

INTRODUCED: November 14, 2016

AN ORDINANCE No. 2016-273

To provide for the granting by the City of Richmond to the person, firm or corporation to be ascertained in the manner prescribed by law of a ground lease on certain property located at 3301 Maplewood Avenue, known as City Stadium, and 800 Freeman Road for the construction, renovation, or reconstruction of improvements on such property primarily for use as a sports complex in accordance with a certain Deed of Ground Lease.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: DEC 12 2016 AT 6 P.M.

WHEREAS, following the introduction of this ordinance, the City Clerk has caused to be advertised, once a week for two successive weeks in a newspaper of general circulation published in the city of Richmond, a descriptive notice of the Deed of Ground Lease attached to this ordinance, which notice:

1. included a statement that a copy of the full text of the ordinance is on file in the office of the City Clerk;
2. invited bids for the ground lease offered to be granted in and by this ordinance, which bids were to be:

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: DEC 12 2016 REJECTED: _____ STRICKEN: _____

- a. delivered in writing to the presiding officer of the Council of the City of Richmond at its regular meeting to be held on December 12, 2016, at 6:00 p.m., in open session;
 - b. presented by the presiding officer to the Council; and
 - c. then dealt with and acted upon in the mode prescribed by law;
3. required that all bids for the ground lease hereby offered to be granted shall be submitted in writing as required by law; and
 4. reserved the Council's right to reject any and all bids; and

WHEREAS, the deadline for the receipt of bids has passed, all bids have been received, and the Council is prepared to act in accordance with sections 15.2-2102 or 15.2-2103, or both, of the Code of Virginia (1950), as amended;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That there shall be granted in the manner prescribed by Article VII, Section 9 of the Constitution of Virginia and Title 15.2, Chapter 21, Article 1, §§ 15.2-2100—15.2-2108.1:1 of the Code of Virginia (1950), as amended, a ground lease on certain property located at 3301 Maplewood Avenue, known as City Stadium, and 800 Freeman Road for the construction, renovation, or reconstruction of improvements on such property primarily for use as a sports complex as described and under the conditions set forth in the Deed of Ground Lease, a copy of which is attached to and incorporated into this ordinance, to the following grantee:

The Richmond Kickers.

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Deed of Ground Lease between the City of Richmond as grantor and the grantee identified in section 1 of this ordinance to grant a ground lease on

certain real property located at 3301 Maplewood Avenue, known as City Stadium, and 800 Freeman Road for the construction, renovation, or reconstruction of improvements on such property primarily for use as a sports complex by such grantee, provided that:

(a) The Deed of Ground Lease has first been approved as to form by the City Attorney and is substantially in the form of the document attached to this ordinance;

(b) The grantee identified in section 1 of this ordinance has first executed a bond, with good and sufficient security, in favor of the City of Richmond, Virginia, in the amount of \$50.00 and conditioned upon the construction, renovation, or reconstruction of improvements on the property primarily for use as a sports complex as provided for in the granted ground lease, with such bond in a form acceptable to the Chief Administrative Officer and approved as to form by the City Attorney; and

(c) The grantee identified in section 1 of this ordinance has first paid all costs incurred in connection with the advertisement of this ordinance, as required by section 15.2-2101 of the Code of Virginia (1950), as amended.

§ 3. This ordinance shall be in force and effect upon adoption.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

RECEIVED

NOV 10 2016

OFFICE OF CITY ATTORNEY

O&R REQUEST

DATE: November 10, 2016 EDITION: 1

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Lenora Reid, Deputy Chief Administrative Officer, Finance

THROUGH: Debra Gardner, Deputy Chief Administrative Officer, Human Resources

FROM: Lee Downey, Deputy Chief Administrative Officer, Planning & Economic Development

RE: LEASE AGREEMENT FOR CITY STADIUM BETWEEN THE CITY OF RICHMOND AND THE KICKERS YOUTH SOCCER CLUB, INC.

ORD. OR RES No. _____

PURPOSE: To allow the CAO to enter into a lease agreement with the Kickers Youth Soccer Club, Inc. (Kickers) for a 40-year lease of 3301 Maplewood Avenue (City Stadium Property) and 800 Freeman Road (Parking Lot Property). The kickers would lease the property, pay leasehold taxes to the City, be responsible for the maintenance and upkeep of the property, pay all utility costs for the property and would provide approximately \$20,000,000 in improvements to the sports complex and parking facilities on the property.

REASON: The City currently provides an annual permit to the Kickers for use of the City Stadium. It is the desire of the Kickers to obtain a long-term lease of the property in order to make major improvements to the property to grow and expand their soccer programs within the City.

BACKGROUND: The City Stadium property is currently in need of major improvements, but no funding for these improvements is currently planned or budgeted. With this lease, the Kickers will commit to improvements in a phased approach including:

Phase 1:

- 1. Landscaping
2. Fencing
3. Parking Lot
4. Seating
5. Pitch and Irrigation

Phase 2:

1. Concourse paving/improvements
2. Signage
3. Stadium Lighting
4. Locker rooms/Team facilities
5. Restrooms (rehab)
6. Scoreboards/AV
7. Seating enhancements
8. Parking Lot Improvements

Phase 3:

1. Parking
2. Press Box
3. Additional Seating
4. Mini-pitch/Futsal courts
5. Restrooms (new)

The lease will provide for the continued use of the facilities by the City of Richmond and Richmond Public Schools in coordination with the Kickers organization.

FISCAL IMPACT/COST: None anticipated.

FISCAL IMPLICATIONS: None anticipated.

