

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of the Interior (“Interior”) (collectively, “the United States”), the County of Clark, Nevada (the “County”), and Nevada Links, Inc. (“Nevada Links”). As used below, “Defendant” refers to the County or Nevada Links individually, and, together both are referred to as the “Defendants”; “Parties” refers collectively to the United States, the County, and Nevada Links; “Party” refers to any one of the Parties.

RECITALS

A. In 1999, the United States, through Interior’s Bureau of Land Management (“BLM”), conveyed various lands to the County pursuant to section 4(g) of the Southern Nevada Public Land Management Act of 1998 (the “Act”). By a deed dated March 30, 1999 (the “Deed”), the United States conveyed land to the County that included approximately 91 acres of land the County subsequently leased to Nevada Links. In 2004, the County and BLM (but not Nevada Links) signed a Memorandum of Agreement (the “MOA”) regarding certain aspects of conveyances of land under the Act.

B. On July 20, 1999, the Defendants entered a lease (the “Lease”) for approximately 154 acres of land (the “Property”) for the development of a golf course in Las Vegas. The Property includes approximately 91 acres of land that the United States had transferred under the Deed. The Lease was amended four times. On September 6, 2011, the County and Nevada Links executed a fourth amendment to the Lease (the “Fourth Amendment”), which was formally terminated on September 1, 2022.

C. On September 1, 2017, the United States filed suit against the County and Nevada Links in the United States District Court for the District of Nevada, captioned *United States of America v. County of Clark and Nevada Links, Inc.*, Case No. 2:17-cv-02303 (the “Litigation”). The United States alleges that Fourth Amendment’s rent provisions violated the Act, the Deed, and the MOA. In the Litigation, the United States asserts claims against the County for breaches of the Deed covenant, the MOA, and fiduciary duty, asserts that Nevada Links is jointly and severally liable for the County’s alleged breach of fiduciary duty, and seeks a declaratory

judgment. The claims asserted in the Litigation by the United States are collectively referred to herein as the “Claims.” Defendants have each denied all liability for each and all of the Claims.

D. Without admitting liability on the part of either Defendant, and without any concession by the United States that the Claims are not well founded, this Agreement seeks to amicably compromise and resolve the Claims and potential claims that could have been brought in the Litigation.

E. To avoid the delay, uncertainty, and expense of litigation over the Claims, and in consideration of the mutual promises and obligations in this Agreement, the Parties agree and covenant, for valuable consideration, as follows:

TERMS AND CONDITIONS

1. As full satisfaction of the Claims, each Defendant agrees to pay the United States as follows:

- a. The County agrees to pay the United States the sum of \$10,000,000.00; and
- b. Nevada Links agrees to pay the United States the sum of \$1,500,000.00.

The total of these two sums (\$11,500,000.00) is referred to herein as the “Settlement Amount.”

2. Each Defendant’s share of the Settlement Amount shall be paid by or on behalf of the Defendant by electronic funds transfer to the United States Department of Justice according to written instructions to be provided by undersigned counsel for the United States to counsel for Defendants at or before the execution of this Agreement. Each Defendant shall pay its share of the Settlement Amount no later than the seventh day following the date on which all Parties have executed this Agreement.

3. In consideration of the obligations under this Agreement and conditioned upon each Defendant’s full and timely payment of its share of the Settlement Amount as described above and subject to the limitations stated in Paragraph 4 of this Agreement, the United States agrees to release Defendants from the Claims, and from any and all other potential claims (whether known or unknown) arising from, related to, or in any way connected to the Fourth Amendment or the Lease which are based on acts or omissions that occurred or are alleged to have occurred or begun prior to the execution of this Agreement (collectively, the “Release”). This Release shall become effective seven days after Defendants have remitted full payment of the Settlement Amount to the United States in accord with this Agreement and all instructions provided for payment hereunder (the “Release Date”), but if either Defendant breaches any

obligation or representation made under this Agreement or otherwise fails to comply with any term of this Agreement, this Release shall be void and ineffective as to the breaching Defendant only. The Parties agree to sign a stipulation of dismissal with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii) dismissing the Litigation in its entirety, which the United States shall file within seven days after the Release Date.

