

RESOLUTION NO. 069, SERIES 2022

A RESOLUTION APPROVING THE GROUND LEASE AND OPTION AGREEMENT FOR PROPERTY AT 148 NORTH CLAY STREET TO BE LEASED TO LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS A PART OF DAVID ARMSTRONG EXTREME PARK.

SPONSORED BY: COUNCIL MEMBER JECOREY ARTHUR

WHEREAS, the City of Louisville previously entered into a Lease Agreement with Option to Purchase dated December 12, 2001 with Thomas P. Burkhart (the “Original Lease”) to lease property owned by Mr. Burkhart at 148 North Clay Street (the “Property”), pursuant to which the Property was to be used as part of David Armstrong Extreme Park; and

WHEREAS, Louisville/Jefferson County Metro Government (“Louisville Metro”) is the successor to the City of Louisville under the Original Lease; and

WHEREAS, the Property has been used as part of David Armstrong Extreme Park during the term of the Original Lease; and

WHEREAS, the Original Lease, by its terms, expired November 14, 2021, and Louisville Metro in the process of entering into a new ground lease and option agreement with Thomas P. Burkhart, Trustee of the Clare E. Burkhart Living Trust, u/a July 17, 2008, for the continued lease of the Property for use as part of David Armstrong Extreme Park (the “New Lease”); and

WHEREAS, a copy of the proposed New Lease is attached to this Resolution as Exhibit A; and

WHEREAS, the New Lease contemplates another twenty (20) year term, unless sooner terminated or extended; and

WHEREAS, Section 17 of the New Lease states that the New Lease is

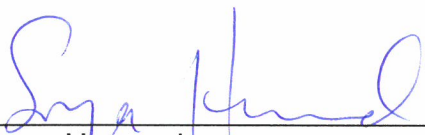
contingent upon approval by the Legislative Council of the Louisville/Jefferson County Metro Government; and

WHEREAS, Louisville Metro will receive benefits from the continued operation of David Armstrong Extreme Park.

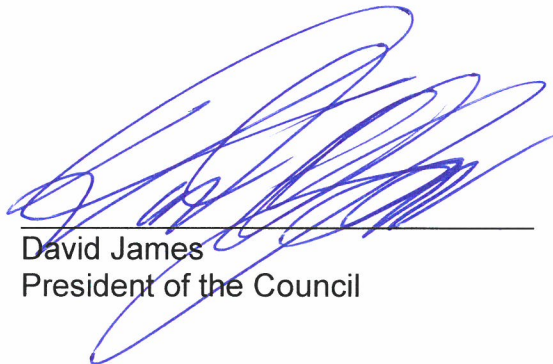
NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: The proposed New Lease in substantially the form and with the contents set forth in Exhibit A attached hereto and incorporated herein by reference is hereby approved, and the Mayor is hereby authorized and directed to execute and deliver said New Lease.

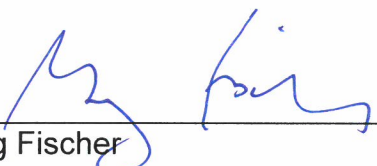
SECTION II: This Resolution shall become effective upon its passage and approval or otherwise becoming law.



Sonya Harward
Metro Council Clerk



David James
President of the Council



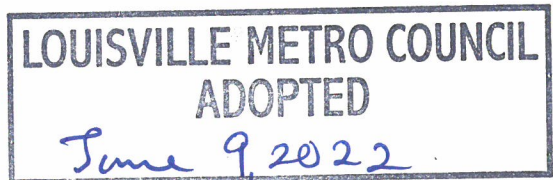
Greg Fischer
Mayor

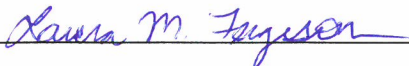
6-16-22

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney



By:  _____

R-066-22 Approving the Ground Lease and Option Agreement by Louisville Metro of 148 North Clay Street for David Armstrong Extreme Park (If)

GROUND LEASE

THIS LEASE is made effective as of the 15th day of November, 2021, between **THOMAS P. BURKHART, TRUSTEE OF THE CLARE E. BURKHART LIVING TRUST, u/a July 17, 2008** whose mailing address is 4103 Jack Teeple Road, Charlestown, Indiana 47111 ("Lessor"), and **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its Metro Parks Department whose mailing address is 1297 Trevillian Way, P.O. Box 37281, Louisville, Kentucky 40233 ("Lessee").

WITNESSETH:

In consideration of the mutual covenants contained herein, and intending to be legally bound hereby, Lessor and Lessee hereby agree as follows:

1. PREMISES:

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, subject to the provisions of this Lease, all of that certain tract situated in the City of Louisville, County of Jefferson, and Commonwealth of Kentucky, more particularly described on Exhibit "A" attached hereto together with all rights accruing thereto including all interest of Lessor to the center of any street adjoining said tract (all of foregoing being referred to herein as the "Premises").