BUDGET AMENDMENT NECESSARY: No amendment necessary at this time.

REVENUE TO CITY: Ongoing new real estate tax revenue (leasehold taxes paid by the Kickers); ongoing new tax revenue including new business personal property taxes and increased admissions and sales taxes.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: November 14, 2016

CITY COUNCIL PUBLIC HEARING DATE: December 12, 2016

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Finance & Economic Development

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: Planning Commission

AFFECTED AGENCIES: Economic & Community Development; Planning and Development Review; Finance

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Deed of Ground Lease

STAFF: Lee Downey, DCAO Planning and Economic Development (804) 646-4848

DEED OF GROUND LEASE

THIS DEED OF GROUND LEASE ("Lease") is made the _____ day of _____, 2016, by and between the CITY OF RICHMOND, VIRGINIA, a municipal corporation of the Commonwealth of Virginia, ("Landlord") and _____, a Virginia non-stock corporation, ("Tenant").

RECITALS

A. Landlord is the record owner of certain real property located in the city of Richmond, Commonwealth of Virginia, located at 3301 Maplewood Avenue (Tax Map Parcel No. W000-1502-001) ("City Stadium Property") and 800 Freeman Road (Tax Map Parcel No. W000-1583-001) ("Parking Lot Property").

B. Landlord is the record owner of property identified as Tax Map Parcel No. W000-1502-001T, on which is located a telecommunications tower leased by the Landlord to Cellco Partnership d/b/a Verizon Wireless ("Tower Parcel").

C. Tenant desires to lease from the Landlord the City Stadium Property and the Parking Lot Property, together the "Premises," excepting the Telecommunications Property.

D. Tenant desires to construct, renovate, or reconstruct on the City Stadium Property improvements primarily for use as a sports complex, and to improve the Parking Lot Property to provide parking for its events and for the general public.

NOW, THEREFORE, the Landlord and Tenant, agree as follows:

1. **RECITALS.** The recitals set forth above are fully incorporated herein by reference.

2. **PREMISES.**

2.1 **Grant.** Landlord hereby grants and demises to Tenant, and Tenant hereby leases and rents from Landlord, the Premises, totaling 20.028 acres of land, more or less, located in the city of Richmond, Virginia, upon and subject to the terms and conditions of this Lease. Landlord grants and demises the Premises subject to any building restrictions, regulations, and zoning ordinances of the City of Richmond; any easements; and any other matters of title which a search of the public records would disclose and any state of fact that an accurate survey would show. The Premises do not include the Tower Parcel. The City hereby reserves any and all rights necessary to comply with the terms of any present or future lease for the telecommunications tower located on the Tower Parcel, including but not limited to the right of ingress and egress to and from the Tower Parcel.

2.2 **Condition of the Premises.** Landlord leases the Premises to the Tenant "as is" with all faults, without warranty or representation by Landlord as to condition or usefulness of the

Premises for any purpose. Tenant covenants that it has inspected and is fully familiar with the Premises and accepts the Premises in "as is" condition.

2.3 **Delivery and Possession.** Landlord covenants to deliver quiet possession of the Premises to the Tenant on the Effective Date, subject to the terms of this Lease and provided Tenant is not in default hereunder.

3. **TERM.** The term of this Lease is forty (40) years, beginning at 12:01 a.m. Eastern Standard Time on the first day of the month following award of the Lease to Tenant by the City Council of the City of Richmond, Virginia ("Effective Date") and ending at 11:59 p.m. Eastern Standard Time on the day preceding the fortieth (40th) anniversary of the Effective Date. If requested by either Landlord or Tenant, the parties shall confirm the Effective Date in writing.

4. **RENT.**

4.1 **Rent.** Tenant covenants and agrees to pay Landlord rent for the Premises in the amount of \$ _____ per year, which Tenant has paid to Landlord in full as one payment of _____ Dollars (\$ _____) as of the date hereof, the receipt of which is hereby acknowledged by Landlord.

4.2 **Net Rent.** Tenant acknowledges and agrees that Rent is net to Landlord, and that all costs, expenses, and obligations of every kind whatsoever directly relating to the Premises, including, but not limited to, utilities, taxes, insurance, and maintenance will be the responsibility of the Tenant. Tenant shall pay the Rent and any other payments required under this Lease free and clear of all deductions, diminutions, defenses, claims, or set-off of any kind whatsoever.

5. **USE.** Tenant is entitled to exclusive use and control for the operation of a sports franchise and the hosting of games, tournaments, club and sports-related entertainments and related and ancillary uses, all subject to the terms of the Lease. Tenant is entitled to all merchandising and concessions rights and revenues, ticketing, food, and beverage (including alcohol) sales and revenues, advertising, stadium naming rights and revenues, event scheduling, radio/tv/media rights, security/traffic control rights and revenues, and other operational matters, subject to the terms of the Lease and in accordance with all applicable laws, rules, and regulations.

Tenant hereby grants to the Landlord the right to use the Premises for itself and for Richmond Public Schools (RPS) without the need to enter into a license agreement or for the payment of a license or other fee, for those events, categories of events, and number of events set forth in Exhibit "A" attached hereto and made a part hereof. Use by the City and RPS which differs from the uses set forth in Exhibit "A" will be negotiated by the relevant parties and may be subject to a license fee, but not a requirement to enter into a license agreement. For purposes of this Section 5 only, the School Board of the City of Richmond, Virginia, is deemed a third party beneficiary of this Lease.

