

**LEASE  
BETWEEN THE**

**UNITED STATES DEPARTEMENT OF THE INTERIOR  
NATIONAL PARK SERVICE  
(LESSOR)**

**AND**

**NAME TO BE INSERTED UPON SELECTION**

**(LESSEE)**

**PEA RIDGE NATIONAL MILITARY PARK**

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**THIS LEASE** is made and entered into by and between the United States Department of the Interior, acting through the National Park Service, an agency of the United States of America (Lessor), and \_\_\_\_\_, (Lessee).

**WITNESSETH THAT:**

**WHEREAS**, Congress designated Pea Ridge National Military Park (Park Area) as a unit of the national park system;

**WHEREAS**, the Park Area contains property that has been determined suitable for leasing under 36 Code of Federal Regulations Part 18;

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

**WHEREAS**, the Lessee desires to lease the property on the terms and conditions set forth in this Lease;

**NOW THEREFORE**, in consideration of their mutual promises, the Lessor and Lessee hereby agree as follows:

**Section 1. DEFINITIONS**

As used in this Lease, the following defined terms are applicable to both singular and plural forms.

**1.1. Alterations** - means any construction, physical modifications, rehabilitation, reconstruction, and/or restoration of the Premises.

**1.2. Applicable Laws** - means all present and future laws, statutes, requirements, ordinances, judgments, regulations, and administrative and judicial determinations that are applicable by their own terms to the Premises or the Lessee, even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over the Premises now or hereafter enacted or in effect (including, but not limited to, Part 18 and the Park Area's General Management Plan, environmental laws and those relating to accessibility to, usability by, and discrimination against, disabled individuals), and all covenants, restrictions, and conditions now or hereafter of record which may be applicable to the Lessee or to all or any portion of the Premises, or to the use, occupancy, possession, operation, and maintenance of the Premises even if compliance therewith results in interference with the use or enjoyment of all or any portion of the Premises.

**1.3. Annual Rent** - means the annual fixed rent to be paid to Lessor by Lessee under Section 5.

**1.4. Assignment** - means the transfer, whether it is direct or indirect, voluntary or by operation of law, assignment, sale, or conveyance, of the Lessee's leasehold estate, or the Lessee's rights under this Lease in whole or part. Such transfer may be designated as a sale, a conveyance, or an assignment. The sale, conveyance, or assignment (including by consolidation, merger or reorganization) of a controlling interest in the Lessee (if such entity is a corporation), or any sale or other transfer of a controlling interest in the partnership interests (if such entity is a

partnership), whether in a single transfer or in a series of related transfers, and whether directly or by sales or transfers of underlying partnership or corporate ownership interests, is an Assignment. For a corporate entity, the term “controlling interest” means an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee. For a partnership, limited partnership, joint venture, limited liability company, or individual entrepreneur, “controlling interest” means the beneficial ownership of the capital assets of the Lessee so as to permit exercise of managerial authority over the actions and operations of the Lessee.

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

**1.6. Encumbrance** - means the direct or indirect, voluntary or by operation of law, encumbrance, pledge, mortgage, or other hypothecation of the Lessee’s interest or rights under this Lease and/or the Premises or Lessee’s leasehold estate.

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

**1.8 FF&E** - means all furniture, fixtures and equipment in or on the Premises.

**1.9. Hazardous Materials** - means any material or other substance: (a) that requires investigation or correction under Applicable Laws; (b) that is or becomes defined as a hazardous waste, hazardous substance, pollutant, or contaminant, under Applicable Laws; (c) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated under Applicable Laws; (d) that, without limitation of the foregoing, contains gasoline, diesel fuel or other petroleum hydrocarbons; (e) that, without limitation of the foregoing, contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; or (f) without limitation of the foregoing, contains radon gas. The term Hazardous Materials as used in this Lease includes Pre-Existing Hazardous Materials unless otherwise stated in a particular provision of this Lease.

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

**1.11 Historic Property** - means building(s) and land located within the boundaries of the Park Area that are part of a pre-historic or historic district or site included on, or eligible for inclusion on, the National Register of Historic Places.

**1.12 Interest Rate** - means the percentage of interest charged based on the current value of funds to the United States Treasury that is published annually in the Federal Register or successor publication.

**1.13 Inventory and Condition Report** - means the document contained in Exhibit A to this Lease that describes the FF&E in the Premises and the condition of the Premises (including FF&E) as of the Commencement Date.

**1.14 Lease Term** - is the term of this Lease as stated in Section 4 of this Lease.

**1.15 Lease Year** - means a year of the Lease Term. The first Lease Year shall commence on the Commencement Date and shall end on the expiration of the twelfth full calendar month following thereafter. Each subsequent Lease Year shall commence on the next day following the expiration of the preceding Lease Year, and shall end on the expiration of the twelfth full

calendar month following thereafter, or on the last day of the Lease Term, whichever occurs first.

**1.16 Notice of Default** - means an instrument in writing from the Lessor to the Lessee providing notice of that the Lessee is in default of the lease.

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

**1.18 Park Area** - means Pea Ridge National Military Park.

**1.19 Part 18** - means Part 18 of Volume 36 of the Code of Federal Regulations.

**1.20 Personal Property** - means all furniture, fixtures, equipment, appliances, and apparatus placed in or on the Premises-that are neither permanently attached to or form a part of the Premises.

**1.21 Pre-existing Hazardous Materials** - means hazardous materials (including storage tanks) that existed in, on, or under the Premises or other Park Area property prior to the Commencement Date.

