

**THIRD AMENDMENT TO LEASE AGREEMENT**

This Third Amendment to Lease Agreement (the “**Amendment**”) is made on this \_\_\_\_ day of \_\_\_\_\_, 2021, by the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate and agency of the State of Maryland (the “**Commission**”), and MEADOWBROOK FOUNDATION, INC., a Maryland non-stock corporation, located at 8200 Meadowbrook Lane, Chevy Chase, Maryland 20815 (the “**Lessee**”).

**RECITALS:**

A. The Commission and Lessee entered into a Meadowbrook Stables - Property Lease with the last signature date of August 31, 2012, which lease was amended via First Amendment and Extension of Lease Agreement (Contract # 310671-001) effective as of September 1, 2015, a Forbearance Agreement dated April 1, 2020 (Contract # 310671-002), and a Second Amendment and Extension of Lease Agreement effective as of September 1, 2020 (Contract # 310671-003) (Collectively, the “**Lease**”).

B. Lessee desires to install solar panels on a portion of its 4<sup>th</sup> Ring Pavilion roof (the “**Solar Project**”) in accordance with: (i) the stamped building permits and plans approved by Montgomery County Department of Permitting Services (see Attachment M), (ii) the Permit for Construction on Park Property with Conditions (see Attachment N), and the Power Purchase and License Agreement (the “**Solar Agreement**”) by the Lessee and Skyview Potomac, LLC (see Attachment O) (collectively, the “**Solar Project Approvals**”).

C. The Lease will expire on August 31, 2025, with an option to extend the Lease term for one renewal term of five years.

D. In an email dated February 22, 2021, Lessee requested to amend the Lease to extend the Lease term through August 31, 2041 for the purpose of aligning the Lease term with that of the Solar Agreement term in order that the solar vendor may seek appropriate financing proposed under the Solar Agreement.

D. Commission and Lessee have previously amended the Lease to incorporate the “Phase II” development of the Lessee’s operations for the completion of the 4<sup>th</sup> Ring Pavilion. The foregoing fulfillment of the Lessee’s obligations under the Lease and its promise to continue its operations pursuant to the Lease are material inducements for Commission to grant Lessee’s request to further amend the Lease subject to the terms and conditions set forth in this Amendment.

E. The parties desire to extend and amend the Agreement as set forth hereinbelow.

ACCORDINGLY, the parties agree as follows:

1. **Incorporation of Recital.** The above Recitals are incorporated into this Amendment by reference. Any defined term not otherwise defined herein will have the meaning ascribed in the respective Lease document.

2. **Lease Termination Date.** Despite anything to the contrary in the Lease, the current Term, which commenced on September 1, 2020, will expire on August 31, 2021.

3. **Term; Rent.** Articles II and III of the Lease is amended by deleting Section 2.2 in its entirety and replaced with the replacement Section 2.2 and new sub-section 3.2(a)(iv) as follows:

**“2.2 Renewal Terms.** If this Lease is in full force and effect and Lessee is in compliance with all of the covenants, agreements, conditions and provisions of this Lease, Lessee may request to extend this Lease for one (1) renewal term of 20 years (the **“Renewal Term”**), to commence immediately following the expiration of the then current term, on the same terms, conditions and provisions as are set forth in this Lease, except that, beginning with and as of the first day of the Renewal Term, the monthly rent payable shall be adjusted and modified pursuant to Section 3.2 below. The Commission in its sole discretion may accept or deny the requests to extend this Lease. If the Commission accepts, the Commission shall provide written acceptance of the renewal and confirmation of the adjusted annual minimum rent as defined in Section 3.2 at least 30 days prior to the expiration of the then current term of this Lease. Lessee may decline to renew based on the rent increase by providing written notice to the Commission prior to the expiration of the term. Further, if granted by the Commission, the Renewal Term shall commence on September 1, 2021 and expire on August 31, 2041.”

**“3.2(a)(iv)** Notwithstanding anything to the contrary in this Lease, during the Renewal Term the Annual Minimum Rent shall increase as stated in Attachment P, incorporated into and made a part of this Lease.”