5.3 **Compliance With Laws.** The Tenant shall not use the Premises or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. The Tenant shall, at its own cost and expense, promptly comply with all laws, statutes, ordinances

and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by the Tenant's particular use of the Premises, or by the Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of the Tenant in any action against the Tenant, whether the Landlord is a party thereto or not, that the Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the Landlord and the Tenant. The Tenant shall not use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall the Tenant cause, maintain or permit any nuisance in, on or about the Premises. The Tenant shall not commit or allow to be committed any waste in or upon the Premises.

6. **TAXES AND UTILITY EXPENSES.**

6.1 Tenant Obligations. Tenant shall pay or have paid and shall discharge punctually, as and when the same shall become due and payable, all taxes (including, but by no means limited to, taxes on gross receipts, meals, admission and ticket sales); special and general assessments, payments in lieu of taxation; stormwater fees; water rents, rates and charges; sewer rents and other governmental impositions and charges of every kind and nature whatsoever affecting the Premises. Tenant shall pay or ensure payment of and shall discharge punctually, as and when the same shall become due and payable, all charges for water, steam, heat, gas, electricity, telephone, sanitary sewer, coaxial or fiber optic cable, satellite, internet access and other services and utilities whether public or private, furnished to the Premises for the benefit of the Tenant or any other user.

6.2 Taxes or Payments in Lieu of Taxes. If for any reason Tenant is not subject to real estate taxation, business personal property taxation or business, professional and occupational license taxation, or any other category of local taxation, arising from Tenant's tenancy or activities at or upon the Premises, Tenant shall pay to the City of Richmond, Virginia annually an amount equal to the real estate taxes, business personal property taxes or business, professional and occupational license taxes, or other local taxes, that would be required to be paid if Tenant were subject to such taxation.

7. **NO SERVICES BY LANDLORD.** Landlord shall not be required to furnish any service or facility to the Premises, including but not limited to heat, water, light and power, and shall not be liable to Tenant or otherwise for any failure of water supply or electric current, or of any service by any utility, or for injury or damage to person (including death) or property caused by or resulting from steam, gas, electricity, water or rain which may flow or leak from any part of the Premises or the buildings and improvements to be erected thereon, or from any pipes, appliances or plumbing works of the same, or from the street or subsurface, or from any other place, nor from interference with land or easements, however caused, except if due to the gross negligence or willful misconduct of Landlord; provided, that Tenant shall be entitled to connect to public utility systems available to the Premises, at Tenant's sole cost, and subject to Tenant

complying with the applicable City of Richmond Code requirements respecting same. Landlord shall not be required to make any repairs or alterations in or to the Premises.

8. **COVENANT AGAINST LIENS.** If, because of any act or omission of Tenant or any subtenant or occupant of the Premises or any part thereof, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or Landlord's interests in the Premises, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice of the filing of such lien, charge or order; and Tenant shall indemnify, defend with counsel satisfactory to Landlord and hold harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including attorneys' fees, resulting therefrom.

9. **ACCESS TO PREMISES.** Landlord and Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Premises or any part thereof with prior notice to Tenant, at any time without unreasonably interfering with the conduct of business operations or any construction activities thereon to inspect and examine the same and to enforce any of Landlord's rights set out herein.

10. **INSURANCE; BONDING.**

(a) Tenant shall provide and maintain throughout the Term insurance in the kinds and amounts specified in this section with an insurer or insurers licensed to transact insurance business in the Commonwealth of Virginia, such insurance to be issued only by companies with A. M. Best's Key Rating of at least A-:VI. Each insurance policy, endorsement and certificate of insurance shall be signed by duly authorized representatives of such insurers and, where required, shall be countersigned by duly authorized local agents of such insurers.

(b) Tenant shall pay all premiums, deductibles and other costs of the insurance required by this section, and Landlord shall have no responsibility or liability for the payment of such costs. All insurance contracts and policies shall provide, or be endorsed to provide, as follows:

(1) Subrogation against Landlord shall be waived.

(2) Landlord and its officers, employees, agents and volunteers shall be included as additional insured on all policies for coverage types for which an additional insured endorsement is commercially available.

(3) Coverage will not be canceled, non-renewed or materially modified in a way adverse to Landlord without 30 days' (or ten days' for non-payment of premium) prior written notice to Landlord.

(4) The insolvency or bankruptcy of any of the insured shall not release the insurer from its obligation to satisfy claims otherwise within the coverage of such policies.

(5) The insurance obtained by or on behalf of Tenant to comply with this section shall be primary as to any coverage maintained by Landlord.

(c) For all policies required by this section, Tenant shall furnish Landlord with the following evidence of coverage:

(1) A copy of one or more certificates of insurance evidencing the coverage required by this section, indicating that the policy provides or has been endorsed to provide that (i) Landlord and its officers, employees, agents and volunteers are included as additional insured (with the exception of workers' compensation) and (ii) coverage will not be canceled, non-renewed or materially modified in a way adverse to Landlord without thirty (30) days' (or ten (10) days' for non-payment of premium) prior written notice to Landlord. Tenant shall furnish Landlord with a new certificate of insurance annually before the expiration date of the policies described on the last delivered certificate of insurance.

(2) A copy of the policy endorsements providing that coverage will not be canceled, non-renewed or materially modified in a way adverse to Landlord without thirty (30) days' (or ten (10) days' for non-payment of premium) prior written notice to Landlord and providing that, where required, Landlord and its officers, employees, agents and volunteers are included as additional insured.

(3) Only if requested by Landlord, a copy of all or any part of any insurance contract or policy required by this section and a copy of any other endorsements required by this section.