**1.22 Premises** - means the property of the Park Area that is described in Section 2 of this Lease.

**1.23 Preservation Maintenance Plan** - is a document that sets forth a plan for the Lessee’s repair and maintenance of Historic Property.

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

**1.25 Secretary’s Treatment Standards** - shall mean the Secretary of the Interior’s Treatment Standards for Historic Property (36 Code of Federal Regulations Part 68) that are hereby made a part of this Lease by reference.

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

**1.27 Termination Date** - means the date this Lease may be terminated or cancelled in accordance with its terms prior to the Expiration Date.

## **Section 2. LEASE OF PREMISES**

### **2.1. Lease of Premises; Reservation of Rights**

(a) The Lessor hereby leases and demises to the Lessee under the authority of Part 18, and the Lessee hereby leases, upon and subject to the covenants and agreements contained in this Lease, from the Lessor, the Premises described as follows:

The facility and property for lease are located at Pea Ridge NMP at 15930 HWY 62 Garfield, AR 72732. The facility includes 1 storage building (98.15 square feet) and the property is approximately 400 acres of land.

(b) Subject to all Applicable Laws, and all liens, encumbrances, restrictions, rights and conditions of law or of record or otherwise; and

(c) Excepting and reserving to the Lessor the right, at reasonable times and (except in case of emergency) following advance notice to the Lessee, to enter and to permit any governmental

agency, public or private utilities and other persons to enter upon the Premises as may be necessary for the purposes of the administration of this Lease and/or the Park Area as determined by the Lessor and to close the Premises when immediate danger to life or property is discovered;

(d) Excepting and reserving exclusive rights to all oil, gas, hydrocarbons, and other minerals in, under, or on the Premises and ownership of any current or future water rights applicable to the Premises.

## **2.2 Waiver**

The Lessee hereby waives any claims for damages for any injury or inconvenience to or interference with the Lessee's use and occupancy of the Premises, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by the Lessor's exercise of its rights under this Lease or by the Lessor's actions taken for the management and protection of the Park Area's resources and visitors.

## **2.3 Easements**

Nothing contained in this Lease shall give or be deemed to give the Lessee a right to grant any type of easement or right-of-way affecting the Premises.

## **2.4 Ownership of the Premises**

This Lease does not vest in the Lessee any fee interest in the Premises. Title to the Premises at all times is with and shall remain solely with the Lessor.

## **2.5 Historic Property**

The Premises (or portions of the Premises) is Historic Property.

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

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

The Lessee agrees to lease the Premises in their existing "as is" condition and acknowledges that in entering into this Lease, the Lessee does not rely on, and the Lessor does not make, any express or implied representations or warranties as to any matters including, without limitation, any characteristics of the Premises or improvements thereon, the suitability of the Premises for the intended use, the likelihood of deriving trade from or other characteristics of the Park Area, the economic or programmatic feasibility of the Lessee's use and occupancy of the Premises, or hazardous materials on or in the vicinity of the Premises.

## **3.2 Lessee's Due Diligence**

Prior to entering into this Lease, the Lessee in the exercise of due diligence has made a thorough, independent examination of the Premises and all matters relevant to the Lessee's decision to enter into this Lease, and the Lessee is thoroughly familiar with all aspects of the Premises and is satisfied that they are in an acceptable condition and meet the Lessee's needs.

## **3.3 Inventory and Condition Report**

In the exercise of its due diligence, Lessee has taken into account the Inventory and Condition Report (Exhibit A) and acknowledges that it is complete and accurate.



## **Section 4. LEASE TERM AND ABANDONMENT**

### **4.1 Lease Term**

The Lease Term shall be a period from (Month, Day, Year) through (Month, Day, Year) or ending on such earlier date as this Lease may be terminated in accordance with its terms (Termination Date).

### **4.2 Abandonment**

The Lessee shall occupy the Premises during the entire Lease Term. If it fails to do so, the Lessee may be determined as in Default for abandoning the Premises.

## **Section 5. RENT**

### **5.1. Net Lease**

All Rent shall be absolutely net to Lessor without any abatement, deduction, counterclaim, set-off or offset. Lessee shall pay all costs, expenses and charges of every kind and nature relating to the Premises, including, without limitation, all taxes and assessments.

### **5.2 Annual Rent**

During the Lease Term, Lessee shall pay to Lessor Annual Rent for the Premises in the aggregate amount of \_\_\_\_\_. At Lessor's option, payments of Annual Rent shall be payable by wire transfer or other electronic means to such account as Lessor may from time to time designate. Interest at the Interest Rate will be assessed on overdue Annual Rent payments and any other Rent this lease may require. The Lessor may also impose penalties for late payment to the extent authorized by Applicable Law.

### **5.3 Percentage Rent**

(a) In addition to Annual Rent, the Lessee shall pay to the Lessor as Percentage Rent an amount of money equal to twenty-five percent (25%) of the Lessee's Gross Revenues for the preceding month of the Lease Term. The Percentage Rent shall be due on a monthly basis at the end of each month of the applicable Lease Year during the Lease Term and shall be paid by the Lessee within fifteen (15) calendar days after the last day of the applicable month.

(b) Lessee will work with the park to determine specific dates for cutting the hay and the number of cuttings per year.

(c) Gross Receipts Defined: Gross Revenues means the entire amount of Lessor's revenues (and the revenues of any Affiliate of Lessee) derived from this Lease or any Sublease hereunder, such amount as determined in accordance generally accepted accounting principles consistently applied. The revenues derived from this Lease, specifically the revenues derived from the haying operation, must be the product of the hay being sold at the fair market value of the hay at the time the cutting of the hay is completed. The term "Affiliate of Lessee" as used in this section means any person or entity directly or indirectly controlling, controlled by, or under common control with Lessee, or, any entity owned in whole or part, directly or indirectly, by Lessee.

