

Appendix H-1:
L-EBLA004-20 Draft Lease



UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

EBEY'S LANDING NATIONAL HISTORICAL RESERVE
HIGHWAY SOUTH PROPERTIES

Lease No. L-EBLA004-20

—

[SELECTED OPERATOR NAME]

COVERING THE PERIOD OF [LEASE EFFECTIVE DATE] TO [LEASE EFFECTIVE DATE + 10 YEARS]

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

WITNESSETH THAT:

WHEREAS, Congress designated Ebey's Landing National Historical Reserve as a unit of the national park system;

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

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

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

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

Section 1. DEFINITIONS

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

1.1 Agricultural Activities- uses and practices legally allowed on federal land currently existing or including, but not limited to: producing, breeding, or increasing or expanding agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land for agricultural activities to lie dormant because the land is needed as a buffer to protect surface water from runoff; conducting agricultural operations; and maintaining agricultural lands under production or cultivation. Agricultural activities also include post and wire fencing, and shall include weed control activities in accordance with state and local regulations mandating noxious weed control.

1.2 Alterations- means any construction, physical modifications, rehabilitation, reconstruction, and/or restoration of the Premises.**1.3 Applicable Laws-** means all present and future laws, statutes, requirements, ordinances, judgments, regulations, and administrative and judicial determinations that are applicable by their own terms to the Premises or the Lessee, even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Premises now or hereafter enacted or in effect (including, but not limited to, Part 18 and the Reserve's General Management Plan, environmental laws and those relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Lessee or to all or any portion of the Premises, or to the use, occupancy,

possession, operation, and maintenance of the Premises even if compliance therewith results in interference with the use or enjoyment of all or any portion of the Premises.

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

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

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

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

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

1.9 Good Faith- refers to the general presumption that the parties to a contract will deal with each other honestly, fairly, and in good faith, so as to not destroy the right of the other party or parties to receive the benefits of the contract.

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

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

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

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

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

1.15 Lease Term- the term of this Lease as stated in Section 4 of this Lease.

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

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

1.18 NPS 28- means the National Park Service document entitled ACultural Resource Management Guideline that is hereby made a part of this Lease by reference.

1.19 Reserve- means Ebey's Landing National Historical Reserve.

1.20 Part 18- means Part 18 of Volume 36 of the Code of Federal Regulations.

1.21 Personal Property- means all furniture, fixtures, equipment, appliances, and apparatus placed in or on the Premises-that are neither permanently attached to or form a part of the Premises.

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

1.23 Premises- means the property of the Reserve that is described in Section 2 of this Lease, including, without limitation, all improvements thereon as of the Commencement Date and all Alterations and other installations or physical changes made to the Premises during the term of this Lease by any Party.

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

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

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

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

Section 2. LEASE OF PREMISES

2.1. Lease of Premises; Reservation of Rights

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

The cultivated lands authorized for agricultural use have been calculated at 44.58 acres. All cultivation shall be conducted under the provisions of this Lease.

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

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

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

2.2 Waiver

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

2.3 Easements

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

2.4 Ownership of the Premises

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

2.5 Historic Property

The Premises are part of the Central Whidbey Island Historic District, which is a Historic Property listed on the National Register of Historic Places.

Section 3. ACCEPTANCE OF PREMISES

3.1 As Is Condition of the Premises

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

3.2 Lessee’s Due Diligence

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

3.3 Inventory and Condition Report

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

Section 4. LEASE TERM AND ABANDONMENT

4.1 Lease Term

The Lease Term shall be a period of Ten (10) years commencing on: _____ (Commencement Date) and expiring on _____ (Expiration Date) or ending on such earlier date as this Lease may be terminated in accordance with its terms (Termination Date).