(d) Tenant shall provide and maintain the following types of coverage in accordance with the requirements of this section:

(1) Commercial general liability insurance for the Premises and any abutting sidewalks and street pavements for which the Landlord and Tenant are responsible pursuant to the City Code sections governing encroachments into the City of Richmond's right of way in a single limit of at least One Million Dollars (\$1,000,000) with respect to bodily injury and real and personal property damage in a form acceptable to the Landlord in its sole discretion. Landlord will review the limits of the policy annually for adequacy, and Tenant shall cause the limits to be increased as directed by the Landlord in its sole discretion.

(2) Umbrella or excess liability insurance for liabilities in excess of the limits of the liability insurance required by this section with a limit of not less than Ten Million Dollars (\$10,000,000) in the aggregate.

(3) Automobile liability insurance with a combined limit of not less than One Million Dollars (\$1,000,000) covering all vehicles owned or leased by Tenant for use in the maintenance or operation of the Premises.

(4) Statutory Workers' Compensation and Employers' Liability Insurance with the Alternate Employer Endorsement WC 000301.

(5) Property insurance for the Premises in coverage amounts up to the replacement value thereof and which shall keep all buildings and improvements now existing or hereinafter constructed on the Premises insured for the benefit of Landlord against loss or damage

by fire and customary extended coverage in an amount not less than the full replacement value thereof. Such policy or policies shall name Landlord as an additional insureds thereunder.

(6) During any period during which Tenant is conducting any construction activity whatsoever at the Premises, including, but not limited to, construction of improvements and repairs, replacements, alterations, modifications, additions and demolition thereof, to cover the potential liability of its contractors and subcontractors, Tenant shall require its contractors and subcontractors to keep in full force and effect or shall itself acquire and maintain the following:

a. A policy of builder's risk insurance covering loss or damage to such improvements for the full replacement value thereof, other than respecting repairs or alterations for which the insurance set forth in subsection (d)(5) of this section remains in force. Such policy or policies shall name Landlord and Tenant, as insureds thereunder, as their respective interests may appear.

b. Commercial General Liability Insurance (including, at a minimum, Premises / Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability) with a combined limit of not less than \$1,000,000 per occurrence.

c. Automobile Liability Insurance with a combined limit of not less than \$1,000,000 per occurrence.

d. Statutory Workers' Compensation and Employers' Liability Insurance with the Alternate Employer Endorsement WC 000301.

e. Umbrella or Excess Liability Insurance with a combined limit of not less than \$10,000,000 per occurrence.

f. Professional Liability Insurance, for design work, with a combined limit of not less than \$1,000,000 per claim.

g. If any blasting is to be done, blasting insurance in forms, types and amounts required by Landlord.

(e) Prior to the commencement of the construction activities referenced in Section 6, Tenant shall furnish Landlord with copies of performance bonds, guaranteeing completion of any and all work, and payment bonds, guaranteeing payment of subcontractors and suppliers who perform work or supply materials for the construction work, with the Tenant as obligee, from its construction contractors.

11. INDEMNITY.

11.1 Tenant shall indemnify, defend and hold harmless Landlord and its officers, directors, agents and employees, from and against any and all losses, claims, liabilities, damages, penalties, judgments, causes of action, proceedings, suits, costs and expenses, real or alleged, including, but not limited to, fees and costs of attorneys and other professionals and accountants, court costs and other costs of litigation, arising out of, in connection with or in any way related to any injury or death to person or property sustained by anyone in and about the Premises, resulting

from, out of or in connection with the use or occupancy of the Premises, resulting from, arising out of or in connection with acts or omissions of Tenant or its officers, directors, agents, employees, contractors, subcontractors, subtenants, concessionaires, licensees, invitees, volunteers, successors or assigns, or related to or arising out of or in connection with any default by Tenant under this Lease or any failure by Tenant to fully and completely perform and comply with its obligations under this Lease.

11.2 Landlord shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons at any time on the Premises, including, but not limited to, any damage or injury to Tenant or to any of Tenant's officers, directors, agents, servants, employees, contractors, subcontractors, customers, licensees, invitees, concessionaires, subtenants, volunteers, successors or assigns, and Tenant hereby releases Landlord from the same.

12. ENVIRONMENTAL CONDITIONS, LIABILITY, INDEMNITY.

12.1 As stated herein, Tenant is leasing the Premises "AS IS" without warranty or guaranty, including without limitation any warranty or guarantee regarding the environmental condition of the Premises and any Hazardous Material which may be present thereon. As used in this Lease, the term "Hazardous Material" means those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or classified by the Environmental Protection Agency as hazardous substances (40 CFR Part 302), or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (1) petroleum, (2) asbestos, (3) polychlorinated biphenyls, (4) designated as a hazardous substance pursuant to the federal "Clean Water Act", the federal "Resource Conservation and Recovery Act", or the federal "Comprehensive Environmental Response, Compensation and Liability Act", (5) excreta or other animal waste, or (6) lead.

12.2 Any Hazardous Material to be brought upon or used in or about the Premises by Tenant or its employees, contractors, subcontractors, subtenants, agents, invitees or licensees shall be used, kept, stored and disposed of in a manner that complies with all federal, state and local laws, rules, regulations, directives, decrees, ordinances, codes, orders, approvals of governmental authorities, licenses or standards, including, without limitation, the federal "Comprehensive Environmental Response, Compensation and Liability Act", the federal "Resource Conservation and Recovery Act" and any state and local law, regulation, or ordinance relating to pollution or protection of human safety, health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of any Hazardous Material, or otherwise relating to the manufacture, processing, refining, distribution, use, management, treatment, storage, disposal, transport, recycling, reporting or handling of any Hazardous Material (collectively, "Environmental Laws"). In addition, to the extent any environmental permits are required to be obtained by Tenant or its employees, contractors, subcontractors, subtenants, agents, invitees or licensees in connection with Tenant's use, Tenant shall be responsible, at its sole cost and expense, for obtaining such permits and for immediately providing copies of all applications for such permits and copies of all issued permits to Landlord.