4. **Permits and Approvals.** Lessee represents, warrants, and covenants that it shall, and it shall cause the solar vendor under the Solar Agreement, to obtain all required permits and approvals from non-Commission entity in a timely manner for completion of the Solar Project.

5. **Solar Project Default.** Any construction of Solar Project authorized in accordance with the Solar Project Approvals that differs in an impactful manner, as reasonably determined by the Commission, will constitute material default under the Lease.

6. **Maintenance and Repairs by Lessee.** Section 6.6 Maintenance and Repairs by Lessee of the Lease is amended to add the following subsection 6.6(b):

**“6.6(b) Solar Project.**

(i) *The Lessee shall be solely responsible for the entirety of the Solar Project in accordance with the Solar Project Approvals, including but not limited to, all capital and non-capital improvements, maintenance, repairs, replacements, utilities, compliance with regulatory agencies, and any other works and/or activities necessary to keep the Solar Project operational in good condition throughout the term of the Lease. Commission shall have no obligation or responsibility of any kind or nature concerning Solar Project.*

(ii) *The Lessee acknowledges and affirms that (1) the covenant set forth in Section 6.6(b)(i) above is a material inducement for Commission to agree to extend the term of the Lease; (2) enter into this Amendment; and (3) Commission has interest in ascertaining that Solar Project is completed, maintained, and kept in good working conditions at all times relevant in accordance with Section 6.6(b)(i) and Solar Project Approvals.*

(iii) *Notwithstanding anything to the contrary in the Lease, Commission may inspect the Solar Project from time to time upon providing a minimum of two days advance notice to Lessee. While the parties agree that Lessee is solely responsible to maintain and keep the Solar Project at all times relevant, Commission may notify the Lessee of any issue of material importance regarding the sound keeping and operation of the Solar Project identified by Commission. If so notified, Lessee shall address such issues to Commission’s satisfaction within 30 days from the date of the notice to Lessee; provided, however, that if the nature of the work necessary to address the issues is such that the work cannot be completed within 30 days, then Lessee shall promptly commence the work and diligently pursue completion therefor and finish all work necessary no later than 60 days from the date of Commission notice. Failure to address the Commission identified issues to Commission’s satisfaction will constitute material default under the Lease.”*

**7. Maintenance Responsibilities of Commission.** Section 7.2 Maintenance Responsibilities of Commission of the Lease is amended to add the following subsection:

*“7.2.2 Responsibilities for Solar Project Improvements. Lessee shall be solely responsible for the entirety of the Solar Project and associated site amenities authorized in accordance with the Solar Project Approvals as described in Section 6.6(b). For clarity, Commission has no obligation or responsibility of any kind or nature concerning Solar Project.”*

**8. Adequate Funding.** Lessee represents and warrants to Commission that Lessee has adequate funding to complete the Solar Project pursuant to the Solar Project Approvals.

**9. Conditions Precedent.** The effectiveness of this Amendment is contingent upon

Lessee obtaining: (a) all the Solar Project Approvals, (b) completion of the Solar Project, including final building permits showing punch list items completed, and (c) Montgomery County Planning Board and Montgomery County Council approvals of this Amendment.

10. **Fixtures.** The parties agree that Section 6.7 of the Lease (i.e., Capital Improvements) will not apply to the solar panels and other fixtures to be installed at the Leased Premises. Lessee represents and warrants that Md. Code, Ann., Land Use § 17-204(a)(3) does not apply to Solar Agreement as the solar panels and other fixtures to be installed at the Leased Premises constitute personal property of the solar vendor.

11. **Compliance with Lease.**

(a) Lessee represents and warrants that nothing in the Solar Agreement violates or conflicts with the Lease. In the event of any conflict or violation, Lessee covenants that it will resolve any such conflict and cure any violation within 30 days of the date of written notice from the Commission; provided, however, that if the nature of the conflict or violation is such that the resolution or cure cannot be completed within 30 days, then Lessee shall promptly commence the resolution or cure and diligently pursue completion therefor and resolve or cure such conflict or violation no later than 60 days from the date of Commission notice. Failure to address the Commission identified issues to Commission's satisfaction will constitute material default under the Lease.