Lessee shall have the right to terminate this Lease by giving six months advance written notice to Lessor. Lessor shall, at any time, have the right to revoke this Lease. Lessor also has the right to revoke this Lease for any reason in Lessor's sole discretion after first providing Lessee with one year's written notice of such revocation. Notwithstanding the foregoing, if Lessor, in its sole discretion, determines that there is a significant health or safety risk to persons or property associated with Lessee's continued use or occupancy of the Premises, Lessor shall have the right to revoke this Lease after first providing Lessee with thirty (30) days written notice of such revocation. If the health or safety risk will cause imminent harm, then the Lessor has the authority and discretion to shorten revocation period as necessary to prevent injury.

4.2 Abandonment

The Lessee shall occupy the Premises during the entire Lease Term. If it fails to do so, the Lessee may be determined as in Default for abandoning the Premises. Occupancy is not required

if the Lessor determines it infeasible because of the construction of Improvements.

Section 5. RENT

5.1. Net Lease and Rent Payments

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

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

5.2 Annual Rent

During the Lease Term, Lessee shall pay to Lessor Annual Rent for the Premises in the aggregate annual amount of _____ (\$ _____) (as adjusted for CPI if provided below) payable in advance on the first day of the first calendar month of the lease.

5.3 CPI Adjustment

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

Section 6. USE OF PREMISES

6.1 Authorized Uses

Unless otherwise limited by the provisions of this Lease, or applicable law, Lessee may utilize the Premises only for the following purposes:

Lessee is hereby authorized to use the Premises for: “agricultural activities” involving land. As such the lands shall be used only for agricultural-related activities, such as growing commodity crops for animal feed, or cash crops. Lessor hereby approves this use and no changes to this designated use shall be permitted, except as provided for in Section 6.2 of this Lease.

Agricultural products the Lessee may produce include: a) viticultural, dairy, apiary, vegetable, b) production of fruit, grain, hay, straw, and seed. Agricultural crops may include: a) seed-producing annuals, such as but not limited to, canola/rapeseed, corn, wheat, barley, oats, millet, potatoes, and sunflowers; b) domestic grasses and legumes, such as but not limited to, bluegrass, wheatgrass, brome, orchard grass, clover, alfalfa, trefoil, and sweetclover; c) root and bulb crops;

d) other low-lying customary and traditional crops such as, but not limited to, row crops, vegetables, herbs and berry crops; and e) fruit trees, orchards, and vineries. No genetically modified food and forage crops (e.g. "Roundup ready alfalfa") shall be authorized without NPS review and approval. Agricultural crops shall not include tree farms primarily for the production of conifer seeds, Christmas trees, or wood or hemp fiber.

No use of land beyond the boundaries of the Premises is authorized.

Lessee's authorized use of the premises is subject to Lessee's good faith participation in the development and implementation of an Agricultural Use Plan that includes Best Management Practices (BMP's) designed to preserve and protect the integrity of the Reserve's resources.

The Parties hereby acknowledge and agree that Lessee's covenant that the Premises shall be used as set forth in this Section 6 is material consideration for Lessor's agreement to enter into this Lease. The Parties further acknowledge and agree that any violation of said covenant shall constitute a Default under this Lease.

Lessee's use of the land is subject to the right of the NPS to establish trails, roads and other improvements and betterments over, upon, or through said premises and further to the use by travelers and others of such roads and trails as well as those already existing. The Lessee understands that Reserve visitors are authorized to walk or hike on the perimeter of the cultivated fields included in this Lease even if no trail is formally established.

The Lessee shall be responsible for the planting, growing and harvesting of any and all crops.

6.2 Changes to Authorized Uses

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

6.3 Applicable Laws

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

6.4 Forbidden Uses

In no event shall the Premises be used for any purpose that is not permissible under Part 18 or, even if so permissible, may be dangerous to life, limb, property or public health; that constitutes or results in waste or unreasonable annoyance (including, without limitation, the introduction of signage or the use of loudspeakers or sound or light apparatus that could disturb Reserve visitors outside the Premises); that in any manner causes or results in a nuisance; that is of a nature that it involves substantial hazard, such as the manufacture or use of explosives, chemicals or products that may explode, or that otherwise harms the health or welfare of Reserve resources and/or visitors; or that results in any discharge of Hazardous Materials in, on or under the Premises.

