015-03 (hereinafter “Contract”), effective April 15, 2003, as amended by Amendment No. 1 dated February 27, 2006, Amendment No. 2 dated July 13, 2006, Amendment No. 3 dated December 31, 2008; and Amendment No. 4 dated December 3, 2010 for the purposes of granting the Concessioner the limited privilege of providing required and authorized visitor services and related operations within Gateway National Recreation Area (hereinafter “Area”) as set forth in the Contract; and

**WHEREAS**, through this Amendment, the Concessioner and the Director acknowledge the ownership by the United States of names and images associated with the Area and features therein, including but not limited to the names of the Concession Facilities; and,

**WHEREAS**, the Concessioner has requested financial relief in order to continue operating and that absent the requested financial relief, the Concessioner represents that it will no longer be able to operate the concession, resulting in an interruption to visitor services; and,

**WHEREAS**, the Director has considered the request and obtained an independent, confidential, proprietary, financial analysis that supports the Concessioner’s claim; and the Director supports continuation of visitor services under the Contract and will undertake action to avoid interruption in service; and,

**WHEREAS**, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services; and,

**WHEREAS**, the Concessioner has requested financial relief from obligations under the Contract and the Director has considered the probable value of the Contract based on a reasonable opportunity for net profit in relation to capital invested and obligations of the Contract, and the

Director has determined that revenue considerations are subordinate to the objectives of protecting and preserving park areas and of providing appropriate and necessary visitor services; and,

**WHEREAS**, the Contract may be amended to authorize the Concessioner to provide minor additional services that are a reasonable extension of the existing services and the Director wishes to permit the Concessioner to provide minor additional services similar to those currently offered by the Concessioner; and,

**WHEREAS**, the Director wishes to revise Exhibit D to incorporate the land and real property improvements associated with the additional services provided in this Amendment, including the Flatbush Avenue golf driving range, Jacob Riis Park Pitch and Putt, and use of the historic runways at Floyd Bennett Field on which events, which were previously authorized under a Special Use Permit, are now to be authorized for Concessioner's non-exclusive use at the discretion of the Director; and,

**WHEREAS**, Director and Concessioner desire to provide a continuation of visitor services and otherwise amend such Contract to the mutual benefit of the parties; and,

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual promises and covenants contained in this Amendment, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Director and the Concessioner hereby agree as follows:

**1. Section 3(a) of the Contract is deleted in its entirety and replaced with the following:**

(1) Required Visitor Services. The Concessioner is required to operate a sports and event center anchored by an ice rink on a year-round basis to include:

**Floyd Bennett Field (Aviator Road) Location:**

- Sports-related programming both indoor and outdoor,
- Food and beverage,
- Vending services.

**Flatbush Avenue Location:**

- Operation of golf driving range including miniature golf.

**Jacob Riis Park:**

- Operation of par 3, 18 hole pitch and putt course.

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following listed visitor services, during the term of this CONTRACT:

**Floyd Bennett Field (Aviator Road) Location:**

- Retail service in support of sports center,
- Instructional recreation services,
- Sports physical therapy,
- School, community, and private events, fee based event parking - See Exhibit D
- Runway activities - See Exhibit D
- Any appropriate activity approved in advance in writing by NPS.

**Flatbush Avenue Location:**

- Food and beverage,
- Vending services,
- Instructional golf services,
- Sports center related retail services,
- Any appropriate activity approved in writing by NPS

**Jacob Riis Park:**

- Limited food and beverage,
- Instructional golf services,
- Any appropriate activity approved in advance in writing by NPS

**3. Section 8 (i) of the Contract is deleted in its entirety and replaced with the following:**

The Director may choose to fund contributions towards the Concessioner's cost of utilities. Contributions shall be made on a calendar year basis, shall not exceed \$650,000 annually, and shall be prorated for the portions of calendar years 2017 and 2024 during which this Amendment to the Contract is in effect. In the event the Director pays any third party for the cost of Concessioner utility expenses, and such contributions to Concessioner's utility expenses exceed \$650,000 per calendar year, the Director shall reduce or cease the amount of any funds allocated by the Service as described in Paragraph 4(a)(2) below toward any facility improvements or upgrades.

**4. Section 9(a) of the Contract is deleted in its entirety and replaced with the following:**

**(a) Construction of Real Property Improvements**

(1) The Concessioner may construct or install upon lands assigned to the Concessioner under

this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

(2) The Director may elect to fund Capital Improvements, Major Rehabilitations, and other facility upgrades, as defined in this Contract. The total amount of the above facility improvements or upgrades undertaken by NPS at the request of the Concessioner shall not exceed \$1,500,000.00. The limit on the total value of facility improvements or upgrades undertaken by NPS shall be calculated based on actual costs incurred by NPS. In the event the Service elects to undertake procurement and replacement of turf fields identified as part of the current land assignment, such investments shall be included as part of the \$1,500,000.00 for facility improvements or upgrades mentioned above.

**5. Section 9(d)(2) of the Contract is removed in its entirety.**

**6. Section 10(c)(3) of the Contract is removed in its entirety and replaced with the following:**

The Concessioner is not required to establish a Repair and Maintenance Reserve.

**7. Section 11(a)(1) of the Contract is removed in its entirety and replaced with the following:**

As of the effective date of this Amendment, the Concessioner shall pay to the Director for the privileges granted by this CONTRACT a base franchise fee equal to zero percent (0%), except that in any year where the Concessioner's gross receipts exceed Fourteen Million Dollars (\$14,000,000), the Concessioner is obligated for payment of Franchise Fees in the amount of Two percent (2%) of all gross receipts.

In addition, and the above notwithstanding and Paragraph 11(b) of the Contract notwithstanding, the Concessioner shall pay to the Director and the United States Treasury, as applicable, outstanding debts and obligations as more fully described in Attachment A. The Concessioner is required to provide the Director with proof of any payment made at the time the payment is made. In the event the Concessioner does not establish an NPS approved payment plan with the



NPS Accounting Operations Center (AOC) within 90 days of the execution of this Amendment, the Concessioner shall be considered to be in breach of the Contract terms and conditions and NPS shall take action accordingly. The Concessioner agrees a failure to make timely payments under the payment plan will be considered a material breach of the Contract, which may be terminated in accordance with Section 16(b)(3) of the Contract.

**8. The following language shall be inserted as a new paragraph 20 of the Contract:**

**Sec. 20. INTELLECTUAL PROPERTY LICENSE.**

The Concessioner and Director agree that, except with the written authorization of the Director of the National Park Service, Concessioner shall not assert any legal claim that the Concessioner or any related entity holds a trademark, tradename, servicemark or other ownership interest in the words "National Park Service", the initials "NPS", or official name of any unit or part thereof, including but not limited to the name of any Concession Facilities, or any logo, distinctive natural, archaeological, cultural, or historic site, within the National Park System, or any colorable likeness thereof, or the likeness of a National Park Service official uniform, badge, logo, or insignia.

**9.** Exhibit B Operating Plan to the Contract is deleted and replaced with a revised Exhibit B which is attached to this Amendment No. 5.

**10.** Exhibit D Land Assignment to the Contract is deleted and replaced with a revised Exhibit D which is attached to this Amendment No. 5.

**11.** Exhibit H Maintenance Plan to the Contract is deleted and replaced with a revised Exhibit H which is attached to this Amendment No. 5.

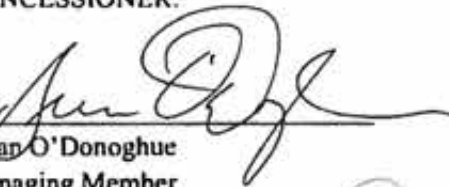
**12.** The Concessioner and Director agree and assert that the modifications set forth in this Amendment are unique to the special circumstances presented by Concession Contract No. CC-GATE015-03 and are not intended to, nor should they be construed as, precedent for any other concession contracts or agreements entered into by the Director or the U.S. Department of the Interior on matters of a similar type or subject matter.


**13.** To the extent that any provisions of this Amendment are considered to be in conflict with the terms and conditions of the Contract, any extensions or continuations thereof, or other obligations or agreements of the parties to the Contract, the Concessioner and Director agree that the provisions of this Amendment shall modify or supersede such terms and conditions to the extent necessary for the effectuation of this Amendment.

14. Except as expressly amended herein, the Contract remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment, which shall be effective as of the last date of execution below.

CONCESSIONER:

By   
Brian O'Donoghue  
Managing Member  
ARKLOW-FBF, LLC

Date: 07/20/17 




ATTEST:


By SABEEN HASSAN  
Name:   
Title:

UNITED STATES OF AMERICA

UNITED STATES OF AMERICA

By   
Joshua Laird  
Commissioner  
National Parks of New York Harbor  
NATIONAL PARK SERVICE

Date: 7/17/17

By   
Cynthia MacLeod  
Acting Regional Director  
Northeast Region  
NATIONAL PARK SERVICE

Date: July 27, 2017

**CC-GATE015-03**

**AMENDMENT NO. 4**

**THIS AMENDMENT NO. 4 to CCGATE015-03 is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service or his designee (hereinafter referred to as the "Director"), and ARKLOW-FBF, LLC, a limited liability company organized and existing under the laws of the State of Delaware (hereinafter referred to as the "Concessioner"):**

**WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner's predecessors as applicable entered into Concession Contract No. CC-GATE015-03, effective April 15, 2003, as amended by Amendment No. 1 dated February 27, 2006, Amendment No. 2 dated July 13, 2006, and Amendment No. 3 dated December 31, 2008, (as amended, the "Previously Amended Contract"), which Previously Amended Contract authorizes the provision of accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003, until its expiration on April 14, 2023; and

**WHEREAS**, the Previously Amended Contract was duly assigned to the Concessioner effective as of December 31, 2008; and

**WHEREAS**, the Director and Concessioner desire to provide for the early payment of compensation to the Concessioner for its Leasehold Surrender Interest as described in the Previously Amended Contract and otherwise amend such contract to the mutual benefit of the parties.

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual covenants set forth herein and for other good consideration, hereto covenant and agree as follows:

**1. Section 8(i) of the Previously Amended Contract is amended to read as follows:**

**(i) Special Provision related to Utility Charges and Costs for the Period January 1, 2009, through December 31, 2013**

(1) For the period January 1, 2009, through December 31, 2013, notwithstanding the terms of Subsections 8(g) and 8(h) to the contrary and subject to the conditions and limitations set forth in this subsection, the Director:

(a) will not charge the Concessioner for the utilities provided by the Director under Subsection 8(g) (referred to herein as "unassessed utility charges" as that term is defined in Subsection 8(i)(2) below) and as further described in Section XVI (1) of Exhibit B; and

(b) will provide to the Concessioner the utilities set forth in Section XVI (2) of Exhibit B by paying the utility costs (as that term is defined in Subsection 8 (i)(2) below) that would otherwise be paid by the Concessioner under Subsection 8(h).

(2) "Unassessed utility charges" for purposes of this Subsection 8(i) are the amounts of money the Director would have charged the Concessioner for utilities provided by the Director under Subsection 8(g) but for the terms of this Subsection 8(i). "Utility costs" for purposes of this Subsection 8(i) means invoiced charges for services rendered by public utility companies for electricity, water, sewage and natural gas. Without limitation, utility costs do not include telephone or other communication services and do not include repair, maintenance, purchase or replacement of any fixtures or equipment.

(3) Notwithstanding Subsection 8(i)(1) above, the Concessioner shall pay the Director for utilities in accordance with Subsection 8(g) above and shall pay all utility costs in accordance with Subsection 8(h) above after any time in any of the calendar years set forth below when the total of the unassessed utility charges under Subsection 8(i)(1)(a) above and the utility costs paid by the Director under Subsection 8(i)(1)(b) above exceed the amounts set forth below:

2009: \$900,000  
2010: \$925,000  
2011: \$950,000  
2012: \$725,000  
2013: \$400,000

(4) The Director's obligations under this Subsection 8(i) shall immediately terminate upon an assignment or encumbrance of this Contract, other than assignments and encumbrances existing as of this date.

**2. Section 9(c)(1) of the Previously Amended Contract is amended to read as follows:**

(1) As soon as possible after the effective date of Amendment No. 4 to this Contract, the Director shall pay by electronic transfer (as directed by the Concessioner pursuant to the Direction Letter currently in effect) to the Concessioner's assignee, Great – West Life and Annuity Insurance Company to the account set forth on Schedule A attached hereto below, the sum of \$12.75 million in full settlement of all of the Concessioner's rights to compensation for Leasehold Surrender Interest, Leasehold Surrender Interest Value, or any other compensable interests in real property improvements provided to the Concessioner by this Contract or Applicable Laws. In consideration of such early payment and other good and valid consideration, as of the effective date of Amendment No. 4 to this Contract all rights, title and interests of Concessioner for Leasehold Surrender Interest or any other compensable interests of any nature in real property improvements in the Park that exist as of the effective date of this Agreement or are hereafter installed or constructed shall without further action be deemed to have been irrevocably waived and relinquished by the Concessioner, notwithstanding any terms and conditions of the Concession Contract or Applicable Laws to the contrary. In addition, the Concessioner, for itself, its heirs, legal representatives, successors, and assigns (as applicable) hereby releases, acquits and forever discharges the United States, its representatives, successors, and assigns, to the maximum extent permitted by law, of and from any and all claims, rights, demands, liabilities or causes of action at law or in equity whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that Concessioner now has or that may arise in the future because of or in any way growing out of or connected with any Leasehold Surrender Interest, Leasehold Surrender Interest Value or other compensable interests in real property improvements under the terms of the Concession Contract, Applicable Laws, or otherwise. Concessioner further

expressly waives its rights under any provision of Applicable Laws that may provide that a general release does not extend to claims or rights that the releasing party does not know or suspects to exist in its favor at the time of executing the release, which, if known by the releasing party, may have materially affected its agreement to release the United States. For the purposes of this Contract, the terms "Leasehold Surrender Interest," "Leasehold Surrender Interest Value," "Real Property Improvements," "Capital Improvements," and "Related Capital Improvements" (whether or not capitalized) shall be defined as set forth in Part 51 of Volume 36 of the Code of Federal Regulations as of the effective date of Amendment No. 4 to this Contract.

**3. Section 9(d)(2) of the Previously Amended Contract is amended to read as follows:**

(2) The Concessioner, within two years from the effective date of Amendment No. 4 to this CONTRACT, shall undertake and complete (at a cost of not less than \$50,000 and not more than \$150,000 ) the following CFIP projects:

Rehabilitation and adaptation of Building 29 and the historic light tower in accordance with the standards set forth in the Memorandum of Agreement between the Director and the New York State Historic Preservation Officer (which Memorandum of Agreement is hereby attached to this CONTRACT as Exhibit K).

**4. Sections 10(c)(5) and (6) of the Previously Amended Contract are amended to read as follows:**

(5) Repair and Maintenance Reserve funds may be used to construct capital improvements as that term is defined in this CONTRACT. The Concessioner shall obtain no ownership or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be paid to the Director by the Concessioner as an additional franchise within fifteen (15) days of such termination or expiration.

**5. Section 11 of the Previously Amended Contract is amended by adding a subsection (e) as follows:**

**(e) Special Adjustment of Franchise Fees and Repair and Maintenance Reserve Debits**

Notwithstanding any terms of this Contract or Applicable Laws to the contrary, the Director by written notice to the Concessioner may request within 730 days of the effective date of Amendment No. 4 to this Contract an increase in the franchise fee amounts and /or repair and maintenance reserve debits called for by this Contract. Unless the Concessioner by written notice objects to such requested increase(s) within thirty(30) days of request, such increase(s) shall take effect without further action thirty (30) days from the date of request. If the Concessioner timely objects to such increase(s), such requested increases shall be negotiated, and, if negotiations fail, shall be determined by binding arbitration in accordance with the standards and procedures set forth above with respect to possible franchise fee adjustments as described in Section 11(d)(1) above. The decision resulting from such arbitration shall limited to the increase, if any, in such franchise fee amounts and/or repair and

maintenance reserve debits based upon the probable value of the privileges granted by this Contract as of the time of the arbitration. Such decision shall not result in a decrease to existing franchise fee amounts, repair and maintenance reserve debits. The Concessioner agrees that the early payment of Leasehold Surrender Interest compensation as called for by Amendment No. 4 to this Contract constitutes an extraordinary, unanticipated change within the meaning of Section 11(d) above, which change warrants possible consideration of an increase (not decrease) in franchise fee amounts and/or repair and maintenance reserve debits as described in this subsection.

**6. Section 13(b) of the Previously Amended Contract is amended to read as follows:**

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder.

**7. Section 17(b) of the Previously Amended Contract is amended to read as follows:**

**(b) Compensation for CONTRACT expiration or termination**

No compensation of any nature is due the Concessioner upon the termination or expiration of this Contract.

**8. Section 17(c) of the Previously Amended Contract is deleted in its entirety and Section 17(d) is relabeled as Section 17(c).**

**9. Exhibit A to the Previously Amended Contract is deleted in its entirety.**

**10. Exhibit D2 to the Previously Amended Contract is deleted and replaced by a revised Exhibit D2 which is attached to this Amendment No. 4 as Attachment A.**

**11. Exhibit H-1 to the Previously Amended Contract is amended by deleting its Section H)4)(e) in its entirety.**

**12. This Agreement contains the entire agreement of NPS and Concessioner with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written. No modification of this Agreement shall be binding unless in writing and signed by the party to be bound.**

**13. NPS and the Concessioner agree and assert that the decisions reflected in this Agreement are unique to the special circumstances presented by this matter and are not intended to, nor should they be construed as, precedent for any other agreement by the NPS or the U.S. Department of the Interior on matters of a similar type or subject matter.**

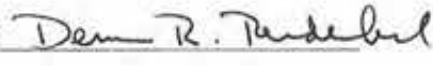


IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment No. 4 effective as of the last date set forth below.

**CONCESSIONER**

**UNITED STATES OF AMERICA**

BY   
Title: MANAGING MEMBER

BY   
Title: NER Regional Director

ARKLOW-FBF, LLC

National Park Service

Date: 12/2/2010

Date: 12/3/2010

**ATTEST:**

BY:   
Title: SECRETARY  
Date: 12/2/2010

**SCHEDULE A**

**NAME AND ADDRESS OF ASSIGNEE OF CONCESSIONER**

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY  
8515 EAST ORCHARD ROAD, 3T2  
GREENWOOD VILLAGE, CO 80111  
ATTN: INVESTMENTS DIVISION  
Fax: (303)737-6193

**Payments**

All payments on or in respect to the assigned Leasehold Surrender Interest to be by bank wire transfer of Federal or other immediately available funds to:

The Bank of New York  
ABA No.: 021-000-018  
BNF Account No.: IOC566  
Further Credit To: Great-West Life/Acct No. 640935

Reference: Aviator Development Company/Arklow FBF LLC

Taxpayer I.D. Number: 84-0467907



CONCESSIONS CONTRACT NO. CCGATE015-03

EXHIBIT D2 - ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT-ADDITIONAL FIELD ASSIGNMENT - COMPASS ROSE FIELD AND CRICKET FIELD



ATTACHMENT A

0 50 100 200 Feet

November 2010  
Produced By: N. Apostolou



## CC-GATE015-03

### Assignment and Acceptance

**This Assignment and Acceptance** ("Assignment and Acceptance") is made and entered into by and among AVIATOR SPORTS AND RECREATION, LLC and AVIATOR DEVELOPMENT COMPANY, LLC, (New York limited liability companies collectively referred to hereafter as "Aviator" or "Assignor") and ARKLOW-FBI, LLC, a Delaware limited liability company ("Arklow" or "Assignee"). In accordance with 36 CFR Part 51, this Assignment and Acceptance is subject to approval by the United States of America acting through the Director of the National Park Service ("NPS"). Such approval ("NPS Approval") is deemed as granted when executed by NPS where indicated below.

#### **Witnesseth That:**

**Whereas**, Aviator is the Concessioner under the terms of NPS Concession Contract No. CC-GATE015-03, as amended (the "Concession Contract"), which contract authorizes and requires the Concessioner to provide certain visitor facilities and services within the Gateway National Recreation Area (the "Area"); and

**Whereas**, Aviator wishes to assign all of its rights, title and interest in and under the Concession Contract to Arklow.

**Now, Therefore**, Aviator and Arklow hereby agree as follows in consideration of the mutual premises of this Assignment and Acceptance, subject to execution of the NPS Approval.

**1. Assignment.** Aviator hereby assigns, subject to execution of the NPS Approval, the Concession Contract to Arklow, such action being subject to the representations and conditions set forth below and the terms of the Approval. Effective immediately upon execution of the NPS Approval, Arklow shall become the Concessioner under the Concession Contract for all purposes. Aviator and their officers, employees and agents, hereby irrevocably waive and relinquish all rights, claims and/or causes of action of any nature that they may have individually or collectively against NPS and/or its officers, agents and employees in or related to or arising from this Assignment and Acceptance, the Concession Contract, or any circumstances and events related thereto. Aviator understands and agrees that neither this Assignment and Acceptance nor the Approval shall be construed in any manner as relieving them, joint or severally, of any liability to NPS that may exist as a result of any breach of the Concession Contract that may have occurred prior to the execution of the NPS Approval or of any failure to comply with Applicable Laws as defined in the Concession Contract. Notwithstanding this Assignment and Acceptance or the NPS Approval, Aviator also agrees that they shall comply with all applicable terms of the NPS Approval and that they shall remain liable to NPS with respect to all claims and liabilities based on or resulting from actions, events, or circumstances occurring prior to the effective date of the NPS Approval.

2. **Acceptance.** Arklow hereby accepts the foregoing Assignment and agrees to carry out fully and perform as the Concessioner all of the obligations imposed upon the Concessioner by the terms and conditions of the Concession Contract and to assume all obligations of the Concession Contract incurred by Aviator Development and/or Aviator Sports prior to the execution date of the Assignment and Acceptance if Aviator Development or Aviator Sports fails to perform them. Arklow also agrees to all conditions of the Approval as set forth below.

3. **Transition.** Assignor, Assignee and the NPS all agree and concur that Exhibit J of the Concession Contract does not apply to the transaction contemplated by this Assignment and Acceptance.

Executed on December 30, 2008.

**AVIATOR DEVELOPMENT COMPANY, LLC, ASSIGNOR**

By: Katherine Cukhl  
Title CEO


Attest: Susan Pasini  
By: SUSAN PASINI  
Title SECRETARY


**AVIATOR SPORTS AND RECREATION, LLC, ASSIGNOR**

By: Katherine Cukhl  
Title CEO

Attest: Susan Pasini  
By: SUSAN PASINI  
Title SECRETARY

**ARKLOW FBF LLC, ASSIGNEE**

By:   
Title Managing Member

Attest:   
By: Gregory Shrock  
Title Secretary

**NPS APPROVAL**

NPS hereby approves the Assignment and Acceptance set forth above, effective as of execution of this Approval by NPS, in accordance with the requirements of 36 CFR Part 51 and under and subject to the following terms and conditions:

- A. The purchase price paid to Aviator by Arklow, any debt to be incurred by the Arklow in connection with the Assignment and Acceptance, and/or any facts and circumstances related to the Concession Contract that existed prior to NPS Approval will not be used at any time by Arklow or any related party as justification for: an increase in rates charged to the public under the terms of the Concession Contract; a waiver or reduction of franchise fees or other Concession Contract requirements; or any claim that the terms of the Concession Contract do not provide the Arklow a reasonable opportunity for profit. Arklow and its officers, employees or agents, hereby irrevocably waive and relinquish all rights, claims and/or causes of action of any nature that they may have against NPS and/or its officers, agents and employees in or related to or arising from the Concession Contract or any circumstances and events related thereto that occurred thereto prior to the date of this Approval.
- B. Within thirty (30) day of the execution of this Approval, Arklow will submit for the approval of NPS a balance sheet, as of the execution date of the Approval, together with a Schedule of Arklow's Assets with the description of each asset.
- C. NPS, when developing the requirements of any subsequent concession contract for the facilities and services provided under the Concession Contract, will not take into account the purchase price or any outstanding debt resulting from the Assignment and Acceptance or related transactions. NPS will establish franchise fees and other contract obligations for a subsequent concession contract based on the probable value to a concessioner of the authorization as required by law and as determined by NPS.
- D. Neither NPS nor any successor concessioner bears any liability for any debt incurred by

Aviator or Arklow in connection with this Assignment and Acceptance, the Concession Contract, or otherwise.

- E. Arklow represents that it has not been advised by the NPS that the NPS or other federal government official considers the terms of the Assignment and Acceptance to be reasonable or that Arklow may expect to earn a profit under the terms of the Concession Contract.
- F. This Approval in no manner implies the existence of or grants any preferential right to the award of any subsequent concession contract. Arklow hereby waives any right to assert any preferential right or other benefit based on the Approval or otherwise.
- G. Neither Aviator or Arklow will utilize the Approval in any form or manner, including, but not limited to, any litigation, proceeding, or hearing, involving the NPS, as evidence of any fact or matter other than that the NPS approved the Assignment and Acceptance in accordance with 36 CFR Part 51.
- H. Notwithstanding any representations made by Aviator or other persons to Arklow as to the value of the Concession Contract, if any, or as to any other matters related to this Assignment and Acceptance, NPS, in approving the Assignment and Acceptance, expressly is not agreeing to, approving or concurring in any such representations. NPS reserves the right to challenge any representations made by Aviator or other persons in any future matters concerning the Concession Contract, this Assignment and Acceptance, or circumstances related thereto.
- I. That, to the extent that Aviator may have been allocated by NPS user days or other access privileges to the Area for the purposes of the Concession Contract, such allocations are subject to change or elimination by NPS. The Concession Contract does not grant such allocations as a matter of right to the Concessioner or any subsequent concessioner.
- J. Arklow and its officers, employees and agents, in consideration of the benefits derived by this Approval, hereby accept all terms of the Concession Contract and knowingly waive and relinquish any claims or rights they may have under Applicable Laws as defined in the Concession Contract or otherwise regarding the terms of the Concession Contract, including, without limitation, all terms and conditions of the Concession Contract relating to Leasehold Surrender Interest as defined and described therein.
- K. No one may construe the Approval by NPS of this Assignment and Acceptance as, in any manner, as amending, altering, or waiving any terms and conditions of the Concession Contract.
- L. The Approval by NPS of this Assignment and Acceptance does not in and of itself constitute approval of any financial transaction or encumbrance associated with this Assignment and Acceptance. If NPS must, by law,



approve such financial transaction or encumbrance, NPS will provide such approval, if granted, of any such associated financial transaction or encumbrance, if granted, in a separate document.

**APPROVED BY:**

**THE UNITED STATES OF AMERICA**

By: Matthew S. New

for Director, National Park Service (or her designee)

Date: DEC 31 2008

**In Consideration of the Following Findings and Determinations**

Under regulations governing the assignment of concession contracts at 36 C.F.R. Part 51, the Director must make certain findings before approving such assignment. In compliance with those requirements, I have determined the following:

1. The assignment does not purport to assign assets that are not owned by the Assignor, including, without limitation, Area entrance, user day, or similar use allocations made by the National Park Service.
2. The Assignee is a qualified person as defined in 36 C.F.R. Part 51.
3. The assignment would not have an adverse impact on the protection, conservation, or preservation of resources within Gateway National Recreation Area.
4. The assignment would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges.
5. The terms of the assignment are not likely, directly or indirectly, to reduce the opportunity of the Assignee to earn a reasonable profit over the remaining term of the Concession Contract, to affect adversely the quality of facilities and services provided by the Assignor, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

## CC\_GATE-015-03

### AMENDMENT NO. 3

**THIS AMENDMENT NO. 3** to CC-GATE015-003 is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service or her designee (hereinafter referred to as the "Director"), and AVIATOR SPORTS AND RECREATION, LLC and AVIATOR DEVELOPMENT COMPANY, LLC, limited liability companies organized and existing under the laws of the State of New York (hereinafter referred to collectively as the "Concessioner"):

#### WITNESSETH:

**THAT WHEREAS**, the Director and the Concessioner entered into Concession Contract No. CC-GATE015-03, effective April 15, 2003, and amended the Concession Contract by Amendment No. 1 dated February 27, 2006, and Amendment No. 2 dated July 13, 2006, (as amended, the "PREVIOUSLY AMENDED CONTRACT"), which PREVIOUSLY AMENDED CONTRACT authorizes the provision of accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003, until its expiration on April 14, 2023; and

**WHEREAS**, the Director and Concessioner desire to further amend the PREVIOUSLY AMENDED CONTRACT to the mutual benefit of the parties, including, without limitation, deletion of its Exhibit G, addition of Exhibit H-1, addition of Exhibit J, further specification of Leasehold Surrender Interest Value, and agreement to the waiver and release of claims and rights to certain Leasehold Surrender Interest; and

**WHEREAS**, the Director and the Concessioner for the sake of clarity wish to restate the PREVIOUSLY AMENDED CONTRACT as amended by the terms of this Amendment No. 3; and

**WHEREAS**, immediately prior to the execution of this Amendment No. 3, the Director, in accordance with the instructions of the Concessioner, paid seventeen million five hundred thousand dollars (\$17,500,000) which sum by the agreement of the Director and the Concessioner reduced the Leasehold Surrender Interest Value (as defined in the PREVIOUSLY AMENDED CONTRACT) by the equivalent sum of money such that the Leasehold Surrender Interest Value equals \$12.75 million as of the time of and after giving effect to such payment.

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual covenants set forth herein and for other good consideration, hereto covenant and agree that:

**The PREVIOUSLY AMENDED CONTRACT is further amended and restated, effective as of the last date set forth below, by this Amendment No. 3, the terms of which are incorporated in the document attached hereto as Exhibit A. Exhibit A restates the PREVIOUSLY AMENDED CONTRACT, as amended by this Amendment No. 3, in its entirety effective as of the last date set forth below and Exhibit A henceforth shall constitute Concession Contract CC-GATE015-03 as**

amended for all purposes. In the event of any inconsistency between the PREVIOUSLY AMENDED CONTRACT and Exhibit A, Exhibit A shall control.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment No. 3 effective as of the last date set forth below.

CONCESSIONER

UNITED STATES OF AMERICA

BY [Signature]

BY [Signature]

Title: CEO

Title: A/D Business Services

Aviator Development Company, LLC

National Park Service

Date: December 30, 2008

Date: DEC 31 2008

ATTEST:

BY: [Signature]

Title: SECRETARY

Date: December 30, 2008

BY [Signature]

Title: CEO

Aviator Sports and Recreation, LLC

Date: December 30, 2008

ATTEST:

BY: [Signature]

Title: SECRETARY

Date: December 30, 2008

**EXHIBIT A to Amendment No. 3: Concession Contract CC – GATE015-03**

**CONCESSION CONTRACT CC- GATE015-03 RESTATED AS AMENDED BY  
AMENDMENTS No. 1, 2, AND 3.**

**TABLE OF CONTENTS**

**IDENTIFICATION OF THE PARTIES**

**SEC. 1 TERM OF CONTRACT**

**SEC. 2 DEFINITIONS**

**SEC. 3. SERVICES AND OPERATIONS**

- A. Required and Authorized Visitor Services
- B. Operation and Quality of Operation
- C. Operating Plan
- D. Merchandise and Services
- E. Rates
- F. Impartiality as to Rates and Services

**SEC. 4. CONCESSIONER PERSONNEL**

- A. Employees
- B. Employee Housing and Recreation

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

- A. Legal, Regulatory, and Policy Compliance
- B. Notice
- C. How and Where to Send Notice

**SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

- A. Environmental Management Objectives
- B. Environmental Management Program
- C. Environmental Management Measurement
- D. Environmental Data, Reports, Notifications, and Approvals
- E. Corrective Action
- F. Indemnification and Cost Recovery for Concessioner Environmental Activities
- G. Weed and Pest Management
- H. Protection of Cultural and Archeological Resources

**SEC. 7 INTERPRETATION OF AREA RESOURCES**

- A. Concessioner Obligations
- B. Director Review of Content

**SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY CONCESSIONER**

- A. Assignment of Concession Facilities
- B. Concession Facilities Withdrawals
- C. Effect of Withdrawal
- D. Right of Entry
- E. Personal Property
- F. Condition of Concession Facilities
- G. Utilities Provided by the Director
- H. Utilities Not Provided by the Director
- I. Utility Charges and Costs January 1, 2009 – December 31, 2015

**SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

- A. Construction of Real Property Improvements
- B. Removal of Real Property Improvements
- C. Leasehold Surrender Interest
- D. Concession Facilities Improvement Program

**SEC. 10. MAINTENANCE**

- A. Maintenance Obligation
- B. Maintenance Plan
- C. Repair and Maintenance Reserve

**SEC. 11. FEES**

- A. Franchise Fee
- B. Payments Due
- C. Interest
- D. Adjustment of Franchise Fee

**SEC. 12. INDEMNIFICATION AND INSURANCE**

- A. Indemnification
- B. Insurance in General
- C. Commercial Public Liability
- D. Property Insurance

**SEC. 13. BONDS AND LIENS**

- A. Bonds
- B. Lien

**SEC. 14. ACCOUNTING RECORDS AND REPORTS**

- A. Accounting System
- B. Annual Financial Report
- C. Other Financial Reports

**SEC. 15. OTHER REPORTING REQUIREMENTS**

- A. Insurance Certification
- B. Environmental Reporting
- C. Miscellaneous Reports and Data.

**SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

- A. Suspension
- B. Termination
- C. Notice of Bankruptcy or Insolvency
- D. Requirements in the Event of Termination or Expiration

**SEC. 17. COMPENSATION**

- A. Just Compensation
- B. Compensation for Contract Expiration or Termination
- C. Compensation for Personal Property

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

**SEC. 19. GENERAL PROVISIONS**

**EXHIBITS**

- EXHIBIT A: Leasehold Surrender Interest
- EXHIBIT B: Operating Plan
- EXHIBIT C: Nondiscrimination
- EXHIBIT D: Assigned Land, Real Property Improvements
- EXHIBIT E: Assigned Government Personal Property
- EXHIBIT F: Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures
- EXHIBIT G: [Intentionally Deleted]
- EXHIBIT H: Maintenance Plan
- EXHIBIT H-1: Repair and Maintenance Reserve Procedures
- EXHIBIT I: Insurance Requirements
- EXHIBIT J: Transition to a New Concessioner



THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Northeast Region, (hereinafter referred to as the "Director"), and THE AVIATOR DEVELOPMENT COMPANY, LLC, and AVIATOR SPORTS AND RECREATION, LLC, limited liability companies organized and existing under the laws of the State of New York (hereinafter referred to collectively as the "Concessioner"):

**WITNESSETH:**

**THAT WHEREAS**, Gateway National Recreation Area is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

**WHEREAS**, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

**WHEREAS**, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

**WHEREAS**, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

**NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub. L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

**SEC. 1. TERM OF CONTRACT**

This Concession Contract No. CC-GATE015-03 ("CONTRACT") shall be effective as of April 15, 2003, and shall be for the term of twenty (20) years until its expiration on April 14, 2023.

**SEC. 2. DEFINITIONS**

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

- (b) "Area" means the property within the boundaries of Gateway national Recreation Area.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.
- (i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
- (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
  - (2) charges for employees' meals, lodgings, and transportation;
  - (3) cash discounts on purchases;
  - (4) cash discounts on sales;
  - (5) returned sales and allowances;
  - (6) interest on money loaned or in bank accounts;
  - (7) income from investments;
  - (8) income from subsidiary companies outside of the Area;
  - (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
  - (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
  - (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the

Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(p) "Superintendent" means the manager of the Area.

(q) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

### **SEC. 3. SERVICES AND OPERATIONS**

#### **(a) Required and Authorized Visitor Services**

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

##### (1) Required Visitor Services

The Concessioner is required to operate a family-oriented sports center, on a year-round basis to include:

Ice sports as the core activity and anchor for the sports center with support activities and services

Pro shop,

Food and Beverage Service,

and

Provide exhibits and informational media that inform and educate users of the national significance of the historic hangars.

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services, listed here during the term of this CONTRACT:

Interpretive material (books, postcards, posters, photographs),

Limited apparel,

Souvenirs tied to the interpretive theme(s) of Gateway National Recreation Area,

Teaching professional services,

Sports physical therapy, and

Community events

**(b) Operation and Quality of Operation**

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

**(c) Operating Plan**

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

**(d) Merchandise and Services**

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this

CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

**(e) Rates**

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

**(f) Impartiality as to Rates and Services**

(1) Subject to Section (f) (2) and (f) (3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

**SEC. 4. CONCESSIONER PERSONNEL**

**(a) Employees**

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

## **SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

### **(a) Legal, Regulatory and Policy Compliance**

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

### **(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

[REDACTED]

**(c) How and Where to Send Notice**

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

General Superintendent  
Gateway National Recreation Area  
Attention: Chief, Business Management Division  
Headquarters Building 69  
Floyd Bennett Field  
Brooklyn, New York 11234

Notices sent to the Concessioner shall be sent to an address designated in writing by the Concessioner.

**SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

**(a) Environmental Management Objectives**

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

- (1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

**(b) Environmental Management Program**

- (1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.
- (3) The EMP shall include, without limitation, the following elements:
  - (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.



(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

### **(c) Environmental Performance Measurement**

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

### **(d) Environmental Data, Reports, Notifications, and Approvals**

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this

CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

**(f) Indemnification and Cost Recovery for Concessioner Environmental Activities**

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this

CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

**(g) Weed and Pest Management**

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

**(h) Protection of Cultural and Archeological Resources.**

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

**SEC. 7. INTERPRETATION OF AREA RESOURCES**

**(a) Concessioner Obligations**

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in the Comprehensive Interpretive Plan, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

**(b) Director Review of Content**

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

## **SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER**

### **(a) Assignment of Concession Facilities**

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements as described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth below.

### **(b) Concession Facilities Withdrawals**

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

### **(c) Effect of Withdrawal**

Any permanent withdrawal of assigned Concession Facilities which the Director considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as termination of this CONTRACT pursuant to Section 16. Other withdrawals of assigned Concession Facilities shall not be considered as a termination of this CONTRACT.

### **(d) Right of Entry**

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

**(e) Personal Property**

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

**(g) Utilities Provided by the Director.**

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

**(h) Utilities not provided by the Director**

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in

writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

**(i) Special Provision related to Utility Charges and Costs for the Period January 1, 2009, through December 31, 2015**

(1) For the period January 1, 2009, through December 31, 2015, notwithstanding the terms of Subsections 8(g) and 8(h) to the contrary and subject to the conditions and limitations set forth in this subsection, the Director:

(a) will not charge the Concessioner for the utilities provided by the Director under Subsection 8(g) (referred to herein as "unassessed utility charges" as that term is defined in Subsection 8(i)(2) below) and as further described in Section XVI (1) of Exhibit B; and

(b) will provide to the Concessioner the utilities set forth in Section XVI (2) of Exhibit B by paying the utility costs (as that term is defined in Subsection 8 (i)(2) below) that would otherwise be paid by the Concessioner under Subsection 8(h).

(2) "Unassessed utility charges" for purposes of this Subsection 8(i) are the amounts of money the Director would have charged the Concessioner for utilities provided by the Director under Subsection 8(g) but for the terms of this Subsection 8(i). "Utility costs" for purposes of this Subsection 8(i) means invoiced charges for services rendered by public utility companies for electricity, water, sewage and natural gas. Without limitation, utility costs do not include telephone or other communication services and do not include repair, maintenance, purchase or replacement of any fixtures or equipment.

(3) Notwithstanding Subsection 8(i)(1) above, the Concessioner shall pay the Director for utilities in accordance with Subsection 8(g) above and shall pay all utility costs in accordance with Subsection 8(h) above after any time in any of the calendar years set forth below when the total of the unassessed utility charges under Subsection 8(i)(1)(a) above and the utility costs paid by the Director under Subsection 8(i)(1)(b) above exceed the amounts set forth below:

2009: \$900,000  
2010: \$925,000  
2011: \$950,000

(4) In addition to the limitations set forth in Subsection 8(i)(3) above, the Director's obligations under this Subsection 8(i) will terminate if, at any time during the period January 1, 2009 -- December 31, 2015: (a) the unassessed utility charges under Subsection 8(g) and the applicable Subsection 8(h) utility costs paid by the Director cumulatively total seven million dollars (\$7 million) or more; or, (b) the cumulative fiscal year gross receipts of the Concessioner for any particular fiscal year (gross receipts based on a fiscal year period commencing January 1 and ending on December 31) exceed fourteen million dollars (\$14 million). With respect to termination for the latter reason, the Director's obligations under Subsection 8(i) will cease in the month immediately following the month in which cumulative fiscal year gross receipts exceed \$14 million. For example, if cumulative gross receipts for the fiscal year beginning on January 1, 2012 and ending on December 31, 2012 exceed \$14 million dollars in September, 2012, the

Director's obligations under Subsection 8(i) will cease effective as of October 1, 2012. The Director will make the determination to terminate these obligations in his sole discretion, after consultation with the Concessioner.

(5) Upon request, the Concessioner will promptly provide the Director with monthly gross receipt reports to track cumulative gross receipts.

## **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

### **(a) Construction of Real Property Improvements**

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

### **(b) Removal of Real Property Improvements**

(1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

### **(c) Leasehold Surrender Interest**

(1) This CONTRACT hereby provides the Concessioner, subject to the limitations set forth in Section 17 of this CONTRACT and subject to all applicable definitions, requirements and limitations of this CONTRACT a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT.

### **(d) Concession Facilities Improvement Program**

(1) The Concessioner has undertaken an improvement program (hereinafter a "Concession Facilities Improvement Program" or "CFIP") generally consisting of the stabilization, rehabilitation and adaptation of historic hangars into a family sports center. The CFIP, with the exception of the projects described in Subsection 9(d) (2) below, was substantially completed to the satisfaction of the Director and the facility



opened to the public as of September 15, 2006.

(2) The Concessioner, within one year from the effective date of Amendment No. 3 to this CONTRACT, shall undertake and complete (at a cost of not less than \$50,000 and not more than \$150,000 ) the following CFIP projects:

Rehabilitation and adaptation of Building 29 and the historic light tower in accordance with the standards set forth in the Memorandum of Agreement between the Director and the New York State Historic Preservation Officer (which Memorandum of Agreement is hereby attached to this CONTRACT as Exhibit K).

(3) Notwithstanding any provision of this CONTRACT or Applicable Laws to the contrary, the Director and the Concessioner agree that the Gas Co-Generation facility that provides electricity to the Concession Facilities constructed by the Concessioner as part of the CFIP is deemed to be a real property improvement (and not personal property) as defined by this CONTRACT for all purposes of this CONTRACT.

## **SEC. 10. MAINTENANCE**

### **(a) Maintenance Obligation**

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

### **(b) Maintenance Plan**

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

### **(c) Repair and Maintenance Reserve**

(1) Commencing on January 1, 2014, the Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall reasonably direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2)

Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: four(4%) percent of the Concessioner's gross receipts for the previous month, up to an accumulated maximum of \$1,000,000.00. The Repair and Maintenance Reserve shall be replenished, as necessary, in the manner provided in this Section 10(c) (3) to maintain the maximum amount provided above. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default, after written notice and an opportunity to cure, or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation reasonably satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds when directed by the Director shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this CONTRACT, after written notice and an opportunity to cure.

(5) Repair and Maintenance Reserve funds shall not be used to construct capital improvements as that term is defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner.

## **SEC. 11. FEES**

### **(a) Franchise Fees**

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted by this CONTRACT a base franchise fee and an additional franchise fee as set forth below:

(i) The base franchise fee shall be equal to two percent (2.0%) of the Concessioner's gross

receipts for the preceding year or portion of a year; provided that, for the period January 1, 2009 through December 31, 2013, the base fee shall be equal to zero percent (0%); and

(ii) The additional franchise fee shall be equal to eight percent (8%) of the Concessioner's gross receipts in excess of fourteen million dollars (\$14 million) for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the franchise fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

(1) The franchise fees shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fees equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner in accordance with Applicable Laws.

**(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

**(d) Adjustment of Franchise Fees**

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fees established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fees.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fees within this period, the franchise fees will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fees within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fees in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on adjusted franchise fees (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fees resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fees will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

## **SEC. 12. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

[REDACTED]

**(b) Insurance in General**

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

**(c) Commercial Public Liability**

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

**(d) Property Insurance**

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d) (1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds. The Leasehold Surrender Interest Value existing immediately prior to an event of loss shall not be reduced provided that Concessioner has complied with the terms of this section of the CONTRACT.

(6) The commercial property package shall include the coverages and amounts described in Exhibit 1.

### **SEC. 13. BONDS AND LIENS**

#### **(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

#### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner, provided however, that the Director agrees that the Leasehold Surrender Interest Value shall, when due, be payable without any deduction or set-off other than such deduction or set-off reflecting any amount then claimed by the Government for payment of: (1) Franchise Fees then due and unpaid to the Government pursuant to Section 11 of this CONTRACT; (2) claims for damage to or failure to maintain the Concession Facilities (as defined herein); (3) claims arising from Concessioner's discharge or release as described in Section 6 of this CONTRACT, within the Area of hazardous materials, petroleum products, and/or pollutants on, under or from the Concession Facilities; (4) damages arising from third-party claims alleging personal injury, death, and/or property damage which occurred at or in connection with the Concessioner's Operations hereunder or Concession. Facilities and not covered by casualty or liability insurance; (5) claims of subcontractors and/or service or material suppliers for improvements or services contracted for by, or otherwise performed on behalf of, Concessioner in connection with the Concession Facilities which have

not been paid or bonded; and (6) claims for payment of any utility service supplied by the Director to Concessioner in connection with the Concession Facilities (subject to the special terms of Section 8(i) hereof).

## **SEC. 14. ACCOUNTING RECORDS AND REPORTS**

### **(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

### **(b) Annual Financial Report**

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$250,000 and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

### **(c) Other Financial Reports**

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the



Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. Commencing in 2014, the Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

## **SEC. 15. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

### **(a) Insurance Certification**

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

### **(b) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

### **(c) Miscellaneous Reports and Data**

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

## **SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Suspension**

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

### **(b) Termination**

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement

to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

**(c) Notice of Bankruptcy or Insolvency**

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

**(d) Requirements in the Event of Termination or Expiration**

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this CONTRACT for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this CONTRACT for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

## **SEC. 17. COMPENSATION**

### **(a) Just Compensation**

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

### **(b) Compensation for CONTRACT expiration or termination**

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

### **(c) Leasehold Surrender Interest Value.**

The Concessioner, notwithstanding any provision of Applicable Laws or this CONTRACT to the contrary, hereby waives and relinquishes any and all Leasehold Surrender Interest or Leasehold Surrender Interest Value that it may now have or otherwise would obtain in the future under the terms of this CONTRACT or otherwise in the Concession Facilities specified in Exhibit D to this CONTRACT, or in any other property, in excess of \$12.75 million, and hereby waives any right to payment for Leasehold Surrender Interest Value except as expressly provided under the terms of this

CONTRACT. The Director and the Concessioner agree that the Leasehold Surrender Interest Value for all purposes of this CONTRACT, notwithstanding any provision of Applicable Laws or this CONTRACT to the contrary, shall be \$12.75 million.

**(d) Compensation for Personal Property**

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

**SEC. 19. GENERAL PROVISIONS**

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements for the provision of visitor services required and/or authorized under this CONTRACT are not permitted; provided, however, that the Concessioner may provide food and beverage services through a wholly owned subsidiary subject to prior written approval by the Director.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

[REDACTED]

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR Part 42, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, or of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

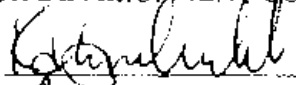
(m) Prior to and upon the expiration or termination of this CONTRACT for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this CONTRACT after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit J to this CONTRACT, "Transition to New Concessioner." This Section and Exhibit J shall survive the expiration or termination of this CONTRACT. Exhibit H-1 to this CONTRACT establishes procedures for expenditure of Repair and Maintenance Reserve Funds.


**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this CONTRACT. (Original CONTRACT effective as of April 15, 2003; Amendment No.1 effective as of February 27, 2006; Amendment No. 2 effective as of July 13, 2006; Amendment No. 3 effective as of December 31, 2008 [date to be inserted after execution of Amendment No. 3]).

**CONCESSIONER**

**UNITED STATES OF AMERICA**

AVIATOR DEVELOPMENT COMPANY, LLC

BY   
TITLE: CEO

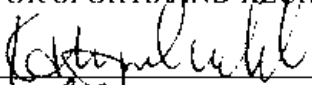
BY   
for Director,  
National Park Service

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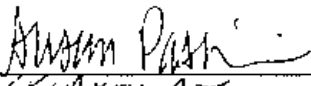
ATTEST:

BY:   
TITLE: SECRETARY

AVIATOR SPORTS AND RECREATION, LLC

BY   
TITLE: CEO

ATTEST:

BY:   
TITLE: SECRETARY

CC-GATE015-03

EXHIBIT A

**LEASEHOLD SURRENDER INTEREST**

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest.

**Section 1. Definitions**

A "capital improvement" is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

"Leasehold surrender interest" solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

"Leasehold surrender interest value" means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT

"Real property improvements" means real property other than land, including, but not limited to, capital improvements.

"Related capital improvement" or "related fixture" means a capital improvement in which the Concessioner has a leasehold surrender interest.

**Section 2. Actions the Concessioner May or Must Take Regarding Leasehold Surrender Interest**

The Concessioner:

(a) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;

(b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and

(c) May waive or relinquish a leasehold surrender interest.

### **Section 3. Extinguishment of a Leasehold Surrender Interest**

A leasehold surrender interest may not be extinguished by the expiration or termination of this CONTRACT and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for leasehold surrender interest within the meaning of this CONTRACT and for all other purposes.

### **Section 4. Leasehold Surrender Interest Under a New Concession Contract**

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner's Leasehold Surrender Interest Value (established as of the date of expiration or termination of this CONTRACT) in the related capital improvements will be continued as the initial value of the Concessioner's leasehold surrender interest under the terms of the new concession contract.

### **Section 5. Payment for Leasehold Surrender Interest if the Concessioner is not Awarded a New Concession Contract**

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT. The Director is under no obligation under this CONTRACT to make leasehold surrender interest value payments at any other time and the Concessioner hereby waives any rights under Applicable law to the contrary.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT.