## **Section 6. USE OF PREMISES**

### **6.1 Authorized Uses**

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

Lessee is authorized to use the storage facility for storage of supplies and materials associated with the work being completed on the leased lands. Haying operations will take place on 25 different fields throughout the park, comprising approximately 400 acres. These fields are located within 6 distinct areas of the park, which are: Ford's Farm, Cox's Farm, Leetown Battlefield, Foster's Farm, Ruddick's Farm, and Clemons' Field.

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

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

### **6.3 Applicable Laws**

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

### **6.4 Forbidden Uses**

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

### **6.5 Site Disturbance**

Lessee shall neither cut any timber nor remove any other landscape features of the Premises such as shrubs or bushes without Lessor's prior written consent. The Lessee shall conduct no mining or drilling operations, remove no sand, gravel or similar substances from the ground, and commit no waste of any kind.

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

The Lessee shall ensure that any protected sites and archeological resources within the Park Area are not disturbed or damaged by the Lessee except in accordance with Applicable Laws and only with the prior written approval of the Lessor. Discoveries of any archeological resources by the Lessee shall be promptly reported to the Lessor. The Lessee shall cease work or other disturbance, which may impact any protected site or archeological resource until the Lessor may grant approval to continue upon such terms and conditions as the Lessor deems necessary to protect the site or resource.

### **6.7 Signs**

The Lessee may not post signs on the Premises of any nature without the Lessor's prior written approval. Any approval of a sign that may be given by the Lessor shall specify the type, size,

and other appropriate conditions concerning its display. The Lessor may post signs on the Premises as appropriate for the administration of the Park Area.

### **6.8 Permits and Approvals**

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

### **6.9 Alterations**

The Lessee shall not make Alterations of any nature to the Premises without the written permission of the Lessor. Any such permission that may be given will be subject to an amendment of this Lease to incorporate appropriate terms and conditions regarding the nature of the Alterations and construction requirements, including, without limitation, construction insurance requirements.

## **Section 7. RECORDS AND AUDITS**

The Lessee shall provide the Lessor and its agents and affiliates, including without limitation, the Comptroller General of the United States, access to all books and records relating to the Premises and the Lessee's use of the Premises under this Lease for the purpose of conducting audits to verify the Lessee's compliance with the terms and conditions of this Lease for any of the five (5) preceding Lease Years. The Lessee shall keep and make available to the Lessor these books and records at a location in the Premises or within the locale of the Park Area.

## **Section 8. MAINTENANCE AND REPAIR**

### **8.1 Lessee's Responsibilities**

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

- (a) General custodial / housekeeping such as sweeping out of the interior of the assigned structure;
- (b) The repair or replacement in-kind of broken or worn out elements, parts or surfaces so as to keep the existing appearance of the Premises;

Any repair and maintenance actions that may result in Alterations to the Premises require the prior written approval of the Lessor.

### **8.2 Maintenance Plan**

If requested by the Lessor, the Lessee shall submit to the Lessor for its approval a Lessee Maintenance Plan satisfactory to Lessor. The plan, when approved by Lessor, shall become an Exhibit to this Lease without further action and the Lessee shall comply with its terms. The Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises.

### **8.3 Preservation Maintenance Plan**

If the Premises (or any part of the Premises) are Historic Property, the Lessee shall repair and

maintain all portions of the Premises that are Historic Property through a Preservation Maintenance Plan prepared by the Lessee and approved by the Lessee as appropriate and consistent with the requirements of the Secretary's Treatment Standards and NPS 28. The Lessor may make reasonable modifications to the plan from time to time to reflect changing maintenance and repair needs of the Premises. The Lessee shall submit a proposed Preservation Maintenance Plan to the Lessor within thirty (30) calendar days of the Commencement Date.

## **Section 9. UTILITIES**

Utility services are not associated with this lease.

## **Section 10. HAZARDOUS MATERIALS**

The Lessee shall comply with the following provisions concerning Hazardous Materials:

- (a) No Hazardous Materials shall be used, treated, kept, stored, sold, released, discharged or disposed of from, on about, under or into the Premises except in compliance with all Applicable Laws and as approved by the Lessor in writing;
- (b) The Lessee shall use, manage, treat, keep, store, release discharge and dispose of its approved Hazardous Materials in accordance with all Applicable Laws. The Lessee is responsible for timely acquisition of any permits required for its Hazardous Materials and related activities and will be fully responsible for compliance with the provisions and conditions of such permits;
- (c) If any Hazardous Materials Occurrence caused by Lessee results in any contamination of the Premises, other Park Area property or neighboring property, the Lessee shall promptly take all actions at its sole expense as are required to comply with Applicable Laws and to allow the Premises or such other property to be used free of any use restriction imposed under Applicable Laws as a result of the Hazardous Materials Occurrence. Except in cases of emergency, the Lessor's written approval of such actions shall first be obtained;
- (d) Lessee at its expense shall be responsible for the abatement of Hazardous Materials in accordance with Applicable Laws in, on, or under the Premises as of the Commencement Date and thereafter; and
- (e) If the Lessee discovers any unapproved Hazardous Materials in or on the Premises or becomes aware of a Hazardous Materials Occurrence related to the Premises, the Lessee shall immediately notify the Lessor.