Lessee may neither authorize nor host activities that require a National Park Service Special Use Permit, such as organized events or filming activities, upon the Premises without Lessor's prior written approval.

Hunting is not permitted on the property.

6.5 Site Disturbance

Except as provided in Article 6.14 (Tree and Vegetation Removal) and Article 6.13 (Wildlife Protection and 6.1 Authorized Uses), notwithstanding weed management, Lessee shall neither cut any timber nor remove any other landscape features of the Premises such as shrubs or bushes without Lessor's prior written consent. The Lessee shall not drain or ditch the fields if they are ponded. The Lessee shall conduct no mining or drilling operations, remove no sand, gravel or similar substances from the ground, and commit no waste of any kind. Except in emergencies, Lessee shall submit requests to conduct such activities in writing to Lessor not less than thirty (30) days in advance of the proposed commencement date of any such activities. If approval is granted, Lessee shall abide by all the terms and conditions of the approval, including provisions pertaining to archaeological resources.

The Lessee shall dispose of brush and other refuse at the Island County transfer station as required by NPS. No dumping of ashes, trash, hazardous materials, spoils, or any other unsightly or offensive material shall be permitted upon the land.

6.6 Protection of Cultural and Archeological Resources

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

6.7 Signs

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

6.8 Permits and Approvals

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

6.9 Alterations

The Lessee shall not make Alterations of any nature to the Premises without the written

permission of the Lessor. Any such permission that may be given will be subject to an amendment of this Lease to incorporate appropriate terms and conditions regarding the nature of the Alterations and construction requirements, including, without limitation, construction insurance requirements. Temporary or permanent greenhouses will not be authorized under the lease.

6.10 National Environmental Policy Act and National Historic Preservation Act

In order to preserve the historic appearance of certain farmstead structures or because of the effect of certain proposed activities on the environment, activities undertaken by the Lessor or the Lessee may require the preparation of compliance documents pursuant to the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA") ("Compliance Activity"), Lessee shall supply all necessary information to Lessor and any Agency in a timely manner. If Lessor determines that the Compliance Activity is warranted, Lessor may elect, in its sole discretion, to arrange for the preparation of NEPA and NHPA compliance with the costs of such compliance to be reimbursed by Lessee. Where appropriate and time and resources available, Lessor may also elect, in its sole discretion, to prepare such compliance at Lessor's expense. Lessor will prepare NEPA or NHPA documents as appropriate. Lessee shall not implement any aspect of the Compliance Activity until all applicable NEPA and NHPA requirements have been met.

6.11 Annual Meeting

The Parties shall meet annually during the Term of this Lease for the purposes of discussing and resolving issues of mutual concern and ensuring Lessee compliance with the Provisions of this Lease. Any proposed changes or modifications to this Lease which are required in order to meet National Park Service requirements or objectives shall be discussed and negotiated at the Annual Meeting. If National Park Service requirements or objectives require prompt attention, the date of an Annual Meeting may be reasonably changed by Lessor.

6.12 Water Rights

The Lessor has no water rights to any of the Premises.

Terry Road NPS 101-102

Domestic Water is not presently provided at this location but residential water connections to the Town of Coupeville are available and must be sustained to retain the right to use water in the future. Bimonthly fees must be paid to the Town of Coupeville (account # 2262). Should the Lessee choose to use Town of Coupeville water, the Lessee shall be responsible for any fees or costs associated with hooking up to the municipal water system, and for water consumption..

Highway South NPS 101-103

Domestic Water is not available at this location.

Highway North NPS 101-104

Domestic Water is not available at this location.

6.13 Wildlife Protection

Wildlife management practices, including removal of non-native species and the restoration of extirpated native species, are in accordance with NPS legislation, the Code of Federal Regulations, and NPS Policies (NPS Management Policies 2006). Native predators, scavengers and prey are all integral to healthy native ecosystems and are protected by NPS Management Policies. The occasional damage that is caused by wildlife, to fences, ranching structures, agricultural animals and livestock forage, is to be expected on permitted lands. Lessee shall not engage in any activity that causes harm or destroys any wildlife. Conversely, Lessee shall not engage in any activity that purposely supports or increases populations of non-native or invasive animal species. On a case by case basis, the Lessor will evaluate incidences of depredation and choose a course of action. The nature of the course of action taken, if any, will be determined by the wildlife species, the extent and frequency of the damage and Reserve-wide management objectives.

