



**LEASE**

Between

**U.S. DEPARTMENT OF INTERIOR  
National Park Service**

And

**NATIONAL LINKS TRUST,  
a District of Columbia nonprofit  
corporation**

For the Premises known as East Potomac  
Golf Course, Rock Creek Golf Course and  
Langston Golf Course

**NPS Lease# NCR-3060-19-001**

Executed September 30, 2020

Covering the period October 5, 2020 through September 30, 2070

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Exhibit A	Site Plans showing Leased Premises
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Exhibit G	Use and Ownership of Intellectual Property
Exhibit H	Certain Commitments

**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 National Links Trust, a District of Columbia nonprofit corporation (Lessee).**

**WITNESSETH THAT:**

**WHEREAS, Congress designated National Capital Parks East, National Mall and Memorial Parks, and Rock Creek Park (Park Areas) as units of the national park system;**

**WHEREAS, the Park Areas contain property that has been determined suitable for leasing under 36 Code of Federal Regulations Part 18; and 54 USC 306121;**

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

**WHEREAS, the Lessee is a nonprofit, 501(c) (3) tax-exempt corporation whose mission is, among other things, to promote affordable and accessible golf, preserve and/or restore historic and significant golf course architecture, and engage with local communities through educational programming at municipal golf courses throughout the United States of America, including the Golf Courses (as defined in Section 2.1); and**

**WHEREAS, the Lessee desires to lease the Premises 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. Additional Rent** - refers to all forms of Rent required by this Lease other than the Rent required by Section 5 hereof.

**1.2. Alterations** – means any construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises other than Initial Improvements. For clarity, Alterations include, but are not limited to, replacement of Fixtures.

**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 Park Areas' General Management Plan, environmental laws and those relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions, and conditions now or

hereafter of record which may be applicable to the Lessee or to all or any portion of the Premises, or to the use, occupancy, possession, operation, maintenance, alteration, repair or restoration of any of the Premises, even if compliance therewith necessitates structural changes to the Premises or results in interference with the use or enjoyment of all or any portion of the Premises.

#### **1.4 Reserved.**

**1.5 Approved Costs** – means costs (including General and Administrative Costs) approved by Lessor as being no higher than those prevailing in the locality of the Premises, required for the construction of Initial Improvements or Alterations, and otherwise reasonable.

**1.6 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, 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.

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

**1.8 Construction Documents** – means any and all plans and specifications prepared for the construction of the Initial Improvements or any Alterations.

**1.9 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.

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

**1.11 Fixtures** – means all non-removable equipment and furniture, and apparatuses permanently attached to, in, or on the Premises.

**1.12 General and Administrative Costs** – means costs necessary for the construction of Initial Improvements or Alterations that are not directly related to labor and building materials. Such costs may include, but are not limited to, architecture, engineering, planning, including compliance with the National Environmental Policies Act (NEPA, 42 USC 4321 et seq.), and permits.

**1.13 Golf Course** – has the meaning set forth in Section 2.1(a) of this Lease.

**1.14 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.

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

**1.16 Historic Property** – means building(s) and land located within the boundaries of the Park Areas 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.

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

**1.18 Initial Improvements** – means the construction, modifications, rehabilitation, reconstruction, and/or restoration of the Premises as may be described in Section 8 of this Lease.

**1.19 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.

**1.20 Inventory and Condition Report** – means Exhibit C to this Lease that lists both maintained landscapes and built assets that have been assigned NPS Asset Numbers. The report also describes the condition of these maintained landscapes and built assets as of the Commencement Date.

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

**1.22 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 (12<sup>th</sup>) 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 (12<sup>th</sup>) full calendar month following thereafter, or on the last day of the Lease Term, whichever occurs first.

**1.23 Management Agreement** – means an agreement entered into by Lessee with a professional golf facility management company for the management and operation of the Golf Courses. A Management Agreement may be a single agreement for the entire Premises or one of several agreements for one or more of the Golf Courses or with one or more managers, as same may be entered into by Lessee from time to time.

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

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

**1.26 Park Areas** – means those areas within the designated park system units of the National Mall (NAMA), National Capital Parks East (NACE), and Rock Creek Park (ROCR).

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

**1.28 Personal Property** – means all furniture, equipment, appliances, and apparatus placed in or on the Premises that are neither permanently attached to nor form a part of the Premises and expressly do not include Fixtures.