## **Section 11. INSURANCE AND INDEMNIFICATION**

### **11.1 Insurance During the Lease Term**

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

### **11.2 Insurance Requirements Modification**

If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, conditions, deductibles or self insurance retention, with respect to any of the insurance required by this Lease are insufficient for a prudent owner of property of the nature of the Premises, the Lessor may determine the proper and reasonable limits and extent of coverage, conditions, deductibles and self insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this section.

### **11.3. Disposition of Insurance Proceeds**

All insurance proceeds received by or payable with respect to damage or destruction of the Premises (except proceeds of insurance covering loss or damage of the Lessee's Personal Property), less actual expenses incurred in connection with their collection, shall be held by the Lessee in an interest bearing account, with all interest accrued thereon deemed proceeds of insurance for purposes of this Lease. However, if required by the Lessor, an insurance trustee acceptable to the Lessor shall hold such proceeds for application in accordance with this Lease.

### **11.4 Inadequate Insurance Coverage**

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

### **11.5 Indemnity**

The Lessee shall indemnify, defend, save and hold the United States of America, its employees, successors, agents and assigns, harmless from and against, and reimburse the United States of America for any and all claims, demands, damages, injuries, losses, penalties, fines, costs, liabilities, causes of action, judgments, and expenses, including without limitation expenses incurred in connection with or arising in any way out of this Lease, the use, occupancy or manner of use or occupancy of the Premises by the Lessee or any other person or entity, the design, construction, maintenance, or condition of any improvements on the Premises, the condition of the Premises, and/or any accident or occurrence on the Premises from any cause whatsoever; provided, however, that the Lessee shall not be liable to the extent that the damages, expenses, claims or suits result from the willful misconduct or negligence of the United States of America, or its employees, contractors, or agents; provided, further, that the United States of America shall be liable only to the extent such claims are covered by the Federal Tort Claims Act (28 USC 2671 et seq.).

The provisions of this section shall survive the Expiration Date or Termination Date of this Lease.

## **Section 12. DAMAGE OR DESTRUCTION**

### **12.1 Damage or Destruction; Duty to Restore**

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

(a) the Lessee, as promptly as reasonably practicable and with all due diligence, subject to the written prior approval of the Lessor, shall repair or replace the damaged or destroyed Premises to the condition that existed prior to the damage or destruction; or

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

### **12.2 No Termination; No Effect on Rental Obligation**

No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the improvements thereon, any other property on the Premises shall operate to terminate this Lease except as provided in Section 12.1 of this Lease. No such loss or damage shall affect or relieve the Lessee from the Lessee's obligation to pay the Rent required by this Lease and in no event shall the Lessee be entitled to any prorated return or refund of Rent paid hereunder. Unless this Lease is terminated under Section 12.1, no such loss or damage shall relieve or discharge the Lessee from the payment of taxes, assessments, or other charges as they become due and payable, or from performance of other the terms and conditions of this Lease.

## **13. LIENS**

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

The Lessee shall have no power to take any action that may create or be the foundation for any lien, mortgage or other encumbrance upon the reversion, fee interest or other estate of the Lessor or of any interest of the Lessor in the Premises, except as otherwise may be expressly approved by the Lessor in writing in accordance with the terms of this Lease.

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

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

### **13.3 No Consent or Waiver by Lessor**

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

## **Section 14. ASSIGNMENTS AND ENCUMBRANCES**

### **14.1 Assignments**

The Lessee shall not effectuate an Assignment of this Lease, in whole or in part, or any real property on the Premises, nor Sublease the Premises to a Sublessee or any part thereof or any property thereon, nor grant any interest, privilege or license whatsoever in connection with this Lease, without the express prior written permission of the Lessor. Approval of any Assignment is in the discretion of the Lessor and in no event shall the Lessor grant an approval unless it is able to determine that the proposed assignee or Sublessee is financially and managerially capable of carrying out the terms of this Lease.

With respect to proposed assignments and without otherwise limiting the criteria upon which the Lessor may withhold its consent to any proposed assignment, the Lessee shall furnish to the Lessor the following information: [1] all instruments proposed to implement the transaction; [2] a statement as to the existence of any litigation questioning the validity of the proposed transaction; [3] a description of the management qualifications and financial background of the proposed transferee, if any; [4] a detailed description of the financial aspects of the proposed transaction including but not limited to prospective financial forecast statements that have been examined by an independent accounting firm and that demonstrate to the satisfaction of the Lessor that terms of the transfer do not impede or interfere with the financial ability of the Lessee to perform the requirements of this Lease; [5] if the transaction may result in an encumbrance on the Lessee's assets, full particulars of the terms and conditions of the encumbrance; and [6] such other information as the Lessor may reasonably require. The Lessor shall have the right to approve the form of any assignment.

Any consideration for transfers of leasehold interests (as such costs are approved by the Lessor) received by the Lessee from an assignee for or in connection with an assignment of this Lease shall be payable to the Lessor.

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

### **14.2 Encumbrances**

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

## **Section 15. DEFAULTS AND LESSOR'S REMEDIES**

### **15.1 Termination for Default**

The Lessor may terminate this Lease for default if the Lessee fails to keep and perform any of the terms and conditions of this Lease, provided that the Lessor shall first give the Lessee written notice of at least fifteen (15) calendar days in the case of monetary defaults and thirty calendar (30) days in the case of non-monetary defaults of the Lessor's intention to terminate if the default

is not cured within the applicable time period. If the Lessor terminates this Lease, all of the rights of the Lessee under this Lease and in the Premises shall terminate. The Lessee hereby acknowledges the sovereign right of the Lessor to cancel this Lease at any time to the extent otherwise provided by law. The Lessor will consider such a cancellation as a default of the Lease.

