

**First Tee Sanford Family Learning Center
Lease and Use Agreement**

This Lease and Use Agreement (this “Lease”) is entered into this _____ day of _____, 2022, by and between the City of Saint Paul, a municipal corporation, through its Department of Parks and Recreation (“City”), and Twin Cities Junior Golf Program d/b/a First Tee – Minnesota (f/k/a The First Tee of the Twin Cities, f/k/a The First Tee of St. Paul), a Minnesota non-profit corporation (“FTMN”), with a primary business address of 5416 Park Place, Edina, MN 55424.

WHEREAS, the City is the owner of the Highland Park National Golf Course, located at 1403 Montreal Avenue, Saint Paul, Minnesota, 55116; and

WHEREAS, in 2011 the City gave permission and funding assistance to FTMN for the construction of the First Tee Sanford Family Learning Center (“Learning Center”) on the Highland National Golf Course site; and

WHEREAS, ownership of the Learning Center was transferred to the City upon completion with the understanding that FTMN would be permitted to lease the building for its golf programs; and

WHEREAS, the PGA TOUR First Tee Foundation d/b/a First Tee (the “First Tee Foundation”), is a national organization whose mission is to impact the lives of young people by providing learning facilities and education programs that promote character-development and life-enhancing values through the game of golf; and

WHEREAS, FTMN was formed for the purpose of providing Saint Paul area youth, and other youth across Minnesota, with golf and life skills lessons that meet the mission statement of the organization; and

WHEREAS, the FTMN began using the Highland National Golf Course and Learning Center to provide golf lessons as part of the curriculum it offers to participants in 2004, and wishes to continue using the Highland National Golf Course, and the City is willing to provide access in exchange for a monetary contribution to the facility; and

WHEREAS, City and FTMN wish to enter into an agreement for the operation and use of the Learning Center.

Now, therefore, parties agree as follows:

1. Leased Premises. The City, in consideration of the payment of the Basic Rent and Additional Rent to be paid by FTMN, and the covenants and agreements herein contained, does hereby lease to FTMN the premises hereinafter referred to as the Learning Center, whose address is: 1403 Montreal Avenue, Saint Paul, MN 55116 and which is described as: the First Tee Sanford Family Learning Center.

2. Term and Renewal.

2.1.1 Initial Term. This Lease shall be in effect annually June 1 through October 31 for a term of five (5) years, commencing June 1, 2022, and ending on October 31, 2026, unless terminated earlier as provided herein.

2.1.2 Renewal Term. This Lease may be renewed by mutual consent of the parties on the same terms for a two-year term beginning June 1, 2027, and ending on October 31, 2029. Parties must agree in writing to Basic Rent and Additional Rent for the renewal term.

3. Use of Premises.FTMN shall use and occupy the Learning Center for the purposes of the operation of golf learning facilities, education programs promoting character development and life enhancing values through the game of golf, and office space to support FTMN's programs.

3.1 By June 1st of each year of this Lease, FTMN will post their hours of operation in a method which is visible to the public. Prior to posting, but no later than May 1st of each year, FTMN will submit proposed operating hours to the City for approval.

3.2 FTMN shall not exercise any rental use of the Learning Center without prior written approval from City.

3.3 On or before May 1st of each year, FTMN will provide the Highland Park National Golf Course Pro-Manager with a master schedule for annual use of the Learning Center.

3.4 City will have first priority for use of the Learning Center after FTMN activities and events. Use by the City will be at no charge.

3.5 Both the hours of operation provided pursuant to Section 3.1 and the master schedule provided pursuant to Section 3.3 shall be subject to reasonable adjustment by FTMN to reflect actual usage and cost-effective staffing.

4. Rent. Rent shall consist of Basic Rent and such Additional Rent as may apply.

4.1 Basic Rent. FTMN shall pay annual Basic Rent of \$5,000.00 by May 1 of each year during this lease.

4.2 City will establish a Capital Investment and Maintenance Fund (CIMF) by depositing payments made to the City pursuant to Section 4.1. The CIMF will provide money for Capital Investment and Maintenance Projects at the Highland National Golf Course that will have a long-term benefit to City and are at least \$500 in total value per project.

Capital projects may include, but are not limited to:

- Mechanical Systems including boilers and plumbing.
- Structural Systems including roofs and building envelopes.
- Architectural - Interior items including flooring and cabinetry.
- Safety and Security items including access controls.
- Site Improvements including asphalt replacement and landscaping.

City and FTMN will cooperate in determining a plan for CIMF spending. City reserves the right to approve or reject all expenditures requests.

