

LEASE AND MANAGEMENT AGREEMENT

between

THE CITY OF SOLON

and

**THE BOARD OF PARK COMMISSIONERS OF THE
CLEVELAND METROPOLITAN PARK DISTRICT**

for

SOLON TO CHAGRIN FALLS TRAIL

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LEASE AND MANAGEMENT AGREEMENT

THIS LEASE AND MANAGEMENT AGREEMENT (this “LMA” or “Agreement”) is made and entered into as of the ___ day of _____, 2022 (the “Effective Date”), by and between the CITY OF SOLON (“Property Owner”), pursuant to Ordinance _____, passed on _____, and the BOARD OF PARK COMMISSIONERS OF THE CLEVELAND METROPOLITAN PARK DISTRICT, a political subdivision of the State of Ohio (“Manager”), pursuant to Resolution No. _____, dated _____.

RECITALS

A. Property Owner is the fee owner of the Leased Premises, consisting of property well-suited for a trail, currently known as Permanent Parcel Numbers 955-03-001, 952-23-001, 952-23-002, 952-23-006, 952-26-001, 952-26-002, 952-21-006, 955-03-002, 955-03-003, 955-03-049, and 955-07-001 which property ends just south of property currently owned by Cleveland Metroparks.

B. Manager is authorized to acquire and/or lease land for the conservation of the natural resources of the State and to develop, improve, protect, and promote the use of parks pursuant and subject to the provisions of Chapter 1545 of the Ohio Revised Code.

C. Manager is experienced in the management of land for conservation purposes and for recreational use by the public.

D. Property Owner wishes to rely on Manager’s experience in the management of land for conservation and recreational purposes for the benefit of Property Owner’s citizens.

E. The Parties have entered into a Project Development Agreement for Solon to Chagrin Falls Trail dated _____, 2022 (the “PDA”) for development of Trail Improvements on the Leased Premises, which PDA assigns responsibilities to the Parties for development of or Trail Improvements being added to the Leased Premises, which developments and/or Trail Improvements the Parties wish to be managed pursuant to this LMA.

F. Property Owner desires to lease to Manager and have Manager manage, and Manager desires to lease from Property Owner and provide management services related to, the Leased Premises for such purposes.

NOW, THEREFORE, for the premises set forth above, and in consideration of the mutual promises and agreements hereinafter set forth, Property Owner and Manager agree as follows:

1. Definitions. In addition to other terms defined throughout this Agreement, as used in this Agreement, the following terms shall have the meanings indicated below:

“ADA Accessible Multi-purpose Recreational Trail” shall mean a paved trail that meets the accessibility requirements of the Americans with Disabilities Act (ADA) as well as the Architectural Barriers Act (ABA) and is suitable for pedestrian and bicycle traffic.

“Applicable Laws” shall mean all federal, state and local laws, codes, ordinances, rules and regulations applicable to Property Owner, Manager or the Leased Premises.

“Award” means the payment or other award resulting from a Taking from the condemning authority to Manager attributable to the value of the Improvements.

“Capital Repair” means any and all work reasonably necessary to repair, restore or refurbish any structure or Improvement necessitated by physical or functional obsolescence or the substitution, replacement, enlargement or enhancement of any such structure or Improvement when Repair and Maintenance are insufficient to restore the Improvement or Leased Premises to a condition that it can be effectively used for its designated purpose.

“Chief Executive Officer” means the Chief Executive Officer of Manager, or such other officer, agency, or agencies of Manager or other governing body as may now or hereafter have jurisdiction over Manager.

“Cleveland Metroparks Standards” shall mean the generally applicable and common standards and levels of maintenance, repair and operation provided by Manager from time to time with respect to all parks operated by Manager, as the same may be modified, changed or altered by Manager from time to time.

“Commencement Date” means the date on which construction of the Project described in the PDA is completed, except that if the Project is completed in phases, the Commencement Date means the date on which Phase 1 of the Project is completed, pursuant to the limitations in Section 13.2, and as the Commencement Date may be postponed pursuant to Section 5.2.

“Effective Date” means the date set forth in the Preamble of this LMA.

“Environmental Law” means any present and future federal, State and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act and the Resource Conservation and Recovery Act that apply to Property Owner, Manager or the Leased Premises and relate to Hazardous Materials.

“Extension Terms” means two (2) periods of twenty-five (25) years each, and each twenty-five (25) year period is referred to herein, individually, as an “Extension Term.”

“Force Majeure” means any act or acts beyond the reasonable control of the affected party, including without limitation, acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials (other than the Chief Executive Officer or the Director, respectively), or any local municipal authority, or any civil or military authority; laws, ordinances, permits, rules, regulations, orders, and other applicable requirements imposed by governmental authorities with competent jurisdiction; insurrections; civic disturbances; riots; strikes; lockouts; unforeseen subsurface conditions; shortages of labor, fuel, or materials; discontinuation, suspension, or interruption of, or interference with, any utility or service; landslides; fire, explosion, and earthquakes; and adverse weather, including, but not limited to, hurricane, tornadoes, lightning, storms, and floods; or severe ice, snow or wind.

“Hazardous Materials” shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint, asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Leased Premises is prohibited by any Federal, State or local authority; mold or any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance”, “hazardous material”, hazardous waste”, “toxic substance”, “toxic pollutant”, “contaminant”, or “pollutant” within the meaning of any Environmental Law.

“Improvements” means, collectively, any building, structure, and other permanent addition to or betterment of the Leased Premises that enhances its capital value and that involves the expenditure of labor or money and is designed to make the Leased Premises more useful or valuable as distinguished from Repairs and Maintenance that the Parties, in consultation, determine to be in furtherance of, and consistent with, Manager’s mission and authority contemplated to be constructed upon the Leased Premises pursuant to Section 10 of this LMA, including, any alteration, remodeling, modification, expansion or demolition of Improvements.