### **15.2 Bankruptcy**

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

### **15.3 No Waiver**

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

### **15.4 Lessor's Right to Cure Defaults**

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

## **Section 16. SURRENDER AND HOLDING OVER**

### **16.1 Surrender of the Premises**

- (a) On or before the Expiration Date or Termination Date of this Lease, the Lessee shall surrender and vacate the Premises, remove Lessee's Personal Property, and return the Premises, including the FF&E, to as good an order and condition as that existing upon the Commencement Date.
- (b) For these purposes, the Lessor and Lessee shall prepare an inventory and condition report of the Premises to constitute the basis for settlement by the Lessee to the Lessor for Lessor's FF&E, or elements of the Premises shown to be lost, damaged or destroyed. Any such FF&E, or other elements of the Premises shall be either replaced or returned to the condition required



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

## **16.2 Holding Over**

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

## **Section 17. EQUAL OPPORTUNITY LAWS**

The Lessee and Lessee's Agent's shall comply with the requirements of (a) Title VII of the Civil Rights Act of 1964 (as amended), as well as Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967; (b) Title V, Sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 (as amended), which prohibits discrimination on the basis of disability and requires government contractors and subcontractors to take Affirmative Action to employ and advance in employment qualified handicapped individuals; (c) 41 C.F.R. Chapter 60, which prescribes affirmative action requirements for government contractors and subcontractors; (d) the Age Discrimination in Employment Act of December 15, 1967 (as amended); (e) the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.; (f) and all other Applicable Laws relating to nondiscrimination in employment and in providing facilities and services to the public. The Lessee shall do nothing in advertising for employees that will prevent those covered by these laws from qualifying for such employment.

## **Section 18. NOTICES**

Except as otherwise provided in this Lease, any notice, consent or other communication required or permitted under this Lease shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the parties may designate by notice given in accordance with this section):

If to the Lessor:

Superintendent  
Pea Ridge National Military Park  
15930 Highway 62  
Garfield, Arkansas 72732

If to the Lessee:

[Lessee's address and name of person to whom the notice should be addressed]

## **Section 19. GENERAL PROVISIONS**

The following general provisions apply to this Lease:

(a) The Lessor is not for any purpose a partner or joint venture participant of the Lessee in

the development or operation of the Premises or in any business conducted on the Premises. The Lessor under no circumstances shall be responsible or obligated for any losses or liabilities of the Lessee. The Lessee shall not publicize, or otherwise circulate, promotional or other material of any nature that states or implies endorsement of the Lessee or its services or products by the Lessor or any other governmental agency.

(b) This Lease shall not, nor be deemed nor construed to, confer upon any person or entity, other than the parties hereto, any right or interest, including, without limiting the generality of the foregoing, any third party beneficiary status or any right to enforce any provision of this Lease.

(c) This Lease provides no right of renewal or extension to the Lessee. No rights shall be acquired by virtue of this Lease entitling the Lessee to claim benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

(d) The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. For breach or violation of this warranty, the Lessor shall have the right to terminate this Lease for Default.

(e) In case any one or more of the provisions of this Lease shall for any reason be held to be invalid, such invalidity shall not affect any other provision of this Lease, and this Lease shall be construed as if the invalid provisions had not been contained in this Lease.

(f) All Exhibits that may be referenced in this Lease are hereby attached to and incorporated in this Lease.

(g) Time is of the essence to this Lease and all of its terms and conditions.

(h) The laws of the United States shall govern the validity, construction and effect of this Lease.

(i) This Lease constitutes the entire agreement between the Lessor and Lessee with respect to its subject matter and supersedes all prior offers, negotiations, oral and written. This Lease may not be amended or modified in any respect except by an instrument in writing signed by the Lessor and Lessee.

(j) The voluntary sale or other surrender of this Lease by the Lessee to the Lessor, or a mutual cancellation, or the termination by the Lessor pursuant to any provision of this Lease, shall not work a merger, but, at the option of the Lessor, shall either terminate any or all existing subleases hereunder or operate as an assignment to the Lessor of any or all of subleases.

(k) If more than one Lessee is named in this Lease, each Lessee shall be jointly and severally liable for performance of the obligations of this Lease.

(l) Any and all remedies available to Lessor for the enforcement of the provisions of this Lease are cumulative and are not exclusive, and Lessor shall be entitled to pursue either the rights enumerated in this Lease or remedies authorized by law, or both. Lessee shall be liable for any costs or expenses incurred by Lessor in enforcing any term of this Lease, or in pursuing legal action for the enforcement of Lessor's rights, including, but not limited to, court costs.

(m) Nothing contained in this Lease shall be construed as binding the Lessor to expend, in any fiscal year, any sum in excess of the appropriation made by Congress for that fiscal year or

administratively allocated for the subject matter of this Lease, or to involve the Lessor in any contract or other obligation for the future expenditure of money in excess of such appropriations.

**IN WITNESS WHEREOF**, the, Regional Director, Midwest Region, National Park Service, acting on behalf of the United States, in the exercise of the delegated authority from the Secretary of the Interior, as Lessor; and the Lessee have executed this Lease by proper persons thereunto duly authorized as of the date heretofore written.

**LESSOR**

THE UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

By \_\_\_\_\_

Regional Director

Midwest Region

**LESSEE**

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

## **EXHIBIT A: Inventory and Condition Report**

The storage facility is an 8'X12' wood frame building located outside of the Roads, Grounds, and Trail Complex. It has wood panel siding, a shingle roof, and is in good overall condition. There are a few cosmetic issues, such as, missing trim from the bottom of the door and a piece of the trim is broken on the back left corner. There are no structural concerns and is ideal for storing supplies.





