

GROUND LEASE AGREEMENT
BETWEEN
THE CITY OF ATLANTA
AND
NATIONAL MONUMENTS FOUNDATION, INC.

LEASE

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- Exhibit A – Demised Premises
- Exhibit B – Site Plan
- Exhibit C – Design Details
- Exhibit D – Tenant’s Work
- Exhibit E – Vendor and Concessionaire Protocol
- Exhibit F – Permitted Liens
- Exhibit G – Short form of Lease

GROUND LEASE

THIS GROUND LEASE (“Lease”) is dated as of the _____ day of _____ 2020 (the “Effective Date”), by and between **THE CITY OF ATLANTA**, a municipal corporation of the State of Georgia (hereinafter referred to as “**Landlord**” or “**City**”) and **THE NATIONAL MONUMENTS FOUNDATION, INC.**, a Georgia public non-profit corporation (hereinafter referred to as “**Tenant**” or “**NMF**”).

W I T N E S S E T H:

In consideration of Ten Dollars (\$10.00), other good and valuable consideration, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree as follows:

Section 1. Premises: Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all that certain tract, piece or parcel of land located in Historic Vine City, Atlanta, Georgia (the “Demised Premises”), which Demised Premises is a portion of the Rodney Cook Sr. Park (the “Project”) and is more particularly described or shown on Exhibit A attached hereto and by this reference made a part hereof. Exhibit A is a metes and bounds legal description of the overall portions of the park property that comprise the Demised Premises. Exhibit B is a site plan (the “Site Plan”) depicting the approximate locations of the footprint of each of the improvements, including the Column Site, the Pantheon Site, the Museum Site, and the markers, landscaping, fencing and pathways associated therewith (collectively the “Improvements”). Changes in the Site Plan are subject to the provisions of Section 13 of this Lease.

Section 2. Term: The initial term of this Lease shall be for the period beginning on the Commencement Date and terminating on the last day of the month which is fifty (50) years after the Commencement Date (as herein defined) (the “Initial Term”), unless sooner terminated or extended as herein provided. Tenant shall have the right, at its option, to extend the term of this Lease for four (4) additional, consecutive periods of five (5) years each, at the rent and upon all of the other terms, conditions, covenants and provisions set forth herein; provided, however, that Tenant may only extend the term of this Lease by giving Landlord written notice of such extension on or prior to a date which is six (6) months before the expiration of the Initial Term of this Lease or any extension period, as the case may be. The expression “Term” as hereinafter used shall mean and refer to the Initial Term of this Lease and any extensions thereof, as the context may permit or require.

Section 3. Commencement Date: The Commencement Date is the date on which possession of any portion of the Demised Premises is delivered to Tenant upon completion of Landlord’s Work, as described in Section 11 hereof. Landlord and Tenant agree that ~~either~~ the Column Site **and/or** the Pantheon Site shall be delivered to Tenant with all of Landlord’s Work completed not later than ninety (90) days after the Effective Date of the Lease.

Section 4. Rent: Tenant covenants and agrees to pay Landlord for the Demised Premises, without offset or deduction, and without demand therefor, base rent at the rate of one hundred dollars (\$100.00) per year from the Commencement Date and thereafter throughout the term of

this Lease. All base rent shall be payable by Tenant in advance, annually, on the Commencement Date and on each anniversary of the Commencement Date

Section 5. Place of Payment: All amounts payable under Section 4 of this Lease, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall be paid at such offices of Landlord as the Landlord may direct from time to time, in lawful money of the United States which shall be legal tender for the payment of all debts and dues, public and private, at the time of payment.

Section 6. Rent to be Net to Landlord: It is the intention of the parties hereto that the rent payable hereunder shall be net to Landlord so that this Lease shall yield, net to Landlord, the base rent specified herein during the term of this Lease.

Section 7. Use of Premises: Landlord and Tenant agree that Tenant shall construct and install the Improvements upon the Demised Premises (the "Project"), which construction shall be at the sole cost and expense of the Tenant, consistent with the Site Plan and generally consistent with the design details set forth on Exhibit C, attached hereto and by this reference made a part thereof (the "Design Details"), and in accordance with all required City approvals.

Section 8. Tenant's Work: Tenant's construction of the Improvements upon the Demised Premises is more specifically described on Exhibit D, attached hereto, and is defined as "Tenant's Work." Tenant shall have no obligation to commence Tenant's Work on the Improvements until all conditions precedent set forth in Sections 9 and 10 hereof have been satisfied.

Tenant's Work on the Column Site at the entrance of the Project shall commence no later than nine (9) months after the Landlord completes Landlord's Work (as defined herein) on the Column Site. Tenant's Work on the Pantheon Site shall commence not later than twelve (12) months after the City completes Landlord's Work on the Pantheon Site. If Tenant fails to commence Tenant's Work on either the Column Site or the Pantheon Site by the deadlines set forth herein, Landlord shall provide Tenant with written notice of its intention to terminate the Lease due to this failure, and Tenant shall have a period of thirty (30) days to cure such default by commencing Tenant's Work on either the Column Site or the Pantheon Site, as applicable. In the event Tenant fails to commence Tenant's Work within this cure period, Landlord shall have the right to terminate the Lease.