**Section 6. Payment of Leasehold Surrender Interest by a New Concessioner**

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its leasehold surrender interest value in existing capital improvements as determined under the terms of this Contract.

Approved by NPS, effective December 31, 2008

By: Walter Lewis Steen

Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective \_\_\_\_\_, 2008

By: [Signature]  
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]  
SECRETARY

## **OPERATING PLAN**

# **AVIATOR DEVELOPMENT COMPANY, LLC AND AVIATOR SPORTS AND RECREATION, LLC**

### **Providing Family-Orientated Sports Activities Within GATEWAY NATIONAL RECREATION AREA**

#### TABLE OF CONTENTS

Introduction & Objectives .....	4
I. Required and Authorized Services	
A. Required Services.....	4
B. Authorized Services.....	5
II. Management, Organization and Responsibilities	
A. Concessioner.....	6
B. National Park Service.....	7
III. Concession Operations	
A. Operational Evaluations.....	9
B. Rates.....	9
C. Schedule of Operation.....	10
D. Concessioner Personnel.....	10
E. NPS Employees and Families .....	10
F. Training Program.....	11
G. Lost and Found .....	11
IV. Scope and Quality of Service	
A. Merchandising .....	12

B. Food and Beverage Service.....	13
C. Spectator Events.....	13
C. Interpretive Services .....	13
V. Reports	
A. Administrative Reports .....	14
B. Case Specific Reports .....	14
VI. Utility Responsibility.....	14
VII. Risk Management.....	15
A. Risk Management Program .....	15
B. First Aid.....	15
VIII. Integrated Pest Management .....	16
IX. Complaints.....	16
X. Advertisements/Public Information.....	16
XI. Protection and Security	
A. Fire Emergency.....	17
B. Security Plan .....	17
C. Accidents & Incidents .....	18
D. Spectator Events .....	19
E. Firearms.....	19
F. Lost Children.....	20
XII. Hazardous Waste Program .....	20
XIII. Environmental Management.....	20
XIV. Volunteers in the Park (VIP) Program.....	21
XV. Emergencies.....	21
XVI. Utility Accounts	
XVII. Definitions .....	21



## **Introduction**

This Operating Plan between Aviator Development Company and Aviator Sports and Recreation, LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service," the "Park," or "NPS") will serve as a supplement to the Concession Contract CCGATE015-03, as amended, referred to as the "Contract." It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent.

Any revisions shall not be inconsistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

### **Objectives for the Concession to Satisfy are:**

1. Enhance the recreational mission of Gateway National Recreation Area by providing varied, year-round, recreational opportunities for all populations.
2. Rehabilitate historic fabric where feasible; stabilize the remaining historic fabric.
3. Respectfully use the rich history of Floyd Bennett Field to good advantage through architectural design that aesthetically capitalizes upon the underlying historical specimen.
4. Provide exhibits and other informational media that educate users and remind of the national significance of the site.

## **I. Required and Authorized Services**

### **A. Required Services per Sec. 3 (a) (1) of the Contract:**

In accord with the above objectives and as required by the parameters of the prospectus to which the Concessioner responded and proposed, and as memorialized in the Contract, a family-oriented sports center shall be developed. Ice sports and hockey are the primary sport activities offered through the sports center.

The following stipulations shall apply to required services:

1. Ice hockey shall be accommodated on a regulation-size rink. The Concessioner shall provide ice time by a reservation system that meets the approval of the Superintendent.
2. Public ice skating (open skating) shall be accommodated on a rink of comparable size as noted in #1 above.
3. Ice time allocations will be reviewed by the Superintendent and shall be subject to revision by the Superintendent after consultation with the Concessioner. In doing so the Superintendent shall exercise due consideration for public use and financial feasibility of the Concession operation.
4. The family sports center shall include support facilities and services that may reasonably be expected in such a facility, such as locker rooms.
5. Operation of the required pro shop includes authorization for associated retail sales and rental of sports equipment.
6. The requirement to provide food and beverage services may include a restaurant and lounge area that may be developed pursuant to plans and theme approved in advance by the Superintendent.
7. The Service has contracted with the U.S. Public Health Service to accomplish health and sanitation inspections.
8. The concessioner shall provide space to accommodate a health and wellness program.
9. Gateway National Recreation Area will work with the Concessioner to produce informational and interpretive media to inform and educate users of the family sports center. Gateway National Recreation Area has an inventory of historic photos and memorabilia that it will share with the Concessioner for this purpose.
10. All indoor facilities will be designated as non-smoking.
11. All Special Event activities will take place within the concession land assignments and will not require advance Jamaica Bay Unit Superintendent review and approval and shall be consistent with the objectives and purposes of the Concession. NPS, NPS permittees (Cricket Field), and the concessioner shall inform each other and coordinate sufficiently in advance of planned special events that may create impacts to the concessioner, NPS Jamaica Bay Unit, or its permittees.

## **B. Authorized Services per Sec. 3 (a) (2) of the Contract**

As required by the parameters of the prospectus to which the Concessioner responded, a family-oriented sports center shall be developed. To this end, annually, or more often, the Concessioner shall meet with the Superintendent to review and program appropriate activities from the list of services that were offered by the Concessioner in response to the prospectus. In doing so, the review and programming process by the Concessioner and the Superintendent shall be guided by the above annotated "Objectives for the Concession to Satisfy." Activity programming shall serve as wide a range of the population as possible while maintaining financial viability of the concession.

Authorized activities (permitted) include, but are not limited to, court sports, gymnastics, rock climbing, soccer, football, lacrosse, physical conditioning, and spectator events. Authorized activities are not to be scheduled or publicized until they are approved in writing by the Superintendent. Requests for approval of authorized activities shall include proposed rates, security measures, dates, timeframes, space requirements and any other relevant conditions.

Meetings regarding authorized services may be initiated by the Concessioner or the Superintendent. Decisions regarding authorized activities may be formalized by amendment to this Operating Plan or other appropriate legal instruments.

## **II. Management, Organization and Responsibilities**

### **A. Concessioner**

The Concessioner is responsible for visitor services, facility development and maintenance, administration and other functions in accordance with the terms of this Contract. To accomplish this purpose, the Concessioner will employ a staff, in sufficient numbers and with appropriate expertise, to carry out all services required and/or authorized under this Contract. This organization will be operated by one or more managers and supervisors. In addition:

1. Lead Manager. The Concessioner shall identify one manager who will be responsible for carrying out the terms of this Contract. The lead manager shall also function as the primary representative of the Concessioner in communication with the Service and have full authority to act as a liaison with the Service in all matters related to this Contract.
2. Physical Security Specialist. The Concessionaire will employ a physical security specialist to coordinate security matters with the United States Park Police.
3. Managers and Supervisors. The Concessionaire will furnish the Service with a list of key management and supervisory personnel along with job titles, brief descriptions of

responsibilities, and contact information. This list will be promptly updated as changes occur.

4. Communication and Meetings. The Concessionaire will foster effective communications within its own organization and with Service personnel. In broad terms, communication is intended to: (a) advance the four objectives of this concession and (b) meet specific requirements of this contract and operating plan. Timely and complete exchange of information will be accomplished through use of electronic media, correspondence, meetings and telephone calls. The Concessioner will hold regular meetings with representatives of the Gateway Business Office and with representatives of the Unit Superintendent.

## **B. National Park Service**

The Concessioner operates within the Jamaica Bay Unit of Gateway National Recreation Area. Key positions and/or offices with responsibilities relative to the concession include:

1. Superintendent. The Superintendent manages all activity within the Jamaica Bay Unit, including concession operations, in accordance with applicable laws, policies and directives. The Superintendent must review and approve rates, schedules, activities, construction and other activities in accordance with the terms of the contract. Representatives of the Superintendent oversee concession operations for conformance with the contract and approved proposals.
2. Assistant Superintendent. The Assistant Superintendent makes recommendations to the Superintendent on all aspects of the concession operation. The Assistant Superintendent has authority from the Superintendent to make field decisions that pertain to the concessions operation, and acts as liaison between the Concessionaire and Superintendent. The Assistant Superintendent ensures necessary evaluations and inspections are performed, including those required by the NPS Public Health Program, Park Safety Officer, fire inspectors, and the Concession review program.
3. Business Management Office. The Business Management Office is responsible for developing, negotiating, and administering concession contracts and leases for Gateway NRA. The Business Management Office coordinates concession activity with other Gateway Divisions. The Business Management Office is the primary contact for all matters related to the administration of the Contract and shall be the first point of contact for any questions regarding the Contract.

The Business Management Office will review and/or coordinate the Concessioner's operational and maintenance responsibilities, including but not limited to: rate approvals, provision of quality visitor services, schedule changes; advertisements; annual financial reports; insurance coverage; construction and any other Contract



requirements.

The Business Management Office will be copied on all correspondence sent to Superintendent by the concessioner and all correspondence sent by the Superintendent to the concessioner.

4. Safety and Environmental Management. The Park Safety Officer and the Environmental Management Specialist will coordinate with other Park staff to review and evaluate the Concessioner's Risk Management Program and Environmental Management Program as required under this Contract.
5. U.S. Public Health Program. The U.S. Public Health Service Officer stationed at Gateway NRA will inspect food and beverage services, water, and waste water systems, in accordance with applicable laws and regulations including without limitation, compliance with public health standards.
6. U.S. Park Police. The U.S. Park Police (USPP) provides law enforcement services for the Park in accordance with management direction from the Superintendent. The USPP initiate, review, supervise, and coordinate the activities of personnel who provide public safety functions (law enforcement, and physical security). The Concessioner's Physical Security Specialist will communicate directly with USPP officers on matters related to law enforcement, search and rescue, emergency medical services, emergency management operations, and security.
7. Facility Manager. The Facility Manager is responsible for all utilities, roads, and facilities within the Jamaica Bay Unit. As part of those duties, all issues in regards to shared roads facilities and utilities should be referred to that office. In cases where there are power losses and road issues, contact will be made with the facility manager. In cases of planned power shutdowns within the NPS facilities, the Concessioner will advise the facility manager at least 48 hours prior so arrangements may be accommodated.
8. District Ranger. The Supervisory Ranger for the North Shore District of the Jamaica Bay Unit will assist the Concessioner in matters pertaining to interpretation, operational logistics, resource management and fire management. The District Ranger -- in coordination with the Superintendent and the Business Management Office -- will monitor and evaluates concession activities, and reviews interpretive materials prepared for distribution by the Concessioner. The District Ranger and other rangers, as needed, will assist with concession evaluations, emergencies, and daily operational issues.
9. Administrative Officer. The Administrative Officer of the Jamaica Bay Unit is responsible for certain matters related to concession activities, including but not

limited to billing and receiving utilities payments.

### **III. Concession Operations**

#### **A. Operational Evaluations**

As called for in this Contract, inspections and evaluations of the Concessioner's facilities and services will be conducted in conformance with applicable laws, policies and guidelines. The purpose of such inspections and evaluations is to:

1. Ensure public health and safety
2. Ensure that satisfactory services are provided
3. Ensure that employee working conditions are satisfactory
4. Ensure that buildings and equipment are well maintained

Concession operations will be evaluated once each quarter and at the end of the calendar year. Quarterly evaluations will include observation and rating of all elements related to required and authorized services -- including their rates. The annual evaluation will be comprehensive in nature and serve to alert both the Superintendent and the Concessioner of any outstanding deficiencies. Evaluations will use NPS standards and forms.

Periodic inspections will be made of the Concession operation to ensure compliance with all applicable laws, standards and guidelines regarding public health and safety.

Follow-up visits will be made to ensure that deficiencies identified in evaluations or inspections are properly addressed.

#### **B. Rates**

The objective of the NPS rate approval program is to assure that Concessioner rates are comparable to similar services and facilities provided by the private sector. Rates will be approved or disapproved based on current comparability studies or applicable guidelines. Any rate which is to be charged to a park visitor must be approved in writing by the Superintendent before being instituted. In addition:

1. The Concessioner shall provide visitor services at rates approved by the Superintendent. Periodic requests for rate changes shall be submitted within forty-five (45) days, but no less than thirty (30) days prior to the requested effective date.

The rate request letter should be addressed to the Superintendent with a copy to the Chief of the Business Management Office. The Concessioner shall supply comparability data to support proposed rates at the time approval is requested.

2. Requests shall include pertinent information about the product or service for which a rate is proposed. For food service, requests will identify which items will be served regularly and which will be offered on a special or limited basis.
3. Within 30 days of the submittal of a rate request, the Superintendent will inform the Concessioner in writing whether the proposed rates were approved or disapproved. If the Concessioner would like a response in a shorter time period, the Service will attempt to accommodate this request as an exception to normal procedures. If the Superintendent needs a longer period for review of the proposal, the Concessioner will be contacted in order to negotiate a response date.
4. The Concessioner will prominently post all rates for goods and services provided to the visiting public. The Concessioner will charge the approved maximum rates for services unless and until new rates are approved by the Superintendent.

### **C. Schedule of Operation**

As stipulated in this Contract, the Concession will operate on a year-round basis. Closing on Christmas and New Year's Day will be permitted upon written approval of the Superintendent. Hours of operation for all venues must be approved by the Superintendent on an annual basis. Temporary changes in operating hours may be approved on a case-by-case basis.

### **D. Concessioner Personnel**

1. When on duty, Concessioner employees will be easily identifiable by a uniform or badge approved by the Superintendent. Employees will provide courteous and efficient service in keeping with the image of the National Park Service.
2. If requested, the Concessioner will provide the Superintendent with names and dates of birth of all permanent and seasonal employees and indicate their organizational responsibilities.
3. Work cards or Social Security cards will be a condition of employment.
4. Employees will be encouraged to act in compliance with applicable laws, policies and regulations when outside of the concessioner's land assignment but inside the park boundary.

### **E. National Park Service Employees and Families**

The Concessioner shall not employ a Service employee, the spouse of a Service employee, or minor children of Service employees without prior written approval from the Superintendent. Requests for such approval must be submitted in writing by the employee to the Superintendent.

#### **F. Training Program**

1. All employees of the Concessioner will be trained to conduct business in a friendly, helpful and professional manner. Training procedures will assure personnel at all levels will focus on customer service, customer relations, sanitation and employee and customer safety.
2. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements which affect their employment and activities while working in Gateway National Recreation Area. Employees will also be provided with information about the National Park Service, Gateway National Recreation Area, the Jamaica Bay Unit, and Floyd Bennett Field. Emphasis will be placed on mission, resources and visitor opportunities. A Service representative may participate in scheduled orientation sessions.
3. The Service will provide employees and managers with an orientation to the Concessioner Review Program and other NPS Concession Programs, as needed.
4. Concessioner managers and employees may participate in any appropriate training offered by the National Park Service.

#### **G. Lost and Found**

1. The Concessioner will manage a Lost-and-Found program in a responsible and accountable manner. Written procedures for handling such items and for reclaiming them are to be distributed to all employees and prominently posted.
2. All found items are to be turned over Concession managers and tagged by designated personnel. The tag will identify the item, date, location and name of finder. The Concessioner shall establish and maintain a central repository, familiar to all employees. A log book will be maintained at the lost-and-found repository. Any item not claimed within thirty (30) days must be turned over to the District Ranger in accordance with NPS regulations. The lost-and-found log will identify items turned over to the Service.
3. Found items that are expensive in nature -- such as cameras, wallets and jewelry -- will be stored in a safe or equally secure facility.

#### **IV. Scope and Quality of Services**

All services are to be provided in a consistent, quality manner. Service standards provided by the NPS Operational Performance Program are considered service minimums. The Concessioner is expected to make every effort to exceed these standards. The Concessioner shall be responsible for monitoring their operations to assure that quality standards are met.

All vehicular equipment used by the Concessioner will be properly licensed and maintained in a safe operating condition. Federal and state requirements must be adhered to. The Concessioner will park such equipment, when not in use, in an orderly fashion in an area approved by the Service.

##### **A. Merchandise**

The Concessioner may sell merchandise that: (a) enables visitors to participate in park activities, (b) allow visitors to purchase mementos of the park, and (c) serves as an extension of the Park interpretive program. Where possible, merchandise will contribute to appreciation of the park and its resources, understanding of preservation values, and support for conservation activity. Merchandise may also support understanding of the role recreation can play in personal development, support for cultural traditions, and pursuit of life-long health.

In addition to these general provisions, the following stipulations will also apply:

1. The image and unique identity of the Park will be reflected in the design of retail sales areas. Shops will exemplify quality and professionalism.
2. The Concessioner will, to the greatest extent possible, offer gifts and souvenirs that have an identifiable relationship to the National Park Service, historical and natural resources associated with the Jamaica Bay Unit, and recreational opportunities offered within Gateway NRA.
3. The Concessioner will cooperate with the National Park Service in promoting the sale of handicrafts made in the United States and related to the cultural, historical, natural and geographic characteristics of Gateway NRA.
4. The NPS Merchandising Standards will be followed. The standards include but are not limited to:
  - a. Foreign-made merchandise is not prohibited but should not dominate gift shops.
  - b. Merchandise that offends normal standards of taste will not be sold.

- c. The sale of original prehistoric or historic archeological specimens is prohibited. Replicas may be sold if they are clearly labeled as replicas.
- d. Merchandise representative of items found in the park, but not originating from the park, must be labeled and identified so as to indicate the origin.
- e. Plant material or other natural materials originating in the park cannot be sold. (Animal skins fabricated into such items as leather gloves, belts, jackets, purses, etc., are acceptable if the Concessioner obtains a statement from the manufacturer stating the skins were obtained from legally authorized sources and not from threatened or endangered species.)
- f. Merchandise conflicting with National Park Service policies and regulations will not be sold.
- g. The selling price of all items must be individually marked or designated on each display.

#### **B. Food and Beverage Service**

The menu will maintain a price range and variety of food services that will accommodate the general range of park visitors.

#### **C. Special Events**

All Special Event activities that are contained within the concession land assignments will not require Superintendent advance approval and shall be consistent with the objectives and purposes of the Concession. Special Events that exceed the concession land assignments require Superintendent advance review and approval and may be authorized on a case-by case-basis subject to Section III.B.1. and the following considerations:

1. The proposed event must be consistent with the purpose of the concession, as outlined above.
2. Health and safety concerns can be adequately addressed.
3. The event will not unduly displace other visitors to the park -- including the sports center visitors-- for significant periods.
4. All approved and permitted Special Events shall be in accordance with the Park's Compendium and limit the total number of public attendees to 5500 during summer months Memorial Day to Labor Day, and 10,000 fall, winter and spring

months.

Superintendent will review and approve in advance all media and publications related to Special Events. Security provisions and costs must be agreed upon prior to Special Events. For related information, see Section XI.D.

All Special Events may be offered free to the public or require paid admission at rates that are reviewed and approved in advance by the Superintendent. Only the Concessioner is authorized to sell tickets to Special Events.

#### **D. Interpretive Services**

1. **Non-Personal Interpretive Services:** In addition to providing general interpretive training to employees, the Concessioner will actively pursue a non-personal interpretive program. The Concessioner will explore a wide array of avenues for conveying interpretive messages to visitors on park-related themes and topics such as resource protection, appreciation of park values, and Service goals. The Concessioner will develop the use of story boards and kiosks located in strategic areas of the facilities and make printed materials available to the public.
2. **Interpretive Assistance:** The Division of Interpretation is available to advise/assist the Concessioner in the development of an interpretive program which encompasses all of these efforts.

#### **V. Reports**

##### **A. Administrative Reports:**

In accordance with the term of this Contract, the Concessioner will submit the following reports on or before the indicated deadline:

- |                                  |                            |
|----------------------------------|----------------------------|
| 1. Annual Financial Report       | May 1 each year            |
| 2. Certificate of Insurance      | March 1 each year          |
| 3. Statement of Insurance        | March 1 each year          |
| 4. Risk Management Program       | Review and update annually |
| 5. Gift Mission Statement        | Review and update annually |
| 6. Environmental Management Plan | Review and update annually |





6. Emergency procedures

B. First Aid:

Aviator will establish a First-Aid station within the facilities and prominently display directions to the public for its use.

1. First Aid kits and blood-borne pathogen kits will be maintained as part of emergency equipment/supplies.
2. One First Aid Kit is required for each venue.
3. Each First Aid Kit will be commercially manufactured and stocked in accordance with national standards set by the American Red Cross.(The U.S. Public Health Officer and Park Safety Officer may be consulted regarding the supplies that are required for these kits.)
4. Any incident of major consequence must be reported to the U.S. Park Police.

**VIII. Integrated Pest Management**

The control of pests by chemical and other means is subject to park approval. Specific problems can be referred to the park's Integrated Pest Management Coordinator.

**IX. Complaints**

All complaints regarding the Concessioner will be sent to the Superintendent for response. The Concessioner will address requests for information regarding complaints in a prompt and professional manner. A copy of the Service's response to the complaining party will be forwarded to the Concessioner.

In order to initiate valid and responsive visitor comments, the following notice will be prominently posted at all Concessioner cash registers and payment areas:

This service is operated by Aviator Development Company, LLC and Aviator Sports and Recreation LLC, a Concessioner under Contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The reasonableness of prices is based on comparability. Prices are approved by the National Park Service based upon prices charged by similar private enterprises

outside the Park for similar services with due consideration for appropriate differences in operating conditions.

Please address comments to:

Gateway National Recreation Area  
Attn: Jamaica Bay Unit Supervisor  
Floyd Bennett Field  
Brooklyn, New York 11234

## **X. Advertisements & Public Information**

All promotional material must be approved by the Superintendent prior to publication, distribution, broadcast, etc. In addition, the following stipulations will apply:

1. Advertisements, including sets of advertisements, must include a statement that the Concessioner is authorized by the Department of the Interior, National Park Service, to serve the public in Gateway National Recreation Area.
2. Layout, content and overall appearance of advertisements should support the objectives of this Contract as outlined above.
3. Advertising that would offend normal standards of taste will not be approved.
4. Brochures and menu text changes and layout should be submitted to the Superintendent for review at least 30 days prior to the date that approval is needed. The Superintendent will make every effort to respond to minor changes to brochure and menu texts within 15 days. Longer periods may be required for major projects or where National Park Service assistance is required to help develop the product. The Concessioner should contact park staff well in advance of their internal deadlines to establish specific time frames for each project.
5. Advertisements for employment must contain a statement that the company is an equal opportunity employer.

## **XI. Protection and Security**

### **A. Fire Emergency**

The Concessioner shall call "911" in the event of fire. Only limited fire support can be provided by the Park. If there is a charge involved as a result of New York City Fire Department involvement, the Concessioner shall be responsible for reimbursement.

## **B. Security Plan**

The Superintendent has sole authority to determine whether or not the Concessioner has provided adequate measures to protect visitors and park resources, and to comply with life safety, building and safety building codes.

1. The Concessioner will submit a written Security Plan to the Superintendent for approval. The Plan shall be updated and reviewed on an annual basis. The plan will address year-round operations as well as occasional activities and events.
2. As the law enforcement arm of the NPS within the Park, the US Park Police possesses concurrent jurisdiction on Federal Parklands and shall investigate all significant incidents that occur within the land assignment of the Concessioner.
3. The US Park Police may assist the Concessioner with security planning and evaluation.
4. All security personnel whether contracted by the Concessioner or employed by a contracted and bonded security company shall be unarmed.

## **C. Accidents and Incidents**

The Concessioner will address all aspects of personal safety and protection of property in accordance with the following provisions:

1. Major accidents and incidents will be immediately reported to the U.S. Park Police and the Superintendent.
2. Concession-operated facilities will be patrolled 7 days per week and 24 hours per day either by Concession employees or bonded guard service in order to secure government, concessioner and visitor property from theft, vandalism and fire.
3. Any problems detected by U.S. Park Police during non-operational hours will be reported to the concessioner at an agreed upon emergency number. Other phone numbers will be provided to the U.S. Park Police in the event that the designated representative is not available to receive the emergency call.
4. All security measures and procedures are subject to coordination with and approval by the U.S. Park Police and the Superintendent.

## **D. Special Events**

Security requirements for Special Events will be identified by the Concessioner in consultation with the Superintendent prior to Special Events, either permitted or requiring advance approval. The Concessioner will inform the Superintendent of all final security requirements and provisions prior to Special Events. The Concessioner may be required to reimburse the Service for the cost of US Park Police officers assigned to cover the event.

USPP Commanders will advise the Superintendent on the number of supplemental USPP officers needed to provide adequate law enforcement during a proposed Special Event. The following charts approximate the number of supplemental USPP officers required at indoor and outdoor events based on the number of expected spectators:

**Indoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>
Recommended # USPP Officers	1	2	3	4
Recommended # USPP Supervisor	0	0	0	1

**Outdoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>	<b>2001 to 3000*</b>	<b>3001 to 4000*</b>	<b>4000 to 6000*</b>
Recommended # Police Officers	0	1	2	3	4	5	6
Recommended Police Supervisors	0	0	0	1	1	1	1

\*Some events may require more or fewer officers based on the complexity of the event, type of event and other relevant factors. A meeting between USPP and Aviator will occur to discuss final assessment.

Following the event the USPP Budget Officer will issue a Bill of Collection to the Concessioner for reimbursement of law enforcement expenses related to the event. Names of officers who worked the event, specific hours worked, and any related miscellaneous law enforcement expenses will be provided to the Concessioner in a written document. The Concessioner will reimburse the USPP for these expenses within 10 days of receipt of a Bill of Collection.

#### **E. Firearms**

The Code of Federal Regulations, Part 36, chapter 1, prohibits the use of armed guards or off-duty city/state police officers on land administered by the NPS.

#### **F. Lost Children**

Lost children will be taken to the U.S. Park Police Offices located in Floyd Bennett Field.

### **XII. Hazardous Waste Program**

The Concessioner will develop and submit a Hazardous Materials Plan to the Service for approval. The Concessioner will review and update the Plan on an annual basis. In addition:

1. The Concessioner must comply with all federal, state and local regulations regarding hazardous waste.
2. The Concessioner will properly clean, mitigate, and remediate all unauthorized discharges of hazardous materials or non-hazardous chemical and biological products released from fleet and public service vehicles and/or stationary sources. Response shall be consistent with guidelines established within applicable Federal, state, and local regulations. When a spill, leak, or other release occurs, the Concessioner shall notify the Superintendent as soon as possible without impeding cleanup.
3. When a release of hazardous or non-hazardous chemical or biological product occurs, proper corrective, cleanup, and safety actions must be implemented immediately.

### **XIII. Environmental Management**

The Concessioner will manage its operation in accordance with an approved Environmental Management Plan (EMP). The EMP will, at a minimum, address the following:

1. Source Reduction: The Concessioner will minimize use of disposable products. Reusable and recyclable products are preferred over "throwaways." Where disposable products are the only available option, products will be used which have the least impact on the environment. For example, polystyrene and plastics will be used as

little as possible; if polystyrene is used, it will not contain chlorofluorocarbons. The use of post-consumer recycled products will be used whenever possible.

2. Recycling and Beverage Container Programs: The Concessioner shall implement and actively support a recycling program. Products to be recycled include but are not limited to paper, newsprint, cardboard, metals, plastics, aluminum, glass, waste oil, antifreeze, and batteries. All recycling is to conform to applicable standards and procedures.

**XIV. Volunteers in the Park (VIP)**

The Concessioner will allow its employees to participate in the NPS Volunteers in the Park (VIP) program.

**XV. Emergencies**

In the event of an emergency, the Concessioner will call the following numbers:

United States Park Police	(718) 338-3988
Jamaica Bay Unit (District Ranger)	(718) 338-3827

**XVI. Utility Accounts**

<u>(1). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Electric	National Park Service	Aviator	N/A
<u>(2). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Water & Sewer	NYC Water Board	80010-16701-001	N/A
Gas	Keyspan/National Grid	4620-91950	General Account
Gas	Keyspan/National Grid	4620-81331	Tran General Account
Gas	Keyspan/National Grid	4620-91940	Co-Gen Account

**XVII. Definitions**

In addition to all defined terms contained in the Contract, its Exhibits, and 36 CFR Part 51, the following definitions shall apply to this Operating Plan:

1. Environmentally Preferable refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.
2. Hazardous Substance refers to any hazardous waste, hazardous chemical or hazardous material. Further clarification on hazardous substances can be found in 29 CFR 1910.120, Occupational Safety and Health Standards, Hazardous Waste Operations and Emergency Response at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/29cfr1910\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/29cfr1910_04.html).
3. Incidental Spill or Release refers to the spill or release of a hazardous substance which does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency within a short time frame. Incidental releases are limited in quantity, exposure potential, or toxicity and present minor safety or health hazards to employees in the immediate work area or those assigned to clean them up. Employees who are familiar with the hazards of the chemicals with which they are working may safely clean up an incidental spill.
4. Spectator or Special Events are any events outside of normal recreational activities that (a) are designed or have the propensity to draw at least 500 spectators, (b) are usually advertised, (c) may be free or require an admission fee, and (d) must be approved in advance by the Superintendent.

Approved by NPS, effective December 31, 2008

By: Walter J. H. Sison  
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: [Signature]  
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]

**EXHIBIT C**  
**NONDISCRIMINATION**

**Section I: Requirements Relating to Employment and Service to the Public**

**A. Employment**

During the performance of this CONTRACT the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.



(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **B. Construction, Repair, and Similar Contracts**

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

#### **C. Facilities**

(1) Definitions: As used herein:

- (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (ii) facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

- (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (ii) discriminating by segregation or other means against any person.

## **Section II Accessibility**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### **A. Discrimination Prohibited**

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

### **B. Existing Facilities**

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a

Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

CC-GATE-015-03

EXHIBIT D

ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)

LAND ASSIGNED:

Land is assigned as depicted as (1) the "NEW ASSIGNMENT AREA" in Exhibit D1 and (2) the "ADDITIONAL FIELD ASSIGNMENT" in Exhibit D2.

REAL PROPERTY IMPROVEMENTS ASSIGNED:

The following real property improvements included within the "NEW ASSIGNMENT AREA" are assigned to the Concessioner for use in conducting its operations under this CONTRACT.

Building Name	Square Footage
Hangar 5	16,820
Hangar 5 lean-to	3,944
Hangar 6	16,820
Hangar 6 lean-to	3,944
Enclosed space between hangars 5 & 6	6,528
Hangar 7	16,820
Hangar 7 lean-to	3,944
Hangar 8	16,820
Hangar 8 lean-to	3,944
Enclosed space between hangars 7 & 8	6,528
Enclosed space & Mezzanine between the two pairs of hangars	52,500 (Enclosed space), Approximately 8,000 (Mezzanine)
Field Pump House	678
Co-Gen Building	5,612
Pump House (Building 29)	913
Storage Shed (Building 266)	240
Light Tower (JV 145)	196
Warehouse space (Southeast corner of Building 89) with use of loading dock	3,200

REAL PROPERTY IMPROVEMENTS REMOVED FROM ASSIGNED REAL PROPERTY IMPROVEMENTS:

The following real property improvement is no longer an assigned real property improvement.

Building Name	Square Footage
Former "Job Corps" kitchen and serving area (Building 129)	8,760

Approved, effective December 31, 2008

By: Chatteronei Street

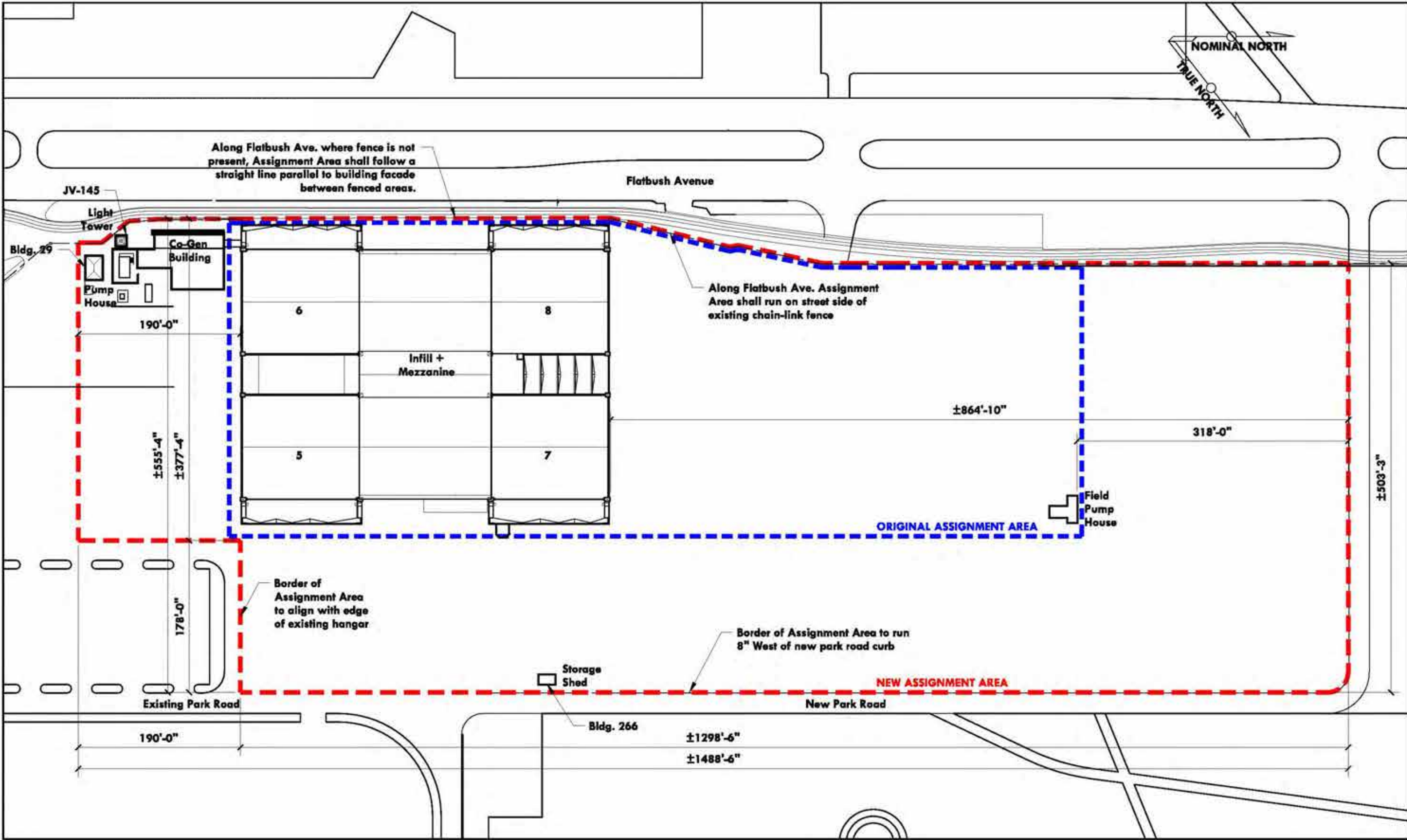
Director, ~~Northeast Region~~ ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: [Signature]

Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]







CONCESSIONS CONTRACT NO. CCGATE015-03

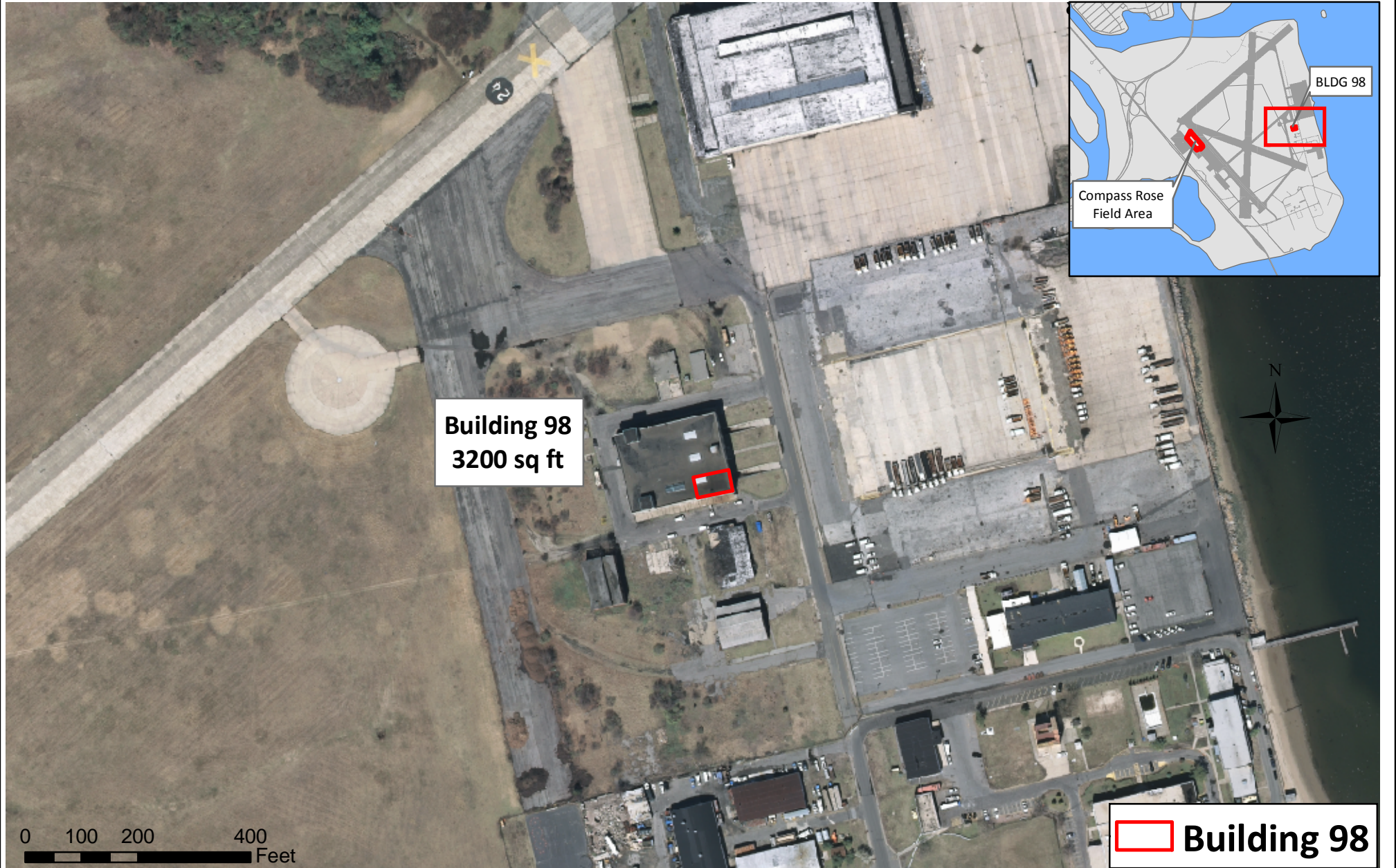
EXHIBIT D2 - ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT - COMPASS ROSE FIELD







CONCESSIONS CONTRACT NO. CCGATE015-03  
EXHIBIT D3 - ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT - BUILDING 98





**EXHIBIT E**

**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

NONE

## **EXHIBIT F**

### **CONCESSIONER CONSTRUCTION AND REPAIR AND MAINTENANCE PROJECT PROCEDURES**

#### **A. INTRODUCTION**

This exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area. Important terms are defined first. Project planning and design are presented second, followed by guidelines for project supervision. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This exhibit applies to the building of new structures or facilities, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and Concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by Service through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by Service, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and Service management policies.

The Concessioner is responsible for all aspects of project development and implementation. The role of the Service is to provide direction, authorization and oversight. The Concessioner and the park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the Service.

#### **B. DEFINITION OF TERMS**

**“Annual Construction and Repair and Maintenance Management Plan” (CMP):** A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

**“Approved Project Documents”:** “Project drawings and specifications approved by the park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

**“Change Order”:** A written agreement between the “Construction Supervisor” and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

**“Construction”:** The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

**“Construction Supervisor”:** A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and Service and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

**“Conventional Design-Bid-Build Methods”:** Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

**“Contact Person”:** A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

**“Facilitator”:** A Concessioner employee designated to have the role of providing structure and agendas for meetings with Service and who records meeting discussions and outcomes.

**“Guaranteed Maximum Price Design-Build Construction Methods”:** An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

**“Licensed Contractor”:** An entity performing construction certified or licensed by the State to perform construction services within that State.

**“Project Coordinator”:** A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

**“Project Statement” (PS):** An agreement between Service and the Concessioner approved by the park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

**“Registered Technical Professionals”:** Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

**“Substantially Complete”:** (Defined in the CONTRACT).

**“Total Project Cost”:** The total of all actual project expenditures (invoiced and paid) for completion of a project.

**“Total Project Price”:** The total of all estimated project expenditures for completion of a project.

### C. PROJECT PLANNING AND DESIGN

- 1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by Service, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP shall include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with Service staff.
- 2) Notify Service of Intent-to-Proceed. The Concessioner must notify the Service in writing before commencing any facility design or construction process. The project must be identified in the CMP the calendar year before to assist the Service in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the park Superintendent are included in the project scope before the project is funded.
- 3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person shall have the authority to obligate project expenditures and hire and direct consultants and contractors, and Concessioner support staff.
- 4) Prepare a Proposed Project Statement. (PS) Arrange and facilitate a project planning conference with Service staff and prepare a proposed PS to be submitted to the park Superintendent for review. The conference shall be performed on the proposed project site, if needed.
  - (a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference shall be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the park Superintendent.
  - (b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of Service design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.
  - (c) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals

to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the park Superintendent.

- (d) Service Operations. Any aspect of the proposed project where the scope of work interfaces with Service operations such as utility service connections or road maintenance operations must be clearly identified in the PS.
- 5) Submit Project Statement for Service Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the park Superintendent requesting review. A PS signed by the park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.
- 6) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and Service acceptance. Each project shall be identified with a unique project number assigned by the park. All documents entered into the file shall have the project identification number clearly displayed on it as part of document identity.
- (a) Typical Project File. The organization of a typical project file is presented in the following sections:
- Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the park Superintendent shall be filed in this section.
- Section B. Planning. This section shall contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section shall be any concept design, preliminary design, or schematic design correspondence and documents. When the park Superintendent grants approval for any of the above stages of project development, correspondence from the park Superintendent shall be filed in this section.
- Section C. Assessment. This section shall contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, shall be filed in this section. Any other existing site or facility investigative reports and all quality assurance documents such as third party project inspection, testing and certification shall also be filed in this section.
- Section D. Design. This section shall contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the park Superintendent providing design approval shall be in this section.

Section E. Project Work. This section shall contain a record of decisions made during project work. The letter from the park Superintendent granting notice-to-proceed with the project shall be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. shall be in this section. Documentation for larger projects shall be organized according to subcontractor activity or standard specification enumeration. The final document filed in this section shall be the Service correspondence sent to the Concessioner providing project acceptance and closeout.

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications shall be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., shall be kept to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos shall be filed with the documents they support.

- 7) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of Service staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.
  - (a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings. The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

- (b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them: "Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Shall Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Shall the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."
- (c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the Service. The Service shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the Service is unable to provide the expertise.
- (d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the Service early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.
- 8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

- 9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

#### **D. PROJECT MANAGEMENT PROCEDURES**

- 1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The Service will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person shall have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The Service shall not take any responsibility for projects until Project Close-out and Acceptance when the Service receives certification of completed work performed in compliance with Project Documents and all specified codes.
- 2) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a project will be issued when all submittals requested by the park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.
- 3) Hold a Pre-Project Conference attended by the Contractor and the Service. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the Service with the Contractor. The purpose of the conference is to provide the Service the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the Service. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.
- 4) Submit Project Activity Reports (As Required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.
  - (a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs (See discussion below for review and approval of change orders and contract modifications.)
  - (b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance



inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

- 5) **Submit Requests for Changes in Approved Project Documents.** The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the Service with written notification immediately upon identifying the need for a change in project scope that affects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:
  - (a) Changes affecting natural, cultural and/or historic resources;
  - (b) Changes in designated visual appearance;
  - (c) Changes in the interface with Service utility and/or road facility maintenance operations;
  - (d) Changes in project scope as required for facility improvement projects;
  - (e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.
- 6) **Service Project Inspection.** The project will be inspected periodically by a representative of the park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.
- 7) **Project Supervision Documents.** Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by Service staff.
- 8) **Substantial Completion Inspection and Occupancy.** Joint inspection by the Service and the Concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the park Superintendent.
- 9) **Project Completion Report.** Upon completion of any project, the Concessioner shall submit a Project Completion Report to the Service. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance

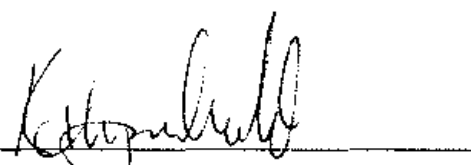
manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

- 10) "As-Constructed Drawings. The "as constructed" drawings included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with Service management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided.
- 11) Request Project Acceptance and Closeout by the Superintendent. The Concessioner shall request project acceptance by the park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the Service. Until receiving formal written project acceptance and closeout from the park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.

Approved by NPS, effective December 31, 2008

By:   
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By:   
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By 

**MAINTENANCE PLAN**

**FAMILY SPORTS CENTER**  
**GATEWAY NATIONAL RECREATION AREA**

**SIGNED:** /s/Billy G. Garrett **DATED:** 5/1/03  
**General Superintendent**

**TABLE OF CONTENTS**

Introduction	Page 3
Concession Facilities	Page 3
Access to Concession Facilities	Page 3
General Maintenance Standards	Page 3
General Concessioner Responsibilities	Page 4
Buildings	Page 4
Grounds and Landscaping	Page 5
Accessways	Page 6
Utilities	Page 7
Solid Waste	Page 7
Water	Page 7
Sewer	Page 8
Electrical	Page 8
Telephones	Page 8
Fuel Tanks	Page 8
Hazardous Materials	Page 9
Environmental	Page 9
Snow Removal	Page 9
Public Signs	Page 10
Pest Control	Page 10

## **INTRODUCTION**

This Maintenance Plan between The Aviator Development Co., LLC (herein referred to as the “Concessioner”) and Gateway National Recreation Area (herein referred to as the “Service”) will serve as a supplement to the Concession Contract CC-GATE015-03 (herein referred to as the “Contract”). The plan describes specific maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of Gateway National Recreation Area. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

### **Assigned Areas**

The Concessioner is responsible for all maintenance within areas assigned to it. Lands assigned under Exhibit D of the Contract are, with the exception of the former Job Corps building, are depicted on the aerial photograph of that Exhibit. The former Job Corps building is assigned in the text of Exhibit D. Areas of responsibility, which are not well defined by a sidewalk or road, are to be a minimum of 50-feet from buildings and 10-feet on either side of paths, walkways, and trails unless otherwise specified on the maps. If a sidewalk is the defining boundary, the assignment will include up to the roadside edge of the gutter. Any modification of concession-assigned areas or buildings will be reflected by corresponding changes on the land assignment maps.

### **Access to Concession Facilities**

The Superintendent or his designated representatives will have access to all concessioner facilities to conduct evaluations and other required inspections.

### **General Maintenance Standards for Concession Facilities**

The NPS Concession Review Program provides general direction, expectations, and standards on all aspects of concession operations. The standards for interior and exterior maintenance as amended, supplemented, or revised, are hereby incorporated by reference.

The concessioner is required by the terms of the contract to maintain the assigned property and facilities in a manner that is acceptable to the NPS. It is the purpose of this Maintenance Plan to help define the necessary standards and to define the maintenance relationship between the concessioner and the NPS. Both the concessioner and the NPS have specific responsibilities as outlined in the concession contract and this plan.

### **General Concessioner Responsibilities**

Any work that modifies concession facilities requires written approval by the NPS prior to commencing work. (See Contract - Exhibit F).

The concessioner will ensure that all operations, repair, maintenance and new construction adhere to the contract requirements and the Secretary of Interior's Standards for Treatment of Historic Properties.

Except as noted, the concessioner is responsible for housekeeping, general maintenance, replacement and repair as follows:

#### **A. Buildings**

1. Buildings: Any changes in the architecture, building interior or exterior, including color and material must be approved in advance by the NPS. Preservation maintenance, routine maintenance and repair on all structures must be consistent with NPS standards and guidelines.
2. Radon: When requested to do so, the concessioner will monitor radon levels in work places and provide mitigation where federally accepted levels are exceeded in accordance with Director's Order (DO)-76.
3. Asbestos: The concessioner will develop a schedule for identifying and abating asbestos in accordance with OSHA 29 CFR 1926.58, Environmental Protection Agency (EPA), 40 CFR 61.M, 763.E and G, and NPS-76.
4. Lead-Based Paint: The concessioner will develop a program to identify and mitigate hazardous lead-based paint in accordance with the Lead Poisoning Prevention Act of 1971, Public Law 91-695, as amended in 1987 and 1988; and NPS Housing Design and Rehabilitation Guidelines (DO-76). Lead levels must be detected before renovating any building constructed prior to 1977.
5. Building Codes: The concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.
6. Interior Systems: The concessioner will develop and implement preventive maintenance guidelines for building systems to ensure efficient operations. The concessioner will clean and inspect all interior systems prior to each operating season, including but not limited to, chimneys, fireplaces, stoves, etc.
7. Utility Systems: The concessioner will operate, repair and replace all interior and exterior utility systems within their land assignments as described in this plan or shown and described on land assignment maps.
8. Food Service Equipment: All equipment used in food service operations, including but not limited to, dishwashers refrigerators, freezers, coolers, serving tables, etc., will comply with safety, public health, and sanitation codes.

9. Safety Equipment: The concessioner will provide and maintain safety devices, in accordance with applicable codes, including but not limited to, fall protection, confined space, fire detection, suppression equipment, etc. and all equipment necessary for the protection of the employees and the public, as well as concessioner-owned and government-assigned improvements by complying with all applicable codes.
10. Historic Structures: The hangars are listed on, or are eligible to for nomination to the National Register of Historic Places. The concessioner will submit plans for all proposed work or actions affecting these resources to the NPS to ensure compliance with laws, policies, and guidelines, including the National Historic Preservation Act of 1966, as amended. The NPS will work with the concessioner to ensure that compliance requirements are followed.
11. Damage to Concession Facilities or Utilities: The concessioner will be responsible for repairing any damage caused to any assigned structure or utility due to negligence on the part of a concessioner employee or supplier.