“Initial Term” shall have the meaning set forth in Section 4.1 of this LMA.

“LMA Commencement Conditions” shall have the meaning set forth in Section 5.1 of this LMA.

“Leased Premises” means the real property described and depicted on **Exhibit A**, attached hereto and incorporated herein, currently known as Permanent Parcel Numbers 955-03-001, 952-23-001, 952-23-002, 952-23-006, 952-26-001, 952-26-002, 952-21-006, 955-03-002, 955-03-003, 955-03-049, and 955-07-001. If construction of the Trail Improvements as set forth in the PDA is phased, the Leased Premises shall include those parcels on which Improvements were constructed during Phase 1. Upon the completion of Phase 2, the Leased Premises shall expand to include the entirety of the real property described and depicted on **Exhibit A**.

“Motor Vehicle” means any vehicle that is propelled or drawn by power other than muscular power but shall not include class 1 or class 2 electric bicycles or scooters as referenced in Chapter 373 of the Codified Ordinances of Cleveland Metroparks.

“Permitted Exceptions” means those exceptions to title to the Leased Premises approved by Manager and reflected in the attached **Exhibit B**.

“Release” means any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

“Repair and Maintenance” means those activities associated with the routine care and upkeep of the Leased Premises and any Improvements that are recurrent, day-to-day, periodic or scheduled work required to preserve or immediately restore the Leased Premises or any Improvement to such a condition that it can be effectively used for its designated purpose, including but not limited to garbage or trash removal, snow removal, and the removal of downed

trees. Repair and Maintenance does not include any activity that changes the character, scope, or size of any Improvement or the Leased Premises. Repair and Maintenance shall include patching of all-purpose trail (“APT”) but shall not include repaving when patching is not sufficient to allow the APT to be effectively used for its designated purpose.

“Substantial Portion” means the Taking of such portion of the Leased Premises that renders the Leased Premises unusable for its permitted purposes (other than for temporary periods).

“Taking” means all or a Substantial Portion of the Leased Premises taken by right of condemnation or eminent domain, with or without litigation, or transferred in lieu of or under threat of such action.

“Tax” or “Taxes” means all real estate taxes, payments in lieu of taxes, personal property taxes, privilege taxes, admissions taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, rates and charges, levies, license and permit fees, assessments (including assessments for public improvements or benefits) and all other governmental impositions and charges of every kind and nature whatsoever, whether or not now customary or within the contemplation of the parties and regardless of whether the same shall be extraordinary or ordinary, general or special, unforeseen or foreseen, or similar or dissimilar to any of the foregoing, but excluding any income, franchise, excise, corporation, estate, inheritance, succession, capital stock, or transfer tax levied on Property Owner to the extent that any such tax is not a substitute for real estate taxes.

“Term” shall mean the Initial Term, as the same may be extended by one or more Extension Terms, if exercised.

2. Use of the Leased Premises.

2.1 Title to the Leased Premises and Associated Encumbrances. Property Owner covenants, based on information and belief, that it is well-seized of, and has marketable fee simple title to the Leased Premises subject only to the Permitted Exceptions as noted in the title commitment attached as **Exhibit B**. Included within **Exhibit B** is also a list of the easements and/or agreements which Property Owner assigns all of its rights and responsibilities through this Agreement, to the extent that Property Owner is so able to assign such rights under the terms and conditions of the underlying easements and/or agreements, to Manager for the term of this Agreement (“Assigned Interests”). Property Owner hereby covenants that it is not currently in default of any of the Assigned Interests. Should this Agreement be terminated or expire, then this assignment of the Assigned Interests shall be revoked and the right and responsibilities of the Assigned Interests shall return to Property Owner.

2.2 Lease of Leased Premises. Property Owner hereby leases to Manager, and Manager hereby leases from Property Owner, on the terms and conditions and for the purposes set forth herein, all of Property Owner’s rights, title and interest in and to the Leased Premises (including the Assigned Interests).

2.3 Condition of Leased Premises. Manager accepts the Leased Premises in their present or “as is” condition as of the Commencement Date.

2.4 Use of Leased Premises. Property Owner and Manager acknowledge and agree that Manager's right to use and occupy the Leased Premises is unlimited except as set forth in this LMA, and Property Owner shall not interfere with Manager's use of the Leased Premises except as necessary for Property Owner to perform its obligations set forth herein.

2.5 Property Owner's Use of Leased Premises. Property Owner may use the Leased Premises as set forth in this LMA and for the same purposes as the general public. To the extent Property Owner wishes to use the Leased Premises in a way that requires a permit pursuant to Manager's Regulations, Property Owner shall comply with all processes necessary to obtain such a permit. Manager shall work with Property Owner to provide Property Owner such access whenever reasonably possible.

2.6 Use Restrictions. The Leased Premises shall be used by Manager for open space, park, ADA Accessible Multipurpose Recreational Trail and/or conservation purposes and those activities ancillary thereto pursuant and subject to Chapter 1545 of the Ohio Revised Code (as the same may be amended from time to time) or any successor statute defining the rights and responsibilities of Ohio park districts.

2.7 Third Party Agreements/Easements. Subsequent to the Effective Date of this Agreement, Property Owner may enter into easements or agreements with third parties under which Property Owner would gain rights to access and use property for the benefit of the Trail Improvements, such as a trailhead. If Property Owner does, subsequent to the Effective Date, enter into an easement or agreement as noted in this Section, Property Owner will in good faith, to the extent that it is able under the terms of the applicable agreement, assign any and all of Property Owner's rights under such agreement that affect the Trail Improvements to Manager in furtherance of effectuating the terms of this Agreement to the extent that Manager is reasonably agreeable to the terms of said applicable agreement. Property Owner and Manager will execute any necessary addendum to incorporate any such easement or agreement, and assignment of rights, under the terms of this Agreement. Any such assignment will be linked to this Agreement and be revoked or expire if this Agreement is terminated or expires.