Section 9. Conditions Precedent to Commencement of the Lease: The following are conditions precedent to the Commencement of the Lease: (a) completion by the City of a Phase I environmental site assessment of the Demised Premises, and completion of all recommended environmental remediation recommended by the Phase I; and (b) NMF shall have applied to the City or other appropriate public body for all permits necessary for the construction and installation of the Improvements, at no cost to the Landlord.

Section 10. Conditions Precedent to Tenant's Obligations to Commence Work: The following are conditions precedent to Tenant's obligations under Section 8 to commence Tenant's Work on the Improvements: (a) delivery of all or a portion of the Demised Premises in a condition reflecting completion of the Landlord's Work as set forth in Section 11 hereof; (b) with respect to the Pantheon Site, confirmation by Tenant that there is no known impediment to securing

separately metered utilities to the Pantheon Site; and (c) for the Column Site, confirmation by Tenant that there is no known impediment to securing separately metered utilities to the Column Site from the nearby street. The resolution of any impediments to securing separately metered utilities shall be the sole responsibility of Tenant.

Section 11. Landlord's Work: Landlord shall deliver the Demised Premises generally in the following condition: graded, sodded, and where relevant, completion of the Corrective Action Plan approved by the Georgia Environmental Protection Division ("Landlord's Work"). The City shall use all reasonable efforts to deliver the Column Site with any and all pending or appealed legal action with respect to adjacent sites resolved. The City hereby grants to NMF such air rights over the Demised Premises as shall be mutually determined by the City and NMF to be necessary in connection with the construction and installation of the Improvements.

Landlord shall complete Landlord's Work and deliver the Column Site not later than _____, the Pantheon Site not later than _____, and the balance of the Demised Premises not later than _____.

The Museum Site shall be delivered prior to _____, 20____, and in the condition generally applicable to the balance of the Demised Premises.

Section 12. Proceeds from Operations: Tenant shall be responsible for staffing and operating all concessions, stores and sales that occur on the Demised Premises, and may contract with one or more third parties to perform the concessions and sales in Tenant's name. Tenant and the City agree that Tenant shall be fully responsible for all bookings and third party use of the terraces, staircases, lawns, meeting rooms and other improvements within the Demised Premises, and shall follow the City's established procedures for obtaining any permits required for gated events and outdoor festivals, and any third party sales during such events or festivals within the Demised Premises.

Other than as specifically provided in this Section 21, Tenant shall have the right to retain all Proceeds (as defined below) from concession and other sales on the Demised Premises, and such proceeds shall be used for operation and maintenance of the Improvements, with any surplus retained for the purpose of an endowment or escrow to ensure long-term maintenance, repair, expansion or protection of the Improvements.

"Proceeds" shall mean the net amount realized by NMF after operating expenses and all other charges, including taxes, interest, depreciation, and debt service, have been deducted from total revenue, excluding any donated funds. Funds donated to NMF and/or its programs or the Demised Premises will not constitute Proceeds nor be included in any calculation of Proceeds. The calculation of Proceeds shall be done annually and calculated based upon the financials determined at the end of NMF's fiscal year, which ends on December 31.

NMF and the City hereby agree that, once NMF has been operating for twelve (12) months, Proceeds will be shared in the following proportions between the City and NMF: (a) seventy percent (70%) of the Proceeds will be retained by NMF, and (b) thirty percent (30%) of the Proceeds will be distributed to a maintenance trust fund established and managed by the City to be used for capital improvements, repairs, and maintenance to the Project (the "City Reserve

Account”). NMF shall maintain records and accounts in connection with the performance of the Lease that will accurately document all funds received by the NMF and all costs incurred by the NMF, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of the Lease unless otherwise specified by applicable law. Landlord or its designated representatives shall have the right to examine and copy the records and accounts, with advance written notice to Tenant. Landlord reserves the right to audit NMF’s records and accounts annually.

Section 13. Changes to Site Plan: Landlord and Tenant agree that changes to the Site Plan set forth in Exhibit B and the Improvements to be constructed, shall be approved by the City’s Department of City Planning, Department of Watershed Management, Office of Cultural Affairs, Department of Public Works and by the Department of Parks and Recreation (collectively the “City Agencies”). Each of Landlord and Tenant shall use commercially reasonable efforts to accommodate changes requested by the other party hereto. Notwithstanding the foregoing, after the commencement of construction of the Improvements, material changes reasonably requested by the Tenant, and in order to maintain the critical path schedule of construction of the Improvements, shall be deemed approved by the City Agencies within thirty (30) days of submittal by the Tenant to the City. Changes requested by the Landlord pursuant to Section 18 hereof shall be deemed approved by the Tenant within thirty (30) days of submittal by the City to the Tenant.