**1.29 Reserved.**

**1.30 Premises** – means the portion of the Park Areas occupied by the Golf Courses as described in Section 2 of this Lease.

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

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

**1.33 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.

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

**1.35 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: East Potomac Golf Course, Langston Golf Course, and Rock Creek Golf Course (each of the foregoing is sometimes referred to herein individually as a “Golf Course” and collectively as the “Golf Courses”). The boundaries of the Premises are graphically shown more particularly on Exhibit A, attached hereto and incorporated herein.

b) This Lease and Lessee’s use of the Premises shall be subject to all Applicable Laws, and all liens, encumbrances, restrictions, rights and conditions of law or of record or otherwise.

c) During the Term, Lessor shall have the right, at reasonable times and (except in case of emergency) following reasonable 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 (1) the administration of this Lease and/or the Park Areas or (2) the preparation for and solicitation of any future leasing or other commercial opportunities on the Premises, as determined by the Lessor, and to close the Premises when immediate danger to life or property is discovered.

d) Lessor hereby reserves and retains 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**



Lessee hereby waives any claims for damages for any injury or inconvenience to or interference with Lessee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss, in each case occasioned by the Lessor's rightful exercise of its rights pursuant to this Lease or by the Lessor's actions taken for the management and protection of the Park Areas' resources and visitors as required by statute, regulation, or policy.

### **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 reasonably 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 Historic Property.

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

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

The Lessee agrees to lease the Premises in their existing "as is" condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving trade from or other characteristics of the Park Areas, 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, subject to the terms and conditions hereof.

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

In the exercise of its due diligence, Lessee has taken into account Exhibit C - Inventory and Condition Report, attached hereto as Exhibit C and incorporated herein by reference, 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 up to fifty (50) years commencing on [October 1, 2020] (the “**Commencement Date**”), and expiring at 11:59 P.M. on such date which is the earlier of (i) September 30, 2070 (the “**Expiration Date**”) or such earlier date as this Lease may be terminated in accordance with its terms or written consent of the parties (the “**Termination Date**”). The Lessee shall have the option, in its sole discretion, to terminate the Lease at the end of each of the tenth (10<sup>th</sup>), twentieth (20<sup>th</sup>), twenty-fifth (25<sup>th</sup>), thirtieth (30<sup>th</sup>) and fortieth (40<sup>th</sup>) Lease Year following the Commencement Date, by providing the Lessor with written notice of its intent to terminate the Lease no less than two (2) years before the end of the Lease Year in which the Lease is to terminate. For example, if the Lessee wishes to terminate the Lease at the end of the tenth (10<sup>th</sup>) Lease Year (that is, as of September 30, 2030), it must so notify the Lessor prior to September 30, 2028. The Lessor may also terminate the Lease if the Lessee fails to complete a material portion of the Initial Improvements (if submitted and approved) in accordance with the schedule (including applicable grace or cure periods) set forth in the Construction Documents.

### 4.2. Abandonment

The Lessee shall occupy the Premises during the entire Lease Term, provided that the Lessee may opt to close any of the Golf Courses from November 1 to March 31 of any Lease Year. If it fails to do so, the Lessee may be determined as in default for abandoning the Premises. Occupancy of any Golf Course, or portion thereof, is not required if the Lessor reasonably determines it infeasible because of the construction of Improvements. For clarity, the temporary closure of all or any part of a Golf Course due to such factors as extreme weather events, governmental action, a force majeure event (including but not limited to epidemics or pandemics), or Repair and Replacement of damage or destruction of the Premises, shall not constitute a failure to occupy or abandonment of the Premises.

## Section 5. RENT

### 5.1. Net Lease and Rent Payments

- (a) Except as provided in Section 5.6, all Rent shall be absolutely net to Lessor without any abatement, deduction, or counterclaim. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises including, without limitation, all taxes and assessments; provided, however, that Lessee shall not be obligated to pay any cost, expense or charge of Lessor relating to the Premises except as otherwise expressly provided in this Lease.
- (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.
- (c) The Lessor may choose to, but is not obligated to, issue Lessee a bill of collection identifying Rent due and owing, though any failure of the Lessor to do so shall not alleviate Lessee’s obligation to remit Rent due and owing pursuant to the terms of this Lease.