3. Delivery of Possession. On the Commencement Date, Property Owner shall deliver possession of the Leased Premises to Manager, free and clear of all tenancies, whether oral or written, subject to the provisions of this LMA.

4. Term.

4.1 Initial Term. The "Initial Term" shall commence upon the Commencement Date and expire upon the fiftieth (50th) anniversary of the Commencement Date, unless sooner terminated in accordance with the provisions of this LMA.

4.2 Extension Term. The Parties shall have the right and option to extend this LMA for up to two (2) Extension Terms. The Parties shall automatically be deemed to have exercised the option to extend the LMA for the Extension Terms unless either Party notifies the other in writing of its intent not to extend not less than six (6) months prior to the expiration of the Initial Term or the then current Extension Term, as applicable.

4.3 Termination Rights. Notwithstanding the foregoing or any other provision of this LMA to the contrary, either Party hereto shall have the right, if the Party so elects at any time following the completion of the Project, as so defined in the PDA, to terminate this LMA by delivery of six (6) months' written notice to the other Party hereto. If Property Owner fails to fulfill any obligation under this LMA and ninety (90) days after notice of such failure by Manager, Property Owner has not remedied such failure, Manager may terminate this LMA effective immediately. Similarly, if Manager fails to fulfill any obligation under this LMA and ninety (90) days after notice of such failure by Property Owner, Manager has not remedied such failure, Property Owner may terminate this LMA effective immediately.

4.4 Termination due to Tax Foreclosure. If, at any time during the Term, the relevant public authority initiates a Tax foreclosure against the Leased Premises, Manager shall have the option at any time during the Tax foreclosure proceedings to either: (1) terminate this LMA by providing Property Owner with not less than ten (10) days' prior written notice; provided, however, such notice shall be null and void if Property Owner caused the Tax foreclosure to be dismissed prior to the expiration of such ten (10)-day period; or (2) amend this LMA to remove the portion of the Leased Premises being foreclosed upon from this LMA.

5. Conditions to Commencement of this LMA.

5.1 Conditions to Commencement of this LMA. In addition to the conditions provided elsewhere in this LMA, the commencement of the Initial Term shall be subject to the satisfaction or waiver in writing of each of the following conditions ("LMA Commencement Conditions") on or before the Commencement Date:

- 5.1.1 Manager has received and approved all Due Diligence Materials, and Manager has approved all Due Diligence Reports and Testing;
- 5.1.2 Manager shall have received and approved the Survey (if Manager elected to obtain a Survey);
- 5.1.3 All of the other documents required to be delivered to Manager by Property Owner, as required by this LMA, shall have been delivered.
- 5.1.4 All Taxes related to the Leased Premises for periods prior to the Commencement Date shall have been paid by Property Owner, other than Taxes that are not yet due and payable.

5.2 Manager's Rights Prior to the Commencement Date. If any LMA Commencement Condition is not satisfied or waived in writing by Manager on or before the date on which it is required to be satisfied, then Manager shall have the right to postpone the Commencement Date or to terminate this LMA by written notice to Property Owner.

6. Further Assurances and Additional Information. Property Owner and Manager shall, from and after the Effective Date or Commencement Date, as the case may be, upon the reasonable request of the other party, execute and deliver such other documents as the other party may reasonably request to obtain the full benefit of this LMA and the consummation of the LMA Transactions. Both parties shall participate in regularly scheduled periodic information sharing

and planning sessions that will focus on information exchange that shall allow both parties to promptly implement the terms of this LMA immediately following the receipt of proper authority from their respective statutory governing bodies.

7. Payment.

7.1 Rent. In consideration of the LMA hereby granted, Manager shall pay Property Owner the rent of One Dollar (\$1) per year during the Term, which, as to the Initial Term, Manager shall have the option of paying as a lump sum on or before the Commencement Date and which, as to each Extension Term, Manager shall have the option of paying as a lump sum on or before the first day of the Extension Term.

7.2 Absolute Net Lease. Except as otherwise provided in this LMA, Manager and Property Owner intend for this lease to be absolutely net, with Property Owner receiving the rent herein reserved free from any expenses whatsoever relating to the Leased Premises or activities conducted on the Leased Premises.

7.3 Management Fee. In consideration of the property management services to be provided by Manager, Property Owner shall Pay Manager the Management Fee of One Dollar (\$1) per year, during the Term, which, as to the Initial Term, Property Owner shall have the option of paying the Management Fee as a lump sum on or before the Commencement Date.

7.4 Place of Payment. All payments of rent shall be made by good draft or check, payable to the order of the "City of Solon" and forwarded to:

City of Solon
c/o Director of Finance
34200 Bainbridge Road
Solon, OH 44139

All payments of management fees shall be made by good draft or check, payable to the order of "Cleveland Metroparks" and forwarded to:

Cleveland Metroparks
4101 Fulton Parkway
Cleveland, Ohio 44144
Attn: Chief Financial Officer

7.5 Taxes. Property Owner shall be solely responsible for the payment of all Taxes, if any, and shall pay such bill in full prior to the date of delinquency. Property Owner shall hold Manager harmless from any Taxes assessed against the Leased Premises at any time during the Term.

7.6 No Offsets or Abatements Allowed. All amounts and times stated for payments herein shall be paid without offset or abatement.