## **B. Grounds and Landscaping**

1. All landscaping changes will be approved in advance by the NPS. All chemicals, including but not limited to, fertilizers, pesticides, and herbicides require NPS approval prior to use.
2. The concessioner will work with the NPS to identify resource-related problems in their assigned areas. The NPS will recommend and approve correction methods. The concessioner is responsible for ensuring that necessary work is accomplished.
3. The concessioner is responsible for litter-control in assigned areas.
4. The concessioner is responsible for exotic weed management in their assigned areas:
  - The NPS will survey the concessioner's land assignments to identify exotic weeds and provide the concessioner with the survey results. The concessioner will work with the NPS to ensure early detection.
  - The concessioner will be responsible for manual removal of high-priority species. Weeds that cannot be controlled manually will be chemically sprayed by the NPS. The concessioner will be billed for associated costs.
5. The Concessioner is responsible for grass mowing and trimming shrubs and trees.

## **C. Accessways**

### Parking Areas

1. The Concessioner is responsible for resurfacing, surface repair, patching and striping, debris and hazard removal in visitor, employee and administrative parking lots designated in land assignments.

Sidewalks, Walkways, Trails, Steps, Foot Bridges

1. The Concessioner is responsible for maintaining and replacing sidewalks, established trails, and steps in their assigned areas including sweeping, surface repair, erosion control, and lighting.
2. The Concessioner will provide safety railings on steps and hazardous walkways.
3. The Concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in their assigned areas. All designs must meet NPS and UFAS standards. Ramps must not interfere with plowing and street-sweeping by extending into the roadways or parking lots.

**D. Utilities**

Water and sewer are provided by the NPS and, if requested, the NPS will collect garbage. These services will be provided to the Concessioner based on established rates.

Solid Waste

1. If requested, the NPS will collect solid waste and bill the Concessioner based on established rates.
2. The Concessioner can make other arrangements for garbage collection. However, storage equipment, and schedules must be approved in advance by the NPS to assure that resource management guidelines are met.
3. The Concessioner will paint garbage cans within its assigned areas as needed.
4. Any debris generated from the Concessioner's construction or demolition is the responsibility of the Concessioner. Debris will be contained and removed from the park, to appropriate disposal sites, as soon as possible.

Water

1. The Concessioner is responsible for all interior plumbing in concession facilities.
2. The Concessioner's responsibility starts at, and includes, the isolation valves on the building side of the water main in assigned areas.
3. The NPS will maintain water meters on new and existing concession facilities. The Concessioner is responsible for purchasing and installing meters and back-flow prevention devices for new construction or new building assignments.
4. If a water main is tapped, broken or needs to be accessed, the local NPS maintenance supervisor will be notified. The Concessioner is responsible for exposing the main and restoring the area unless it is previously determined to be an NPS responsibility.
5. The Concessioner is responsible for road repairs if excavation through a road or paved area is



needed to repair a line. The Concessioner will replace topsoil and vegetation due to any ground disturbance caused by repairs. The Concessioner will disinfect repaired lines in accordance with NPS procedures.

6. The Concessioner will provide the NPS with facility occupancy dates for activation or deactivation of systems when opening and closing dates are submitted for approval.
7. The Concessioner is responsible for the following procedures prior to opening any facility that has been closed:
  - Water lines will be superchlorinated before initial use.
  - In cases where superchlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.
8. The NPS and the USPHS will conduct annual water/sewer surveys in the Concessioner's facilities.
9. The NPS is responsible for replacing and maintaining and painting fire hydrants.

#### Sewer

1. The Concessioner is responsible for all interior plumbing and fixtures in concession facilities.
2. The Concessioner is responsible for collection systems serving only the Concessioner's facilities as follows:
  - Cleaning, repair and replacement of systems up to and including the last manhole before a lift station or up to and including the last manhole before another user comes on line.
  - Exterior lines and laterals from assigned buildings to the mains.
3. The NPS is responsible for day-to-day maintenance on lift stations.
4. The Concessioner is responsible for installing, repairing, maintaining and replacing grease traps associated with their operations.
5. The Concessioner is responsible for reporting sewer spills and plugged sewer lines to NPS District Maintenance Managers and the Concessions Management Office immediately.

#### Electrical

The Concessioner will obtain electrical service from the local provider.

1. Maintaining, repairing and replacing all interior wiring and electrical supply lines from exterior transformers into concession facilities are Concessioner responsibilities.
2. The Concessioner will provide all utility line drawings to the NPS to reflect any changes including new installations, repair or relocation.
3. The Concessioner is responsible for obtaining new or additional power lines within assigned areas.
4. The Concessioner is responsible for electricity and fixtures in assigned parking lots that serve only their facilities.

#### Telephones

The Concessioner is responsible for all on-premise equipment and inside wiring. The Concessioner will contract directly for commercial telephone service. Agreements will be in accordance with guidelines provided by the NPS.

#### **E. Fuel Tanks**

1. The Concessioner is responsible for all underground storage tanks (USTs) and above ground storage tanks (ASTs) within their assigned areas. ASTs will be tested and maintained in accordance with 40 CFR, Part 280 (Wyoming) and ARM 16.45.102A (Montana) and all other applicable laws. The Concessioner must notify the NPS and the appropriate State Department of Environmental Quality (DEQ) in the event of any leaks, spills, tank modifications, temporary closures or any status changes.
2. The NPS policy for USTs and ASTs will be followed for all existing tanks, upgrades and new installations.
3. The Concessioner is responsible for all propane (L.P.) tanks in assigned areas:
  - Tanks will be tested and maintained in accordance with NFPA 54 and 58, and with 29 CFR 1910.110.
  - Wherever possible, propane tanks will be underground. All above ground propane tanks will be fenced and kept free of vegetation.
  - Plastic, untraceable LP gas lines will have trace-wire installed to facilitate advanced location and use. Warning tape will also be installed to warn future excavators of gas lines below.
  - All new propane tank installation will be approved by the NPS prior to installation.
4. All designated suppliers will be issued a non-fee permit for transporting hazardous materials.

#### **F. Hazardous Materials**

All hazardous material (Haz-Mats) will be handled as follows:

- The Concessioner will follow all RCRA, OSHA and 29 CFR, 1910 and 1926 regulations.
- Haz-Mat requirements will be part of the Concessioner's Risk Management Program.
- Spill kits, specified by the NPS, will be available at all of the concessioner's fueling stations, Haz-Mat storage areas and in maintenance vehicles.
- Spills will be reported immediately to the NPS Concessions Management Office.

### **G. Environmental**

To the extent possible, the concessioner will use naturally-derived cleaning products.

The concessioner will cooperate with the NPS in assuring that disposable products such as glass, aluminum, cardboard and paper are recycled. Following are individual responsibilities:

1. The concessioner may independently recycle (any independent recycling program must be approved in advance by the NPS) or participate in the park's recycling program as follows:
  - The NPS will provide a sufficient number of marked recycling receptacles throughout the park for employees and visitors
  - The concessioner will provide a sufficient number of marked recycling receptacles in its areas of operation
  - The NPS will collect recyclables from NPS offices and residential areas and haul them to Amfac's recycling center.
  - The concessioner will collect recyclables from their assigned areas and haul to designated recycling centers.
  - The concessioner will store recyclables in appropriate secure storage containers to protect against odors that could attract animals.
  - Revenues generated from the sale of recycled materials will be documented and used to offset the cost of the program.

### **H. Snow Removal**

1. The concessioner is responsible for snow removal from concession facilities' roofs, entrances, porches and walkways. Ice buildup on walkways will be sanded or removed for safety. Spring snow removal will be coordinated with NPS District Maintenance Managers.
2. Any chemical used for removing ice must be approved in advance by the NPS.

3. All winter keeping of concession facilities is the concessioner's responsibility. **page** 10 of 10
4. The concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

**F. Public Signs**

All signs, flags and banners will be approved by the NPS prior to installation or replacement. Signs will meet the NPS sign standards and the following requirements:

- The concessioner is responsible for maintaining and replacing all interior and exterior signs within their land assignments that relate to their operations and services
- The NPS will provide roadside directional, traffic and regulatory signs
- The NPS will provide signs for accessibility to be installed by the concessioner

**G. Pest Control**

The concessioner will notify the Concessions Management Office of serious pest problems including rodents, swallows, bats, bedbugs and other wildlife or insects that may invade buildings. Concessions Management will coordinate with other NPS staff to provide an approved Integrated Pest Management (IPM) strategy for the concessioner's implementation. The concessioner will provide the results of implementation to the NPS.

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CCGATE015-03

EXHIBIT H-1

REPAIR AND MAINTENANCE RESERVE PROJECT PROCEDURES

**A) INTRODUCTION**

This Supplement presents systematic procedures for the administration of projects funded out of the Repair and Maintenance Reserve within the Park. The Contract defines the purpose and scope of the Reserve Fund as well as the type and nature of eligible projects in Section 9(c) of the Contract.

Note that certain projects may require review under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act (NHPA) of 1966, as amended. The Concessioner must ensure that all projects comply with codes and building requirements adopted by the Director, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and National Park Service Management Policies.

**B) PROCEDURES**

- 1) Roles and Responsibilities. The Concessioner will conduct all aspects of its project development and implementation. The Service will provide direction, authorization, and oversight via the Superintendent.
- 2) Multiyear Repair and Maintenance Reserve Plan Approval. The Concessioner must provide the Service at least annually with a Multiyear Repair and Maintenance Reserve Plan per Exhibit E. The Concessioner must obtain Repair and Maintenance Reserve Plan approval by the Superintendent prior to submitting any specific project for approval.
- 3) Project Approval. The Concessioner must provide formal written notice to the Superintendent of the intent to proceed with the planning and design of any project at least one year prior to the intended commencement date. The Concessioner must not proceed prior to receiving written approval from the Superintendent.
- 4) Project Planning and Design Approval. The Concessioner must submit a set of project Plans and Designs to the Superintendent for review and approval. The Concessioner must not execute any aspect of the project or contract for the execution of any aspect of the project prior to receiving written approval from the Superintendent. Project Plans and Designs must include, at a minimum:
  - (a) *Project Statement*: A copy of the project Approval, the designated Concessioner project supervisor, a description of the work, and the justification for the work.
  - (b) *Planning*: Documents as applicable such as those produced for NEPA and Section 106 compliance, concept design, preliminary design, or schematic design and related correspondence and documents.
  - (c) *Design*: Documents produced and decisions made during the design phase of the project such as drawings, renderings, schematics, or descriptions.
  - (d) *Project Estimate and Schedule*: An estimate of the Total Project Price and completion schedule before work begins based on the best information available identified during project planning and design.
  - (e) *Certification of No Capital Improvement*: An analysis of the proposed project to ensure that no element of the project would qualify as a Capital Improvement, as that term is defined in


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36 C.F.R. Part 51, Subpart G, eligible for Leasehold Surrender Interest. The Concessioner must certify that the project does not include the construction or installation of a Capital Improvement. The Service must review this certification to confirm that the project does not include any element that may be eligible for Leasehold Surrender Interest. The parties will resolve any concerns before the Superintendent approves the project. The Superintendent is not authorized to allow the Concessioner to construct or install any Capital Improvement to Concession Facilities.

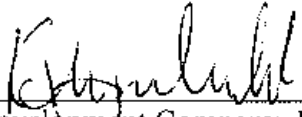
- 5) Project Management. The Concessioner designated project supervisor must oversee the project and its completion. The Concessioner must submit to the Superintendent periodic activity reports, at a frequency to be agreed upon by the Concessioner and Superintendent prior to project commencement. A periodic activity report must, at a minimum:
  - (a) Summarize project activity by recording observations and decisions
  - (b) Identify project expenditures to date
  - (c) List any changes to the approved project Plans and Designs
  - (d) List any changes in Schedule and Total Project Price
- 6) Project Change Approval. Changes during the work that require review and approval of the Superintendent include, without limitation, the following:
  - (a) Changes affecting natural, cultural, or historic resources
  - (b) Changes in designated visual appearance
  - (c) Changes in the interface with utility, road, or facility maintenance operations
  - (d) Changes in project scope
- 7) Substantial Completion Inspection. The Concessioner must notify the Superintendent that the project is substantially complete and request a joint inspection. The Concessioner and Service will develop a punch list of work items required to "close-out" the project. The Concessioner must not use the structure or structure area affected by the project until all punch list items are resolved.
- 8) Project Completion Report Approval. Upon completion of any project, the Concessioner must submit a project Completion Report to the Superintendent. The project Completion Report must include the Total project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; as-constructed drawings, and other documents as requested by the Superintendent. Until receiving formal written project Completion Report Approval from the Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.


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Approved by NPS, effective \_\_\_\_\_, 2008\_\_

By:   
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008\_\_

By:   
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By 

## EXHIBIT I

### INSURANCE REQUIREMENTS

#### I. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT. Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

#### II. LIABILITY INSURANCE

The following Liability Coverage is to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

##### A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit -	\$25,000,000
Products/Completed Operations Limit -	\$25,000,000
Personal Injury & Advertising Injury Limit -	\$25,000,000
General Aggregate -	\$25,000,000
Fire Damage Legal Liability "per fire" -	\$5,000,000

2. The liability coverage may not contain the following exclusions/limitations:

- a. Products/Completed Operations
- b. Personal Injury or Advertising Injury exclusion or limitation
- c. Contractual Liability limitation
- d. Explosion, Collapse and Underground Property Damage exclusion
- e. Total Pollution exclusion

3. For all indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

##### B. Automobile Liability



Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto."

Each Accident Limit - \$1,000,000 or greater amount if required by the state or the terms of the excess liability policy.

**Aggregate Limit: \$25,000,000**

#### C. Liquor Liability

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit - \$ 6,000,000

#### D. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

#### E. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

**Policy Limit: \$3,000,000**

#### F. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

#### G. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

#### H. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

### III. PROPERTY INSURANCE

#### A. Building(s) and/or Contents Coverage

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. Coverage is to be provided on a blanket basis.
6. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

#### B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities.
2. The policy shall provide for loss recovery on a Replacement Cost basis.
3. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
5. Coverage is to be provided on a blanket basis.
6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
7. Ordinance or Law Coverage shall be maintained.

#### C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while

such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Any occupancy restriction must be eliminated.
7. Any collapse exclusion must be eliminated.
8. Any exclusion for loss caused by faulty workmanship must be eliminated.

#### D. Business Interruption and/or Expense

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

#### E. Deductibles

Property Insurance coverage described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000.
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

#### F. Required Clauses

##### 1. Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. CC-GATE015-03 dated April 10, 2003, between the United States of America and the Concessioner, payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed

directly to the Concessioner without requiring endorsement by the United States of America."

2. The United States Department of the Interior, National Park Service will be named as additional insured on certificates with respect to damage to National Park Service property. The United States of America shall be the named insured for General Liability Insurance.

#### IV. CONSTRUCTION PROJECT INSURANCE

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverage shall be determined in consultation with the Director taking into consideration the scope and size of the project.

#### V. INSURANCE COMPANY MINIMUM STANDARDS

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverage must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
2. All insurers for all coverage must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state in which the concessioner is operating.

#### VI. CERTIFICATES OF INSURANCE

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverage, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.


Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

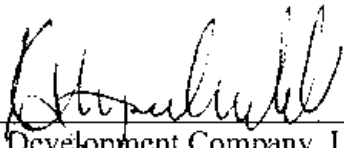
VII. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit will be considered the minimum to be maintained.

Approved by NPS, effective December 31, 2008

By:   
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By:   
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By 

**CC-GATE015-03**

**EXHIBIT J  
TRANSITION TO A NEW CONCESSIONER.**

**Section 1. In General**

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

**Section 2. Cooperation Prior to the Termination Date**

At such time as the Director may notify the Concessioner that it will not continue its operations upon the expiration or termination of this CONTRACT, the Concessioner shall, notwithstanding such notification:

**(a) Continue Operations.** Continue to provide visitor services and otherwise comply with the terms of the CONTRACT in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

**(b) Continue Bookings.** Continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken; not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner; and notify all guests with bookings for any period after the Termination Date that the facilities and services are to be operated by the New Concessioner. Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner, and thereafter the Concessioner shall update such log on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's (1) address, (2) contact information, (3) dates of stay, (4) rate quoted, (5) amount of advance deposit received and (6) confirmation number, if applicable.

**(c) Designating a Point of Contact and Other Actions.** Cooperate with the Director and the New Concessioner to ensure the smooth transition of operations by: (1) designating one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner; (2) providing the Director and the New Concessioner with access to

any assigned Real Property Improvements, including "back-of-house areas" and including copies of the keys to assigned Real Property Improvements; (3) providing the Director and the New Concessioner with full access to the books and records, licenses and all other materials pertaining to any assigned Real Property Improvements and the Concessioner's operations in general; (4) providing the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio) service contracts and supply contracts, including contracts for on-order merchandise (collectively, "Contracts"), and copies of all liquor licenses and other licenses and permits (collectively, "Licenses"); (5) allowing the New Concessioner to solicit and interview for employment all of the concessioner's salaried and hourly employees, including seasonal employees through a coordinated process implemented by the Concessioner; and (6) not entering into any contracts or agreements that would be binding on any assigned Real Property Improvements or operations in general after the Termination Date without the prior written agreement of the New Concessioner.

**(d) Financial Reports.** Within 30 days after receipt of the notification of the selection of the New Concessioner, provide the New Concessioner with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessioner shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum, (1) a balance sheet for the Concessioner's assigned Real Property Improvements, if any; (2) a schedule of pending accounts payable; and (3) a schedule of pending accounts receivable.

**(e) Inventory.** Provide the New Concessioner with a complete, detailed and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the CONTRACT (including a list of such items that are on-order). The list shall be provided to the New Concessioner within thirty (30) days following receipt of the notification of the selection of the New Concessioner, shall be updated monthly thereafter, and shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of its operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

**(f) Sale of Inventory and Other Personal Property.** In addition to inventory that may be sold to the New Concessioner in accordance with Section 16(d)(3), the Concessioner, upon the request of the New Concessioner, shall sell to the New Concessioner at book value such other property listed on the inventory described above as the New Concessioner may request.

**(g) Other Information and Reports.** Provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner's operations for the period of one year prior to notification of the selection of the New Concessioner, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessioner, and shall be updated periodically (but no less frequently than thirty (30) days) until the Termination Date.

**(h) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

### **Section 3. Cooperation Upon the Termination Date.**

Upon the Termination Date, the Concessioner shall:

**(a) Transfer of Contracts and Licenses.** Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessioner that the New Concessioner elects to assume.

**(b) Reservation Systems.** (1) Provide the New Concessioner with an update of the reservation log through the Termination Date; (2), disconnect its operations from the Concessioner's centralized reservation system, if any; and (3) cooperate with the New Concessioner in transitioning to the New Concessioner's reservation system.

**(c) Fees and Payments.** Within ten (10) days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the CONTRACT as of the Termination Date, including, without limitation, all deferred, accrued and unpaid fees and charges. The Concessioner shall, within ten (10) days of its delivery to the Director of this itemized statement, pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

**(d) Access to Records.** Notwithstanding any other provision of this CONTRACT to the contrary, upon the Termination Date, the Concessioner shall make available to the Director for the Director's collection, retention and use, copies of all books, records, licenses, permits and other information in the Concessioner's possession or control that in the opinion of the Director, are related to or necessary for orderly and continued operations of the related facilities and services.

**(e) Removal of Marks.** Concessioner shall within thirty (30) days after Termination, remove (with no compensation to Concessioner) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessioner.

**(f) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.



Approved by NPS, effective December 31, 2008

By: Walter Weir Strom

Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: Stephen Luhl  
Aviator Development Company, LLC

Aviator Sports and Recreation, LLC

Attest: By Maureen Parnis



# United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.  
Washington, D.C. 20240

IN REPLY REFER TO:

MARCH 21, 2014

To: NPS Concessioners

From: Ben Erichsen, Chief of Commercial Services

Subject: GATE015-03  
Suspension of the Collection of Concession Franchise Fees for October 2014

The National Park Service (NPS) recognizes that the unfortunate circumstances of the October 2013 Federal Government shutdown resulted in economic costs to our concession partners, including employee layoffs and lost revenue.

As a good faith effort to provide the opportunity to recover some of the economic losses, NPS Regional Directors have been authorized to forego the collection of concession franchise fees payments and special account contributions for the entire month of October 2014 from those concessioners who could have operated in October 2013, and did not, and who will operate in October 2014. This determination is done entirely within the discretion of the National Park Service and does not confer any right or entitlement to any entity or individual.

This letter informs you that you are eligible to forego your franchise fee payment and/or special account contribution for the month of October 2014. Please follow the attached guidance to ensure that you timely submit to the superintendent all appropriate paperwork and correctly complete your Annual Financial Report.

This directive applies to all NPS concessioners that were scheduled to conduct operations and were forced to close when the Federal Government shutdown occurred. Concessioners will have to pay required building use fees and fund required repair and maintenance reserves. It will not apply to any new concessioners that started operations after October 17, 2013.

This action demonstrates our concern for your business. It is not meant to make you whole. It is, however, after considerable analysis, the most fair, across the board gesture the NPS could devise as we continue in service to our visitors.

It is important that you carefully read and follow the directions on the attached forms to remain eligible for this directive. If you have any questions regarding this guidance, please send an email to [commercial\\_services@nps.gov](mailto:commercial_services@nps.gov).

## CC\_GATE-015-03

### AMENDMENT NO. 3

**THIS AMENDMENT NO. 3** to CC-GATE015-003 is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service or her designee (hereinafter referred to as the "Director"), and AVIATOR SPORTS AND RECREATION, LLC and AVIATOR DEVELOPMENT COMPANY, LLC, limited liability companies organized and existing under the laws of the State of New York (hereinafter referred to collectively as the "Concessioner");

#### **WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner entered into Concession Contract No. CC-GATE015-03, effective April 15, 2003, and amended the Concession Contract by Amendment No. 1 dated February 27, 2006, and Amendment No. 2 dated July 13, 2006, (as amended, the "PREVIOUSLY AMENDED CONTRACT"), which PREVIOUSLY AMENDED CONTRACT authorizes the provision of accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003, until its expiration on April 14, 2023; and

**WHEREAS**, the Director and Concessioner desire to further amend the PREVIOUSLY AMENDED CONTRACT to the mutual benefit of the parties, including, without limitation, deletion of its Exhibit G, addition of Exhibit H-1, addition of Exhibit J, further specification of Leasehold Surrender Interest Value, and agreement to the waiver and release of claims and rights to certain Leasehold Surrender Interest; and

**WHEREAS**, the Director and the Concessioner for the sake of clarity wish to restate the PREVIOUSLY AMENDED CONTRACT as amended by the terms of this Amendment No. 3; and

**WHEREAS**, immediately prior to the execution of this Amendment No. 3, the Director, in accordance with the instructions of the Concessioner, paid seventeen million five hundred thousand dollars (\$17,500,000) which sum by the agreement of the Director and the Concessioner reduced the Leasehold Surrender Interest Value (as defined in the PREVIOUSLY AMENDED CONTRACT) by the equivalent sum of money such that the Leasehold Surrender Interest Value equals \$12.75 million as of the time of and after giving effect to such payment.

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual covenants set forth herein and for other good consideration, hereto covenant and agree that:

**The PREVIOUSLY AMENDED CONTRACT is further amended and restated, effective as of the last date set forth below, by this Amendment No. 3, the terms of which are incorporated in the document attached hereto as Exhibit A. Exhibit A restates the PREVIOUSLY AMENDED CONTRACT, as amended by this Amendment No. 3, in its entirety effective as of the last date set forth below and Exhibit A henceforth shall constitute Concession Contract CC-GATE015-03 as**

amended for all purposes. In the event of any inconsistency between the PREVIOUSLY AMENDED CONTRACT and Exhibit A, Exhibit A shall control.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment No. 3 effective as of the last date set forth below.

CONCESSIONER

UNITED STATES OF AMERICA

BY [Signature]

BY [Signature]

Title: CEO

Title: A/D Business Services

Aviator Development Company, LLC

National Park Service

Date: December 30, 2008

Date: DEC 31 2008

ATTEST:

BY: [Signature]

Title: SECRETARY

Date: December 30, 2008

BY [Signature]

Title: CEO

Aviator Sports and Recreation, LLC

Date: December 30, 2008

ATTEST:

BY: [Signature]

Title: SECRETARY

Date: December 30, 2008

**EXHIBIT A to Amendment No. 3: Concession Contract CC – GATE015-03**

**CONCESSION CONTRACT CC- GATE015-03 RESTATED AS AMENDED BY  
AMENDMENTS No. 1, 2, AND 3.**

**TABLE OF CONTENTS**

**IDENTIFICATION OF THE PARTIES**

**SEC. 1 TERM OF CONTRACT**

**SEC. 2 DEFINITIONS**

**SEC. 3. SERVICES AND OPERATIONS**

- A. Required and Authorized Visitor Services
- B. Operation and Quality of Operation
- C. Operating Plan
- D. Merchandise and Services
- E. Rates
- F. Impartiality as to Rates and Services

**SEC. 4. CONCESSIONER PERSONNEL**

- A. Employees
- B. Employee Housing and Recreation

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

- A. Legal, Regulatory, and Policy Compliance
- B. Notice
- C. How and Where to Send Notice

**SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

- A. Environmental Management Objectives
- B. Environmental Management Program
- C. Environmental Management Measurement
- D. Environmental Data, Reports, Notifications, and Approvals
- E. Corrective Action
- F. Indemnification and Cost Recovery for Concessioner Environmental Activities
- G. Weed and Pest Management
- II. Protection of Cultural and Archeological Resources

**SEC. 7 INTERPRETATION OF AREA RESOURCES**

- A. Concessioner Obligations
- B. Director Review of Content

**SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY CONCESSIONER**

- A. Assignment of Concession Facilities
- B. Concession Facilities Withdrawals
- C. Effect of Withdrawal
- D. Right of Entry
- E. Personal Property
- F. Condition of Concession Facilities
- G. Utilities Provided by the Director
- H. Utilities Not Provided by the Director
- I. Utility Charges and Costs January 1, 2009 – December 31, 2015

**SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

- A. Construction of Real Property Improvements
- B. Removal of Real Property Improvements
- C. Leasehold Surrender Interest
- D. Concession Facilities Improvement Program

**SEC. 10. MAINTENANCE**

- A. Maintenance Obligation
- B. Maintenance Plan
- C. Repair and Maintenance Reserve

**SEC. 11. FEES**

- A. Franchise Fee
- B. Payments Due
- C. Interest
- D. Adjustment of Franchise Fee

**SEC. 12. INDEMNIFICATION AND INSURANCE**

- A. Indemnification
- B. Insurance in General
- C. Commercial Public Liability
- D. Property Insurance

**SEC. 13. BONDS AND LIENS**

- A. Bonds
- B. Lien

**SEC. 14. ACCOUNTING RECORDS AND REPORTS**

- A. Accounting System
- B. Annual Financial Report
- C. Other Financial Reports

**SEC. 15. OTHER REPORTING REQUIREMENTS**

- A. Insurance Certification
- B. Environmental Reporting
- C. Miscellaneous Reports and Data.

**SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

- A. Suspension
- B. Termination
- C. Notice of Bankruptcy or Insolvency
- D. Requirements in the Event of Termination or Expiration

**SEC. 17. COMPENSATION**

- A. Just Compensation
- B. Compensation for Contract Expiration or Termination
- C. Compensation for Personal Property

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

**SEC. 19. GENERAL PROVISIONS**

**EXHIBITS**

- EXHIBIT A: Leaschold Surrender Interest
- EXHIBIT B: Operating Plan
- EXHIBIT C: Nondiscrimination
- EXHIBIT D: Assigned Land, Real Property Improvements
- EXHIBIT E: Assigned Government Personal Property
- EXHIBIT F: Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures
- EXHIBIT G: [Intentionally Deleted]
- EXHIBIT H: Maintenance Plan
- EXHIBIT H-1: Repair and Maintenance Reserve Procedures
- EXHIBIT I: Insurance Requirements
- EXHIBIT J: Transition to a New Concessioner

THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Northeast Region, (hereinafter referred to as the "Director"), and THE AVIATOR DEVELOPMENT COMPANY, LLC, and AVIATOR SPORTS AND RECREATION, LLC, limited liability companies organized and existing under the laws of the State of New York (hereinafter referred to collectively as the "Concessioner"):

**WITNESSETH:**

**THAT WHEREAS**, Gateway National Recreation Area is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

**WHEREAS**, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

**WHEREAS**, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

**WHEREAS**, the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

**NOW, THEREFORE**, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub. L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

**SEC. 1. TERM OF CONTRACT**

This Concession Contract No. CC-GATE015-03 ("CONTRACT") shall be effective as of April 15, 2003, and shall be for the term of twenty (20) years until its expiration on April 14, 2023.

**SEC. 2. DEFINITIONS**

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.



- (b) "Area" means the property within the boundaries of Gateway national Recreation Area.
- (c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations conducted under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.
- (d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.
- (e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.
- (f) "Days" shall mean calendar days.
- (g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.
- (h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.
- (i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:
- (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
  - (2) charges for employees' meals, lodgings, and transportation;
  - (3) cash discounts on purchases;
  - (4) cash discounts on sales;
  - (5) returned sales and allowances;
  - (6) interest on money loaned or in bank accounts;
  - (7) income from investments;
  - (8) income from subsidiary companies outside of the Area;
  - (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
  - (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;
  - (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the

Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Possessory Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(p) "Superintendent" means the manager of the Area.

(q) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

### **SEC. 3. SERVICES AND OPERATIONS**

#### **(a) Required and Authorized Visitor Services**

During the term of this CONTRACT, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

##### (1) Required Visitor Services

The Concessioner is required to operate a family-oriented sports center, on a year-round basis to include:

Ice sports as the core activity and anchor for the sports center with support activities and services

Pro shop,

Food and Beverage Service,

and

Provide exhibits and informational media that inform and educate users of the national significance of the historic hangars.

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services, listed here during the term of this CONTRACT:

Interpretive material (books, postcards, posters, photographs),

Limited apparel,

Souvenirs tied to the interpretive theme(s) of Gateway National Recreation Area,

Teaching professional services,

Sports physical therapy, and

Community events

**(b) Operation and Quality of Operation**

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

**(c) Operating Plan**

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

**(d) Merchandise and Services**

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this

CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

**(e) Rates**

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

**(f) Impartiality as to Rates and Services**

(1) Subject to Section (f) (2) and (f) (3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

**SEC. 4. CONCESSIONER PERSONNEL**

**(a) Employees**

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

## **SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

### **(a) Legal, Regulatory and Policy Compliance**

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

### **(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

[REDACTED]

**(c) How and Where to Send Notice**

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

General Superintendent  
Gateway National Recreation Area  
Attention: Chief, Business Management Division  
Headquarters Building 69  
Floyd Bennett Field  
Brooklyn, New York 11234

Notices sent to the Concessioner shall be sent to an address designated in writing by the Concessioner.

**SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

**(a) Environmental Management Objectives**

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

- (1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.
- (2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

**(b) Environmental Management Program**

- (1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.
- (2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.
- (3) The EMP shall include, without limitation, the following elements:
  - (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.

(ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e. measurable results and schedules) to achieve these goals.

(iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.

(iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.

(v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.

(vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.

(vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.

(viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.

(ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

### **(c) Environmental Performance Measurement**

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

### **(d) Environmental Data, Reports, Notifications, and Approvals**

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this

CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area, (whether solid, semi-solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

**(e) Corrective Action**

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

**(f) Indemnification and Cost Recovery for Concessioner Environmental Activities**

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this



CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remediate an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remediate, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

**(g) Weed and Pest Management**

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

**(h) Protection of Cultural and Archeological Resources.**

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

**SEC. 7. INTERPRETATION OF AREA RESOURCES**

**(a) Concessioner Obligations**

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in the Comprehensive Interpretive Plan, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

**(b) Director Review of Content**

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

## **SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER**

### **(a) Assignment of Concession Facilities**

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

(i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and

(ii) certain real property improvements as described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth below.

### **(b) Concession Facilities Withdrawals**

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

(1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;

(2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

### **(c) Effect of Withdrawal**

Any permanent withdrawal of assigned Concession Facilities which the Director considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as termination of this CONTRACT pursuant to Section 16. Other withdrawals of assigned Concession Facilities shall not be considered as a termination of this CONTRACT.

### **(d) Right of Entry**

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

**(e) Personal Property**

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

**(f) Condition of Concession Facilities**

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

**(g) Utilities Provided by the Director.**

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

**(h) Utilities not provided by the Director**

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in

writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

**(i) Special Provision related to Utility Charges and Costs for the Period January 1, 2009, through December 31, 2015**

(1) For the period January 1, 2009, through December 31, 2015, notwithstanding the terms of Subsections 8(g) and 8(h) to the contrary and subject to the conditions and limitations set forth in this subsection, the Director:

(a) will not charge the Concessioner for the utilities provided by the Director under Subsection 8(g) (referred to herein as "unassessed utility charges" as that term is defined in Subsection 8(i)(2) below) and as further described in Section XVI (1) of Exhibit B; and

(b) will provide to the Concessioner the utilities set forth in Section XVI (2) of Exhibit B by paying the utility costs (as that term is defined in Subsection 8 (i)(2) below) that would otherwise be paid by the Concessioner under Subsection 8(h).

(2) "Unassessed utility charges" for purposes of this Subsection 8(i) are the amounts of money the Director would have charged the Concessioner for utilities provided by the Director under Subsection 8(g) but for the terms of this Subsection 8(i). "Utility costs" for purposes of this Subsection 8(i) means invoiced charges for services rendered by public utility companies for electricity, water, sewage and natural gas. Without limitation, utility costs do not include telephone or other communication services and do not include repair, maintenance, purchase or replacement of any fixtures or equipment.

(3) Notwithstanding Subsection 8(i)(1) above, the Concessioner shall pay the Director for utilities in accordance with Subsection 8(g) above and shall pay all utility costs in accordance with Subsection 8(h) above after any time in any of the calendar years set forth below when the total of the unassessed utility charges under Subsection 8(i)(1)(a) above and the utility costs paid by the Director under Subsection 8(i)(1)(b) above exceed the amounts set forth below:

2009: \$900,000  
2010: \$925,000  
2011: \$950,000

(4) In addition to the limitations set forth in Subsection 8(i)(3) above, the Director's obligations under this Subsection 8(i) will terminate if, at any time during the period January 1, 2009 -- December 31, 2015: (a) the unassessed utility charges under Subsection 8(g) and the applicable Subsection 8(h) utility costs paid by the Director cumulatively total seven million dollars (\$7 million) or more; or, (b) the cumulative fiscal year gross receipts of the Concessioner for any particular fiscal year (gross receipts based on a fiscal year period commencing January 1 and ending on December 31) exceed fourteen million dollars (\$14 million). With respect to termination for the latter reason, the Director's obligations under Subsection 8(i) will cease in the month immediately following the month in which cumulative fiscal year gross receipts exceed \$14 million. For example, if cumulative gross receipts for the fiscal year beginning on January 1, 2012 and ending on December 31, 2012 exceed \$14 million dollars in September, 2012, the

Director's obligations under Subsection 8(i) will cease effective as of October 1, 2012. The Director will make the determination to terminate these obligations in his sole discretion, after consultation with the Concessioner.

(5) Upon request, the Concessioner will promptly provide the Director with monthly gross receipt reports to track cumulative gross receipts.

## **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

### **(a) Construction of Real Property Improvements**

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

### **(b) Removal of Real Property Improvements**

(1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

### **(c) Leasehold Surrender Interest**

(1) This CONTRACT hereby provides the Concessioner, subject to the limitations set forth in Section 17 of this CONTRACT and subject to all applicable definitions, requirements and limitations of this CONTRACT a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT.

### **(d) Concession Facilities Improvement Program**

(1) The Concessioner has undertaken an improvement program (hereinafter a "Concession Facilities Improvement Program" or "CFIP") generally consisting of the stabilization, rehabilitation and adaptation of historic hangars into a family sports center. The CFIP, with the exception of the projects described in Subsection 9(d) (2) below, was substantially completed to the satisfaction of the Director and the facility

opened to the public as of September 15, 2006.

(2) The Concessioner, within one year from the effective date of Amendment No. 3 to this CONTRACT, shall undertake and complete (at a cost of not less than \$50,000 and not more than \$150,000 ) the following CFIP projects:

Rehabilitation and adaptation of Building 29 and the historic light tower in accordance with the standards set forth in the Memorandum of Agreement between the Director and the New York State Historic Preservation Officer (which Memorandum of Agreement is hereby attached to this CONTRACT as Exhibit K).

(3) Notwithstanding any provision of this CONTRACT or Applicable Laws to the contrary, the Director and the Concessioner agree that the Gas Co-Generation facility that provides electricity to the Concession Facilities constructed by the Concessioner as part of the CFIP is deemed to be a real property improvement (and not personal property) as defined by this CONTRACT for all purposes of this CONTRACT.

## **SEC. 10. MAINTENANCE**

### **(a) Maintenance Obligation**

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

### **(b) Maintenance Plan**

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.

### **(c) Repair and Maintenance Reserve**

(1) Commencing on January 1, 2014, the Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall reasonably direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2)

Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: four(4%) percent of the Concessioner's gross receipts for the previous month, up to an accumulated maximum of \$1,000,000.00. The Repair and Maintenance Reserve shall be replenished, as necessary, in the manner provided in this Section 10(c) (3) to maintain the maximum amount provided above. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default, after written notice and an opportunity to cure, or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation reasonably satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds when directed by the Director shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, termination of this CONTRACT, after written notice and an opportunity to cure.

(5) Repair and Maintenance Reserve funds shall not be used to construct capital improvements as that term is defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds.

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner.

## **SEC. 11. FEES**

### **(a) Franchise Fees**

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted by this CONTRACT a base franchise fee and an additional franchise fee as set forth below:

(i) The base franchise fee shall be equal to two percent (2.0%) of the Concessioner's gross

receipts for the preceding year or portion of a year; provided that, for the period January 1, 2009 through December 31, 2013, the base fee shall be equal to zero percent (0%); and

(ii) The additional franchise fee shall be equal to eight percent (8%) of the Concessioner's gross receipts in excess of fourteen million dollars (\$14 million) for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the franchise fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

**(b) Payments Due**

(1) The franchise fees shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fees equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner in accordance with Applicable Laws.

**(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

**(d) Adjustment of Franchise Fees**

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fees established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.



(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fees.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fees within this period, the franchise fees will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fees within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fees in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on adjusted franchise fees (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fees resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fees will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

## **SEC. 12. INDEMNIFICATION AND INSURANCE**

### **(a) Indemnification**

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

[REDACTED]

**(b) Insurance in General**

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent businessperson would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverages.

**(c) Commercial Public Liability**

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverages and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

**(d) Property Insurance**

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d) (1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds. The Leasehold Surrender Interest Value existing immediately prior to an event of loss shall not be reduced provided that Concessioner has complied with the terms of this section of the CONTRACT.

(6) The commercial property package shall include the coverages and amounts described in Exhibit I.

### **SEC. 13. BONDS AND LIENS**

#### **(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

#### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner, provided however, that the Director agrees that the Leasehold Surrender Interest Value shall, when due, be payable without any deduction or set-off other than such deduction or set-off reflecting any amount then claimed by the Government for payment of: (1) Franchise Fees then due and unpaid to the Government pursuant to Section 11 of this CONTRACT; (2) claims for damage to or failure to maintain the Concession Facilities (as defined herein); (3) claims arising from Concessioner's discharge or release as described in Section 6 of this CONTRACT, within the Area of hazardous materials, petroleum products, and/or pollutants on, under or from the Concession Facilities; (4) damages arising from third-party claims alleging personal injury, death, and/or property damage which occurred at or in connection with the Concessioner's Operations hereunder or Concession. Facilities and not covered by casualty or liability insurance; (5) claims of subcontractors and/or service or material suppliers for improvements or services contracted for by, or otherwise performed on behalf of, Concessioner in connection with the Concession Facilities which have

not been paid or bonded; and (6) claims for payment of any utility service supplied by the Director to Concessioner in connection with the Concession Facilities (subject to the special terms of Section 8(i) hereof).

## **SEC. 14. ACCOUNTING RECORDS AND REPORTS**

### **(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

### **(b) Annual Financial Report**

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$250,000 and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

### **(c) Other Financial Reports**

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the

Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. Commencing in 2014, the Concessioner shall submit annually, not later than one hundred twenty (120) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

## **SEC. 15. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

### **(a) Insurance Certification**

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

### **(b) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

### **(c) Miscellaneous Reports and Data**

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

## **SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Suspension**

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

### **(b) Termination**

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement

to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

**(c) Notice of Bankruptcy or Insolvency**

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

**(d) Requirements in the Event of Termination or Expiration**

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this CONTRACT for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this CONTRACT for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

## **SEC. 17. COMPENSATION**

### **(a) Just Compensation**

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

### **(b) Compensation for CONTRACT expiration or termination**

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

### **(c) Leasehold Surrender Interest Value.**

The Concessioner, notwithstanding any provision of Applicable Laws or this CONTRACT to the contrary, hereby waives and relinquishes any and all Leasehold Surrender Interest or Leasehold Surrender Interest Value that it may now have or otherwise would obtain in the future under the terms of this CONTRACT or otherwise in the Concession Facilities specified in Exhibit D to this CONTRACT, or in any other property, in excess of \$12.75 million, and hereby waives any right to payment for Leasehold Surrender Interest Value except as expressly provided under the terms of this

CONTRACT. The Director and the Concessioner agree that the Leasehold Surrender Interest Value for all purposes of this CONTRACT, notwithstanding any provision of Applicable Laws or this CONTRACT to the contrary, shall be \$12.75 million.

**(d) Compensation for Personal Property**

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

**SEC. 19. GENERAL PROVISIONS**

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements for the provision of visitor services required and/or authorized under this CONTRACT are not permitted; provided, however, that the Concessioner may provide food and beverage services through a wholly owned subsidiary subject to prior written approval by the Director.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.



(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR Part 42, as applicable, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, or of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C. 2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

(m) Prior to and upon the expiration or termination of this CONTRACT for any reason, and, in the event that the Concessioner is not to continue the operations authorized under this CONTRACT after its expiration or termination, the Concessioner shall comply with all applicable requirements of Exhibit J to this CONTRACT, "Transition to New Concessioner." This Section and Exhibit J shall survive the expiration or termination of this CONTRACT. Exhibit H-1 to this CONTRACT establishes procedures for expenditure of Repair and Maintenance Reserve Funds.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT. (Original CONTRACT effective as of April 15, 2003; Amendment No.1 effective as of February 27, 2006; Amendment No. 2 effective as of July 13, 2006; Amendment No. 3 effective as of December 31, 2008 [date to be inserted after execution of Amendment No. 3].

**CONCESSIONER**

**UNITED STATES OF AMERICA**

AVIATOR DEVELOPMENT COMPANY, LLC

BY *Katya Gulich*  
TITLE: CEO

BY *Lawrence Brown*  
Director,  
National Park Service

DEC 31 2008

ATTEST:

BY: *Ann Pash*  
TITLE: SECRETARY

AVIATOR SPORTS AND RECREATION, LLC

BY *Katya Gulich*  
TITLE: CEO

ATTEST:

BY: *Ann Pash*  
TITLE: SECRETARY

CC-GATE015-03

EXHIBIT A

**LEASEHOLD SURRENDER INTEREST**

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest.

**Section 1. Definitions**

A "capital improvement" is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

"Leasehold surrender interest" solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

"Leasehold surrender interest value" means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT

"Real property improvements" means real property other than land, including, but not limited to, capital improvements.

"Related capital improvement" or "related fixture" means a capital improvement in which the Concessioner has a leasehold surrender interest.

**Section 2. Actions the Concessioner May or Must Take Regarding Leasehold Surrender Interest**

The Concessioner:

(a) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;

(b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and

(c) May waive or relinquish a leasehold surrender interest.

### **Section 3. Extinguishment of a Leasehold Surrender Interest**

A leasehold surrender interest may not be extinguished by the expiration or termination of this CONTRACT and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for leasehold surrender interest within the meaning of this CONTRACT and for all other purposes.

### **Section 4. Leasehold Surrender Interest Under a New Concession Contract**

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner's Leasehold Surrender Interest Value (established as of the date of expiration or termination of this CONTRACT) in the related capital improvements will be continued as the initial value of the Concessioner's leasehold surrender interest under the terms of the new concession contract.

### **Section 5. Payment for Leasehold Surrender Interest if the Concessioner is not Awarded a New Concession Contract**

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT. The Director is under no obligation under this CONTRACT to make leasehold surrender interest value payments at any other time and the Concessioner hereby waives any rights under Applicable law to the contrary.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT.

**Section 6. Payment of Leasehold Surrender Interest by a New Concessioner**

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its leasehold surrender interest value in existing capital improvements as determined under the terms of this Contract.

Approved by NPS, effective December 31, 2008\_\_

By: Uathereine Steen

Title: ~~ASSISTANT DIRECTOR, BUSINESS SERVICES~~

Accepted, effective \_\_\_\_\_, 2008\_\_

By: [Signature]

Aviator Development Company, LLC

Aviator Sports and Recreation, LLC

Attest: By [Signature]  
SECRETARY

## **OPERATING PLAN**

# **AVIATOR DEVELOPMENT COMPANY, LLC AND AVIATOR SPORTS AND RECREATION, LLC**

### **Providing Family-Orientated Sports Activities Within GATEWAY NATIONAL RECREATION AREA**

#### TABLE OF CONTENTS

Introduction & Objectives .....	4
I. Required and Authorized Services	
A. Required Services.....	4
B. Authorized Services .....	5
II. Management, Organization and Responsibilities	
A. Concessioner .....	6
B. National Park Service.....	7
III. Concession Operations	
A. Operational Evaluations.....	9
B. Rates.....	9
C. Schedule of Operation.....	10
D. Concessioner Personnel .....	10
E. NPS Employees and Families .....	10
F. Training Program.....	11
G. Lost and Found .....	11
IV. Scope and Quality of Service	
A. Merchandising .....	12

B. Food and Beverage Service.....	13
C. Spectator Events.....	13
C. Interpretive Services .....	13
V. Reports	
A. Administrative Reports .....	14
B. Case Specific Reports .....	14
VI. Utility Responsibility.....	14
VII. Risk Management.....	15
A. Risk Management Program .....	15
B. First Aid.....	15
VIII. Integrated Pest Management .....	16
IX. Complaints.....	16
X. Advertisements/Public Information.....	16
XI. Protection and Security	
A. Fire Emergency.....	17
B. Security Plan .....	17
C. Accidents & Incidents .....	18
D. Spectator Events .....	19
E. Firearms.....	19
F. Lost Children.....	20
XII. Hazardous Waste Program .....	20
XIII. Environmental Management.....	20
XIV. Volunteers in the Park (VIP) Program.....	21
XV. Emergencies.....	21
XVI. Utility Accounts	
XVII. Definitions .....	21





## **Introduction**

This Operating Plan between Aviator Development Company and Aviator Sports and Recreation, LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service," the "Park," or "NPS") will serve as a supplement to the Concession Contract CCGATE015-03, as amended, referred to as the "Contract." It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any conflict between the terms of the Contract and this Operating Plan, the terms of the Contract, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent.

Any revisions shall not be inconsistent with the main body of this Contract. Any revisions must be reasonable and in furtherance of the purposes of the Contract.

### **Objectives for the Concession to Satisfy are:**

1. Enhance the recreational mission of Gateway National Recreation Area by providing varied, year-round, recreational opportunities for all populations.
2. Rehabilitate historic fabric where feasible; stabilize the remaining historic fabric.
3. Respectfully use the rich history of Floyd Bennett Field to good advantage through architectural design that aesthetically capitalizes upon the underlying historical specimen.
4. Provide exhibits and other informational media that educate users and remind of the national significance of the site.

## **I. Required and Authorized Services**

### **A. Required Services per Sec. 3 (a) (1) of the Contract:**

In accord with the above objectives and as required by the parameters of the prospectus to which the Concessioner responded and proposed, and as memorialized in the Contract, a family-oriented sports center shall be developed. Ice sports and hockey are the primary sport activities offered through the sports center.

The following stipulations shall apply to required services:

1. Ice hockey shall be accommodated on a regulation-size rink. The Concessioner shall provide ice time by a reservation system that meets the approval of the Superintendent.
2. Public ice skating (open skating) shall be accommodated on a rink of comparable size as noted in #1 above.
3. Ice time allocations will be reviewed by the Superintendent and shall be subject to revision by the Superintendent after consultation with the Concessioner. In doing so the Superintendent shall exercise due consideration for public use and financial feasibility of the Concession operation.
4. The family sports center shall include support facilities and services that may reasonably be expected in such a facility, such as locker rooms.
5. Operation of the required pro shop includes authorization for associated retail sales and rental of sports equipment.
6. The requirement to provide food and beverage services may include a restaurant and lounge area that may be developed pursuant to plans and theme approved in advance by the Superintendent.
7. The Service has contracted with the U.S. Public Health Service to accomplish health and sanitation inspections.
8. The concessioner shall provide space to accommodate a health and wellness program.
9. Gateway National Recreation Area will work with the Concessioner to produce informational and interpretive media to inform and educate users of the family sports center. Gateway National Recreation Area has an inventory of historic photos and memorabilia that it will share with the Concessioner for this purpose.
10. All indoor facilities will be designated as non-smoking.
11. All Special Event activities will take place within the concession land assignments and will not require advance Jamaica Bay Unit Superintendent review and approval and shall be consistent with the objectives and purposes of the Concession. NPS, NPS permittees (Cricket Field), and the concessioner shall inform each other and coordinate sufficiently in advance of planned special events that may create impacts to the concessioner, NPS Jamaica Bay Unit, or its permittees.

## **B. Authorized Services per Sec. 3 (a) (2) of the Contract**

As required by the parameters of the prospectus to which the Concessioner responded, a family-oriented sports center shall be developed. To this end, annually, or more often, the Concessioner shall meet with the Superintendent to review and program appropriate activities from the list of services that were offered by the Concessioner in response to the prospectus. In doing so, the review and programming process by the Concessioner and the Superintendent shall be guided by the above annotated "Objectives for the Concession to Satisfy." Activity programming shall serve as wide a range of the population as possible while maintaining financial viability of the concession.