Section 14. Assignment and Subletting: Tenant may collaterally assign, mortgage, or otherwise encumber its interest in the leasehold estate provided by the Lease as required in connection with any financing arrangement secured by Tenant for construction of the Improvements, subject to the ownership interest held by Landlord. Any such collateral assignee shall have the same cure rights provided to Tenant hereunder. Tenant may also assign the Lease or sublet the Demised Premises without Landlord’s prior written consent to any entity the majority of interests in which are owned by Tenant or to any firm, person, corporation, partnership or other entity now or hereafter controlled by, in control of, or under common control with the Tenant. Finally, Tenant may enter into other subleases or assignments with Landlord’s prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Landlord and Tenant acknowledge and agree that arrangements for concessions, vendors and other similar commercial opportunities are contemplated by Tenant, and shall be permitted without the prior written consent of the Landlord so long as undertaken in accordance with the procedures and standards set forth in **Exhibit E (Vendor and Concessionaire Protocol)** attached hereto and by this reference made a part hereof.

Landlord’s consent shall not apply to the transfer of stock in connection with a merger or consolidation of Tenant and another corporation, provided that Tenant’s successor shall, as a result of such reorganization, be legally bound to pay rental and all of the charges due hereunder and to perform all of the terms, covenants and provisions to be performed by Tenant.

Section 15. Maintenance and Repair; Right of Entry Back to Landlord: NMF shall bear all costs and expenses incurred in connection with maintenance of the Demised Premises, other than turf maintenance and reasonable/customary activities in connection with the grounds maintenance of the Demised Premises, which will be the responsibility of the Department of Parks and Recreation. Tenant hereby provides the City with a right of entry onto the Demised premises

for the purpose of maintenance of the grounds. Tenant shall maintain the Improvements at its own cost.

Section 16. Taxes and Utility Expenses: Landlord and Tenant expect that no local ad valorem real property taxes of any kind shall be due or payable in connection with the Demised Premises. Notwithstanding the forgoing, in the event any ad valorem real property taxes shall become due or payable in connection with respect to the Tenant's leasehold, then Tenant shall bear all cost and expense therefor. During the term of this Lease, Tenant shall also pay and discharge punctually, as and when the same shall become due and payable, all charges for utilities to the Improvements, including, without limitation, the charges for sewer, water, heat, gas, electricity, light and power, and other service or services furnished for the Improvements or the occupants thereof during the Term.

Section 17. Security: Landlord shall cause the City of Atlanta Police Department ("APD") to enforce applicable laws throughout the Project generally. APD shall provide public safety services for all Improvements at the level consistent with the services it provides for privately-owned businesses, and for the Project generally at the level consistent with the services it provides for other City parks. Tenant may contract for supplemental private security services at its own cost and expense.

Section 18. Department of Watershed Management and Capacity Relief Facility: Landlord and Tenant acknowledge and agree that the City of Atlanta Department of Watershed Management ("DWM") is building a sewer capacity relief facility (the "Capacity Relief Facility") within the Demised Premises that will provide needed capacity for DWM's combined sewer system located in the Upper Proctor Creek Sewer Basin. Tenant acknowledges and agrees that the Site Plan is designed to accommodate the Capacity Relief Facility and agrees to further cooperate with the Landlord and DWM in connection with making adjustments to the Site Plan to accommodate DWM's construction and implementation of the Capacity Relief Facility. Tenant agrees to design the Improvements to comply with current capacity relief requirements.

Section 19. Right of Entry Prior to Commencement Date: Tenant shall, prior to the Commencement Date of the Lease, have reasonable access to the Demised Premises for itself, its agents or engineers as needed to inspect, examine, survey and otherwise do whatever Tenant deems reasonably necessary in the engineering and planning for development of the Improvements upon the Demised Premises, which access shall not be unreasonably denied. Tenant shall return the Demised Premises to its condition immediately prior to such examinations. Tenant hereby indemnifies and agrees to hold Landlord harmless from and against any claims or damages incurred by Tenant or Landlord as a result of persons or firms entering the Demised Premises on Tenant's behalf pursuant to the privilege granted hereunder.

Section 20. Ownership of Improvements: Until the expiration or sooner termination of this Lease, title to any Improvements shall remain solely in Tenant; and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax returns for any such Improvements. Upon the expiration of the Term of this Lease and any exercised extensions, Tenant shall quit and surrender to Landlord the Demised Premises and the Improvements then located thereon; provided, however, not more than thirty (30) days prior to such expiration or termination date, Tenant shall be permitted to remove or relocate the Improvements (including, without limitation, the statues)

at any time. In connection with any alterations made by Tenant in accordance with the preceding sentence, Tenant shall repair any structural damage to the Demised Premises caused by such alterations and shall otherwise deliver the Demised Premises to Landlord in good condition and repair, subject to ordinary wear and tear. Upon the expiration or sooner termination of the Term of this Lease, in the event Tenant elects not to remove the Improvements, Landlord and Tenant mutually agree that title to the Improvements remaining on the Land upon termination or expiration of the Term shall vest in and become the full and absolute property of Landlord.