8. Law Enforcement and Security Patrols. Throughout the Term, Manager's Police Department shall have the right and obligation to exercise all powers of police officers within

and adjacent to the Leased Premises in accordance with Cleveland Metroparks Standards and Applicable Laws. Manager's Codified Park District Regulations, available at https://www.amlegal.com/codes/client/cleveland-metroparks_oh/, shall apply to the public's activities on the Leased Premises. Property Owner's Police Department shall continue to have full police authority as stated in the Property Owner's City Charter, and shall regularly patrol the Leased Premises along with other priorities. The Property Owner's Police Department will endeavor to contact Manager's Police Department in the event a citation needs to be issued for violation of Manager's Codified Park District Regulations or the Codified Ordinances of the Property Owner. Manager's Police Department may also contract with Property Owner's Police Department for special duty dedicated to patrolling the Leased Premises.

9. Manner of Operation. Manager shall operate the Leased Premises in a safe and clean manner, and consistent with the management practices of Managers' other reservations.

10. Operation. Manager shall operate the Leased Premises as open to the general public for use and enjoyment, pursuant to the requirements and limitations of Section 2.6 herein, during hours adopted in accordance with Manager's regulations.

11. Motor Vehicles. Motor vehicles shall be prohibited on the Leased Premises, except in designated vehicle parking locations. This prohibition does not apply to Manager's vehicles or to motor vehicles permitted by Manager's Codified Park District Regulations, including but not limited to permitted e-bikes pursuant to Chapter 373 of the Codified Ordinances of the Cleveland Metroparks. This restriction shall not apply during construction associated with the Project, as that term is defined in the PDA. Further, this restriction shall not apply to motor vehicles used by Property Owner or utility companies for purposes noted in Section 25 (Right of Entry) herein.

12. Utilities.

12.1 Non-Serving Utilities. The utilities located on, over or through the Leased Premises as of the Commencement Date but not serving the Leased Premises (or serving the Leased Premises and property other than the Leased Premises), whether such utilities are owned by Property Owner or have been permitted on the Leased Premises with or without formal agreements or easements ("Non-Serving Utilities"), shall remain the responsibility of Property Owner or the party owning the utilities, and Manager shall have no obligation to maintain, repair, replace, or remove the Non-Serving Utilities, provided that Manager shall exercise reasonable diligence in determining the location of such Non-Serving Utilities and avoiding damage thereto. Notwithstanding the above, Non-Serving Utilities shall include, but not be limited to, storm sewers serving catchment areas off of the Leased Premises and the Easement for Longitudinal Occupation, granted by The Wheeling & Lake Erie Railway Company to Cleveland Electric Illuminating Company, dated August 10, 1992 and recorded in Volume 92-7124, Page 5 of Cuyahoga County Records (hereinafter referred to as the "CEI Easement"), and attached as **Exhibit C.**

12.2 Repair of Non-Serving and Property Owner Utilities. Property Owner shall, at its sole cost and expense, install, maintain, repair or replace all Non-Serving Utilities and all other utilities owned or operated by Property Owner. All installation, maintenance, repair or replacement shall (a) be performed in a good and workmanlike manner without interfering with the operations on the Leased Premises, and without diminishing or interfering with the utility

services to the Leased Premises, and (b) be performed in accordance with all applicable federal, state or local laws, ordinances, statutes, codes, rules or regulations. Prior to performing any installation, maintenance, repair or replacement, Property Owner shall give Manager at least ten days' prior written notice of the work and shall schedule its work in a commercially reasonable manner. Property Owner shall restore any damage to the Leased Premises to a condition that is substantially the same or better than that which existed immediately prior to such installation, maintenance, repair or replacement (including restoration of all paving or landscaping disturbed). Within thirty (30) days after written request by Manager, Property Owner, shall at Property Owner's sole cost and expense, provide a metes and bounds legal description and easement for any such Non-Serving Utility or other utility owned or operated by Property Owner.

12.3 Installation of Utilities. This Section 12 of the Agreement in no way precludes the ability of Property Owner to install and maintain new lines and equipment for utilities. Property Owner shall perform all installation and maintenance of new utility lines and equipment in accordance with the provisions as set forth in this Section 12.

13. Improvements and Alterations.

13.1 Construction of Improvements; Title to Improvements. Subject to the provisions of this Section 13, the Parties may agree to the construction of Improvements to the extent necessary or desirable for the use and occupancy of the Leased Premises. Unless otherwise agreed to by Manager in writing, Property Owner shall pay for all Improvements. Prior to beginning any Improvements or modifications to any existing Improvements, Property Owner must provide to Manager plans (signed or certified if requested by Manager) for the Improvements or modifications and receive written approval from Manager to proceed with the Improvements. Property Owner shall be responsible for all applicable building permit fees, impact fees or any other fees payable in connection with any construction, alterations, additions or other Improvements to the Leased Premises, which shall be procured and paid for in accordance with Property Owner's standard procedures. Property Owner will obtain building permits from the State of Ohio for structures as required by the then current edition of the Ohio Building Code.

13.2 Approvals for Improvements. To the extent Manager and Property Owner agree in writing to certain Improvements or modification of an existing Improvement, and under such express written agreement Manager agrees to construct an Improvement or modify an existing Improvement with its own funds or as a contractor for Property Owner, Manager shall be responsible for all applicable building permit fees, impact fees or any other fees payable in connection with any construction, alterations, additions or other Improvements to the Leased Premises, which shall be procured and paid for in accordance with Manager's standard procedures. Manager will obtain building permits from the State of Ohio for structures as required by the then current edition of the Ohio Building Code. Property Owner shall be responsible for obtaining any internal planning commission or building department approval of any construction, demolition, alteration or remodeling of any Improvement or plan related thereto, or any other consent, approval or permit from Property Owner in connection therewith.

13.3 Construction of Solon to Chagrin Falls Trail. The Parties agree that construction of Trail Improvements on the Leased Premises shall be conducted pursuant to the terms of the PDA. To the extent the Project detailed in the PDA is completed in phases, Property Owner

shall convey to Manager and Manager shall be obligated to provide management services on the Commencement Date only for that portion of the Leased Premises that is the location for Improvements in Phase 1. Property Owner shall convey to Manager and Manager shall be obligated to provide management services for the remainder of the Leased Premises upon completion of Phase 2, and similarly for any subsequent phases as agreed to be the Parties.