The use of noise making devices, such as "corn cannons" shall not be permitted as per 36 CFR 2.2(a) (2).

6.14 Tree and Vegetation Removal

Lessee may not remove tree(s) or vegetation, with the exception of planted crops and invasive non-native plants and weeds, unless expressly approved in writing by the Lessor. Lessee shall provide specific plans to the Lessor for desired tree(s) and vegetation removal during the annual meeting or in writing during the term of this Permit. Trimming and vegetation removal around structures, mowing areas that have been Reserve approved, mechanical removal of exotic invasive vegetation such as thistles and silage harvesting (if expressly approved in the Lease) is permissible. Lessee shall manage noxious weeds on the cropland. Noxious weeds are defined as class A and class B noxious weeds in accordance with Island County.

6.15 Pesticide and Herbicide Use

The Reserve utilizes Integrated Pest Management ("IPM") to treat pest problems. The goal of IPM is to use the least-toxic, effective methods of controlling pests. Lessee shall not use any pesticides that do not comply with the IPM program. To this end, Lessee shall submit in writing to Lessor a request for the use of pesticide(s) 30 days in advance of the proposed use, and shall not use any pesticide(s), including topical insecticide(s) and herbicide(s), until Lessee has received an express written authorization therefore from Lessor. Lessee shall manage, treat, generate, handle, store and dispose of all pesticides in accordance with Applicable Laws, including reporting requirements. Each year, the lessee will provide NPS with the quantity of pesticides applied (name, volume, approximate location).

6.16 Fire Prevention and Suppression

Lessee and its employees, agents, and contractors shall, in Lessee's use and occupancy of the Premises, take all reasonable and legally required precautions to prevent forest, brush, grass, and structural fires and shall, if safety permits, assist the Lessor in extinguishing such fires on the Premises.

Section 7. RECORDS AND AUDITS

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

Section 8. MAINTENANCE AND REPAIR

8.1 Lessee's Responsibilities

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

- (a) The performance of all repairs, maintenance, replacement, upgrading, capital improvements, (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the improvements thereon in good order, condition, and repair in a manner consistent with the operation of comparable facilities in the locale of the Reserve and in compliance with all Applicable Laws;
- (b) Housekeeping and routine and periodic work scheduled to mitigate wear and deterioration without altering the appearance of the Premises;
- (c) The repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;
- (d) Maintaining the grounds of the Premises in good condition, including, without limitation, avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles.

Any repair and maintenance actions that may result in Alterations to the Premises require the prior written approval of the Lessor.

8.2 Maintenance Plan

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

Section 9. UTILITIES

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

Section 10. HAZARDOUS MATERIALS

The Lessee shall comply with the following provisions concerning Hazardous Materials:

- (a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on, about, under, or into the Premises or within the Reserve except in compliance with all Applicable Laws and as approved by the Lessor in writing;
- (b) The Lessee shall use, manage, treat, keep, store, release discharge and dispose of its approved Hazardous Materials in accordance with all Applicable Laws. The Lessee is responsible for timely acquisition of any permits required for its Hazardous Materials and related activities and will be fully responsible for compliance with the provisions and conditions of such permits;
- (c) If any Hazardous Materials Occurrence caused by Lessee results in any contamination of the Premises, other Reserve property or neighboring property, the Lessee shall promptly take all actions at its sole expense as are required to comply with Applicable Laws and to allow the Premises or such other property to be used free of any use restriction imposed under Applicable Laws as a result of the Hazardous Materials Occurrence. Except in cases of emergency, the Lessor's written approval of such actions shall first be obtained;
- (d) Lessee at its expense shall be responsible for the abatement of Hazardous Materials in accordance with Applicable Laws in, on, or under the Premises as of the Commencement Date and thereafter; and
- (e) If the Lessee discovers any unapproved Hazardous Materials in or on the Premises or becomes aware of a Hazardous Materials Occurrence related to the Premises, the Lessee shall immediately notify the Lessor.