12.3 Neither Tenant nor its employees, contractors, subcontractors, subtenants, agents, invitees or licensees shall discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by Landlord or any government authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety of persons, whether located on the Premises or elsewhere, or (b) the condition, use or enjoyment of any other real or personal property.

12.4 Tenant shall maintain good spill prevention practices as recommended by governmental agencies having jurisdiction over the Premises and comply with all applicable regulations and containment practices. Any and all releases, spills, discharges, emissions, etc. occurring on the Premises shall be documented by Tenant and reported to Landlord and the appropriate authority under applicable law within twenty-four (24) hours of the occurrence thereof. Immediate steps shall be taken by Tenant in the event of an uncontained release to minimize the duration, amount and extent of any discharge to the environment. Tenant shall require all contractors and subcontractors operating on the Premises to maintain, at the Premises and available to interested parties on request, any and all material safety data sheets required by law and pertaining to materials or substances discovered, encountered, brought upon, stored, used or consumed in any construction at the Premises, regardless of their source.

12.5 If any Hazardous Materials are released into the environment as a result of the actions (or inactions) of Tenant or its employees, contractors, subcontractors, subtenants, agents, invitees or licensees, Tenant shall be responsible, at its sole cost and expense, for completing any and all remediation activities that may be required to be undertaken in compliance with any applicable laws or any directive from any governmental entity having jurisdiction over the Premises. Any required remediation activities shall be completed by Tenant in accordance with all applicable laws and in accordance with any requirements imposed by Landlord. Tenant's obligations under this subsection 12.5 shall survive the expiration or earlier termination of this Lease.

12.6 Tenant hereby agrees to defend, indemnify and hold harmless Landlord (including its officers, directors, employees and agents) from and against all liabilities (including third party liabilities), losses, claims, damages, property damage, demands, judgments, fines or penalties insofar as not prohibited by law, costs and expenses (including, without limitation, clean-up costs and reasonable attorneys' and consultants' fees and disbursements) which arise, or are alleged to arise, from or in connection with (i) Tenant's violation of any Environmental Laws, (ii) Tenant's compliance with any Environmental Laws relating to or arising out of Tenant's operations on the Premises, (iii) the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge or spill of any Hazardous Materials on the Premises by Tenant or its employees, contractors, subcontractors, subtenants, agents, invitees or licensees, or (iv) any disturbance, migration, leaching or release of any Hazardous Materials on, onto, near, under or otherwise affecting the Premises. Tenant shall defend any action, suit or proceeding brought against Landlord in connection with the foregoing, and in doing so it shall use independent counsel selected by Tenant and approved by Landlord. The provisions of this subsection 12.6 shall be in addition to any other obligations and liabilities Tenant may have to Landlord at law or equity and shall survive the expiration or earlier termination of this Lease. Tenant's subleases shall require

any subtenants to defend, indemnify and hold harmless the Landlord from and against any of the above matters arising under Tenant's subleases.

13. **IMPROVEMENTS, REPAIRS, ADDITIONS, REPLACEMENTS.**

13.1 **Generally.** Tenant shall have the right, at its own cost and expense, to construct on any part or all of the Premises, at any time and from time to time, such improvements as Tenant shall from time to time determine, and may at any time and from time to time, at its own cost and expense, make any additions and alterations to the existing improvements on the Premises (together "Improvements"), provided that (1) the Improvements are in compliance with all building codes and ordinances, (2) the Improvements are compatible with the permitted use of the Premises, (3) the Improvements have been approved in writing by the Landlord following submission of such plans as Landlord may require, which approval will not be unreasonably withheld, conditioned, or delayed, and (4) the Tenant is in compliance with all provisions of this Lease. Tenant may at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, reductions, improvements and additions in and to the Premises and the Improvements as it deems desirable, provided Tenant is in compliance with all provisions of this Lease; provided, however, that Tenant shall not demolish the existing stadium structure. Tenant shall have the right, at Tenant's sole expense, from time to time to submit, in its own name, applications for such building permits, rezoning, conditional use permits and all such other permits and approvals as shall be related to the use of the Premises and the construction and operation of the Improvements thereon. In the event any condition is imposed by any governmental authority with respect to the granting or approval of grading permits, building permits, and any and all other permits or approvals which require improvements to be made on or off the Premises, the Tenant, at its own cost and expense, shall comply with such conditions.

13.2 **Capital Improvement Plan.** Without limiting the generality of the foregoing subsection 13.1, but subject to the same conditions contained therein, Tenant shall implement a phased plan of improvements ("Capital Improvements") to the Premises ("Capital Improvement Plan").

13.2.1 **Capital Investment.** Tenant shall make a total capital investment of not less than \$20,000,000 as set forth in this section 13.2. "Capital Investment" means expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to expand or rehabilitate the Premises, and excavations, grading, paving, driveways, landscaping, or other land improvements, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and cleanup. Capital Investment does not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, utilities, bonding, copying, or temporary facilities or revenue loss incurred during construction; (vii) utility hook-up or access fees; or (viii) the cost of any well or septic or sewer system.

