

## **LEASE AGREEMENT**

This Lease Agreement (“**Agreement**”) is made and entered by and between the **CITY OF COLUMBUS, OHIO**, a municipal corporation (“**Lessor**”), and **THE COLUMBUS ZOOLOGICAL PARK ASSOCIATION** (“**Lessee**”) - (Lessor & Lessee, collectively, “**Parties**”).

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### **RECITALS**

**A.** Lessor owns and manages certain real property located at 6006 Harriott Rd. Powell, OH, 43065, with a Delaware County Parcel Number of 600-423-01-009-000 which is commonly known as “Jeffery Club Property & Clubhouse”; and

**B.** Lessee desires to utilize a 1 acre, more or less, portion of the Jeffery Club Property & Clubhouse, which is described and depicted in the one (1) page attachment, **Exhibit-A**, and fully incorporated for reference as if rewritten (“**Premises**”); and

**C.** Lessee desires to use the Premises as a research laboratory, offices, and for such other uses incidental to the normal day-to-day operation of the Columbus Zoo and Aquarium (“**Program**”); and

**D.** Parties intend for this Agreement to be the only written agreement between the Parties relating to Lessee’s use of the Premises to operate the Program and its permitted uses, and all prior or contemporaneous oral or written agreement(s) between the Parties relating to the Premises’ use to operate the Program are deemed null, void, and terminated; and

**Now, therefore**, the Parties, in consideration of the mutual covenants and obligations contained in this Agreement, mutually agree to the following provisions.

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### **TERMS & CONDITIONS**

**ARTICLE 1.        RECITALS.** Parties agree to all provisions and accuracy of all information described in the first (1<sup>st</sup>) paragraph and “Recitals” sections of this Agreement, which are fully incorporated for reference as if rewritten.

**ARTICLE 2.        PREMISES.**

**2.1.        Premises & Program.** The Lessor, upon and subject to all the provisions described in this Agreement, agrees to permit Lessee to use the clubhouse as a research laboratory, offices, and headquarters, and for such other uses incidental to the normal day-to-day operation of the Columbus Zoo and Aquarium, (*i.e.* Program) on a certain portion of Jeffery Club Property & Clubhouse, which is described and depicted in the one (1) page attachment, **Exhibit-A**, and fully incorporated for reference as if rewritten (*i.e.* Premises). Lessee agrees to use the Premises in its “as

is" and "where is" condition and "with all faults" without any express or implied warranties or representations from the Lessor, without limitation regarding the Premises' suitability, habitability, fitness for a particular purpose, environmental site conditions, zoning, or adequacy of utility services. Lessee agrees to indemnify, defend, release, and hold the Lessor harmless for all conditions known or unknown in, on, under, over, or adjacent to the Premises.

2.2. **Personal Property.** Where applicable, the Lessor, upon and subject to all the provisions described in this Agreement, permits Lessee to use the personal property and equipment contained within the leased area including, but not limited to, property and equipment listed in the attachment, **Exhibit-B ("Personal Property")**, which is fully incorporated into this Agreement for reference as if rewritten. Furthermore, Lessee agrees to use the Personal Property in its "as is," "where is," and "with all faults." The Lessor makes no express or implied warranty of any kind regarding the personal property, including but not limited to its **(i)** merchantability, **(ii)** fitness for any particular purpose, **(iii)** design or condition, **(iv)** quality or capacity, or **(v)** compliance with the requirements of any law, rule specification, contract or patent, or lack of latent defects. Lessee agrees to indemnify, defend, release, and hold the Lessor harmless for all conditions known or unknown regarding Lessee's use of the Personal Property.

The Personal Property shall be solely used in connection with the permitted uses of the Premises. Lessee is prohibited from removing the Personal Property from the Premises. The Lessor shall remain the sole owner of the Personal Property and nothing contained in this Agreement or the payment or receipt of any consideration under this Agreement enables the Lessee to acquire any right, title, or other interest in or to the Personal Property. Lessee, at its sole cost and expense during the Term (further defined herein) of this Agreement, is responsible for maintaining, repairing, and replacing the Personal Property, as necessary to keep the Personal Property in the same condition as of the Commencement Date (further defined herein), except ordinary wear and tear. If during the Term of this Agreement, Lessee no longer desires to use the Personal Property in the occupancy of the Premises, Lessee is required to surrender the Personal Property to the Lessor in the same condition as of the Commencement Date except ordinary wear and tear. Lessee, at the end or other expiration of this Agreement, is required to return the Personal Property to the Lessor in as good a condition as when the Lessor delivered the Personal Property to the Lessee, except ordinary wear and tear. Any replacement part added to or made upon the Personal Property by Lessee in connection with repairing the Personal Property is required to be considered an accession to the Personal Property, and title to the replacement part shall, upon installation or affixation, automatically vest in the Lessor. Lessee is strictly prohibited under any circumstances from creating any type of lien, mortgage, assignment, or otherwise encumber the Personal Property.

### **ARTICLE 3. TERM & RENEWAL OPTION(S).**

3.1. **Term.** The term of this Agreement is applicable for a period of **ten (10) years** commencing on **March 1, 2023 ("Commencement Date")** and ending at midnight on **February 28, 2033 ("Expiration Date")**, unless otherwise terminated as provided in this Agreement and subject to the Renewal Option (further defined herein). The provision "**Lease Year**" is defined as the first consecutive twelve (12) month period commencing on the Commencement Date, and with respect to a subsequent Lease Year, and each consecutive twelve (12) month period thereafter

during this Agreement including a Lease Year during any renewal period. The provision “Term” under this Agreement is defined as the full duration of this Agreement, including all renewal periods approved under this Agreement or subsequently approved between the Parties.

3.2. **Renewal Option(s).** Parties do not intend for this Agreement to be extended or renewed beyond the Expiration Date. Furthermore, Parties agree this Agreement is prohibited from being renewed under any circumstances unless the renewal term(s) are (i) reduced to writing, (ii) executed by the Parties’ appropriate signatories, and (iii) authorized by the Parties’ respective authorities.

#### **ARTICLE 4. CONSIDERATION.**

4.1. **Rent.** The Lessee, in consideration of the Lessor leasing the Premises to Lessee to operate the Program, is required to pay, by cash or check, the Rent in the amount of one dollar (**\$1.00 per year**) to the Lessor, payable to **Columbus City Treasurer**. Lessee is required to pay the rent by the first day of each lease year. Invoices will be sent on or near February 1<sup>st</sup> of each Lease year.

4.2. **Late Fee(s).** “Late Fee(s)” is defined as those charges for Lessee’s failure to timely pay Rent or any other amount due under this Agreement calculated at a charge equal to **five (5) percent** of the overdue amount, plus any attorneys’ fees incurred by the Lessor by reason of Lessee’s failure to pay Rent or other charges. If any installment of Rent or any other sum due from Lessee is not received by the Lessor or its designee within **ten (10) days** after the sum is due, then Lessee is required to pay to the Lessor Late Fee(s) plus any attorneys’ fees incurred by the Lessor by reason of Lessee’s failure to pay the charge(s) when due under this Agreement. Accordingly, Lessee’s Late Fee(s) are deemed “**additional rent,**” and the Lessor’s right to be compensated this amount in addition to all of the Lessor’s other rights and remedies under this Agreement or at law will not be construed as liquidated damages or as limiting the Lessor’s remedies in any manner. In addition to Late Fee(s), any Rent or other amounts owing under this Agreement that are not paid on or before the date they are due will continue to bear interest until paid at a rate per annum equal to **fifteen (15) percent, per annum**, provided that in no case this rate will be higher than the highest rate permitted by applicable law. The Lessor reserves the rights to declare a default by the Lessee and automatically terminate this Agreement upon Lessee’s breach of this section regardless of any other provision of this Agreement.