Section 11. INSURANCE AND INDEMNIFICATION

11.1 Insurance during the Lease Term

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

11.2 Insurance Requirements Modification

If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, conditions, deductibles or self-insurance retention, with respect to any of the insurance required by this Lease are insufficient for a prudent owner of property of the nature of the

Premises, the Lessor may determine the proper and reasonable limits and extent of coverage, conditions, deductibles and self-insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this section.

11.3. Disposition of Insurance Proceeds

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

11.4 Inadequate Insurance Coverage

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

11.5 Indemnity

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

Section 12. DAMAGE OR DESTRUCTION

12.1 Damage or Destruction; Duty to Restore

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

- (a) the Lessee, as promptly as reasonably practicable and with all due diligence, subject to the written prior approval of the Lessor, shall repair or replace the damaged or

destroyed Premises to the condition that existed prior to the damage or destruction; or

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

12.2 No Termination; No Effect on Rental Obligation

No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the improvements thereon, any other property on the Premises shall operate to terminate this Lease except as provided in Section 12.1 of this Lease. No such loss or damage shall affect or relieve the Lessee from the Lessee's obligation to pay the Rent required by this Lease and in no event shall the Lessee be entitled to any prorated return or refund of Rent paid hereunder. Unless this Lease is terminated under Section 12.1, no such loss or damage shall relieve or discharge the Lessee from the payment of taxes, assessments, or other charges as they become due and payable, or from performance of other the terms and conditions of this Lease.

Section 13. LIENS

13.1. No Power in Lessee to Create

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

13.2. Discharge of Liens by Lessee

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

13.3 No Consent or Waiver by Lessor

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

Section 14. ASSIGNMENTS AND ENCUMBRANCES

14.1 Assignments

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

With respect to proposed assignments and without otherwise limiting the criteria upon which the Lessor may withhold its consent to any proposed assignment, the Lessee shall furnish to the Lessor the following information: [1] all instruments proposed to implement the transaction; [2] a statement as to the existence of any litigation questioning the validity of the proposed transaction; [3] a description of the management qualifications and financial background of the proposed transferee, if any; [4] a detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial forecast statements that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Lessor that terms of the transfer do not impede or interfere with the financial ability of the Lessee to perform the requirements of this Lease; [5] if the transaction may result in an encumbrance on the Lessee's assets, full particulars of the terms and conditions of the encumbrance; and [6] such other information as the Lessor may reasonably require. The Lessor shall have the right to approve the form of any assignment.

Any consideration for transfers of leasehold interests (as such costs are approved by the Lessor) received by the Lessee from an assignee for or in connection with an assignment of this Lease shall be payable to the Lessor.

The Lessor has an unconditional right to assign this Lease or any or all of its rights and obligations under it at any time.

14.2 Encumbrances

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

Section 15. DEFAULTS AND LESSOR'S REMEDIES

15.1 Termination for Default

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least fifteen (15) calendar days in the case of monetary defaults and thirty calendar (30) days in the case of non-monetary defaults of the Lessor's intention to terminate if the default

is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate.

15.2 Bankruptcy

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

15.3 No Waiver

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

15.4 Lessor's Right to Cure Defaults

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

Section 16. SURRENDER AND HOLDING OVER

16.1 Surrender of the Premises

(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the FF&E, to as good an order and condition as that existing upon the Commencement Date. As of the termination of the Lease, all agricultural lands must be plowed, disced and fallow.

(b) For these purposes, the Lessor and Lessee shall prepare an inventory and condition report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's FF&E, or elements of the Premises shown to be lost, damaged or destroyed. Any such FF&E, or other

elements of the Premises shall be either replaced or returned to the condition required under this Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefor by the Lessee at the then current market value thereof.