Section 21. Requirements of Public Authority: During the Term, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county governments and of all other governmental authorities affecting Tenant's construction, use and occupation of the Demised Premises or appurtenances thereto or any part thereof whether the same are in force at the Commencement Date or may in the future be passed, enacted or directed. The foregoing covenant of Tenant shall not impose any liability for the presence of Hazardous Materials on the Demised Premises.

(a) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Tenant or Landlord (as legally required), or both (if legally required), without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (a) of this Section and if compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

(b) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, directive, rule, regulation or requirement, as reasonably determined by Landlord, and to cooperate reasonably with Tenant in such contest, at no cost to Landlord.

Section 22. Covenant Against Liens: If, because of any act or omission of Tenant during the construction period, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the Demised Premises, Landlord or the interest of Landlord in and to any portion of the Demised Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record, either by payment or bond, within thirty (30) days after written notice from Landlord to Tenant of the filing thereof; and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom. Notice is hereby given that all such liens shall relate and attach only to the interest of Tenant in the Demised Premises.

Section 23. Signage: Landlord and Tenant shall mutually agree upon signage for the Project. Tenant shall have the right at its sole cost and expense to install, maintain and replace on the facade of any museums, buildings and structures constructed on the Demised Premises such additional identification signs as Tenant may desire, provided that such signs shall be in compliance with any applicable requirements of governmental authorities having jurisdiction and consistent with the Design Details. Tenant shall obtain any necessary permits for any signage.

Section 24. Insurance: Tenant shall provide at its expense, and keep in force during the term of this Lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in Georgia selected by Tenant, and reasonably satisfactory to Landlord, any mortgage lender of Landlord and the holder of any Leasehold Mortgage (as hereinafter defined) placed by Tenant on the Demised Premises in the amount of at least one Million (\$1,000,000.00) Dollars with respect to injury or death to any one person, and Two Million (\$2,000,000.00) Dollars with respect to injury or death of more than one person in any one accident or other occurrence, and One Million (\$1,000,000.00) Dollars with respect to damage to property. Such policy or policies shall include Landlord, any mortgage lender of Landlord, and each such Leasehold Mortgagee (as hereinafter defined) as additional insureds. Tenant agrees to deliver certificates of such insurance to Landlord on or before the Commencement Date and thereafter not less than ten (10) days prior to the expiration of any such policy. Tenant shall not cancel such insurance without thirty (30) days' written notice to Landlord, any mortgage lender of Landlord, and to each Leasehold Mortgagee.

(a) During the term of this Lease, Tenant shall keep all Improvements erected by Tenant on the Demised Premises at any time insured for the benefit of Landlord, Tenant and any Leasehold Mortgagee, as their respective interests may appear, against loss or damage by fire and customary extended coverage in a minimum amount equal to one hundred percent (100%) of the full replacement cost (excluding foundations and excavations) of such Improvements. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to the Leasehold Mortgagee, if any, or to Tenant. Landlord shall, at Tenant's cost and expense, cooperate in good faith with Tenant in order to obtain the largest possible recovery and execute any and all consents and other instruments and take all other actions reasonably necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as provided herein and Landlord shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Tenant hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Tenant's insurance.

(b) Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Demised Premises and other locations of Tenant provided such blanket insurance complies with all of the other requirements of this Lease with respect to the insurance involved and such blanket insurance is acceptable to any Leasehold Mortgagee.

Section 25. Waiver of Subrogation: Landlord and Tenant each hereby release the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property caused by a casualty which is insurable under standard fire and extended coverage insurance; provided, however, that this mutual waiver shall be applicable only with respect to a loss or damage occurring during the time when property insurance policies, which are readily available in the marketplace, contain a clause or permit an endorsement to the effect that any such release shall not adversely affect or impair the policy or the right of the insured party to receive proceeds under the policy; provided, further, that this release shall not be applicable to the portion of any damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged

party's insurance coverage. The release specified in this Section 21 is cumulative with any releases or exculpations which may be contained in other provisions of this Lease.

