

## **GROUND LEASE AND MEMORANDUM OF AGREEMENT**

This **GROUND LEASE AND MEMORANDUM OF AGREEMENT** (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, 527 W. Jefferson Street, Louisville, Kentucky 40202 (“Metro”) and **COTTON SPORTS, LLC**, a Kentucky limited liability company, 8001 Wooded Ridge Drive, Louisville, Kentucky 40214 (“Cotton Sports,” and collectively with Metro, the “Parties”).

**WHEREAS**, Cotton Sports needs space in which to operate a multisport facility to be used by local, not affiliated, sports teams;

**WHEREAS**, Cotton Sports at its own expense and at no cost to Metro, intends to provide Metro with design work, engineering work and other construction, technical and professional services to improve a Metro owned asset, namely an undeveloped portion of Metro property adjoining Bobby Nichols Golf Course; and

**WHEREAS**, Metro has and will benefit by the provision of these services and believes that an arrangement providing the undeveloped portion of Metro property adjoining Bobby Nichols Golf Course to Cotton Sports for the purpose of allowing Cotton Sports to operate a multisport facility for \$1 per year is adequate consideration for said improvements;

**NOW THEREFORE**, in consideration of foregoing premises, which are hereby incorporated within this Agreement, and for the mutual covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties hereto hereby agree as follows:

### **1. DEMISED PREMISES.**

Metro does hereby lease to Cotton Sports and Cotton Sports does hereby lease from Metro, a portion of the demised premises located on 4301 East Pages Lane, Louisville, Kentucky at Bobby Nichols Golf Course, which consists of the currently undeveloped area designated in Exhibit A (the “Premises”) attached to this Agreement and incorporated herein by reference.

Cotton Sports shall provide design and construction services to create the multisport facility and related parking at the Premises (collectively, the “Multisport Facility”).

Cotton Sports shall provide drawings and illustrations to Metro and its designee for processing of necessary reviews by Metro agencies. All parties will strive to expedite all approvals, decisions and design activities. Construction of the improvements contemplated by this section shall not commence until Cotton Sports has received written approval from Metro to proceed.

### **2. TERM.**

The initial term of this Agreement shall begin on \_\_\_\_\_, 2021 and shall continue thereafter until \_\_\_\_\_, 2031 (the “Initial Term”).

Cotton Sports shall have two (2) options to renew this Agreement, each for an additional ten (10) year period, subject to the approval of Metro, such approval not to be unreasonably withheld (“Option Term”) upon the same terms and conditions set forth herein. Cotton Sports shall exercise this option to renew by delivering written notice of said exercise to Metro no later than two (2) months prior to the end of the Initial Term or the subsequent Option Term, if applicable. Metro shall provide a written response to the notice within fifteen (15) days of receipt of said notice. The Initial Term and any Option Term shall be collectively referred to as the “Term.”

### **3. RENT AND FEE WAIVER.**

In consideration of the improvements made by Cotton Sports to the Premises, Cotton Sports shall pay \$1.00 annually in rent to Metro.

Cotton Sports agrees that Metro shall not be responsible in any manner for any and all fees and professional services to improve the Premises.

### **4. UTILITIES AND SERVICES.**

Metro shall provide existing water and power to the Premises. Metro is not responsible for providing any new or additional utility infrastructure to the Premises.

### **5. USE OF PREMISES.**

The Premises shall only be used for the purposes of operating the Multisport Facility for use by local, not affiliated, sports teams. The utilization of the courts/fields that are part of the Multisport Facility shall be managed in a manner so as to give the local, not affiliated, sports teams equitable utilization of said courts/fields from a scheduling and operational standpoint. Cotton Sports may charge the local, not affiliated, sports teams a fee for said usage. The Multisport Facility may include onsite concessions that will sell food, beverages, and alcoholic beverages (subject to receiving and maintaining required licensing for such alcoholic beverage sales and food sales). The Director of Metro Parks shall have the right to review and approve the fee schedule and scheduling protocols on an annual basis, with such approval not to be unreasonably withheld. Any disputes regarding the fee schedule or scheduling protocols of the courts/fields shall be resolved by the Director of Metro Parks, with such decision to be governed by developing an equitable solution for all parties involved in the dispute. Approval by Metro will not unreasonably withheld. Any utilization of the Premises other than for the uses described above must be pre-approved in writing by the Director of Metro Parks or his or her designee.

Cotton Sports shall be responsible for securing the Premises to reduce unauthorized use of the Multisport Facility. Combinations or keys will be provided to Metro.

Cotton Sports shall be responsible for all normal and routine maintenance of the Premises, including but not limited to grass cutting and trimming of the outdoor facilities. Maintenance of the remaining portion of 4301 East Pages Lane that is outside the boundaries of the Premises shall remain the responsibility of Metro.

