

January 20, 2017

The Honorable Denise Turner Roth
Administrator
General Services Administration
1800 F Street, N.W.
Washington, DC 20405

Re: Breach and Default of Ground Lease with Trump Old Post Office LLC

Dear Administrator Roth:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests the General Services Administration (“GSA”) immediately initiate the process for establishing that Trump Old Post Office LLC is in breach of its ground lease for the Old Post Office Building. Elected government officials are barred from receiving any benefit under the lease, and now that Mr. Trump has been sworn in today as President of the United States, Trump Old Post Office LLC, a company he largely owns, is in violation of the lease’s conflict-of-interest provision. If President Trump’s company does not resolve this breach, GSA should exercise its rights to terminate the lease or take other legal action.

On August 5, 2013, Trump Old Post Office LLC entered into a ground lease with the United States for the Old Post Office Building.¹ More than 76% of Trump Old Post Office LLC is owned by DJT Holdings LLC, which in turn is owned almost entirely by The Donald J. Trump Revocable Trust.²

Section 37.19 of the ground lease provides that “[no] elected official of the Government of the United States . . . shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom.”³

The purpose of this conflict-of-interest provision is the same as the purpose of the Federal Acquisition Regulation’s prohibition on awarding a federal contract to a government employee or a business owned or controlled by a government employee: “to avoid any conflict of interest that might arise between the employees’ interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.”⁴ As Deputy Commissioner Michael Gelber explained to members of Congress during a briefing

¹ General Services Administration, Ground Lease, By and Between the United States of America (as “Landlord”) and Trump Old Post Office LLC (as “Tenant”), Lease No. GS-LS-11-1307 (“Ground Lease”), dated Aug. 5, 2013, available at [https://www.gsa.gov/portal/mediaId/233119/fileName/Part_One_of_Segment_001_of_OPO_Ground_Lease_\(2013\)_RA.action](https://www.gsa.gov/portal/mediaId/233119/fileName/Part_One_of_Segment_001_of_OPO_Ground_Lease_(2013)_RA.action).

² Donald J. Trump, Executive Branch Personnel Public Financial Disclosure Report, filed May 16, 2016, available at [\[link\]](#).

³ Ground Lease, § 37.19.

⁴ Federal Acquisition Regulation, 48 C.F.R. § 3.601.

in December, this standard clause “is included in many GSA leases to create a ‘level playing field’ and protect the interests of the American people.”⁵

Mr. Trump was sworn in as President of the United States today. Once that happened, he became an “elected official of the Government of the United States.” As a result, he and companies he owns can no longer “be admitted to any share or part” of the lease or “to any benefit that may arise” from it.

On December 14, 2016, GSA asserted that it could make no definitive statement at that time about what would constitute a breach of the lease, and that no determination could be completed “until the full circumstances surrounding the President-elect’s business arrangements have been finalized and he has assumed office.”⁶ On January 11, 2017, President Trump held a press conference at which he and his attorney announced his plan to address his business conflicts of interest during his presidency. That plan, however, did not address the ground lease, and President Trump did not announce any plans to change his ownership of Trump Old Post Office LLC.⁷ GSA does not appear to have been aware of these plans before they were announced,⁸ and asserted after the press conference that it was “seeking additional information that explains and describes any new organizational structure” with regard to the Old Post Office lease, and that when it received the information, it would review the information “and determine its compliance with all the terms and conditions of the lease.”⁹

Unless GSA has received new information demonstrating President Trump no longer owns Trump Old Post Office LLC, and there is no evidence it has, it is now time for GSA to initiate the process for establishing that President Trump’s company has breached the lease and is in default. Section 27.1 of the ground lease outlines occurrences that constitute a “tenant’s default.”¹⁰ A “non-monetary breach” includes “any breach by the Tenant of any other terms, obligations, conditions, agreements or covenants under this Lease,” if that breach continues for 30 days after the tenant is given notice of it.¹¹ A violation of section 37.19 therefore constitutes a non-monetary breach and a default unless it is remedied within 30 days after notice from GSA.¹²

⁵ Letter to the Honorable Denise Turner Roth, Dec. 14, 2016, at 2, *available at* <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-12-14.EEC%20DeFazio%20Connolly%20Carson%20to%20Roth%20re%20Trump%20Hotel%20Conflicts%20....pdf>.

⁶ Press Release, *GSA Releases Statement on Old Post Office Lease*, Dec. 14, 2016, *available at* <https://www.gsa.gov/portal/content/153578>.

⁷ Paul Blumenthal, *Donald Trump Won’t Divest From His Business Interests, Opening Door to Years of Ethics Conflicts*, *Huffington Post*, Jan. 11, 2017, *available at* http://www.huffingtonpost.com/entry/donald-trump-conflict-of-interest_us_587660f3e4b05b7a465cdf13?qrow0i1nuqafhto6r.

⁸ Paul Blumenthal, *Trump Is Set to Violate His D.C. Hotel Lease and the Agency Holding It Has No Plan*, *Huffington Post*, Jan. 14, 2017, *available at* http://www.huffingtonpost.com/entry/trump-washington-dc-hotel-gsa_us_587947bfe4b0e58057fed977.

⁹ Press Release, *GSA Releases Statement on Old Post Office Lease*, Jan. 11, 2017, *available at* <https://www.gsa.gov/portal/content/154314>.

¹⁰ Ground Lease, § 27.1.

¹¹ Ground Lease, § 27.1(b)(ii).

¹² Letter to the Honorable Denise Turner Roth, Dec. 14, 2016, at 2 (recounting assertion of Deputy Commissioner Gelber that if President Trump does not divest himself of his financial interest in the lease, the contracting official

Hon. Denise Turner Roth
January 20, 2017
Page 3

CREW requests that GSA initiate this process by immediately notifying Old Post Office LLC that it is in breach of the ground lease. Furthermore, if Old Post Office LLC does not cure the breach within the time permitted by the lease, CREW urges GSA to invoke the remedies provided for a default. In the event of a default, GSA may terminate the lease and recover possession of the property.¹³ In addition, when the breach is non-monetary, as it is here, GSA has the right to bring an action “for interim and permanent prohibitory or mandatory injunctive relief to restrain Tenant from committing or continuing a Non-Monetary Breach.”¹⁴

The potential conflicts of interest with regard to President Trump’s company’s lease of the Old Post Office Building are serious and real.¹⁵ President Trump now both owns the lessee, Old Post Office LLC, and controls the lessor, GSA, whose administrator is appointed by and serves at the pleasure of the president.¹⁶ If a dispute arises under the lease, or when terms of the lease are renegotiated every year, the exact problems the ground lease’s conflict-of-interest provision is intended to avoid will come to pass. As a result, GSA should now initiate the process of finding President Trump’s company in breach of the lease and exercise its right to terminate it or take other legal action.

Thank you for your prompt attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

handling the agreement at GSA would usually send a letter giving the lessee 30 days to review the matter and respond to GSA; further, if the breach is not satisfactorily resolved, GSA would then normally bring the matter before the U.S. Civilian Board of Contract Appeals).

¹³ Ground Lease, § 27.1(d)(i).

¹⁴ Ground Lease, § 27.1(f).

¹⁵ See, e.g., Steven L. Schooner and Daniel I. Gordon, GSA’s Trump Hotel Lease Debacle, *Government Executive*, Nov. 28, 2016, available at <http://www.govexec.com/excellence/promising-practices/2016/11/gsas-trump-hotel-lease-debacle/133424/>.

¹⁶ *Id.*