

IN REPLY REFER TO:  
C3823 5.B (GATE-S)

Date

XXXX

Dear XXXX.,

This Letter of Intent (LOI) establishes the terms and conditions of the negotiations for a Proposed Lease, in accordance with 36 CFR 18.3, for residential use of facilities identified below, which has been deemed a compatible use by NPS. The terms and conditions follow:

The National Park Service (NPS) and XXXX (Offeror/s) agree to enter into good faith negotiations for a proposed lease (the "Proposed Lease") of the following property (Premises) in the Sandy Hook Unit of at Gateway National Recreation Area ("Park" or "GATE"):

Building #XX, also known as the "XXXX": Residential Use

LCS ID: XXXX

FMSS ID: XXXXX

The Premises do not include, but Lessee shall be allowed access to:

- Corresponding ingress and egress
- Non-exclusive use of common parking area/s.

## **I. TERMS**

1. The Premises shall be used for \_\_\_\_\_ use as referenced above.
2. This LOI shall be effective XXXX.
3. This LOI shall expire XXXX, unless extended by written agreement of NPS and Offeror or superseded by a Lease executed between NPS and Offeror. Either party may terminate this LOI and the negotiations for the Proposed Lease at any time in its discretion by written notice to the other party by written notice to the other party within five (5) days of the full execution of this LOI. The term of this LOI is also known as the "feasibility period."
4. During the term of this LOI, the Offerors are authorized to take action to secure the Premises and make efforts to prevent any further deterioration to same. Such temporary

actions include boarding up windows, removal of vegetation, placing tarpaulins on roofs, and similar efforts. All such efforts must be approved in writing by the Unit Coordinator prior to commencing same. Any such temporary efforts shall become the property of the United States without compensation or further obligation to the Offerors.

5. In the event that at the end of the feasibility period, NPS, in its sole discretion and based on its review of Offeror's progress throughout the term of this LOI, determines that the findings of the feasibility study indicated that Offeror is unable to:
  - a. Meet the Fair Market Value rental payments as required under 36 CFR Part 18
  - b. Meet the obligations to repair or rehabilitate the Premises
  - c. Undertake the obligations of the project
  - d. Otherwise manage the facility obligations

NPS shall notify Offeror of such determination, and unless Offeror provides reasonable evidence to the contrary within thirty (30) days of such determination, this LOI shall terminate. If the NPS deems that Offeror is making substantial progress to ensure that it can meet the financial requirements identified above, this requirement may be extended.

6. In addition, in the event that notwithstanding NPS efforts to negotiate the Proposed Lease with Offeror, such Proposed Lease has not been executed by both parties prior to the expiration of the term of this LOI or in the event that either party exercises its right to terminate this LOI, this LOI shall terminate. In the event of any such termination, the parties, hereto irrevocably waive and relinquish any and all claims, causes of action and/or rights to any other monetary compensation or equitable relief of any nature against the other (the term "other" shall include, without limitation, the respective officers, employees, and/or agents of NPS and Offeror), in any manner arising out of the circumstances of this LOI, including, without limitation, its solicitation, negotiation, execution and related administrative actions, of any nature whatsoever, excepting any costs identified above by NPS as recoverable in connection with Offeror's occupancy of the Premises. In the event of any such termination, Offeror will also be prohibited from further access to the facilities. NPS shall deem any property left behind "abandoned" and shall dispose of same in the manner authorized pursuant to applicable law, regulation, and policy. Offeror shall be liable for any costs incurred by NPS arising in connection with the disposal of abandoned property.

7. This LOI may be terminated at the discretion of the Superintendent upon 24 hours' notice, or without notice if damage to resources or facilities occurs or is threatened, notwithstanding any other term or condition of this LOI to the contrary. In the event of any such termination, Offeror will be prohibited from further occupancy or utilization of the facilities. All costs associated with clean-up or damage repairs in conjunction with a terminated LOI will be the responsibility and obligation of Offeror.
8. All architectural, engineering and other plans, drawings, specifications and studies relating to the Premises which are developed during the feasibility period shall become the property of the United States. In order to assure NPS that it will have the legal right to use such plans, drawings, specifications and the like, Offeror shall include in its agreements with the architects, engineers and other professionals who prepared such items and who have any proprietary rights with respect to such items (including the rights to use thereof in connection with the Premises) provisions whereby NPS shall have the right to use such plans and other materials in connection with the Premises.