## **EXHIBIT B: Insurance Requirements**

During the term of this Lease, the Lessee shall maintain the following insurance coverage (where applicable as determined by the Lessor) under the following general terms and conditions and under such specific terms and conditions as the Lessor may further require with respect to each particular insurance policy.

### **1. In general.**

- (a) Property Insurance - An all risk or special form, including fire, vandalism and malicious mischief insurance. The amount of such insurance shall be the full insurable value of the Premises. All such policies shall specify that proceeds shall be payable whether or not any damaged or destroyed improvements are actually rebuilt.
- (b) Worker's Compensation and Employer's Liability Insurance - Worker's compensation insurance in the statutory amounts and coverage required under worker's compensation, disability and similar employee benefit laws applicable to the Premises and to the Lessee's use and occupancy of the Premises; and employer's liability insurance, with limits of not less than one hundred thousand dollars (\$100,000) for bodily injury per incident and one million dollars (\$1,000,000) aggregate, or such higher amounts as may be required by law.
- (c) General Liability - Comprehensive Farm Liability and/or Commercial General Liability through one or more primary and umbrella liability policies against claims for bodily injury and property damage occurring on the Premises, the improvements thereon, or the streets, curbs or sidewalks adjoining the Premises, with such limits as may be required by the Lessor, but in any event not less than five hundred thousand dollars (\$500,000) per incident and one million dollars (\$1,000,000) aggregate for the Premises. Such insurance shall insure the performance by the Lessee of its indemnity obligations under this Lease.
- (d) Other - All other insurance that the Lessee should maintain to adequately protect the Premises, Lessor, and Lessee.

### **2. Conditions of Insurance**

- (a) The policy or policies required under this section shall provide that in the event of loss, the proceeds of the policy or policies shall be payable to the Lessee to be used solely for the repair or replacement of the property damaged or destroyed, as approved and directed by the Lessor, with any balance of the proceeds not required for repair or replacement; provided, however, that the insurer, after payment of any proceeds to the Lessee, will have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee.
- (b) All property and liability insurance policies shall name the Park Area as an additional insured.
- (c) All of the insurance required by this section and all renewals shall be issued by one or more companies of recognized responsibility licensed to do business in the state in which the Park Area is located with a financial rating of at least a Class B+ (or equivalent) status, as rated in the most recent edition of Best's Insurance Reports (or

equivalent) or as otherwise acceptable to the Lessor.

(d) All insurance policies shall provide that such policies shall not be cancelled, terminated or altered without thirty (30) days prior written notice to the Lessor. The Lessee must provide to the Lessor a copy of each policy and a certificate of the policy executed by a properly qualified representative of the insurance company evidencing that the required insurance coverage is in full force and effect on or before the Commencement Date, and annually thereafter. The Lessee shall maintain all policies provided throughout the Lease Term and the Lessee shall renew such policies before the expiration of the term of the policy.

(e) If the Lessor at any time, but not more than annually, believes that the limits or extent of coverage, deductibles or self insurance retention, with respect to any of the insurance required by this section are insufficient for a prudent owner of property of the nature of the Premises, the Lessor may determine the proper and reasonable limits and extent of coverage, deductibles and self insurance retention limits for such insurance and such insurance shall thereafter be carried by the Lessee until changed pursuant to the provisions of this section.

(f) The Lessee assumes full risk and responsibility for any inadequacy of insurance coverage or any failure of insurers. No approval by the Lessor of any insurer, or the terms or conditions of any policy, or any coverage or amount of insurance, or any deductible amount shall be construed as a representation by the Lessor of the solvency of the insurer or the sufficiency of any policy or any coverage or amount of insurance or deductible.

(g) The Lessee and Lessee's Agents shall not do anything, or permit anything to be done, in or about the Premises or on adjacent or nearby property that would invalidate or be in conflict with the provisions of any fire or other insurance policies covering the Premises or result in a refusal by insurance companies of good standing to insure the Premises in the amounts required under this section.