## **6. ALTERATIONS.**

During the Term of this Agreement, Cotton Sports may, at its own expense, alter and/or make additions and improvements to the Premises upon the prior written consent of Metro.

At the end of the Term, or whenever the Lease is no longer in effect, whichever comes first, all alterations, additions, and improvements that cannot be removed without substantially damaging the Premises (the "Fixtures") shall become owned in fee by Metro. For purposes of this Agreement, the term "Fixtures" shall include buildings, parking lot, playing surfaces of all of the pitches/fields (both artificial and regular grass), perimeter fencing and potential sidewalk improvements. All work by the Parties shall be in accordance with all applicable laws, regulations, etc, for this type of occupancy.

## **7. METRO'S DUTIES IF PREMISES ARE DAMAGED.**

In the event that the Premises are damaged by casualty so that the Premises are not habitable in whole or in part, Metro shall promptly restore the Premises and all improvements at Metro's cost within 90 days of the casualty. In the event that such casualty occurs within 90 days of the end of any term hereunder, and the Parties have not agreed for renewal of the Agreement, then Metro shall be under no responsibility to restore the Premises and all improvements. If Metro fails to restore as set out above, Metro may terminate this Agreement. In the event that damage to the Premises cannot be reasonably restored within 90 days of the casualty, Metro shall not be in default if it promptly begins restoration and diligently pursues completion of restoration, even though such restoration takes longer than 90 days from the date of casualty.

Cotton Sports shall give immediate written notice to Metro of any damage to, or destruction of, the Premises.

## **8. INSURANCE REQUIREMENTS FOR COTTON SPORTS.**

It is acknowledged and agreed by Cotton Sports that the risk of loss for all contents and personal property belonging to Cotton Sports at the Premises shall be the responsibility of Cotton Sports.

Prior to Cotton Sports entering the Premises for purposes of commencing the initial term of this Agreement or prior to entering into any option term, Cotton Sports shall obtain at its own cost and expense the insurance more particularly described in Exhibit B to this Agreement.

## **9. INDEMNIFICATION.**

Cotton Sports shall indemnify, hold harmless and defend Metro, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including reasonable attorneys' fees, arising out of or resulting directly or indirectly, from Cotton Sports' (or Cotton Sports' contractors, if any) negligent or intentionally wrongful act provided that such claim, damage, loss, or expense is (a) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting

therefrom, and (b) not caused by the negligent act of Metro, its elected and/or appointed officials, and employees acting within the scope of their employment. This hold harmless and indemnification clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

To the extent permitted by law, Metro shall indemnify, hold harmless and defend Cotton Sports, its members, employees, agents and successors in interest from all claims, damages, losses and expenses including reasonable attorneys' fees, arising out of or resulting directly or indirectly, from Metro's (or Metro's contractors, if any) negligent or intentionally wrongful act provided that such claim, damage, loss, or expense is (a) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, and (b) not caused by the negligent act of Cotton Sports, its members, employees, contractors (if any), or agents, acting within the scope of their employment. This hold harmless and indemnification clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

#### **10. MAINTENANCE.**

Cotton Sports is fully acquainted with the condition of the Premises and accepts the Premises "as is." Metro shall not be required to make any repairs or alterations to the Premises prior to commencement of this Agreement.

Cotton Sports shall keep the Premises in good condition subject to wear and tear incident to the utilization described in Section 5, above. Cotton Sports shall return the Premises to Metro at termination of this Agreement in as good condition as at the commencement of the Agreement, subject to the utilization previously mentioned.

#### **11. ENVIRONMENTAL HAZARDS.**

Cotton Sports shall be responsible for the abatement of any environmental hazards in or about the Premises, including but not limited to asbestos, lead, and radon, but only to the extent such environmental hazards are brought to the Premises or generated by Cotton Sports, its agents, employees, invitees or guests. Cotton Sports shall be responsible for ensuring that its employees are properly trained and informed about any environmental hazards that may be on the Premises and aware of appropriate procedures for dealing with such hazards. Cotton Sports shall be responsible for and accountable for any and all reporting, notifications, and correspondence for any environmental hazards to appropriate regulatory agencies.

Metro shall be responsible for the abatement of any environmental hazards on or about the Premises existing as of the date of this Agreement, and not brought to the Premises or generated by Cotton Sports, its agents, employees, guests or invitees.

#### **12. SIGNS.**

Cotton Sports shall not paint, place or erect any permanent sign on any part of the Premises without first obtaining appropriate permits and Metro's written permission, which permission shall

not be unreasonably withheld. Temporary/event signage may be placed on premises as needed subject to all applicable regulations.

**13. NON-ASSIGNMENT.**

Cotton Sports shall not assign this Agreement or any portion thereof, or sublet the Premises or any part thereof or permit any other person, firm or corporation to occupy the Premises or any part thereof without Metro's prior written consent.