4. The Parties expressly acknowledge and agree that nothing in this Agreement operates as a release of or has the effect of releasing or compromising any claims that are or could be asserted by the United States or any agency or component thereof other than those covered under the Release. For the avoidance of doubt, the following claims are not released:

- a. any claims arising under criminal law;
- b. any civil, criminal or administrative claims, rights, or defenses arising under Title 26 of the United States Code (the Internal Revenue Code);
- c. any claims, rights, or defenses arising under subchapter III of chapter 37 of Title 31 of the United States Code (False Claims Act), 31 U.S.C. §§ 3801-12 (Administrative Remedies for False Claims and Statements), 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Statute), or any common law cause of action for fraud;
- d. any claim for violation of antitrust law; or
- e. any additional penalties or damages recoverable in a civil action that the United States or its agencies or components, including the BLM, may seek based on any Defendant's acts or omissions that occur after the execution of this Agreement.

5. For the avoidance of doubt, except for claims explicitly released under this Agreement, the Act, the Deed, and the MOA shall continue to remain in full force and effect.

6. Neither Defendant's obligations under this Agreement may be avoided according to 11 U.S.C. § 547, and neither Defendant shall argue or otherwise take the position in any such case, proceeding, or action that: (i) its obligations under this Agreement may be avoided under 11 U.S.C. § 547; or (ii) it became insolvent as a result of the payment made to the United States under this Agreement.

7. Except when Defendants have fully and timely paid the Settlement Amount required under this Agreement, it is hereby agreed that if either Defendant's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a

trustee's avoidance powers under the Bankruptcy Code) or if, before the Release Date, either Defendant or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of the that Defendant's debts, or to adjudicate that Defendant as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for that Defendant or for all or any substantial part of that Defendant's assets:

- a. the United States may rescind the Release in this Agreement and bring any civil or administrative claim, action, or proceeding against the Defendant that failed to meet its obligation under this Agreement for the Claims, plus interest, and may maintain any such claim, action, or proceeding already pending; and
- b. the United States has an undisputed, noncontingent, and liquidated allowed claim against such Defendant for the amount of the Claims, plus interest, less any payments received pursuant to this Agreement, provided, however, that if such payments are otherwise avoided and recovered from the United States by the Defendant, a receiver, trustee, custodian, or other similar official for the Defendant, the Claims are not reduced by the amount avoided and recovered.

8. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties to the Agreement and their estates, heirs, legal representatives, successors, and assigns.

9. Each Party shall bear its own legal and other costs incurred in connection with the Litigation, including the preparation and performance of this Agreement.

10. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

11. Each signatory to this Agreement represents that it is legally authorized and empowered to execute this Agreement on their own behalf and on behalf of any person or entity for which they sign the Agreement. For each signatory representing a government entity, each represents that it has obtained all requisite approvals to execute this Agreement on behalf of that entity under applicable law.

12. This Agreement is governed by the federal law of the United States. The Parties agree not to challenge personal jurisdiction or venue in the United States District Court for the District of Nevada for any action arising out of or relating to this Agreement.

13. For the purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any signatory for that reason in any subsequent dispute.

14. This Agreement constitutes the complete agreement among the Parties as to the subject matter of this Agreement. This Agreement may not be amended except by written consent of all Parties. No act or inaction by or on behalf of the United States shall constitute a waiver of any obligation of the Defendants unless expressly stated in a writing signed by counsel for the United States.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

16. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable binding signatures for purposes of this Agreement. Signatures of any Party transmitted by facsimile or electronic mail (including, without limitation, electronic mailing of a scanned counterpart in portable document format) shall be treated as and deemed to be original signatures for all purposes, and will have the same binding effect as if they were original, signed instruments delivered in person.

17. Survival. The rights and obligations of the Parties under the provisions of this Agreement that expressly survive or, by their context, intent, and meaning, would reasonably be expected to survive the termination or expiration of this Agreement, or any part thereof, shall so survive.

For THE UNITED STATES OF AMERICA:

DATED: _____ BY _____
John R. Kresse

COUNTY OF CLARK:

DATED: _____ Signature _____

NEVADA LINKS, INC.:

DATED: _____ Signature _____