

## **AMENDED AND RESTATED LEASE AND MEMORANDUM OF AGREEMENT**

This **AMENDED AND RESTATED LEASE AND MEMORANDUM OF AGREEMENT** (“Agreement”) is made this \_\_\_\_ day of March, 2020, between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, 527 W. Jefferson Street, Louisville, Kentucky 40202 (“Metro”) and **LOUISVILLE CITY FC, LLC**, 110 W. Main Street, 2<sup>nd</sup> Floor, Louisville, Kentucky 40202 (“LCFC,” and collectively with Metro, the “Parties”).

**WHEREAS**, the Parties previously entered into that certain Lease Agreement and Amendment to Memorandum of Agreement dated September 5, 2014 (the “Original Agreement”) for the construction of professional-level training facilities at Thurman-Hutchins Park and to support bringing professional soccer to the Louisville area;

**WHEREAS**, subsequent to the Original Agreement, LCFC has begun construction on a soccer specific stadium, which is expected to be completed in time for the 2020 season;

**WHEREAS**, LCFC has reached agreement to acquire a women’s professional soccer team, who is expected to begin play in Louisville in 2021, but will need professional-level training facilities, which will attract high quality players, international teams, and other visitors to the area related to professional soccer training and other soccer events;

**WHEREAS**, LCFC 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 Soccer Fields located at Louisville Champions Park. Said improvements are estimated to cost at least \$6 million dollars; and

**WHEREAS**, Metro has and will benefit by the provision of these services and believes that an arrangement providing the improved portions of Thurman-Hutchins Park and Louisville Champions Park to LCFC for the purpose of allowing LCFC to practice for \$1 per year is adequate consideration for said improvements;

**WHEREAS**, LCFC has indicated to Metro that this Lease along with the Improvements mentioned thereon is a part of an overall strategy to enhance soccer facilities throughout Louisville Metro and that this Lease represents Phase I of the implementation of that strategy. Phase II contemplates LCFC investing additional funds, partnering with other soccer related organizations and facilitating projects in other areas of Louisville Metro with the goal of improving the quality of soccer pitches and facilities throughout the region; and

**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 LCFC and LCFC does hereby lease from Metro, the demised premises located on River Road, Louisville, Kentucky at Thurman Hutchens Park and Louisville Champions Park, which consist of the areas designated in Exhibit A (the “Premises”) attached to this Agreement and incorporated herein by reference.

LCFC shall provide design and construction services to create and maintain the LCFC practice fields at Louisville Champions Park. The practice fields shall consist of the creation of soccer pitches as contemplated on Exhibit B. The grounds shall have a surveillance system, fencing, underground drainage, irrigation, and other items commensurate with a facility of this nature. It is anticipated that the improvements shall include a structure for locker rooms and other amenities for the professional teams. No Metro funds shall be utilized for any portion of the improvements to the demised premises.

LCFC shall provide drawings and illustrations to Metro and its designee for processing of necessary reviews by Metro agencies. All parties understand the immediacy of this project due to the need for training grounds in the Fall of 2020, to prepare for the inaugural season of the women’s team in March, 2021. All parties will strive to expedite all approvals, decisions and design activities. Construction of the improvements contemplated by this section shall not commence until LCFC has received written approval from Metro to proceed.

LCFC shall lease approximately 7 acres owned by Metro on Lower River Road or its environs when it commences Phase III of its city-wide soccer/youth sports development activities under the same terms and conditions contained in this Agreement.

## **2. ORIGINAL AGREEMENT.**

With the execution of this Agreement, the Parties agree that the provisions in the Original Agreement are now void and replaced with the provisions of this Agreement.

## **3. TERM.**

The initial term of this Agreement shall begin on April 1, 2020 and shall continue thereafter until February 28, 2030 (the “Initial Term”).

LCFC shall have two (2) options to renew this Agreement, each for an additional twenty (20) year period. Said options are conditioned upon the utilization of the premises being the same as set forth in Section 6 of this Agreement. All terms, covenants and provisions of this Agreement shall apply to the Option Term. The Initial Term and any Option Term shall be collectively referred to as the “Term.”

## **4. RENT AND FEE WAIVER.**

In consideration of the improvements made by LCFC to the Premises, LCFC shall pay \$1.00 annually in rent to Metro. At the end of the term of the Lease or when the Lease is no

longer in effect, whichever comes first, Metro shall own, in fee, all of the improvements that are “fixtures” that were constructed by LCFC. For the purposes of this agreement, the term “Fixture” includes all of the playing surfaces of all of the pitches/fields, both artificial and regular grass.

LCFC agrees that Metro shall not be responsible in any manner for any and all fees, professional services, or construction costs to improve the Premises. LCFC further agrees that no liens or encumbrances will be placed upon the Louisville Metro and/or the Demised Premises by any contractor that performs work on the Demised Premises for LCFC.

It is agreed by all parties that any and all fees and professional services were donated to Metro for purposes of providing practice fields for LCFC. To that end, LCFC shall indemnify Metro for any and all fees and costs associated with the improvement of the soccer pitches on the Premises incurred by any entity that has provided or will provide equipment, fees, goods and services for the purposes of improving the soccer pitches and surrounding areas at the Premises.

## **5. 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.

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

Pitches constructed by LCFC, and as designated as “Pro Fields” on Exhibit B, and their adjacent premises shall only be used for the purposes of professional soccer training, professional soccer related activities, and professional training grounds by members of (i) the USL team affiliated with LCFC and (ii) the National Women’s Soccer League team affiliated with LCFC.