2. TERM:

- (a) The term of this Lease shall commence on November 15, 2021 (the "Effective Date").
- (b) The initial term of this Lease shall be for a period of twenty (20) years from the Effective Date hereof unless sooner terminated or extended.

3. RENT:

- (a) Lessee agrees to pay rent for the Premises at the rate per month equal to the sum of One Thousand Eight Hundred Dollars (\$1,800.00), which shall be paid in annual installments of Twenty-One Thousand Six Hundred Dollars (\$21,600.00) from the date hereof. If any installment of rent shall not be paid within ten (10) days of its Payment Date, Tenant shall owe and shall pay to Landlord, on demand, a late charge equal to ten percent (10%) of the amount of such installment.
- (b) The basic rent provided in Section 3(a) above shall be increased every five (5) years by a percentage equal to the percentage change in the Consumer Price Index statistics published by the United States Bureau of Labor. Comparisons shall be made using the index entitled, "U.S. City Average/All Items and Major Group Figures for all Urban Consumers Louisville Area (1982-84 = 100)," or the nearest comparable data on changes in the cost of living, if such index is no longer published. The change shall be determined by comparison of the figure for the

January at the beginning of the previous five (5) year period, with that of January 1 of the current year. In no event shall the next lease year rental be less than the prior year. The proposed adjustment shall be presented to Lessee by Lessor thirty (30) days prior to the effective date of the assessment. The basic rent shall increase no less than five percent (5%) every five (5) year period regardless of the foregoing.

- (c) Such rent shall be payable annually, in advance, beginning as soon as practicable upon approval of this Agreement and its terms by Louisville/Jefferson County Metro Council and thereafter on the fifteenth (15th) day of November (the "Payment Date"), at Lessor's mailing address in Paragraph 1 of this Lease or at such other place as Lessor has notified Lessee in writing at least thirty (30) days in advance.

4. OPTION TO PURCHASE:

If not in default in the performance of its covenants or any other obligations under this Lease, at the beginning of every five (5) year period as provided in Section 3 (b) above, or at the expiration of the Term, Lessee is hereby granted the option to purchase the Premises for an amount equal to the then current appraised value of the Premises using a bare ground appraisal and not including the value of improvements made at the expense of Lessee which added to the value of the Premises, as determined by an MAI Real Estate Appraiser acceptable to both parties and hired at Lessee's sole expense. Such purchase option must be exercised, if at all no later than the first (1st) day of each five (5) year period and no earlier than six (6) months prior to the first day of each five (5) year period or the expiration of the Term.

5. USE OF PREMISES:

The Premises may only be used for an extreme skate park and for no other uses.

6. TAXES AND UTILITY EXPENSES:

- (a) During the term of this Lease, Lessee shall pay all charges for sewer, water, and electricity or other services furnished to the Premises or the occupants thereof during the term of this Lease.
- (b) Lessee agrees to pay all real estate taxes and special assessments assessed against the Premises, attributable to the improvements constructed by Lessee, during the term of this Lease or any extension hereof, if any, as Lessee is tax exempt.

7. IMPROVEMENTS:

Lessee may at its own cost construct any buildings or other improvements on the Premises consistent with the approved use, provided that they shall be in accordance with all applicable building regulations. Until the expiration or sooner termination of this Lease, title to any improvements shall remain in Lessee, but at the end of the Term, Lessee shall raze the improvements and place the Premises in a clean, safe and sightly condition and seed and straw any bare ground, unless Lessor requests that such improvements remain.

8. REQUIREMENTS OF PUBLIC AUTHORITY:

Lessee shall, during the term of this Lease, comply with all laws and regulations of any governmental authority with respect to the Premises.

9. LIENS:

Lessee shall cause to be promptly discharged any mechanic's or other lien filed against the Premises by reason of any act or omission of Lessee and hold Lessor harmless from any and all damages, claims, costs or liabilities related to any such filing or threat of same, including reasonable attorneys' fees. It is understood and agreed that Lessee shall have the right to contest any lien filed against the Leased Premises.

10. ASSIGNMENT AND SUBLETTING:

Lessee may not sublease this Lease or any part of the Premises. Lessee may not assign this Lease.