13.4 Removal of Alterations. Manager may remove alterations, additions or Improvements at any time during the Term with the prior consent of Property Owner, including for the Improvements identified in Section 13. In case of removal of any alterations, additions or other Improvements by Manager occurring at or after the termination of this LMA, Manager shall level the area formerly occupied by any alterations, additions or other Improvements so removed and shall return the Leased Premises to a generally neat and clean appearance.

14. Repair and Maintenance; Capital Repair.

14.1 Repair and Maintenance. Manager shall be responsible for the labor and costs required for Repair and Maintenance of the Leased Premises, which Repair and Maintenance shall be conducted consistent with Cleveland Metroparks Standards.

14.2 Capital Repair.

14.2.1 Property Owner shall be responsible for all Capital Repair.

14.2.2 Before conducting any Capital Repair on the Leased Premises, Property Owner shall provide Manager with ten (10) days prior notice of Property Owner's intent to conduct the Capital Repair, including a timeline for completion of the Capital Repairs. Manager may require Property Owner to conduct the Capital Repairs at another time if, in Manager's sole discretion, the timeline of Capital Repairs proposed by the Property Owner will negatively impact Manager's management or the public's use of the Leased Premises.

14.2.3 If Manager becomes aware of a Capital Repair that Manager, in its sole discretion, believes is necessary and that Capital Repair must be addressed before the time of the Parties' planning meeting described in Section 14.3, Manager shall make a request to Property Owner, which request shall detail the Capital Repair required and the timeline on which Manager believes the Capital Repair should be completed. Property Owner shall respond to Manager's request within ten (10) days, which response shall indicate either that the Property Owner will conduct the required repair as requested and on the timeline requested or the Property Owner's proposal of an alternate plan to address the Capital Repair identified by Manager. The Parties shall agree in writing as to the manner, method, timeline and cost for the completion of the Capital Repair. If the Parties are unable to agree under this subsection as to the manner, method, timeline and cost of the completion of the Capital Repair, then such Capital Repair shall not be completed unless and until the Parties are able to come to an agreement hereunder. If a written

agreement, detailing the manner, method, timeline and cost of a Capital Report, is breached by one of the Parties, then the non-breaching Party may terminate this LMA pursuant to Section 4 hereto.

14.3 Planning Meeting. Manager and Property Owner shall meet every year to set a Repair and Maintenance and Capital Repair agenda for the following years. The agenda for the meeting shall be prepared by the Manager and the minutes for the meeting shall be retained by both the Manager and Property Owner for the duration outlined in each party's record retention policy.

15. Surrender of Leased Premises. On the date of termination of this LMA, whether by termination pursuant to the LMA, expiration of the Term or otherwise, Manager agrees to yield and deliver peaceably to Property Owner possession of the Leased Premises granted hereunder, promptly and in the condition generally required to be maintained under this LMA.

16. Representations, Acknowledgments, and Additional Covenants.

16.1 Property Owner's Representations. Property Owner represents that: (a) Property Owner is a municipal corporation duly formed and validly existing under the laws of the State of Ohio; (b) the execution, delivery, and performance by Property Owner of this LMA are within the power of Property Owner and have been authorized by all necessary action; (c) this LMA has been duly executed and delivered by Property Owner; (d) this LMA and the documents referred to herein constitute valid and binding obligations of Property Owner; (e) to the best of Property Owner's knowledge, the execution and delivery of this LMA and the performance by Property Owner of the provisions and terms hereof do not and will not violate or conflict with any provision of, or result in an event of default, or in the acceleration of any obligation, under any material commitment, contract, agreement, plan, arrangement, understanding, instrument, lease, license, or permit to which Property Owner is a party or by which it is bound or which otherwise affects the Leased Premises; and (f) Property Owner has no knowledge or reason to know of any violation or condition that would create liability to any owner or operator, with respect to, and has received no notice from any governmental authority asserting that the Leased Premises or any part thereof is in violation of, or in conflict with, any applicable law, rule, regulation, or ordinance that relates to environmental or any other matters; and (g) commencing on the Effective Date and continuing thereafter throughout the Term, Property Owner shall give notice to Manager with respect to all matters of which Property Owner obtains notice or knowledge affecting the Leased Premises.

16.2 Manager's Representations. Manager represents that: (a) Manager is a political subdivision of the State of Ohio duly formed and validly existing under the laws of the State of Ohio and has or will obtain all material governmental licenses, authorizations, consents, approvals, and other qualifications required to carry on its business as now conducted and to be conducted pursuant to the terms of this LMA; (b) the execution, delivery, and performance by Manager of this LMA are within the power of Manager and have been authorized by all necessary action; (c) this LMA has been duly executed and delivered by Manager; and (d) this LMA and documents referred to herein constitute valid and binding obligations of Manager.

17. Insurance.

17.1 Kinds and Amounts of Insurance. Manager shall, at its sole cost and expense, take out and maintain during the Term such liability and property insurance as it customarily carries, with limits of liability or coverage not less than those Manager customarily carries, with respect to similar facilities operated by Manager. Property Owner shall, at its sole cost and expense, take out and maintain during the Term such liability and property insurance as it customarily carries, with limits of liability or coverage not less than those Property Owner customarily carries, with respect to similar facilities owned by Property Owner.

17.2 Proof of Insurance. No later than seven (7) days after the Commencement Date, each party shall provide to the other party a certificate or certificates of insurance and an endorsement naming such other party as an additional insured or loss payee, as appropriate.

17.3 Blanket Policies. Any insurance required to be maintained may be taken out under a blanket insurance policy or policies covering other premises, properties or insured in addition to the Leased Premises.