**5.2. Annual Rent SECTION DELETED****5.3. CPI Adjustment SECTION DELETED****5.4. Percentage Rent**

(a) The Lessee shall pay to the Lessor as Percentage Rent an amount of money equal to 16 % of the Lessee's Gross Revenues for the preceding month of the Lease Term. Percentage Rent shall be due on a monthly basis at the end of each month of the applicable Lease Year during the Lease Term and shall be paid by the Lessee within fifteen (15) calendar days after the last day of the applicable month.

(b) Gross Revenues Defined

Gross Revenues means the entire amount of Lessee's revenues (and the revenues of any Affiliate of Lessee) derived from this Lease or any Sublease hereunder, such amount as determined in accordance with generally accepted accounting principles consistently applied. Gross revenues (i) include, as applicable and without limitation, revenue derived from the following operations of the Golf Courses: greens fees, cart fees, pro shop sales, club rental fees, lesson fees (net of any fees paid to independent contractors), miniature golf fees, driving range fees, food and beverage sales, liquor sales, revenue generated from space rentals and from meetings, banquets, parties, receptions, tournaments and other group gatherings, and receipts from all mechanical or other vending devices placed on the Premises by the Lessee or under authority from the Lessee; and (ii) expressly exclude (A) applicable excise, sales, occupancy and use taxes, or similar government charges collected directly from patrons or guests, or as part of the sales price of any goods, services or displays, such as gross receipts, admission or similar taxes; (B) receipts from the financing, refinancing, sale, master lease, debt incurred, government funding or other disposition of any asset of Lessee or its contractors; (C) proceeds of any insurance, judgment or other award; and (D) amounts derived from a Sublessee's gross revenue and paid by the Sublessee to the Lessee for purposes of relaying those amounts to the Lessor as Percentage Rent. The term "Affiliate of Lessee" as used in this section means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.

**5.5. Rent Reconsideration**

(a) The Rent required by this Lease shall be subject to adjustment at the request of the Lessor after the end of the five (5), ten (10), fifteen (15), twenty (20), thirty (30), and forty (40) Lease Years of this Lease, and at the request of the Lessee at any time during the Term, in order to maintain the Rent under this Lease in an amount and structure consistent with "fair market value rent." "Fair market value rent" for the purposes of this section means the most probable rent, as of a specific date, in cash or in terms equivalent to cash, for which the Premises, under the terms and conditions of this Lease, should rent for its highest and best permitted use after reasonable exposure in a competitive market under all conditions requisite to a fair leasing opportunity, with the Lessor and the Lessee each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. Such determination must take into consideration any restrictions on the use of the Premises or terms of the Lease that limit the value and/or the highest and best use of the Premises; any past Improvements constructed or installed by the Lessee prior to Rent adjustment, with the Lessor's approval, and consistent with the terms of this Lease; and, any future Improvements to be constructed or installed by the Lessee after Rent adjustment.

(b) Within sixty (60) days after the applicable Lease Year (in the case of the Lessor), or at any time (in the case of the Lessee), the Lessor or Lessee may request a Rent adjustment by providing written notice to the other party. Within thirty (30) days after providing or receiving a written request for a Rent adjustment, the Lessor will, as applicable, either submit an appraisal request to the Department of the Interior's Appraisal and Valuation Services Office, or its successor, for an appraisal to determine the "fair market value rent" of the Premises, or initiate a market study or other valuation process allowed for under NPS policy to determine "fair market value rent." The requesting party will be responsible for the cost of any appraisal, market study, or other valuation process initiated under this section.

(c) On the Commencement Date, the Lessor shall initiate a request for an appraisal as if the appraisal was requested in accordance with Section 5.5(b).

## **5.6 Rent Offsets**

(a) Lessor approved Initial Improvements:

The Lessor will offset Rent for Approved Costs of Initial Improvements incurred by the Lessee (i) in accordance with the method and schedule set forth in Exhibit D (Initial Improvements by Lessee) to this Lease and (ii) as otherwise reasonably agreed by the Lessor and Lessee from time to time, provided that, no Rent Offsets may be made in the absence of such an agreement.

(b) Lessor approved Alterations:

The Lessee may request and, the Lessor may approve, Rent Offsets for Approved Costs of Alterations incurred by the Lessee on a project-by-project basis in accordance with the requirements of this Lease. The method and timing of such Rent Offsets will be agreed to by the Lessor and Lessee from time to time, provided that, no Rent Offsets may be made in the absence of such an agreement.