Section 26. Destruction: In the event that, at any time during the term of this Lease, the Improvements are destroyed or damaged in whole or in part by fire or other cause within the extended coverage of the fire insurance policies required to be carried by Tenant in accordance with this Lease, then Tenant, at its own cost and expense, shall cause the same to be repaired, replaced or rebuilt (with such changes in the design, type or character of the Improvements as Tenant may deem desirable) within one hundred eighty (180) days after receipt by Tenant of such insurance proceeds. Notwithstanding the foregoing sentence to the contrary, in the event Improvements on the Demised Premises are destroyed or damaged at any time during the last ten (10) years of the Term of this Lease or any extension period to the extent that, in Tenant's reasonable judgment, the Demised Premises are not usable in their damaged condition for the conduct of Tenant's business, Tenant may, upon written notice to Landlord, terminate this Lease and assign to Landlord all insurance proceeds collected or collectible in connection with such damage and destruction and which are attributable to the buildings and other improvements on the Demised Premises.

Section 27. Utility Easements: Tenant shall have the right to enter into reasonable agreements with utility suppliers creating easements in favor of such suppliers, including, without limitation, gas, electricity, telephone, water and sewer, as are required in order to service the Improvements on the Land, subject, however, to Landlord's reasonable approval of the location of such utility lines and provided that such easements shall require the utility supplier to restore the easement area following any construction or repair work and further provided that such easements shall reserve the rights of Landlord to relocate such utility lines from time to time at Landlord's expense. Subject to Landlord's reasonable approval of such items, Landlord covenants and agrees to consent thereto and to execute any and all documents, agreements and instruments, and to take all other actions in order to effectuate the same.

Section 28. Leasehold Mortgages: Tenant shall have the right, from time to time, to convey or encumber by mortgage, deed to secure debt, collateral assignment of Tenant's interest in Lease, or similar financing instrument, Tenant's leasehold estate and interest in and to the Demised Premises or any part thereof (each such leasehold mortgage, deed to secure debt or other financing instrument being herein referred to as a "Leasehold Mortgage" and the holder thereof as a "Leasehold Mortgagee"). The execution and delivery of a Leasehold Mortgage shall not, in and of itself, be deemed to constitute an assignment or transfer of this Lease nor shall the Leasehold Mortgagee, as such, be deemed an assignee or transferee of this Lease so as to require such Leasehold Mortgagee to assume the performance of any of the covenants or agreements on the part of Tenant to be performed hereunder. Tenant shall also have the right from time to time to obtain financing by a "sale and leaseback" of Tenant's leasehold interest hereunder (i.e., an assignment of Tenant's leasehold estate under this Lease simultaneously with or subsequent to the making of a sublease of all of the Demised Premises to Tenant). If Tenant shall enter into any such financing arrangement, it shall deliver to Landlord true and complete copies of the instruments effecting such transaction. Simultaneously with the delivery to Landlord of the aforesaid instruments effecting such transaction, Tenant shall also give Landlord notice of the name and address of the party providing such financing.

(a) Tenant agrees that Tenant shall not encumber its leasehold estate with more than two (2) Leasehold Mortgages at one time without the prior, written consent of Landlord. With respect to any Leasehold Mortgagee or other person providing financing as to which Landlord shall have been given notice, the following shall apply notwithstanding anything in this Lease to the contrary:

(1) No voluntary termination by Tenant of this Lease shall be effective unless consented to in writing by such Leasehold Mortgagee; and any material amendment or material modification of this Lease or the exercise by Tenant of any option to terminate this Lease without the written consent of such Leasehold Mortgagee shall be voidable as against such Leasehold Mortgagee at its option. If any Leasehold Mortgagee shall fail to respond to any written consent under this Section 24(b)(1) within ten (10) days after the receipt by such Leasehold Mortgagee of such written request, the Leasehold Mortgagee shall be deemed to have granted its consent to such request;

(2) Landlord shall give any and all notices given to Tenant hereunder simultaneously to any such Leasehold Mortgagee at the address of such Leasehold Mortgagee provided to Landlord, and no such notice shall be effective as to such Leasehold Mortgagee unless and until a copy thereof has been sent to such Leasehold Mortgagee at such address. In the event Landlord sends Tenant a notice of default, from and after the time that such notice has been delivered to such Leasehold Mortgagee, such Leasehold Mortgagee shall have a period equal to the period granted to the Tenant plus, with respect to monetary defaults, an additional five (5) business days in which to effect a cure, and with respect to non-monetary defaults only, an additional fifteen (15) days in which to effect a cure of any default by Tenant under this Lease (provided, however, that if such cure is of a nature that it cannot be effected within such a period of time, no default shall have been deemed to have occurred hereunder as long as such Leasehold Mortgagee shall have commenced to cure such default within such period and shall thereafter be taking diligent steps to effect the same). Landlord shall accept performance of any and all of Tenant's obligations hereunder, including the obligations to pay rent, from any such Leasehold Mortgagee and the performance of such obligation by such Leasehold Mortgagee shall be deemed to have been a cure effected by Tenant. Landlord hereby consents to the entry into the Demised Premises by any such Leasehold Mortgagee for the purpose of effecting the cure of any default by Tenant. In the event of a default by Tenant hereunder, any Leasehold Mortgagee may affect the cure of such default by foreclosing its Leasehold Mortgage, obtaining possession of the Demised Premises and performing all of Tenant's obligations hereunder, subject to compliance with clause (3) below;