**ARTICLE 5. TERMINATION.** The Lessor, at any time during the Term, is permitted to terminate this Agreement without cause by giving Lessee **ninety (90) days’** written notice. Lessee, at any time during the Term, is permitted to terminate this Agreement with cause by giving Lessor **ninety (90) days’** prior written notice. However, in the case of an emergency as determined solely by the Lessor, this lease may be temporarily suspended or terminated immediately upon written notice to Lessee.

An “**Emergency**” is defined under this Agreement as (i) when it is necessary for the Lessor to immediately possess the Premises to protect or preserve the Premises, **or (ii)** when it is necessary for the Lessor to immediately possess the Premises to protect the public health, peace, property, safety, and welfare of the Premises, and (a) the public health, peace, property, safety, maintenance,

and welfare would be substantially and materially harmed by Lessee's continued use of the Premises to operate the Program for the **ninety (90) days'** notice of termination period agreed between the Parties.

## **ARTICLE 6. USE, RESTRICTIONS & LIMITATIONS.**

### **6.1. Program.**

**6.1.1. General.** Lessee is only permitted to use, operate, maintain, and manage a nonprofit Program Specifically, Lessee is required to abide by the following specific items governing its use of the Premises:

- 1)** Annually submit a written summary of all Program operations and building and grounds maintenance to the Lessor;
- 2)** Provide copies of contracts with any person(s) or business(es) for services conducted on City property, as consistent with the provisions of this Agreement;
- 3)** Manage daily operations, record keeping, and events;
- 4)** Purchase all supplies and materials necessary for the daily operations of the Program.

**6.1.2. Time of Operation.** Lessee and its participant(s), invitee(s), member(s), guest(s), patron(s), employee(s), and related personnel are prohibited from using the Premises outside of park hours for any activity or operation other than normal programming. Lessee is required to obtain the Lessor's prior, written consent if Lessee is interested in engaging in any activity not directly related to normal programming outside of park hours of operation which are defined in Columbus City Code Section as "*919.05 - Restrictions. (A) Parks shall be open daily between the hours of 7:00 a.m. to 11:00 p.m. with the following exceptions: (1) Upon written approval by the director. (2) Camping pursuant to Section 919.12. (3) Offshore and shorebound fishing and associated trailering activities at reservoirs, creeks, and rivers.*" Such consent may be granted or denied at the sole discretion of the Lessor. Furthermore, Lessee and its participant(s), invitee(s), member(s), guest(s), and patron(s) are **(i)** required to operate the Program in a manner that does not disturb the Property, and **(ii)** prohibited from creating any nuisances or engaging in any activity prohibited under Columbus City Code.

**6.1.3. Improvement(s).** Any permanent or temporary upgrade(s), equipment, structure(s), alteration(s), or improvement(s) are prohibited from being placed, installed, or constructed in, on, under, over, or upon the Premises, except **(a)** by the Lessor's prior, written direction and approval, which approval may be granted or denied at the Lessor's sole discretion, or **(b)** as otherwise permitted under this Agreement. All Lessor-approved temporary or permanent upgrade(s), equipment, structure(s), alteration(s), or other improvement(s) on the Premises are required to be installed, constructed, used, and maintained **(i)** in a manner consistent with all provisions of this Agreement, **(ii)** at Lessee's sole cost and expense, **(iii)** to the Lessor's satisfaction, and **(iv)** in a sound and workmanlike manner conforming to all applicable building and safety codes and practices. Parties agree that the Lessor and its employee(s), agent(s), representative(s), and contractor(s) are released and forever absolved of all liability for any

damage or destruction to any unauthorized permanent or temporary upgrade(s), equipment, structure(s), alteration(s), or improvement(s) in, on, under, over, or upon the Premises.

6.1.4. **Ownership.** All Lessor-approved permanent upgrade(s), equipment, structure(s), alteration(s), or other improvement(s) made to the Premises by Lessee during the Term of this Agreement are deemed ownership of the Lessor to be disposed at Lessor's discretion, except as otherwise agreed in writing between the Parties, upon this Agreement's termination or expiration and at the sole option and discretion of Lessor.

6.1.5. **Parking & Access.** Lessee is permitted non-exclusive rights of ingress and egress access via all public areas near or adjacent to the Premises for the benefit of Lessee and its employees, agents, students, guests, participants, and spectators. Lessee's employees, agents, guests, students, and patrons are prohibited from parking in any non-designated parking areas of the Premises or Jeffery Club Property. Lessee is exclusively responsible for coordinating all parking for all of its employees, agents, guests, participants, and spectators in the appropriate designated parking areas. Lessee is required to notify and ensure that all of its employees, agents, guests, participants, and spectators comply with the parking restrictions of this Agreement.

6.2. **Jeffery Club Property & Clubhouse.** Lessee is strictly prohibited from using any real property or any other improvements at Jeffery Club Property & Clubhouse located outside of the Premises' parameters. Lessee is strictly prohibited from committing any acts at the Premises that disturbs the quiet enjoyment of Jeffery Club Property's other visitors or occupants.

6.3. **Lessee's Property.** All trade fixtures, furnishings, equipment and other personal property placed or maintained at the Premises by Lessee are to be used, stored, and maintained at its sole risk and expense. Accordingly, the Lessor is not liable for any loss or damage to Lessee's property.

6.4. **Utilities.** Lessee agrees Lessor is not obligated to provide or permit Lessee any rights to use or connect to any utilities located at the Premises. However, Lessee, upon the Lessor's prior written approval but at Lessee's sole cost and expense, is permitted to place, connect, procure, and pay for any utilities to service the Premises necessary to operate the Program.

6.5. **Signs & Advertisements.** Lessee is prohibited from placing, attaching, or installing any programs, displays, satellite dishes, signs, decorations, lettering, or advertisement materials (collectively, "**Graphics**") anywhere at the Premises without the Lessor's prior written consent, which will be at the Lessor's sole discretion and direction. If the Lessor should approve any Graphics, then Lessee, at its sole cost and expense, is required to maintain the Graphics in good condition and repair at all times and include CRPD's logo, when desired by Lessor, identifying common goals and practices between the Parties. Additionally, Lessee's placement of any Graphics at the Premises, as defined in Columbus City Code, Article Fifteen (City Graphics Code), will require submission to and written approval by the staff of the Lessor's Development Department, which approval is based on the provisions of the Columbus City Graphics Code, Chapter 3381.