(c) Approved Rent Offsets in excess of the balance due and owing for Percentage Rent in any given Lease Year shall be credited to the Lessee and available for future Rent Offsets.

(d) The Lessee shall have no right or claim of compensation of any nature from the Lessor in the event of a termination, assignment, or expiration of this Lease in circumstances where the Approved Costs of Initial Improvements and/or Alterations have not been earned by the Lessee to offset Annual Rent as of the date of such termination, assignment, or expiration of this Lease.

(e) There shall be no Rent Offsets allowed for the first Twelve Thousand Five Hundred Dollars (\$12,500) of the Percentage Rent monthly. Percentage Rent due above and beyond this figure are subject to Rent Offsets as set forth above.

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

### **6.1. Authorized Uses**

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

Any and all legal purposes that are usual and customary to the operation of a golf course and related facilities, such purposes to include, without limitation, operation of and/or provision of services relating or incidental to golf-related events, including tournaments, retail golf shops, restaurants, food

services, on-premises sale and consumption of alcoholic beverages (subject to NPS approval), driving range, miniature golf, training facilities, and such other uses, amenities, and services consistent with those being offered at comparable and/or superior public golfing facilities located in Maryland, Virginia, and the District of Columbia. Without limiting the generality of the foregoing, Lessee is authorized to (a) determine, establish and implement all operational and managerial policies, procedures and schedules; (b) establish and implement all playing fee categories and rates; (c) implement grounds maintenance practices that adhere, where reasonably practical, to all environmental laws as they pertain to golf courses; (d) hire, train, and supervise all employees; (d) organize and provide fee-based and complimentary golf lessons for all levels of playing ability and age groups; (f) provide merchandise, food and beverage sales for individuals, golf-related events and groups; (g) utilize the Premises for private events, including social and fundraising events (which shall be subject to Lessor approval to the extent they would preclude public use of any golf course for more than one (1) day or would require Lessor assistance necessitating a special use permit); (h) supervise and direct all phases of advertising and business promotions; and (i) establish accounting, reporting, banking and payroll procedures for the individual facilities and for the managerial entity as a whole.

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

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

## **6.3. Applicable Laws**

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

## **6.4. Forbidden Uses**

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

## **6.5. Site Disturbance**

Lessee shall neither cut any timber nor remove any other landscape features of the Premises such as shrubs or bushes without Lessor's prior written consent, which consent shall not be unreasonably withheld; provided, however, that the foregoing shall not prohibit Lessee from performing landscape maintenance in accordance with accepted professional standards of landscape management practice, including the removal of (i) trees, shrubs or bushes that are dead, below the height specified, or with a diameter less than specified, in the Lessee Maintenance Plan and (ii) any limbs that would interfere with mowing equipment or intended ball flight for a golf hole. 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 without Lessor's prior written consent, which shall be in Lessor's sole discretion.

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

The Lessee shall ensure that any protected sites and archeological resources within the Park Areas are not disturbed or damaged by the Lessee except in accordance with Applicable Laws and only with the prior written approval of the Lessor. Lessor represents that all known protected sites and archeological resources located within the Premises are noted in the Cultural Landscape Report, Cultural Landscape Inventory, or Historic Resource Study that were developed for the Golf Courses and provided as part of the Request for Proposals dated 07/01/2019, as amended. 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, which shall not be unreasonably withheld, conditioned or delayed. Any approval of a sign that may be given by the Lessor shall specify the type, size, and other appropriate conditions concerning its display. The Lessor may post signs on the Premises as appropriate for the administration of the Park Areas.

## **6.8. Permits and Approvals**

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

## **6.9. Alterations**

The Lessee shall not make any Alterations of any nature to the Premises without the express written approval of the Lessor, which shall not be unreasonably withheld, conditioned or delayed.

## **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 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. 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 all operations including but not limited to revenue producing activities, expenditures for which rent offsets are requested and financial transactions related to compliance with the terms and conditions of this Lease.

Lessee shall provide the Lessor, annually, a set of audited financials within 120 days of the end of Lessee's fiscal year, commencing with the fiscal year ending December 31, 2021.

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



If otherwise granted approval by the Lessor under the terms of this Lease, Lessee hereby agrees to commence and engage diligently in the construction of the Initial Improvements described in Exhibit D (Initial Improvements by Lessee) in accordance with the schedule set forth therein and the Construction Documents approved by Lessor.