Authorized activities (permitted) include, but are not limited to, court sports, gymnastics, rock climbing, soccer, football, lacrosse, physical conditioning, and spectator events. Authorized activities are not to be scheduled or publicized until they are approved in writing by the Superintendent. Requests for approval of authorized activities shall include proposed rates, security measures, dates, timeframes, space requirements and any other relevant conditions.

Meetings regarding authorized services may be initiated by the Concessioner or the Superintendent. Decisions regarding authorized activities may be formalized by amendment to this Operating Plan or other appropriate legal instruments.

## **II. Management, Organization and Responsibilities**

### **A. Concessioner**

The Concessioner is responsible for visitor services, facility development and maintenance, administration and other functions in accordance with the terms of this Contract. To accomplish this purpose, the Concessioner will employ a staff, in sufficient numbers and with appropriate expertise, to carry out all services required and/or authorized under this Contract. This organization will be operated by one or more managers and supervisors. In addition:

1. Lead Manager. The Concessioner shall identify one manager who will be responsible for carrying out the terms of this Contract. The lead manager shall also function as the primary representative of the Concessioner in communication with the Service and have full authority to act as a liaison with the Service in all matters related to this Contract.
2. Physical Security Specialist. The Concessionaire will employ a physical security specialist to coordinate security matters with the United States Park Police.
3. Managers and Supervisors. The Concessionaire will furnish the Service with a list of key management and supervisory personnel along with job titles, brief descriptions of

responsibilities, and contact information. This list will be promptly updated as changes occur.

4. Communication and Meetings. The Concessionaire will foster effective communications within its own organization and with Service personnel. In broad terms, communication is intended to: (a) advance the four objectives of this concession and (b) meet specific requirements of this contract and operating plan. Timely and complete exchange of information will be accomplished through use of electronic media, correspondence, meetings and telephone calls. The Concessioner will hold regular meetings with representatives of the Gateway Business Office and with representatives of the Unit Superintendent.

## **B. National Park Service**

The Concessioner operates within the Jamaica Bay Unit of Gateway National Recreation Area. Key positions and/or offices with responsibilities relative to the concession include:

1. Superintendent. The Superintendent manages all activity within the Jamaica Bay Unit, including concession operations, in accordance with applicable laws, policies and directives. The Superintendent must review and approve rates, schedules, activities, construction and other activities in accordance with the terms of the contract. Representatives of the Superintendent oversee concession operations for conformance with the contract and approved proposals.
2. Assistant Superintendent. The Assistant Superintendent makes recommendations to the Superintendent on all aspects of the concession operation. The Assistant Superintendent has authority from the Superintendent to make field decisions that pertain to the concessions operation, and acts as liaison between the Concessionaire and Superintendent. The Assistant Superintendent ensures necessary evaluations and inspections are performed, including those required by the NPS Public Health Program, Park Safety Officer, fire inspectors, and the Concession review program.
3. Business Management Office. The Business Management Office is responsible for developing, negotiating, and administering concession contracts and leases for Gateway NRA. The Business Management Office coordinates concession activity with other Gateway Divisions. The Business Management Office is the primary contact for all matters related to the administration of the Contract and shall be the first point of contact for any questions regarding the Contract.

The Business Management Office will review and/or coordinate the Concessioner's operational and maintenance responsibilities, including but not limited to: rate approvals, provision of quality visitor services, schedule changes; advertisements; annual financial reports; insurance coverage; construction and any other Contract

requirements.

The Business Management Office will be copied on all correspondence sent to Superintendent by the concessioner and all correspondence sent by the Superintendent to the concessioner.

4. Safety and Environmental Management. The Park Safety Officer and the Environmental Management Specialist will coordinate with other Park staff to review and evaluate the Concessioner's Risk Management Program and Environmental Management Program as required under this Contract.
5. U.S. Public Health Program. The U.S. Public Health Service Officer stationed at Gateway NRA will inspect food and beverage services, water, and waste water systems, in accordance with applicable laws and regulations including without limitation, compliance with public health standards.
6. U.S. Park Police. The U.S. Park Police (USPP) provides law enforcement services for the Park in accordance with management direction from the Superintendent. The USPP initiate, review, supervise, and coordinate the activities of personnel who provide public safety functions (law enforcement, and physical security). The Concessioner's Physical Security Specialist will communicate directly with USPP officers on matters related to law enforcement, search and rescue, emergency medical services, emergency management operations, and security.
7. Facility Manager. The Facility Manager is responsible for all utilities, roads, and facilities within the Jamaica Bay Unit. As part of those duties, all issues in regards to shared roads facilities and utilities should be referred to that office. In cases where there are power losses and road issues, contact will be made with the facility manager. In cases of planned power shutdowns within the NPS facilities, the Concessioner will advise the facility manager at least 48 hours prior so arrangements may be accommodated.
8. District Ranger. The Supervisory Ranger for the North Shore District of the Jamaica Bay Unit will assist the Concessioner in matters pertaining to interpretation, operational logistics, resource management and fire management. The District Ranger -- in coordination with the Superintendent and the Business Management Office -- will monitor and evaluates concession activities, and reviews interpretive materials prepared for distribution by the Concessioner. The District Ranger and other rangers, as needed, will assist with concession evaluations, emergencies, and daily operational issues.
9. Administrative Officer. The Administrative Officer of the Jamaica Bay Unit is responsible for certain matters related to concession activities, including but not

limited to billing and receiving utilities payments.

### **III. Concession Operations**

#### **A. Operational Evaluations**

As called for in this Contract, inspections and evaluations of the Concessioner's facilities and services will be conducted in conformance with applicable laws, policies and guidelines. The purpose of such inspections and evaluations is to:

1. Ensure public health and safety
2. Ensure that satisfactory services are provided
3. Ensure that employee working conditions are satisfactory
4. Ensure that buildings and equipment are well maintained

Concession operations will be evaluated once each quarter and at the end of the calendar year. Quarterly evaluations will include observation and rating of all elements related to required and authorized services -- including their rates. The annual evaluation will be comprehensive in nature and serve to alert both the Superintendent and the Concessioner of any outstanding deficiencies. Evaluations will use NPS standards and forms.

Periodic inspections will be made of the Concession operation to ensure compliance with all applicable laws, standards and guidelines regarding public health and safety.

Follow-up visits will be made to ensure that deficiencies identified in evaluations or inspections are properly addressed.

#### **B. Rates**

The objective of the NPS rate approval program is to assure that Concessioner rates are comparable to similar services and facilities provided by the private sector. Rates will be approved or disapproved based on current comparability studies or applicable guidelines. Any rate which is to be charged to a park visitor must be approved in writing by the Superintendent before being instituted. In addition:

1. The Concessioner shall provide visitor services at rates approved by the Superintendent. Periodic requests for rate changes shall be submitted within forty-five (45) days, but no less than thirty (30) days prior to the requested effective date.

The rate request letter should be addressed to the Superintendent with a copy to the Chief of the Business Management Office. The Concessioner shall supply comparability data to support proposed rates at the time approval is requested.

2. Requests shall include pertinent information about the product or service for which a rate is proposed. For food service, requests will identify which items will be served regularly and which will be offered on a special or limited basis.
3. Within 30 days of the submittal of a rate request, the Superintendent will inform the Concessioner in writing whether the proposed rates were approved or disapproved. If the Concessioner would like a response in a shorter time period, the Service will attempt to accommodate this request as an exception to normal procedures. If the Superintendent needs a longer period for review of the proposal, the Concessioner will be contacted in order to negotiate a response date.
4. The Concessioner will prominently post all rates for goods and services provided to the visiting public. The Concessioner will charge the approved maximum rates for services unless and until new rates are approved by the Superintendent.

### **C. Schedule of Operation**

As stipulated in this Contract, the Concession will operate on a year-round basis. Closing on Christmas and New Year's Day will be permitted upon written approval of the Superintendent. Hours of operation for all venues must be approved by the Superintendent on an annual basis. Temporary changes in operating hours may be approved on a case-by-case basis.

### **D. Concessioner Personnel**

1. When on duty, Concessioner employees will be easily identifiable by a uniform or badge approved by the Superintendent. Employees will provide courteous and efficient service in keeping with the image of the National Park Service.
2. If requested, the Concessioner will provide the Superintendent with names and dates of birth of all permanent and seasonal employees and indicate their organizational responsibilities.
3. Work cards or Social Security cards will be a condition of employment.
4. Employees will be encouraged to act in compliance with applicable laws, policies and regulations when outside of the concessioner's land assignment but inside the park boundary.

### **E. National Park Service Employees and Families**

The Concessioner shall not employ a Service employee, the spouse of a Service employee, or minor children of Service employees without prior written approval from the Superintendent. Requests for such approval must be submitted in writing by the employee to the Superintendent.

#### **F. Training Program**

1. All employees of the Concessioner will be trained to conduct business in a friendly, helpful and professional manner. Training procedures will assure personnel at all levels will focus on customer service, customer relations, sanitation and employee and customer safety.
2. The Concessioner will provide employee orientation and training and will inform employees of park regulations and requirements which affect their employment and activities while working in Gateway National Recreation Area. Employees will also be provided with information about the National Park Service, Gateway National Recreation Area, the Jamaica Bay Unit, and Floyd Bennett Field. Emphasis will be placed on mission, resources and visitor opportunities. A Service representative may participate in scheduled orientation sessions.
3. The Service will provide employees and managers with an orientation to the Concessioner Review Program and other NPS Concession Programs, as needed.
4. Concessioner managers and employees may participate in any appropriate training offered by the National Park Service.

#### **G. Lost and Found**

1. The Concessioner will manage a Lost-and-Found program in a responsible and accountable manner. Written procedures for handling such items and for reclaiming them are to be distributed to all employees and prominently posted.
2. All found items are to be turned over Concession managers and tagged by designated personnel. The tag will identify the item, date, location and name of finder. The Concessioner shall establish and maintain a central repository, familiar to all employees. A log book will be maintained at the lost-and-found repository. Any item not claimed within thirty (30) days must be turned over to the District Ranger in accordance with NPS regulations. The lost-and-found log will identify items turned over to the Service.
3. Found items that are expensive in nature -- such as cameras, wallets and jewelry -- will be stored in a safe or equally secure facility.



#### **IV. Scope and Quality of Services**

All services are to be provided in a consistent, quality manner. Service standards provided by the NPS Operational Performance Program are considered service minimums. The Concessioner is expected to make every effort to exceed these standards. The Concessioner shall be responsible for monitoring their operations to assure that quality standards are met.

All vehicular equipment used by the Concessioner will be properly licensed and maintained in a safe operating condition. Federal and state requirements must be adhered to. The Concessioner will park such equipment, when not in use, in an orderly fashion in an area approved by the Service.

##### **A. Merchandise**

The Concessioner may sell merchandise that: (a) enables visitors to participate in park activities, (b) allow visitors to purchase mementos of the park, and (c) serves as an extension of the Park interpretive program. Where possible, merchandise will contribute to appreciation of the park and its resources, understanding of preservation values, and support for conservation activity. Merchandise may also support understanding of the role recreation can play in personal development, support for cultural traditions, and pursuit of life-long health.

In addition to these general provisions, the following stipulations will also apply:

1. The image and unique identity of the Park will be reflected in the design of retail sales areas. Shops will exemplify quality and professionalism.
2. The Concessioner will, to the greatest extent possible, offer gifts and souvenirs that have an identifiable relationship to the National Park Service, historical and natural resources associated with the Jamaica Bay Unit, and recreational opportunities offered within Gateway NRA.
3. The Concessioner will cooperate with the National Park Service in promoting the sale of handicrafts made in the United States and related to the cultural, historical, natural and geographic characteristics of Gateway NRA.
4. The NPS Merchandising Standards will be followed. The standards include but are not limited to:
  - a. Foreign-made merchandise is not prohibited but should not dominate gift shops.
  - b. Merchandise that offends normal standards of taste will not be sold.

- c. The sale of original prehistoric or historic archeological specimens is prohibited. Replicas may be sold if they are clearly labeled as replicas.
- d. Merchandise representative of items found in the park, but not originating from the park, must be labeled and identified so as to indicate the origin.
- e. Plant material or other natural materials originating in the park cannot be sold. (Animal skins fabricated into such items as leather gloves, belts, jackets, purses, etc., are acceptable if the Concessioner obtains a statement from the manufacturer stating the skins were obtained from legally authorized sources and not from threatened or endangered species.)
- f. Merchandise conflicting with National Park Service policies and regulations will not be sold.
- g. The selling price of all items must be individually marked or designated on each display.

#### **B. Food and Beverage Service**

The menu will maintain a price range and variety of food services that will accommodate the general range of park visitors.

#### **C. Special Events**

All Special Event activities that are contained within the concession land assignments will not require Superintendent advance approval and shall be consistent with the objectives and purposes of the Concession. Special Events that exceed the concession land assignments require Superintendent advance review and approval and may be authorized on a case-by case-basis subject to Section III.B.1. and the following considerations:

1. The proposed event must be consistent with the purpose of the concession, as outlined above.
2. Health and safety concerns can be adequately addressed.
3. The event will not unduly displace other visitors to the park -- including the sports center visitors-- for significant periods.
4. All approved and permitted Special Events shall be in accordance with the Park's Compendium and limit the total number of public attendees to 5500 during summer months Memorial Day to Labor Day, and 10,000 fall, winter and spring

months.

Superintendent will review and approve in advance all media and publications related to Special Events. Security provisions and costs must be agreed upon prior to Special Events. For related information, see Section XI.D.

All Special Events may be offered free to the public or require paid admission at rates that are reviewed and approved in advance by the Superintendent. Only the Concessioner is authorized to sell tickets to Special Events.

#### **D. Interpretive Services**

1. **Non-Personal Interpretive Services:** In addition to providing general interpretive training to employees, the Concessioner will actively pursue a non-personal interpretive program. The Concessioner will explore a wide array of avenues for conveying interpretive messages to visitors on park-related themes and topics such as resource protection, appreciation of park values, and Service goals. The Concessioner will develop the use of story boards and kiosks located in strategic areas of the facilities and make printed materials available to the public.
2. **Interpretive Assistance:** The Division of Interpretation is available to advise/assist the Concessioner in the development of an interpretive program which encompasses all of these efforts.

#### **V. Reports**

##### **A. Administrative Reports:**

In accordance with the term of this Contract, the Concessioner will submit the following reports on or before the indicated deadline:

- |                                  |                            |
|----------------------------------|----------------------------|
| 1. Annual Financial Report       | May 1 each year            |
| 2. Certificate of Insurance      | March 1 each year          |
| 3. Statement of Insurance        | March 1 each year          |
| 4. Risk Management Program       | Review and update annually |
| 5. Gift Mission Statement        | Review and update annually |
| 6. Environmental Management Plan | Review and update annually |



6. Emergency procedures

B. First Aid:

Aviator will establish a First-Aid station within the facilities and prominently display directions to the public for its use.

1. First Aid kits and blood-borne pathogen kits will be maintained as part of emergency equipment/supplies.
2. One First Aid Kit is required for each venue.
3. Each First Aid Kit will be commercially manufactured and stocked in accordance with national standards set by the American Red Cross.(The U.S. Public Health Officer and Park Safety Officer may be consulted regarding the supplies that are required for these kits.)
4. Any incident of major consequence must be reported to the U.S. Park Police.

**VIII. Integrated Pest Management**

The control of pests by chemical and other means is subject to park approval. Specific problems can be referred to the park's Integrated Pest Management Coordinator.

**IX. Complaints**

All complaints regarding the Concessioner will be sent to the Superintendent for response. The Concessioner will address requests for information regarding complaints in a prompt and professional manner. A copy of the Service's response to the complaining party will be forwarded to the Concessioner.

In order to initiate valid and responsive visitor comments, the following notice will be prominently posted at all Concessioner cash registers and payment areas:

This service is operated by Aviator Development Company, LLC and Aviator Sports and Recreation LLC, a Concessioner under Contract with the U.S. Government and administered by the National Park Service. The Concessioner is responsible for conducting these operations in a satisfactory manner. The reasonableness of prices is based on comparability. Prices are approved by the National Park Service based upon prices charged by similar private enterprises

outside the Park for similar services with due consideration for appropriate differences in operating conditions.

Please address comments to:

Gateway National Recreation Area  
Attn: Jamaica Bay Unit Supervisor  
Floyd Bennett Field  
Brooklyn, New York 11234

## **X. Advertisements & Public Information**

All promotional material must be approved by the Superintendent prior to publication, distribution, broadcast, etc. In addition, the following stipulations will apply:

1. Advertisements, including sets of advertisements, must include a statement that the Concessioner is authorized by the Department of the Interior, National Park Service, to serve the public in Gateway National Recreation Area.
2. Layout, content and overall appearance of advertisements should support the objectives of this Contract as outlined above.
3. Advertising that would offend normal standards of taste will not be approved.
4. Brochures and menu text changes and layout should be submitted to the Superintendent for review at least 30 days prior to the date that approval is needed. The Superintendent will make every effort to respond to minor changes to brochure and menu texts within 15 days. Longer periods may be required for major projects or where National Park Service assistance is required to help develop the product. The Concessioner should contact park staff well in advance of their internal deadlines to establish specific time frames for each project.
5. Advertisements for employment must contain a statement that the company is an equal opportunity employer.

## **XI. Protection and Security**

### **A. Fire Emergency**

The Concessioner shall call "911" in the event of fire. Only limited fire support can be provided by the Park. If there is a charge involved as a result of New York City Fire Department involvement, the Concessioner shall be responsible for reimbursement.

## **B. Security Plan**

The Superintendent has sole authority to determine whether or not the Concessioner has provided adequate measures to protect visitors and park resources, and to comply with life safety, building and safety building codes.

1. The Concessioner will submit a written Security Plan to the Superintendent for approval. The Plan shall be updated and reviewed on an annual basis. The plan will address year-round operations as well as occasional activities and events.
2. As the law enforcement arm of the NPS within the Park, the US Park Police possesses concurrent jurisdiction on Federal Parklands and shall investigate all significant incidents that occur within the land assignment of the Concessioner.
3. The US Park Police may assist the Concessioner with security planning and evaluation.
4. All security personnel whether contracted by the Concessioner or employed by a contracted and bonded security company shall be unarmed.

## **C. Accidents and Incidents**

The Concessioner will address all aspects of personal safety and protection of property in accordance with the following provisions:

1. Major accidents and incidents will be immediately reported to the U.S. Park Police and the Superintendent.
2. Concession-operated facilities will be patrolled 7 days per week and 24 hours per day either by Concession employees or bonded guard service in order to secure government, concessioner and visitor property from theft, vandalism and fire.
3. Any problems detected by U.S. Park Police during non-operational hours will be reported to the concessioner at an agreed upon emergency number. Other phone numbers will be provided to the U.S. Park Police in the event that the designated representative is not available to receive the emergency call.
4. All security measures and procedures are subject to coordination with and approval by the U.S. Park Police and the Superintendent.

## **D. Special Events**

Security requirements for Special Events will be identified by the Concessioner in consultation with the Superintendent prior to Special Events, either permitted or requiring advance approval. The Concessioner will inform the Superintendent of all final security requirements and provisions prior to Special Events. The Concessioner may be required to reimburse the Service for the cost of US Park Police officers assigned to cover the event.

USPP Commanders will advise the Superintendent on the number of supplemental USPP officers needed to provide adequate law enforcement during a proposed Special Event. The following charts approximate the number of supplemental USPP officers required at indoor and outdoor events based on the number of expected spectators:

**Indoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>
Recommended # USPP Officers	1	2	3	4
Recommended # USPP Supervisor	0	0	0	1

**Outdoor Event**

<b>Number of Spectators</b>	<b>500 to 750*</b>	<b>751 to 1000*</b>	<b>1001 to 1500*</b>	<b>1501 to 2000*</b>	<b>2001 to 3000*</b>	<b>3001 to 4000*</b>	<b>4000 to 6000*</b>
Recommended # Police Officers	0	1	2	3	4	5	6
Recommended Police Supervisors	0	0	0	1	1	1	1

\*Some events may require more or fewer officers based on the complexity of the event, type of event and other relevant factors. A meeting between USPP and Aviator will occur to discuss final assessment.



Following the event the USPP Budget Officer will issue a Bill of Collection to the Concessioner for reimbursement of law enforcement expenses related to the event. Names of officers who worked the event, specific hours worked, and any related miscellaneous law enforcement expenses will be provided to the Concessioner in a written document. The Concessioner will reimburse the USPP for these expenses within 10 days of receipt of a Bill of Collection.

#### **E. Firearms**

The Code of Federal Regulations, Part 36, chapter 1, prohibits the use of armed guards or off-duty city/state police officers on land administered by the NPS.

#### **F. Lost Children**

Lost children will be taken to the U.S. Park Police Offices located in Floyd Bennett Field.

### **XII. Hazardous Waste Program**

The Concessioner will develop and submit a Hazardous Materials Plan to the Service for approval. The Concessioner will review and update the Plan on an annual basis. In addition:

1. The Concessioner must comply with all federal, state and local regulations regarding hazardous waste.
2. The Concessioner will properly clean, mitigate, and remediate all unauthorized discharges of hazardous materials or non-hazardous chemical and biological products released from fleet and public service vehicles and/or stationary sources. Response shall be consistent with guidelines established within applicable Federal, state, and local regulations. When a spill, leak, or other release occurs, the Concessioner shall notify the Superintendent as soon as possible without impeding cleanup.
3. When a release of hazardous or non-hazardous chemical or biological product occurs, proper corrective, cleanup, and safety actions must be implemented immediately.

### **XIII. Environmental Management**

The Concessioner will manage its operation in accordance with an approved Environmental Management Plan (EMP). The EMP will, at a minimum, address the following:

1. Source Reduction: The Concessioner will minimize use of disposable products. Reusable and recyclable products are preferred over "throwaways." Where disposable products are the only available option, products will be used which have the least impact on the environment. For example, polystyrene and plastics will be used as

little as possible; if polystyrene is used, it will not contain chlorofluorocarbons. The use of post-consumer recycled products will be used whenever possible.

2. **Recycling and Beverage Container Programs:** The Concessioner shall implement and actively support a recycling program. Products to be recycled include but are not limited to paper, newsprint, cardboard, metals, plastics, aluminum, glass, waste oil, antifreeze, and batteries. All recycling is to conform to applicable standards and procedures.

**XIV. Volunteers in the Park (VIP)**

The Concessioner will allow its employees to participate in the NPS Volunteers in the Park (VIP) program.

**XV. Emergencies**

In the event of an emergency, the Concessioner will call the following numbers:

United States Park Police	(718) 338-3988
Jamaica Bay Unit (District Ranger)	(718) 338-3827

**XVI. Utility Accounts**

<u>(1). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Electric	National Park Service	Aviator	N/A
<u>(2). Utility</u>	<u>Provider</u>	<u>Account Number</u>	<u>Note</u>
Water & Sewer	NYC Water Board	80010-16701-001	N/A
Gas	Keyspan/National Grid	4620-91950	General Account
Gas	Keyspan/National Grid	4620-81331	Tran General Account
Gas	Keyspan/National Grid	4620-91940	Co-Gen Account

**XVII. Definitions**

In addition to all defined terms contained in the Contract, its Exhibits, and 36 CFR Part 51, the following definitions shall apply to this Operating Plan:

1. Environmentally Preferable refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.
2. Hazardous Substance refers to any hazardous waste, hazardous chemical or hazardous material. Further clarification on hazardous substances can be found in 29 CFR 1910.120, Occupational Safety and Health Standards, Hazardous Waste Operations and Emergency Response at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/29cfr1910\\_04.html](http://www.access.gpo.gov/nara/cfr/waisidx_04/29cfr1910_04.html).
3. Incidental Spill or Release refers to the spill or release of a hazardous substance which does not pose a significant safety or health hazard to employees in the immediate vicinity or to the employee cleaning it up, nor does it have the potential to become an emergency within a short time frame. Incidental releases are limited in quantity, exposure potential, or toxicity and present minor safety or health hazards to employees in the immediate work area or those assigned to clean them up. Employees who are familiar with the hazards of the chemicals with which they are working may safely clean up an incidental spill.
4. Spectator or Special Events are any events outside of normal recreational activities that (a) are designed or have the propensity to draw at least 500 spectators, (b) are usually advertised, (c) may be free or require an admission fee, and (d) must be approved in advance by the Superintendent.

Approved by NPS, effective December 31, 2008

By: Walter J. H. Stacey  
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: [Signature]  
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]

CC-GATE-015-03

EXHIBIT D

ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)

LAND ASSIGNED:

Land is assigned as depicted as (1) the "NEW ASSIGNMENT AREA" in Exhibit D1 and (2) the "ADDITIONAL FIELD ASSIGNMENT" in Exhibit D2.

REAL PROPERTY IMPROVEMENTS ASSIGNED:

The following real property improvements included within the "NEW ASSIGNMENT AREA" are assigned to the Concessioner for use in conducting its operations under this CONTRACT.

Building Name	Square Footage
Hangar 5	16,820
Hangar 5 lean-to	3,944
Hangar 6	16,820
Hangar 6 lean-to	3,944
Enclosed space between hangars 5 & 6	6,528
Hangar 7	16,820
Hangar 7 lean-to	3,944
Hangar 8	16,820
Hangar 8 lean-to	3,944
Enclosed space between hangars 7 & 8	6,528
Enclosed space & Mezzanine between the two pairs of hangars	52,500 (Enclosed space), Approximately 8,000 (Mezzanine)
Field Pump House	678
Co-Gen Building	5,612
Pump House (Building 29)	913
Storage Shed (Building 266)	240
Light Tower (JV145)	196
Warehouse space (Southeast corner of Building 89) with use of loading dock	3,200

REAL PROPERTY IMPROVEMENTS REMOVED FROM ASSIGNED REAL PROPERTY IMPROVEMENTS:

The following real property improvement is no longer an assigned real property improvement.

Building Name	Square Footage
Former "Job Corps" kitchen and serving area (Building 129)	8,760

Approved, effective December 31, 2008

By: Walter W. Street  
 Director, ~~Northeast Region~~ ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: [Signature]  
 Aviator Development Company, LLC  
 Aviator Sports and Recreation, LLC

Attest: By [Signature]

**EXHIBIT E**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

NONE

**EXHIBIT F**  
**CONCESSIONER CONSTRUCTION AND REPAIR AND**  
**MAINTENANCE PROJECT PROCEDURES**

**A. INTRODUCTION**

This exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area. Important terms are defined first. Project planning and design are presented second, followed by guidelines for project supervision. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This exhibit applies to the building of new structures or facilities, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and Concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by Service through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by Service, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and Service management policies.

The Concessioner is responsible for all aspects of project development and implementation. The role of the Service is to provide direction, authorization and oversight. The Concessioner and the park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the Service.

**B. DEFINITION OF TERMS**

**“Annual Construction and Repair and Maintenance Management Plan” (CMP):** A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

**“Approved Project Documents”:** “Project drawings and specifications approved by the park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

**“Change Order”:** A written agreement between the “Construction Supervisor” and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

**“Construction”:** The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

**“Construction Supervisor”:** A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and Service and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

**“Conventional Design-Bid-Build Methods”:** Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

**“Contact Person”:** A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

**“Facilitator”:** A Concessioner employee designated to have the role of providing structure and agendas for meetings with Service and who records meeting discussions and outcomes.

**“Guaranteed Maximum Price Design-Build Construction Methods”:** An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

**“Licensed Contractor”:** An entity performing construction certified or licensed by the State to perform construction services within that State.

**“Project Coordinator”:** A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

**“Project Statement” (PS):** An agreement between Service and the Concessioner approved by the park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

**“Registered Technical Professionals”:** Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

**“Substantially Complete”:** (Defined in the CONTRACT).

**“Total Project Cost”:** The total of all actual project expenditures (invoiced and paid) for completion of a project.



**“Total Project Price”**: The total of all estimated project expenditures for completion of a project.

### C. PROJECT PLANNING AND DESIGN

- 1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by Service, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP shall include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with Service staff.
- 2) Notify Service of Intent-to-Proceed. The Concessioner must notify the Service in writing before commencing any facility design or construction process. The project must be identified in the CMP the calendar year before to assist the Service in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the park Superintendent are included in the project scope before the project is funded.
- 3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person shall have the authority to obligate project expenditures and hire and direct consultants and contractors, and Concessioner support staff.
- 4) Prepare a Proposed Project Statement. (PS) Arrange and facilitate a project planning conference with Service staff and prepare a proposed PS to be submitted to the park Superintendent for review. The conference shall be performed on the proposed project site, if needed.
  - (a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference shall be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the park Superintendent.
  - (b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of Service design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.
  - (c) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals

to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the park Superintendent.

- (d) Service Operations. Any aspect of the proposed project where the scope of work interfaces with Service operations such as utility service connections or road maintenance operations must be clearly identified in the PS.
- 5) Submit Project Statement for Service Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the park Superintendent requesting review. A PS signed by the park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.
- 6) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and Service acceptance. Each project shall be identified with a unique project number assigned by the park. All documents entered into the file shall have the project identification number clearly displayed on it as part of document identity.
  - (a) Typical Project File. The organization of a typical project file is presented in the following sections:
    - Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the park Superintendent shall be filed in this section.
    - Section B. Planning. This section shall contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section shall be any concept design, preliminary design, or schematic design correspondence and documents. When the park Superintendent grants approval for any of the above stages of project development, correspondence from the park Superintendent shall be filed in this section.
    - Section C. Assessment. This section shall contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, shall be filed in this section. Any other existing site or facility investigative reports and all quality assurance documents such as third party project inspection, testing and certification shall also be filed in this section.
    - Section D. Design. This section shall contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the park Superintendent providing design approval shall be in this section.

Section E. Project Work. This section shall contain a record of decisions made during project work. The letter from the park Superintendent granting notice-to-proceed with the project shall be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. shall be in this section. Documentation for larger projects shall be organized according to subcontractor activity or standard specification enumeration. The final document filed in this section shall be the Service correspondence sent to the Concessioner providing project acceptance and closeout.

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications shall be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., shall be kept to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos shall be filed with the documents they support.

- 7) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of Service staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.
  - (a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings. The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

- (b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them: "Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Shall Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Shall the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."
- (c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the Service. The Service shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the Service is unable to provide the expertise.
- (d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the Service early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.
- 8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

- 9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

#### **D. PROJECT MANAGEMENT PROCEDURES**

- 1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The Service will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person shall have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The Service shall not take any responsibility for projects until Project Close-out and Acceptance when the Service receives certification of completed work performed in compliance with Project Documents and all specified codes.
- 2) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a project will be issued when all submittals requested by the park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.
- 3) Hold a Pre-Project Conference attended by the Contractor and the Service. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the Service with the Contractor. The purpose of the conference is to provide the Service the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the Service. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.
- 4) Submit Project Activity Reports (As Required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.
  - (a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs (See discussion below for review and approval of change orders and contract modifications.)
  - (b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance

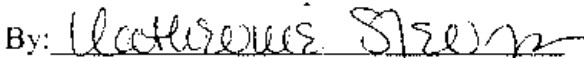
inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

- 5) **Submit Requests for Changes in Approved Project Documents.** The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the Service with written notification immediately upon identifying the need for a change in project scope that affects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:
  - (a) Changes affecting natural, cultural and/or historic resources;
  - (b) Changes in designated visual appearance;
  - (c) Changes in the interface with Service utility and/or road facility maintenance operations;
  - (d) Changes in project scope as required for facility improvement projects;
  - (e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.
- 6) **Service Project Inspection.** The project will be inspected periodically by a representative of the park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.
- 7) **Project Supervision Documents.** Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by Service staff.
- 8) **Substantial Completion Inspection and Occupancy.** Joint inspection by the Service and the Concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the park Superintendent.
- 9) **Project Completion Report.** Upon completion of any project, the Concessioner shall submit a Project Completion Report to the Service. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance

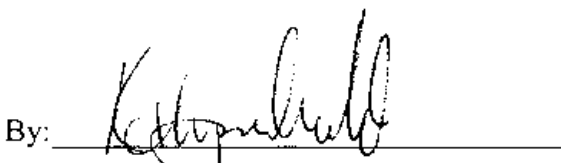
manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

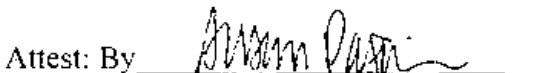
- 10) "As-Constructed Drawings. The "as constructed" drawings included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with Service management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided.
- 11) Request Project Acceptance and Closeout by the Superintendent. The Concessioner shall request project acceptance by the park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the Service. Until receiving formal written project acceptance and closeout from the park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.

Approved by NPS, effective December 31, 2008

By:   
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By:   
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By 

**MAINTENANCE PLAN**

**FAMILY SPORTS CENTER**  
**GATEWAY NATIONAL RECREATION AREA**

**SIGNED: /s/Billy G. Garrett DATED: 5/1/03**  
**General Superintendent**



**TABLE OF CONTENTS**

Introduction	Page 3
Concession Facilities	Page 3
Access to Concession Facilities	Page 3
General Maintenance Standards	Page 3
General Concessioner Responsibilities	Page 4
Buildings	Page 4
Grounds and Landscaping	Page 5
Accessways	Page 6
Utilities	Page 7
Solid Waste	Page 7
Water	Page 7
Sewer	Page 8
Electrical	Page 8
Telephones	Page 8
Fuel Tanks	Page 8
Hazardous Materials	Page 9
Environmental	Page 9
Snow Removal	Page 9
Public Signs	Page 10
Pest Control	Page 10

## **INTRODUCTION**

This Maintenance Plan between The Aviator Development Co., LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service") will serve as a supplement to the Concession Contract CC-GATE015-03 (herein referred to as the "Contract"). The plan describes specific maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of Gateway National Recreation Area. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

### **Assigned Areas**

The Concessioner is responsible for all maintenance within areas assigned to it. Lands assigned under Exhibit D of the Contract are, with the exception of the former Job Corps building, are depicted on the aerial photograph of that Exhibit. The former Job Corps building is assigned in the text of Exhibit D. Areas of responsibility, which are not well defined by a sidewalk or road, are to be a minimum of 50-feet from buildings and 10-feet on either side of paths, walkways, and trails unless otherwise specified on the maps. If a sidewalk is the defining boundary, the assignment will include up to the roadside edge of the gutter. Any modification of concessioner-assigned areas or buildings will be reflected by corresponding changes on the land assignment maps.

### **Access to Concession Facilities**

The Superintendent or his designated representatives will have access to all concessioner facilities to conduct evaluations and other required inspections.

### **General Maintenance Standards for Concession Facilities**

The NPS Concession Review Program provides general direction, expectations, and standards on all aspects of concession operations. The standards for interior and exterior maintenance as amended, supplemented, or revised, are hereby incorporated by reference.

The concessioner is required by the terms of the contract to maintain the assigned property and facilities in a manner that is acceptable to the NPS. It is the purpose of this Maintenance Plan to help define the necessary standards and to define the maintenance relationship between the concessioner and the NPS. Both the concessioner and the NPS have specific responsibilities as outlined in the concession contract and this plan.

### **General Concessioner Responsibilities**

Any work that modifies concession facilities requires written approval by the NPS prior to commencing work. (See Contract - Exhibit F).

The concessioner will ensure that all operations, repair, maintenance and new construction adhere to the contract requirements and the Secretary of Interior's Standards for Treatment of Historic Properties.

Except as noted, the concessioner is responsible for housekeeping, general maintenance, replacement and repair as follows:

#### **A. Buildings**

1. Buildings: Any changes in the architecture, building interior or exterior, including color and material must be approved in advance by the NPS. Preservation maintenance, routine maintenance and repair on all structures must be consistent with NPS standards and guidelines.
2. Radon: When requested to do so, the concessioner will monitor radon levels in work places and provide mitigation where federally accepted levels are exceeded in accordance with Director's Order (DO)-76.
3. Asbestos: The concessioner will develop a schedule for identifying and abating asbestos in accordance with OSHA 29 CFR 1926.58, Environmental Protection Agency (EPA), 40 CFR 61.M, 763.E and G, and NPS-76.
4. Lead-Based Paint: The concessioner will develop a program to identify and mitigate hazardous lead-based paint in accordance with the Lead Poisoning Prevention Act of 1971, Public Law 91-695, as amended in 1987 and 1988; and NPS Housing Design and Rehabilitation Guidelines (DO-76). Lead levels must be detected before renovating any building constructed prior to 1977.
5. Building Codes: The concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.
6. Interior Systems: The concessioner will develop and implement preventive maintenance guidelines for building systems to ensure efficient operations. The concessioner will clean and inspect all interior systems prior to each operating season, including but not limited to, chimneys, fireplaces, stoves, etc.
7. Utility Systems: The concessioner will operate, repair and replace all interior and exterior utility systems within their land assignments as described in this plan or shown and described on land assignment maps.
8. Food Service Equipment: All equipment used in food service operations, including but not limited to, dishwashers refrigerators, freezers, coolers, serving tables, etc., will comply with safety, public health, and sanitation codes.

9. Safety Equipment: The concessioner will provide and maintain safety devices, in accordance with applicable codes, including but not limited to, fall protection, confined space, fire detection, suppression equipment, etc. and all equipment necessary for the protection of the employees and the public, as well as concessioner-owned and government-assigned improvements by complying with all applicable codes.
10. Historic Structures: The hangars are listed on, or are eligible to for nomination to the National Register of Historic Places. The concessioner will submit plans for all proposed work or actions affecting these resources to the NPS to ensure compliance with laws, policies, and guidelines, including the National Historic Preservation Act of 1966, as amended. The NPS will work with the concessioner to ensure that compliance requirements are followed.
11. Damage to Concession Facilities or Utilities: The concessioner will be responsible for repairing any damage caused to any assigned structure or utility due to negligence on the part of a concessioner employee or supplier.

#### **B. Grounds and Landscaping**

1. All landscaping changes will be approved in advance by the NPS. All chemicals, including but not limited to, fertilizers, pesticides, and herbicides require NPS approval prior to use.
2. The concessioner will work with the NPS to identify resource-related problems in their assigned areas. The NPS will recommend and approve correction methods. The concessioner is responsible for ensuring that necessary work is accomplished.
3. The concessioner is responsible for litter-control in assigned areas.
4. The concessioner is responsible for exotic weed management in their assigned areas:
  - The NPS will survey the concessioner's land assignments to identify exotic weeds and provide the concessioner with the survey results. The concessioner will work with the NPS to ensure early detection.
  - The concessioner will be responsible for manual removal of high-priority species. Weeds that cannot be controlled manually will be chemically sprayed by the NPS. The concessioner will be billed for associated costs.
5. The Concessioner is responsible for grass mowing and trimming shrubs and trees.

#### **C. Accessways**

##### Parking Areas

1. The Concessioner is responsible for resurfacing, surface repair, patching and striping, debris and hazard removal in visitor, employee and administrative parking lots designated in land assignments.

Sidewalks, Walkways, Trails, Steps, Foot Bridges

1. The Concessioner is responsible for maintaining and replacing sidewalks, established trails, and steps in their assigned areas including sweeping, surface repair, erosion control, and lighting.
2. The Concessioner will provide safety railings on steps and hazardous walkways.
3. The Concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in their assigned areas. All designs must meet NPS and UFAS standards. Ramps must not interfere with plowing and street-sweeping by extending into the roadways or parking lots.

**D. Utilities**

Water and sewer are provided by the NPS and, if requested, the NPS will collect garbage. These services will be provided to the Concessioner based on established rates.

Solid Waste

1. If requested, the NPS will collect solid waste and bill the Concessioner based on established rates.
2. The Concessioner can make other arrangements for garbage collection. However, storage equipment, and schedules must be approved in advance by the NPS to assure that resource management guidelines are met.
3. The Concessioner will paint garbage cans within its assigned areas as needed.
4. Any debris generated from the Concessioner's construction or demolition is the responsibility of the Concessioner. Debris will be contained and removed from the park, to appropriate disposal sites, as soon as possible.

Water

1. The Concessioner is responsible for all interior plumbing in concession facilities.
2. The Concessioner's responsibility starts at, and includes, the isolation valves on the building side of the water main in assigned areas.
3. The NPS will maintain water meters on new and existing concession facilities. The Concessioner is responsible for purchasing and installing meters and back-flow prevention devices for new construction or new building assignments.
4. If a water main is tapped, broken or needs to be accessed, the local NPS maintenance supervisor will be notified. The Concessioner is responsible for exposing the main and restoring the area unless it is previously determined to be an NPS responsibility.
5. The Concessioner is responsible for road repairs if excavation through a road or paved area is

needed to repair a line. The Concessioner will replace topsoil and vegetation due to any ground disturbance caused by repairs. The Concessioner will disinfect repaired lines in accordance with NPS procedures.

6. The Concessioner will provide the NPS with facility occupancy dates for activation or deactivation of systems when opening and closing dates are submitted for approval.
7. The Concessioner is responsible for the following procedures prior to opening any facility that has been closed:
  - Water lines will be superchlorinated before initial use.
  - In cases where superchlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.
8. The NPS and the USPHS will conduct annual water/sewer surveys in the Concessioner's facilities.
9. The NPS is responsible for replacing and maintaining and painting fire hydrants.

#### Sewer

1. The Concessioner is responsible for all interior plumbing and fixtures in concession facilities.
2. The Concessioner is responsible for collection systems serving only the Concessioner's facilities as follows:
  - Cleaning, repair and replacement of systems up to and including the last manhole before a lift station or up to and including the last manhole before another user comes on line.
  - Exterior lines and laterals from assigned buildings to the mains.
3. The NPS is responsible for day-to-day maintenance on lift stations.
4. The Concessioner is responsible for installing, repairing, maintaining and replacing grease traps associated with their operations.
5. The Concessioner is responsible for reporting sewer spills and plugged sewer lines to NPS District Maintenance Managers and the Concessions Management Office immediately.

#### Electrical

The Concessioner will obtain electrical service from the local provider.

1. Maintaining, repairing and replacing all interior wiring and electrical supply lines from exterior transformers into concession facilities are Concessioner responsibilities.
2. The Concessioner will provide all utility line drawings to the NPS to reflect any changes including new installations, repair or relocation.
3. The Concessioner is responsible for obtaining new or additional power lines within assigned areas.
4. The Concessioner is responsible for electricity and fixtures in assigned parking lots that serve only their facilities.

#### Telephones

The Concessioner is responsible for all on-premise equipment and inside wiring. The Concessioner will contract directly for commercial telephone service. Agreements will be in accordance with guidelines provided by the NPS.

#### **E. Fuel Tanks**

1. The Concessioner is responsible for all underground storage tanks (USTs) and above ground storage tanks (ASTs) within their assigned areas. ASTs will be tested and maintained in accordance with 40 CFR, Part 280 (Wyoming) and ARM 16.45.102A (Montana) and all other applicable laws. The Concessioner must notify the NPS and the appropriate State Department of Environmental Quality (DEQ) in the event of any leaks, spills, tank modifications, temporary closures or any status changes.
2. The NPS policy for USTs and ASTs will be followed for all existing tanks, upgrades and new installations.
3. The Concessioner is responsible for all propane (L.P.) tanks in assigned areas:
  - Tanks will be tested and maintained in accordance with NFPA 54 and 58, and with 29 CFR 1910.110.
  - Wherever possible, propane tanks will be underground. All above ground propane farms will be fenced and kept free of vegetation.
  - Plastic, untraceable LP gas lines will have trace-wire installed to facilitate advanced location and use. Warning tape will also be installed to warn future excavators of gas lines below.
  - All new propane tank installation will be approved by the NPS prior to installation.
4. All designated suppliers will be issued a non-fee permit for transporting hazardous materials.

#### **F. Hazardous Materials**

All hazardous material (Haz-Mats) will be handled as follows:

- The Concessioner will follow all RCRA, OSHA and 29 CFR, 1910 and 1926 regulations.
- Haz-Mat requirements will be part of the Concessioner's Risk Management Program.
- Spill kits, specified by the NPS, will be available at all of the concessioner's fueling stations, Haz-Mat storage areas and in maintenance vehicles.
- Spills will be reported immediately to the NPS Concessions Management Office.

#### **G. Environmental**

To the extent possible, the concessioner will use naturally-derived cleaning products.

The concessioner will cooperate with the NPS in assuring that disposable products such as glass, aluminum, cardboard and paper are recycled. Following are individual responsibilities:

1. The concessioner may independently recycle (any independent recycling program must be approved in advance by the NPS) or participate in the park's recycling program as follows:
  - The NPS will provide a sufficient number of marked recycling receptacles throughout the park for employees and visitors
  - The concessioner will provide a sufficient number of marked recycling receptacles in its areas of operation
  - The NPS will collect recyclables from NPS offices and residential areas and haul them to Amfac's recycling center.
  - The concessioner will collect recyclables from their assigned areas and haul to designated recycling centers.
  - The concessioner will store recyclables in appropriate secure storage containers to protect against odors that could attract animals.
  - Revenues generated from the sale of recycled materials will be documented and used to offset the cost of the program.

#### **H. Snow Removal**

1. The concessioner is responsible for snow removal from concession facilities' roofs, entrances, porches and walkways. Ice buildup on walkways will be sanded or removed for safety. Spring snow removal will be coordinated with NPS District Maintenance Managers.
2. Any chemical used for removing ice must be approved in advance by the NPS.



3. All winter keeping of concession facilities is the concessioner's responsibility. **page 10 of 10**
4. The concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

#### **F. Public Signs**

All signs, flags and banners will be approved by the NPS prior to installation or replacement. Signs will meet the NPS sign standards and the following requirements:

- The concessioner is responsible for maintaining and replacing all interior and exterior signs within their land assignments that relate to their operations and services
- The NPS will provide roadside directional, traffic and regulatory signs
- The NPS will provide signs for accessibility to be installed by the concessioner

#### **G. Pest Control**

The concessioner will notify the Concessions Management Office of serious pest problems including rodents, swallows, bats, bedbugs and other wildlife or insects that may invade buildings. Concessions Management will coordinate with other NPS staff to provide an approved Integrated Pest Management (IPM) strategy for the concessioner's implementation. The concessioner will provide the results of implementation to the NPS.

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CCGATE015-03

EXHIBIT H-1

REPAIR AND MAINTENANCE RESERVE PROJECT PROCEDURES

**A) INTRODUCTION**

This Supplement presents systematic procedures for the administration of projects funded out of the Repair and Maintenance Reserve within the Park. The Contract defines the purpose and scope of the Reserve Fund as well as the type and nature of eligible projects in Section 9(c) of the Contract.

Note that certain projects may require review under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act (NHPA) of 1966, as amended. The Concessioner must ensure that all projects comply with codes and building requirements adopted by the Director, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and National Park Service Management Policies.

**B) PROCEDURES**

- 1) Roles and Responsibilities. The Concessioner will conduct all aspects of its project development and implementation. The Service will provide direction, authorization, and oversight via the Superintendent.
- 2) Multiyear Repair and Maintenance Reserve Plan Approval. The Concessioner must provide the Service at least annually with a Multiyear Repair and Maintenance Reserve Plan per Exhibit E. The Concessioner must obtain Repair and Maintenance Reserve Plan approval by the Superintendent prior to submitting any specific project for approval.
- 3) Project Approval. The Concessioner must provide formal written notice to the Superintendent of the intent to proceed with the planning and design of any project at least one year prior to the intended commencement date. The Concessioner must not proceed prior to receiving written approval from the Superintendent.
- 4) Project Planning and Design Approval. The Concessioner must submit a set of project Plans and Designs to the Superintendent for review and approval. The Concessioner must not execute any aspect of the project or contract for the execution of any aspect of the project prior to receiving written approval from the Superintendent. Project Plans and Designs must include, at a minimum:
  - (a) *Project Statement*: A copy of the project Approval, the designated Concessioner project supervisor, a description of the work, and the justification for the work.
  - (b) *Planning*: Documents as applicable such as those produced for NEPA and Section 106 compliance, concept design, preliminary design, or schematic design and related correspondence and documents.
  - (c) *Design*: Documents produced and decisions made during the design phase of the project such as drawings, renderings, schematics, or descriptions.
  - (d) *Project Estimate and Schedule*: An estimate of the Total Project Price and completion schedule before work begins based on the best information available identified during project planning and design.
  - (e) *Certification of No Capital Improvement*: An analysis of the proposed project to ensure that no element of the project would qualify as a Capital Improvement, as that term is defined in

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36 C.F.R. Part 51, Subpart G, eligible for Leasehold Surrender Interest. The Concessioner must certify that the project does not include the construction or installation of a Capital Improvement. The Service must review this certification to confirm that the project does not include any element that may be eligible for Leasehold Surrender Interest. The parties will resolve any concerns before the Superintendent approves the project. The Superintendent is not authorized to allow the Concessioner to construct or install any Capital Improvement to Concession Facilities.

- 5) Project Management. The Concessioner designated project supervisor must oversee the project and its completion. The Concessioner must submit to the Superintendent periodic activity reports, at a frequency to be agreed upon by the Concessioner and Superintendent prior to project commencement. A periodic activity report must, at a minimum:
  - (a) Summarize project activity by recording observations and decisions
  - (b) Identify project expenditures to date
  - (c) List any changes to the approved project Plans and Designs
  - (d) List any changes in Schedule and Total Project Price
- 6) Project Change Approval. Changes during the work that require review and approval of the Superintendent include, without limitation, the following:
  - (a) Changes affecting natural, cultural, or historic resources
  - (b) Changes in designated visual appearance
  - (c) Changes in the interface with utility, road, or facility maintenance operations
  - (d) Changes in project scope
- 7) Substantial Completion Inspection. The Concessioner must notify the Superintendent that the project is substantially complete and request a joint inspection. The Concessioner and Service will develop a punch list of work items required to "close-out" the project. The Concessioner must not use the structure or structure area affected by the project until all punch list items are resolved.
- 8) Project Completion Report Approval. Upon completion of any project, the Concessioner must submit a project Completion Report to the Superintendent. The project Completion Report must include the Total project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; as-constructed drawings, and other documents as requested by the Superintendent. Until receiving formal written project Completion Report Approval from the Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work.