**6.6. Maintenance.** Lessee, at its sole cost and expense and at all times, is **(i)** strictly liable for maintaining the continued value of the Premises, **(ii)** required to otherwise maintain the Premises in a good and reasonable condition, **(iii)** required to promptly notify the Lessor's property manager of any issue(s), defect(s), malfunction(s), deterioration(s), or damage(s) to the Premises or Jeffery Club Property & Clubhouse, **(iv)** strictly prohibited from using the Premises for any unlawful, hazardous, unsanitary, noxious, or offensive business or purpose(s), **(v)** prohibited from permitting, committing, or suffering waste or impairment to any portion of the Premises, and **(vi)** absent prior approval from the Lessor, Lessee is required to keep all applicable driveways, entry areas, vestibules, hallways, fire exits, paths, and sidewalks free from any hazard, hindrance, or obstruction to pedestrian and vehicular traffic. Accordingly, except for capital improvements to the Premises, which are required to be pre-approved by the Lessor, Lessee, at its sole cost and expense, is required to take all reasonable and prudent steps and precautions to provide and assure the continued value and integrity of the Premises by maintaining the Premises according to the following:

- 1) Security & Locks.** Lessee is responsible for providing security services provided in or about the Premises and assume all cost and responsibility for protecting the Premises from vandalism, theft, robbery, and pilferage. Install and repair any security system(s) and conduct all locksmith work (required to provide two (2) full sets of keys to the Lessor's property manager and building manager if Lessee uses any locks for assets). Lessee is prohibited from changing any existing locks or placing any additional locks on any applicable doors or windows at the Premises without the Lessor's prior, written consent. Lessee shall bear the cost of any lock changes or additions. If applicable, a reasonable number of initial keys to the locks or electronic keycards for the doors at the Premises shall be furnished by the Lessor to Lessee at the cost of the Lessor, and Lessee is prohibited from making any duplicate keys. Lessee is required to return all keys and keycards to the Lessor at the expiration or earlier termination of the Agreement.
- 2) Refuse Collection.** Lessee is responsible for ensuring all trash and debris are in dumpsters and trash bins and paying for all trash/refuse disposals at the Premises and paying the Lessor's Refuse Division or a private contractor, unless another refuse plan is approved in writing by the Lessor.
- 3) Janitorial** Lessee is responsible for all interior and exterior janitorial care to the Premises and its grounds. Any proposed landscaping, lawn mowing, cutting, trimming, removing, applying herbicide chemicals, or generally disturbing any tree(s) or other vegetation at the Premises is to be governed by the Maintenance Agreement under section 7.1
- 4) Repairs.** If applicable, Lessee is required to give the Lessor written notice of the necessity for repairs coming to the attention of Lessee via the Lessor's Work Order Request system. Lessee agrees the Lessor is not responsible for any damage or inconvenience caused by the installation, use, or interruption or use of any utilities (*e.g.* electricity, air-conditioning, heating, plumbing, *etc.*) occasioned by fire, accident, strikes, labor troubles, necessary maintenance, alterations, repairs, or other causes. Lessor will make reasonable effort to accomplish its work orders in a timely manner.

- 5) **Non-use.** Lessee is responsible for securing the Premises during any periods of non-use.
- 6) **Equipment.** Lessee is responsible for providing and maintaining all improvements and appurtenances used at the Premises to operate the Program. Furthermore, Lessee is prohibited from storing any broken or non-functioning equipment at the Premises. The Lessor reserves the right to assess Lessee a reasonable fee, which Lessee will be required to reimburse Lessor for the removal of any unpermitted items in the event Lessee stores any unpermitted items at the Premises. Lessee is required to install, maintain, and remove all of its temporary equipment supporting its use and operation of the Program at the Premises in a safe manner and in compliance with all of the Lessor's permitting requirements. Any temporary or permanent improvements existing or to be constructed at the Premises by Lessee are subject to the Lessor's written direction and approval, which approval may be granted or withheld at the Lessor's sole discretion.

6.7. **Restoration.** Lessee, as soon as practicable after the expiration or termination of this Agreement, is required to either, (i) at Lessee's sole cost and expense, restore the Premises, including but not limited to disconnecting any utilities, removing all personal property and temporary fixtures, and returning the Premises to former conditions as reasonably practicable prior to Lessee's use of the Premises according to the Lessor's written satisfaction and approval, or (ii) to monetarily compensate the Lessor for all repairs, removal costs, and restoration costs of restoring the Premises to a good and reasonable condition from prior to Lessee's use of the Premises.

6.8. **Compliance.**

6.8.1. **Requisite Skill; Safety.** Lessee represents and warrants that Lessee and its participant(s), member(s), guest(s), employee(s), volunteer(s), and other person(s) possess the requisite professional skill, knowledge, certifications, and experience to use, operate, and safeguard the Premises to operate the Program. Furthermore, Lessee is (i) required to ensure the Program complies with all industry standard safety practices, (ii) strictly liable for its operation of the Program, and (iii) required to exercise reasonable caution in its use of the Premises.

6.8.2. **Rules & Conditions.** The Lessor reserves and possesses the rights, power, and authority at any time and for any reason to impose reasonable rules, conditions, and requirements relative to the occupation of the Premises or management and operation of the Program that in the Lessor's sole judgment and discretion may appear to be for the best interests of the public but will not unreasonably interfere with the Lessee's use of the Premises. Notice of all of the Lessor's decisions and regulations will be given according to the provisions of this Agreement.

6.8.3. **Unlawful Acts.** Lessee is strictly prohibited from committing any unlawful acts or using the Premises for any unlawful purposes, which in the Lessor's sole judgment will create a nuisance, liability, or injure the reputation of the Premises or Jeffery Club Property & Clubhouse.

6.8.4. **Government Regulation.** Lessee, at its sole cost and expense, is required to comply with all requirements of all laws, ordinances, orders, regulations, guidelines, and accreditations of the federal, state, county, and municipal or quasi-governmental authorities now in force or that may be in force and applicable to Lessee's use of the Premises or operation of the Program.

6.8.5. **Non-Waiver of Legal Requirements.** This Agreement is not considered or deemed a waiver of any other local, state, or federal permits or requirements Lessee is required to obtain in order to use the Premises to operate the Program.

6.9. **Withholding Income Tax.** When Applicable, Lessee is required to withhold all City income taxes due or payable under the provisions of Columbus City Code, Chapter 361, and any other income taxes due and payable under any other ordinance, code, or law for wages, salaries, and commissions paid to its employees for any work performed at the Premises.

6.10. **Secular Use.** Lessee is strictly prohibited from using or permitting any portions of the Premises to be used for any sectarian instruction, religious worship, or political purposes.

6.11. **Alcohol & Drugs.** Smoking is prohibited within any structure located on City owned land, and it is Lessee's responsibility to maintain all structures as a no smoking zone at all times. Furthermore, Lessee is strictly prohibited from permitting, manufacturing, selling, storing, or consuming any intoxicating liquor, beer, narcotics, or any other illegal substance in, on, upon, or around the Premises or Jeffery Club Property & Clubhouse.

6.12. **Nonprofit Business & Intent.** Lessee, pursuant to Columbus City Code, Section 919.07, agrees this Agreement does not act as a waiver or permission by the Lessor for Lessee to engage in any commercial activities at the Premises. Furthermore, Lessee represents and warrants that it is using the Premises only to operate the Program for the public's benefit and not for pecuniary gain.

6.13. **Conformation & Clarification.** Lessee agrees that it is Lessee's responsibility to contact Lessor and receive written instructions from Lessor anytime Lessee requires clarification of how to properly interpret any provision, perform any obligation, or appropriately use the Premises in a manner consistent with any provision described in this Agreement.

## **ARTICLE 7. ENVIRONMENTAL.**

7.1. **Maintenance Agreement.** Lessee is required to follow the Maintenance Agreement, that is depicted in the attachment, **Exhibit-C**, which has been outlined by the Lessor and remain a party to the Maintenance Agreement throughout the term of this Agreement. Lessee shall abide by all terms and conditions of the Maintenance Agreement. All actions undertaken under the Maintenance Agreement are at the sole cost and expense of Lessee. The Lessor reserves the right to declare a default by the Lessee and automatically terminate this Agreement upon Lessee's breach of this section regardless of any other provision of this Agreement.