(3) If it shall be necessary for any such Leasehold Mortgagee to obtain possession of the Demised Premises to effect any such cure of a default by Tenant under this Lease, then Landlord shall not commence any proceeding or action to terminate the term of this Lease if (i) such Leasehold Mortgagee shall have informed Landlord within the grace period applicable to such Leasehold Mortgagee that such Leasehold Mortgagee has taken steps to foreclose its Leasehold Mortgage, or cancel its sublease or other financing arrangement, necessary to obtain possession of the Demised Premises, (ii) the rent shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Demised Premises are so observed and performed while any such foreclosure, other action or other remedy is being prosecuted by any such Leasehold Mortgagee and for so long

thereafter as such Leasehold Mortgagee shall have obtained possession of the Demised Premises, and (iii) such Leasehold Mortgagee shall be diligently prosecuting such foreclosure or cancellation and attempting to effect a cure of the default. Nothing herein contained shall be deemed to require the Leasehold Mortgagee to continue with any foreclosure or other proceedings, or, in the event such Leasehold Mortgagee shall otherwise acquire possession of the Demised Premises, to continue such possession, if the default in respect to which Landlord shall have given the notice shall be remedied;

(4) Landlord agrees that in the event of the termination of this Lease by reason of any default by Tenant, and if Landlord has prior to such termination been given written notice of the name and address of such Leasehold Mortgagee, Landlord will enter into a new lease of the Demised Premises with any Leasehold Mortgagee or its nominee for the remainder of the term of this Lease, effective as of the date of such termination, at the rent and upon the terms, options, provisions, covenants and agreements as herein contained, provided:

(A) Such Leasehold Mortgagee shall make written request upon Landlord for such new lease prior to or within ten (10) days after the date of such termination and such written request is accompanied by payment to Landlord of all sums then due to Landlord hereunder; and

(B) Such Leasehold Mortgagee or its nominee shall pay to Landlord at the time of the execution and delivery of said new lease any and all sums which would at that time be due hereunder but for such termination, together with any expenses, including reasonable attorneys' fees, incurred by Landlord as a result of such termination, as well as in the preparation, execution and delivery of such new lease;

(5) No Leasehold Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the leasehold estate. Any assignment of the entire interest in this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgagee or from any holder thereof, shall be subject to Section 18 of this Lease, except that the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment, provided that the assignee shall execute and deliver to Landlord a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in this Lease contained on Tenant's part to be performed and observed, it being the intention of the parties that once the Leasehold Mortgagee or its nominee shall succeed to Tenant's interest hereunder, any and all subsequent assignments (whether by such Leasehold Mortgagee, its nominee, or any purchaser at a foreclosure sale or other transferee or assignee from Leasehold Mortgagee or its nominee) shall upon the aforesaid assumption and agreement by the assignee, effect a release of the assignor's liability hereunder;

(6) If at any time there shall be two or more Leasehold Mortgages constituting a lien on the Tenant's interest in this Lease and the leasehold estate hereby created, the holder of the Leasehold Mortgage recorded prior in time shall be vested with the rights under Section 24(b)(4) of this Lease to the exclusion of the holder(s) of the other Leasehold Mortgages; provided, however, that if the holder of a Leasehold Mortgage recorded prior in time to any other Leasehold Mortgage shall fail or refuse to exercise the rights set forth in this Lease, the holder of

the other Leasehold Mortgage next in time shall have the right to exercise such rights. All of the provisions contained in this Lease with respect to Leasehold Mortgages and the rights of Leasehold Mortgagees shall survive the termination of this Lease for such period of time as shall be necessary to effectuate the rights granted to all Leasehold Mortgagees by the provisions of this Lease; and

(7) Nothing herein contained shall require any Leasehold Mortgagee or its nominee to cure any default by Tenant hereunder.

Section 29. Performance by Subtenant: Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any permitted sublessee of Tenant occupying all or any part of the Demised Premises and the performance of such act shall be deemed to be performance by Tenant and shall be acceptable as Tenant's act by Landlord.

Section 30. Quiet Enjoyment: Status of Landlord's Title: Tenant, upon paying the rent and additional rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone.

(a) Landlord represents and warrants to Tenant that Landlord owns fee simple title to the Demised Premises free and clear of any liens, encumbrances and restrictions except only those matters set forth on **Exhibit F**, attached hereto and by reference made a part hereof and that Landlord has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by Landlord hereunder.

(b) Landlord represents and warrants that there are no encumbrances on the Land, and covenants to use all reasonable efforts to obtain from the holder of any deed to secure debt or other security instrument later placed against the Demised Premises, a subordination, nondisturbance and attornment agreement in form and substance reasonably satisfactory to Tenant.