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Approved by NPS, effective \_\_\_\_\_, 2008

By: Walter S. Green  
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: [Signature]  
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By [Signature]

## EXHIBIT 1

### INSURANCE REQUIREMENTS

#### I. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT. Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

#### II. LIABILITY INSURANCE

The following Liability Coverage is to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

##### A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit –	\$25,000,000
Products/Completed Operations Limit -	\$25,000,000
Personal Injury & Advertising Injury Limit –	\$25,000,000
General Aggregate -	\$25,000,000
Fire Damage Legal Liability "per fire" -	\$5,000,000

2. The liability coverage may not contain the following exclusions/limitations:

- a. Products/Completed Operations
- b. Personal Injury or Advertising Injury exclusion or limitation
- c. Contractual Liability limitation
- d. Explosion, Collapse and Underground Property Damage exclusion
- e. Total Pollution exclusion

3. For all indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

##### B. Automobile Liability

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto."

Each Accident Limit - \$1,000,000 or greater amount if required by the state or the terms of the excess liability policy.

**Aggregate Limit: \$25,000,000**

#### C. Liquor Liability

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit - \$ 6,000,000

#### D. Excess Liability or Excess "Umbrella" Liability

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

#### E. Environmental Impairment Liability

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

**Policy Limit: \$3,000,000**

#### F. Special Provisions for Use of Aggregate Policies

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

#### G. Self-Insured Retentions

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

#### H. Workers Compensation & Employers' Liability

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

### III. PROPERTY INSURANCE

#### A. Building(s) and/or Contents Coverage

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. Coverage is to be provided on a blanket basis.
6. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

#### B. Boiler & Machinery Coverage

1. Insurance shall apply to all pressure objects within Concession Facilities.
2. The policy shall provide for loss recovery on a Replacement Cost basis.
3. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
5. Coverage is to be provided on a blanket basis.
6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
7. Ordinance or Law Coverage shall be maintained.

#### C. Builders Risk Coverage

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while

such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.

2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 100% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Any occupancy restriction must be eliminated.
7. Any collapse exclusion must be eliminated.
8. Any exclusion for loss caused by faulty workmanship must be eliminated.

#### D. Business Interruption and/or Expense

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

#### E. Deductibles

Property Insurance coverage described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000.
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

#### F. Required Clauses

1. Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. CC-GATE015-03 dated April 10, 2003, between the United States of America and the Concessioner, payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed



directly to the Concessioner without requiring endorsement by the United States of America."

2. The United States Department of the Interior, National Park Service will be named as additional insured on certificates with respect to damage to National Park Service property. The United States of America shall be the named insured for General Liability Insurance.

#### IV. CONSTRUCTION PROJECT INSURANCE

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverage shall be determined in consultation with the Director taking into consideration the scope and size of the project.

#### V. INSURANCE COMPANY MINIMUM STANDARDS

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverage must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
2. All insurers for all coverage must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state in which the concessioner is operating.

#### VI. CERTIFICATES OF INSURANCE

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverage, limits, and coverage amendments that are described above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

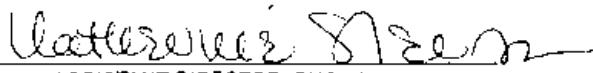
Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

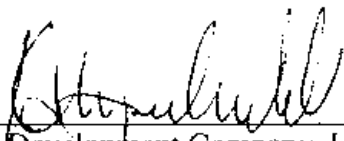
## VII. STATUTORY LIMITS

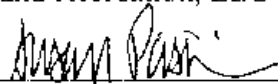
In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit will be considered the minimum to be maintained.

Approved by NPS, effective December 31, 2008

By:   
Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By:   
Aviator Development Company, LLC  
Aviator Sports and Recreation, LLC

Attest: By 

**CC-GATE015-03**

**EXHIBIT J  
TRANSITION TO A NEW CONCESSIONER.**

**Section 1. In General**

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

**Section 2. Cooperation Prior to the Termination Date**

At such time as the Director may notify the Concessioner that it will not continue its operations upon the expiration or termination of this CONTRACT, the Concessioner shall, notwithstanding such notification:

**(a) Continue Operations.** Continue to provide visitor services and otherwise comply with the terms of the CONTRACT in the ordinary course of business and endeavor to meet the same standards of service and quality that were being provided previously, and with a view to maintaining customer satisfaction.

**(b) Continue Bookings.** Continue to accept all future bookings for any hotel, lodging facilities, or other facilities and services for which advance reservations are taken; not divert any bookings to other facilities managed or owned by the Concessioner or any affiliate of the Concessioner; and notify all guests with bookings for any period after the Termination Date that the facilities and services are to be operated by the New Concessioner. Promptly following notification to the Concessioner by the Director of the selection of the New Concessioner, the Concessioner shall provide the New Concessioner with a copy of Concessioner's reservation log for visitor services as of the last day of the month prior to the selection of the New Concessioner, and thereafter the Concessioner shall update such log on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. The reservation log shall include, without limitation, the name of each guest, and the guest's (1) address, (2) contact information, (3) dates of stay, (4) rate quoted, (5) amount of advance deposit received and (6) confirmation number, if applicable.

**(c) Designating a Point of Contact and Other Actions.** Cooperate with the Director and the New Concessioner to ensure the smooth transition of operations by: (1) designating one of the Concessioner's executives as the point of contact for communications between the Concessioner and the New Concessioner; (2) providing the Director and the New Concessioner with access to

any assigned Real Property Improvements, including "back-of-house areas" and including copies of the keys to assigned Real Property Improvements; (3) providing the Director and the New Concessioner with full access to the books and records, licenses and all other materials pertaining to any assigned Real Property Improvements and the Concessioner's operations in general; (4) providing the Director and the New Concessioner with copies of all maintenance agreements, equipment leases (including short-wave radio) service contracts and supply contracts, including contracts for on-order merchandise (collectively, "Contracts"), and copies of all liquor licenses and other licenses and permits (collectively, "Licenses"); (5) allowing the New Concessioner to solicit and interview for employment all of the concessioner's salaried and hourly employees, including seasonal employees through a coordinated process implemented by the Concessioner; and (6) not entering into any contracts or agreements that would be binding on any assigned Real Property Improvements or operations in general after the Termination Date without the prior written agreement of the New Concessioner.

**(d) Financial Reports.** Within 30 days after receipt of the notification of the selection of the New Concessioner, provide the New Concessioner with a financial report with respect to the operation of any assigned Real Property Improvements and the Concessioner's operations in general as of the last day of the month prior to receipt of such notification. Thereafter, the Concessioner shall update such financial report on a periodic basis (but no less frequently than thirty (30) days) until the Termination Date. Such financial report shall include, at a minimum, (1) a balance sheet for the Concessioner's assigned Real Property Improvements, if any; (2) a schedule of pending accounts payable; and (3) a schedule of pending accounts receivable.

**(e) Inventory.** Provide the New Concessioner with a complete, detailed and well-organized list of physical inventory, supplies, and other personal property owned or leased by the Concessioner in connection with its operations under the CONTRACT (including a list of such items that are on-order). The list shall be provided to the New Concessioner within thirty (30) days following receipt of the notification of the selection of the New Concessioner, shall be updated monthly thereafter, and shall designate those items that the Concessioner believes are essential to maintaining the continuity of operations or the special character of its operations. The Concessioner shall assist the New Concessioner in reviewing and validating the list.

**(f) Sale of Inventory and Other Personal Property.** In addition to inventory that may be sold to the New Concessioner in accordance with Section 16(d)(3), the Concessioner, upon the request of the New Concessioner, shall sell to the New Concessioner at book value such other property listed on the inventory described above as the New Concessioner may request.

**(g) Other Information and Reports.** Provide the New Concessioner with all other information and reports as would be helpful in facilitating the transition, including, without limitation, a list of maintenance records for the Concessioner's operations for the period of one year prior to notification of the selection of the New Concessioner, and complete information with respect to: (1) utilities, including gas and electric; (2) telephone service; (3) water service; and, (4) specific opening and closing procedures. Such information shall be provided within thirty (30) days after receipt of notification of the selection of the New Concessioner, and shall be updated periodically (but no less frequently than thirty (30) days) until the Termination Date.

**(h) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

### **Section 3. Cooperation Upon the Termination Date.**

Upon the Termination Date, the Concessioner shall:

**(a) Transfer of Contracts and Licenses.** Cooperate with the transfer or assignment of all Contracts and Licenses entered into by the Concessioner that the New Concessioner elects to assume.

**(b) Reservation Systems.** (1) Provide the New Concessioner with an update of the reservation log through the Termination Date; (2), disconnect its operations from the Concessioner's centralized reservation system, if any; and (3) cooperate with the New Concessioner in transitioning to the New Concessioner's reservation system.

**(c) Fees and Payments.** Within ten (10) days after the Termination Date, the Concessioner shall provide the Director with an itemized statement of all fees and payments due to the Director under the terms of the CONTRACT as of the Termination Date, including, without limitation, all deferred, accrued and unpaid fees and charges. The Concessioner shall, within ten (10) days of its delivery to the Director of this itemized statement, pay such fees and payments to the Director. The Concessioner and the Director acknowledge that adjustments may be required because of information that was not available at the time of the statement.

**(d) Access to Records.** Notwithstanding any other provision of this CONTRACT to the contrary, upon the Termination Date, the Concessioner shall make available to the Director for the Director's collection, retention and use, copies of all books, records, licenses, permits and other information in the Concessioner's possession or control that in the opinion of the Director, are related to or necessary for orderly and continued operations of the related facilities and services.

**(e) Removal of Marks.** Concessioner shall within thirty (30) days after Termination, remove (with no compensation to Concessioner) all items of inventory and supplies as may be marked with any trade name or trademark belonging to the Concessioner.

**(f) Other Cooperation.** Provide the Director and the New Concessioner with such other cooperation as may be reasonably requested.

Approved by NPS, effective December 31, 2008

By: Walter Weir Strom

Title: ASSISTANT DIRECTOR, BUSINESS SERVICES

Accepted, effective December 31, 2008

By: Gregory Luhl  
Aviator Development Company, LLC

Aviator Sports and Recreation, LLC

Attest: By Monica Parnis

**AMENDMENT NO. 2  
CONCESSION CONTRACT NO. CC-GATE015-03  
AVIATOR DEVELOPMENT COMPANY, LLC  
GATEWAY NATIONAL RECREATION AREA**

**THIS AMENDMENT**, made and entered into by and between the United States of America, acting in this behalf by the Director of the National Park Service, hereinafter referred to as the "Director," and Aviator Development Co., LLC, and Aviator Sports and Recreation, LLC, corporations organized and existing under the laws of the State of New York, hereinafter referred to as the "Concessioner":

**WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner entered into a twenty year Concession Contract No. CC-GATE015-03, hereinafter referred to as "Contract", effective on April 15, 2003, whereby the Concessioner was authorized to provide accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003 until its expiration on April 14, 2023, as amended by Amendment No.1 dated February 27, 2006; and

**WHEREAS**, the Concessioner has requested certain additional amendments to the concession contract; and .

**WHEREAS**, the Director and Concessioner desire to modify the terms and conditions of the Concession Contract to reflect changed circumstances; and

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual covenants set forth herein and for other good consideration, hereto covenant and agree to and with each other that the Contract, as amended, is hereby further amended as follows:

I. **CONTRACT** Section 11.(a)(1) "Franchise Fee" is deleted in its entirety and replaced with the following:

(a)(1) For the term of this **CONTRACT**, the Concessioner shall pay to the Director for the privileges granted under this **CONTRACT** a franchise fee equal to two (2.0%) percent of the Concessioner's gross receipts for the preceding year or portion of a year.

II. **CONTRACT** Section 12(d)(5) is amended by adding the following sentence at the end of the paragraph:

The Leasehold Surrender Interest Value existing immediately prior to an event of loss shall not be reduced provided that Concessioner has complied with the terms of this section of the CONTRACT.

III. CONTRACT Section 13(b) is deleted in its entirety and replaced by the following:

Lien

(b) As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner, provided however, that the Director agrees that the Leasehold Surrender Interest Value shall, when due, be payable without any deduction or set-off other than such deduction or set-off reflecting any amount then owing to the Government for payment of: (1) Franchise Fees then due and unpaid to the Government pursuant to Section 11 of this CONTRACT; (2) claims for damage to or failure to maintain the Concession Facilities (as defined herein), but only to the extent that Concessioner, (A) pursuant to the terms and conditions of this CONTRACT, fails to deposit required amounts into the Repair and Maintenance Reserve as required by this CONTRACT; (B) fails to expend such Repair and Maintenance Reserve funds as directed by the Director in accordance with the terms of this CONTRACT, (C) expends any such deposited Repair and Maintenance Reserve amounts in a manner not approved by the Director as may be required under this CONTRACT; or (D) fails to obtain and maintain the insurance required under Section 12 of this CONTRACT; (3) claims arising from Concessioner's discharge or release as described in Section 6 of this CONTRACT, within the Area of hazardous materials, petroleum products, and/or pollutants on, under or from the Concession Facilities; (4) damages arising from third-party claims alleging personal injury, death, and/or property damage which occurred at or in connection with the the Concessioner's Operations hereunder or Concession Facilities and not covered by casualty or liability insurance; (5) claims of subcontractors and/or service or material suppliers for improvements or services contracted for by, or otherwise performed on behalf of, Concessioner in connection with the Concession Facilities which have not been paid or bonded; and (6) claims for payment of any utility service supplied by the Director to Concessioner in connection with the Concession Facilities.

IV. CONTRACT Section 17(b) is amended by adding the following at the end of the existing paragraph:

(b) Notwithstanding any other provision of this CONTRACT, the Leasehold Surrender Interest Value that would otherwise be due the Concessioner is to be reduced by an amount equal to two (2%) percent of the Concessioner's gross receipts obtained under this CONTRACT between the date of this Amendment # 2 to the CONTRACT and the date of payment of the Leasehold Surrender Interest



Value. If the Director withdraws a portion of the Concession Facilities as provided in Section 8 of this CONTRACT, and the Leasehold Surrender Interest Value of the withdrawn Concession Facility is less than the sum of the two (2%) percent of the gross receipts described above as of the date of withdrawal, the balance of such sum will be applied to any remaining Leasehold Surrender Interest Value.

V. CONTRACT Section 19(c) is deleted in its entirety and replaced by the following:

(c) Subconcession or other third party agreements, including management agreements for the provision of visitor services required and/or authorized under this CONTRACT are not permitted, provided, however, that the Concessioner may provide food and beverage services through its wholly owned subsidiary, Aviator Food & Beverage, LLC.

VI. All defined terms in this Amendment to this Contract not otherwise defined herein, shall have the meanings ascribed to them in the CONTRACT.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Amendment to Contract CCGATE015-03 as of the 13<sup>th</sup> day of July, 2006.

CONCESSIONER

UNITED STATES OF AMERICA

By Ronald H. Bold  
Asst. Secretary (TITLE)  
Aviator Development Company, LLC  
By Aviator Sports and Recreation LLC  
By Ajax Gateway, LLC  
By: Ajax Capital LLC

By Chupandra D. Watts  
for Regional Director, Northeast Region  
National Park Service

By Ronald H. Bold  
Asst. Secretary (Title)  
Aviator Sports and Recreation, LLC  
By: Ajax Gateway, LLC  
By: Ajax Capital, LLC

This letter shall not be construed as or have the effect of amending, modifying, varying or waiving the terms of the Gateway Contract.

Very truly yours,

AVIATOR DEVELOPMENT COMPANY,  
LLC

By: David M. Prager

Name: David M. Prager

Title: Chief Operating Officer

Accepted and Agreed:

UNITED STATES DEPARTMENT OF  
THE INTERIOR,  
NATIONAL PARK SERVICE

By: Mary A. Bomar

Mary Bomar

Regional Director of the National Park Service, Northeast Region

Date as of: March 15, 2006

Exhibit A to Form of Payment Direction Letter

Form of Release Notice

{Commerce Bank, N.A. Letterhead}

{date}

Superintendent  
Gateway National Recreation Area  
Floyd Bennett Field, Building 69  
Brooklyn, New York 11234  
Attention: Chief, Business Management Division

Re: Concession Contract No. CC-Gate015-03, as amended

Dear Sir or Madam:

This release notice ("**Release Notice**") is given by Commerce Bank, N.A., pursuant to a payment direction letter dated as of March 15, 2006, to the National Park Service (the "NPS") from Aviator Development Company, LLC, the Concessioner under Concession Contract No. CC-Gate015-03 as amended (the "**Gateway Contract**").

Commerce Bank, N.A., as Lender, hereby notifies you that the obligations secured by the Gateway Contract have been paid, redeemed, defeased or discharged. Hereafter, any payments due or to become due to the Concessioner from the NPS under the Gateway Contract (including, without limitation, in respect to the Leasehold Surrender Interest described therein) may be made directly to the Concessioner.

Very truly yours,

COMMERCE BANK, N.A., as Lender

By: 

Name: George Andreozzi

Title: DVP

**COLLATERAL ASSIGNMENT OF CONCESSION CONTRACT  
AND  
LEASEHOLD SURRENDER INTEREST**

**THIS COLLATERAL ASSIGNMENT OF CONCESSION CONTRACT AND LEASEHOLD SURRENDER INTEREST (this "Collateral Assignment"), made as of March 15, 2006, by AVIATOR SPORTS AND RECREATION LLC, a New York limited liability company ("Aviator Sports"), and AVIATOR DEVELOPMENT COMPANY, LLC, A New York limited liability company ("Aviator Development" and, collectively with Aviator Sports, "Borrower"), in favor of COMMERCE BANK, N.A., a national banking association ("Lender").**

**WITNESSETH:**

WHEREAS, pursuant to that certain Loan and Security Agreement dated of even date herewith (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "Loan Agreement"), Lender has agreed to make a loan to Borrower in the aggregate principal amount of up to \$16,000,000 (the "Loan"), to be evidenced by those certain promissory notes to be issued by Borrower in favor of Lender in accordance with the terms of the Loan Agreement (together with all extensions, renewals, modifications, substitutions, replacements and amendments thereof, the "Notes"); and

WHEREAS, as a condition precedent to making the Loan, Lender requires that Borrower secure the repayment of the indebtedness evidenced by the Notes and the performance of the other terms, covenants and agreements contained herein and in the Notes, the Loan Agreement and each other document evidencing, securing, guaranteeing and/or relating to the indebtedness to be evidenced by the Notes (the Notes, the Loan Agreement and such other documents, as each of the foregoing may from time to time be amended or replaced, are herein sometimes collectively referred to as the "Loan Documents") by collaterally assigning to Lender all of its rights and interests in, to and under (i) Contract No. CC-Gate015-03, effective as of April 15, 2003, as amended by Amendment No. 1 dated as of February 27, 2006 between the United States of America acting by the Director of the National Park Service ("NPS") and Aviator Development and Aviator Sports (as further amended, supplemented, restated, extended, replaced or otherwise modified from time to time, the "Gateway Contract"), in connection with certain visitor services to be established and conducted by Aviator Development at the Gateway National Recreation Area; and (ii) the Leasehold Surrender Interest described in Section 9(c) and Exhibit A of the Gateway Contract (the "Leasehold Surrender Interest");

NOW, THEREFORE, as collateral security for the full and timely payment of the Obligations, Borrower hereby collaterally assigns, transfers, sets over and pledges to Lender all of Borrower's rights, privileges and interest under the Gateway Contract, including without limitation, all of Borrower's rights, privileges and interest in and to the Leasehold Surrender Interest together with all cash and non-cash proceeds of the foregoing and all claims of Borrower

with respect thereto and together with all right, title and interest of Borrower in and to any and all extensions and renewals of the Gateway Contract (collectively, the "Assigned Property"). For the purposes of and subject to the terms set forth herein, upon an Event of Default, this Collateral Assignment will constitute an absolute, unconditional and presently effective assignment from Borrower's to Lender of all of Borrower's rights in, under and to the Assigned Property. Notwithstanding the foregoing, prior to the occurrence of an Event of Default, Borrower, subject to the terms and conditions of this Collateral Assignment, shall have the right to use, employ and enforce the Gateway Contract. In furtherance of the foregoing assignment, Aviator Development hereby authorizes Lender, after the occurrence of an Event of Default, to exercise in the name of Borrower or in its own name as Lender, all rights in, under and to the Assigned Property, and Borrower further agrees to facilitate in all reasonable ways Lender's exercise of the rights in, under and to the Assigned Property.

This Collateral Assignment is made upon the following terms and conditions:

1. Defined Terms. Capitalized terms used in this Collateral Assignment and not otherwise defined herein shall have the respective meanings assigned to them in the Loan Agreement.

2. Borrower's Representations and Warranties: Borrower represents and warrants to Lender that: (a) the Gateway Contract as amended through the date hereof, (a true and correct copy of which is attached hereto as Exhibit A) is in full force and effect and has not been modified, amended or assigned other than pursuant to this Collateral Assignment and is a legal, valid and binding obligation of Borrower; (b) neither Borrower nor, to the best of Borrower's knowledge, the NPS is in default under any of the terms, covenants or provisions of the Gateway Contract, and Borrower knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under, or give rise to suspension or termination of the Gateway Contract by Borrower or the NPS; (c) Borrower has not assigned or granted and will not assign or grant a security interest in the Assigned Property to anyone other than Lender. Borrower's interest in the Assigned Property is not subject to any claim, setoff, lien, deduction or encumbrance of any nature (other than a lien in favor of the NPS as created in the Gateway Contract and the encumbrance created hereby); (d) Borrower has full power and authority to assign the Assigned Property, subject only to the approval of the NPS; (e) neither Borrower nor the NPS has commenced any action or given or received any notice for the purpose of suspending or terminating the Gateway Contract or obtaining the LSI Value; and (f) all sums due and payable as of the date hereof to the NPS under the Gateway Contract have been paid in full.

3. Borrower's Covenants. Borrower covenants and agrees that (a) except to the extent otherwise permitted in the Loan Agreement, Borrower will at all times comply and cause substantial compliance with all of its covenants, obligations and agreements, if any, under the Gateway Contract (including, the obligation to pay all sums due thereunder) and, subject to the terms and conditions of the other Loan Documents, will use all reasonable efforts to secure or enforce all of its rights under the Gateway Contract and to the Leasehold Surrender Interest; (b) except to the extent otherwise permitted in the Loan Agreement, Borrower shall not surrender, terminate (other than a termination in connection with a default beyond applicable time periods

by the NPS), cancel, modify, amend, enter into any agreement in substitution for, or consent to the assignment of the Gateway Contract without Lender's prior written consent; provided, however, Lender shall not unreasonably withhold or delay its consent for immaterial modifications or amendments to the Gateway Contract; (c) Borrower shall give prompt notice to Lender of any default or any other notice issued by any Governmental Authority or any other party with respect to the Assigned Property together with an accurate and complete copy of any such notice; (d) Borrower shall promptly notify Lender in writing of any suspension, surrender, cancellation or termination of the Gateway Contract pursuant to Section 16 thereof or otherwise whether or not Lender's consent thereto is required; (e) as long as the Obligations are outstanding, upon an event of default under, or termination, suspension or expiration of the Gateway Contract, any compensation due Borrower for the value of the Leasehold Surrender Interest shall be paid directly to Lender; (f) Borrower shall promptly provide Lender with copies of all construction reports and maintenance and property condition assessments delivered pursuant to the Gateway Contract and any and all other correspondence and other documentation in connection with the valuation of the Leasehold Surrender Interest or otherwise relating to the Gateway Contract including without limitation any and all "tracking system reports generated pursuant to Section 9(d) 3(c) of the Gateway Contract and (h) Borrower shall exercise all reasonable efforts to enforce or secure the performance of each and every material obligation, covenant, condition, and agreement to be performed by the NPS under the Gateway Contract.

4. No Waiver. Neither this Collateral Assignment nor any action or actions on the part of Lender shall relieve Borrower of any obligation under the Gateway Contract, and Borrower shall continue to be primarily liable for all obligations thereunder, Borrower hereby agreeing to perform each and all of its obligations under the Gateway Contract.

5. Default. Any failure by Borrower in the performance or observance of any covenant or condition hereof and the continuance of such failure for ten (10) days (or such longer or shorter period of time provided under any other Loan Document) after notice of such default from Lender shall be an Event of Default.

6. Rights and Remedies. (a) Upon the occurrence and during the continuation of an Event of Default, Lender may, at its option, in addition to all other remedies provided for hereunder and under the other Loan Documents, or at law, exercise from time to time any rights and remedies available to Lender under applicable law in respect of the Gateway Contract (including, all of the rights of a secured creditor under the Uniform Commercial Code) and without regard for the adequacy of security for the Obligations, either in person or by Lender, with or without bringing any action or proceeding, provided that it also assumes all of the executory obligations of Borrower arising under the Gateway Contract after the date of such assumption, if any, and/or exercise the rights, benefits, privileges and obligations of Borrower under the Gateway Contract subject, to the extent applicable, to (i) the terms and conditions of the Gateway Contract and 36 C.F.R. Section 51.89, (ii) the terms, provisions and limitations of the regulations promulgated by the NPS pursuant to the National Park Service Concession Management Improvement Act of 1998, 16 USC §§ 5951 et seq. (as hereafter amended or modified), which regulations may be found at 36 C.F.R. Part 51 (as hereafter amended or modified) (the "Regulations"), and (iii) compliance with Section 51.87 of the Regulations, including, without limitation, (x) a determination by the NPS under 51.87(c) of the Regulations

that Lender, any assignee, designee or receiver of Lender or any operator proposed by Lender is a "qualified person," as such term is defined in the Regulations, prior to beginning any operations under the Gateway Contract, and (y) such new operator's (whether such operator is Lender, any assignee, designee or receiver of Lender or any other person or entity) written commitment, among other things, to cure any existing defaults (including defaults by Borrower or any previous operator) in accordance with the Gateway Contract to the extent required by the NPS in its sole and absolute discretion.

(b) In the event that Lender shall exercise its rights and remedies under Section 6(a) to assume any or all the obligations of Borrower under the Gateway Contract, upon the occurrence of an Event of Default, Lender shall give notice to the NPS, electing either to continue performance under the Gateway Contract or, alternatively, to terminate the Gateway Contract (subject to the limitations disclosed in Subsection 6(a) of this Collateral Assignment and to the extent such rights are available under the Gateway Contract). This Collateral Assignment shall constitute a direction to and full authority to the NPS under the Gateway Contract to act at Lender's written direction and otherwise perform on Lender's behalf under the Gateway Contract, without proof of the Event of Default relied upon. The NPS shall be entitled to rely upon written notice from Lender that Lender has assumed all of the rights and obligations of Borrower under the Gateway Contract without any inquiry into whether an Event of Default has occurred, and Concessioner hereby waives any and all claims it might otherwise have against the United States of America and the NPS arising out of or in anyway connected to such reliance by the NPS. Such assumption of the Gateway Contract by Lender shall be evidenced by written notice from Lender to the NPS. Under no circumstances shall Lender be deemed by any party to have assumed Borrower's rights and obligations under the Gateway Contract unless and until such written notice is delivered to the NPS in accordance with this Section 6(b).

7. Cure. Lender shall have the right in accordance with Section 5 of the Consent and Agreement, dated the date hereof, among the NPS, Borrower and Lender, but shall have no obligation, to take in its name or in the name of Borrower, or otherwise, such action as Lender may at any time or from time to time determine to be reasonably necessary to cure any default by Borrower under the Gateway Contract. Lender shall incur no liability to Borrower if any action taken by Lender reasonably and in good faith pursuant to this Collateral Assignment shall prove to be in whole or in part inadequate or invalid unless caused by Lender's gross negligence or willful misconduct.

8. Security Agreement. This Agreement constitutes a security agreement with Borrower as the "debtor" and Lender as the "secured party", under the Uniform Commercial Code as in effect in the State of New York. In addition to the rights and remedies granted to Lender by applicable Law or by this Collateral Assignment, Lender shall have all of the rights and remedies with respect to the Assigned Property as are granted to a secured party under the Uniform Commercial Code as in effect in each applicable jurisdiction.

9. Arbitration with NPS. If, pursuant to Section 17(c) of the Concession Contract or otherwise, Borrower or another Person commences negotiations or, in lieu thereof, an arbitration proceeding or similar dispute resolution proceeding to determine the LSI Value, Borrower, as promptly as practicable but in any event no later than five (5) business days after Borrower's

receipt of notice of the commencement of negotiations or the election to initiate dispute resolution proceedings (such negotiations or dispute resolution proceedings, the ("Proceedings")), shall notify Lender in writing of such receipt or election. If such Proceedings are commenced and continue prior to the occurrence of an Event of Default, Lender shall have the right to approve, which approval shall not be unreasonably withheld or delayed, (i) counsel to be retained by Borrower to represent Borrower in connection with the Proceedings, (ii) any arbitrators, experts or consultants to be chosen or engaged by Borrower in connection with the Proceedings, and (iii) any compromise, settlement or agreement settling or determining the LSI Value, provided, however, that Lender's approval of any negotiated determination, compromise, settlement or agreement regarding the LSI Value shall not be required if the agreed upon LSI Value shall be equal to or greater than the (x) principal balance of the Loan multiplied by (y) one hundred and fifty percent (150%). If such Proceedings are commenced after the occurrence of an Event of Default, Lender shall have the right to approve, in its sole discretion, (i) counsel to be retained by Borrower to represent Borrower in connection with the Proceedings, (ii) any arbitrators, experts or consultants to be chosen or engaged by Borrower in connection with the Proceedings, and (iii) any compromise, settlement or agreement regarding the LSI Value. Whether commenced prior to or after the occurrence of an Event of Default, Borrower shall consult with Lender and Lender's counsel regarding the pursuit, compromise and settlement of such Proceedings, including, without limitation, valuation methods and arbitration strategies. In addition, Borrower shall promptly provide to Lender copies of all memoranda, pleadings, statements, notices, agreements, exhibits or any other documents submitted by or on behalf of Borrower, the NPS or any other Person in such Proceedings. Notwithstanding the foregoing, Borrower shall be solely responsible for all costs and expenses incurred by Lender or otherwise related to any Proceedings, including, without limitation, attorneys', consultants' or experts' fees and costs (whether or not such attorneys, consultants or experts are designated by Lender). Borrower hereby expressly waives and releases Lender, its affiliates and their respective officers, directors, employees, affiliates, attorneys and representatives from any liability in connection with Lender's role in the Proceedings.

10. Successors and Assigns. During the term of the Loan, this Collateral Assignment and the agreements and undertakings of Borrower hereunder shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of (i) Lender and its successors and assigns pursuant to the terms of the Loan Agreement and (ii) any purchaser of any interest of the Lender in the Notes and the other Loan Documents pursuant to the terms of the Loan Agreement.

11. Further Assurances. Borrower covenants and agrees to make, execute and deliver all such further or additional instruments as may be reasonably necessary to satisfy the intents and purposes hereof and to perfect the assignment made hereby.

12. Governing Law. This Collateral Assignment shall be construed under and governed by the laws of the State of New York, except to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling. In any action brought under or arising out of this Collateral Assignment or the other Loan Documents, Borrower hereby consents to the jurisdiction of any competent court within the State of New York and consents to service of process by any means authorized by the law of the State of New York.



13. Notice. Any notices or other communications hereunder shall be in writing and shall be given in accordance with Section 6.11 of the Loan Agreement.

14. Counterparts. This Collateral Assignment may be executed in any number of counterparts, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Collateral Assignment may be detached from any counterpart of this Collateral Assignment without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Collateral Assignment identical in form hereto but having attached to it one or more additional signature pages.

15. Severability. If any provision under this Collateral Assignment or the application thereof to any entity, person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Collateral Assignment and the application of the provisions hereof to other entities, persons or circumstances shall not be effected thereby and shall be enforced to the fullest extent permitted by law.

16. Amendments and Waivers. This Collateral Assignment may not be amended, modified or otherwise changed except by a written instrument duly executed by Borrower, Lender and the NPS.

17. Miscellaneous. (a) Wherever pursuant to this Collateral Assignment (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein; (b) wherever pursuant to this Collateral Assignment it is provided that Borrower shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees and disbursements of Lender.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Borrower has executed this Collateral Assignment as of the day and year first above written.

AVIATOR SPORTS AND RECREATION LLC

By: Ajax Gateway, LLC, Managing Member

By: Ajax Capital, LLC, Manager

By: David M. Prager

David M. Prager, Chief Operating Officer

AVIATOR DEVELOPMENT COMPANY, LLC

By: Aviator Sports and Recreation LLC, Manager

By: Ajax Gateway, LLC, Managing Member

By: Ajax Capital, LLC, Manager

By: David M. Prager

David M. Prager, Chief Operating Officer

AGREED TO AND ACCEPTED:

as of March 15, 2006

COMMERCE BANK, N.A.

By: George Andreozzi  
George Andreozzi  
Regional Vice President

Accepted and Agreed as of March 15, 2006

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

By: Mary A Bomar  
Mary Bomar  
Regional Director National Park Service, Northeast Region

**EXHIBIT A**

Gateway Contract

## CONSENT AND AGREEMENT

**CONSENT AND AGREEMENT** dated as of March 15, 2006 (this "**Consent**"), among **THE UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, ACTING BY THE DIRECTOR OF THE NATIONAL PARK SERVICE** (the "**NPS**"), and **AVIATOR DEVELOPMENT COMPANY, LLC** (the "**Concessioner**") and **AVIATOR SPORTS AND RECREATION LLC** ("**Aviator Sports**") (Aviator Sports and the Concessioner are collectively referred to herein as the "**Borrower**") and **COMMERCE BANK, N.A.** ("**Commerce Bank**").

### BACKGROUND

A. **Gateway Contract.** On or about January 21, 2003, the NPS and the Borrower entered into that certain Contract No. CC-Gate 015-03, as amended by Amendment No. 1 dated as of February 27, 2006 (the "**Gateway Contract**") in connection with certain visitor services to be established and conducted by the Borrower at the Gateway National Recreation Area (the "**Area**").

B. **Commerce Bank Financing.** Subject to the execution of this Consent, Commerce Bank, on the terms and subject to the further conditions set forth in the Commerce Bank Financing Documents (as defined below), has agreed to extend a credit facility to the Borrower in an amount not to exceed \$16,000,000 (the "**Commerce Bank Loan**"). The Borrower has simultaneously with the delivery of this Consent delivered to the NPS true, correct and complete copies of the Commerce Bank Financing Documents (including, without limitation, that certain Collateral Assignment of Concession Contract and Leasehold Surrender Interest – the "**Collateral Assignment**"), as well as the pro formas, legal opinions and other documents and agreements governing, controlling, evidencing and securing the Commerce Bank Loan, as well as the documents required under 36 C.F.R § 51.91 listed on Exhibit A attached hereto (collectively, the "**Commerce Bank Financing Documents**"). The proceeds of the Commerce Bank Loan will be used to finance the construction of the capital improvements and real property improvements culminating in the completion of the Aviator Sports & Recreation Center at Floyd Bennett Field, Brooklyn, New York (the "**Project**"), which the Concessioner is required to make under the Gateway Contract as specified in Section 9(d) of the Gateway Contract. (The Commerce Bank Loan made pursuant to the Commerce Bank Financing Documents and all other documents, instruments and agreements related thereto is herein referred to as the "**Commerce Bank Financing**").

C. **Encumbrance.** Pursuant to the Commerce Bank Financing Documents, the Borrower desires to grant a security interest to Commerce Bank in all of the Borrower's rights, privileges and interest in and to the Gateway Contract, including, but not limited to, the Concessioner's right, title and interest in and to the Leasehold Surrender Interest described in Section 9(c) and Exhibit A to the Gateway Contract (the "**Leasehold Surrender Interest**") and all other property of the Borrower (collectively, the "**Encumbrance**"), which security interest shall be a first priority security interest subject only to a first lien granted by Concessioner to the NPS in accordance with the Gateway Contract. The Borrower shall grant the Encumbrance pursuant to (i) the Commerce Bank Loan and Security Agreement, dated of even date herewith,

between the Borrower and Commerce Bank, and (ii) a Collateral Assignment of Concession Contract and Leasehold Surrender Interest substantially in the form of Exhibit B attached hereto.

D. **The NPS Consent Sought.** The National Park Service Concession Management Improvement Act of 1998, 16 U.S.C. §§5951 *et seq.* (as hereafter amended or modified, the "Statute") and regulations promulgated by the NPS pursuant thereto and found at 36 C.F.R. Part 51 (as hereafter amended or modified, the "Regulations") require, among other things, that the NPS approve certain sales and assignments of, and grants of security interests in or encumbrances on: a concession contract with the NPS; any rights to operate under or manage the performance of a concession contract; and any leasehold surrender interest. Therefore, the Borrower requests that the NPS approve the encumbrances to be effected pursuant to the Commerce Bank Financing and the Encumbrance.

The parties hereby agree as follows:

1. **Approval of Encumbrance.**

(a) Pursuant to, and to the extent required by, the Statute, the Regulations and the Gateway Contract, the NPS hereby approves and consents, solely for the purposes required by 16 U.S.C. 5957, to the Encumbrance providing security for the Commerce Bank Loan as evidenced by the Commerce Bank Financing Documents to finance the improvements the Concessioner is required to make under the Gateway Contract as specified in Section 9(d) of the Gateway Contract.

(b) Notwithstanding the terms of the Commerce Bank Financing Documents or any other agreement entered into between Commerce Bank and the Borrower, as of the date hereof or at a later date, the United States, pursuant to the Gateway Contract, has a first lien on all assets of the Concessioner within the Area. The United States is not, by approving the Encumbrance or otherwise, waiving its right to this first lien on such assets.

2. **Consent to Exercise of Remedies; Conditions to Exercise.** Upon the occurrence of an Event of Default under any of the Commerce Bank Financing Documents, Commerce Bank in its discretion shall have the right to exercise its rights and remedies thereunder (including, without limitation, foreclosure on the Encumbrance), provided, however, Commerce Bank's exercise of such rights and remedies shall be subject, to the extent applicable, to (i) the terms and conditions of the Gateway Contract, (ii) the terms, provisions and limitations of Section 51.89 of the Regulations, and (iii) compliance with Section 51.87 of the Regulations, including, without limitation, (x) a determination by the NPS under Section 51.87(c) of the Regulations that Commerce Bank, any assignee, designee or receiver of Commerce Bank or any operator proposed by Commerce Bank is a "qualified person," as such term is defined in the Regulations, prior to beginning any operations under the Gateway Contract, and (y) such new operator's (whether such operator is Commerce Bank, any assignee, designee or receiver of Commerce Bank or any other person or entity) written commitment, among other things, to cure any existing defaults under the Gateway Contract (including defaults by the Borrower or any

previous operator) in accordance with the Gateway Contract to the extent required by the NPS in its sole and absolute discretion.

3. **Payment Direction Letter.** The Concessioner shall send to the NPS a letter of payment direction substantially in the form attached hereto as Exhibit C (the "**Payment Direction Letter**") simultaneously with the execution and delivery of this Consent.

4. **The NPS Concession Manager.** The NPS shall designate an NPS employee stationed at Gateway National Recreation Area to be a point of contact for the NPS in the Project and the Gateway Contract (the "**Concession Manager**") who will, on behalf of the NPS, coordinate written approval in accordance with the terms of the Gateway Contract of (i) plans and specifications for the Project, (ii) the estimate of the total construction cost of the Project, (iii) any proposed change orders relating to the Project, (iv) any additions to any structures or replacement of fixtures described in the Gateway Contract and (v) periodic issuance of reports relating to the Leasehold Surrender Interest tracking system and referred to in the Gateway Contract, if any.

5. **The NPS Notices to Commerce Bank and Commerce Bank Option to Cure.** In the event the NPS terminates or suspends the Gateway Contract pursuant to Section 16 thereof, the Statute or the Regulations, or withdraws any of the concession facilities pursuant to Sections 8(b) and/or (c) of the Gateway Contract, the NPS shall endeavor to deliver to Commerce Bank concurrently a copy of any notice given to the Borrower in respect thereof, provided that the failure to make any delivery to Commerce Bank shall not affect the validity of any such termination, suspension or withdrawal nor result in any liability of the NPS to any other party hereto. In the event the NPS provides any notices of breach or default to the Borrower pursuant to Section 16(b)(3) of the Gateway Contract, the NPS shall endeavor to deliver concurrently a copy of any such notice to Commerce Bank, provided that the failure to make any delivery to Commerce Bank shall not affect the validity of any such notice of breach nor result in any liability of the NPS to any other party hereto. The NPS will allow Commerce Bank, in its name or in the name of the Borrower, an opportunity to cure such a breach within the time frames provided to Borrower under the terms of the Gateway Contract and in accordance with law. Notwithstanding the foregoing, nothing herein or otherwise shall obligate Commerce Bank to cure any default by the Concessioner under the Gateway Contract. Commerce Bank may make such determination in its sole and absolute discretion. In addition, the NPS shall endeavor to deliver to Commerce Bank concurrently with delivery to Borrower (i) any maintenance and property condition assessments obtained from time to time by the NPS in relation to the Area and/or the Project and (ii) copies of all material correspondence or notices relating to the Gateway Contract.

6. **Conditions and Limitations Upon the NPS Consent.**

(a) Notwithstanding the terms or conditions of any agreement entered into between Commerce Bank and the Borrower to effectuate the Encumbrance, the approval of the Encumbrance by the NPS shall not be construed, in any manner, as amending, altering or waiving any term or condition of the Gateway Contract, or as amending,

altering or waiving the responsibility of the Borrower to perform its obligations under the Gateway Contract.

(b) The approval by the NPS of the Encumbrance will not be used at any time by the Borrower or any related party as justification for:

(i) An increase in rates to be charged to the public;

(ii) A waiver or reduction of franchise fees or other requirements under the Gateway Contract; or

(iii) Any claim that the terms of the Gateway Contract does not provide a reasonable opportunity for profit.

(c) The NPS, when developing the requirements of any subsequent concession contract for the operation of concession facilities at the Gateway National Recreation Area, will not take into account any outstanding debt resulting from the Encumbrance. Franchise fees and other contract obligations for any such subsequent concession contract will be established based on the probable value to a successor concessioner of the authorization as determined by the NPS. Borrower assumes all risk in this connection.

(d) In the event that the Borrower is not awarded a subsequent concession contract for the operation of concession facilities at the Gateway National Recreation Area, neither the NPS nor the successor concessioner will bear any liability for the Commerce Bank Loan or any other debt incurred by the Borrower that is secured by the Encumbrance.

(e) Approval of the Encumbrance by the NPS in no manner implies the existence of, or grants, any preferential right to the award of any subsequent concession contracts for the operation of concession facilities at the Gateway National Recreation Area or any other national parks, and the Borrower waives any right it may have to assert that approval of the Encumbrance by the NPS implies the existence of, or grants, any such preferential right.

(f) Neither the Borrower or any other related entity will utilize this Consent in any form or manner, including, but not limited to, any litigation, proceeding or hearing involving the NPS or the United States of America, as evidence of any fact or matter other than the fact that the NPS approved the Encumbrance in accordance with 16 U.S.C. §5957 and the Regulations.

(g) Notwithstanding any representation made by the Borrower to the NPS or Commerce Bank or any other person as to the value of the Gateway Contract or the LSI described therein, or as to any other matters related to this transaction, the NPS, by approving the Encumbrance, expressly is not agreeing to, approving or concurring in any such representations made by the Borrower. The NPS reserves the right to challenge, in accordance with the Statute and the Regulations, any representation made by the

Borrower in any future matter concerning the Gateway Contract (and any other NPS concession contract) and the NPS, including, but not limited to, the value of the LSI.

7. **Representations and Warranties of the NPS.** The NPS hereby represents and warrants that all approvals necessary for the due execution and delivery by the NPS of this Consent under the Regulations have been duly obtained and are in full force and effect. The NPS hereby represents and warrants that the Gateway Contract is in full force and effect.

8. **Representations and Warranties of the Borrower.** The Borrower hereby represents and warrants to the NPS and to Commerce Bank that:

(a) The execution, delivery and performance by it of this Consent have been duly authorized by all necessary limited liability company action on its part.

(b) All approvals necessary for the due execution and delivery by it of this Consent have been duly obtained and are in full force and effect.

(c) This Consent is in full force and effect and is its valid and binding obligation, enforceable against it in accordance with the terms of this Consent.

(d) It has not been advised by the NPS or any official of the United States government that the NPS or such governmental official considers the terms of the transactions contemplated by the Commerce Bank Financing Documents to be reasonable or that the Borrower may expect to earn a profit under the terms of the Gateway Contract and such transactions.

(e) No consent or authorization of, filing with, notice to or other act by or in respect of, any governmental authority, other than the NPS, or any other person is required in connection with the transactions contemplated by the Commerce Bank Financing Documents.

(f) The Borrower has simultaneously with the delivery of this Consent delivered true, correct and complete copies of each of the Commerce Bank Financing Documents, a true, correct and complete list of which is attached hereto as Exhibit D. The Commerce Bank Financing Documents constitute all the material documents and agreements that govern, control, evidence and secure the Commerce Bank Financing. There are no other material documents, agreements or instruments that evidence or effect the consummation of the transactions contemplated hereby other than those listed on Exhibit B hereto.

(g) The Borrower is not in default under or with respect to any of its obligations in any respect under any of the Commerce Bank Financing Documents and no default or Event of Default has occurred thereunder.

9. **Miscellaneous.**



(a) This Consent shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) No amendment or waiver of any provision of this Consent shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(c) THIS CONSENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE UNITED STATES OF AMERICA, TO THE EXTENT APPLICABLE THERETO.

(d) All notices to be given under this Consent shall be in writing and shall be (i) personally delivered, (ii) sent by certified or registered first-class mail, postage prepaid, return receipt requested, (iii) sent by a nationally recognized courier service, with delivery receipt requested, or (iv) sent by telecopy transmission to the intended recipient at its address or telecopy number set forth below, unless the recipient has given notice of another address or telecopy number for receipt of notices. All notices sent hereunder shall be deemed to have been given when transmitted by telecopy or personally delivered or in the case of a notice mailed or sent by courier, upon receipt, at the address provided for herein:

If to the NPS:

Regional Chief of Concessions  
National Park Service Northeast Region  
200 Chestnut Street  
Philadelphia, Pennsylvania 19106  
Attention: Pamela McLay  
Telecopy: 215-597-5748

with a copy to:

Superintendent  
Gateway National Recreational Area  
Floyd Bennett Field, Building 69  
Brooklyn, New York 11234  
Attention: Chief, Business Management  
Division  
Telecopy: 718-338-3560

If to the Borrower:

c/o Ajax Group  
162 Fifth Avenue  
New York, New York 10010  
Attention: David Prager  
Telecopy: 212-965-2409

with a copy to: DLA Piper Rudnick Gray Cary US LLP  
203 N. LaSalle Street, Suite 1900  
Chicago, Illinois 60601-1293  
Attention: John Cusack  
Telecopy: 312-236-7516

If to Commerce Bank: Commerce Bank, N.A.  
211 Montague Street  
Brooklyn, New York 11201  
Attention: George Andreozzi  
Telecopy: 718-290-1220

with a copy to: Anderson Kill & Olick, P.C.  
1251 Avenue of the Americas  
New York, New York 10020-1182  
Attention: Arnold L. Bartfeld  
Telecopy: 212-278-1733

(e) This Consent may be executed in one or more counterparts with the same effect as if such signatures were upon the same instrument.

(f) No further assignment or encumbrance of the Gateway Contract or any of Borrower's rights or interests thereunder may be made without the written consent and approval of the NPS in accordance with 16 U.S.C. §5957 and the Regulations.

(g) Without the prior written consent of the NPS, (i) Aviator Sports shall not transfer, assign, convey, mortgage, pledge, encumber, or otherwise transfer or provide as a security interest all or any portion of its ownership interests in the Concessioner and (ii) the Borrower shall not further transfer, assign, convey, mortgage, pledge, encumber, or otherwise transfer or provide as a security interest all or any portion of its ownership interests in the Gateway Contract.

(h) The Borrower will reimburse and indemnify the NPS from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements of any kind or nature whatsoever (collectively, "Losses") that may be imposed on, incurred by, or asserted against the NPS in any way arising out of or based upon any claims, disputes, actions, suits, arbitrations or proceedings made or asserted against the NPS in connection with its following or acting in accordance with the terms of the Payment Direction Letter dated as of the date hereof. The obligations of the Borrower under this Section shall survive the payment in full of the Commerce Bank Loan and the termination of the Commerce Bank Financing Documents, including the Collateral Assignment.

(i) The Borrower hereby agrees to (i) notify the NPS in writing upon becoming aware of any default or event of default under any of the Commerce Bank

Financing Documents, and (ii) promptly provide to the NPS copies of any written notices received from Commerce Bank.

(j) In the event that a new concession contract is to be awarded to a new concessioner pursuant to Exhibit A of the Gateway Contract, the NPS will use its best efforts to award such new concession contract within 12 months of termination or expiration of the Gateway Contract pursuant to Section 16 thereof. If the NPS is unable to award a new concession contract within 12 months of termination of the Gateway Contract, such non-award of a successor concession contract shall not give rise to liability of the NPS to Commerce Bank, provided, however, that nothing in this Section 9(j) shall relieve the NPS of its obligations under the Gateway Contract. Nothing contained herein shall constrain the NPS from deciding not to award a new concession contract.

(k) The NPS agrees that the Leasehold Surrender Interest Value shall, when due, be payable without any deduction or set-off other than such deduction or set-off reflecting any amount of the Franchise Fee then owing to the NPS pursuant to Section 11 of the Gateway Contract or any other sums that may be claimed to be owed to the NPS under the Gateway Contract.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the undersigned by their duly authorized signatories or officers have caused this Consent to be duly executed and delivered as of the date first written above.