4.3 Additional Rent. Additional Rent means all amounts, other than Basic Rent, that FTMN shall be obligated to pay under this paragraph or other provisions of this Lease. Additional Rent shall include:

4.3.1 utility costs for electricity, gas and water (during the months of June-October); and

4.3.2 maintenance costs described in Section 12.2, below; and

4.3.3 repairs as described in Section 12.1, below.

FTMN will not receive credit for any in-kind donations in lieu of Basic Rent or Additional Rent without prior written approval from City.

FTMN shall make all payments of Basic Rent and Additional Rent to City at the following address:

Parks and Recreation - Finance Division
400 City Hall Annex
25 W. Fourth Street
Saint Paul, MN 55102

The City will invoice FTMN monthly for Additional Rent, which shall be payable within 30 days of the receipt of the invoice. In the event that FTMN reasonably disputes the validity of the amount of the invoice, Payment shall be due thirty (30) days from the date the disputed invoice has been resolved. The City shall charge interest of 1.5% per month on any Basic or Additional Rent remaining unpaid beyond the due date as herein provided.

5. FTMN Revenue. FTMN is entitled to retain all revenue generated from its use of the Learning Center, including all lessons and activities.

6. Scope of Use. It is agreed that City will provide use and access to the Highland National Golf Course to FTMN participants in accordance with the minimum access and program use requirements of the First Tee Foundation, all as more particularly described in

Exhibit A attached hereto. Specific times and dates of the use will be mutually determined by the parties on an annual basis, but in any event no later than May 1 of each year that this Lease is in effect.

6.1 City will provide access to the Highland 9 Hole Golf Course as open tee times are available for FTMN program participants. Recurring FTMN access times will be confirmed in writing by May 1 annually.

6.2 City will provide range balls for use by FTMN during approved times.

6.3 FTMN will pay to City any costs associated with City-provided aids or companions for FTMN program participants who require accommodation due to a disability.

7. City Control. At all times during the term of this Lease, FTMN participants are subject to the same rules and regulations related to use of the Learning Center, Highland National Golf Course and Highland 9 Hole Golf Course (collectively, the “Golf Facilities”) as any other member of the public, and failure to comply with such rules and regulations may result in a determination that a participant is no longer eligible to utilize or participate in programs held at the Golf Facilities. Any such determination shall not be considered a breach of FTMN’s right of use and access provided by City pursuant to this Lease.

8. Insurance.

FTMN shall acquire and keep in effect during the term of this Lease the following insurance coverage:

8.1 FTMN shall be responsible for the self-insurance of, or the acquisition of Commercial Property Insurance on, its personal property.

8.2 **COMMERCIAL GENERAL OR PUBLIC LIABILITY INSURANCE** including

blanket contractual liability coverage, personal injury liability coverage and a broad form property damage liability endorsement with a combined single limit of not less than \$1,500,000 per occurrence and \$3,000,000 in the aggregate, shall be purchased by First Tee. Such insurance shall:

- (a) name the City of Saint Paul as additional insured;
- (b) be primary with respect to City's insurance or self-insurance;
- (c) include an all services, products or completed operations endorsement;
- (d) not exclude explosion, collapse and underground property damage; and
- (e) be written on an Occurrence Form policy basis.

8.3 **AUTOMOBILE LIABILITY INSURANCE** with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, covering hired, non-owned and owned automobiles.

8.4 WORKERS' COMPENSATION INSURANCE with not less than statutory minimum limits.

8.5 EMPLOYERS' LIABILITY INSURANCE with minimum bodily injury limits of at least \$100,000 per accident, \$100,000 per employee bodily injury by disease and a maximum of \$500,000 per disease, with an all -states endorsement or FTMN must provide City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC verifying its number of employees and the reason for their exemption).

FTMN shall supply to City current insurance certificates which shall certify whether or not the agent has errors and omissions insurance coverage.

The limits cited under each insurance requirement above establish minimums; and it is the sole responsibility and in the sole discretion of FTMN whether to purchase and maintain additional insurance that it deems necessary with regard to this Lease.

Nothing in this contract shall constitute a waiver by the City of any statutory limits or exceptions on liability.

City waives its right of subrogation for damage to the Learning Center, contents therein, loss of use thereof, and/or loss of income, up to the amount of insurance proceeds collected. FTMN waives its right of subrogation for damage to personal property in the Learning Center, loss of use thereof, loss of income and/or accounts receivable, up to the amount of their respective insurance proceeds collected. The parties shall notify their respective insurance companies, in writing, of the provisions of this paragraph; and, if either cannot waive its subrogation rights, such party shall immediately notify the other party in writing.