11. INDEMNITY AND INSURANCE:

Indemnity: To the extent permitted by law, Lessee agrees to hold Lessor harmless from any and all liability, claims, loss, damage, cost or expenses, including reasonable attorneys' fees, related to or from injury or damage to any person or property occurring on, or resulting from the condition of, the Premises (if said condition is not a result of Lessor's breach of its covenants contained in this Lease, or has not otherwise been caused by Lessor, its agents or servants), or resulting from any acts or omissions of Lessee or anyone under its direction or control, including, but not limited to Lessee's invitees, agents or servants. Lessee, and its invitees, agents, contractors, or successors and assigns, assume all risk of use, maintenance and/or operations on the Premises, including, without limitation, all injuries, deaths, losses, claims and/or damages to any person or property. Lessee agrees that Lessee assumes all such risks knowingly and after sufficient due diligence to accept such risks, and Lessor shall not be liable for any loss, costs, expenses, damages, injuries and/or death in connection with Premises or Lessee's (or that of its invitees, agents, contractors, or successors and assigns) use thereof or presence thereon.

Liability Insurance: Pursuant to Ordinance No. 11, Series 2003, the Lessee is self insured for all properly asserted General Liability claims brought against it to which the Lessee does not otherwise have a legal defense. In addition, the Lessee agrees to keep in full force and effect Excess Self Insurance coverage for all properly asserted claims brought against it to which the Lessee does not otherwise have a legal defense covering Bodily Injury; Property Damage and Personal injury Liability under the Louisville Area Governmental Self Insurance Trust; as long as such coverage is available. The Limit of Liability provided by such Excess coverage shall be at least \$5,000,000 per Occurrence under a Combined Single Limit format. The Lessee agrees to provide Lessor with a Certificate of Self Insurance from the Louisville Area Governmental Self Insurance Trust, if requested. The Trust Bylaws do not allow including additional insureds on Members coverages, however, Broad Form Contractual Liability coverage is provided.

Workers' Compensation Insurance: Lessee maintains and appropriates funds for the Self-Insurance Program for Workers' Compensation coverage to the Lessee employees, the Lessee is in compliance with KRS.342.340 of the Workers' Compensation Act and has received the Certificate of Self Insurance as proof of ability to pay compensation claims.

12. CONDEMNATION:

If the whole of the Premises shall be taken or condemned by any competent authority for any public use or purpose under any statute or by right of eminent domain, other than Lessee, or by a private purchase in lieu thereof under threat of such eminent domain proceedings, then in either of such events, this Lease shall expire on the date when the Premises shall be so taken and the rent shall be prorated as of that date. Nothing contained herein shall prevent Lessor and Lessee from prosecuting claims in any condemnation proceedings for the value of their respective interests.

13. QUIET ENJOYMENT:

Lessee, upon paying rent and complying with all the other provisions hereof, shall quietly have and enjoy the Premises during the term of this Lease without hindrance by anyone.

14. DEFAULTS:

- (a) If any one or more of the following events shall have occurred and shall not have been remedied as herein provided: (i) Lessee's failure to pay any installment of rent and the continuance of the same for a period of fourteen (14) days after notice and demand therefore in writing have been made to Lessee, or (ii) Lessee's failure to comply with any other agreement herein contained and the continuance of such failure for a period of thirty (30) days after receipt by Lessee from Lessor of notice in writing specifying in detail the nature of such failure, then, Lessor, at its option, may terminate this Lease, or without terminating this Lease terminate Lessee's right of possession, and may pursue any and all other remedies available to it under the laws of the Commonwealth of Kentucky, including, by way of example rather than of limitation, the rights to (a) re-enter and repossess the Premises, with lawful force, and any and all improvements thereon and additions thereto; (b) immediately recover an amount equal to the present value (as of the date of Lessee's default) of the Rent which would have become due through the date on which the Term would have expired but for Lessee's default, which damages shall be payable to Lessor in a lump sum on demand. Any rent payment paid in advance by Lessee which is attributable to the period beyond termination of the lease shall be held by Lessor to be applied to any and all losses, damages or other claims. Should there be any balance so remaining after all of Lessor's damages and losses are paid then any balance will be returned to Lessee within thirty (30) days of written request for same. For purposes of this Section, present value shall be computed by discounting at a rate equal to one percent (1.0%) above the "prime rate" as then published in the Wall Street Journal, and collect such

balance in any manner not inconsistent with applicable law; (c) relet any or all of the Premises for Lessee's account for any or all of the remainder of the Lease Term, or for a longer term; and/or (d) recover from Lessee the cost to Lessor of any reasonable fees relating to reletting of the Premises including but not limited to construction costs, brokerage fees, reasonable attorney's fees.

15. WAIVERS:

Neither party hereto shall be deemed to have waived any right hereunder for failure to complain of any act or omission of the other party.

16. DAMAGE TO IMPROVEMENTS BY FIRE, THE ELEMENTS, OR OTHER CASUALTY:

Should Lessee's improvements be damaged by fire, the elements, or other casualty during the term of this Lease, Lessee may terminate the Lease or repair, restore or rebuild the Premises to substantially its condition at the time of the occurrence of such damage.