## **II. OBLIGATIONS:**

1. NPS and Offeror will address all matters necessary to achieving execution of the Proposed Lease, including, without limitation, the Fair Market Value rent for the Premises, applicable common area charges or fees, the scope of activities Offeror will be allowed to conduct on the Premises, and other terms and conditions of the Proposed Lease. All requirements of 36 CFR Part 18 shall apply to the negotiations of all terms more fully described in Part §18.5, which allows NPS to consider:
  - a. Any restrictions on the use of the property or terms of the lease that limit the value and/or the highest and best use of the property; and
  - b. Any requirements under the lease for the lessee to restore, rehabilitate or otherwise improve the leased property.
2. Offeror is obligated to insure the premises as follows: Offeror shall carry commercial general liability insurance against claims occasioned by the action or omissions of the Offeror, its agents and employees in carrying out the activities and operations authorized under this LOI. The policy shall be in the amount of \$1,000,000 per occurrence and \$3,000,000 aggregate and underwritten by a United States company naming the United States of America as additionally insured. Offeror agrees to provide the Superintendent with a Certificate of Insurance with the proper endorsements prior to the effective date of the LOI. Additionally:

a. All insurance policies shall name the United States of America as an additional insured on the face of the policy and of the corresponding certificate of insurance, and shall provide that the NPS shall have no obligation to pay any premium or assessment.

b. All required insurance and any renewals shall be issued by one or more companies of recognized responsibility licensed to do business in the state in which the Park is located with a financial rating of at least a Class A- (or equivalent) status, as rated in the most recent edition of Best's Insurance Reports (or equivalent) or as otherwise acceptable to the NPS and 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).

c. All insurance policies shall provide that such policies shall not be cancelled, terminated or altered without thirty (30) days prior written notice to the NPS. The Offeror must provide to the NPS a copy of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect on or before the commencement date of this LOI and periodically thereafter. The Offeror shall maintain all policies provided throughout the term of this LOI and the Offeror shall renew such policies before the expiration of the term of the policy.

3. NPS and the Offeror shall coordinate with the Department of the Interior (DOI), Office of Valuation Services (OVS) to obtain a Fair Market Value rent appraisal or market study, at Offeror's cost and expense. The appraisal or market study and any information identified therein shall remain the property of NPS and NPS is under no obligation to provide Offeror any information contained therein beyond the actual Fair Market Value rent. NPS may, at its discretion, offset the cost of the appraisal or market study against rents due and owing under a subsequently executed lease.

4. Offeror shall make a thorough, independent examination of the Premises and all matters relevant to Offeror's decision to enter into the Proposed Lease such that Offeror will be thoroughly familiar with all aspects of the Premises and satisfied that they are in an acceptable condition and meet Offeror's needs. The inspection and review must include:

a. All matters relating to legal requirements as such, but not limited to:

- i. Taxes and assessments;
- ii. Permitting and other authorizations required from entities other than NPS;
- iii. Boundaries, easements, and other, if any, limitations on use of the premises.

b. Physical and functional condition of the Premises and the areas under, or in the vicinity of, the Premises. Such inspection and review should address the suitability of the Premises for Offeror's proposed use. Such inspection and review should include but is not limited to review of:

- i. Soils
- ii. Structural Conditions
- iii. Mechanical, Electrical, Plumbing Systems
- iv. Fire Safety Considerations - Adequate fire exits, signage, and necessary sprinklering
- v. Hazardous materials identification and abatement, not limited to mold and other sources of air quality hazards
- vi. Accessibility Considerations - ingress/egress

c. Feasibility Review and Pre-Construction Planning - Offeror shall, upon request from NPS, furnish the NPS with a correct copy of any contract with the professionals such as but not limited to general contractor, architects, or consultants retained by Offeror in connection with the activities undertaken herein. In addition, the following are required:

- i. A Scope of Work (SOW) which includes specifications for all work proposed including:
  1. A project statement that details the intended use/operation of each property. Documentation of existing conditions, including photos, for all proposed modifications should be provided.
  2. A Code Assessment completed by an architect licensed in the State of New Jersey.
  3. Construction drawings and specifications (including product/material submissions, landscape plans if any) consistent with DOI standards for rehabilitation of historic structures for all improvements or modifications, including Mechanical, Electrical, Plumbing, and fire suppression systems, that are proposed for each property, stamped and signed by a professionally licensed architect or engineer.
  4. Cost estimates identifying the total project costs.