17.4 Waiver of Subrogation. Property Owner and Manager hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property covered by property, fire or extended coverage insurance policies even if such damage shall have been caused by the fault or negligence of the other party, or anyone claiming through or under such other party.

18. Damage or Destruction.

18.1 Restoration. If Improvements are damaged or otherwise destroyed at any time after the Commencement Date, then this LMA shall remain in full force and effect and, unless the damage or destruction to the Improvements is due primarily to the negligence or intentional conduct of the Manager, or its employees, representatives, agents or officers, Property Owner shall fully restore the Improvements, or cause the Improvements to be fully restored, to the condition existing prior to such damage or destruction to the extent of available insurance proceeds ("Restoration Work"). All Restoration Work performed or caused to be performed by Property Owner shall be: (a) performed in compliance with the Applicable Laws, and (b) completed within twenty-four (24) months following the date of casualty, subject to Force Majeure; provided, that if such Restoration Work cannot reasonably be completed within such period, such date shall be extended so long as Property Owner diligently and continuously prosecutes the completion of the Restoration Work. If, however, the damage or destruction was caused primarily by the negligence or intentional conduct of the Manager, or its employees, representatives, agents or officers, Property Owner shall fully restore the Improvements, as provided above in this subsection; however, Manager shall be liable for the costs and expenses associated with the Restoration Work performed. Manager shall promptly reimburse Property Owner for its costs and expenses incurred in connection therewith upon presentation of an invoice thereof.

18.2 No Abatement. In the event of any damage or destruction to the Leased Premises, there shall be no abatement of rent or any other obligations of Manager hereunder unless and until this LMA is terminated.

19. Environmental Matters. Property Owner shall be responsible for the cleanup, removal, treatment, and/or remediation of Released Hazardous Materials on the Leased Premises as of the Commencement Date. Manager shall be responsible for the cleanup, removal, treatment and/or remediation of Released Hazardous Materials on the Leased Premises occurring after the Commencement Date, provided such Release is caused by Manager. If such release is not caused by Manager, Property Owner shall be responsible for cleanup, removal, treatment and/or remediation of Released Hazardous Materials on the Leased Premises.

20. Condemnation.

20.1 Substantial Taking. If a Taking occurs, then Manager shall have the right, at its option, exercisable at any time following the date of such Taking, to terminate this LMA in its entirety or with respect to the applicable portion of the Leased Premises, in which event the parties shall be released from all additional obligations or liability hereunder, without prejudice to any rights that have accrued prior to such termination.

20.2 Award. In the event of a Taking, the Award shall be paid to and solely retained by Property Owner, and the payment or other award attributable to the value of the Leased Premises or leasehold estate shall be paid to and retained solely by Manager.

20.3 Partial Taking; Restoration of the Leased Premises. If less than a substantial portion of the Leased Premises is the subject of a Taking, or if a substantial portion or more is the subject of a Taking but Manager does not terminate this LMA as provided in Section 20.1, or in the event of any temporary Taking, then Manager shall restore or cause to be restored, to the extent of funds received by Manager from the Award, the remainder of the Leased Premises to a complete architectural unit suitable for Manager's use and otherwise to a state comparable to that which existed immediately prior to the date of Taking, and this LMA shall remain in effect without abatement of any obligations hereunder.

21. Subordination and Estoppel.

21.1 Subordination. Property Owner reserves the right to request from Manager, and Manager shall deliver to Property Owner, within ten (10) days after receipt of such demand, a waiver of priority or subordination of this LMA, in recordable form, subordinating this LMA in favor of any mortgage placed upon the Leased Premises, or any part thereof, from time to time by Property Owner; provided that Property Owner shall procure from any such mortgagee an agreement providing in substance that so long as Manager shall faithfully discharge the obligations on its part to be kept and performed under the terms of this LMA, Manager's tenancy will not be disturbed by any default under such mortgage. Manager agrees that this LMA shall remain in full force and effect even though default in the mortgage may occur. Manager agrees to attorn to any mortgagee or purchaser in a foreclosure sale against Property Owner.

21.2 Estoppel. The parties hereby reserve the right to demand and obtain from each other, and the other shall deliver to the requesting party within ten (10) days after receipt of such request, a true and accurate estoppel certificate indicating that this LMA is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that requesting party is not in default in the performance of its covenants hereunder (or if there are such defaults, specifying the same), the

Commencement Date and Term, the amount of rent and such other information as the requesting party shall request.

22. Notice of Dispute. Each party shall give the other party prompt written notice of any claim, breach or dispute coming to its knowledge that in any way directly or indirectly affects the interests of such other party, which other party shall have the right to participate in the defense of such dispute to the extent of its interest.

23. Assignments, Transfers, and Other Parties.

23.1 Assignment and Transfer by Manager. Manager shall not assign, transfer, convey, or otherwise dispose of this LMA, or its right to execute it, or its right, title, or interest in it or to it, or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this LMA, except with the written consent of Property Owner. The giving of any such consent to a particular transfer shall not dispense with the necessity of such consent to any further or other assignments. Notwithstanding any provision of this LMA to the contrary, Manager may sublet or permit the use of all or any portion of the Leased Premises for purposes not inconsistent with the purposes described in Chapter 1545 of the Ohio Revised Code (as the same may be amended from time to time) without obtaining Property Owner's permission. Subletting shall not relieve Manager of any of its obligations under this LMA.

23.2 Assignment and Transfer by Property Owner. Property Owner shall not sublet, assign, transfer, convey, sell, mortgage, pledge or encumber this LMA or the Leased Premises hereunder without in each instance first obtaining authorization of Manager, which authorization shall not be unreasonably withheld, conditioned or delayed. Any transfer or assignment by merger, consolidation, stock purchase, operation of law or in any other manner whatsoever shall likewise be prohibited without prior authorization of Manager and shall constitute a default hereunder.