## **Section 9. CONSTRUCTION APPROVAL**

### **9.1. In General**

All Improvements (Initial Improvements and Alterations), if any, shall be undertaken at the Lessee's sole expense and only with the Lessor's prior written approval, which shall not be unreasonably withheld, conditioned or delayed. All work shall be performed in a good and workmanlike manner and with materials of at least the quality and standard of materials used in comparable facilities in the locale of the Park Areas. The Lessee shall undertake Improvements in strict accordance with Applicable laws and with approved Construction Documents. The Lessee shall, upon request, furnish the Lessor a correct copy of any contract with the Lessee's general contractor, architects, or consultants. The Lessor shall require the Lessee not to occupy specified portions of or all of the Premises during the construction of Improvements if reasonably determined by the Lessor as necessary for the protection of human health or safety. Note that 36 CFR 18.12(i) does not allow the construction of new buildings or structures under Part 18 leases except for minor additions, buildings and structures determined by NPS to be necessary for the support of the activities authorized by the applicable lease.

### **9.2. Enforced Delays**

The Lessee shall not be considered in default in the event of an enforced delay in the construction of Improvements due to unforeseeable causes beyond the Lessee's control and without any fault or negligence on the part of the Lessee. Such enforced delays include, without limitation, public enemies, war, invasion, insurrection, rebellion, riots, fires, floods, epidemics, pandemics, quarantine restrictions, government-caused delays (other than those arising from the rightful exercise of the Lessor's approval rights under this Lease), strikes, lockouts, freight embargoes, shortage of materials, and unusually severe weather. In the event of an enforced delay, the time or times for construction of Improvements will be extended by the period of the enforced delay.

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

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

### **9.4. Site Inspection**

The Lessor shall be entitled to have on the Premises at reasonable times during the construction of Improvements an inspector or representative who may observe all aspects of the work on the Premises, but shall not, and shall have no right to, issue directions regarding performance of any construction to Lessee's contractors or subcontractors. Any issues noted by Lessor's inspector shall be addressed to Lessee in writing. No inspection performed or not performed by the Lessor shall be deemed to give the Lessor any responsibility or liability with respect to the construction work, its prosecution or design,

or, be deemed to constitute a waiver of any of the Lessee's obligations under this Lease or be construed as an approval or acceptance of the Improvements (or portions thereof). The Lessee shall maintain on the Premises during construction, current, annotated Construction Documents for inspection by the Lessor.

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

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

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

### **9.6. Construction Documents**

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

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

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

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

Any material change in the approved Construction Documents and any material deviation in actual construction from these documents are subject to Lessor's prior written approval (which shall not be unreasonably withheld, conditioned or delayed) under the procedures stated in this Section. An approved change order will be issued by Lessor if proposed changes are approved.

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

If proposed Improvements relate to Historic Property, the Lessor will not approve proposed Construction Documents unless it is able to determine that they comply with the Secretary of the



Interior's Standards for the Treatment for Historic Properties (Preservation Standards) NPS 28, and any conditions that may be imposed on the Improvements through the operation of other Applicable Laws, including, without limitation, NEPA and Section 106. The Lessor's approval shall not be unreasonably withheld, conditioned or delayed.

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

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

#### **9.11. Building Permit**

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

#### **9.12. Construction Completion Procedures**

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

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

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

#### **9.13. Lessor's Right to Utilize Construction Documents**

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

provisions:

The drawings, specifications and other documents prepared by the Architect for this Project ("Documents") are instruments of the Architect's service and, unless otherwise provided, the Architect shall be deemed the author of these Documents and shall retain all common law, statutory and other reserved rights, including the copyright. For the purpose of completing this Project or for any other purpose, Architect and its consultants hereby (i) grant to Owner and the National Park Service an irrevocable, fully paid-up, perpetual, worldwide license to copy and use such Documents for completion of this Project or for any other purpose and (ii) consent to the use by Owner and the National Park Service, and of the modification by other design professionals retained by Owner and the National Park Service, of the Documents.