(c) To induce Tenant to enter into this Lease, Landlord does hereby expressly warrant and represent to Tenant the following:

(1) To the best of Landlord's knowledge, there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, pending or threatened against the Demised Premises or Landlord in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, including, without limitation, any condemnation or eminent domain proceedings.

(2) To the best of Landlord's knowledge, no person, firm, corporation or other legal entity whatsoever (other than Tenant) has any right or option whatsoever to acquire or lease the Demised Premises or any portion or prorrations thereof or any interest or interests therein.

(3) To the best of Landlord's knowledge, the Demised Premises is not and will not be subject to or affected by any special assessments, whether or not presently a lien thereon.

(4) To the best of Landlord's knowledge, Landlord is not in violation or breach of any ordinance, code, law, rule, requirement or regulation applicable to the Demised Premises.

(5) Landlord has not used or operated the Demised Premises in any manner for the storage, use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined), and to the best of Landlord's knowledge and belief, after reasonable investigation, the Demised Premises has never been used or operated for the storage, use, treatment, manufacture or disposal of any Hazardous Materials. For purposes hereof, the term "Hazardous Materials" means (i) any "hazardous wastes" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "superfund" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, and specifically identified and known as a hazardous, toxic or dangerous waste, substance or material as of the date hereof including any petroleum, petroleum products or waste.

(6) To the best of Landlord's knowledge, there are no actions, suits, proceedings or proposals of any kind or nature whatsoever pending or being considered relating to any proposed changes to the highways, roadways and/or accessways adjoining ' or adjacent to the Demised Premises, including without limitation, the widening thereof, proposed or pending construction of road medians, proposed or pending construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts, proposed or pending installation or removal of traffic lights or any other changes or proposed changes in traffic patterns or management of traffic flow thereover.

(d) Landlord agrees to assign to Tenant any warranties given by its contractors or suppliers in connection with Landlord's Work, to the extent assignable. Tenant acknowledges that it has been given the opportunity to inspect the Demised Premises and to have qualified experts inspect the Demised Premises during the Inspection Period.

Section 31. Defaults: The following events shall constitute events of default under this Lease:

(1) Tenant's failure to pay any installment of base rent when the same shall be due and payable and the continuance of such failure for a period of ten (10) days after receipt by Tenant of notice in writing from Landlord specifying the nature of such failure; or

(2) Tenant's failure to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by Tenant of notice in writing from Landlord specifying the nature of such failure, and provided Tenant shall not cure said failure as provided in subparagraph (b) of this Section 27; or

(3) if Tenant shall (i) file a petition commencing a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law; (ii) make a general

assignment for the benefit of its creditors; (iii) file an application for, or consent to, the appointment of any receiver or a permanent or interim trustee of Tenant or of all or a substantial portion of its property; (iv) file a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, insolvency or similar law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; (v) take any action for the purpose of effecting any of the foregoing; or (vi) be the subject of a decree or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under any applicable federal or state bankruptcy, insolvency or similar law.

Upon the occurrence of an event of default and the failure of Tenant to cure the same within any applicable cure period specified, Landlord may, at its option, (i) give to Tenant a notice of election to end the term of this Lease upon a date specified in such notice, which date shall be not less than five (5) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Tenant of such notice from Landlord, and upon the date specified in said notice, and provided such event of default has not been cured, the term and estate hereby vested in Tenant shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed, but Tenant shall continue to be liable to Landlord as hereinafter provided, (ii) bring suit for the collection of rent hereunder as same becomes due without cancellation or termination of the Lease, together with all damages incurred by Landlord by reason of such breach, including the cost of recovering and reletting the Demised Premises, costs of collection and reasonable attorneys' fees actually incurred, (iii) cure the default for the account and at the expense of Tenant, and Tenant shall reimburse Landlord upon demand for all reasonable costs and expenses actually incurred by Landlord in curing such default, or (iv) exercise any and all other remedies available at law or in equity. Upon a default by Tenant hereunder beyond any applicable cure period, Landlord shall use its reasonable efforts, as determined in Landlord's sole discretion, to relet the Demised Premises and thus reduce the obligation of Tenant to pay the rental due pursuant to this Lease (i.e., only to the extent of whatever amounts are actually received from any replacement tenant, and even then only after all other payments due by Tenant hereunder have been satisfied in full). The curing of any default(s) within the above time limits set forth herein by any of the permissible parties or combination thereof, shall constitute a curing of any default(s) hereunder with like effect as if Tenant had cured same hereunder.

(b) In the event that Landlord gives notice of a default and said default is of such a nature that it cannot be cured within such thirty (30) day period then such default shall not be deemed to continue so long as Tenant, after receiving such notice, promptly proceeds to cure the default and continues to take all steps necessary to complete the same promptly. No default shall be deemed to continue if and so long as Tenant shall be delayed in or prevented from curing the same by any cause specified in the Section of this Lease entitled "Force Majeure".