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

By: Mary A. Bomar  
Mary Bomar  
Regional Director of the National Park Service,  
Northeast Region

**AVIATOR DEVELOPMENT COMPANY, LLC**

By: Aviator Sports and Recreation LLC, Manager  
By: Ajax Gateway, LLC, Managing Member  
By: Ajax Capital, LLC, Manager

By: David M. Prager  
David M. Prager, Chief Operating Officer

**AVIATOR SPORTS AND RECREATION LLC**

By: Ajax Gateway, LLC, Managing Member  
By: Ajax Capital, LLC, Manager

By: David M. Prager  
David M. Prager, Chief Operating Officer

**COMMERCE BANK, N.A.**

By: George Andreozzi  
Name: George Andreozzi  
Title: Regional Vice President

**Exhibit A**

**Commerce Bank Financing Documents**

**[DESCRIBE COMMERCE BANK LOAN DOCUMENTS]**

- All pro formas, legal opinions and other documents and agreements governing, controlling, evidencing and securing the Commerce Bank Financing
- All documents required under Section 51.91 of the Regulations

**Exhibit B**

**Form of Collateral Assignment of Concession Contract and Leasehold Surrender Interest**

**Exhibit C**

**Form of Payment Direction Letter**

**[To Be Printed on Letterhead of Aviator Development Company, LLC]**

March 15, 2006

Suprintendent  
Gateway National Recreation Area  
Floyd Bennett Field, Building 69  
Brooklyn, New York 11234  
Attention: Chief, Business Management Division

Re: Concession Contract No. CC-Gate015-03

Dear Sir or Madam:

By this letter, Aviator Development Company, LLC, the Concessioner under Concession Contract No. CC-Gate015-03 effective on April 15, 2003, as amended by Amendment No. 1 dated as of February 27, 2006 (the "**Gateway Contract**"), irrevocably directs the National Park Service (the "**NPS**") to make all payments due or to become due to the Concessioner from the NPS under the Gateway Contract including without limitation, in respect of the Leasehold Surrender Interest Value described therein to Commerce Bank, N.A., as Lender, at the following address:

Commerce Bank, N.A.  
211 Montague Street  
Brooklyn, New York 11201  
Attention: George Andreozzi

This irrevocable letter of direction is to remain in effect until such time as the NPS receives a Release Notice (the form of which is attached to this letter as Exhibit A) from Commerce Bank, N.A., as Lender. While this letter remains in effect, the NPS may not rely on any request or instruction from the Concessioner that is inconsistent with this payment direction and may not make any such payment inconsistent with this payment direction. Upon receipt by the NPS of the signed Release Notice, any payments due or to become due to the Concessioner from the NPS under the Gateway Contract may be made to the Concessioner. The NPS may rely on the accuracy and validity of a signed Release Notice, and on the authority of the signatory to execute the Release Notice and on the genuineness of the signature, provided that the Release Notice is in the form of Exhibit A.

This letter shall not be construed as or have the effect of amending, modifying, varying or waiving the terms of the Gateway Contract.

Very truly yours,

AVIATOR DEVELOPMENT COMPANY,  
LLC

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

Name: David M. Prager

Title: Chief Operating Officer

Accepted and Agreed:

UNITED STATES DEPARTMENT OF  
THE INTERIOR,  
NATIONAL PARK SERVICE

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

Mary Bomar

Regional Director of the National Park Service, Northeast Region

Date as of: March 15, 2006



**Exhibit A to Form of Payment Direction Letter**

**Form of Release Notice**

**[Commerce Bank, N.A. Letterhead]**

[date]

Superintendent  
Gateway National Recreation Area  
Floyd Bennett Field, Building 69  
Brooklyn, New York 11234  
Attention: Chief, Business Management Division

Re: Concession Contract No. CC-Gate015-03, as amended

Dear Sir or Madam:

This release notice ("**Release Notice**") is given by Commerce Bank, N.A., pursuant to a payment direction letter dated as of March 10, 2006, to the National Park Service (the "NPS") from Aviator Development Company, LLC, the Concessioner under Concession Contract No. CC-Gate015-03, as amended (the "**Gateway Contract**").

Commerce Bank, N.A., as Lender, hereby notifies you that the obligations secured by the Gateway Contract have been paid, redeemed, defeased or discharged. Hereafter, any payments due or to become due to the Concessioner from the NPS under the Gateway Contract (including, without limitation, in respect to the Leasehold Surrender Interest described therein) may be made directly to the Concessioner.

Very truly yours,

COMMERCE BANK, N.A., as Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D  
ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

**LAND ASSIGNED:** All that certain lot, piece, or parcel of land, lying and being situated in Kings County, State of New York, located on the Easterly side of Flatbush Avenue, within Floyd Bennett Field, U.S. Naval Air Station, being further depicted on a graphic entitled:

See "EXHIBIT D1 – ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT", Concessions Contract No. CCGATE015-03, (excluding Land Assigned to Building 129) more particularly described as follows:

Beginning at the Southern most corner of herein described parcel; said point of beginning being an angle point situated between a pump house and a light tower, as depicted on said Exhibit D;

Thence, Northwesterly, approximately 1,266 feet, more or less, to an angle point;

Thence, Northeasterly, approximately 500 feet, more or less, to an angle point;

Thence, Southeasterly, approximately 1,065 feet, more or less, to an angle point;

Thence, Southwesterly, approximately 150 feet, more or less; to an angle point;

Thence, Southeasterly, approximately 190 feet, more or less, to an angle point;

Thence, Southwesterly, approximately 405 feet, more or less, to the point of beginning and containing 14.82 acres of land, more or less.

**LAND ASSIGNED:** All that certain lot, piece, or parcel of land, lying and being situated in Kings County, State of New York, located on the Easterly side of Flatbush Avenue, within Floyd Bennett Field, U.S. Naval Air Station, being further depicted on a graphic entitled:

See "EXHIBIT D3 – ASSIGNED LAND AND REAL PROPERTY IMPROVEMENT", Concessions Contract No. CCGATE015-03, Building 129 more particularly described as follows:

Intent is for the concessioner to maintain a perimeter of land outside building 129 at a 50' offset from the furthest extent of the east, north and west sides of the building, an area of 162' x 316', or 51,192 square feet.

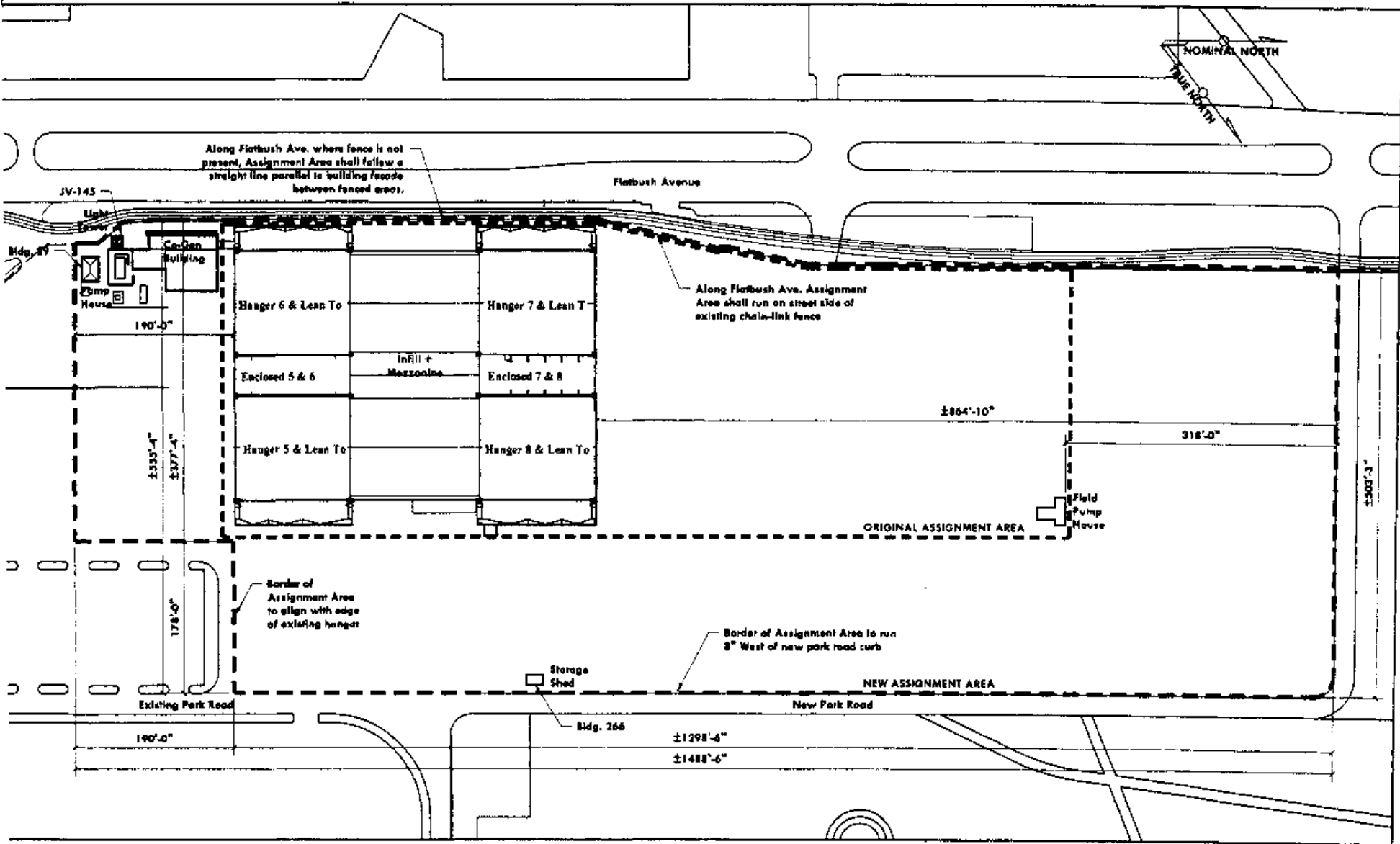
**REAL PROPERTY IMPROVEMENTS ASSIGNED:**

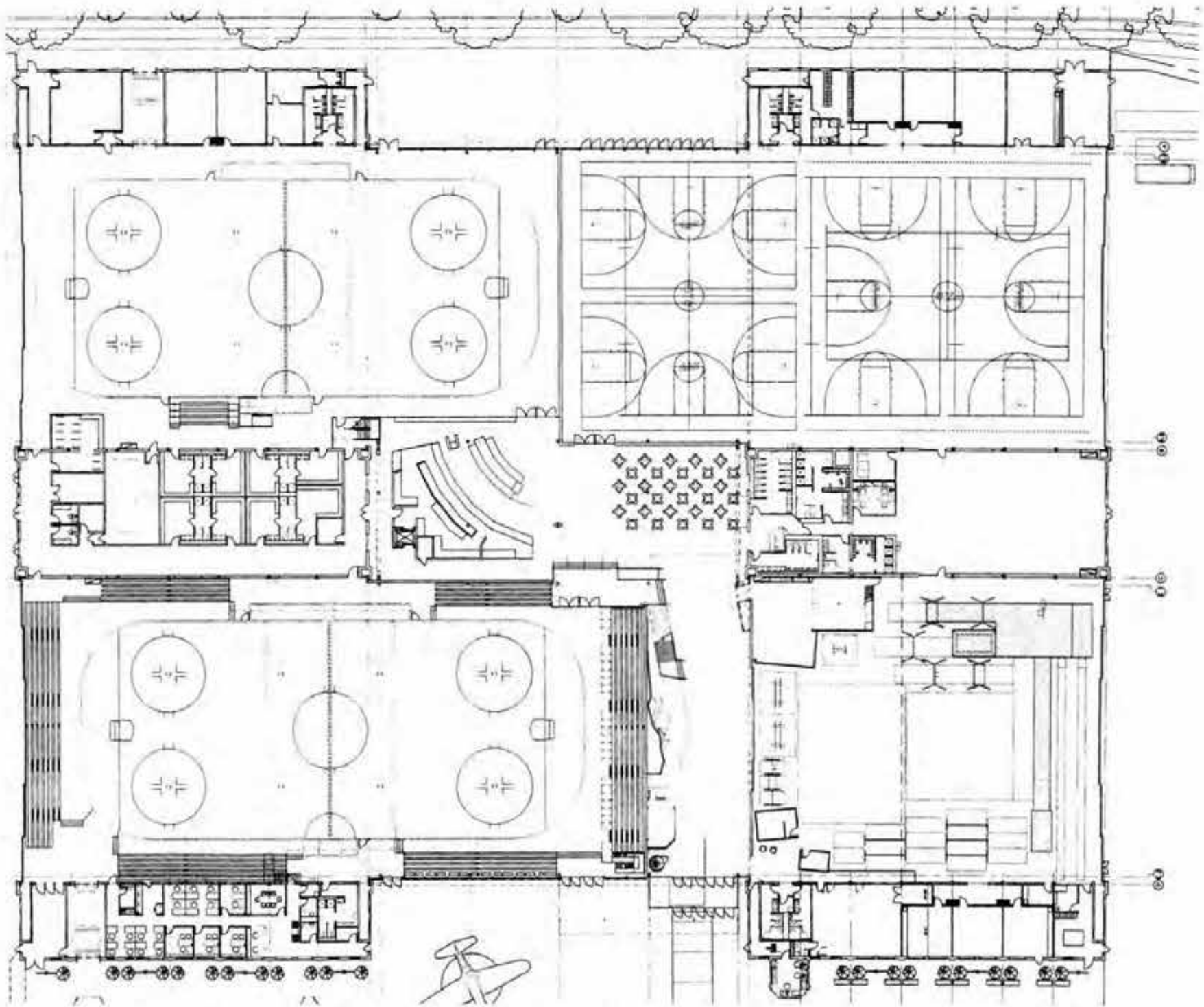
The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

<b>Building # &amp; Description</b>	<b>Building Name</b>	<b>Square Footage</b>
See Exhibit D1, D2	hangar 5	16,820
See Exhibit D1, D2	hangar 5 lean-to	3,944
See Exhibit D1, D2	hangar 6	16,820
See Exhibit D1, D2	hangar 6 lean-to	3,944
See Exhibit D1, D2	enclosed space between hangars 5 & 6	6,528
See Exhibit D1, D2	hangar 7	16,820
See Exhibit D1, D2	hangar 7 lean-to	3,944
See Exhibit D1, D2	hangar 8	16,820
See Exhibit D1, D2	hangar 8 lean-to	3,944
See Exhibit D1, D2	enclosed space between hangars 7 & 8	6,528
See Exhibit D1, D2	Infill Mezzanine (Former outside open area between the two pairs of hangers)	52,500 8,000 +-
See Exhibit D1	Field Pump House	678
See Exhibit D1	Co-Gen Building Proposed	5,612
129 See Exhibit D3	The former "Job Corps" kitchen and serving area.	8,760
29, See Exhibit D1	Pump House	913
266, See Exhibit D1	Storage Shed	240
JV145, See Exhibit D1	Light Tower	196
<b>TOTAL GROSS FLOOR AREA</b>	<b>REAL PROPERTY IMPROVEMENTS ASSIGNED &amp; PROPOSED</b>	<b>172,758</b>

Approved, effective February 27, 2006

By Mary A. [Signature]  
Director, Northeast Region

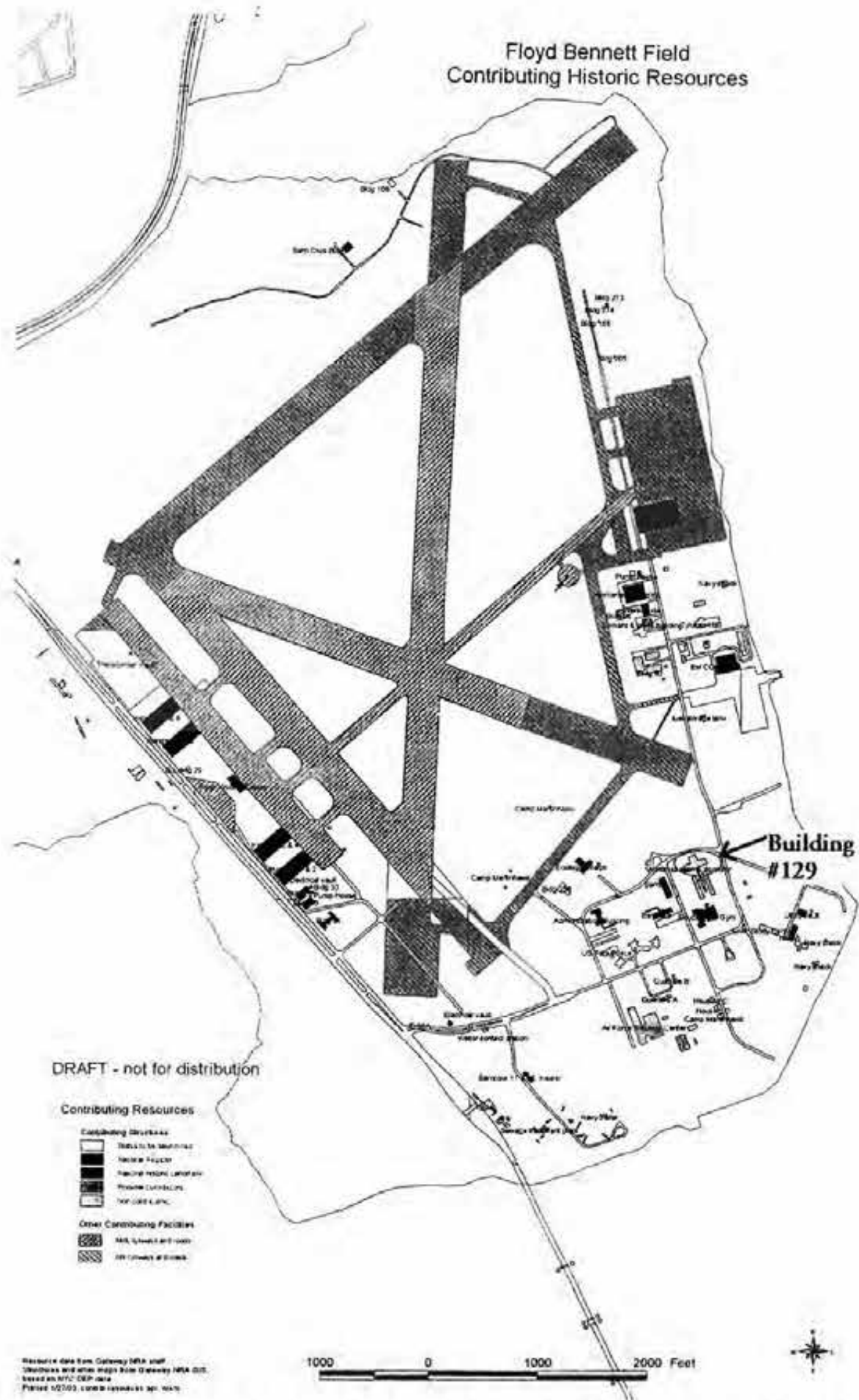




CONCESSIONS CONTRACT NO. CCGATE015-03

EXHIBIT D2 - FLOOR PLAN LAYOUT FOR HANGERS 5 - 8 INCLUDING INFILL & MEZZANINE

# Floyd Bennett Field Contributing Historic Resources



**CONCESSION CONTRACT NO. CCGATE015-03**  
**EXHIBIT F1 TOTAL CONSTRUCTION COST AS OF 12-13-05 (Per Concessioner)**

Aviator Sports and Recreation Facility 12-13 2005	Project 001	Project 002	Project 003	Project 004	Project 005	Project 006	Project 007	Project 008
Project Budget Projects 001-008	Total Project Cost	Total Project Cost	Total Project Cost	Total Project Cost	Total Project Cost	Total Project Cost	Total Project Cost	Total Project Cost
Description								
<b>Construction</b>								
Division 1 General Requirements	\$596,562.00	\$141,020.00			\$220,000.00			
Division 2 Sitework	\$1,130,000.00		\$800,000.00					
Division 2A Demolition Removals/Sitework	\$479,776.00				\$365,000.00			
Division 3 Concrete	\$1,738,000.00		\$200,000.00		\$65,000.00			
Division 4 Masonry	\$1,392,000.00			\$25,000.00	\$20,500.00			
Division 5 Metals	\$1,555,000.00				\$60,000.00			
Division 6 Wood and Plastic	\$20,000.00				\$25,000.00			
Division 7 Thermal and Moisture Protection	\$1,424,000.00				\$345,000.00			
Division 8 Doors and Windows	\$2,289,300.00				\$113,000.00			
Division 9 Finishes	\$1,882,000.00				\$254,000.00			
Division 10 Specialties	\$105,300.00				\$27,500.00			
Division 11 Equipment	\$1,710,000.00	\$2,262,474.00						
Division 12 Furnishings	\$726,468.00							
Division 13 Special Construction	\$135,000.00		\$700,000.00					
Division 14 Conveying Systems	\$120,000.00							
Division 15A Plumbing/Sprinkler	\$1,558,000.00	\$66,708.00		\$25,000.00	\$287,500.00			
Division 15B Mechanical	\$2,547,000.00	\$481,083.00		\$25,000.00	\$770,500.00			
Division 16 Electrical	\$2,615,000.00	\$1,567,274.00	\$250,000.00	\$25,000.00	\$345,000.00			
Changeorders	\$890,000.00	\$293,596.00	\$0.00	\$0.00	\$0.00			
Architecture	\$1,926,750.00		\$198,000.00	\$0.00	\$200,000.00			
Insurance	\$35,000.00		\$0.00	\$0.00	\$15,000.00			
Consultants	\$105,000.00		\$0.00	\$0.00	\$0.00			
Project Manager	\$509,000.00	\$217,369.00	\$0.00	\$0.00	\$0.00			
NYSERDA Grant		-\$400,000.00						
Engineering		\$170,476.00						
Construction Costs Interest						\$690,078.00		
Salaries							\$837,300.00	
Benefits							\$125,595.00	
Sports Equipment							\$85,000.00	
Major Equipment							\$1,045,000.00	
Netting and Curtains							\$225,000.00	
Scoreboards							\$165,000.00	
Flooring, Tinting, Staging, Padding							\$310,000.00	
Seating							\$150,000.00	
Ice Rink Equipment							\$70,000.00	
Equipment Contingency							\$50,000.00	
Card Access System/Security							\$1,000,000.00	
Technology							\$500,000.00	
Video and PA							\$1,000,000.00	
Launch Advertising and Promotion							\$500,000.00	
Landor							\$200,000.00	
Science & Fiction							\$100,000.00	
Fund Raising Fees							\$200,000.00	
Legal and Bank Fees							\$400,000.00	
Misc. Consulting							\$150,000.00	
Other Misc.							\$50,000.00	
Working Capital								\$250,000.00
<b>TOTAL</b>	<b>\$25,489,156.00</b>	<b>\$4,800,000.00</b>	<b>\$2,148,000.00</b>	<b>\$180,000.00</b>	<b>\$3,115,000.00</b>	<b>\$690,078.00</b>	<b>\$7,162,895.00</b>	<b>\$250,000.00</b>

**Exhibit J- "Aviator Baseline Gross Revenue Projections"**

**Projected Income Statement**

	2006	2007	2008	2009	2010	2011
<b>Revenue</b>						
<b>Rinks</b>						
General Skating Revenue	\$787,800	\$931,725	\$1,043,532	\$1,164,190	\$1,222,400	\$1,283,520
Figure Skating	436,800	516,600	578,592	645,492	677,766	711,655
Ice Hockey	1,228,500	1,452,937	1,627,290	1,815,445	1,906,218	2,001,529
Ancillary	927,300	1,077,787	1,198,512	1,328,614	1,395,045	1,464,797
<b>Rink Total</b>	<b>3,380,400</b>	<b>3,979,050</b>	<b>4,447,926</b>	<b>4,953,742</b>	<b>5,201,429</b>	<b>5,461,501</b>
<b>Fields</b>						
Leagues	542,400	694,950	875,637	1,072,655	1,287,186	1,351,546
Ancillary	280,800	307,500	343,539	382,413	424,316	445,532
Special Events	100,000	102,500	107,625	113,006	118,657	124,589
Turf Fields	917,550	940,489	987,513	1,036,889	1,088,733	1,143,170
<b>Field Total</b>	<b>1,840,750</b>	<b>2,045,439</b>	<b>2,314,314</b>	<b>2,604,964</b>	<b>2,918,892</b>	<b>3,064,837</b>
<b>Courts</b>						
Basketball Leagues	432,000	531,360	650,916	781,099	820,154	861,162
Ancillary	264,000	270,600	284,130	298,336	313,253	328,916
<b>Court Total</b>	<b>696,000</b>	<b>801,960</b>	<b>935,046</b>	<b>1,079,436</b>	<b>1,133,407</b>	<b>1,190,078</b>
<b>Facility</b>						
Retail Rent and Commission	112,099	129,788	147,218	162,284	172,474	181,098
Food & Beverage Rent and Commission	514,738	721,560	968,001	998,014	1,020,855	1,071,898
Food & Beverage Equity Ownership	237,906	424,095	645,757	679,895	708,058	743,461
Birthday Parties	209,664	417,872	477,568	477,568	477,568	501,446
Corporate Events	250,000	262,500	275,625	289,406	303,877	319,070
Aviator Memberships	850,000	1,071,250	1,324,969	1,596,913	1,888,398	1,982,818
Gymnastics	1,434,720	1,692,236	1,977,083	2,022,337	2,069,854	2,173,347
Summer Camp	1,000,000	1,230,000	1,506,750	1,808,100	1,898,505	1,993,430
Sponsorship/signage	1,000,000	1,050,000	1,102,500	1,157,625	1,215,506	1,276,282
Corporate Advertising	500,000	525,000	551,250	578,813	607,753	638,141
<b>Facility Total</b>	<b>6,109,126</b>	<b>7,524,301</b>	<b>8,976,721</b>	<b>9,771,954</b>	<b>10,362,848</b>	<b>10,880,990</b>
<b>Total Revenue</b>	<b>\$12,026,276</b>	<b>\$14,360,750</b>	<b>\$16,874,007</b>	<b>\$18,410,096</b>	<b>\$19,616,576</b>	<b>\$20,597,405</b>



	<i>% growth</i>	<i>NM</i>	<i>19.3%</i>	<i>16.2%</i>	<i>10.4%</i>	<i>6.6%</i>	<i>5.0%</i>
<b>Operating Expenses</b>							
Payroll		\$2,791,000	\$2,930,550	\$3,077,077	\$3,230,931	\$3,392,478	\$3,562,102
Benefits		418,650	439,582	461,562	484,640	508,872	534,315
<b>Total Payroll</b>		<b>3,209,650</b>	<b>3,370,132</b>	<b>3,538,639</b>	<b>3,715,571</b>	<b>3,901,350</b>	<b>4,096,417</b>
Utilities		1,144,880	1,207,963	1,277,354	1,353,685	1,437,648	1,530,008
Insurance		750,000	787,500	826,875	868,219	911,630	957,211
League Expenses		434,648	526,986	617,014	714,728	778,621	817,552
Maintenance		424,000	445,200	467,460	490,833	515,375	541,143
Camp Expenses		250,000	307,500	376,687	452,025	474,626	498,358
Gymnastics Expenses		358,680	423,059	494,271	505,584	517,464	543,337
Advert/Marketing/PR		350,000	367,500	385,875	405,169	425,427	446,699
General and Administrative		250,000	262,500	275,625	289,406	303,877	319,070
Uniforms		20,000	21,000	22,050	23,153	24,310	25,526
Credit Card Fees (1% sales)		120,263	143,507	166,740	184,101	196,166	205,974
Contingency		182,803	196,571	211,215	225,062	237,162	249,532
<b>Total Non-Payroll Opex</b>		<b>\$4,285,273</b>	<b>\$4,689,287</b>	<b>\$5,121,167</b>	<b>\$5,511,964</b>	<b>\$5,822,306</b>	<b>\$6,134,410</b>
<b>Pre-Opening Expenses</b>							
Nat. Park Service Fee (2%)		240,526	287,015	333,480	368,202	392,332	411,948
<b>Total Oper. Expenses</b>		<b>7,735,449</b>	<b>8,346,434</b>	<b>8,993,288</b>	<b>9,585,737</b>	<b>10,115,397</b>	<b>10,642,776</b>
<b>EBITDA</b>		<b>4,290,827</b>	<b>6,004,316</b>	<b>7,680,721</b>	<b>8,814,359</b>	<b>9,500,589</b>	<b>9,954,630</b>
<i>% margin</i>		<i>35.7%</i>	<i>41.8%</i>	<i>46.1%</i>	<i>47.9%</i>	<i>48.4%</i>	<i>48.3%</i>
Staff Bonus Pool		129,083	290,432	447,739	550,425	608,014	642,017
Depreciation		1,642,509	1,664,035	1,689,046	1,716,661	1,746,086	1,776,982
<b>EBIT</b>		<b>2,519,236</b>	<b>4,049,849</b>	<b>5,543,936</b>	<b>6,547,273</b>	<b>7,146,489</b>	<b>7,535,631</b>
Interest		1,280,000	1,216,000	1,050,000	960,000	870,000	780,000
<b>Pre-Tax Profit</b>		<b>1,239,236</b>	<b>2,833,849</b>	<b>4,493,936</b>	<b>5,587,273</b>	<b>6,276,489</b>	<b>6,755,631</b>
NY Uninc. Business Tax (4%)		49,569	113,354	179,757	223,491	251,060	270,225
<b>Net Income</b>		<b>\$778,667</b>	<b>\$1,720,495</b>	<b>\$2,314,179</b>	<b>\$2,963,782</b>	<b>\$3,025,429</b>	<b>\$3,485,406</b>
<i>% margin</i>		<i>9.9%</i>	<i>19.0%</i>	<i>25.9%</i>	<i>29.1%</i>	<i>30.7%</i>	<i>31.5%</i>

Projected Year Beginning June

2012	2013	2014	2015	2016	2017	2018	2019	2020
\$1,347,696	\$1,415,081	\$1,485,835	\$1,560,126	\$1,638,133	\$1,720,039	\$1,806,041	\$1,896,343	\$1,991,161
747,237	784,599	823,829	855,021	908,272	953,685	1,001,369	1,051,438	1,104,010
2,101,605	2,206,685	2,317,019	2,432,870	2,554,514	2,682,240	2,816,352	2,957,169	3,105,028
1,538,037	1,614,939	1,695,686	1,780,470	1,869,494	1,962,969	2,061,117	2,164,173	2,272,382
<b>5,734,576</b>	<b>6,021,304</b>	<b>6,322,370</b>	<b>6,638,488</b>	<b>6,970,412</b>	<b>7,316,933</b>	<b>7,684,880</b>	<b>8,069,124</b>	<b>8,472,580</b>
1,419,123	1,490,079	1,564,583	1,642,812	1,724,953	1,811,201	1,901,761	1,996,849	2,096,691
467,808	491,199	515,759	541,547	568,624	597,055	626,908	658,253	691,166
130,819	137,360	144,228	151,439	159,011	166,962	175,310	184,075	193,279
1,200,328	1,260,345	1,323,362	1,389,530	1,459,007	1,531,957	1,608,555	1,688,983	1,773,432
<b>3,218,079</b>	<b>3,378,982</b>	<b>3,547,932</b>	<b>3,725,328</b>	<b>3,911,595</b>	<b>4,107,174</b>	<b>4,312,533</b>	<b>4,528,160</b>	<b>4,754,568</b>
904,220	949,431	996,903	1,046,748	1,099,085	1,154,039	1,211,741	1,272,328	1,335,945
345,362	362,630	380,761	399,799	419,789	440,779	462,818	485,959	510,257
<b>1,249,582</b>	<b>1,312,061</b>	<b>1,377,664</b>	<b>1,446,547</b>	<b>1,518,874</b>	<b>1,594,818</b>	<b>1,674,559</b>	<b>1,758,287</b>	<b>1,846,201</b>
190,153	199,660	209,643	220,125	231,132	242,688	254,823	267,564	280,942
1,125,492	1,181,767	1,240,855	1,302,898	1,368,043	1,436,445	1,508,267	1,583,681	1,662,865
780,634	819,666	860,649	903,681	948,865	996,309	1,046,124	1,098,430	1,153,352
526,519	552,845	580,487	609,511	639,987	671,986	705,585	740,865	777,908
335,024	351,775	369,364	387,832	407,224	427,585	448,964	471,412	494,983
2,081,958	2,186,056	2,295,359	2,410,127	2,530,633	2,657,165	2,790,023	2,929,525	3,076,001
2,282,014	2,396,115	2,515,921	2,641,717	2,773,803	2,912,493	3,058,117	3,211,023	3,371,574
2,093,102	2,197,757	2,307,645	2,423,027	2,544,178	2,671,387	2,804,957	2,945,204	3,092,465
1,340,096	1,407,100	1,477,455	1,551,328	1,628,895	1,710,339	1,795,856	1,885,649	1,979,932
670,048	703,550	738,728	775,664	814,447	855,170	897,928	942,825	989,966
<b>11,425,040</b>	<b>11,996,291</b>	<b>12,596,106</b>	<b>13,225,911</b>	<b>13,887,207</b>	<b>14,581,567</b>	<b>15,310,646</b>	<b>16,076,178</b>	<b>16,879,987</b>
<b>\$21,627,275</b>	<b>\$22,708,639</b>	<b>\$23,844,071</b>	<b>\$25,036,275</b>	<b>\$26,288,088</b>	<b>\$27,602,493</b>	<b>\$28,982,617</b>	<b>\$30,431,748</b>	<b>\$31,953,336</b>

5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%
\$3,740,207	\$3,927,217	\$4,123,578	\$4,329,757	\$4,546,245	\$4,773,557	\$5,012,235	\$5,262,847	\$5,525,989
561,031	589,083	618,537	649,464	681,937	716,034	751,835	789,427	828,898
<b>4,301,238</b>	<b>4,516,300</b>	<b>4,742,115</b>	<b>4,979,221</b>	<b>5,228,182</b>	<b>5,489,591</b>	<b>5,764,070</b>	<b>6,052,274</b>	<b>6,354,887</b>
1,631,604	1,743,359	1,866,290	2,001,514	2,150,261	2,313,882	2,493,865	2,691,846	2,909,626
1,005,072	1,055,325	1,108,092	1,163,496	1,221,671	1,282,755	1,346,892	1,414,237	1,484,949
858,430	901,352	946,419	993,740	1,043,427	1,095,598	1,150,378	1,207,897	1,268,292
568,201	596,611	626,441	657,763	690,651	725,184	761,443	799,515	839,491
523,275	549,439	576,911	605,757	636,045	667,847	701,239	736,301	773,116
570,504	599,029	628,980	660,429	693,451	728,123	764,529	802,756	842,894
469,033	492,485	517,109	542,965	570,113	598,619	628,550	659,977	692,976
335,024	351,775	369,364	387,832	407,224	427,585	448,964	471,412	494,983
26,802	28,142	29,549	31,027	32,578	34,207	35,917	37,713	39,599
216,273	227,086	238,441	250,363	262,881	276,025	289,826	304,317	319,533
262,636	276,523	291,243	306,853	323,412	340,985	359,642	379,456	400,509
<b>\$6,466,854</b>	<b>\$6,821,126</b>	<b>\$7,198,839</b>	<b>\$7,601,738</b>	<b>\$8,031,713</b>	<b>\$8,490,809</b>	<b>\$8,981,246</b>	<b>\$9,505,429</b>	<b>\$10,065,967</b>
432,546	454,173	476,881	500,725	525,762	552,050	579,652	608,635	639,067
<b>11,200,637</b>	<b>11,791,599</b>	<b>12,417,835</b>	<b>13,081,584</b>	<b>13,785,856</b>	<b>14,532,460</b>	<b>15,324,968</b>	<b>16,166,337</b>	<b>17,059,921</b>
10,426,638	10,917,041	11,426,236	11,954,690	12,502,432	13,070,043	13,657,649	14,265,411	14,893,414
48.2%	48.1%	47.9%	47.7%	47.6%	47.4%	47.1%	46.9%	46.6%
677,436	714,302	752,641	792,477	833,829	876,710	921,127	967,082	1,014,567
1,809,423	1,843,486	1,879,252	1,916,807	1,956,239	1,997,642	2,041,116	2,086,764	2,134,694
<b>7,939,779</b>	<b>8,359,253</b>	<b>8,794,342</b>	<b>9,245,306</b>	<b>9,712,365</b>	<b>10,195,691</b>	<b>10,695,406</b>	<b>11,211,565</b>	<b>11,744,153</b>
690,000	600,000	510,000	420,000	330,000	240,000	150,000	60,000	0
<b>7,249,779</b>	<b>7,759,253</b>	<b>8,284,342</b>	<b>8,825,306</b>	<b>9,382,365</b>	<b>9,955,691</b>	<b>10,545,406</b>	<b>11,151,565</b>	<b>11,744,153</b>
289,991	310,370	331,374	353,012	375,295	398,228	421,816	446,063	469,766
<b>32.2%</b>	<b>32.6%</b>	<b>33.4%</b>	<b>33.8%</b>	<b>34.3%</b>	<b>34.6%</b>	<b>34.9%</b>	<b>35.2%</b>	<b>35.3%</b>

2021	2022	
		5%
\$2,090,719	\$2,195,255	
1,159,210	1,217,171	
3,260,279	3,423,293	
2,386,001	2,505,301	
<b>8,896,209</b>	<b>9,341,019</b>	
		5%
2,201,526	2,311,602	
725,724	762,010	
202,943	213,090	
1,862,103	1,955,209	
<b>4,992,298</b>	<b>5,241,911</b>	
		5%
1,402,742	1,472,879	
535,769	562,558	
<b>1,938,511</b>	<b>2,035,437</b>	
		5%
294,989	309,739	
1,746,008	1,833,308	
1,211,019	1,271,570	
816,803	857,644	
519,732	545,719	
3,229,801	3,391,291	
3,540,153	3,717,161	
3,247,088	3,409,442	
2,078,928	2,182,875	
1,039,464	1,091,437	
<b>17,723,986</b>	<b>18,610,185</b>	
<b>\$33,661,002</b>	<b>\$36,226,552</b>	

	5.0%	5.0%	
\$5,802,289		\$6,092,403	5.0%
870,343		913,860	
<b>6,672,632</b>		<b>7,006,263</b>	
2,635,133		2,898,647	10.0%
1,559,196		1,637,156	5.0%
1,331,707		1,398,292	
881,466		925,539	
811,772		852,361	
885,038		929,290	
727,625		764,006	
519,732		545,719	
41,579		43,657	
335,510		352,286	1.0%
410,035		433,830	
<b>\$10,138,792</b>		<b>\$10,780,783</b>	
671,020		704,571	2.0%
<b>17,482,444</b>		<b>18,491,617</b>	
16,068,658		16,736,935	
<b>47.9%</b>		<b>47.5%</b>	
1,116,255		1,166,740	
2,185,020		2,237,863	
<b>12,767,282</b>		<b>13,332,332</b>	
0		0	
<b>12,767,282</b>		<b>13,332,332</b>	
510,691		533,293	4.0%
<b>36.5%</b>		<b>36.3%</b>	



**AMENDMENT NO. 1  
CONCESSION CONTRACT NO. CC-GATE015-03  
AVIATOR DEVELOPMENT COMPANY, LLC  
GATEWAY NATIONAL RECREATION AREA**

**THIS AMENDMENT**, made and entered into by and between the United States of America, acting in this behalf by the Director of the National Park Service, hereinafter referred to as the "Director," and Aviator Development Co., LLC, and Aviator Sports and Recreation, LLC, corporations organized and existing under the laws of the State of New York, hereinafter referred to as the "Concessioner":

**WITNESSETH:**

**THAT WHEREAS**, the Director and the Concessioner entered into a twenty year Concession Contract No. CC-GATE015-03, effective on April 15, 2003, whereby the Concessioner was authorized to provide accommodations, facilities and services for the public within Gateway National Recreation Area during the period April 15, 2003 until its expiration on April 14, 2023; and

**WHEREAS**, this contract stipulates that the concessioner will invest not less than \$15.5M in the project (Phases I and II) and that ice skating and hockey will be the centerpiece of recreational activities offered at the center.

**WHEREAS**, certain unanticipated conditions, including asbestos abatement, unanticipated historic masonry deterioration, increases in the construction cost index and stipulations required for conformance with section 106 of the National Historic Preservation Act have increased construction costs; and

**WHEREAS**, the Concessioner has proposed quality construction changes associated with the best utilization of available space with the addition of an infill area, mezzanine, food court, and replacement of the pond ice rink with a competitive regulation size ice rinks, and

**WHEREAS**, the local municipal utility (Con Edison) could not guarantee a reliable and cost effective service due to degraded infrastructure at Floyd Bennett Field, and

**WHEREAS**, additional buildings are located within the increased area of the land assignment and are needed by the Concessioner for the following uses: restrooms, storage of athletic equipment, and support for mechanical systems, and

**WHEREAS**, the Director has determined that an increase in the land assignment is necessary for the Concessioner to provide the Required and Authorized Visitor Services, as depicted in Exhibit D of the Contract; and

**WHEREAS**, the Director and Concessioner desire to modify the terms and conditions of the Concession Contract to reflect changed circumstances; and

**NOW THEREFORE**, the Director and the Concessioner, in consideration of the mutual promises set forth herein and for other good consideration, hereto covenant and agree to and with each other that the Contract is hereby amended as follows:

I. CONTRACT Section 9(d) "Concession Facilities Improvement Program" is deleted in its entirety and replaced with the following:

"(d) Concession Facilities Improvement Program

(1) The Concessioner shall undertake and complete, subject to compliance with all applicable laws, an improvement program (hereinafter "Concession Facilities Improvement Program") costing not more than \$43,755,129 as more particularly set forth below and as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U Index, as published by the Department of Labor.

(2)(a)(1) The Concession Facilities Improvement Program shall include the following projects :

(Project 001) At a cost not to exceed \$25,489,156, stabilization and rehabilitation of hangars 5, 6, 7, and 8, connection of the hangars with an infill structure, and installation of dual, National Hockey League standard hockey rinks as well as additional construction to accommodate a full program of indoor recreation, to include, but not be limited to, indoor athletic courts, health and wellness services, retail space and food and beverage services, as further described in Exhibit D2.

(Project 003) At a cost not to exceed \$2,148,000, outdoor playing fields within the Area lands assigned to include, but not be limited to, soccer fields, football fields, restrooms and food and beverage facilities..

(2)(a)(2) The Concession Facilities Improvement Program may include the following projects:

(Project 002) At a cost not to exceed \$4,800,000, a Gas Co-Generation facility to provide electricity to the Concession Facilities.



(Project 004) At a cost not to exceed \$100,000, restoration of the exteriors of Building 29 and, as well as the historic light tower, in accordance with the standards set forth in the Memorandum of Agreement between the National Park Service and the New York State Historic Preservation Office.

(Project 005) At a cost not to exceed \$3,115,000, rehabilitation and adaptation of Building 129, the former Job Corps Kitchen and Serving Area, for food preparation and storage.

(2)(b) The costs set forth above exclude costs related to construction interest, pre-opening expenses, and working capital. For purposes of total project cost, the Concessioner agrees that:

(006) Construction Interest shall not exceed \$690,078.00, to be prorated on a per-project basis;

(007) Pre-Opening Expenses shall not exceed \$7,162,895.00; and

(008) Working Capital shall not exceed \$250,000.

(2)(c) The total costs of the Concession Facilities Improvement Program are further delineated in Exhibit F1, attached hereto. All prices are on a not to exceed basis. Final costs will be subject to an independent cost review.

(3)(a) Furthermore, and notwithstanding the provisions of Section 9(c)(1) and 9(c)(2) or other terms of this Contract to the contrary, and pursuant to Section 8(c) of Exhibit A, the Concessioner hereby waives and relinquishes any and all Leasehold Surrender Interest that it may now have or otherwise would obtain under the terms of this Contract or otherwise in (i) the Co-Generation facility (Project 002), (ii) the outdoor playing fields and facilities (Project 003), (iii) to the extent otherwise applicable, pre-opening expenses (007) and (iv) to the extent applicable, working capital (008). Additionally, to ensure that the Leasehold Surrender Interest Value does not exceed \$29,394,234.00 at such date as the facility opens to public use, the Concessioner hereby waives and relinquishes any and all Leasehold Surrender Interest that it may now have or otherwise would obtain under the terms of this CONTRACT or otherwise in Concession Facilities in excess of \$29,394,234.00 subject to adjustment pursuant to the terms of the CONTRACT.

(3)(b) Notwithstanding anything to the contrary in subparagraph (3)(a), subparagraph (3)(a) shall not apply in the event the CONTRACT is terminated by the Director pursuant to Section 16(b)(1) of the CONTRACT.

(3)(c) In conjunction with the determination of the construction cost of a capital improvement (as described in Exhibit A) by the Director, the Concessioner and the Director agree that a Leasehold Surrender Interest tracking system shall be established. It

is further agreed that the initial construction cost of the related capital improvements will be allocated on a per project basis, per asset, by depreciable building components including the allocation of all eligible approved indirect costs assigned to each major building component. The Leasehold Surrender Interest tracking system will adjust each building component's cost (of the capital improvement) by the Consumer Price Index from the date of approval. The Concessioner and Director also agree to establish a straight-line depreciation schedule for all approved capital improvements based on a depreciation rate of two and twenty five hundredths (2.25%) percent per year.

(5) No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(6) The Concessioner shall complete and have the real property improvements described in subparagraphs (2)(a)(1) and (2)(a)(2) available for public use on or before September 30, 2006. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

II. CONTRACT Section 10. is amended by adding the following new Section 10(c)

(c) Repair and Maintenance Reserve

(1) Commencing on the second anniversary of the facility opening to public use, the Concessioner shall establish and manage a Repair and Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis in accordance with Exhibits F and H, repair and maintenance of Concession Facilities that are non-recurring within a seven-year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall reasonably direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2) Projects paid for with funds from the Repair and Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities or housekeeping and groundskeeping responsibilities as required by this CONTRACT from Concessioner funds exclusive of the funds contained in the Repair and Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Repair and Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: four (4%) percent of the Concessioner's gross receipts for the previous month, up to an accumulated maximum of \$1,000,000. The Repair and Maintenance Reserve shall be replenished, as necessary, in the manner provided in this Section II (c)(3) to maintain the maximum amount provided above. If the Concessioner fails to make timely debits to the Repair and Maintenance Reserve, the Director may terminate this CONTRACT for default, after written notice and an opportunity to cure, or may require the Concessioner to post a bond in an amount equal to the estimated annual Repair and Maintenance Reserve allocation, based on the preceding year's gross receipts.

(4) The balance in the Repair and Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Repair and Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation reasonably satisfactory to the Director. Failure to expend Repair and Maintenance Reserve Funds when directed by the Director shall be considered as a material breach of this CONTRACT for which the Director may seek monetary damages and other legal relief, including, without limitation, "termination of this CONTRACT", after written notice and an opportunity to cure.

(5) "Repair and Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this CONTRACT. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Repair and Maintenance Reserve funds".

(6) Any Repair and Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this CONTRACT shall be retained by the Concessioner.

III. CONTRACT Section 11.(a)(1) "Franchise Fee" is deleted in its entirety and replaced with the following:

- (1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee as follows:
  - (a) A franchise fee equal to two (2%) of the Concessioner's gross receipts for the preceding year or portion of a year.
  - (b) In addition, Concessioner shall pay a franchise fee of two (2%) percent of gross receipts in excess of the baseline projected total revenue streams as set forth in Exhibit J attached hereto and identified as "Aviator baseline gross revenue projections."

IV. The original assigned area depicted and described by Exhibit D shall be supplemented with the attached Exhibit D1 which identifies by dotted lines, the "Original Assignment Area" and the "New Assignment Area", which includes the following buildings

- Building 29, Pump House, 913 s.f.
- Structure JV-145, Historic Light Tower, s.f. n/a
- Building 266, Storage Shed. 240 s.f.

Together, Exhibit D and D-1 describe the Concession Facilities.

V. CONTRACT Exhibit I: Insurance Requirements is amended by adding to Subsection B thereof the following:

	Replacement Cost
Building 29, Pump House, 913 s.f.	\$235,970
Structure JV-145, Historic Light Tower, 196 s.f.	\$110,000
Building 266, Storage Shed, 240 s.f.	\$ 28,272
Gas Co-Generation Facility, 5612 s.f.	\$4,800,000.

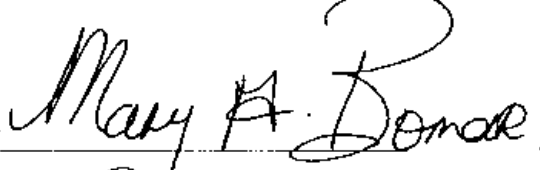
VI. All defined terms in this Amendment to Contract not otherwise defined herein, shall have the meanings ascribed to them in the CONTRACT.