(b) Commission consents to the Solar Project as a permitted use at the Leased Premises as proposed in the Solar Agreement.

12. **Solar Project Indemnification.** Lessee shall indemnify, defend, and hold harmless the Commission from all liabilities, obligations, damages, fines, penalties, claims, demands, costs, charges, judgments, and expenses (including reasonable attorneys' fees and other professional fees) which may be imposed upon, incurred or paid by, or asserted against, the Commission or the Commission's interest in the Premises by reason of, or in connection with: (i) any breach or default in the performance by the named parties under the Solar Agreement; or (ii) any other acts or omissions of the named parties under the Solar Agreement, their agents, employees or contractors.

13. **Insurance.** *[TBD pending RM requirements, if any – whether additional language necessary to cover solar panels under Lease section 6.4]*

14. **Notices.** Lessee agrees to provide copies of all notices provided and received by Lessee under the Solar Agreement to the Commission as promptly as possible. Lessee acknowledges and agrees that the foregoing notices are for informational purposes only and will not substitute for any notification requirements under the Lease.

15. **Effective Date.** The effective date of this Amendment is the last date written on the signature page herein.

16. **Good Standing.** Lessee represents, warrants, and avers that Lessee is, and has been, in compliance with all terms of the Lease at all times relevant.

17. **No Other Changes.** Except as modified in this Amendment, all other terms and conditions of the Lease remain the same.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Commission and the Lessee have executed this Lease on the date written below.

MEADOWBROOK FOUNDATION INC.

By: Katrina Weing  
(Signature)

Date: 9/8/2021

Printed Name: KATRINA WEINIG

Title: EXECUTIVE DIRECTOR / GENERAL MANAGER

Lessee Fed ID # 30-0020043

MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

By: \_\_\_\_\_  
Asuntha Chiang-Smith  
Executive Director

ATTEST:

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

By: \_\_\_\_\_  
Joseph Zimmerman  
Secretary-Treasurer

**ATTACHMENT M**

**MEADOWBROOK FOUNDATION INC.  
Solar Project Improvements  
Permitted Construction Drawings  
Approved by  
Montgomery County Department of Permitting Services  
(Attached Separately Hereto)**

**ATTACHMENT N**

**MEADOWBROOK FOUNDATION INC.  
Solar Project Improvements  
Construction Permit with Conditions  
Issued by  
Park Development Division  
Montgomery County Department of Park and Planning  
M-NCPPC**

(Attached Separately Hereto)



**ATTACHMENT O**

**MEADOWBROOK FOUNDATION INC.  
Solar Project Power Purchase and License Agreement**

(Attached Separately Hereto)

**ATTACHMENT P**

**Rent Schedule**

<b><u>Annual Increases</u></b>	<b><u>Lease Year Period</u></b>		<b><u>Lease Year</u></b>
Consumer Price Index	09/01/2021	08/31/2022	12
Consumer Price Index	09/01/2022	08/31/2023	13
Consumer Price Index	09/01/2023	08/31/2024	14
Consumer Price Index	09/01/2024	08/31/2025	15
Greater of 3% or Consumer Price Index	09/01/2025	08/31/2026	16
Consumer Price Index	09/01/2026	08/31/2027	17
Consumer Price Index	09/01/2027	08/31/2028	18
Consumer Price Index	09/01/2028	08/31/2029	19
Consumer Price Index	09/01/2029	08/31/2030	20
Greater of 3% or Consumer Price Index	09/01/2030	08/31/2031	21
Consumer Price Index	09/01/2031	08/31/2032	22
Consumer Price Index	09/01/2032	08/31/2033	23
Consumer Price Index	09/01/2033	08/31/2034	24
Consumer Price Index	09/01/2034	08/31/2035	25
Greater of 3% or Consumer Price Index	09/01/2035	08/31/2036	26
Consumer Price Index	09/01/2036	08/31/2037	27
Consumer Price Index	09/01/2037	08/31/2038	28
Consumer Price Index	09/01/2038	08/31/2039	29
Consumer Price Index	09/01/2039	08/31/2040	30
Greater of 3% or Consumer Price Index	09/01/2040	08/31/2041	31