The Architect will have no responsibility or liability to the Owner or the National Park Service with respect to any modification to the Documents made by the Owner or National Park Service or any other design professional retained by the Owner or National Park Service. Furthermore, except where the Architect is found to be liable for such claim, damage or loss, the Owner shall hold Architect harmless from any such claim, damage or loss arising out of (a) the modification of the Documents by Owner or the National Park Service or another design professional. The Owner and the National Park Service shall be permitted to retain copies, including reproducible copies, of the Documents for information and reference in connection with the use and occupancy of the Project.

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

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

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

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

- (a) the performance of all repairs, maintenance, replacement, upgrading, capital improvements, (whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary) necessary to maintain the Premises and the improvements thereon in good order, condition, and repair (excluding ordinary wear and tear) in a manner consistent with the operation of comparable facilities in the locale of the Park Areas and in compliance with all Applicable Laws;
- (b) the replacement, as they become worn out or obsolete, of all Personal Property and Fixtures;
- (c) housekeeping and routine and periodic work scheduled to mitigate wear

and deterioration without altering the appearance of the Premises;

(d) the repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;

(e) scheduled inspections of all building systems on the Premises;

(f) maintaining the grounds of the Premises in good condition, including, without limitation, regular grass mowing, managed lawn and ornamental plantings, and avoidance or removal of unsightly storage or parking of materials, equipment, or vehicles; and

(g) paying to the proper authority, when and as the same become due and payable by the Lessee, all taxes and assessments imposed by federal, state, or local agencies applicable to the Premises or the Lessee's activities on the Premises.

At East Potomac Golf Course, the Lessor will maintain all trees, signs, light poles, and drinking fountains between the fence line and the sidewalk as depicted on Exhibit A.

Notwithstanding the foregoing, Lessee shall not be responsible for repairs of any part of electrical or gas systems beyond Lessee's meters, or any other utility systems not associated with Lessee's operations, unless necessary due to Lessee's actions.

## **10.2. Maintenance Plan**

The Lessee shall submit to the Lessor for its approval (which shall not be unreasonably withheld, conditioned or delayed), within thirty (30) calendar days of the Commencement Date, a Lessee Maintenance Plan (to be included as Exhibit E to the Lease). The Lessor, with the Lessee's consent (which shall not be unreasonably withheld, conditioned or delayed), may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises.

## **10.3. Preservation Maintenance Plan**

The Lessee shall submit to the Lessor for its approval (which shall not be unreasonably withheld, conditioned or delayed), within thirty (30) calendar days of the Commencement Date, a Preservation Maintenance Plan (to be included as Exhibit F to the Lease). The Lessee shall repair and maintain all portions of the Premises that are Historic Property in accordance with the Preservation Maintenance Plan. The Lessor, with the Lessee's consent (which shall not be unreasonably withheld, conditioned or delayed), may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises as appropriate and consistent with the requirements of the Preservation Standards and NPS 28.

## **10.4. Maintenance Reserve Account SECTION DELETED**

## **Section 11. UTILITIES**

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

## **Section 12. HAZARDOUS MATERIALS**

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

(a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of, from, on, about, under or into the Premises except in compliance with all Applicable Laws and as approved by the Lessor in writing (which approval shall not be unreasonably withheld, conditioned or delayed); provided, however, that the foregoing shall not prohibit Lessee from using or storing on the Premises reasonable quantities of Hazardous Materials used in the ordinary course of the operation, maintenance, repair or replacement of any portion of the Premises or the construction of any Improvements, and Lessee's consent shall not be required therefor, as long as all of the Hazardous Materials are documented, used, managed, kept, stored, and disposed of in accordance with all Applicable Laws;

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

(c) If any Hazardous Materials Occurrence caused by Lessee results in any contamination of the Premises, other Park Areas 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 (which shall not be unreasonably withheld, conditioned or delayed) 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 due to the activities of Lessee, its employees, agents, contractors, guests or invitees occurring from and after the Commencement Date; 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, Lessee shall immediately notify the Lessor.

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

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

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

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

If the Lessor at any time, but not more than annually, reasonably 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, by giving the Lessee sixty (60) days written notice, the proper and reasonable limits and extent of coverage, deductibles, conditions, and self-insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this section.

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

All insurance proceeds received by or payable with respect to damage or destruction of the Premises (except proceeds of insurance covering business interruption or loss or damage of the Lessee's Personal Property), less actual expenses incurred in connection with their collection, shall be held by the Lessee and distributed in accordance with the terms of Section 14.1.