### **EXHIBIT C: Description of Premises**

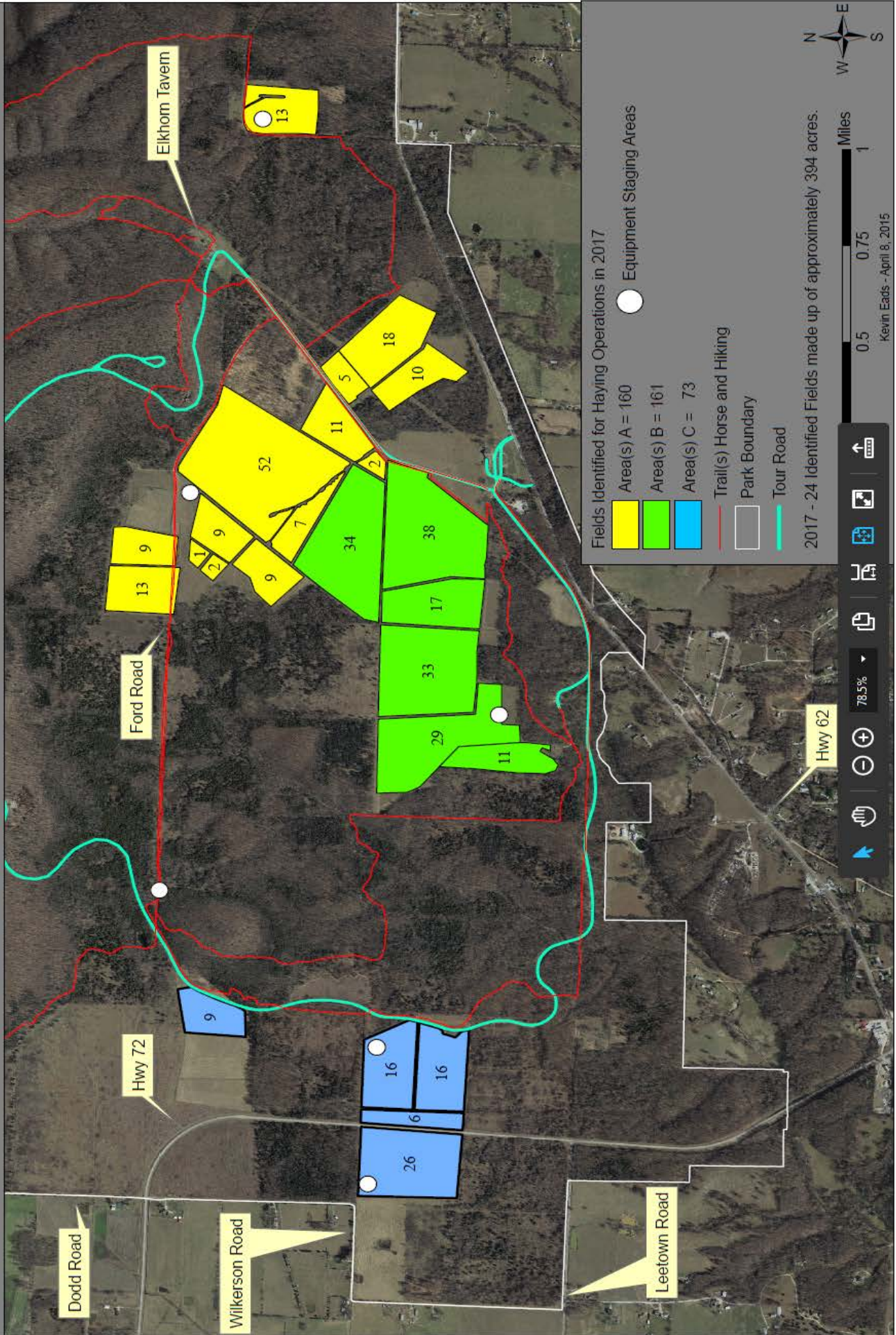
The facility and property for lease are located at Pea Ridge National Military Park at 15930 HWY 62 Garfield, Arkansas 72732. The Premises includes 1 storage building (98.15 square feet) and approximately 400 acres of mixed grass land to be used for haying operations.

Lessee is authorized to use the storage facility for storage of supplies and materials associated with the work being completed on the leased lands. The storage facility is an 8'X12' wood frame building and is located outside of the Roads, Grounds, and Trail Complex. Haying operations will take place on 25 different fields, throughout the park, comprising approximately 400 acres. These fields are located within 6 distinct areas of the park. They are: Ford's Farm, Cox's Farm, Leetown Battlefield, Foster's Farm, Ruddick's Farm, and Clemons' Field.

See the map on the following page of the fields to be hayed.



# Pea Ridge National Military Park - Vegetation Management Plan Implementation - 2017 Grassland Management (Fields)



## **EXHIBIT D: Maintenance Plan**

### **Purpose**

The NPS has set forth conditions in this Lease with the intention of protecting the environment, soils, and streams. These elements will take precedence over enhancing yields if such enhancement methods may cause any adverse effect to the resources.

### **Natural Resource Protection**

The presence of any federally or state-listed endangered, threatened, or rare species or important habitat for such species is noted on the attached field map. Impacts on these areas must be avoided. Areas of fields containing sinkholes along with a 10 yard buffer will remain unmowed.

### **Crop Plan**

This plan is for the purposes of haying of designated fields (see attached map). Removal of hay rolls from fields shall be by tractor to truck, to minimize any rutting or damage to park fields.

### **Field Border/Filter Strips**

New filter strips established by seeding will not be mowed.

Filter strips are to be protected from damage by farm equipment and traffic. Filter strips are not to be used as roadways. Filter strips are not to be damaged with chemicals or tillage implements.

Damage caused by erosion or lack of seedling vigor is to be repaired by grading and shaping, as directed by the Superintendent, upon completion of necessary compliance, and by reseeding any area with less than 60% cover.

### **Equipment Storage**

The overnight storage of equipment shall be in those areas designated by the Resource Manager. Storage of equipment will only be allowed while maintaining or harvesting fields. The government assumes no liability for loss or damage to equipment due to improper storage, lack of protection from the elements, or any other cause whatsoever.

### **Compliance with Laws and Regulations**

The Permittee shall comply with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the said premises are located, with regard to construction, sanitation, licenses, permits to conduct business, and all other matters.

Nothing in these conditions shall be construed to prevent the enforcement of the provisions of the regulations of the NPS or any other regulations applicable to park lands. Representatives of the Superintendent have authority to enter upon the land for the purpose of enforcing conditions of the Lease and to enforce laws and regulations applicable to the Park.

All Park regulations must be adhered to. The digging and/or removal of any historic relic or other object of antiquity is strictly prohibited. Any object of antiquity unearthed or otherwise found must be left in place, protected, and immediately reported to the Park's Resource Manager so that it may be properly protected.

There shall be no disturbance of the surface of the land, except as permitted for agricultural purposes, including but not limited to filling, excavating, removing topsoil, sand, gravel, rocks or minerals, building roads, draining wet areas, or changing the topography of the land in any manner, nor shall any vegetation, including but not limited to brush and trees, be removed, except with the prior authorization of the Superintendent or as provided for in this permit.