17. LOUISVILLE/JEFFERSON COUNTY METRO COUNCIL APPROVAL

This Agreement shall be contingent upon approval by the Louisville/Jefferson County Metro Council. Furthermore, in the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Lessee's obligations under this Agreement, the Lessee's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Lessee shall deliver written notice to Lessor of any such non-appropriation of funds not later than thirty (30) days after the Lessee has knowledge that the appropriation has not been made. Lessee is responsible for payment of rent until the date Lessor receives such written notice of non-appropriation of funds from Lessee. Lessor further agrees to file any disclosures required pursuant to Louisville Metro Code of Ordinances Section 39.030.

18. MISCELLANEOUS:

- (a) If either party hereto shall be prevented from performing any act required hereby by any cause beyond the control of such party then the time for such performance shall be extended by the period of such delay.
- (b) No notice hereunder shall be effective unless sent postage prepaid by United States registered or certified mail, return receipt requested, direct to the other party at the address first mentioned above or at such other address as either party may designate by notice given in accordance with this section.
- (c) Either party shall, without charge and within ten (10) days after any request of the other, certify in writing to any person specified in such request, as to the existence, amendment, validity of this Lease, the existence of any default or counterclaim hereunder and any other matter reasonably requested. Any such certificate may be

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relied upon by any party requesting it and by any person to whom the same may be exhibited.


- (d) This Lease shall be construed under and governed by the laws of the State in which the Premises are located.
- (e) The parties will, at the request of the other, execute in duplicate a short form lease in recordable form setting forth any provision hereof so requested.
- (f) As used herein, the singular shall include the plural and the masculine gender shall include the feminine and neuter genders unless the context shall require otherwise. Section headings are for convenience and shall not be used to construe this Lease. This Lease may be executed in multiple counterparts each of which shall be an original. The terms "Lessor" and "Lessee" as used herein shall mean only the owner at the time of Lessor's or Lessee's interest herein (or any part thereof) and upon the sale or assignment of the interest of either party hereto, their successors in interest shall be deemed to be Lessor or Lessee, as the case may be.
- (g) If Lessee fails to surrender the Premises upon the expiration or earlier termination hereof, Lessee's tenancy shall be subject to the terms and conditions hereof; provided, however, that such tenancy shall be a tenancy at sufferance only, for the entire Premises, and Tenant shall pay monthly rent (on a per-month basis without reduction for any partial month) at a rate equal to 150% of the monthly rent applicable during the last calendar month of the Term. Nothing shall limit Lessor's rights or remedies or be deemed a consent to any holdover. If Lessor is unable to deliver possession of the Premises to a new tenant or to perform improvements for a new tenant as a result of Lessee's holdover, Lessee shall be liable for all resulting damages, including lost profits, incurred by Lessor.
- (h) This Lease contains the entire Lease among the parties hereto, supersedes all prior agreements and may be modified only in writing.
- (i) Unless otherwise expressly provided herein, the provisions of this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the Effective Date.

LESSOR:

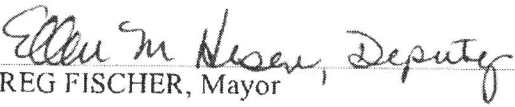
THE CLARE E. BURKHART LIVING TRUST

u/a July 17, 2008


TOM BURKHART, Trustee

LESSEE:

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**


GREG FISCHER, Mayor

APPROVED AS TO FORM:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

By: 

Assistant Jefferson County Attorney

EXHIBIT A

BEGINNING at the northwest corner of Franklin Street and Clay Street; thence North with the West line of Clay Street 186 feet to the Northeast corner of Tract #1 conveyed to John P. Glass and wife by deed of record in Deed Book 3862, Page 499, in the office of the Clerk of the County Court of Jefferson County, Kentucky; thence West with the North line of said last mentioned tract 37.49 feet to the Northwest corner of said tract; thence southwestwardly with the Northwesterly line of Tract #1 conveyed to John P. Glass and wife by Deed of record in Deed Book 3862 Page 499, in said office; and with the northwesterly line of the tract conveyed to John P. Glass and wife by deed of record in Deed Book 3811 Page 221, in said office, 95.38 feet to the North line of the tract conveyed to John P. Glass and wife by deed of record in Deed Book 3805 Page 348, in said office; then West with said North line 7.34 feet to the most Northerly corner of Tract #2 conveyed to John P. Glass and wife by deed of record in Deed Book 3862 Page 499, in said office; thence Southwestwardly with the northwesterly line of said last mentioned tract, 147.22 feet to the north line of Franklin Street; thence East with the North line of Franklin Street 200.54 feet to the point of beginning.

BEING the same property conveyed to first party by deed dated November 1, 1989 of record in Deed Book 5911, Page 197, in the office of the County Clerk of the Jefferson County, Kentucky.