(c) Upon any termination of the Term of this Lease, or at any time thereafter, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, re-enter the Demised Premises and recover possession thereof and dispossess any or all occupants of the Demised Premises in the manner prescribed by the statute relating to summary proceedings, or similar statutes.

(d) Notwithstanding anything to the contrary contained herein, Landlord shall have the option to terminate this Lease at any time upon 180 days' written notice to Lessee if Landlord determines at any time during the Term of the Lease that such termination is needed or appropriate in furthering the public interest and/or in the furtherance of the City's objectives to protect, enhance or otherwise regulate the health, safety and/or welfare of its citizens and the general public within its jurisdictional boundaries, with such determination being evidenced by City Council Resolution or Ordinance, and/or the taking of other official action by the City Council calling for, requiring and/or necessitating such termination.

(e) Upon any termination of the Term of this Lease, ownership and removal of the Improvements shall be governed by Section 20 hereof.

Section 32. Waivers: Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision.

Section 33. Hazardous Materials: Landlord represents and warrants that Landlord has not used or operated the Demised Premises in any manner for the storage, use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined), and to the best of Landlord's knowledge and belief, after reasonable investigation, the Demised Premises has never been used or operated for the storage, use, treatment, manufacture or disposal of any Hazardous Materials. For purposes hereof, the term "Hazardous Materials" means (i) any "hazardous wastes" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in or for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "superfund" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, and specifically identified and known as a hazardous, toxic or dangerous waste, substance or material as of the date hereof. This Section 29 will survive the termination or expiration of this Lease. **[rework]**

Section 34. Force Majeure: In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, pandemics, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other party, war or any reason beyond their control (other than financial difficulty), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, the provisions of this Section shall not operate to extend the date Landlord is required to deliver possession of the Demised Premises to Tenant. Lack of funds shall not be a basis for avoidance or delay of any obligation under this Lease.

Section 35. Notices: Every notice, approval, consent, or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and delivered in

person, by courier, by reputable overnight courier guaranteeing next day delivery, or sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Section. Such notices or other communications shall be effective (a) in the case of personal delivery or courier delivery, on the date of delivery to the party to whom such notice is addressed as evidenced by a written receipt signed on behalf of such party, (b) if by overnight courier, one (1) day after the deposit thereof with all delivery charges prepaid, and (c) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The rent payable by Tenant hereunder shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed.

Section 36. Certificates: Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and, if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default under this Lease; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

Section 37. Governing Law: This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Georgia.

Section 38. Partial Invalidity: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 39. Short Form Lease: Landlord and Tenant shall execute and deliver a short form of lease in the form attached hereto as Exhibit F and made a part hereof by this reference upon the establishment of the Commencement Date, which will constitute a short form of this Lease. Any and all recording costs required in connection with the recording of such short form of lease shall be paid by Tenant.

Section 40. Interpretation: Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term "Landlord" whenever used herein shall mean only the owner at the

time of Landlord's interest herein, and upon any sale or assignment of the interest of Landlord, its successors in interest and/or assigns shall, during the term of its ownership of its estate herein, be deemed to be Landlord. The use of the terms "Landlord" and "Tenant" notwithstanding, this Lease creates for all purposes an estate for years and not a usufruct. The term "effective date" of this Lease shall be the date set forth in the first paragraph of this Lease, determined as of the date both Landlord and Tenant have each received a fully executed counterpart of this Lease.

Section 41. Entire Agreement: No oral statement or prior written matter shall have any force or effect. Landlord and Tenant agree that they are not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or cancelled except by writing executed by Landlord and Tenant.

Section 42. Parties: Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, successors in title, administrators and assigns.

Section 43. Holdover: In the event Tenant remains in possession of the Demised Premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying the Demised Premises as a tenant from month-to-month at a rental equal to \$5000 per month and otherwise subject to all of the terms, conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

[Signatures appear on following page]

CITY OF ATLANTA

Municipal Clerk (Seal)

By: _____
Keisha Lance Bottoms, Mayor

RECOMMENDED:

Commissioner, Department of Public Works

Commissioner, Department of Planning &
Community Development

APPROVED AS TO FORM

City Attorney

**THE NATIONAL MONUMENTS
FOUNDATION, INC.,** a Georgia public
non-profit corporation

By: _____
Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION – DEMISED PREMISES

EXHIBIT B

SITE PLAN

EXHIBIT C
DESIGN DETAILS

EXHIBIT D
TENANT'S WORKS

EXHIBIT E
VENDOR AND CONCESSIONAIRE PROTOCOL

EXHIBIT F
PERMITTED LIENS

EXHIBIT G
SHORT FORM OF LEASE

EXHIBIT G

DESCRIPTION OF LANDLORD'S WORK