16.2 Holding Over

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

Section 17. EQUAL OPPORTUNITY LAWS

The Lessee and Lessee’s Agent’s shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 (as amended), which prohibits discrimination on the basis of disability and requires government contractors and subcontractors to take Affirmative Action to employ and advance in employment qualified handicapped individuals; (c) 41 C.F.R. Chapter 60, which prescribes affirmative action requirements for government contractors and subcontractors; (d) the Age Discrimination in Employment Act of December 15, 1967 (as amended); (e) the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.; (f) and all other Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

Section 18. NOTICES

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

If to the Lessor:

Operations Manager
Ebey’s Landing National Historical Reserve
Reuble Farmstead
593 Fort Casey Road
Coupeville Washington 98239

If to the Lessee:

Section 19. GENERAL PROVISIONS

The following general provisions apply to this Lease:

- (a) The Lessor is not for any purpose a partner or joint venture participant of the Lessee in the development or operation of the Premises or in any business conducted on the Premises. The Lessor under no circumstances shall be responsible or obligated for any losses or liabilities of the Lessee. The Lessee shall not publicize, or otherwise circulate, promotional or other material of any nature that states or implies endorsement of the Lessee or its services or products by the Lessor or any other governmental agency.
- (b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.
- (c) This Lease provides no right of renewal or extension to the Lessee, nor does it provide the Lessee with the right to the award of a new lease upon termination or expiration of this Lease. No rights shall be acquired by virtue of this Lease entitling the Lessee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.
- (d) The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Lessor shall have the right to terminate this Lease for Default.
- (e) In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this Lease, and this Lease shall be construed as if the invalid provisions had not been contained in this Lease.
- (f) All Exhibits that may be referenced in this Lease are hereby attached to and incorporated in this Lease.
- (g) Time is of the essence to this Lease and all of its terms and conditions.
- (h) The laws of the United States shall govern the validity, construction and effect of this Lease.
- (i) This Lease constitutes the entire agreement between the Lessor and Lessee with respect to its subject matter and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect except by an instrument in writing signed by the Lessor and Lessee.
- (j) The voluntary sale or other surrender of this Lease by the Lessee to the Lessor, or a mutual cancellation, or the termination by the Lessor pursuant to any provision of this Lease, shall not

work a merger, but, at the option of the Lessor, shall either terminate any or all existing subleases hereunder or operate as an assignment to the Lessor of any or all of subleases.

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

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

(m) The Lessee shall not construct new buildings or structures on the Premises, Temporary greenhouses shall not be authorized under the lease.

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

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

LESSOR

THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By _____

**Regional Director
Pacific West Region**

LESSEE

By _____

Title _____

EXHIBIT A: Inventory and Condition Report

Not Applicable

EXHIBIT B: Insurance Requirements

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

1. Types of Insurance (Non-Construction)

(a) Property Insurance – N/A

(b) Worker's Compensation and Employer's Liability Insurance – Meet at least the minimum required by the State of Washington.

(c) General Liability - Comprehensive Farm Liability and/or Commercial General Liability through one or more primary and umbrella liability policies against claims for bodily injury and property damage occurring on the Premises, the improvements thereon, or the streets, curbs or sidewalks adjoining the Premises, with such limits as may be required by the Lessor, but in any event not less than \$1,000,000 per incident; \$2,000,000 aggregate.

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

2. Conditions of Insurance

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

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

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

(d) All insurance policies shall provide that such policies shall not be cancelled, terminated or altered without thirty (30) days prior written notice to the Lessor. The Lessee must provide to the Lessor a copy of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect on or before the Commencement Date, and annually thereafter. The Lessee shall maintain all policies provided throughout the Lease Term and the Lessee shall renew such policies before the expiration of the term of the policy.