7.2. **Hazardous Materials.** Lessee is prohibited from handling, storing, manufacturing, or discharging any hazardous materials in or about the Premises. For purposes of this Agreement, the term “**Hazardous Materials**” is defined to include but shall not be limited to any hazardous materials, hazardous substances, toxic substances, or solid wastes, including, but not limited to asbestos (friable or non-friable), petroleum derivatives (with the exception of onboard vessel fuel tanks and gas stored in DOT approved gas cans that are safely stored in a manner that would prohibit any spills from entering the ground or water and minimize any damage from fire), polychlorinated biphenyls, flammable explosives, radioactive materials, or other substances or materials defined as hazardous materials under any federal, state, or local law. Lessee covenants that neither Lessee nor its participant(s), student(s), member(s), guest(s), employee(s), volunteer(s), and other person(s) from using the Premises will use, treat, store, possess, or release any Hazardous Materials in violation of any present or future federal, state or local laws, ordinances, rules, and regulations. Lessee is required to immediately notify the Lessor by telephone and in writing of Lessee’s knowledge of any discharge of any hazardous materials, as described in this section, or of any condition constituting an “imminent hazard” under the Resource Conservation and Recovery Act (RCRA) at the Premises or Jeffery Club Property & Clubhouse.

7.3. **Remediation.** If at any time during the term of this Agreement it is determined that there are any Hazardous Materials located in, on, under, around, or above the Premises introduced to the Premises by Lessee or any of its participant(s), member(s), student(s), guest(s), employee(s), volunteer(s), and other person(s) that are required to be abated, removed, or otherwise remediated by any federal, state, or local environmental law, statue, ordinance, or regulation, court or administrative order or decree, or private agreement (“**Environmental Requirements**”) requiring special handling of Hazardous Materials in their use, handling, collection, storage, treatment, or disposal, then Lessee, as appropriate, shall commence remediation with diligence within thirty (30) days after receipt of notice or the presence of the Hazardous Materials requiring remediation, and shall continue to diligently take all appropriate action, at Lessee’s sole expense, to comply with all the Environmental Requirements. Lessee’s failure to comply with all Environmental Requirements shall constitute a default under this Agreement. Lessee’s obligations under this article shall survive the expiration or termination of this Agreement.

**ARTICLE 8.            NONDISCRIMINATION.** Lessee is required to use the Premises to operate the Program in strict compliance with all requirements imposed by or pursuant to regulations of Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 252) and Executive Order 11246. Lessee is strictly prohibited from denying any person the use, benefits, or services of the Program on the basis of race, color, religion, sex, or national origin.

**ARTICLE 9.            ENCUMBRANCES, TAXES & ASSESSMENTS.**

9.1. **Encumbrances & Mechanic’s Liens.** Lessee is prohibited from causing or permitting any lien(s), debt(s), mortgage(s), charge(s), or encumbrance(s) of any kind whatsoever to attach or be placed upon the Premises or Jeffery Club Property & Clubhouse. The Lessor possesses and reserves the rights at all times to post and keep posted at the Premises any notice which it deems necessary for protection from such liens including without limitation the

requirements under Ohio Revised Code, Sections 1311 *et seq.* Lessee further covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Lessee or the Premises. In case of any lien(s) or encumbrance attaching or notice of any lien or encumbrance, Lessee covenants and agrees to cause the lien(s) to be immediately released and removed of record or post a bond in form and substance satisfactory to the Lessor. Notwithstanding anything in this Agreement to the contrary, in the event that the lien(s) is not bonded off, released, and removed on or before the date occurring thirty (30) days after notice of the lien is delivered by the Lessor to Lessee, the Lessor, at its sole option, may immediately take all action necessary to release and remove the lien(s), without any duty to investigate the validity of the lien(s), and all sums, costs and expenses, incurred by the Lessor in connection with such lien shall be deemed additional rent under this Agreement, which will be required to be immediately due and payable by Lessee.

9.2. **Taxes.** Lessee acknowledges the Premises is currently exempt from real estate property taxes. If during the Term the Premises or any other portion of Jeffery Club Property & Clubhouse becomes subject to any real estate taxes or other assessments as a result of this Agreement, Lessee is required to (i) be exclusively responsible for all real estate property taxes, including any survey work necessary to determine the taxable portion of the property and (ii) promptly pay in full when due all property taxes, assessments, charges, or fees levied against the Premises or Jeffery Club Property & Clubhouse.

## **ARTICLE 10. ALTERATIONS & IMPROVEMENTS.**

10.1. **Lessor's Consent.** Lessee is prohibited from making any alterations, additions, or improvements to the Premises (including but not limited to any penetration of the building structure or any change that affects the building plumbing, electrical, or HVAC systems) without the Lessor's prior, written consent, which may be withheld at the Lessor's sole and absolute discretion. Any Lessor-approved alterations, additions, or improvements are required to be completed within a reasonable period of time and in a sound and workmanlike manner according to all applicable building and safety codes and complying with all applicable LEED requirements. At such time as Lessee ceases its use of the Premises, the fixtures that are severable from the Premises without material damage to the Premises are permitted to be removed by Lessee, provided it repairs any damage caused by the removal of those severable fixtures.

10.2. **Prevailing Wage.** Lessee agrees that prevailing wage rates will be paid, if applicable, for any new construction, improvements, or maintenance to the Premises pursuant to the Columbus City Code and the Ohio Revised Code, and the limits, guidelines, and regulations set forth by the director of the State of Ohio, Department of Commerce.

10.3. **Bonded Performance.** Lessee and its contractor(s) and subcontractor(s) performing any City-approved capital improvements at the Premises are required to be fully bonded and insured regarding the contractor(s) or subcontractor(s) scope of work naming Lessor as an additional insured or obligee, or both.

**ARTICLE 11.        INDEMNIFICATION & WAIVER.** The Lessor and its officials, agents, servants, employees, and independent contractors (collectively, “**Lessor-Parties**”) shall not be liable for any damage either to person or property or resulting from the loss of use, which damage is sustained by Lessee or by other person(s) claiming through Lessee, unless the damage is the direct result of the negligence or willful misconduct of the Lessor or any of the Lessor-Parties. Lessee agrees to indemnify, defend, protect, hold, and save the Lessor and Lessor-Parties harmless from any and all loss, cost, damage, expense, injury, suit, and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection or arising from any causes in, on, or about the Premises or operation of the Program or any acts, omissions, or negligence of Lessee or of any person(s) claiming by, through, or under Lessee, its partners, and their respective officers, directors, beneficiaries, agents, servants, employees, and independent contractors (collectively, “**Lessee-Parties**”), in, on or about the Premises, either prior to, during, or after the expiration of the Term, provided that the terms of the foregoing indemnity do not apply to the negligence or willful misconduct of the Lessor. Further, Lessee’s indemnification of the Lessor pursuant to this article **(i)** is not intended and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessee pursuant to the provision of this Agreement to the extent the policies cover the matters subject to Lessee indemnification obligations, and **(ii)** nor shall it supersede any inconsistent agreement of the Parties set forth in any other provision of this Agreement. The provisions of this article are required to survive the expiration or termination of this Agreement with respect to any claims or liability occurring prior to the expiration or termination.