LCFC shall construct pitches in addition to the “Pro Fields” designated in Exhibit B. Those pitches are designated and marked as “Youth Fields” on Exhibit “B”. The youth fields shall be managed by LCFC but shall be open for use by LCFC academy teams and other local, youth sports teams. The utilization of the youth fields shall be managed in a manner so as to give the local, youth sports teams, not affiliated with LCFC, equitable utilization of said fields from a scheduling and operational standpoint. LCFC may charge the local, non-affiliated youth sports teams a fee for said usage. The fee schedule and scheduling protocols for the youth fields shall be approved annually by the Director of Metro Parks. Any disputes regarding the fee schedule or the scheduling protocols of the youth fields shall be resolved by the Director of Metro Parks. Any decision by the Director regarding a dispute shall be governed by fairness to all parties involved.

LCFC shall be responsible for securing the Premises to reduce unauthorized use of the pitches. Combinations or keys will be provided to Metro.

Security/surveillance cameras installed by LCFC will be operational and access to these cameras will be made available to Metro for monitoring as desired. LCFC will also monitor these cameras for security reasons.

LCFC shall be responsible for all maintenance of the area inside the fencing boundaries, including but not limited to the grass cutting and trimming of the pitches. Maintenance of the area outside the fence shall remain the responsibility of Metro.

The Parties agree that LCFC, after prior approval by Metro, shall conduct events open to the community at the Premises at dates and times to be agreed upon by the Parties. LCFC shall also work with Metro Parks to provide experiences to local youth to interact and meet with team members from the NWSL team and the LCFC team at times convenient to both Metro Parks and the two professional teams.

## **7. ALTERATIONS.**

During the Term of this Agreement, LCFC may, at its own expense, alter and/or make additions and improvements to the Premises and boundaries upon the prior written consent of Metro. LCFC agrees that perimeter fencing and potential sidewalk improvements shall be part of the Improvements to be provided by LCFC. LCFC also agrees to coordinate any fencing and sidewalk improvements with current or planned projects for that area that are being planned by Metro Parks and/or the Metro Council.

All alterations, additions, and improvements that are fixtures, (i.e. they cannot be removed without substantially altering the Premises) shall be surrendered to Metro and owned in fee by Metro. All work by the Parties shall be in accordance with all applicable laws, regulations, etc, for this type of occupancy.

## **8. 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 to a state that existed prior to the construction of any 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. 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.

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

## **9. INSURANCE REQUIREMENTS FOR LCFC.**

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

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

## **10. INDEMNIFICATION.**

LCFC 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 LCFC's (or LCFC's contractors, if any) use of the premises including but not limited to negligent or intentionally wrongful act or breach of the Agreement. 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, or breach of contract, 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.

## **11. MAINTENANCE.**

LCFC 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.

LCFC shall keep the Premises in good condition subject to wear and tear incident to the utilization described in Section 6, above. LCFC 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.

## **12. ENVIRONMENTAL CONDITIONS**

LCFC is aware that the portion of Champions Park referenced by Exhibits A & B are currently governed by a Site Management Plan with the Energy and Environment Cabinet. LCFC shall abide by said Plan when developing the property pursuant to this Agreement. LCFC shall be responsible for working with Metro to obtain any and all necessary permits from any regulatory body for the construction of the improvements to the Demised Premises which include and are not limited to Permits from the Energy and Environment Cabinet.

LCFC shall be responsible for the abatement of any environmental hazards in or about the Premises, including but not limited to asbestos, lead, and radon brought to the Premises or generated by LCFC, its agent, employees, invitees or guests. LCFC 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. LCFC 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 the Original Agreement, and not brought to the Premises or generated by LCFC, its agents, employees, guests or invitees.

**13. SIGNS.**

LCFC shall not paint, place or erect any sign on any part of the Premises without first obtaining appropriate permits and Metro's written permission, which permission shall not be unreasonably withheld.

**14. NON-ASSIGNMENT.**

LCFC 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.

**15. PARKING.**

LCFC personnel and visitors to the Premises may utilize the gravel and paved area of Champions Park that is immediately east of Exhibit B for parking. LCFC shall provide an entrance to the facility from the parking area to replace the current, existing dirt path.

LCFC may, at their own expense, improve said parking area by paving and striping the area after submitting a plan for same to the Director of Metro Parks and receiving his written approval for same. None of the grassy area adjacent to the paved area shall be included in a proposed pavement plan.

**16. HOLD OVER TENANCY.**

If, without the execution of a new Agreement or written extension, LCFC shall hold over after the expiration of the Initial Term or any Option Term, LCFC 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, LCFC agrees to be bound by all terms, covenants and conditions as herein specified.

**17. 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 Kasler  
P.O. Box 37280  
Louisville, Kentucky 40233-7280

LCFC:  
Brad Estes, Team President  
Louisville City FC, LLC  
110 W. Main Street, 2<sup>nd</sup> Floor  
Louisville, Kentucky 40202

### **18. 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.

### **19. INSPECTION.**

Metro shall have the right to inspect the Premises at any time.

### **20. BINDING EFFECT.**

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

### **21. 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.

### **22. 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.

### **23. 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: \_\_\_\_\_

**LOUISVILLE CITY FC, LLC**

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

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

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

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

By: \_\_\_\_\_  
Assistant County Attorney



**EXHIBIT A**  
**PREMISES**

**EXHIBIT “B”  
PITCHES**

**EXHIBIT “C”  
INSURANCE PROVISIONS**

Prior to LCFC commencing this Agreement, LCFC 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 LCFC’s indemnification requirements, it is agreed that LCFC 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 LCFC's 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. LCFC 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 LCFC is submitted to and approved by Metro's Risk Management Division.

LCFC 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

LCFC 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 LCFC's insurance coverage) in coverage as required above, LCFC shall notify Metro's Risk Management Division within two (2) business days. If LCFC fails to notify Metro as required by this Agreement, LCFC 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 LCFC 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 LCFC.