9. Notice. All notices herein provided to be given, or that may be given by either party to the other, shall be deemed to have been fully given when served personally on City or FTMN, or when made in writing and deposited in the United States Mail, certified and postage prepaid, and addressed to FTMN at the address stated in the preamble to this Lease and to the City at the Department of Parks and Recreation, 400 Hall Annex, 25 West Fourth Street, Saint Paul, Minnesota 55102. The address to which the notice shall be mailed may be changed by written notice given by either party to the other. Nothing herein shall preclude the giving of such address change notice by personal service.

10. Assignment and Subletting. FTMN shall not assign this Lease or sublet the Learning Center without the written consent of the City, which consent must be obtained prior to the execution of any agreement to sublease the Learning Center. Any sublease of space must be to nonprofit organizations whose purpose is consistent with the mission of the Department of Parks and Recreation. This Lease shall be binding on the City and FTMN, as well as their respective successors and assigns.

11. Right of Entry. At all times during the term of this Lease, the City shall have the right, by itself, its agents and employees, to enter into and upon the Learning Center during reasonable business hours and use best efforts to provide advanced notice, or in the event of an emergency, at any time for any legitimate purpose, with or without notice.

12. Maintenance and Repairs. Except as provided in the following paragraph, City shall be responsible for all repairs, maintenance and upkeep of the Learning Center, including but not limited to the electrical systems, HVAC, plumbing and roof, emergency repairs of any kind, and routine maintenance and repair to keep the Learning Center in good repair, safe and in compliance with applicable fire, health, building and other life-safety codes; and all repairs and maintenance needed to keep the Learning Center in good and tenantable condition.

12.1. Notwithstanding the foregoing, repairs which are beyond ordinary wear and tear and which are caused by FTMN, its agents, employees or invitees, shall be solely the responsibility of FTMN and shall be invoiced as additional rent in the manner provided in Section 4, above.

12.2. FTMN shall be responsible for the daily maintenance and cleaning of the Learning Center, to be performed at a minimum to the standards of the City, including interior vacuuming, sweeping, restroom cleaning, window washing, garbage removal and routine repairs.

12.3 FTMN is responsible for providing all necessary cleaning and maintenance supplies at its own cost.

13. Indemnity. FTMN agrees to defend and indemnify the City of Saint Paul and any agents, officers and employees thereof from all third party claims, demands, actions or causes of action of whatsoever nature or character, arising out of or by reason of this Lease, the use or condition of the Learning Center or as a result of the operations or business activities taking place at the Learning Center, except to the extent any injury or damage is the result of the negligence or willful misconduct of City.

14. Compliance with Laws. The Learning Center may be used for only the purposes stated herein. It is the sole and exclusive responsibility of FTMN in the use of the Learning Center to comply with all laws, rules, regulations or ordinances imposed by any jurisdiction affecting FTMN's use of the Learning Center. Any inability or failure by FTMN to comply with any of said laws, rules, regulations or ordinances shall not relieve FTMN of its obligation to pay the rent described in Section 4.

15. Safety. FTMN shall:

15.1 Maintain an Emergency Action Plan specific to the Learning Center.

15.2 Maintain current Safety Data Sheets (SDS) for the Learning Center, to the extent applicable to FTMN responsibilities, and on forms provided by, and

at the direction of, the City.

- 15.3 Complete electronic participant accident and incident report forms in any instance where accidents or incidents on or near the Learning Center are reported to or witnessed by FTMN representatives. Completed forms must be provided to the City within two (2) working days following an accident or incident on or near the facility, by U.S. mail, fax or a PDF scan attached to an e-mail.
 - 15.4 Inspect fire extinguishers monthly and document the inspections and results.
 - 15.5 Comply with Parks Safety Office Safety and Security Inspection Reports.
 - 15.6 Conduct background checks on FTMN staff and volunteers who work with children enrolled in FTMN programs at the Learning Center.
 - 15.7 Comply with Minn. Stat. §121A.37 regarding concussion training and reporting.
16. Polling. FTMN must ensure that the Learning Center, or a portion thereof, is open and properly staffed when site is designated as a public polling site. Use for this purpose will be free of charge. City staff will be responsible for opening and closing the building.
17. Records. Pursuant to Minn. Stat. 16C.05, subd. 5, the books, records, documents, and accounting procedures and practices of FTMN that are relevant to this Lease are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six (6) years.

Annually, by May 1, FTMN will deliver to the City an annual report of its preceding year's operations. The annual report will include, at minimum, revenues and expenses for all operations related to this Lease and program participation statistics.

18. Non-Discrimination. FTMN shall not discriminate against any participant or customer in the use or access to the Learning Center because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that all participants are treated the same during their participation in programs or use of the Learning Center. FTMN shall likewise ensure that all employment applicants and employees treated in the same manner as described in this Section 19.