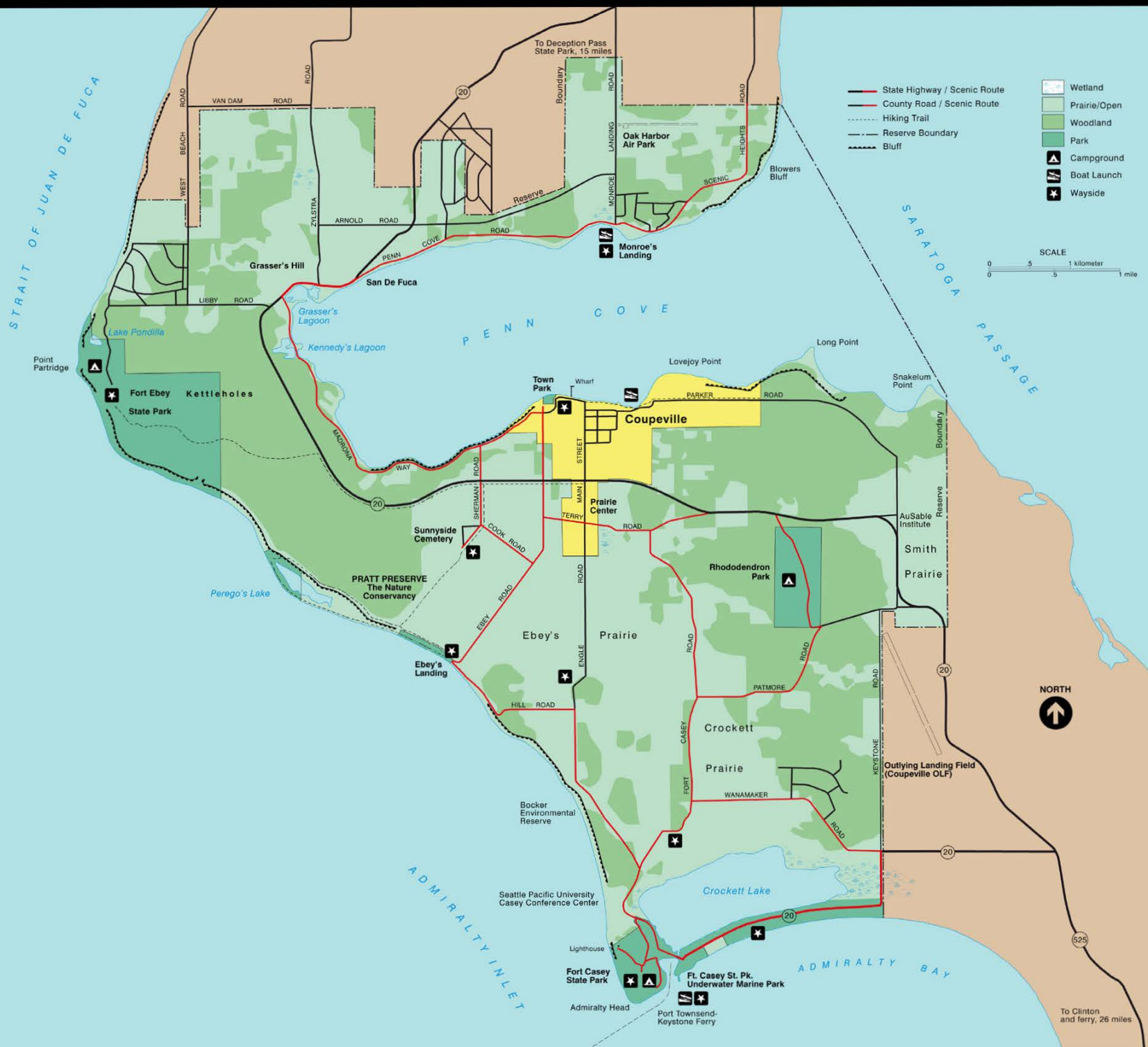
(e) If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, deductibles or self-insurance retention, with respect to any of the insurance required by this section are insufficient for a prudent owner of property of the nature of the Premises, the Lessor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

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

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

Ebey's Landing National Historic Reserve

National Park Service
U.S. Department of the Interior



To Clinton and ferry, 26 miles

Highway South

Ebey's Landing National Historical Reserve
National Park Service
U.S. Department of the Interior