**ARTICLE 12 .        INSURANCE.**

12.1. **Commercial General Liability.** Lessee, at its sole cost and expense for the Term, is required to carry and maintain commercial general liability (CGL) insurance with admitted insurers authorized to do business in the state of Ohio, insuring against liability for personal injury, bodily injury to or death of persons, and loss or damage to property pursuant to the Premises and Personal Property occurring in, on, and about the Premises, with coverage limits of at least **Two Million and 00/100 U.S. Dollars (\$2,000,000.00) per occurrence and Four Million and 00/100 U.S. Dollars (\$4,000,000.00) in the aggregate.** Lessee is required to name the Lessor as an additional insured by an endorsement and include a contractual liability endorsement evidencing coverage of Lessee’s obligation to indemnify the Lessor pursuant to this Agreement.

The Lessor, upon timely notice to Lessee, reserves the rights to require an increase in the above limits of this subsection to reflect prevailing commercial practices.

12.2. **Casualty Insurance.** Lessee, at its sole cost and expense for the Term of this Agreement, is required to carry and maintain casualty insurance with admitted insurers authorized to do business in the state of Ohio, covering Lessee’s personal property against loss or damage by fire, vandalism, malicious mischief, or other insurable casualty, in an amount not less than its full replacement cost.

12.3. **Workers’ Compensation Coverage.** Lessee is required to carry and maintain at all times such Workers’ Compensation insurance as to comply with the laws and regulations of the state of Ohio and provide Lessor with a certificate evidencing that the coverage is in full

force and effect. Lessee acknowledges that any and all injuries or claimed injuries to Lessee's employees shall be regarded as a workers' compensation matter to be adjusted through the Ohio workers' compensation system, and in the event the employee shall claim that his or her injury is of a nature allowing pursuit of a claim in addition to or in lieu of a workers' compensation claim, the matter shall be handled by Lessee solely as an employer/employee matter, without the involvement of the Lessor and Lessee is required to indemnify, defend, hold, and save Lessor harmless from any and all claims under this subsection.

**12.4. Restrictions & Proof.** The minimum limits of policies of insurance required of Lessee under this Agreement are prohibited from limiting the liability of Lessee under this Agreement. Lessee's insurances under this Agreement are **(i)** prohibited from containing provisions relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Premises against the peril involved regardless of collectability, **(ii)** prohibited from being invalidated by any act or neglect of the Parties or any owner of the Premises, **(iii)** required to name the Lessor as an additional insured so long as this Agreement, any renewal, or holdover, is in effect, **(iv)** required to specifically cover the liability assumed by Lessee under this Agreement, including but not limited to Lessee's obligations under this Agreement, **(v)** required to be issued by an insurance company having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Lessor and Leased to do business in the state of Ohio, and **(vi)** required to provide that the insurance is prohibited from being canceled, suspended, or coverage changed unless thirty (30) days prior written notice of the cancellation, suspension, or change is given to Lessor. Lessee is required to deliver all insurance policy(ies) or duplicates required under this Agreement to Lessor on or before the Commencement Date and annually at least thirty (30) days before the expiration dates in each Lease Year. If at any time during the lease term Lessee modifies any insurance coverage, Lessee is required to provide an updated policy(ies) to Lessor immediately.

**ARTICLE 13. DESTRUCTION OR DAMAGE; EMINENT DOMAIN.** If any portion of the Premises is **(i)** destroyed or damaged by fire or other casualty so as to render it unusable, or **(ii)** is taken under the threat of or by the exercise of eminent domain, then Lessor possesses the exclusive right to all insurance funds or just compensation, or both, payable for the Premises and its associated land, structures, improvements, and appurtenances.

**ARTICLE 14. ASSIGNMENT & SUBLETTING.** Lessee is strictly prohibited from **(a)** subleasing, assigning, licensing, or otherwise transferring any portion of the Premises or any of Lessee's interests in this Agreement, or **(b)** permitting the Premises' use by any parties other than Lessee and its principals and employees.

**ARTICLE 15. NOTICES.** All formal notices and other communications required or desired to be given to either party under this Agreement shall be in writing to the parties as addressed below and shall be deemed given when delivered personally, or three (3) business days after having been mailed by certified mail (return receipt requested) to that party at the address for that party (or at such other address for the party as shall have specified in a written notice to the other party), or one (1) day after having been delivered to Federal Express, UPS, or any similar nationally-recognized express delivery service for overnight delivery to that party at that address.

**If to Lessee:** **Columbus Zoo and Aquarium**  
4850 Powell Rd., Powell, OH 43065  
Attn: Doug Warmolts

**If to Lessor:** **Department of Finance & Management**  
90 W. Broad St., Columbus, OH 43215  
Attn: Director

**Department of Public Utilities**  
910 Dublin Rd., Columbus, OH 43215  
Attn: Director

**Recreation & Parks Department (CRPD)**  
1111 E. Broad St., Columbus, OH 43205  
Attn: Director

**With a copy to:** **Columbus City Attorney, Real Estate Division**  
77 N. Front St., 4th Fl., Columbus, OH 43215  
Attn: Chief Real Estate Attorney

**ARTICLE 16. SURRENDER OF PREMISES.** Lessee, upon the termination or expiration of this Agreement or upon any termination of Lessee's rights to use the Premises, will at once surrender possession of the Premises to Lessor in good condition and repair, ordinary wear and tear excepted. Lessee, upon the expiration or termination but without expense to Lessor, is required to remove or cause to be removed from the Premises all debris, rubbish, and items of applicable furniture, equipment, free-standing cabinet work, and other articles of personal property owned by Lessee or installed or placed by Lessee at its expense in the Premises, and similar articles of any other persons claiming under Lessee, as Lessor may require to be removed. Lessee shall repair at its own expense all damage to the Premises resulting from the removal. Lessee shall surrender to Lessor all keys to the Lessee and make known to Lessor the combination of all combination locks that Lessee is required to leave at the Premises.

**ARTICLE 17. RIGHTS RESERVED TO LESSOR.** Lessor reserves as applicable the following rights, exercisable without notice, except as provided in this Agreement, and without liability to Lessee for damage or injury to property, person, or business and without affecting an eviction or disturbance of Lessee's use or giving rise to any claim for setoff or abatement of consideration or affecting any of Lessee's obligations under this Agreement:

- 1) Upon thirty (30) days prior notice to change the name or street address of the Premises;
- 2) To install and maintain signs on the exterior and interior of the Premises;
- 3) To designate and approve applicable window coverings to present a uniform exterior appearance;
- 4) To retain at all times and to use in appropriate instances, pass keys to all door locks within and to the Premises;

- 5) To approve the weight, size, or location of heavy equipment, or articles within the Premises;
- 6) To change the arrangement and location of all applicable entrances of passageways, doors and doorways, corridors, elevators, stairs, toilets, and public parts of the Premises;
- 7) To regulate access to all applicable telephone, electrical, and other utility closets in the Premises and to require use of designated contractors for any work involving access to the Premises;
- 8) To adopt and modify from time to time applicable building rules and procedures for the security or safety of the Premises, its occupants, entry and use, or its contents, and Lessee, its agents, students, employees, contractors, guests, and invitees, are required to comply with the Lessor's reasonable requirements; &
- 9) To enter the Premises at any time upon reasonable notice, or, in an emergency, without notice, to inspect the same or to show the Premises to insurers, to make repairs, alterations, improvements, or additions, or for any purpose whatsoever related to the safety, protection, preservation or improvement of the Premises, or Lessor interests in the Premises. In exercising its rights under this article, Lessor shall make commercially reasonable efforts to avoid unreasonably interfering with Lessee's use of the Premises.