13.2.2 **Phasing.**

13.2.2.1 **Phase One.** Phase One of the required Capital Investment will begin upon the Effective Date and will end on December 31, 2020. During Phase One, Tenant shall make its Capital Investment in the following categories of Capital Improvements with the corresponding values; provided, however, that the parties may agree to reallocate expenditures from one category to another or to make additional expenditures during Phase One:

1. Landscaping: \$200,000 – 250,000
2. Fencing: \$40,000 – 50,000
3. Parking Lot: \$50,000
4. Seating: \$15,000
5. Pitch and Irrigation: \$20,000

13.2.2.2 **Phase Two.** Phase Two of the required Capital Investment will begin on January 1, 2021 and will end on December 31, 2030. During Phase Two, Tenant shall make its Capital Investment in the following categories of Capital Improvements with the corresponding values; provided, however, that the parties may agree to reallocate expenditures from one category to another or to make additional expenditures during Phase Two:

1. Concourse paving/improvements: \$500,000
2. Signage: \$50,000
3. Stadium Lighting: \$500,000
4. Locker rooms/Team facilities: \$250,000
5. Restrooms (rehab): \$250,000
6. Scoreboards/AV: \$400,000
7. Seating enhancements: \$50,000
8. Parking Lot: \$1,000,000

13.2.2.3 **Phase Three.** Phase Three of the required Capital Improvements will begin on January 1, 2031 and will end on December 31, 2050. During Phase Three, the Tenant shall make the following categories of Capital Improvements; provided, however, that the parties may agree to expenditures on additional or different categories of Capital Improvements:

1. Parking
2. Press Box
3. Additional Seating
4. Mini-pitch/Futsal courts
5. Restrooms (new)

13.3 **Americans with Disabilities Act.** Notwithstanding any other provision of this Lease, Landlord and Tenant hereby agree that the Premises may be subject to the terms and conditions of the

Americans with Disabilities Act of 1990, as same may from time to time be amended ("ADA"). Landlord and Tenant further agree and acknowledge that Tenant shall be solely responsible for compliance with any and all provisions of the ADA. Tenant hereby agrees to defend, indemnify and hold harmless Landlord (including its officers, directors, employees and agents) from and against all liabilities (including third party liabilities), losses, claims, damages, property damage, demands, judgments, fines or penalties insofar as not prohibited by law, costs and expenses (including, without limitation, reasonable attorneys' fees) which arise, or are alleged to arise, from or in connection with any violation of the ADA by the Tenant.

13.4 **Surrender of Premises.** Upon the expiration or earlier termination of this Lease, Tenant shall vacate the Premises and surrender same. Upon vacation of the Premises by Tenant, all personalty, furniture, trade fixtures, and movable equipment in or on the Premises, which Tenant provided to the Premises, will remain the property of the Tenant. Improvements will remain part of the Premises and as such the property of the Landlord.

14. **NAMING RIGHTS.** Throughout the term of this Lease, Tenant shall possess all intellectual property rights of whatsoever value relating to the physical structure of the stadium and any part thereof (the "Stadium"), including, without limitation, the right to name the Stadium and to sell the naming rights to the Stadium, subject to the prior written approval of the Chief Administrative Officer of the City of Richmond, Virginia, which approval will not be unreasonably withheld, conditioned, or delayed. Failure by the Landlord to provide approval or any response to a request for approval within ten business days of receipt of a written request by Tenant for such approval will be deemed an approval. Tenant shall be entitled to name events, series, performances and items of personal property at the Premises. Tenant may retain all revenue from the sale of any rights set forth in this Section 14 as its own property.

15. **REPAIRS AND MAINTENANCE.**

15.1 **Tenant Responsibility.** Throughout the Term of this Lease, the Tenant covenants to keep, repair, and maintain the Premises, at no cost to Landlord, so as to conform to and comply with any applicable present or future laws, ordinances, codes, rules, regulations or requirements of any federal, state or municipal government, department, commission, board or officers having jurisdiction, foreseen or unforeseen, ordinary as well as extraordinary, whether or not such laws, ordinances, codes, rules, regulations, or requirements shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Premises or the Improvements or alterations, and to take any and all actions necessary to avoid or eliminate any violation. Lessee shall, at its own cost and expense, maintain sidewalks, curbs, entrances and driveways, to the extent they exist, on the Premises, in good repair and in good and safe condition free from snow, ice, rubbish and other obstructions, and shall comply with all regulations, rules, and other conditions regarding the management of stormwater runoff as may be applicable to the Premises.

15.2 **Landlord Not Obligated.** As stated herein, the Landlord is not required to furnish any services or facilities to or to make any repairs in or to the Premises or the Improvements.

16. **DESTRUCTION AND DAMAGE.** Damage to or destruction in whole or in part of the Improvements by fire or any other casualty will not work as termination of this Lease, or authorize Tenant to quit or surrender the possession of the Premises or any part thereof, and will not release Tenant in any way from its liability to pay Landlord the rent herein provided for or from any of the agreements, covenants,

or conditions of this Lease. Tenant covenants and agrees to repair any such damage or reconstruct the Improvements destroyed as promptly as practicable. In furtherance of this, Landlord agrees to endorse any checks made to the order of the Landlord or to the joint order of Landlord and Tenant in connection with any insurance proceeds and to deliver any such checks to Tenant. The value and usefulness of the Improvements repaired or reconstructed must be equal to the value and usefulness of those Improvements damaged or destroyed on the date immediately prior to such damage or destruction.