5. Offeror is required to provide evidence of the following:

a. Offeror has sufficient skill and resources to rehabilitate the Premises in accordance with the Secretary's Standards and in accordance with the approved plans and specifications provided as part of feasibility review and pre-construction planning.

b. Offeror's possesses the financial capability to complete the rehabilitation and pay Fair Market Value rent. In support of same, Offeror will identify the source and availability of funds for cost

of rehabilitation and the estimated Fair Market Value rent through bank statements, bank financing commitment letters, or similar documents;

c. Offeror has sufficient skill and resources to maintain, operate, and manage the Premises,

d. Offeror has sufficient skill and resources to comply with life, health, and safety issues arising in connection with the proposed use of the Premises.

6. The obligation of NPS to execute the Proposed Lease for the Premises is subject to all NPS determinations required by 36 CFR Part 18, any other required regulatory or statutory actions or determinations, and to NPS determinations that Offeror has satisfied the obligations identified herein.

### **III. LIMITATIONS**

1. Offeror's activities on the Premises are limited to due diligence activities and shall be subject to the general supervision and inspection of the NPS and to such rules and regulations regarding ingress, egress, safety, sanitation and security as may be prescribed by the Superintendent from time to time.

2. During the term of this LOI, Offeror shall cut no timber or remove any other landscape features such as shrubs or bushes, conduct no mining or drilling operations; remove no sand, gravel or similar substances from the ground; commit no waste of any kind; or in any manner change the contour or condition of the Premises without the express written consent of the NPS.

This LOI is executed subject to the express condition that the United States, its agents and employees shall be free from all liabilities and claims for damages and/or suits for or by reason of any injury, injuries, or death to any person or persons or property of any kind whatsoever, whether to the person or property of Offeror, its agents or employees, or third parties, from any cause or causes whatsoever while in or upon said premises or any part thereof during the term of this agreement or occasioned by any occupancy or use of said premises or any activity carried on by the Offeror in connection herewith, and the Offeror hereby covenants and agrees to indemnify, defend, save and hold harmless from and against, and reimburse the United States, the NPS, its employees, successors, agents, and assigns from all liabilities, charges, expenses and costs on account of or by reason of any such injuries, deaths, liabilities, claims, suits or losses however occurring or damages growing out of the same.

Any notice, consent or other communication required or allowed under this LOI shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested, and shall be deemed to have been given on the earliest of (a) receipt, (b) one business day after delivery to a courier for overnight expedited delivery service, or (c) five (5) business days after the date deposited in the United States mail, registered or certified, with postage prepaid and return receipt requested (provided that such return receipt must indicate receipt at the address specified), and addressed as appropriate to the following addresses (or to such other or further addresses as the parties may designate by notice given in accordance with this Section):

If to the NPS:

Superintendent  
Gateway National Recreation Area  
210 New York Avenue  
Staten Island, NY 10305

If to Offeror:

XXXX

The Offerors are jointly and severally liable for the obligations of this LOI.

This LOI constitutes the entire agreement between NPS and Offeror with respect to the Proposed Lease of the Premises and supersedes all prior offers or negotiations, whether oral or written. This LOI may not be amended or modified except by an instrument in writing signed by NPS and Offeror.

If these terms and conditions are acceptable to you, please so indicate by signing below.

Sincerely,

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Kathleen Karhnack-Glasby  
Chief of Business Services Division, Northeast Region  
National Park Service

Agreed:

XXXX

By \_\_\_\_\_

Title \_\_\_\_\_

Attest \_\_\_\_\_

Title \_\_\_\_\_