19. Termination.

19.1 The parties may mutually agree to terminate this Lease at any time.

19.2 Either party may terminate this Lease for cause by giving written notice stating the breach alleged and providing thirty (30) days to cure.

19.3 If a party is claiming a material breach by the other party, it may elect to terminate this Lease by providing notice of such intent to terminate to the other party, stating the basis for the breach, and the amount of time the party has to cure, which shall be no less than thirty (30) days or such other period as specifically identified in this Section 19 or elsewhere in this Lease. Failure to cure within the stated time will result in termination the day following the final cure date.

19.4 Any of the following listed events will be considered a material breach by FTMN for the purposes of termination:

19.4.1 Failure to maintain non-profit status. In the event that FTMN fails to maintain its status as a non-profit organization or no longer offers recreational programming.

19.4.2 Failure to pay utilities. In the event that FTMN fails to pay utility bills and such failure results in heat, electricity or gas being shut off.

19.4.3 Lapse in insurance. In the event FTMN fails to continuously maintain proper insurance as required by this Lease and the lapse continues for a period of five (5) days after receipt of written notice of such failure.

19.4.4 Breach without cure. FTMN breaches any obligation under this Lease and such breach continues for a period forty-five (45) days or more after receipt of written notice of such breach.

19.4.5 Persistent or repeated breaches. In the event that FTMN has a pattern of persistent and repeated breaches of this Lease, whether or not such breaches have been cured. Breaches do not need to be of the same contract requirement in each case to establish a pattern of persistent and repeated breaches.

19.4.6 Bankruptcy. In the event that FTMN files a voluntary petition in bankruptcy, insolvency or a petition for reorganization, or a receiver is appointed for a substantial portion of FTMN's property, or an order or decree of bankruptcy, insolvency, or reorganization is issued.

19.5 It will be considered a material breach for the purposes of termination if City repeatedly fails to perform its obligations under this Lease, whether or not such breaches have been cured. Breaches do not need to be of the same contract requirement in each case to establish a pattern of persistent and repeated breaches.

At the termination of this Lease, the Learning Center shall be surrendered peacefully and returned to the City in the same condition as when this Lease commenced, ordinary wear and tear notwithstanding.

20. Covenants. FTMN specifically covenants and agrees to:

20.1 Maintain the Learning Center in a safe, clean, and orderly condition.

20.2 Provide qualified instructors and chaperones for all programs and events that have passed an appropriate background check conducted by FTMN.

20.3 Offer at least eighty (80) Saint Paul youth free-of-charge introductory golf programs through City's Recreation Services Division to each year.

21. Amendments. No amendments to this Lease shall be effective without being reduced to writing and executed by both parties.

23. Assignment. This Lease may not be assigned without the written consent of the other party, and any attempt to assign without such approval will render this Lease null and void.

24. Entire Agreement. It is understood and agreed that this Lease supersedes all oral agreements and negotiations between the parties relating to the matters contained herein.

25. Jurisdiction. This Lease shall be construed under the laws of the State of Minnesota and any dispute regarding the interpretation or enforcement shall be venued in the state or federal courts located in Ramsey County.

26. Counterparts. The parties may sign this Lease in counterparts, each of which constitutes an original, but all of which together constitute one instrument.

27. Electronic Signatures. The parties agree that the electronic signatures of a party to this Agreement shall be valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be record established and maintained in the ordinary course of business and an original written when printed from electronic files. For purpose also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature shall not affect the enforceability of this Agreement.

IN WITNESS WHEREOF, the parties here to have set their hands and seals to this Lease and Use Agreement effective as of the day first above written.

CITY OF SAINT PAUL

Twin Cities Junior Golf Program d/b/a

First Tee – Minnesota

Director of Parks and Recreation

By _____
Jim Triggs, CEO

Director of Finance

Approved as to Form:

City Clerk

Assistant City Attorney

EXHIBIT A

First Tee Minimum Access and Program Use Requirements

City will provide use and access to the Highland National Golf Course to FTMN in accordance with the minimum access and program use requirements as described below.

Full access to the First Tee Sanford Family Learning Center throughout the year except for October 15 to November 15.

- I. During classes and camps, full access to that part of the driving range located in front of First Tee Sanford Family Learning Center
- II. During classes and camps, full access to the practice putting green located near the Sanford Family Learning Center
- III. Access to the Highland 9-Hole Golf Course for league play. FTMN will work with Highland's general manager to schedule access for the following days:
 - a. Monday, Wednesday, and Friday mornings
 - b. Sunday afternoons