**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Amendment to Contract CCGATE015-03 as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

**CONCESSIONER**

**UNITED STATES OF AMERICA**

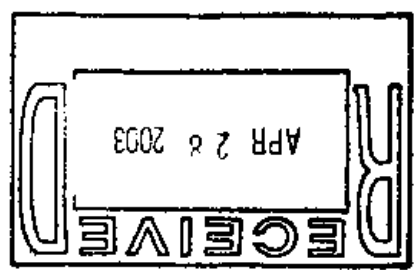
By   
(TITLE)  
Aviator Development Company, LLC

By   
Regional Director, Northeast Region  
National Park Service

By   
(Title)  
Aviator Sports and Recreation, LLC

I

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
NATIONAL PARK SERVICE



—00000—

SPORTS CENTER COMPLEX  
at  
JAMAICA BAY DISTRICT  
GATEWAY NATIONAL RECREATION AREA

—00000—

CONTRACT NO. CC-GATE015-03 EXECUTED \_\_\_\_\_

THE AVIATOR DEVELOPMENT CO., LLC  
AVIATOR SPORTS AND RECREATION, LLC  
15 East 28th Street  
Suite 1803, WEC  
New York, New York 10010

COVERING THE PERIOD

April 15, 2003 Through April 14, 2023

\*\*\*GATEWAY NATIONAL RECREATION AEA\*\*\*  
\*\*\*NORTHEAST REGION - NATIONAL PARK SERVICE\*\*\*

**TABLE OF CONTENTS**

**IDENTIFICATION OF THE PARTIES**

**SEC. 1. TERM OF CONTRACT**

**SEC. 2. DEFINITIONS**

**SEC. 3. SERVICES AND OPERATIONS**

- A. Required and Authorized Visitor Services
- B. Operation and Quality of Operation
- C. Operating Plan
- D. Merchandise and Services
- E. Rates
- F. Impartiality as to Rates and Services

**SEC. 4. CONCESSIONER PERSONNEL**

- A. Employees

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

- A. Legal, Regulatory, and Policy Compliance
- B. Notice
- C. How and Where to Send Notice

**SEC. 6. ENVIRONMENTAL AND CULTURAL PROTECTION**

- A. Environmental Management Objectives
- B. Environmental Management Program
- C. Environmental Management Measurement
- D. Environmental Data, Reports, Notifications, and Approvals
- E. Corrective Action
- F. Indemnification and Cost Recovery for Concessioner Environmental Activities
- G. Weed and Pest Management
- H. Protection of Cultural and Archeological Resources

**SEC. 7. INTERPRETATION OF AREA RESOURCES**

- A. Concessioner Obligations
- B. Director Review of Content

**SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY CONCESSIONER**

- A. Assignment of Concession Facilities
- B. Concession Facilities Withdrawals
- C. Effect of Withdrawal
- D. Right of Entry
- E. Personal Property
- F. Condition of Concession Facilities
- G. Utilities Provided by the Director
- H. Utilities Not Provided by the Director

**SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

- A. Construction of Real Property Improvements
- B. Removal of Real Property Improvements
- C. Leasehold Surrender Interest
- D. Concession Facilities Improvement Program

**SEC. 10. MAINTENANCE**

- A. Maintenance Obligation
- B. Maintenance Plan

**SEC. 11. FEES**

- A. Franchise Fee
- B. Payments Due
- C. Interest
- D. Adjustment of Franchise Fee

**SEC. 12. INDEMNIFICATION AND INSURANCE**

- A. Indemnification
- B. Insurance in General
- C. Commercial Public Liability
- D. Property Insurance

**SEC. 13. BONDS AND LIENS**

- A. Bonds
- B. Lien

**SEC. 14. ACCOUNTING RECORDS AND REPORTS**

- A. Accounting System
- B. Annual Financial Report
- C. Other Financial Reports

**SEC. 15. OTHER REPORTING REQUIREMENTS**

- A. Insurance Certification
- B. Environmental Reporting
- C. Miscellaneous Reports and Data

**SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

- A. Suspension
- B. Termination
- C. Notice of Bankruptcy or Insolvency
- D. Requirements in the Event of Termination or Expiration

**SEC. 17. COMPENSATION**

- A. Just Compensation
- B. Compensation for Contract Expiration or Termination
- C. Procedures for Establishing the Value of a Leasehold Surrender Interest
- D. Compensation for Personal Property

**SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

**SEC. 19. GENERAL PROVISIONS**

**EXHIBITS**

- Exhibit A: Leasehold Surrender Interest
- Exhibit B: Operating Plan
- Exhibit C: Nondiscrimination.
- Exhibit D: Assigned Land, Real Property Improvements
- Exhibit E: Assigned Government Personal Property
- Exhibit F: Concessioner Construction, Major Rehabilitation, and Repair and Maintenance Project Procedures
- Exhibit G: Leasehold Surrender Interest
- Exhibit H: Maintenance Plan
- Exhibit I: Insurance Requirements



THIS CONTRACT is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the Northeast Region. (hereinafter referred to as the "Director"), and THE AVIATOR DEVELOPMENT COMPANY, LLC, a corporation organized and existing under the laws of the State of New York hereinafter referred to as the "Concessioner":

**WITNESSETH:**

**THAT WHEREAS,** Gateway National Recreation Area is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

**WHEREAS,** to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and should be provided for the public visiting the Area; and

**WHEREAS,** the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director; and

**WHEREAS,** the Director desires the Concessioner to conduct these visitor services in a manner that demonstrates sound environmental management, stewardship, and leadership;

**NOW, THEREFORE,** pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2-4), and November 13, 1998 (Pub. L. 105-391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

**SEC. 1. TERM OF CONTRACT**

This Concession Contract No. **CC-GATE015-03** ("CONTRACT") shall be effective as of April 15, 2003, and shall be for the term of **twenty (20) years**, until its expiration on April 14, 2023, if the Concessioner satisfactorily completes the Concession Facilities Improvement Program described in Section 9(d) of this CONTRACT. If the Concessioner fails to complete this program to the satisfaction of the Director within the time specified, then this CONTRACT shall be for the term of **five (5) years** until its expiration on April 14, 2008. The Director may extend this shortened term (but not beyond the original date of expiration of this CONTRACT) in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

**SEC. 2. DEFINITIONS**

The following terms used in this CONTRACT will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

**\*\*\*GATEWAY NATIONAL RECREATION AREA\*\*\*  
\*\*\*\*NORTHEAST REGION - NATIONAL PARK SERVICE\*\*\*\***

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws (e.g., 36 CFR Part 51), whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and protection of public health and safety.

(b) "Area" means the property within the boundaries of Gateway National Recreation Area.

(c) "Best Management Practices" or "BMPs" are policies and practices that apply the most current and advanced means and technologies available to the Concessioner to undertake and maintain a superior level of environmental performance reasonable in light of the circumstances of the operations under this CONTRACT. BMPs are expected to change from time to time as technology evolves with a goal of sustainability of the Concessioner's operations.. Sustainability of operations refers to operations that have a restorative or net positive impact on the environment.

(d) "Capital Improvement" shall have the meaning set forth in Exhibit A to this CONTRACT.

(e) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this CONTRACT and all real property improvements assigned to or constructed by the Concessioner under this CONTRACT. The United States retains title and ownership to all Concession Facilities.

(f) "Days" shall mean calendar days.

(g) "Director" means the Director of the National Park Service, acting on behalf of the Secretary of the Interior and the United States, and his duly authorized representatives.

(h) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this CONTRACT, each of which is hereby made a part of this CONTRACT.

(i) "Gross receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this CONTRACT, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

- (1) intracompany earnings on account of charges to other departments of the operation (such as laundry);
- (2) charges for employees' meals, lodgings, and transportation;
- (3) cash discounts on purchases;
- (4) cash discounts on sales;
- (5) returned sales and allowances;

- (6) interest on money loaned or in bank accounts;
- (7) income from investments;
- (8) income from subsidiary companies outside of the Area;
- (9) sale of property other than that purchased in the regular course of business for the purpose of resale;
- (10) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies; and
- (11) receipts from the sale of handicrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin-operated devices, except telephones, whether provided by the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(j) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by a subconcession contract. A subconcessioner will report all of its gross receipts to the Concessioner without allowances, exclusions, or deductions of any kind or nature.

(k) "Leasehold Surrender Interest" shall have the meaning set forth in Exhibit A to this CONTRACT.

(l) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in Exhibit A to this CONTRACT.

(m) "Major Rehabilitation" shall have the meaning set forth in Exhibit A to this CONTRACT.

(n) "Real Property Improvements" shall have the meaning set forth in Exhibit A to this CONTRACT.

(o) "Subconcessioner" means a third party that, with the approval of the Director, has been granted by a concessioner, rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

(p) "Superintendent" means the manager of the Area.

(q) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and/or authorized to provide by section 3(a) of this CONTRACT.

### SEC. 3. SERVICES AND OPERATIONS

#### (a) Required and Authorized Visitor Services

During the term of this CONTRACT, and as more particularly described in Exhibit B attached hereto and incorporated by reference herein, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

##### (1) Required Visitor Services

The Concessioner is required to operate a family-oriented sports center, on a year-round basis to include:

Ice sports as the core activity and anchor for the sports center with support activities and services

Pro shop

Food and Beverage Service,

and

Provide exhibits and informational media that inform and educate users of the national significance of the historic hangars.

(2) Authorized Visitor Services. The Concessioner is authorized but not required to provide the following visitor services, listed here during the term of this CONTRACT:

Interpretive material (books, postcards, posters, photographs).

Limited apparel.

Souvenirs tied to the interpretive theme(s) of Gateway National Recreation Area.

Teaching professional services.

and

Sports physical therapy.

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this CONTRACT to such an extent and in a manner considered satisfactory by the Director. Except for any such items that may be provided to the Concessioner by the Director, the Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this CONTRACT. The Concessioner's authority to provide visitor services under the terms of this CONTRACT is non-exclusive.

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this CONTRACT in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this CONTRACT as Exhibit B. The Director in his discretion, after consultation with the Concessioner, may make reasonable modifications to the initial Operating Plan that are in furtherance of the purposes of this CONTRACT and are not inconsistent with the terms and conditions of the main body of this CONTRACT.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this CONTRACT, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All promotional material, regardless of media format (i.e. printed, electronic, broadcast media), provided to the public by the Concessioner in connection with the services provided under this CONTRACT must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under

this CONTRACT. The Concessioner's rates and charges to the public must be approved by the Director in accordance with Applicable Laws and guidelines promulgated by the Director from time to time.

**(f) Impartial Rates and Services**

(1) Subject to Section (f)(2) and (f)(3), in providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit C.

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this CONTRACT. However, the Director reserves the right to review and modify the Concessioner's complimentary or reduced rate policies and practices as part of its rate approval process.

(3) Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

**Sec. 4. Concessioner Personnel**

**(a) Employees**

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this CONTRACT.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those set forth in Exhibit C.

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants to whom an offer for employment may be extended to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(6) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper

administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to correct the situation.

(7) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any Concessioner employee housing, within the Area.

(8) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(9) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that is found to be in violation of the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

**SEC. 5. LEGAL, REGULATORY, AND POLICY COMPLIANCE**

**(a) Legal, Regulatory and Policy Compliance**

This CONTRACT, operations thereunder by the Concessioner and the administration of it by the Director, shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this CONTRACT at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this CONTRACT. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this CONTRACT.

**(b) Notice**

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws by the Concessioner, including its employees, agents or contractors, and, at its sole cost and expense, must promptly rectify any such violation.

**(c) How and Where to Send Notice**

All notices required by this CONTRACT shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

General Superintendent  
Gateway National Recreation Area

Attention: Chief, Business Management Division  
Headquarters Building 69  
Floyd Bennet Field  
Brooklyn, New York 11234

Notices sent to the Concessioner shall be sent to the following address:

AVIATOR SPORTS AND RECREATION, LLC, Concessioner

15 East 26th Street  
Suite 1803, WEC  
New York, New York 10010  
Attention: General Manager, Development and Operation

## **Sec. 6. Environmental and Cultural Protection**

### **(a) Environmental Management Objectives**

The Concessioner shall meet the following environmental management objectives (hereinafter "Environmental Management Objectives") in the conduct of its operations under this CONTRACT:

(1) The Concessioner, including its employees, agents and contractors, shall comply with all Applicable Laws pertaining to the protection of human health and the environment.

(2) The Concessioner shall incorporate Best Management Practices (BMPs) in its operation, construction, maintenance, acquisition, provision of visitor services, and other activities under this CONTRACT.

### **(b) Environmental Management Program**

(1) The Concessioner shall develop, document, implement, and comply fully with, to the satisfaction of the Director, a comprehensive written Environmental Management Program (EMP) to achieve the Environmental Management Objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty days of the effective date of this CONTRACT. The Concessioner shall submit to the Director for approval a proposed updated EMP annually.

(2) The EMP shall account for all activities with potential environmental impacts conducted by the Concessioner or to which the Concessioner contributes. The scope and complexity of the EMP may vary based on the type, size and number of Concessioner activities under this CONTRACT.

(3) The EMP shall include, without limitation, the following elements:

- (i) Policy. The EMP shall provide a clear statement of the Concessioner's commitment to the Environmental Management Objectives.



- (ii) Goals and Targets. The EMP shall identify environmental goals established by the Concessioner consistent with all Environmental Management Objectives. The EMP shall also identify specific targets (i.e., measurable results and schedules) to achieve these goals.
- (iii) Responsibilities and Accountability. The EMP shall identify environmental responsibilities for Concessioner employees and contractors. The EMP shall include the designation of an environmental program manager. The EMP shall include procedures for the Concessioner to implement the evaluation of employee and contractor performance against these environmental responsibilities.
- (iv) Documentation. The EMP shall identify plans, procedures, manuals, and other documentation maintained by the Concessioner to meet the Environmental Management Objectives.
- (v) Documentation Control and Information Management System. The EMP shall describe (and implement) document control and information management systems to maintain knowledge of Applicable Laws and BMPs. In addition, the EMP shall identify how the Concessioner will manage environmental information, including without limitation, plans, permits, certifications, reports, and correspondence.
- (vi) Reporting. The EMP shall describe (and implement) a system for reporting environmental information on a routine and emergency basis, including providing reports to the Director under this CONTRACT.
- (vii) Communication. The EMP shall describe how the environmental policy, goals, targets, responsibilities and procedures will be communicated throughout the Concessioner's organization.
- (viii) Training. The EMP shall describe the environmental training program for the Concessioner, including identification of staff to be trained, training subjects, frequency of training and how training will be documented.
- (ix) Monitoring, Measurement, and Corrective Action. The EMP shall describe how the Concessioner will comply with the EMP and how the Concessioner will self-assess its performance under the EMP, at least annually, in a manner consistent with NPS protocol regarding audit of NPS operations. The self-assessment should ensure the Concessioner's conformance with the Environmental Management Objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the Concessioner to correct any deficiencies identified by the self-assessment.

(c) Environmental Performance Measurement

The Concessioner shall be evaluated by the Director on its environmental performance under this CONTRACT, including, without limitation, compliance with the approved EMP, on at least an annual basis.

(d) Environmental Data, Reports, Notifications, and Approvals

(1) Inventory of Hazardous Substances and Inventory of Waste Streams. The Concessioner shall submit to the Director, at least annually, an inventory of federal Occupational Safety and Health Administration (OSHA) designated hazardous chemicals used and stored in the Area by the Concessioner. The Director may prohibit the use of any OSHA hazardous chemical by the Concessioner in operations under this CONTRACT. The Concessioner shall obtain the Director's approval prior to using any extremely hazardous substance, as defined in the Emergency Planning and Community Right to Know Act of 1986, in operations under this CONTRACT. The Concessioner shall also submit to the Director, at least annually, an inventory of all waste streams generated by the Concessioner under this CONTRACT. Such inventory shall include any documents, reports, monitoring data, manifests, and other documentation required by Applicable Laws regarding waste streams.

(2) Reports. The Concessioner shall submit to the Director copies of all documents, reports, monitoring data, manifests, and other documentation required under Applicable Laws to be submitted to regulatory agencies. The Concessioner shall also submit to the Director any environmental plans for which coordination with Area operations are necessary and appropriate, as determined by the Director in accordance with Applicable Laws.

(3) Notification of Releases. The Concessioner shall give the Director immediate written notice of any discharge, release or threatened release (as these terms are defined by Applicable Laws) within or at the vicinity of the Area (whether solid, semi-solid, liquid or gaseous in nature), of any hazardous or toxic substance, material, or waste of any kind, including, without limitation, building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) Notice of Violation. The Concessioner shall give the Director in writing immediate notice of any written threatened or actual notice of violation from other regulatory agencies of any Applicable Law arising out of the activities of the Concessioner, its agents or employees.

(5) Communication with Regulatory Agencies. The Concessioner shall provide timely written advance notice to the Director of communications, including without limitation, meetings, audits, inspections, hearings and other proceedings, between regulatory agencies and the Concessioner related to compliance with Applicable Laws concerning operations under this CONTRACT. The Concessioner shall also provide to the Director any written materials prepared or received by the Concessioner in advance of or subsequent to any such communications. The Concessioner shall allow the Director to participate in any such communications. The Concessioner shall also provide timely notice to the Director following any unplanned communications between regulatory agencies and the Concessioner.

(e) Corrective Action

(1) The Concessioner, at its sole cost and expense, shall promptly control and contain any discharge, release or threatened release, as set forth in this section, or any threatened or actual violation, as set forth in this section, arising in connection with the Concessioner's operations under this CONTRACT, including, but not limited to, payment of any fines or penalties imposed by appropriate agencies. Following the prompt control or containment of any release, discharge or violation, the Concessioner shall take all response actions necessary to remediate the release, discharge or violation, and to protect human health and the environment.

(2) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, or transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

#### (f) Indemnification and Cost Recovery for Concessioner Environmental Activities

(1) The Concessioner shall indemnify the United States in accordance with section 12 of this CONTRACT from all losses, claims, damages, environmental injuries, expenses, response costs, allegations or judgments (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts' fees) arising out of the activities of the Concessioner, its employees, agents and contractors pursuant to this section. Such indemnification shall survive termination or expiration of this CONTRACT.

(2) If the Concessioner does not promptly contain and remedy an unauthorized discharge or release arising out of the activities of the Concessioner, its employees, agents and contractors, as set forth in this section, or correct any environmental self-assessment finding of non-compliance, in full compliance with Applicable Laws, the Director may, in its sole discretion and after notice to the Concessioner, take any such action consistent with Applicable Laws as the Director deems necessary to abate, mitigate, remedy, or otherwise respond to such release or discharge, or take corrective action on the environmental self-assessment finding. The Concessioner shall be liable for and shall pay to the Director any costs of the Director associated with such action upon demand. Nothing in this section shall preclude the Concessioner from seeking to recover costs from a responsible third party.

#### (g) Weed and Pest Management

The Concessioner shall be responsible for managing weeds, and through an integrated pest management program, harmful insects, rats, mice and other pests on Concession Facilities assigned to the Concessioner under this CONTRACT. All such weed and pest management activities shall be in accordance with Applicable Laws and guidelines established by the Director.

#### (h) Protection of Cultural and Archeological Resources.

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, agents and contractors, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by the Concessioner shall be promptly

reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

## **SEC. 7. INTERPRETATION OF AREA RESOURCES**

### **(a) Concessioner Obligations**

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area as reflected in Area planning documents, mission statements and/or interpretive prospectuses.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this CONTRACT.

(3) The Concessioner is encouraged to develop interpretive materials or means to educate visitors about environmental programs or initiatives implemented by the Concessioner.

### **(b) Director Review of Content**

The Concessioner must submit the proposed content of any interpretive programs, exhibits, displays or materials, regardless of media format (i.e. printed, electronic, or broadcast media), to the Director for review and approval prior to offering such programs, exhibits, displays or materials to Area visitors.

## **SEC. 8. CONCESSION FACILITIES USED IN OPERATION BY THE CONCESSIONER**

### **(a) Assignment of Concession Facilities**

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this CONTRACT:

- (i) certain parcels of Area land as described in Exhibit D upon which, among other matters, the Concessioner may be authorized to construct real property; and
- (ii) certain real property improvements described in Exhibit D in existence as of the effective date of this CONTRACT, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this CONTRACT.

(2) The Director shall from time to time amend Exhibit D to reflect changes in Concession Facilities assigned to the Concessioner, including, without limitation, amending Exhibit D to reflect the addition of real property improvements completed in accordance with the terms and conditions of this CONTRACT and to reflect the withdrawal of concession facilities as set forth below.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this CONTRACT if:

- (1) the withdrawal is necessary for the purpose of conserving, preserving or protecting Area resources or visitor enjoyment or safety;
- (2) the operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or
- (3) land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director or the Concessioner considers to be essential for the Concessioner to provide the visitor services required by this CONTRACT will be treated as a termination of this CONTRACT pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this CONTRACT for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) Personal Property Provided by the Concessioner. The Concessioner shall provide all personal property, including without limitation removable equipment, furniture and goods, necessary for its operations under this CONTRACT, unless such personal property is provided by the Director as set forth in subsection (e)(2).

(2) Personal Property Provided by the Government. The Director may provide certain items of government personal property, including without limitation removable equipment, furniture and goods, for the Concessioner's use in the performance of this CONTRACT. The Director hereby assigns government personal property listed in Exhibit E to the Concessioner as of the effective date of this CONTRACT. This Exhibit E will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property assigned to it and shall be responsible for maintaining the property as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

The Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities Provided by the Director

The Director may provide utilities to the Concessioner for use in connection with the operations required or authorized hereunder when available and at rates to be determined in accordance with Applicable Laws.

(h) Utilities Not Provided by the Director

If the Director does not provide utilities to the Concessioner, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this CONTRACT for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director in writing, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this subsection, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

## **SEC. 9. CONSTRUCTION OR INSTALLATION OF REAL PROPERTY IMPROVEMENTS**

(a) Construction of Real Property Improvements

The Concessioner may construct or install upon lands assigned to the Concessioner under this CONTRACT only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this CONTRACT. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit F. All real property

improvements constructed or installed by the Concessioner will immediately become the property of the United States and be considered Concession Facilities.

(b) Removal of Real Property Improvements

(1) The Concessioner may not remove, dismantle, or demolish real property improvements in the Area without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a real property improvement within the Area shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

(c) Leasehold Surrender Interest

(1) This CONTRACT hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of this CONTRACT and Exhibit A, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this CONTRACT, including, but not limited to, those Capital Improvements constructed as part of the Concession Facilities Improvement Program and those Capital Improvements which result from the Major Rehabilitation of an existing real property improvement. Upon completion of a Major Rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the Major Rehabilitation shall be considered as a Capital Improvement for all purposes of this CONTRACT.

(2) This CONTRACT may provide the Concessioner a Leasehold Surrender Interest in real property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract. Exhibit G describes the real property improvements, if any, in which the Concessioner has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this CONTRACT.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this CONTRACT except as may be provided in Exhibit A and Exhibit F. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Repair and Maintenance Reserve described in this CONTRACT, and this CONTRACT does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

(d) Concession Facilities Improvement Program

(1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing not less than fifteen million, five hundred thousand dollars, (\$15.5 million) as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Labor's CPI-U

Index, as published by the Department of Labor. **The improvement program shall stabilize, rehabilitate and adapt Historic Hangars to Provide a Family Sports Center**

(2) The Concession Facilities Improvement Program shall include two phases as follows:

**Phase 1, at a cost of not less than eight million dollars,** shall stabilize hangars 5 and 6, rehabilitate hangars 7 and 8 and install a dual rink hockey center in said rehabilitated hangars 7 and 8 and shall be completed by October 30, 2003.

**Phase 2, at a cost of not less than seven million, five hundred thousand dollars, (\$7.5 million)** shall rehabilitate Hangars 5 and 6 and develop a full program to include, but not be limited to health and wellness services, retail space and food and beverage services.

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program, on or before 180 days after execution of this CONTRACT, in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit F. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward.

(4) The Concessioner shall complete and have Phase I and Phase II real property improvements available for public use on or before September 30, 2005. The Director may extend this date in circumstances where the Director determines that the delay resulted from events beyond the control of the Concessioner.

## **SEC. 10. MAINTENANCE**

### **(a) Maintenance Obligation**

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

### **(b) Maintenance Plan**

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit H. The Director in his discretion may make reasonable modifications to the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall be in furtherance of the purposes of this CONTRACT and shall not be inconsistent with the terms and conditions of the main body of this CONTRACT.



(c) No Repair and Maintenance Reserve is Included in this Contract.

## **SEC. 11. FEES**

### **(a) Franchise Fee**

(1) For the term of this CONTRACT, the Concessioner shall pay to the Director for the privileges granted under this CONTRACT a franchise fee equal to two percent (2.0%) of the Concessioner's gross receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fee under any circumstances.

### **(b) Payments Due**

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees. In the event of termination or expiration of this CONTRACT, overpayments will first be offset against any amounts due and owing the Government, and the remainder will be paid to the Concessioner.

(3) All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

### **(c) Interest**

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published annually in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

### **(d) Adjustment of Franchise Fee**

(1) The Concessioner or the Director may request, in the event that either considers that extraordinary, unanticipated changes have occurred after the effective date of this CONTRACT, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before

the effective date of this CONTRACT which have or will significantly affect the probable value of the privileges granted to the Concessioner by this CONTRACT. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this CONTRACT.

(2) The Concessioner or the Director must make a request for a reconsideration by mailing, within sixty (60) days from the date that the party becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the other party that includes a description of the possible extraordinary, unanticipated changes and why the party believes they have affected or will significantly affect the probable value of the privileges granted by this CONTRACT.

(3) If the Concessioner and the Director agree that extraordinary, unanticipated changes have occurred, the Concessioner and the Director will undertake good faith negotiations as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Concessioner and the Director agree that extraordinary, unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, prospectively as of the date of agreement.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration must be made by mailing written notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a written notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. Unless otherwise agreed by the parties, the arbitration panel shall establish the procedures of the arbitration. Such procedures must provide each party a fair and equal opportunity to present its position on the matter to the arbitration panel.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this CONTRACT within sixty (60) days of the presentations.

(8) Any adjustment to the franchise fee resulting from this Section shall be prospective only.

(9) Any adjustment to the franchise fee will be embodied in an amendment to this CONTRACT.

(10) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this CONTRACT.

## SEC. 12. INDEMNIFICATION AND INSURANCE

### (a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way connected with or arising out of the activities of the Concessioner, its employees, agents or contractors under this CONTRACT. This indemnification shall survive the termination or expiration of this CONTRACT.

### (b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this CONTRACT at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this CONTRACT as determined by the Director. The initial insurance requirements are set forth below and in Exhibit I. Any changed or additional requirements that the Director determines necessary must be reasonable and consistent with the types and coverage amounts of insurance a prudent business person would purchase in similar circumstances. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverage and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director immediate written notice of any material change in the Concessioner's insurance program hereunder, including without limitation, cancellation of any required insurance coverage.

### (c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees, agents or contractors, in carrying out the activities and operations required and/or authorized under this CONTRACT.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this CONTRACT, as more

specifically set forth in Exhibit I. Furthermore, the commercial general liability package shall provide no less than the coverage and limits described in Exhibit I.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit I to revise the minimum required limits or to require additional types of insurance, provided that any additional requirements must be reasonable and consistent with the types of insurance a prudent businessperson would purchase in similar circumstances.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this CONTRACT.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities for all or part of their replacement cost as specified in Exhibit I in amounts no less than the Director may require during the term of the CONTRACT. The minimum values currently in effect are set forth in Exhibit I.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and/or personal property utilized in the Concessioner's operations under this CONTRACT, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds. The Concessioner shall not be relieved of its obligations under subsection (d)(1) because insurance proceeds are not sufficient to repair or replace damaged or destroyed property.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this CONTRACT to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverage and amounts described in Exhibit I.

## **SEC. 13. BONDS AND LIENS**

### **(a) Bonds**

The Director may require the Concessioner to furnish appropriate forms of bonds in amounts reasonable in the circumstances and acceptable to the Director, in order to ensure faithful performance of the Concessioner's obligations under this CONTRACT.

### **(b) Lien**

As additional security for the faithful performance by the Concessioner of its obligations under this CONTRACT, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the CONTRACT hereunder within the Area and any Leasehold Surrender Interest of the Concessioner.

## **SEC. 14. ACCOUNTING RECORDS AND REPORTS**

### **(a) Accounting System**

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this CONTRACT, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are \$250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this CONTRACT, the Concessioner shall keep its accounts in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized under this CONTRACT by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

### **(b) Annual Financial Report**

(1) The Concessioner shall submit annually as soon as possible but not later than one hundred twenty (120) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between \$250,000. and \$1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

**(c) Other Financial Reports**

(1) Balance Sheet. Within ninety (90) days of the execution of this CONTRACT or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this CONTRACT. The balance sheet shall be audited or reviewed, as determined by the annual gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, constructed or installed.

(2) Statements of Reserve Activity. No Repair and Maintenance Reserve is included in this CONTRACT.

**SEC. 15. OTHER REPORTING REQUIREMENTS**

The following describes certain other reports required under this CONTRACT:

**(a) Insurance Certification**

As specified in Section 12, the Concessioner shall, at the request of the Director, provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this CONTRACT. The Concessioner shall give the Director immediate written notice of any material change in its insurance program, including without limitation, any cancellation of required insurance coverages.

**(b) Environmental Reporting**

The Concessioner shall submit environmental reports as specified in Section 6 of this CONTRACT, and as otherwise required by the Director under the terms of this CONTRACT.

**(c) Miscellaneous Reports and Data**

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the CONTRACT or otherwise, including, but not limited to, operational information.

## **SEC. 16. SUSPENSION, TERMINATION, OR EXPIRATION**

### **(a) Suspension**

The Director may temporarily suspend operations under this CONTRACT in whole or in part in order to protect Area visitors or to protect, conserve and preserve Area resources. No compensation of any nature shall be due the Concessioner by the Director in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

### **(b) Termination**

(1) The Director may terminate this CONTRACT at any time in order to protect Area visitors, protect, conserve, and preserve Area resources, or to limit visitor services in the Area to those that continue to be necessary and appropriate.

(2) The Director may terminate this CONTRACT if the Director determines that the Concessioner has materially breached any requirement of this CONTRACT, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only those visitor services required or authorized by the Director pursuant to this CONTRACT, the requirement to pay the established franchise fee, the requirement to prepare and comply with an Environmental Management Program, the requirement to duly expend funds from the repair and maintenance reserve and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the CONTRACT, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the CONTRACT for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the CONTRACT for default. Notwithstanding this provision, repeated breaches (two or more) of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this CONTRACT upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the

Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this CONTRACT if the Director determines that the Concessioner is unable to perform the terms of CONTRACT due to bankruptcy or insolvency.

(5) Termination of this CONTRACT for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director immediate notice (within five (5) days) after the filing of any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this CONTRACT or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, NPS considers that this CONTRACT is not a lease but an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 365.

(d) Requirements in the Event of Termination or Expiration

(1) In the event of termination of this CONTRACT for any reason or expiration of this CONTRACT, the total compensation due the Concessioner for such termination or expiration shall be as described in Section 17 of this CONTRACT. No other compensation of any nature shall be due the Concessioner in the event of a termination or expiration of this CONTRACT, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this CONTRACT for any reason, or upon its expiration, and except as otherwise provided in this section, the Concessioner shall, at the Concessioner's expense, promptly vacate the Area, remove all of the Concessioner's personal property, repair any injury occasioned by installation or removal of such property, and ensure that Concession Facilities are in at least as good condition as they were at the beginning of the term of this CONTRACT, reasonable wear and tear excepted. The removal of such personal property must occur within thirty (30) days after the termination of this CONTRACT for any reason or its expiration (unless the Director in particular circumstances requires immediate removal).

(3) To avoid interruption of services to the public upon termination of this CONTRACT for any reason, or upon its expiration, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one (1) year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, as



published by the Federal Reserve System Board of Governors, effective on the date the operator assumes managerial and operational responsibilities. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon termination of this CONTRACT for any reason or its expiration, the Concessioner shall, if requested by the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

## **SEC. 17. COMPENSATION**

### **(a) Just Compensation**

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

### **(b) Compensation for CONTRACT Expiration or Termination**

If, for any reason, including CONTRACT expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this CONTRACT, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this CONTRACT and the Director shall, subject to the terms and conditions of this CONTRACT, assure that the Concessioner is paid the Leasehold Surrender Interest Value.

### **(c) Procedures for Establishing the Value of a Leasehold Surrender Interest**

At any time during the term of this CONTRACT, the Concessioner shall, when requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this CONTRACT. In the event that such negotiations fail to determine an agreed upon value within a reasonable period of time as determined by the Director, the Director or the Concessioner may initiate arbitration proceedings to determine such value upon written request to the other party. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in Exhibit A. In these circumstances, the Concessioner and the Director shall each select an arbiter. The two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel in accordance with Exhibit A. The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and shall determine the value of the Leasehold Surrender Interest consistent with the terms of this CONTRACT, including without limitation Exhibit A. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two (2) years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

### **(d) Compensation for Personal Property**

No compensation is due the Concessioner from the Director or a successor concessioner for the Concessioner's personal property used in operations under this CONTRACT. However, the Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner in accordance with the terms of this CONTRACT shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to the Concessioner by the Director to the extent consistent with Applicable Laws.

## **SEC. 18. ASSIGNMENT, SALE OR ENCUMBRANCE OF INTERESTS**

(a) This CONTRACT is subject to the requirements of Applicable Laws, including, without limitation, 36 CFR Part 51, with respect to proposed assignments and encumbrances, as those terms are defined by Applicable Laws. Failure by the Concessioner to comply with Applicable Laws is a material breach of this CONTRACT for which the Director may terminate this CONTRACT for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this CONTRACT of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this CONTRACT, if obtained in violation of Applicable Laws.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to Applicable Laws, including without limitation, 36 CFR Part 51, of the requirements of Applicable Law and this CONTRACT.

## **Sec. 19. General Provisions**

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by the terms of Applicable Laws.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this CONTRACT is subject to public release by the Director to the extent provided by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of visitor services required and/or authorized under this CONTRACT are not permitted.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this CONTRACT.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this CONTRACT or to any benefit that may arise from this CONTRACT but this

restriction shall not be construed to extend to this CONTRACT if made with a corporation or company for its general benefit.

(g) This CONTRACT is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This CONTRACT contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this CONTRACT. This CONTRACT may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) This CONTRACT does not grant rights or benefits of any nature to any third party.

(j) The invalidity of a specific provision of this CONTRACT shall not affect the validity of the remaining provisions of this CONTRACT.

(k) Waiver by the Director or the Concessioner of any breach of any of the terms of this CONTRACT by the other party shall not be deemed to be a waiver or elimination of such term, nor of any subsequent breach of the same type, nor of any other term of the CONTRACT. The subsequent acceptance of any payment of money or other performance required by this CONTRACT shall not be deemed to be a waiver of any preceding breach of any term of the CONTRACT.

(l) Claims against the Director (to the extent subject to 28 U.S.C.2514) arising from this CONTRACT shall be forfeited to the Director by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof within the meaning of 28 U.S.C. 2514.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this CONTRACT as of the 21<sup>st</sup> day of January, 2003.

CONCESSIONER

UNITED STATES OF AMERICA

BY Karen McLe Pass.  
(Title).  
Aviator Development Company, LLC

BY [Signature]  
Director, Northeast Region  
National Park Service

ATTEST:

BY Michael J. Caldarella

TITLE: Commissioner of Deeds

[Signature]  
MICHAEL J. CALDARELLA  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK NUMBER: 4-6000  
CERTIFICATE FILED IN: NY COUNTY  
COMMISSION EXPIRES ON: DEC. 14, 2003

**EXHIBIT A  
LEASEHOLD SURRENDER INTEREST**

This Exhibit A to this CONTRACT establishes certain terms and conditions of the CONTRACT regarding the nature, scope and applicable conditions of leasehold surrender interest. In event of any inconsistency between this Exhibit A and Exhibit F of this CONTRACT this Exhibit A shall prevail.

**Section 1. Definitions.**

"Arbitration" means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this Exhibit A will utilize the following procedures unless otherwise agreed by the Concessioner and the Director. One member of the arbitration panel will be selected by the Concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. 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 Concessioner and the Director. 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. Determinations must be made by a majority of the members of the panel and will be binding on the Concessioner and the Director.

A "capital improvement" is a structure, fixture, or non-removable equipment provided by the Concessioner pursuant to the terms of this CONTRACT and located on lands of the United States within the area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this Exhibit A.

"Construction cost" of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP).

"Consumer Price Index" means the national "Consumer Price Index--All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

"Depreciation" means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

"Eligible direct costs" means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead

(including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

"Eligible indirect costs" means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the Concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the Concessioner are not eligible indirect costs.

"Fixtures and non-removable equipment" are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) that may be constructed by the Concessioner pursuant to the terms of this CONTRACT are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in Exhibit A, the term "fixture" includes the term "non-removable equipment."

"Leasehold surrender interest" solely means a right to payment in accordance with this CONTRACT for related capital improvements that the Concessioner makes or provides within the area on lands owned by the United States pursuant to the terms and conditions of this CONTRACT. The existence of a leasehold surrender interest does not give the Concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

"Leasehold surrender interest value" means the amount of compensation the Concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this CONTRACT. The leasehold surrender interest value in existing capital improvements under the terms of this CONTRACT is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of this CONTRACT, or, if applicable, the date on which the

Concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of this CONTRACT).

“Major rehabilitation” means a planned, comprehensive rehabilitation of an existing structure that:

- (1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and
- (2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

“Pre-rehabilitation value” of an existing structure means the replacement cost of the structure less depreciation.

“Real property improvements” means real property other than land, including, but not limited to, capital improvements.

“Related capital improvement” or “related fixture” means a capital improvement in which the Concessioner has a leasehold surrender interest.

“Replacement cost” means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

“Structure” means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

“Substantial completion of a capital improvement” means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

## **Section 2. Obtaining a leasehold surrender interest.**

The Concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with the terms and conditions of this CONTRACT, including, without limitation, the terms and conditions of this Exhibit A to the CONTRACT.

## **Section 3. Authorizing the construction of a capital improvement.**

The Director may only authorize or require the Concessioner to construct capital improvements on area lands in accordance with the terms and conditions of this CONTRACT and for the conduct by the Concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

**Section 4. Requirements for beginning to construct a capital improvement.**

Before beginning to construct any capital improvement, the Concessioner must obtain written approval from the Director in accordance with the terms of this CONTRACT, including the terms and conditions of this Exhibit A and Exhibit F. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this Exhibit. (The approval requirements of this and other sections of this CONTRACT also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this CONTRACT.)

**Section 5. Requirements after substantial completion of a capital improvement.**

Upon substantial completion of the construction of a capital improvement in which the Concessioner is to obtain a leasehold surrender interest, the Concessioner must provide the Director a detailed construction report in accordance with the terms and conditions of this CONTRACT, including without limitation Exhibit A and Exhibit F. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the Concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this Exhibit. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

**Section 6. Determining construction cost for purposes of leasehold surrender interest value.**

After receiving the detailed construction report (and certification, if requested), from the Concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this Exhibit A. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under Section 7 of this Exhibit A. The Director may at any time amend a construction cost determination (subject to arbitration under Section 7 of this Exhibit A) if the Director determines that it was based on false, misleading or incomplete information.

**Section 7. Arbitrating the construction cost of a capital improvement.**

If the Concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under Section 6 of this Exhibit A. If a timely request is not made, the Director's determination of construction cost under Section 6 shall be the final determination of the construction cost. The arbitration procedures are described in Section 1 of



this Exhibit A. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

**Section 8. Actions the Concessioner may or must take regarding leasehold surrender interest.**

The Concessioner:

- (a) May encumber a leasehold surrender interest in accordance with the terms of this CONTRACT;
- (b) Where applicable, must transfer its leasehold surrender interest in connection with any assignment, termination or expiration of this CONTRACT; and
- (c) May waive or relinquish a leasehold surrender interest.

**Section 9. Extinguishment of a leasehold surrender interest.**

A leasehold surrender interest may not be extinguished by the expiration or termination of this CONTRACT and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to the terms of this CONTRACT will constitute the payment of just compensation for leasehold surrender interest within the meaning of this CONTRACT and for all other purposes.

**Section 10. Leasehold surrender interest under a new concession contract.**

If the Concessioner under this CONTRACT is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the Concessioner's leasehold surrender interest value (established as of the date of expiration or termination of this CONTRACT) in the related capital improvements will be continued as the initial value of the Concessioner's leasehold surrender interest under the terms of the new concession contract.

**Section 11. Payment for leasehold surrender interest if the Concessioner is not awarded a new concession contract.**

(a) If the Concessioner is not awarded a new concession contract after expiration or termination of this CONTRACT, or, the Concessioner, prior to such termination or expiration, ceases to utilize under the terms of this CONTRACT capital improvements in which the Concessioner has a leasehold surrender interest, the Concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of this CONTRACT, or the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT. Depreciation of the related capital improvements will be established as of the date of expiration or termination of this CONTRACT, or, if applicable, the date the Concessioner ceases to utilize the capital improvements under the terms this CONTRACT.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or

termination of this CONTRACT, or, as of the date the Concessioner ceases to utilize related capital improvements under the terms of this CONTRACT, the payment when made will include interest on the amount that was due on the date of expiration or termination of this CONTRACT or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of this CONTRACT or the cessation of use of related capital improvements under the terms of this CONTRACT.

**Section 12. Process for determining leasehold surrender interest value.**

In the event that the Concessioner and the Director cannot reach agreement as to a leasehold surrender interest value where required by the terms of this CONTRACT, the leasehold surrender interest value will be determined by arbitration upon request of the Director or the Concessioner. The arbitration procedures are described in Section 1. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this Exhibit A are final and not subject to further arbitration.

**Section 13. Payment of leasehold surrender interest by a new concessioner.**

A new concession contract awarded to a new concessioner will require the new concessioner to pay the Concessioner its leasehold surrender interest value in existing capital improvements as determined under Section 12.

**Section 14. Obtaining additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest.**

If the Concessioner, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the Concessioner has a leasehold surrender interest, the Concessioner will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this CONTRACT.

**Section 15. Obtaining additional leasehold surrender interest by replacing a fixture in which the Concessioner has a leasehold surrender interest.**

If the Concessioner replaces an existing fixture in which the Concessioner has a leasehold surrender interest with a new fixture, the Concessioner will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

**Section 16. Obtaining a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists.**

(a) If the main body of this CONTRACT requires the Concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the Concessioner), a leasehold surrender interest will be obtained by the Concessioner in such replacement fixtures subject to the approval and determination of construction cost and other conditions contained in CONTRACT.

(b) If the main body of this CONTRACT requires the Concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the Concessioner), upon substantial completion of the major rehabilitation, the Concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

**Section 17. No leasehold surrender interest results from repair and maintenance of real property improvements.**

The Concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

**Exhibit B**

**OPERATING PLAN**  
**FAMILY SPORTS CENTER**  
**GATEWAY NATIONAL RECREATION AREA**

SIGNED: \_\_\_\_\_ DATED: \_\_\_\_\_  
General Superintendent, Gateway National Recreation Area

**TABLE OF CONTENTS**

Introduction	Page 3
Objectives for the Concession to Satisfy	Page 3
Required and Authorized Visitor Services	Page 3
Management, Organization and Responsibilities	Page 4
Concessioner	Page 4
National Park Service	Page 5
Concession Operations	Page 5
Operational Evaluations	Page 5
Rates	Page 6
Operating Dates and Hours of Operation	Page 6
Staffing and Employment	Page 6
Merchandising	Page 7
Risk Management/Safety	Page 8
Lost and Found Policy	Page 8
Marketing	Page 8
Bonds	Page 9

## Introduction

This Operating Plan between The Aviator Development Co., LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service") will serve as a supplement to the Concession Contract CCGATE015-03 referred to as the "Contract". It describes specific operating responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract.

In the event of any conflict between the terms of the CONTRACT and this Operating Plan, the terms of the CONTRACT, including its designations and amendments, shall prevail.

This plan will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent.

Any revisions shall not be inconsistent with the main body of this CONTRACT. Any revisions must be reasonable and in furtherance of the purposes of the CONTRACT.

### Objectives for the Concession to Satisfy are:

- 1 Enhance the recreational mission of Gateway National Recreation Area by providing varied, year round, recreational opportunities for all populations.
- 2 Rehabilitate historic fabric where feasible; stabilize the remaining historic fabric.
- 3 Respectfully use the rich history of Floyd Bennett Field to good advantage through architectural design that aesthetically capitalizes upon the underlying historical specimen.
- 4 Provide exhibits and other informational media that educate users and remind of the national significance of the site.

### 1. Required and Authorized Visitor Services

#### A. Required Services of Sec. 3(a)(1) of the Contract:

In accord with the above objectives and as required by the parameters of the prospectus to which the Concessioner responded and proposed, and as memorialized in the Contract, a family-oriented sports center shall be developed. Ice sports and hockey are the primary sport activities offered through the sports center.

Ice hockey shall be accommodated on a regulation-size rink. The Concessioner shall provide ice time by a reservation system that meets the approval of the Superintendent.

Public ice skating shall be accommodated on a rink of comparable size, but not necessarily regulation-size for hockey.

Ice time allocations will be reviewed by the Superintendent and shall be subject to revision by the Superintendent after consultation with the Concessioner. In doing so The Superintendent shall exercise due consideration for public use and financial feasibility of the Concession operation.

The family sports center shall include support facilities and services that may reasonably be expected in such a facility such as locker rooms.

The operation of the required pro shop includes authorization for associated retail sales and to rent sports equipment.

The Concessioner shall offer a range of food service including fountain, fast food, snacks and deli. Food service will be varied and include options for children and the elderly. Menus, pricing and service delivery will be limited to those approved each operating season by the National Park Service.

All food service facilities will be designated as non-smoking.

The Service has contracted with the UNITED STATES PUBLIC HEALTH SERVICE to accomplish health and sanitation inspections. However, the city, county and state also have jurisdiction. They may also conduct inspections and require corrective action pursuant to their findings.

The Phase 2 construction program shall provide space to accommodate a health and wellness program and additional space for retail sales.

Gateway National Recreation Area will work with the Concessioner to produce informational and interpretive media to inform and educate users of the family sports center. Gateway National Recreation Area has an inventory of historic photos and memorabilia that it will share with the Concessioner for this purpose.

#### **B. Authorized Services of Sec. 3(a)(2) of the Contract**

As required by the parameters of the prospectus to which the Concessioner responded, a family-oriented sports center shall be developed. To this end, annually, or more often, the Concessioner shall meet with the Superintendent to review and program appropriate activities from the list of services that were offered by the Concessioner in response to the prospectus. In doing so, the review and programming process by the Concessioner

and the Superintendent shall be guided by the above annotated "Objectives for the Concession to Satisfy."

Said activity programming shall serve the dual purposes of serving as wide a range of the population as possible and maintaining financial feasibility for the Concession operation. Said meeting may be initiated by the Concessioner or the Superintendent and the results may be formalized by amendment to this Operating Plan.

Spectator events may be authorized by the Superintendent on a case by case basis, if aptly associated with the Objectives for operation of the family sports center, health and safety concerns are adequately addressed and the events do not unduly displace the users of the sports center for significant periods. Such events shall have the prior written approval of the Superintendent, Jamaica Bay Unit before they are publicized.

The authorization to provide food and beverage services in Phase 2 may include a restaurant and lounge area that may be developed pursuant to plans and theme approved in advance by the Superintendent..

## **II. Management, Organization and Responsibilities**

### **A. Concessioner**

The Concessioner will employ a general manager, who has the responsibility for carrying out the policies and directives of the NATIONAL PARK SERVICE as well as those of the Concessioner in operating the authorized concession facilities.

### **B. National Park Service**

The General Superintendent is responsible for total park operations. The Chief, Business Management Office is the liaison between the Concessioners and all other NATIONAL PARK SERVICE divisions. All services, rates, menus, operating dates and hours, facility improvements and new construction will be reviewed by the Business Management Office staff, and approved by the Superintendent, Jamaica Bay/Breezy Point Unit.

## **III. Concessions Operations**

### **A. Operational Evaluations**

All NATIONAL PARK SERVICE and United States Public Health Service inspections and evaluations of the Concessioner's facilities and services will be conducted in a professional manner and will conform to current NATIONAL PARK SERVICE guidelines.



1. All services and facilities will be inspected to:
  - Ensure public health and safety
  - Ensure that satisfactory services are provided
  - Ensure that employee living and working conditions are satisfactory
  - Ensure that buildings and equipment are well maintained.
2. The NATIONAL PARK SERVICE and the Concessioner will inspect and monitor concession facilities and services.
3. The Concessioner shall comply with all applicable public health and safety codes and standards.
4. The Concessioner will ensure that impacts to cultural and natural resources are minimized.
5. Results of the evaluations will be forwarded to the Concessioner by the NATIONAL PARK SERVICE in a timely manner.
6. The Concessioner will cooperate with the NATIONAL PARK SERVICE in scheduling inspections and in accompanying NATIONAL PARK SERVICE staff if requested.
7. The Concessioner is required to comply with correction dates or to establish abatement plans to correct deficiencies. Abatement plans will be approved by the NATIONAL PARK SERVICE.

#### **B. Rates**

The objective of the NATIONAL PARK SERVICE rate approval program is to assure that Concessioner rates are comparable to similar services and facilities provided by the private sector. Rates will be approved or disapproved based on current comparability studies or applicable guidelines:

1. Rates for all goods and services must have prior written approval by the NATIONAL PARK SERVICE.
2. The Concessioner may recommend the selection of comparable businesses.
3. The Concessioner will submit requests for rate increases to the NATIONAL PARK SERVICE for approval. Requests for major rate approval actions require at least four weeks for official NATIONAL PARK SERVICE review and response.

4. The Concessioner will provide detailed information necessary to enable the NATIONAL PARK SERVICE to assess rates, i.e., portion sizes, type of service, menus, etc.

### **C. Operating Dates and Hours of Operation**

The Concessioner will submit hours of operation to the NATIONAL PARK SERVICE for approval by January 15 each year. Specific dates for operating seasons may fluctuate with weather and road conditions. The Sports Center will be open all year.

### **D. Staffing and Employment**

1. The Concessioner will hire and maintain staffing levels to provide satisfactory services.
2. The Concessioner may not employ National Park Service employees, spouses and dependent children of Service employees, except as may be permitted by a written determination of the General Superintendent that the proposed hire is in accord with Service policy and procedures.
3. A general employee orientation and training will be provided by the Concessioner. Employees will be informed of regulations and requirements affecting their employment and activities while working in the park. Additional orientation sessions will be conducted by the Concessioner and the NATIONAL PARK SERVICE once employees are on location.
4. Adequate job specific training, applicable to each employee, will be provided prior to working with the public.
5. All employees dealing with the general public will be neat and clean, and wear an accurate name tag, or uniform identifying the Concessioner and the employee.

### **E. Merchandising**

Merchandise sales in Gateway NRA shall: 1) provide logistical support to enable visitors to participate in park activities; 2) provide opportunities for visitors to purchase momentos of the park, and 3) serve as an extension of the park's interpretive responsibilities to the public. Merchandise will generally contribute to the understanding of park preservation and related environmental and cultural values.

The following objectives have been established:

1. The image of the park and its shops will be intertwined. Shops will exemplify quality and professionalism.

2. The Concessioner will, to the greatest extent possible, offer gifts and souvenirs that have an identifiable relationship to Gateway.
3. The Concessioner will cooperate with the NATIONAL PARK SERVICE in promoting the sale of United States handicrafts relating to the cultural, historical, natural and geographic characteristics of Gateway National Recreation Area.
4. The NATIONAL PARK SERVICE Merchandising Standards will be followed. The standards include, but are not limited to:
  - Foreign-made merchandise is not prohibited but should not dominate gift shops.
  - Merchandise that offends normal standards of taste will not be sold.
  - The sale of original prehistoric or historic archeological specimens is prohibited. Replicas may be sold if they are clearly labeled as replicas.
  - Merchandise representative of items found in the park, but not originating from the park, must be labeled and identified so as to indicate the origin.
  - Plant material or other natural materials originating in the park cannot be sold. Animal skins fabricated into such items as leather gloves, belts, jackets, purses, etc., are acceptable if the Concessioner obtains a statement from the manufacturer stating the skins were obtained from legally authorized sources and not from threatened or endangered species.
  - Merchandise conflicting with NATIONAL PARK SERVICE policies and regulations will not be sold.
  - The selling price of all items must be individually marked or designated on each display.