17. **CONDEMNATION.**

17.1 If the whole of the Premises, or any material part thereof, or all means of access to the Premises, shall be condemned, or sold under threat of condemnation, this Lease will terminate and the Tenant will have no claim against the Lessor, or to any portion of the award in condemnation for the value of the unexpired term of the Lease. This subsection 17.1 will not limit the Tenant's right to compensation from the condemning authority for the value of any property taken other than Lessee's leasehold interest.

17.2 In the event of a temporary taking, this Lease will not terminate but the rent will be reduced in proportion to the area taken during the period of such taking.

18. **SUBORDINATION.** Tenant shall not encumber Landlord's interests in the Premises with a mortgage, deed of trust or other kind of lien without the prior written consent of Landlord, which shall be given only after submission of all documents related to such mortgage, deed of trust or other kind of lien by Tenant to Landlord for Landlord's review and consent. Upon the request of the Tenant and with the prior, express written consent of the Landlord, in Landlord's sole discretion, Landlord may agree to subordinate this Lease to another interest; provided, however, that in no event will Landlord's fee simple title to the Premises be subordinated to any other interest.

19. **DEFAULT.**

19.1 In the event of a default: (i) in the payment of any installment of rent as hereinabove provided, (ii) or in the event of a breach of any other covenants or agreements herein contained on the part of Tenant, Landlord, after first giving written notice to Tenant of the alleged default or breach (specifying the default or breach and demanding that it be remedied) and, after the failure of Tenant to remedy the specified default or breach within ten (10) days after receipt of said notice in the case of non-payment of rent or within thirty (30) days or any longer period reasonably necessary to remedy any other specified default or breach after receipt of said notice, shall have the right to reenter the Premises and require the Tenant to surrender and vacate possession of the Premises, to restrain for rent, and to re-rent the Premises, without notice to Tenant, for the account of Tenant for the unexpired portion of the Term of this Lease, or Landlord may, at Landlord's option, immediately terminate this Lease. In the event that Landlord shall terminate this Lease, recover possession of, or re-rent the Premises, or take any action under the foregoing provisions, such action on the part of Landlord will not deprive Landlord of any other action or remedy provided by law against Tenant for possession, for rent, or for damages.

19.2 In any suit brought by the Landlord to enforce any provision of this Lease, Landlord will have the right to recover all costs incurred in connection with such suit, including reasonable attorney's fees.

20. **MEMORANDUM OF LEASE.** Upon execution of this Lease, Landlord and Tenant shall execute a Memorandum of Lease. Either party, at its own cost and expense, may record such Memorandum of Lease in the land records of the Circuit Court of the City of Richmond, Virginia.

21. **WAIVER.** No failure of Landlord or Tenant to complain of any act or omission on the part of the other no matter how long the same shall continue shall be deemed to be a waiver by Landlord or Tenant of any of its rights under this Lease. No waiver by Landlord or Tenant, at any time, express or implied, of any breach of any of the agreements or provisions contained in this Lease shall be construed to be a waiver of any subsequent breach of the same or of any other provisions in this Lease. No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

22. **NOTICES.** Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless same shall be in writing and (i) delivered in person, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested or (iii) sent by Federal Express (or such other express delivery service promising next day delivery) directed to Landlord at 900 East Broad Street, Room 200, Richmond, VA 23219, attention: Chief Administrative Officer, with a copy to City Attorney, 900 East Broad Street, City Hall, Suite 400, Richmond, VA 23219 and to Tenant at _____, or such other address as either party may designate by notice given from time to time in accordance with this section. All such notices shall be deemed to be given upon receipt when delivered in person or upon deposit in the United States mail as hereinabove provided.

23. **AMENDMENT TO LEASE.** This Lease may be amended, modified and supplemented only by the written consent of Landlord and Tenant preceded by all formalities required as prerequisites to the signature by each party of this Lease.

24. **GOVERNING LAW.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Lease, or the rights and obligations of Landlord and Tenant in connection with this Lease, shall be governed and regulated by, and interpreted and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Lease, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court for the City of Richmond, Virginia. Tenant accepts the personal jurisdiction of any court in which an action is brought pursuant to this section for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action. Except as expressly provided in other provisions of this Lease, each party shall be responsible for its own attorneys' fees in the event this Lease is subject to litigation.

25. **PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or

unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

26. **INTERPRETATION.** Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be.

27. **ENTIRE AGREEMENT.** No oral statement or prior written matter shall have any force or effect. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing subscribed by all parties.

28. **PARTIES; NO THIRD-PARTY BENEFICIARIES.** Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective successors and assigns. Notwithstanding any other provision of this Lease, Landlord and Tenant hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Lease; (ii) the provisions of this Lease are not intended to be for the benefit of any individual or entity other than Landlord or Tenant; (iii) no individual or entity shall obtain any right to make any claim against Landlord or Tenant under the provisions of this Lease; and (iv) no provision of this Lease shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Lease.

29. **NO JOINT VENTURE.** Neither the terms, provisions or conditions of the foregoing clauses, nor any terms, provisions or conditions of the Lease of which they are a part, shall be construed as creating or constituting Landlord as co-partner or joint venturer with Tenant, nor shall same be construed in any manner as making Landlord liable for the debts, defaults, obligations or lawsuits of Tenant, or its subtenants and assigns.