**ARTICLE 18.        LAW APPLICABLE; JURISDICTION.** Parties agree this Agreement shall be construed and enforced in accordance with the laws of the state of Ohio, and all claims, counterclaims, disputes, breaches, and other matters in question between the Parties arising or relating to this Agreement are required to be decided in a court of competent jurisdiction within the state of Ohio, county of Franklin.

**ARTICLE 19.        RELATIONSHIP OF PARTIES.** Parties agree that nothing contained in this Agreement is deemed or construed by the Parties, nor by any third party, as creating an agency, partnership, joint venture, leasehold, or employment relationship. Furthermore, the Parties intend, agree, and understand that the only relationship between the Parties under this Agreement is that of a Lessor and Lessee regarding the Premises' use to operate the Program.

**ARTICLE 20.        NON-WAIVER.** Lessor or Lessee's failure or refusal to exercise any rights described in this Agreement is not a waiver of any rights Lessor or Lessee possess to enforce the other party's obligations through any rights and remedies Lessor or Lessee has at law or in equity for the enforcement of the other party's obligations.

**ARTICLE 21.        RECORDING & MEMORANDUM OF AGREEMENT.** Parties agree not to record this Agreement or any short form or a memorandum of this Agreement in any public land records. The Lessor reserves the right to declare a default by the Lessee and automatically terminate this Agreement upon Lessee's breach of this section regardless of any other provision of this Agreement.

**ARTICLE 22.        TIME OF ESSENCE.** Parties agree that **time is of the essence** in this Agreement and all provisions described in this Agreement are strictly construed.

**ARTICLE 23.** **CAPTIONS; LANGUAGE.** Parties agree the captions of this Agreement are for convenience, not to be construed as part of this Agreement, and not in any way to be construed as defining or limiting the scope or intent of the provisions of this Agreement. Furthermore, Parties agree the singular number and neuter gender of each personal pronoun re construed to mean the number and gender as required in the context, circumstances, or its antecedent when used under this Agreement. Additionally, the words “shall”, “must”, or “will” are deemed to be commanding language, and the words “may” or “can” are deemed to be permissive language as used from time-to-time in this Agreement.,

**ARTICLE 24.** **SEVERABILITY.** Parties agree that if for any reason any provisions of this Agreement are held invalid or unenforceable under law or by a court of law of applicable jurisdiction, then all the remaining provisions of this Agreement will be unaffected and remain valid and enforceable to the full extent permitted by law.

**ARTICLE 25.** **REMEDIES CUMULATIVE.** Parties agree that all rights and remedies enumerated in this Agreement are cumulative, and, except as specifically contemplated otherwise in this Agreement, nothing described in this Agreement excludes Lessor of any other rights or remedies at law or in equity, and Lessor’s rights or remedies may be exercised and enforced concurrently.

**ARTICLE 26.** **ESTOPPEL CERTIFICATES.** Parties agree that at any time and upon not less than ten (10) days’ prior, written request from the other party, the Parties will execute, acknowledge, and deliver to the other party, a written statement certifying this Agreement is unmodified and in full force and effect; or, if this Agreement is modified, a written statement certifying that (i) this Agreement is in full force and effect as modified and stating the modifications, (ii) the party is not in default of the Agreement, and (iii) the date any rental and other charges paid in advance.

**ARTICLE 27.** **BROKERS.** Lessee represents and warrants to Lessor that Lessee has not dealt or retained any brokers, finders, real estate agents, or any other persons or entities entitled to commissions or fees related to the Premises’ use. However, if Lessee retained any brokers, finders, real estate agents, or any other related person or entity, then Lessee is required to exclusively pay for all associated commissions or fees due, owed, and to the transaction contemplated by this Agreement. Lessee is required to indemnify, defend, and hold Lessor harmless for any breach of its representations and warranties contained in this article.

**ARTICLE 28.** **FORCE MAJEURE.** Parties agree that if either party is delayed, hindered, or prevented from the performance of any act required under this Agreement due to strikes, lockouts, labor troubles, inability to procure materials, power failure, restrictive governmental laws or regulations, riots, insurrection, or other reasons similar or dissimilar in nature that are not the fault of the party delayed in performing work or acts required under the terms of this Agreement, then performance of the act will be excused for the period of delay and the period for the performance of the work or acts will be extended for a period equivalent to the period of delay.

**ARTICLE 29.** **SURVIVORSHIP.** Parties agree that notwithstanding the expiration of this Agreement, all services executed pursuant to this Agreement are bound by all the provisions described in this Agreement. Furthermore, the Parties intend for all provisions described in this Agreement to survive any completion, performance, cancellation, or termination of this Agreement.

**ARTICLE 30.** **ENTIRE AGREEMENT; MEETING OF THE MINDS.** Parties intend for this Agreement to be on the only written agreement between the Parties relating to Lessee's use of the Premises, and all prior or contemporaneous oral or written agreement(s) between the Parties relating to the Premises' to operate the Program are deemed null, void, and terminated. Parties agree and intend that this Agreement contains the entire agreement between the Parties regarding Lessee's use of the Premises to operate the Program and any subsequent agreement(s) made between the Parties are prohibited from changing, modifying, or discharging any provision of this Agreement, unless the agreement(s) are (i) subsequent to this Agreement, (ii) in writing, and (iii) approved and executed by the Parties' appropriate and authorized authorities (*i.e.* Columbus City Council in regard to Lessor). Accordingly, Parties agree and expressly represent this Agreement is the true written manifestation of the Parties' mutual accord and intent to represent the Parties' voluntary consent to use the Premises.

**ARTICLE 31.** **GOOD FAITH & COOPERATION.** Parties agree to execute and apply good faith and cooperation regarding the performance and adherence to all provisions described in this Agreement.

**ARTICLE 32.** **AUTHORITY TO BIND.** The signatories to this Agreement represent and warrant possessing legal authority and capacity to acknowledge this Agreement and bind themselves and their respective organizations to all provisions of this Agreement.

**ARTICLE 33.** **ATTACHMENTS.** The following items are required to be attached to this Agreement:

- 1) **Exhibit-A.** Description or depiction, or both, of the Premises.
- 2) **Exhibit-B.** Description and list of Personal Property.
- 3) **Exhibit-C.** Maintenance Agreement

### **LEASEE'S EXECUTION**

In witness whereof, Lessee, **THE COLUMBUS ZOOLOGICAL PARK ASSOCIATION**, an Ohio nonprofit corporation, by its duly authorized representative, \_\_\_\_\_, who represents and warrants personally possessing legal authority and capacity to acknowledge this Agreement on behalf of Lessee, does voluntarily acknowledge this Agreement on behalf of Lessee on the date below.

**THE COLUMBUS ZOOLOGICAL PARK ASSOCIATION**  
an Ohio Nonprofit Corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_ ) SS:

Be it remembered on \_\_\_\_\_, 2023, I affixed my seal evidencing this instrument was acknowledged before me by \_\_\_\_\_, \_\_\_\_\_, on behalf of Lessee, The Columbus Zoological Park Association, an Ohio nonprofit corporation. The notarial act certified hereby is an acknowledgement and no oath or affirmation was given to the signer with regard to the notarial act.

(seal)

---

Notary Public  
Commission Expiration Date: \_\_\_\_\_

## **LESSOR'S EXECUTION**

**In witness whereof, CITY OF COLUMBUS, OHIO**, a municipal corporation, by its duly authorized representative, **Bernita A. Reese, Director**, Recreation and Parks Department, pursuant to authority from Columbus City Council described in **Ordinance Number**                 , does voluntarily acknowledge this Agreement on behalf of Lessor on the date below.