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

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

### **13.5. Indemnity**

The Lessee shall indemnify, defend, save and hold the United States of America, its employees, successors, agents and assigns, harmless from and against, and reimburse the United States of America for any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses incurred in connection with or arising in any way out of Lessee's (including its officers, employees, agents, successors, assigns, licensees, and invitees) (1) action or failure to take required action under this Lease; (2) use, occupancy or manner of use or occupancy of the Premises; (3) design, construction, or maintenance of any improvements on the Premises; (4) maintenance of the Premises; or (5) causation of any accident or occurrence on the Premises; provided, however, that the Lessee shall not be liable to the extent that the damages, expenses, claims or suits result from willful misconduct or negligence of the United States of America, or its employees, contractors, or agents; provided, further, that the United States of America shall be liable only to the extent such claims are covered by the Federal Tort Claims Act (28 USC 2671 et seq.). The provisions of this section shall survive the Expiration Date or Termination Date of this Lease.

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

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

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

(a) the Lessee, subject to the prior written approval of the Lessor (which shall not be unreasonably withheld, conditioned or delayed), shall as promptly as reasonably practicable and with all due diligence repair or replace the damaged or destroyed Premises to the condition that existed prior to the damage or destruction; or

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

(c) the Lessee may request termination of this Lease without liability (except to the extent the Lessee caused such damage or destruction). Lessee must provide the request by written notice to the Lessor within three hundred sixty (360) days of the date of casualty. The decision by the Lessor regarding termination shall be reasonable and not unduly delayed or conditioned. If termination is approved by Lessor any insurance proceeds not yet applied will be paid to Lessor as Additional Rent.

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

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

### **Section 15. LIENS**

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

The Lessee shall have no power to take any action that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Lessor or of any interest of the Lessor in the Premises, except as otherwise may be expressly approved by the Lessor in writing in accordance with the terms of this Lease, such Lessor approval not to be unreasonably withheld, conditioned or delayed.

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

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



necessary disbursements in connection with them, shall become due and payable forthwith by the Lessee to the Lessor upon written demand therefore as Additional Rent.

### **15.3. No Consent or Waiver by Lessor**

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

## **Section 16. ASSIGNMENTS AND ENCUMBRANCES**

### **16.1. Assignments**

(a) The Lessee shall not effectuate an Assignment of this Lease, in whole or in part, or any real property on the Premises, nor Sublease any portion of 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 such Assignment, Sublease or grant is at 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 or grantee is financially and managerially capable of carrying out the applicable terms of this Lease. Neither a Management Agreement, nor vendor agreements entered into by Lessee or its manager, shall constitute an assignment or sublease. As of the Commencement Date, Lessee has entered into, or intends to enter into, a Management Agreement with Honours Golf Company, L.L.C. and Troon Golf, L.L.C. with respect to management of the entire Premises.

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

### **16.2. Encumbrances**

The Lessee may not effectuate an Encumbrance on the Premises without the prior written permission of the Lessor. Approval of any Encumbrance is at the discretion of the Lessor and in no event shall an encumbrance be approved unless the Lessor is able to determine that it only grants its holder, in the event of a foreclosure, to assume the responsibilities of the Lessee under this Lease or to select a qualified new lessee subject to the written approval of the Lessor, and that it does not grant its holder any rights to alter or amend in any manner the terms and conditions of this Lease.

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

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

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least thirty (30) calendar days in the case of monetary defaults and forty-five (45) calendar days in the case of non-monetary defaults of the Lessor's intention to terminate if the default is not cured within the applicable time period, provided that if any non-monetary default is of a nature to require more than forty-five (45) days for cure, as reasonably determined by the Lessor, this Lease shall not terminate if the Lessee undertakes procedures to cure the default within such forty-five (45) day period and thereafter diligently pursues such efforts to cure to completion, as reasonably determined by the Lessor. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and

in the Premises shall terminate except for such rights as expressly survive termination.

### **17.2. Bankruptcy**

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

### **17.3. No Waiver**

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

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

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

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

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

(a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the Fixtures, to as good order and condition as that existing upon the Commencement Date, or, if applicable, as that existing upon completion of any Improvements by the Lessee, excepting only ordinary wear and tear not caused by Lessee's failure to perform its obligations under this Lease with respect to maintenance or repair of the Premises, or where Lessee has exercised, and the Lessor has approved, its request to terminate this Lease under Section 14.1.