**14. HOLD OVER TENANCY.**

If, without the execution of a new Agreement or written extension, Cotton Sports shall hold over after the expiration of the Initial Term or any Option Term, Cotton Sports shall be deemed to be occupying the Premises as a tenant from month to month, which tenancy may be terminated, as provided by law. During such tenancy, Cotton Sports agrees to be bound by all terms, covenants and conditions as herein specified.

**15. NOTICES.**

All notices provided for in this Agreement shall be sent to the following addresses:

Metro:  
Louisville/Jefferson County Metro Government  
Metro Parks,  
c/o Dana Kasner  
P.O. Box 37280  
Louisville, Kentucky 40233-7280

Cotton Sports:  
Cotton Sports, LLC  
c/o 8001 Wooded Ridge Drive  
Louisville, Kentucky 40214

**16. DEFAULT.**

In the event that either party fails to comply with any other term of this Agreement, written notice by certified mail shall be given to the defaulting party that it has 30 days (or in the case of an emergency, a reasonable time period less than 30 days) in which to cure the default or the Agreement shall terminate. If the default cannot reasonably be cured within 30 days, the Agreement shall not terminate if the defaulting party begins action within 30 days to cure the default and diligently pursues it to completion.

**17. INSPECTION.**

Metro shall have the right to inspect the Premises at any time. Metro shall make all reasonable efforts to provide advance notice of any such inspection.

**18. BINDING EFFECT.**

This Agreement shall be binding on the Parties, their personal representatives, successors and assigns.

**19. ENTIRE AGREEMENT.**

This Agreement contains all of the terms of the Agreement between the Parties and there are no other written or verbal agreements, representations or warranties that are not a part of this Agreement. All prior negotiations between the Parties are merged herein. Modifications to this Agreement must be in writing and signed by all Parties to this Agreement.

**20. GOVERNING LAW.**

This Agreement shall be governed by the law of the Commonwealth of Kentucky. The Parties agree that venue for all disputes shall be in the courts of Jefferson County, Kentucky.

**21. SEVERABILITY.**

If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

**IN TESTIMONY WHEREOF, WITNESS** the signature of the Parties hereto the day and year first above written.

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COTTON SPORTS, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

By: \_\_\_\_\_

DRAFT

**EXHIBIT A**  
**PREMISES**

DRAFT



## EXHIBIT B

### INSURANCE PROVISIONS

Prior to Cotton Sports commencing this Agreement, Cotton Sports shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth of Kentucky. All insurance required under this Agreement must be obtained and copies of policies or certificates thereof shall be submitted to and approved by Metro (who may request review by Metro's Risk Management Division) prior to this Agreement taking effect.

Without limiting Cotton Sports' indemnification requirements, it is agreed that Cotton Sports shall maintain in force at all times during this Agreement the following policy or policies of insurance covering its operations.

The following clause shall be added to Cotton Sports' Commercial General Liability Policy:

Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the Agreement.

The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the Agreement:

1. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage including:
  - a. Premises - Operations Coverage
  - b. Products and Completed Operations
  - c. Contractual Liability
  - d. Broad Form Property Damage
  - e. Independent Contractors Protective Liability
  - f. Personal Injury
2. WORKERS' COMPENSATION (if applicable) insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and EMPLOYERS' LIABILITY - \$100,000 Each Accident/\$500,000 Disease – Policy Limits/\$100,000 Disease – Each Employee
3. LIQUOR LEGAL LIABILITY (if applicable) - minimum coverage Liability Limit \$1,000,000 for any one Occurrence. This coverage is required if Cotton Sports is engaged in selling and/or dispensing alcoholic beverages. This coverage may be written as an Endorsement on the above mentioned Commercial General Liability Policy or as a separate policy. If Cotton Sports sub-contracts this service to a vendor, only vendor shall be required to purchase this coverage.

4. Cotton Sports shall, during all times of this Agreement, maintain in full force and effect fire and extended coverage insurance any buildings or improvements containing the Premises.

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to Cotton Sports is submitted to and approved by Metro's Risk Management Division.

Cotton Sports shall procure and maintain insurance policies as described herein and for which Metro shall be furnished Certificates of Insurance upon the execution of the Agreement. The Certificates shall include provisions stating that the policies may not be cancelled or non-renewed, without Metro having been provided at least 30 days written notice. The Certificates shall identify the Agreement to which they apply and shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Agreement, renewal Certificates of Insurance shall be furnished to Metro at least 30 days before the expiration date.

Certificates of Insurance as required above shall be furnished to:

Louisville/Jefferson County Metro Government  
Finance Department, Risk Management Division  
611 West Jefferson Street  
Louisville, KY 40202

Cotton Sports shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions of Cotton Sports' insurance coverage) in coverage as required above, Cotton Sports shall notify Metro's Risk Management Division within two (2) business days. If Cotton Sports fails to notify Metro as required by this Agreement, Cotton Sports agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by Metro, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.

Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Cotton Sports hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Cotton Sports.