23.3 No Third Party Beneficiaries. Nothing in this LMA shall be construed to create any third-party beneficiaries under this LMA.

24. Quiet Enjoyment. Upon paying the rent set forth in Section 7.1, and all other charges to be paid by Manager as herein provided, and observing and keeping all covenants, agreements, and conditions of this LMA on its part to be kept, Manager shall quietly have and enjoy the Leased Premises during the Term without hindrance, interference, or molestation of any sort by anyone whomsoever.

25. Right of Entry. Upon reasonable prior written notice, Property Owner, through its officers, employees, agents, representatives and contractors, shall have the right at all reasonable times (provided that there shall be no unreasonable or material interference with the use or occupancy of the Leased Premises by Manager under this LMA) to enter upon the Leased Premises for all reasonable purposes consistent with this LMA, including for the purpose of maintenance or creation of additional trails that connect to the trail on the Leased Premises (provided such maintenance or creation of additional trails complies with this LMA including, but not limited to, Section 13), a municipal purpose, inspection of the same, and for the purpose of exercising any other rights or remedies of Property Owner under this LMA. Nothing herein shall imply any duty upon the part of Property Owner so to inspect the Leased Premises, or to do

any repairs or work that any such inspection may disclose to be necessary except as required by this LMA. Further, all third-party utility companies, for utilities both serving and not serving the Leased Premises, may willfully enter or cross over the Leased Premises as permitted by the Property Owner, or any easement under which the Property Owner has granted entry to property included in the Leased Premises. Property Owner may enter the Leased Premises for emergency purposes, without prior written notice to Manager, however a written explanation of such emergency entry shall be provided to Manager by Property Owner within twenty-four (24) hours following such entry.

26. Financial Records.

26.1 Retention of Financial Records. Manager shall maintain for a reasonable period, but no less than the applicable statute of limitations period, all records required to document Manager's compliance with its obligations to Property Owner. Property Owner shall maintain for a reasonable period, but no less than the applicable statute of limitations or records retention period, all records required to document Property Owner's compliance with its obligations to Manager.

26.2 Inspection of Books and Records. Each party shall permit the other party to inspect, audit, and copy all books and records maintained or required to be maintained with respect to the Leased Premises. Each party agrees to conduct any such inspections and audits only during the normal business hours and at such party's sole cost and expense.

27. Default.

27.1 Events of Default. Each of the following shall constitute a default by either party:

- 27.1.1 A party makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, or consents to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;
- 27.1.2 A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against a party and is not dismissed within thirty (30) days after the filing thereof;
- 27.1.3 Except as permitted hereunder, any lien is filed against the Leased Premises because of any act or omission of a party and is not discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or otherwise, within one hundred eighty (180) days;
- 27.1.4 A party fails duly and punctually to pay any monies required hereunder to the other party within sixty (60) days after receipt of notice given in accordance with Section 29; and
- 27.1.5 A party fails to keep, perform, and observe every other promise and agreement set forth herein on its part to be kept, performed, or observed and within sixty (60) days after receipt of notice of default hereunder from the other party the defaulting party fails to cure the default, except

where fulfillment of its obligations requires activity over a period of time and such other party has commenced to perform whatever may be required for fulfillment and continues such performance without interruption.

27.2 Remedies for Default. Upon occurrence of any default pursuant to Section 27, and at any time thereafter during the continuance thereof, the non-defaulting party may, at its option, exercise concurrently or successively any one or more of the remedies then available to the non-defaulting party under the laws of the State of Ohio. Without limiting the generality of the foregoing, Manager shall have the right, but not the obligation, to cure a default by Property Owner as long as Manager provides written notice to Property Owner prior to curing such default, and includes in such notice the estimated costs required to cure such default, in which case Property Owner promptly shall reimburse Manager for its costs and expenses incurred in connection therewith upon presentation of an invoice therefor.

27.3 No Waiver of Default. No waiver by either party at any time of any of the terms or conditions of this LMA shall be deemed or taken as a waiver at any time thereafter of the same or any other term or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of either party to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of any commission then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquishment thereof, or acquiescence therein and no notice by either party shall be required to restore or revive any option, right, power, remedy or privilege after waiver by such party of default in one or more instances. No waiver shall be valid against either party unless reduced to writing and signed.

28. Dispute Resolution.

28.1 Manager and Property Owner shall attempt to resolve any controversy arising out of or related to this LMA through discussions between representatives of the Parties. If a claim cannot be resolved through such good faith negotiations, and before proceeding to litigation in accordance with Paragraph 28 hereof, such claims, disputes, or other matters in controversy arising out of or related to this LMA shall be subject to mediation. In such event, the Parties shall use good faith efforts to resolve any claims or disputes related to this LMA by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association. A Party's request for mediation shall be made in writing, delivered to the other Party, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of other court proceedings but, in such event, mediation shall proceed in advance of such court proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order.

28.2 The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Cuyahoga County. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

28.3 All claims and/or disputes of any nature whatsoever arising out of or related in any way to this Agreement between Manager and Property Owner not otherwise settled through

mediation shall be resolved through: (1) a federal or state court located in Cuyahoga County, Ohio; or (2) a private arbitrator which shall be administered by the American Arbitration Association. The decision to resolve claims and/or disputes of any nature whatsoever arising out of or related in any way to the LMA by litigation or arbitration shall be by mutual agreement of the Parties. To the extent the Parties choose to litigate, the Parties consent to the exercise of personal jurisdiction by and exclusive venue in a state or federal court located in Cuyahoga County, Ohio.

28.4 Pending final resolution of a claim, dispute or other matter in controversy arising out of or related to this Agreement, the Parties shall proceed diligently with performance of the obligations set forth in this LMA.