30. **ASSIGNMENT OR SUBLEASING.** Tenant shall not assign or sublease its interest in the Premises or any part thereof without the prior written consent of Landlord, which shall not be unreasonably conditioned, withheld or delayed but which shall be given only after submission of all documents related to such assignment or sublease by Tenant to Landlord for Landlord's review and consent. Tenant acknowledges and agrees that Landlord cannot consent to assignment or subleasing to a for-profit entity.

31. **AUTHORIZATION TO ACT.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Agreement.

32. **COUNTERPARTS.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original of such instrument, but all of which together shall constitute one and the same instrument, and facsimile signatures shall have the same binding effect as manual signatures.

33. **TENANT'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Tenant represents, warrants, and covenants to Landlord, as of the date hereof and as of the Effective Date, as to each of the following statements:

33.1 **Organization.** Tenant is a duly organized non-stock corporation, validly existing under the laws of the Commonwealth of Virginia. Tenant, or an affiliate thereof, is a franchisee of the United Soccer League and Tenant or its affiliate will maintain its status as a professional or amateur sports organization throughout the term of the Lease.

33.2 **Authorization.** Tenant has full power and authority and its Board of Directors has taken all required action necessary to permit Tenant to execute and deliver this Lease and to carry out its terms.

33.3 **No Conflicts; Consents.** The execution and delivery by Tenant of this Lease does not violate, conflict with, result in a breach of, result in or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under any of the terms, conditions or provisions of (i) the laws of the Commonwealth or the Tenant's Articles of Incorporation or Bylaws; (ii) to Tenant's knowledge, any material contract, or (iii) to Tenant's knowledge, any order, writ, judgment, injunction, or decree applicable to the Tenant or the Premises.

33.4 **Disclosure.** No provision of this Lease or other information furnished by Tenant to Landlord in connection with the execution, delivery and performance of this Lease contains or will contain any knowingly untrue statements of a material fact or knowingly omits or will omit to state a material fact required to be stated to make the statement in light of the circumstances in which it is made, not misleading.

34. **SUBJECT TO APPROPRIATION.** All payments and other performances by the Landlord under this Lease are subject to annual appropriations by the City Council of the City of Richmond, Virginia. It is understood and agreed between the parties that the Landlord will be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Lease. Under no circumstances shall the Landlord's total liability under this Lease exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Lease.

35. **BROKERAGE.** Tenant hereby represents and warrants to Landlord that Tenant has

engaged no broker or agent who is or may be entitled to be paid a commission in connection with this Lease. Landlord hereby represents and warrants to Tenant that Landlord has engaged no broker or agent who is or may be entitled to be paid a commission in connection with this Lease.

36. **CAPTIONS AND HEADINGS.** The captions and headings used herein are intended only for convenience and are not to be used in construing this instrument.

LESSOR: CITY OF RICHMOND, VIRGINIA

By: _____ (SEAL)

Selena Cuffee-Glenn, Chief Administrative Officer

Authorized by Ord. No. _____, adopted _____, 201__.

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing Deed of Ground Lease was voluntarily acknowledged before me this ___ day of _____, 2016, by _____, who is either personally known to me or has presented identification of a state issued driver's license, in her capacity as Chief Administrative Officer of the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia, on behalf of said municipal corporation.

Notary Public:
Registration Number:
My commission expires:

APPROVED AS TO FORM:

Bonnie M. Ashley
Deputy City Attorney

LESSEE:

By: _____ (SEAL)

Its: _____

COMMONWEALTH OF VIRGINIA

CITY OF _____, to-wit:

The foregoing Deed of Ground Lease was voluntarily acknowledged before me this __ day of _____, 201__, by _____, who is either personally known to me or has presented identification of a state issued driver's license, in his capacity as _____ of _____, on its behalf.

Notary Public: _____

Registration Number:

My commission expires:

AGREEMENT OF GUARANTY
ATTACHED TO AND MADE PART OF THE DEED OF GROUND LEASE DATED
_____, 2016 BETWEEN THE CITY OF RICHMOND, VIRGINIA
(“LANDLORD”) AND _____ (“TENANT”)

The undersigned Guarantor, _____, in consideration of the making of the foregoing Deed of Ground Lease between Landlord and Tenant, does hereby unconditionally guarantee the payment and performance by Tenant of all the duties and obligations, financial and otherwise, under the Deed of Ground Lease.

Guarantor also agrees that Landlord is not first required to enforce against Tenant or any other person any liability, obligation or duty guaranteed by this Agreement before seeking enforcement thereof against Guarantor.

GUARANTOR:

By: _____ (SEAL)

Its: _____

COMMONWEALTH OF VIRGINIA
CITY OF _____, to-wit:

The foregoing Agreement of Guaranty was voluntarily acknowledged before me this __ day of _____, 201__, by _____, who is either personally known to me or has presented identification of a state issued driver's license, in his capacity as _____ of _____, on its behalf.

Notary Public: _____

Registration Number:

My commission expires:

Exhibit A – Use of Premises by the City of Richmond & Richmond Public Schools

1. City Stadium Property and Parking Lot Property

A. City Use

August/September Youth Football Clinics (1) Saturdays 8:30am to 4:30pm

October/November Youth Football Games (6) Tues/Wed/Thurs 5:30pm to 9:30pm

October/November Youth Football Games (4) Saturdays 8:30am to 4:30pm

B. Richmond Public Schools Use

September Huguenot High School Football Game

October John Marshall High School Football Game

George Wythe High School Football Game

Huguenot High School Football Game

November Armstrong High School Football Game

2. Parking Lot Property

A. Cultural Arts

Spring/Summer (2) Concerts

B. Citywide Events

Arts In The Park

Folk Festival

July 4th