### **Sanitation**

The Lessee shall not discharge waste or effluent on the permitted property or manner that will contaminate streams or other bodies of water or otherwise become a public nuisance.

The dumping of trash or other unsightly materials in the park or the keeping thereon of junked or wrecked vehicles, inoperative farm equipment, or similar items is prohibited. The Lessee shall dispose of brush and other refuse as directed by the Superintendent. No sign, billboard, or advertisement shall be displayed or placed in the Park, except with permission of the Superintendent.

### **Lessee Access**

Access to fields is noted on the attached map. The use of any other access road or roads into the Premises must be approved in advance by the Resource Manager. Any gates that serve only the Lessee's fields must be kept closed and locked at all times, and care must be taken to ensure that unauthorized persons do not enter the Park during closed hours. After obtaining permission from the park, the Lessee may place a personal lock, interlocked with the Park lock, on Park gates which only serve the Lessee's fields. The Lessee may only work the fields during daylight hours.

### **Public Use**

Members of the general public are granted rights of access to these lands. Lessee's use of the land is subject to the right of the NPS to establish trails, roads, and other improvements on or through said premises. Every effort will be made by the NPS to avoid undue interference with use of the land by the Lessee for the purpose intended under the Lease.

### **Prohibition of Other Uses**

This Lease is for haying use only. No special tenant privileges relating to hunting, fishing, camping, or other recreational use apply under the terms of this Lease.

No commercial activity such as selling of baled hay may take place on National Park Service property.

**Fire Prevention**

The Lessee and his employees shall take all reasonable precautions to prevent forest, brush, grass, and structural fires. All internal combustion engines shall be equipped with spark-arresters or mufflers to prevent grass fire hazards. All fires (forest, brush, grass, structural) shall be reported immediately to the Park Superintendent or his representative.

**Reporting**

The Resource Manager shall be the Superintendent's representative regarding all activities under this permit. The representative may be reached at 479-451-8122, Extension 225.

Any accidents shall be reported immediately to Nolan Moore at the phone number above.

Lessee agrees to complete the Annual Crop Yield and forward it to the Park representative by December 1 of each year.

**Revocation or Modification**

The right is reserved by the Government to adjust the acreage and/or conditions, as specified in the Lease, annually. The Lessee agrees to vacate within 30 days any portion of the land under the Lease whenever given a written notice by the Superintendent, when he deems it advisable and in the interest of the Government. Under those conditions, any fees paid or costs for seed, lime and fertilizing applied by the Lessee for the calendar year will be prorated and refunded to the permittee.

*Additional park specific conditions*

1. Lessee agrees to require any duly approved sub-lessee (s) to sign the attached hold-harmless statement that acknowledges the assumption of risk during haying operations while in the Park. The Lessee agrees to provide the Superintendent with copies of the signed hold-harmless statement prior to the sub-lessee (s) beginning any haying operations within the park.
2. Daily operations may be stopped due to weather or other unforeseen circumstances at the discretion of the Superintendent or their designee. It is the Lessee or the duly approved sub-lessee(s) responsibility to check in and out of the Park on a daily basis with the primary NPS Park staff contact.
3. Each duly approved sub-lessee will need to: 1) provide a certificate of liability insurance that names the United States of America as additionally insured and 2) sign the hold harmless statement prior to start of the project. The Lessee will provide the Park with copies of the certificate of liability insurance and signed hold harmless statement prior to the start of the project.
4. All haying will be conducted during the appropriate season by vegetation type in identified fields per attached map. All fields will be mowed in a manner to maintain

uniformity of appearance and in such a manner that resource damage does not occur, for example rutting due to wet conditions, disturbance of soil, compaction, creation of roads, damage to canyons or fences, etc.

5. Prior to entrance into the Park, all equipment and vehicles will be cleaned of all plant and soil materials to prevent introduction of weeds into the park. Equipment will be inspected by NPS Park staff prior to the commencement of haying operations.
6. Agriculture equipment for haying will include tractors, hay rakes, round or square hay balers, etc. Agriculture equipment will only be used when ground conditions permit so that ground disturbance will not occur, as determined by NPS Park staff.
7. Hay will not be stored in any field. Hay will be promptly removed after being baled.
8. Hay will be removed from fields on trailers that do not exceed 28 feet in length, and with 1-ton or less trucks. At no time will semi-trucks and trailers be allowed on any field.
9. At no time will any machinery and/or equipment be left within public view except during the actual haying operations. If haying operations are interrupted by weather for more than 24 hours, all equipment will be moved from public view. Staging sites are identified on the attached map. However, additional sites will be determined by NPS Park staff, as needed.
10. Haying operations are authorized to be conducted only during daylight hours when the Park is open. Operations are limited to the hay fields described in the map entitled Vegetation Management Plan (VMP) – Grassland Management (Fields) and dated 2015.
11. Duly approved sub-lessee (s) will check in with, and follow the directions of, the NPS Park staff prior to beginning haying operations to obtain the latest safety and Park operations information.
12. Prescribed fire may occur on adjacent wooded areas, it is the Lessee's or duly approved sub-lessee(s) responsibility to ensure that all equipment and hay bales are located securely away from risk of fire.
13. Lessee and duly approved sub-lessee(s) are responsible for ensuring the safety of visitors from their operations while in the Park.
14. All equipment and hay will be removed from the Park upon completion of the final bale. There will be no storing of equipment from one cutting to the next.
15. The Superintendent retains the discretionary authority to modify the Maintenance Plan at any time.