(b) For these purposes, the Lessor and Lessee shall prepare Exhibit C – Inventory and Condition Report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's Fixtures, or elements of the Premises shown to be lost, damaged or destroyed. Any such Fixtures, or other elements of the Premises shall be either replaced or returned to the condition required under this



Section by the Lessee, ordinary wear and tear excepted, or, at the election of the Lessor, reimbursement made therefor by the Lessee at the then current market value thereof.

## **18.2. Holding Over**

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

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

The Lessee and Lessee's agents 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. In addition, the Lessee shall comply with the requirements of Executive Order 13658 - Establishing a Minimum Wage for Contractors, and its implementing regulations, including the applicable contract clause, which are incorporated by reference into this Lease as if fully set forth herein (available at <https://federalregister.gov/a/2014-23533>).

## **Section 20. NOTICES**

Except as otherwise provided in this Lease, any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express, UPS or DHL), one (1) business day after sending; or (c) if otherwise actually personally delivered, when delivered, provided that such notices, consents or other communications are delivered 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:

Chief of Commercial Services  
National Capital Region  
National Park Service  
1100 Ohio Drive SW  
Washington, DC 20242

If to the Lessee:

Michael McCartin, President  
National Links Trust  
331 7th Street, N.E.  
Washington, D.C. 20002

## **Section 21. GENERAL PROVISIONS**

The following general provisions apply to this Lease:

- (a) The Lessor is not for any purpose a partner or joint venture participant of the Lessee in the development or operation of the Premises or in any business conducted on the Premises. Lessor under no circumstances shall be responsible or obligated for any losses or liabilities of the Lessee. The Lessee shall not publicize, or otherwise circulate, promotional or other material of any nature that states or implies endorsement of the Lessee or its services or products by the Lessor or any other governmental agency.
- (b) This Lease shall not, nor be deemed, nor construed to confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this lease.
- (c) This Lease provides no right of renewal or extension to the Lessee, nor does it provide the Lessee with the right to award of a new lease upon termination or expiration of this Lease. No rights shall be acquired by virtue of this Lease entitling the Lessee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.
- (d) The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Lessor shall have the right to terminate this Lease for default.
- (e) In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this Lease, and this Lease shall be construed as if the invalid provisions had not been contained in this Lease.
- (f) All Exhibits that may be referenced in this Lease are hereby attached to and incorporated in this Lease:

**EXHIBIT A: Site Plans Showing Leased Premises**  
**EXHIBIT B: Insurance Requirements**  
**EXHIBIT C: Inventory and Condition Report**  
**EXHIBIT D: Initial Improvements by Lessee**  
**EXHIBIT E: Maintenance Plan**  
**EXHIBIT F: Preservation Maintenance Plan**  
**EXHIBIT G: Use and Ownership of Intellectual Property**  
**EXHIBIT H: Certain Commitments**

- (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 Lessor of any or all of subleases.
- (k) If more than one Lessee is named in the Lease, each Lessee shall be jointly and severally liable for performance for 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. Lessor shall be liable for costs or expenses incurred by Lessee in enforcing terms of this Lease, or in pursuing legal action for the enforcement of Lessee's rights, including, but not limited to, court costs; provided that Lessor shall only be liable for such costs or expenses to the extent otherwise permitted by Federal law and where such liability would not constitute a violation of the Anti-Deficiency Act (31 U.S.C. § 1341) or bind Lessor to any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease.
- (m) The Lessee shall not construct new buildings or structures on the Premises, except that, with the prior written approval of the Lessor, as described in Section 9 of this Lease, the Lessee may construct minor additions, buildings and/or structures determined by the Lessor to be necessary for the support of the uses authorized by this Lease.
- (n) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations. Nothing in this Lease shall be construed as preventing the cancellation of this Lease by the Lessor in the exercise of sovereign authority otherwise provided by Applicable Laws.
- (o) Lessee agrees to adhere to Certain Commitments as described in Exhibit H.

*[Signatures on the following page]*

**IN WITNESS WHEREOF, the Area Director, National Capital Area, 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 *Lisa A Mendelson-Jelmini*

**Area Director (Acting)**

**Interior Region 1 - National Capital Area**

**National Park Service**

**LESSEE**

**NATIONAL LINKS TRUST**

By *MTW*

**Title: President**