**CITY OF COLUMBUS, OHIO,**  
**a Municipal Corporation**

By: \_\_\_\_\_  
**Bernita A. Reese, Director**  
**Recreation and Parks Department**

Date: \_\_\_\_\_

**State of Ohio**

**County of Franklin, SS:**

**Be it remembered on** \_\_\_\_\_, 2023, I affixed my seal evidencing this instrument was acknowledged before me by **Bernita A. Reese, Director**, Recreation and Parks Department, on behalf of the City Of Columbus, Ohio, a municipal corporation. The notarial act certified hereby is an acknowledgement and no oath or affirmation was given to the signer with regard to the notarial act.

(seal)

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**Notary Public**  
**Commission Expiration Date:** \_\_\_\_\_

**Approved:**

**CITY OF COLUMBUS, OHIO,  
a Municipal Corporation**

By: \_\_\_\_\_  
**Kristen L. Atha, Director  
Department of Public Utilities**

Date: \_\_\_\_\_

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**Approved:**

**CITY OF COLUMBUS, OHIO,  
a Municipal Corporation**

By: \_\_\_\_\_  
**Kathy A. Owens, Director  
Department of Finance & Management**

Date: \_\_\_\_\_

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**THIS INSTRUMENT REVIEWED BY:**

**COLUMBUS CITY ATTORNEY, REAL ESTATE DIVISION  
BY: JEFF BENNINGTON, ASSISTANT CITY ATTORNEY  
DATE: 2.27.2023  
FOR: CRPD – STANLEY BULEJSKI  
RE: LEASE AGREEMENT (COLUMBUS ZOO MUSSEL RESEARCH FACILITY )**



# Jeffery Club Property & Clubhouse

# Exhibit A



## **Exhibit B**

### **Personal Property**

- Club House
- Shed
- Parking Lot - Shared with Ohio State Crew and Hilliard Rowing Association
- Roadway
- Gate

## Exhibit C

### Maintenance Agreement

#### **Purpose**

The intent of this Maintenance Agreement is to provide clarity on areas of maintenance within the leased premises. It will identify boundaries for maintenance, define routine maintenance versus special maintenance requiring written permission, and delegate responsibility when necessary.

The City of Columbus conducted a multi-year study regarding ecological and water quality best management practices to protect the water supply reservoirs. Natural forested buffers around a body of water provide filtration for runoff, stabilize shorelines, and provide wildlife habitation. At minimum, a shoreline buffer from the water's edge extending 50 feet inland is critical. Natural forested buffers beyond 50' from the water's edge provide additional ecological services.

A goal of this agreement will be to balance natural areas, water quality, and recreational access. Areas that are not used for recreational purposes should be restored to natural areas without maintenance either by natural reclamation or planting of native plants. The intent is not to inhibit recreational lease groups' use of the property for recreational purposes, but ensure this critical land surrounding the reservoir is not maintained beyond what is needed for the Lessee to operate successfully.

#### **Responsibility**

As described in the Lease Agreement, Lessee is responsible for maintenance activities unless outlined in the lease or in this Maintenance Agreement.

Lessor may elect to conduct maintenance or collaborate with Lessee on maintenance activities when appropriate. Lessor may become involved with maintenance activity in situations of public safety, water quality, benefit beyond Lessee operation, or when determined to be in the best interest of Lessor and Lessor's property.

6.6. **Maintenance.** Lessee, at its sole cost and expense and at all times, is **(i)** strictly liable for maintaining the continued value of the Premises, **(ii)** required to otherwise maintain the Premises in a good and reasonable condition, **(iii)** required to promptly notify the Lessor's property manager of any issue(s), defect(s), malfunction(s), deterioration(s), or damage(s) to the Premises or Park, **(iv)** strictly prohibited from using the Premises for any unlawful, hazardous, unsanitary, noxious, or offensive business or purpose(s), **(v)** prohibited from permitting, committing, or suffering waste or impairment to any portion of the Premises, and **(vi)** Absent prior approval from the Lessor, Lessee is required to keep all applicable driveways, entry areas, vestibules, hallways, fire exits, paths, and sidewalks free from any hazard, hindrance, or obstruction to pedestrian and vehicular traffic. Accordingly, except for capital improvements to the Premises, which are required to be pre-approved by the Lessor, Lessee, at its sole

cost and expense, is required to take all reasonable and prudent steps and precautions to provide and assure the continued value and integrity of the Premises by maintaining the Premises according to the following:

- 1) **Security & Locks.** Lessee is responsible for providing security services provided in or about the Premises and assume all cost and responsibility for protecting the Premises from vandalism, theft, robbery, and pilferage. Install and repair any security system(s) and conduct all locksmith work (required to provide two (2) full sets of keys to the Lessor's property manager and building manager if Lessee uses any locks for assets). Lessee is prohibited from changing any existing locks or placing any additional locks on any applicable doors or windows at the Premises without the Lessor's prior, written consent. Lessee shall bear the cost of any lock changes or additions. If applicable, a reasonable number of initial keys to the locks or electronic keycards for the doors at the Premises shall be furnished by the Lessor to Lessee at the cost of the Lessor, and Lessee is prohibited from making any duplicate keys. Lessee is required to return all keys and keycards to the Lessor at the expiration or earlier termination of the Agreement.
- 2) **Refuse Collection.** Lessee is responsible for ensuring all trash and debris are in dumpsters and trash bins and paying for all trash/refuse disposals at the Premises and paying the Lessor's Refuse Division or a private contractor, unless another refuse plan is approved in writing by the Lessor.
- 3) **Janitorial** Lessee is responsible for all interior and exterior janitorial care to the Premises and its grounds. Any proposed landscaping, lawn mowing, cutting, trimming, removing, applying herbicide chemicals or generally disturbing any tree(s) or other vegetation at the Premises is to be governed by the Maintenance Agreement under section 7.1
- 4) **Repairs.** If applicable, Lessee is required to give the Lessor written notice of the necessity for repairs coming to the attention of Lessee via the Lessor's Work Order Request system. Lessee agrees the Lessor is not responsible for any damage or inconvenience caused by the installation, use, or interruption or use of any utilities (e.g. electricity, air-conditioning, heating, plumbing, etc.) occasioned by fire, accident, strikes, labor troubles, necessary maintenance, alterations, repairs, or other causes. Lessor will make reasonable effort to accomplish its work orders in a timely manner.
- 5) **Non-use.** Lessee is responsible for securing the Premises during any periods of non-use.
- 6) **Equipment.** Lessee is responsible for providing and maintaining all improvements and appurtenances used at the Premises to operate the Program. Furthermore, Lessee is prohibited from storing any broken or non-functioning equipment at the Premises. The Lessor reserves the right to assess Lessee a reasonable fee, which Lessee will be required to reimburse Lessor for the removal of any unpermitted items in the event Lessee stores any unpermitted items at the Premises. Lessee is required to install, maintain, and remove all of its temporary equipment supporting its use and operation of the Program at the Premises in a safe manner and in compliance with all of the Lessor's permitting requirements. Any temporary or permanent improvements existing or to be constructed at the Premises by Lessee are subject to the Lessor's written direction and approval, which approval may be granted or withheld at the Lessor's sole discretion.