#### **F. Risk Management -Safety**

The Concessioner is responsible for providing a safe and healthful environment for its employees and visitors as outlined in the contract. The Concessioner will develop a Risk Management Program that will be approved by the NATIONAL PARK SERVICE in accordance with the Occupational Safety and Health Act (OSHA) and NATIONAL PARK SERVICE guidelines. The Program will be reviewed annually by the NATIONAL PARK SERVICE. The program will include the following components:

- Management's Policy Statement, Duties, Employees' Responsibilities, and Administration
- Inspection and Abatement

- Accident Investigation and Reporting
- Safety/Health Committee
- Training
- Emergency Procedures

## **G. Lost and Found Policy**

### Found Items

1. Found items are to be turned over the concession manager and tagged by designated personnel. The tag will identify the item, date, location and name of finder. The Concessioner shall establish and maintain a central repository, familiar to all employees. A lost and found log book shall be maintained.
2. Found items shall be stored in a secure place (expensive items such as cameras, wallets and jewelry should be stored in a safe)

## **H. Marketing**

All promotional and printed material produced by the Concessioner (including computer Web-sites) will be submitted to the NATIONAL PARK SERVICE for approval prior to distribution to the public. Out of park advertising including the Internet, radio ads, billboards, magazines, etc., will also be approved by the NATIONAL PARK SERVICE. All interpretive material and park information will be kept current and accurate.

## **I. Bonds**

The Concessioner shall furnish a performance bond in the penal amount of **eight million dollars (\$8,000,000)** in order to ensure faithful performance of the Concessioner's obligations to accomplish Phase I as required and described by SEC. 9(d) of this CONTRACT.

**EXHIBIT C**  
**NONDISCRIMINATION**

**Section I: Requirements Relating to Employment and Service to the Public**

**A. Employment**

During the performance of this CONTRACT the Concessioner agrees as follows:

- (1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provision of this nondiscrimination clause.
- (2) The Concessioner will, in all solicitations or advertisements for employees placed by on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disabling condition.
- (3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices, and procedures in accordance with the affirmative action program requirement.
- (5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this CONTRACT or with any of such rules, regulations, or orders, this CONTRACT may be canceled, terminated or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interests of the United States.

#### **B. Construction, Repair, and Similar Contracts**

The preceding provisions A(1) through A(8) governing performance of work under this CONTRACT, as set out in Section 202 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this CONTRACT, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this CONTRACT, and for that purpose the term "CONTRACT" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

#### **C. Facilities**

(1) Definitions: As used herein:

- (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner;
- (ii) facility shall mean any and all services, facilities, privileges, accommodations, or activities available to the general public and permitted by this agreement.

(2) The Concessioner is prohibited from:

- (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin, or disabling condition;
- (ii) discriminating by segregation or other means against any person.

## **Section II Accessibility**

Title V, Section 504, of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law, and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

### **A. Discrimination Prohibited**

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

- (1) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;
- (2) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
- (3) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;
- (4) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;
- (5) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- (6) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or
- (7) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

### **B. Existing Facilities**

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a

Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.



**EXHIBIT D  
ASSIGNED LAND AND REAL PROPERTY IMPROVEMENTS  
(CONCESSION FACILITIES)**

**LAND ASSIGNED:**

Land is assigned as depicted by the solid line representing boundaries on the aerial photograph of the following page and further described thereon. The two darker rectangles of the right half of the photo contain two hangars apiece for a total of four. A lighter colored rectangle, in the assigned area is a strip of open space between the hangars. Two hangars are on one side of the strip, two are on the other side.

A road to a Gate on Flatbush Avenue is visible as a darkened narrow strip running through the assigned area and curving to the South as it exits. Gateway National Recreation Area retains control of this GATE and the associated right-of-way through the Concessioner's assigned land including, but not limited to, access and egress options.

**REAL PROPERTY IMPROVEMENTS ASSIGNED:**

The following real property improvements are assigned to the concessioner for use in conducting its operations under this CONTRACT:

Building #	Building Name	Square Footage
	hangar 5	16,820
	hangar 5 lean-to	8,400
	hangar 6	16,820
	hangar 6 lean-to	8,400
	enclosed space between hangars 5 & 6	12,180
	hangar 7	16,820
	hangar 7 lean-to	8,400
	hangar 8	16,820
	hangar 8 lean-to	8,400
	enclosed space between hangars 7 & 8	7,800
	The outside open area between the two pairs of hangars measures 150 feet by 350 feet	
129	The former "Job Corps" kitchen and serving area. (not shown on the aerial photo) Use for remote food preparation and storage	8,760 Insurance replacement cost of Building 129 is \$1,281,420

Approved, effective \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_  
Director, Northeast Region

GATEWAY NATIONAL RECREATION AREA  
NATIONAL PARK SERVICE – NORTHEAST REGION

## Land Assignment



Parcels 5-8 and other land assigned are located on Floyd Bennett Field, adjacent to Flatbush Avenue, directly across from the Gateway Marina and Gateway Golf Driving Range. Additional land may be assigned if necessary and approved by the General Superintendent. The dimensions are: southern boundary 362'; eastern boundary 1,050'; northern boundary 522'; the western boundary follows the fence line adjacent to the bike path.

**EXHIBIT E**  
**ASSIGNED GOVERNMENT PERSONAL PROPERTY**

Government personal property is assigned to the Concessioner for the purposes of this CONTRACT as follows:

NONE

## EXHIBIT F

### CONCESSIONER CONSTRUCTION, MAJOR REHABILITATION, AND REPAIR AND MAINTENANCE PROJECT PROCEDURES

#### A. Introduction

This exhibit presents step-by-step procedures for the administration of Concessioner building projects (construction, major rehabilitation, and repair and maintenance projects) within the park Area. Important terms are defined first. Project planning and design are presented second, followed by guidelines for project supervision. All projects undertaken by the Concessioner require a coordinated effort between the Concessioner and the Superintendent. This exhibit applies to the building of new structures or facilities, major rehabilitations, and the repair and maintenance ("R&M projects") of existing Concession Facilities that change the nature, appearance or value of existing Concession Facilities. Rehabilitation projects that are not major rehabilitations as defined in the Contract are considered as R&M projects. Facility operations, custodial and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is also not to be considered as a project subject to these procedures when the activity does not change the nature, appearance or value of existing Concession Facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of this CONTRACT and Exhibit A, the main body of the CONTRACT and Exhibit A will prevail.

In accordance with the Contract, only certain new construction and major rehabilitation projects may qualify for leasehold surrender interest (LSI). Following these administrative procedures for both LSI and non-LSI projects will enable NPS to approve LSI, as well as to ensure that all requirements of law and NPS policy are undertaken with respect to any project.

In addition, these procedures will enable the appraisal of LSI to occur in an orderly way. The documentation collected and organized by the use of these guidelines will provide a record of decision or "paper trail" of project development and implementation that will assist the park and concessioner in future planning and facility appraisal.

All project activities shall be directed and managed as presented in the "Annual Construction and Repair and Maintenance Management Plan" (CMP). In addition to these activities, the CMP is also to present scheduled project development and implementation, as presented below under Item C, Project Planning and Design, paragraph 1. Individual projects included in the CMP will be authorized by NPS through an approved Project Statement (PS).

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by NPS, including without limitation and where applicable, the most recent International Building Code (IBC), National Fire Protection Association (NFPA) codes, the Americans with Disabilities Act (ADA) requirements, and NPS management policies.

The Concessioner is responsible for all aspects of project development and implementation. The role of the NPS is to provide direction, authorization and oversight. The Concessioner and the Park staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of the park Area and the NPS.

## **B. Definition of Terms**

**"Annual Construction and Repair and Maintenance Management Plan" (CMP):** A written document presenting all construction, major rehabilitation and R&M projects to be undertaken by the Concessioner during the following calendar year after the final submittal date.

**"Approved Project Documents":** Project drawings and specifications approved by the Park Superintendent and used by the Concessioner to direct a contractor in the type, size and quality of projects.

**"Change Order":** A written agreement between the "Construction Supervisor" and the Contractor or Consultant that changes the contract documents or scope of project work as agreed upon contractually.

**"Construction":** The removal or assembly of a building, road, utility or any other facility part or material that changes the nature, appearance, or value of that facility.

**"Construction Supervisor":** A Concessioner employee designated to administer and coordinate day-to-day projects representing the interests of the Concessioner and NPS and assuring quality work is performed that meets the design and specifications of the project. This person must have the authority to direct the contractor in any way that may change the contractual agreement between the Concessioner and the contractor.

**"Conventional Design-Bid-Build Methods":** Construction developed and implemented under several separate agreements managed and coordinated directly by the Concessioner.

**"Contact Person":** A Concessioner employee designated as the person to contact with regard to a specific matter, concern, or issue.

**"Facilitator":** A Concessioner employee designated to have the role of providing structure and agendas for meetings with NPS and who records meeting discussions and outcomes.

**"Guaranteed Maximum Price Design-Build Construction Methods":** An industry recognized type of construction where project consultants and contractors form an agreement to work as one entity providing facility construction in response to a developed request for proposal issued by the Concessioner. (Reference: Design Build Institute of America).

**"Licensed Contractor":** An entity performing construction certified or licensed by the State to perform construction services within that State.

**"Major Rehabilitation":** (Defined in the CONTRACT).

**"Project Coordinator":** A Concession employee vested with the authority to direct consultants and contractors in the expenditure of construction and R&M funds.

**“Project Statement” (PS):** An agreement between NPS and the Concessioner approved by the Park Superintendent that authorizes the development and implementation of individual projects identified in a CMP.

**“Registered Technical Professionals”:** Architects, engineers, or any subject area expert either certified or licensed by the State to perform specialized services or certified by a widely recognized industry regulator held responsible for quality and standard application of technical subject matter.

**“Substantially Complete”:** (Defined in the CONTRACT).

**“Total Project Cost”:** The total of all actual project expenditures (invoiced and paid) for completion of a project.

**“Total Project Price”:** The total of all estimated project expenditures for completion of a project.

### **C. Project Planning and Design**

(1) Submit an Annual Construction and Repair and Maintenance Plan (CMP). Before approval to proceed with any project is granted by NPS, the Concessioner must submit a CMP for implementation the following year. Some projects may require several years of planning and design before construction. The purpose of the plan is to identify the need and tentative scope of projects a complete year in advance of actual work to allow adequate time to prepare for project commencement. The CMP should include any intended projects. Projects shown in the plan must include at least a project title; project concept description; a brief statement of justification; and anticipated NEPA and Section 106 planning and compliance established in collaboration with NPS staff.

(2) Notify NPS of Intent-to-Proceed. The Concessioner shall formally notify the Park Superintendent in writing of intent to proceed with any facility planning, design and/or projects. The project must be identified in the CMP the calendar year before to assist the NPS in sequencing and scheduling necessary support staff. The time of notification shall be sufficiently in advance of any Concessioner budget formulation to assure the requirements of the Park Superintendent are included in the project scope before the project is funded.

(3) Identify a Project Coordinator. The Concessioner project coordinator must be identified for each project. This person should have the authority to obligate project expenditures and hire and direct consultants and contractors, and concessioner support staff.

(4) Prepare a proposed Project Statement (PS). Arrange and facilitate a project planning conference with NPS staff and prepare a proposed PS to be submitted to the Park Superintendent for review. The conference should be performed on the proposed project site, if needed.

(a) Conference goal and product. The primary goal of the conference is to clearly identify the project concepts and scope at sufficient detail to carry the project through to completion without significant deviation from an approved PS. The product of the conference should be an approved PS prepared by the Concessioner resulting from collaboration between the Concessioner and the Park Superintendent.

(b) Project Statement Content. The PS shall include the following as a minimum: Project description; justification; scope of work, including NEPA and Section 106 planning and compliance; estimated Total Project Price; proposed schedule; milestones of NPS design review and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, contingent upon the nature, complexity and scope of the proposed project.

(c) Leasehold Surrender Interest. If the Concessioner seeks leasehold surrender interest as a result of a construction project, the Concessioner must request and receive the written approval of the proposed construction project by the Park Superintendent in accordance with the terms of this leasehold surrender interest concession contract. An estimate of the amount of leasehold surrender interest shall be identified in advance if the Concessioner requests leasehold surrender interest. The estimated leasehold surrender interest costs shall be separately identified as part of the Total Project Price and substantiated, if requested, with written and competitively acquired price proposals or construction contracts. Not all projects qualify for LSI. LSI is only granted under the terms of this CONTRACT, including, without limitation, its Exhibit A.

(d) Methods of Establishing the Expected Value of Leasehold Surrender Interest. A number of methods are available to estimate the Concessioner's leasehold surrender interest as long as eligible direct and indirect costs are specified. The methods of identifying the expected value of leasehold surrender interest include guaranteed maximum price design-build construction methods, conventional design-bid-build methods, and construction price estimates professionally prepared by subject area experts.

(e) Professional Services and Construction. The Concessioner must assure the park in its project statement that for any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the Superintendent. The Concessioner shall provide for registered technical professionals to perform project inspection and/or facility certification, or any other service needed for project implementation at the request of the Park Superintendent.

(f) NPS Operations. Any aspect of the proposed project where the scope of work interfaces with NPS operations such as utility service connections or road maintenance operations must be clearly identified in the PS.

(5) Submit Project Statement for NPS Review. The proposed PS shall be submitted in written correspondence from the Concessioner to the Park Superintendent requesting review. A PS signed by the Park Superintendent constitutes official authority for the Concessioner to continue further project development to the level specified in written correspondence from the Superintendent. The Concessioner may obtain authority to complete a project when sufficient planning and design has been completed to meet the interests of the park. Projects that do not have the level of required planning are likely to receive only conceptual approval with authorization to proceed with further planning and/or design as required to assure park objectives are met.

(a) Project Statements Containing Claims for Leasehold Surrender Interest. A PS must present an estimate of project expenditures to be claimed for LSI purposes. The eligibility of any expenditures for LSI will not be identified until all project planning is complete to the satisfaction of the Park Superintendent, including NEPA and Section 106 compliance, if required. An approved PS serves only as a guide for further project development to the level specified in the PS. The Park Superintendent shall only approve final LSI costs after project completion and written project close-out.

(b) Design Required for Leasehold Surrender Interest Eligibility and Value. The Park Superintendent may require an appropriate level of design to determine whether a project is eligible for LSI, and if so, its estimated cost. The level of project planning and design required may include completion of concept design, schematic design, or preliminary engineering design, to clearly identify the elements eligible for LSI. Some projects may require the completion of construction drawings and specifications before the proposed LSI is documented to the satisfaction of the Park Superintendent. All improvements for which LSI is claimed must be defined in record "as-built" construction drawings and specifications when the Concessioner submits its request for LSI at Project Close-out.

(6) Establish a Project File. A file of all project documents shall be held by the Concessioner as a chronological audit trail of all project decision-making activity for each project from concept development to completion and NPS acceptance. Each project shall be identified with a unique project number assigned by the Park. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

(a) Leasehold Surrender Interest Project File. The Project File will become an LSI project file when the Concessioner requests approval of LSI. It shall be established and maintained by the Concessioner and shall include all of the documents identified in section 6(C) of this Exhibit. This file shall be submitted at the time of Project Close-out to the Park Superintendent as the basis for the leasehold surrender interest request. As part of this file, the Concessioner must maintain auditable records of all expenditures attributable to each project and have them available for review if requested by NPS personnel. Invoices shall contain sufficient information to identify the tasks completed or products delivered as agreed upon in contracts presenting a full scope of work. The file shall clearly provide a "paper trail" between expenditures eligible for LSI purposes and the payment of those expenses.

(b) Typical Project File. The organization of a typical project file is presented in the following sections:

Section A. Project Statement. The approved PS, scope of work, and a copy of the notice-to-proceed letter, authorizing planning and design, sent to the Concessioner by the Park Superintendent should be filed in this section.

Section B. Planning. This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and Section 106 compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the Park Superintendent grants approval for any of the above stages of project development, correspondence from the Park Superintendent should be filed in this section.

Section C. Assessment. This section should contain a record of any assessment performed during project implementation. Soil, vegetation, floodplain, structural, electrical assessments, for example, should be filed in this section. Any other existing site or facility investigative reports, and all quality assurance documents such as third party project inspection, testing and certification should also be filed in this section.

Section D. Design. This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the Park Superintendent providing design approval should be in this section.



Section E. Project Work. This section should contain a record of decisions made during project work. The letter from the Park Superintendent granting notice-to-proceed with the project should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc. should be in this section. Documentation for larger projects should be organized according to subcontractor activity or standard specification enumeration. The final document filed in this section should be the NPS correspondence sent to the Concessioner providing project acceptance and close-out.

Section F. Financial. This is a very important section where a copy of all contracts and contract modifications should be filed. It is important to assure that all expenditures are accounted for. All expenditures must have sufficient supporting documentation cross-referenced with documents in other file sections, if necessary. Monthly financial detail reports shall be prepared and filed in this section with copies of all project budget documents. This section must contain all correspondence supporting LSI with appropriate cross reference to other sections for clarity of the LSI "paper trail." (For example, cross reference tabs). Also contained in this section shall be a copy of the project acceptance and close-out letter from the Park Superintendent that specifies the amount of leasehold surrender interest, if any, applicable to the project.

Section G. Photo Documentation. Complete documentation, including before-and-after photos, records of any special situations or conditions requiring changes, documentation of methods used, etc., should be kept to support requests for LSI and to assist future maintenance and/or appraisal efforts. Photographic documentation is also usually required for modifications to "listed" historic structures. To be most useful, photos should be filed with the documents they support.

(7) Submit Resource Compliance Documents for Review and Approval. During development of the project statement, responsibility for compliance work will be established. The Concessioner must request the participation of NPS staff early in project planning to assure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

(a) Historic/cultural compliance. Historic and cultural compliance document approval is required for property listed in or eligible for inclusion in the National Register of Historic Places. Any undertaking affecting property listed shall be performed in accordance with The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings". The Concessioner must document proposed actions using the "XXX Form" (available from the National Park Service) before any work occurs for any project that may affect a historic structure, historic district, cultural landscape, archeological site or historic object or furnishing. Compliance will usually require the preparation of at least "assessment of effect" drawings and specifications to the level of final documents if required. Compliance shall carry through to submission of the "Construction or R&M Completion Report" for many projects where significant changes are made to the historic structure and/or landscape. Therefore, compliance document approval usually will not occur until after submission of project documents. In-park historic compliance review and approval will require at least several weeks from date of submittal. Where submittal is made to the State Historic Preservation Officer or the Advisory Council on Historic Preservation, additional time will be required before approval may be given. This may be performed concurrently with approval of project documents.

(b) Ground disturbance. Where ground disturbance will take place submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project

planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

"Petroglyphs, artifacts, burial grounds or remains, structural features, ceremonial, domestic, and archeological objects of any nature, historic or prehistoric, found within the project area are the property of and will be removed only by the Government. Should Contractor's operations uncover or his/her employees find any archeological remains, Contractor shall suspend operations at the site of discovery; notify the Government immediately of the findings; and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings. Should the temporary suspension of work at the site result in delays, or the discovery site require archeological studies resulting in delays of additional work for Contractor, he/she will be compensated by an equitable adjustment under the General Provisions of the contract."

(c) Archeological Monitoring. Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of the NPS. The NPS shall be notified sufficiently in advance of the need for a monitor and will assist the Concessioner in making arrangements for the services of an archeological monitor at the expense of the Concessioner, if the NPS is unable to provide the expertise.

(d) National Environmental Policy Act (NEPA) compliance. NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by the NPS early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on park resources usually require a "categorical exclusion" determination--a process that may require sufficient extended lead-time from submittal of review documents. Projects having a significant effect on park resources or that are not part of other NEPA compliance documentation may also require a longer period of implementation.

(8) Submit Project Documents (PDs) for Review and Approval. The Concessioner shall submit PDs for review and approval to establish project activity for approval by the Superintendent. Approved PDs establish the full scope of the project and the quality of work to be performed by the Concessioner. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. The Concessioner is responsible for the technical accuracy and completeness of PDs and shall provide the technical review as needed to assure compliance with all applicable federal, state and local statutes, codes, regulations and appropriate industry standards. Any exception to this will be by written authorization from the Superintendent.

(9) Submit a Project Estimate and Schedule. An estimate of the Total Project Price and completion schedule shall be submitted to the Superintendent before work begins. This is a revision of the Total Project Price and completion schedule estimated in the Project Statement. It is based on the best information available identified during project planning and design.

#### D. Project Management Procedures

(1) Identify a Project Supervisor. A Project Supervisor shall be identified and vested with the authority to direct the contractor on behalf of the Concessioner. The NPS will direct its communication concerning the nature and progress of day-to-day project activity to this person. This person should have full responsibility for assuring that all construction complies with the approved Project Documents and specified code compliance. The NPS should not take any responsibility for projects until Project Close-out and Acceptance when the NPS receives certification of completed work performed in compliance with Project Documents and all specified codes.

(2) Submit a Total Project Price for Review.

(a) All projects completed under the terms of this Contract where LSI is requested shall include submittal of a Total Project Price in writing to the Superintendent for review.

(b) Where no LSI is requested, the Total Project Price is provided as an informational item. Formal approval by the Superintendent is not required.

(3) Notice-to-Proceed with a Project. A "Notice-to-Proceed" with a project will be issued when all submittals requested by the Park Superintendent have been reviewed and approved. The Notice-to-Proceed must be received by the Concessioner in writing before any project work occurs.

(4) Hold a Pre-Project Conference with the Contractor. The Concessioner shall arrange and facilitate a pre-project conference as needed or as requested by the NPS with the Contractor. The purpose of the conference is to provide the NPS the opportunity to meet the Contractor and confirm that the Contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between the Concessioner, the Contractor and the NPS. Any questions the Contractor may have regarding any matter of the project or anything about Area access, rules and regulations may also be discussed.

(5) Submit Project Activity Reports (as required). A record of project activity shall be provided by the Concessioner on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of PDs for Park approval. The Concessioner is responsible for the accuracy and completeness of all design and completed projects.

(a) Content. Project activity reports shall summarize daily project activity recording important observations and decisions. It shall also identify project expenditures to date if required for leasehold surrender interest purposes. The reports shall identify any changes to the approved PDs either by change order or any other variance from approved PDs. The NPS shall be notified immediately, if a change is likely to occur in the Total Project Price where the project involves LSI. (See discussion below for review and approval of change orders and contract modifications.)

(b) Regulatory code compliance and project inspection (as required). Inspection reports specifically addressing regulatory code compliance and adherence to PDs will be required, at the request of the Superintendent, during certain stages of the work. Independent industry certified inspectors or registered

professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Section and paragraph of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All inspection reports shall be included in the final project completion report submitted before project acceptance by the Superintendent.

(6) Submit Requests for Changes in Approved Project Documents. The Superintendent's approval will be required before any significant changes are made to the project scope during the completion of projects, as identified in the approved PDs. The Concessioner shall provide the NPS with written notification immediately upon identifying the need for a change in project scope that effects any of the items listed below. The written notification shall include a request for change in the approved PDs complete with justification and explanation of effect of change on all other aspects of project design and work. Requests for any significant changes in the approved PDs shall be reported in project activity reports with attachment of any documentation requested. Changes in approved project scope during the work that will require review and approval of the Superintendent include the following:

(a) Changes affecting natural, cultural and/or historic resources;

(b) Changes in designated visual appearance;

(c) Changes in the interface with NPS utility and/or road facility maintenance operations;

(d) Changes in project scope and/or the estimated leasehold surrender interest, as required for facility improvement projects.

(e) Proposed changes where natural or cultural/historic resources are involved may require a significant period of review depending on the complexity of the concern.

(7) Submittal of Change Orders for Review and Approval (for Leasehold Surrender Interest only). When one of the five factors listed above exists, the Concessioner shall submit, for the review and approval of the Park Superintendent, documentation justifying the proposed changes. The Concessioner shall also submit a revised Total Project Price for each proposed change, as needed, indicating the proposed change in estimated LSI. All change orders or any other means of directing the Contractor that may have the effect of increasing the Total Project Price will require the Park Superintendent's review and approval, if the project has LSI implications.

(8) NPS Project Inspection. The project will be inspected periodically by a representative of the Park Superintendent. The purpose of these inspections is not in lieu of or in any way a substitute for project inspection provided by the Concessioner. The responsibility to assure safe, accountable project activity and for providing the contractor with direction to fulfill the full scope of approved work is the responsibility of the Concessioner.

(9) Project Supervision Documents. Project drawings and specifications must be kept on the project site complete with any design or project modifications, in a well-organized form. The Construction Supervisor shall keep a current "red-line" copy of approved PDs updated daily showing any changes. In addition, a well-organized file of submittals required in the approved PDs and approved where required

by professional Architects and/or Engineers must also be kept on the project site with the PDs for periodic inspection by NPS staff.

(10) Substantial Completion Inspection and Occupancy. Joint inspection by the NPS and the concessioner will occur upon notification that the project is substantially complete. A "punch list" of work items will be formulated and performed to "close-out" the project. The Superintendent, in writing will accept the project, when the "punch-list" items are completed. The Concessioner is not to occupy the facility until authorized in writing by the Park Superintendent.

(11) Requesting Approval of Leasehold Surrender Interest. Upon substantial completion of a project, as determined by the Park Superintendent, the Concessioner must provide the Superintendent a written schedule of requested LSI eligible costs incurred, which becomes the Concessioner's request for LSI approval. The project file, containing actual invoices and the administrative record of project implementation, must support these expenditures and shall be submitted to the Park Superintendent for review with the request. If requested by the Park Superintendent, the Concessioner shall also provide written certification from a certified public accountant regarding the LSI costs. The certification must comply with the requirements of Exhibit A of this Contract.

(12) Project Completion Report. Upon completion of any project, the Concessioner shall submit a Project Completion Report to the NPS. The completion report shall include the Total Project Cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and "as-constructed" drawings (see item section C(13) below). Projects where LSI is requested may require the submittal of any other similar documents deemed by the NPS necessary to establish complete project documentation. The level of documentation requested may also include adequate photo-documentation provided during construction to record significant unforeseen site and construction conditions resulting in changes to approved PDs and the approved Total Construction Price.

(13) "As-Constructed Drawings". The "as constructed" drawings included with the Project Completion Report for all projects shall be full-size archival quality prepared in accordance with NPS management policies and must be submitted before project acceptance by the National Park Service. At least two half-size sets of drawings shall also be provided. The drawings establishing LSI shall provide a full and complete record of all "as-constructed" facilities including reproduction of approved submittals and manufacturer's literature documenting quality of materials, equipment and fixtures in addition to a record set of project specifications approved for construction.

(14) Request Project Acceptance and Close-out by the Superintendent. The Concessioner shall request project acceptance by the Park Superintendent either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by the NPS. Until receiving formal written project acceptance and close-out from the Park Superintendent, the Concessioner retains full responsibility for all project construction activity and liability for both completed and uncompleted work. For LSI projects, the project close-out letter issued by the Superintendent will specify the granted amount of LSI value resulting from the project.

**EXHIBIT G**

**LEASEHOLD SURRENDER INTEREST AS OF THE EFFECTIVE DATE OF THIS  
CONTRACT**

Pursuant to Section 9(c)(2), the Concessioner's leasehold surrender interest in real property improvements as of the effective date of this CONTRACT, if any, is as follows:

NONE

**MAINTENANCE PLAN**

**FAMILY SPORTS CENTER  
GATEWAY NATIONAL RECREATION AREA**

**SIGNED:** \_\_\_\_\_ **DATED:** \_\_\_\_\_  
**General Superintendent**

**TABLE OF CONTENTS**

Introduction	Page 3
Concession Facilities	Page 3
Access to Concession Facilities	Page 3
General Maintenance Standards	Page 3
General Concessioner Responsibilities	Page 4
Buildings	Page 4
Grounds and Landscaping	Page 5
Accessways	Page 6
Utilities	Page 7
Solid Waste	Page 7
Water	Page 7
Sewer	Page 8
Electrical	Page 8
Telephones	Page 8
Fuel Tanks	Page 8
Hazardous Materials	Page 9
Environmental	Page 9
Snow Removal	Page 9
Public Signs	Page 10
Pest Control	Page 10



## **INTRODUCTION**

This Maintenance Plan between The Aviator Development Co., LLC (herein referred to as the "Concessioner") and Gateway National Recreation Area (herein referred to as the "Service") will serve as a supplement to the Concession Contract CC-GATE015-03 (herein referred to as the "Contract"). The plan describes specific maintenance responsibilities of the Concessioner and the Service with regard to those lands and facilities within Gateway National Recreation Area which are assigned to the Concessioner for the purposes authorized by the Contract

In the event of any apparent conflict between the terms of the CONTRACT and this Maintenance Plan, the terms of the CONTRACT, including its designations and amendments shall prevail.

This plan shall remain in effect until superseded or amended. It will be reviewed annually by the Superintendent in consultation with the Concessioner and revised as determined necessary by the Superintendent of Gateway National Recreation Area. Revisions may not be inconsistent with the terms and conditions of the main body of this CONTRACT. Revisions must be reasonable and in furtherance of the purposes of this CONTRACT.

### **Assigned Areas**

The Concessioner is responsible for all maintenance within areas assigned to it. Lands assigned under Exhibit D of the Contract are, with the exception of the former Job Corps building, are depicted on the aerial photograph of that Exhibit. The former Job Corps building is assigned in the text of Exhibit D. Areas of responsibility, which are not well defined by a sidewalk or road, are to be a minimum of 50-feet from buildings and 10-feet on either side of paths, walkways, and trails unless otherwise specified on the maps. If a sidewalk is the defining boundary, the assignment will include up to the roadside edge of the gutter. Any modification of concessioner-assigned areas or buildings will be reflected by corresponding changes on the land assignment maps.

### **Access to Concession Facilities**

The Superintendent or his designated representatives will have access to all concessioner facilities to conduct evaluations and other required inspections.

### **General Maintenance Standards for Concession Facilities**

The NPS Concession Review Program provides general direction, expectations, and standards on all aspects of concession operations. The standards for interior and exterior maintenance as amended, supplemented, or revised, are hereby incorporated by reference.

The concessioner is required by the terms of the contract to maintain the assigned property and facilities in a manner that is acceptable to the NPS. It is the purpose of this Maintenance Plan to help define the necessary standards and to define the maintenance relationship between the concessioner and the NPS. Both the concessioner and the NPS have specific responsibilities as outlined in the concession contract and this plan.

### **General Concessioner Responsibilities**

Any work that modifies concession facilities requires written approval by the NPS prior to commencing work. (See Contract - Exhibit F).

The concessioner will ensure that all operations, repair, maintenance and new construction adhere to the contract requirements and the Secretary of Interior's Standards for Treatment of Historic Properties.

Except as noted, the concessioner is responsible for housekeeping, general maintenance, replacement and repair as follows:

#### **A. Buildings**

1. Buildings: Any changes in the architecture, building interior or exterior, including color and material must be approved in advance by the NPS. Preservation maintenance, routine maintenance and repair on all structures must be consistent with NPS standards and guidelines.
2. Radon: When requested to do so, the concessioner will monitor radon levels in work places and provide mitigation where federally accepted levels are exceeded in accordance with Director's Order (DO)-76.
3. Asbestos: The concessioner will develop a schedule for identifying and abating asbestos in accordance with OSHA 29 CFR 1926.58, Environmental Protection Agency (EPA), 40 CFR 61.M, 763.E and G, and NPS-76.
4. Lead-Based Paint: The concessioner will develop a program to identify and mitigate hazardous lead-based paint in accordance with the Lead Poisoning Prevention Act of 1971, Public Law 91-695, as amended in 1987 and 1988; and NPS Housing Design and Rehabilitation Guidelines (DO-76). Lead levels must be detected before renovating any building constructed prior to 1977.
5. Building Codes: The concessioner will comply with all applicable federal, state, and local codes, including, but not limited to, the National Fire Protection Association's (NFPA) and applicable OSHA standards.
6. Interior Systems: The concessioner will develop and implement preventive maintenance guidelines for building systems to ensure efficient operations. The concessioner will clean and inspect all interior systems prior to each operating season, including but not limited to, chimneys, fireplaces, stoves, etc.
7. Utility Systems: The concessioner will operate, repair and replace all interior and exterior utility systems within their land assignments as described in this plan or shown and described on land assignment maps.
8. Food Service Equipment: All equipment used in food service operations, including but not limited to, dishwashers refrigerators, freezers, coolers, serving tables, etc., will comply with safety, public health, and sanitation codes.

9. Safety Equipment: The concessioner will provide and maintain safety devices, in accordance with applicable codes, including but not limited to, fall protection, confined space, fire detection, suppression equipment, etc. and all equipment necessary for the protection of the employees and the public, as well as concessioner-owned and government-assigned improvements by complying with all applicable codes.
10. Historic Structures: The hangars are listed on, or are eligible to for nomination to the National Register of Historic Places. The concessioner will submit plans for all proposed work or actions affecting these resources to the NPS to ensure compliance with laws, policies, and guidelines, including the National Historic Preservation Act of 1966, as amended. The NPS will work with the concessioner to ensure that compliance requirements are followed.
11. Damage to Concession Facilities or Utilities: The concessioner will be responsible for repairing any damage caused to any assigned structure or utility due to negligence on the part of a concessioner employee or supplier.

#### **B. Grounds and Landscaping**

1. All landscaping changes will be approved in advance by the NPS. All chemicals, including but not limited to, fertilizers, pesticides, and herbicides require NPS approval prior to use.
2. The concessioner will work with the NPS to identify resource-related problems in their assigned areas. The NPS will recommend and approve correction methods. The concessioner is responsible for ensuring that necessary work is accomplished.
3. The concessioner is responsible for litter-control in assigned areas.
4. The concessioner is responsible for exotic weed management in their assigned areas:
  - The NPS will survey the concessioner's land assignments to identify exotic weeds and provide the concessioner with the survey results. The concessioner will work with the NPS to ensure early detection.
  - The concessioner will be responsible for manual removal of high-priority species. Weeds that cannot be controlled manually will be chemically sprayed by the NPS. The concessioner will be billed for associated costs.
5. The Concessioner is responsible for grass mowing and trimming shrubs and trees.

#### **C. Accessways**

##### Parking Areas

1. The Concessioner is responsible for resurfacing, surface repair, patching and striping, debris and hazard removal in visitor, employee and administrative parking lots designated in land assignments.

Sidewalks, Walkways, Trails, Steps, Foot Bridges

1. The Concessioner is responsible for maintaining and replacing sidewalks, established trails, and steps in their assigned areas including sweeping, surface repair, erosion control, and lighting.
2. The Concessioner will provide safety railings on steps and hazardous walkways.
3. The Concessioner is responsible for complying with the Uniform Federal Accessibility Standards (UFAS) in their assigned areas. All designs must meet NPS and UFAS standards. Ramps must not interfere with plowing and street-sweeping by extending into the roadways or parking lots.

**D. Utilities**

Water and sewer are provided by the NPS and, if requested, the NPS will collect garbage. These services will be provided to the Concessioner based on established rates.

Solid Waste

1. If requested, the NPS will collect solid waste and bill the Concessioner based on established rates.
2. The Concessioner can make other arrangements for garbage collection. However, storage equipment, and schedules must be approved in advance by the NPS to assure that resource management guidelines are met.
3. The Concessioner will paint garbage cans within its assigned areas as needed.
4. Any debris generated from the Concessioner's construction or demolition is the responsibility of the Concessioner. Debris will be contained and removed from the park, to appropriate disposal sites, as soon as possible.

Water

1. The Concessioner is responsible for all interior plumbing in concession facilities.
2. The Concessioner's responsibility starts at, and includes, the isolation valves on the building side of the water main in assigned areas.
3. The NPS will maintain water meters on new and existing concession facilities. The Concessioner is responsible for purchasing and installing meters and back-flow prevention devices for new construction or new building assignments.
4. If a water main is tapped, broken or needs to be accessed, the local NPS maintenance supervisor will be notified. The Concessioner is responsible for exposing the main and restoring the area unless it is previously determined to be an NPS responsibility.
5. The Concessioner is responsible for road repairs if excavation through a road or paved area is

needed to repair a line. The Concessioner will replace topsoil and vegetation due to any ground disturbance caused by repairs. The Concessioner will disinfect repaired lines in accordance with NPS procedures.

6. The Concessioner will provide the NPS with facility occupancy dates for activation or deactivation of systems when opening and closing dates are submitted for approval.
7. The Concessioner is responsible for the following procedures prior to opening any facility that has been closed:
  - Water lines will be superchlorinated before initial use.
  - In cases where superchlorination is not possible, lines will be thoroughly flushed with potable water. After lines are flushed, a steady stream of water must flow from spigots until demand creates a constant flow.
8. The NPS and the USPHS will conduct annual water/sewer surveys in the Concessioner's facilities.
9. The NPS is responsible for replacing and maintaining and painting fire hydrants.

#### Sewer

1. The Concessioner is responsible for all interior plumbing and fixtures in concession facilities.
2. The Concessioner is responsible for collection systems serving only the Concessioner's facilities as follows:
  - Cleaning, repair and replacement of systems up to and including the last manhole before a lift station or up to and including the last manhole before another user comes on line.
  - Exterior lines and laterals from assigned buildings to the mains.
3. The NPS is responsible for day-to-day maintenance on lift stations.
4. The Concessioner is responsible for installing, repairing, maintaining and replacing grease traps associated with their operations.
5. The Concessioner is responsible for reporting sewer spills and plugged sewer lines to NPS District Maintenance Managers and the Concessions Management Office immediately.

#### Electrical

The Concessioner will obtain electrical service from the local provider.

1. Maintaining, repairing and replacing all interior wiring and electrical supply lines from exterior transformers into concession facilities are Concessioner responsibilities.
2. The Concessioner will provide all utility line drawings to the NPS to reflect any changes including new installations, repair or relocation.
3. The Concessioner is responsible for obtaining new or additional power lines within assigned areas.
4. The Concessioner is responsible for electricity and fixtures in assigned parking lots that serve only their facilities.

#### Telephones

The Concessioner is responsible for all on-premise equipment and inside wiring. The Concessioner will contract directly for commercial telephone service. Agreements will be in accordance with guidelines provided by the NPS.

#### **E. Fuel Tanks**

1. The Concessioner is responsible for all underground storage tanks (USTs) and above ground storage tanks (ASTs) within their assigned areas. ASTs will be tested and maintained in accordance with 40 CFR, Part 280 (Wyoming) and ARM 16.45.102A (Montana) and all other applicable laws. The Concessioner must notify the NPS and the appropriate State Department of Environmental Quality (DEQ) in the event of any leaks, spills, tank modifications, temporary closures or any status changes.
2. The NPS policy for USTs and ASTs will be followed for all existing tanks, upgrades and new installations.
3. The Concessioner is responsible for all propane (L.P.) tanks in assigned areas:
  - Tanks will be tested and maintained in accordance with NFPA 54 and 58, and with 29 CFR 1910.110.
  - Wherever possible, propane tanks will be underground. All above ground propane tanks will be fenced and kept free of vegetation.
  - Plastic, untraceable LP gas lines will have trace-wire installed to facilitate advanced location and use. Warning tape will also be installed to warn future excavators of gas lines below.
  - All new propane tank installation will be approved by the NPS prior to installation.
4. All designated suppliers will be issued a non-fee permit for transporting hazardous materials.

#### **F. Hazardous Materials**

All hazardous material (Haz-Mats) will be handled as follows:

- The Concessioner will follow all RCRA, OSHA and 29 CRF, 1910 and 1926 regulations.
- Haz-Mat requirements will be part of the Concessioner's Risk Management Program.
- Spill kits, specified by the NPS, will be available at all of the concessioner's fueling stations, Haz-Mat storage areas and in maintenance vehicles.
- Spills will be reported immediately to the NPS Concessions Management Office.

#### **G. Environmental**

To the extent possible, the concessioner will use naturally-derived cleaning products.

The concessioner will cooperate with the NPS in assuring that disposable products such as glass, aluminum, cardboard and paper are recycled. Following are individual responsibilities:

1. The concessioner may independently recycle (any independent recycling program must be approved in advance by the NPS) or participate in the park's recycling program as follows:
  - The NPS will provide a sufficient number of marked recycling receptacles throughout the park for employees and visitors
  - The concessioner will provide a sufficient number of marked recycling receptacles in its areas of operation
  - The NPS will collect recyclables from NPS offices and residential areas and haul them to Amfac's recycling center.
  - The concessioner will collect recyclables from their assigned areas and haul to designated recycling centers.
  - The concessioner will store recyclables in appropriate secure storage containers to protect against odors that could attract animals.
  - Revenues generated from the sale of recycled materials will be documented and used to offset the cost of the program.

#### **H. Snow Removal**

1. The concessioner is responsible for snow removal from concession facilities' roofs, entrances, porches and walkways. Ice buildup on walkways will be sanded or removed for safety. Spring snow removal will be coordinated with NPS District Maintenance Managers.
2. Any chemical used for removing ice must be approved in advance by the NPS.
3. All winter keeping of concession facilities is the concessioner's responsibility.

4. The concessioner is responsible for marking fire hydrants with snow stakes and for removing snow from around hydrants in assigned areas.

#### **F. Public Signs**

All signs, flags and banners will be approved by the NPS prior to installation or replacement. Signs will meet the NPS sign standards and the following requirements:

- The concessioner is responsible for maintaining and replacing all interior and exterior signs within their land assignments that relate to their operations and services
- The NPS will provide roadside directional, traffic and regulatory signs
- The NPS will provide signs for accessibility to be installed by the concessioner

#### **G. Pest Control**

The concessioner will notify the Concessions Management Office of serious pest problems including rodents, swallows, bats, bedbugs and other wildlife or insects that may invade buildings. Concessions Management will coordinate with other NPS staff to provide an approved Integrated Pest Management (IPM) strategy for the concessioner's implementation. The concessioner will provide the results of implementation to the NPS.



## EXHIBIT I

### INSURANCE REQUIREMENTS

#### I. INSURANCE REQUIREMENTS

The Concessioner shall obtain and maintain during the entire term of this CONTRACT, at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of the CONTRACT. Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

#### II. LIABILITY INSURANCE

The following Liability Coverage is to be maintained at a minimum, all of which are to be written on an occurrence basis only. The Concessioner may attain the limits specified below by means of supplementing the respective coverage(s) with Excess or Excess "Umbrella" Liability.

##### A. Commercial General Liability

1. Coverage will be provided for bodily injury, property damage, personal or advertising injury liability (and must include Contractual Liability and Products/Completed Operations Liability).

Bodily Injury and Property Damage Limit -	\$4,000,000
Products/Completed Operations Limit -	4,000,000
Personal Injury & Advertising Injury Limit -	4,000,000
General Aggregate -	5,000,000
Fire Damage Legal Liability "per fire" -	4,000,000

2. The liability coverage may not contain the following exclusions/limitations:

- a. Products/Completed Operations
- b. Personal Injury or Advertising Injury exclusion or limitation
- c. Contractual Liability limitation
- d. Explosion, Collapse and Underground Property Damage exclusion
- e. Total Pollution exclusion

3. For all indoor facilities where there may be a large concentration of people, the pollution exclusion may be amended so that it does not apply to the smoke, fumes, vapor or soot from equipment used to heat the building.

4. If the policy insures more than one location, the General Aggregate limit must be amended to apply separately to each location, or, at least, separately to the appropriate NPS location(s).

**B. Automobile Liability**

Coverage will be provided for bodily injury or property damage arising out of the ownership, maintenance or use of "any auto."

Each Accident Limit - \$1,000,000 or greater amount if required by the state

**C. Liquor Liability**

Coverage will be provided for bodily injury or property damage including damages for care, loss of services, or loss of support arising out of the selling, serving or furnishing of any alcoholic beverage.

Each Common Cause Limit - \$6,000,000  
Aggregate Limit

**D. Excess Liability or Excess "Umbrella" Liability**

This coverage is not required, but may be used to supplement any of the above Liability coverage policies in order to arrive at the required minimum limit of liability. If maintained, coverage will be provided for bodily injury, property damage, personal or advertising injury liability in excess of scheduled underlying insurance. In addition, coverage shall be at least as broad as that provided by underlying insurance policies and the limits of underlying insurance shall be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage afforded under the Excess Liability or Excess "Umbrella" Liability policy.

**E. Environmental Impairment Liability**

Coverage will be provided for bodily injury, personal injury or property damage arising out of pollutants or contaminants (on site and/or offsite).

**F. Special Provisions for Use of Aggregate Policies**

At such time as the aggregate limit of any required policy is (or if it appears that it will be) reduced or exhausted, the concessioner may be required to reinstate such limit or purchase additional coverage limits.

**G. Self-Insured Retentions**

Self-insured retentions on any of the above described Liability insurance policies (other than Excess "Umbrella" Liability, if maintained) may not exceed \$5,000.

**H. Workers Compensation & Employers' Liability**

Coverage will comply with the statutory requirements of the state(s) in which the concessioner operates.

### **III. PROPERTY INSURANCE**

#### **A. Building(s) and/or Contents Coverage**

1. Insurance shall cover buildings, structures, improvements & betterments and/or contents for all Concession Facilities, as more specifically described in Exhibit D of this CONTRACT.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.
5. Coverage is to be provided on a blanket basis.
6. The Vacancy restriction, if any, must be eliminated for property that will be vacant beyond any vacancy time period specified in the policy.

#### **B. Boiler & Machinery Coverage**

1. Insurance shall apply to all pressure objects within Concession Facilities.
2. The policy shall provide for loss recovery on a Replacement Cost basis.
3. The amount of insurance should represent no less than 75% of the Replacement Cost value of the insured property.
4. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
5. Coverage is to be provided on a blanket basis.
6. If insurance is written with a different insurer than the Building(s) and Contents insurance, both the Property and Boiler insurance policies must be endorsed with a joint loss agreement.
7. Ordinance or Law Coverage shall be maintained.

#### **C. Builders Risk Coverage**

1. Insurance shall cover new buildings or structures under construction at the Concession Facilities, and include coverage for property that has or will become a part of the project while such property is at the project site, at temporary off-site storage and while in transit. Coverage should also apply to temporary structures such as scaffolding and construction forms.
2. Coverage shall apply on an "All Risks" or "Special Coverage" basis.
3. The policy shall provide for loss recovery on a Replacement Cost basis.
4. The amount of insurance should represent no less than 90% of the Replacement Cost value of the insured property.
5. The coinsurance provision, if any, shall be waived or suspended by an Agreed Amount or Agreed Value clause.
6. Any occupancy restriction must be eliminated.
7. Any collapse exclusion must be eliminated.
8. Any exclusion for loss caused by faulty workmanship must be eliminated.

#### **D. Business Interruption and/or Expense**

1. Business Interruption insurance, if maintained by the Concessioner, should cover the loss of income and continuation of fixed expenses in the event of damage to or loss of Concession Facilities. Extra Expense insurance shall cover the extra expenses above normal operating expenses to continue operations in the event of damage or loss to covered property.

#### **E. Deductibles**

Property Insurance coverage described above may be subject to deductibles as follows:

1. Direct Damage deductibles shall not exceed the lesser of 10% of the amount of insurance or \$25,000.
2. Extra Expense deductibles (when coverage is not combined with Business Interruption) shall not exceed \$25,000.

#### **F. Required Clauses**

1. Loss Payable Clause:

A loss payable clause similar to the following must be added to Buildings and/or Contents, Boiler and Machinery, and Builders Risk policies:

"In accordance with Concession Contract No. \_\_ dated \_\_\_\_, between the United States of America and [the Concessioner] payment of insurance proceeds resulting from damage or loss of structures insured under this policy is to be disbursed directly to the Concessioner without requiring endorsement by the United States of America."

2. The United States Department of the Interior, National Park Service will be named as additional insured on certificates with respect to damage to National Park Service property. The United States of America shall be the named insured for General Liability Insurance.

#### **IV. CONSTRUCTION PROJECT INSURANCE**

Concessioners entering into contracts with outside contractors for various construction projects, including major renovation projects, rehabilitation projects, additions or new buildings/facilities will be responsible to ensure that all contractors retained for such work maintain an insurance program that adequately covers the construction project.

The insurance maintained by the construction and construction-related contractors shall comply with the insurance requirements stated herein (for Commercial General Liability, Automobile Liability, Workers' Compensation and, if professional services are involved, Professional Liability). Where appropriate, the interests of the Concessioner and the United States shall be covered in the same fashion as required in the Commercial Operator Insurance Requirements. The amounts/limits of the required coverage shall be determined in consultation with the Director taking into consideration the scope and size of the project.

#### **V. INSURANCE COMPANY MINIMUM STANDARDS**

All insurance companies providing the above described insurance coverages must meet the minimum standards set forth below:

1. All insurers for all coverage must be rated no lower than A- by the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
2. All insurers for all coverage must have a Best's Financial Size Category of at least VIII according to the most recent edition of Best's Key Rating Guide (Property-Casualty edition).
3. All insurers must be admitted (licensed) in the state in which the concessioner is domiciled.

#### **VI. CERTIFICATES OF INSURANCE**

All certificates of Insurance required by this CONTRACT shall be completed in sufficient detail to allow easy identification of the coverage, limits, and coverage amendments that are described

above. In addition, the insurance companies must be accurately listed along with their A.M. Best Identification Number ("AMB#"). The name, address and telephone number of the issuing insurance agent or broker must be clearly shown on the certificate of insurance as well.

Due to the space limitations of most standard certificates of insurance, it is expected that an addendum will be attached to the appropriate certificate(s) in order to provide the space needed to show the required information.

In addition to providing certificates of insurance, the concessioner, upon written request of the Director, shall provide the Director with a complete copy of any of the insurance policies (or endorsements thereto) required herein to be maintained by the concessioner.

## VII. STATUTORY LIMITS

In the event that a statutorily required limit exceeds a limit required herein, the higher statutorily required limit will be considered the minimum to be maintained.