29. Notices.

29.1 Form of Notices. Any notices, consents or approvals required or permitted hereunder shall be in writing and personally delivered or sent by registered or certified mail, and shall be deemed to have been served or given when personally delivered or three (3) days after said notice, consent or approval has been deposited, postage prepaid, in a post office, branch post office, or post office box regularly maintained by the United States Government.

29.2 Notices to Property Owner. Notices to Property Owner shall be delivered or addressed to it at:

City of Solon
Attention: Mayor
34200 Bainbridge Road
Solon, Ohio 44139

With a copy to:

City of Solon
Attention: Law Director
34200 Bainbridge Road
Solon, Ohio 44139

or to such other person or place as Property Owner may designate in writing.

29.3 Notices to Manager. Notices to Manager shall be delivered or addressed to it at:

Board of Park Commissioners of the
Cleveland Metropolitan Park District
Attn: Chief Executive Officer
4101 Fulton Parkway
Cleveland, Ohio 44144

with a copy to:

Board of Park Commissioners of the
Cleveland Metropolitan Park District
Attn: Chief Legal & Ethics Officer
4101 Fulton Parkway
Cleveland, Ohio 44144

or to such other person or place as Manager may designate in writing.

30. Signage. As deemed appropriate by agreement of both Parties, signage will be displayed throughout the Leased Premises recognizing the shared responsibility of Manager and Property Owner. Signage shall be consistent with Cleveland Metroparks Standards and shall be created solely by Manager.

31. Construction of LMA. All terms and words used in this LMA, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this LMA or any paragraph or clause herein may require, the same as if such words have been fully and properly written in the number and gender. Each party agrees that no representation or warranties of any type shall be binding upon the other party, unless expressly authorized in writing herein. The headings of sections and paragraphs, if any, to the extent used herein are used for reference only, and in no way define, limit or describe the scope or intent of any provisions hereof. This LMA may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument. The exhibits attached hereto are hereby incorporated in and made a part of this LMA.

31.1 Amendments to Be In Writing. This LMA shall not be changed, modified, discharged or extended except by written instrument executed by both parties.

31.2 Severability. If any term or provision of this LMA is held invalid, illegal or unenforceable by any court of competent jurisdiction, the validity, illegality or unenforceability shall not affect any other term or provision hereof. This LMA shall be interpreted and construed as if such term or provision, to the extent it has been held invalid, illegal or unenforceable, had never been contained herein.

31.3 Property Owner and Manager Not Partners. Nothing contained in this LMA shall be deemed to constitute Property Owner and Manager as partners in a partnership or joint venture for any purpose whatsoever.

31.4 Laws of Ohio. This LMA shall be construed in accordance with the laws of the State of Ohio.

31.5 Compliance with Laws. Each of Property Owner and Manager covenants and agrees at all times to comply with all Applicable Laws of the federal government and the State of Ohio and shall be responsible for securing, at its own expense, any and all licenses, permits and certificates of inspection required by law or by this LMA with respect to its activities hereunder. Without limiting the generality of the foregoing, each of Property Owner and Manager, as

applicable, shall at all times during the Term subscribe to and comply with the Workers' Compensation Laws of the State of Ohio and pay such premiums as may be required thereunder.

31.6 Approval and Consent. Any provision of this LMA requiring the approval or consent of Property Owner, satisfaction of Property Owner or certification, determination or opinion of Property Owner, or any official or employee thereof, shall be interpreted as requiring the written action of the Mayor, or the Mayor's authorized representative, granting, authorizing or expressing approval, satisfaction, certification, determination or opinion, as the case may be. In each case in which this LMA provides for the approval or consent, such approval or consent shall not be unreasonably withheld, conditioned or delayed, unless the express language of the LMA provides that approval or consent may be withheld or granted in a party's sole discretion. The Parties agree that a condition precedent to this Section 31.6, as well as this entire Agreement, is that that City Council of the City of Solon accept and approve this Agreement. If the City Council of the City of Solon fails to approve the terms and conditions as herein stated, the Agreement shall immediately terminate with no further obligation of either Party to the terms and conditions of this Agreement.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the Effective Date.

PROPERTY OWNER:

CITY OF SOLON

Approved as to legal form:

By: _____
Edward H. Kraus, Mayor

By: _____
Thomas G. Lobe, City of Solon
Law Director

Date: _____

Date: _____

MANAGER:

BOARD OF PARK COMMISSIONERS OF THE
CLEVELAND METROPOLITAN PARK DISTRICT

Approved as to legal form by Rosalina
M. Fini, Chief Legal & Ethics Officer:

Katie M. McVoy, Assistant Legal
Counsel

By: _____
Brian M. Zimmerman, Chief Executive Officer

Date: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me a Notary Public in and for said County and State, personally appeared the City of Solon, a municipal corporation, by Edward H. Kraus, its Mayor, who acknowledged that he did sign the foregoing LMA and that the same is his free act and deed personally and as said officer, and the free act and deed of the City of Solon.

IN TESTIMONY WHEREOF, I hereunto have set my hand and official seal at _____, Ohio, this _____ day of _____, 2022.

Notary Public

My commission expires: _____

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

Before me a Notary Public in and for said County and State, personally appeared the Board of Park Commissioners of the Cleveland Metropolitan Park District, a political subdivision of the State of Ohio, by Brian M. Zimmerman, its Chief Executive Officer, who acknowledged that he did sign the foregoing LMA and that the same is his free act and deed personally and as said officer, and the free act and deed of said Board of Park Commissioners of the Cleveland Metropolitan Park District.

IN TESTIMONY WHEREOF, I hereunto have set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 2022.

Notary Public

My commission expires: _____

This instrument was prepared by,
and should be returned to:
Cleveland Metroparks
Attn: Chief Legal & Ethics Officer
4101 Fulton Parkway
Cleveland, Ohio 44144

Exhibit A

Legal Description and Depiction of Leased Premises

Exhibit B

Permitted Exceptions

Exhibit C

CEI Easement