## **Area Designations**

Mow Area – Areas identified on the site map that can regularly be mowed by Lessee. These areas may be maintained as turf grass. Vegetation along the perimeter of a mow area may be trimmed vertically at the boundary of the mow area to prevent sprawl of tree-lines or surrounding natural areas. The perimeter may be trimmed up to ten feet high for ease of mowing and maintenance and to reduce natural area spread. Maintenance of mow areas shall be considered routine maintenance and does not require written permission unless the activity is specified elsewhere in this agreement.

Natural Area – Areas identified on the site map that are not authorized for any maintenance activity by Lessee. These areas shall remain in their native and natural condition. No mowing or trimming will be authorized. Lessor may include native plantings in these areas or authorize Lessee to add native vegetation with written permission. Any maintenance within natural areas shall be considered special maintenance and requires written permission from Lessor.

Path – Areas identified on the site map that are maintained through a natural area, outside of a mow area. Paths may lead to docks, structures, or provide access to a shoreline. Paths that do not include docks or walkways may be maintained up to eight feet wide and ten feet high. Paths will also be designated around docks and dock walkways. The path area will extend two feet outside of all docks and dock walkways to prevent growth from obstructing access. Maintenance of paths shall be considered routine maintenance and does not require written permission unless the activity is specified elsewhere in this agreement.

## **Trees**

Tree Removal – Removal of trees shall be avoided whenever possible, except as outlined below.

Hazardous Trees – A hazardous tree shall be defined as a tree that poses an imminent threat of injury to people or damage to a structure owned by Lessee or Lessor.

Lessee shall immediately notify Lessor of any potential hazardous tree. The tree will be assessed by Lessor's Forestry Division. If the tree is confirmed to be hazardous, Lessor's Forestry Division will move forward with removing or trimming the hazardous tree or portion of the hazardous tree. Lessee may also be given a permit from Lessor's Forestry Division if they elect to move forward with removal or trimming to expedite remediation.

Dead Trees – Lessee shall immediately notify Lessor of any dead, dying, or diseased tree of concern. Lessor's Forestry Division will evaluate the tree to determine its viability. If the tree is confirmed to be at or near the end of its life, the following shall apply:

Dead trees near paths or within mow areas may be removed by Lessor's Forestry Division or by permit issued by Lessor's Forestry Division to Lessee.

Dead trees in natural areas will not be removed unless they are deemed by Lessor as a hazardous tree. Dead standing timber provides critical wildlife habitat. Should hazard trees need to be addressed in natural areas, it is the protocol of Forestry to drop said tree in the natural area, and not remove the wood waste for ecological purposes.

**Tree Trimming** – Trimming of trees shall be the responsibility of the Lessee and the following regulations apply:

Tree may be trimmed along the perimeter of a mow area, roadway, or path without permission. Trees may be trimmed up to ten feet in height as long as branches are less than four inches in diameter. Any trimming along the perimeter of a mow area higher than ten feet in height, containing branches of more than 4 inches in diameter, or that would remove more than 25% of the crown of a tree require permission from Lessor.

Trees may be trimmed two feet on either side of a dock or dock walkway without permission. Trees may be trimmed up to ten feet in height as long as branches are less than four inches in diameter. Any trimming beside a dock or dock walkway higher than ten feet in height, containing branches of more than 4 inches in diameter, or that would remove more than 25% of the crown of a tree require permission from Lessor.

Any additional trimming of trees requires written permission from Lessor. Additional tree trimming will only be authorized if it impacts access, structures, or use of the space as determined by Lessor. Natural areas will typically not be approved for trimming.

**Oak Trees** – No species of oak tree may be trimmed in any capacity between March 1<sup>st</sup> and October 31<sup>st</sup>. Approved or allowable trimming can only take place in the months of November, December, January, and February to prevent Oak Wilt. If emergency work on Oaks is needed, lessee shall consult with Lessor and Lessor's Forestry Division shall inspect. Tree sealant paint would need to be applied *immediately* after pruning or any cutting.

**Volunteer Trees** – It is understood that paths and mow areas will regularly see volunteer growth of woody vegetation from surrounding natural areas. Volunteer saplings in established and identified path and mow areas may be removed without permission as long as they are less than two inches in diameter when measured at the ground. No volunteer saplings shall be removed or maintained if within a natural area unless removed as part of an authorized invasive species management project.

**International Society of Arboriculture (ISA) Best Practices** – All tree maintenance shall follow ISA best practices. Lessor reserves the right to require an ISA certified arborist to conduct or approve any tree maintenance on leased property.

Fallen Trees – Trees that have fallen within a mow area or path may be removed by Lessor's Forestry Division or by Lessee with written permission from Lessor to expedite remediation. The trees removed from a mow area or path shall be hauled off site and not placed in a natural area. Fallen trees or portions thereof in natural areas will be left where they fall. Fallen trees that impede navigation due to a presence in the water or extending from a shoreline will be evaluated for removal by the Lessor.

Tree Stumps – Lessor will not remove stumps from fallen or removed trees. Lessee may have stumps removed within a mow area or path with written permission from Lessor.

### **Invasive Species Removal**

Invasive and noxious species removal shall be considered a special project which requires written permission from Lessor. Lessor may conduct and coordinate these activities with Lessee as necessary. Lessee may also request invasive species removal project approval from Lessor.

### **Application of Chemicals**

No herbicide, pesticide, fertilizer or other chemical may be applied to the Premises without written permission from Lessor. Any chemical application on City of Columbus property must be conducted by a licensed pesticide applicator following all applicable regulations. Any chemical application proposed for city property must receive prior authorization from Lessor before each and every application. Application records meeting Ohio Department of Agriculture requirements must be available to Lessor upon request.

### **Snow Removal**

Any snow removal or de-icing of the premises is the responsibility of the Lessee unless the premises is part of a publicly accessible area and currently maintained by Lessor. If de-icing is required within 50' of the water, calcium magnesium or beet juice blends shall be used instead of rock salt.

### **Embankment Stabilization**

Embankment stabilization to reduce erosion shall be considered a special project which requires written permission from Lessor. Lessor may conduct and coordinate these activities with Lessee as necessary. Lessee may also request embankment stabilization project approval from Lessor. Steps to improve shoreline stabilization may include reduction of maintenance around the shoreline, revegetation, bio-engineered banks, reinforced banks, and riprap revetment. These are listed in order of preference with reduction of maintenance being the first and preferred option and rip-rap revetment being the least preferred method.

### **Natural Debris**

Natural debris collected from mow areas, paths, docks, or reservoir, including but not limited to yard waste, leaves, and reservoir drift wood, shall not be stored on the Premises. Natural debris shall be removed from the Premises and be properly disposed. No natural debris shall be collected or removed from natural areas.

## **Structures**

As used in this section, structure shall be defined as all non-naturally occurring constructions within the leased premises and may include parking lots, lighting, clubhouses, sheds, docks, boat racks, walkways, and similar additions.

Any proposed expansion, modification, removal, or new construction of a structure requires written permission from Lessor.

## **Parking**

According to 919.23(C) in Columbus City Code, No person shall operate or park a vehicle on the grass except in designated areas. Any grass area approved for operating or parking vehicles or trailers shall be designated on the site map.

## **Site Map**

Lessee and Lessor shall agree on a site map for the leased Premises designating boundaries for all mow areas, paths, natural areas, and parking areas. This site map shall be attached to this agreement as

**Exhibit C.2.** The intent of the site map boundaries is not to drastically alter the operation of Lessee, but to reclaim and protect natural areas surrounding the reservoirs that will not cause detriment to Lessee's operation, at the discretion of Lessor.

# Jeffery Club Property & Clubhouse

# Exhibit C.2

