

RESOLUTION NO. 30872

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A GROUND LEASE AGREEMENT WITH CHATTANOOGA FC FOUNDATION, IN SUBSTANTIALLY THE FORM ATTACHED, FOR APPROXIMATELY A THIRTEEN (13) ACRE PORTION OF 1151 E. 23RD STREET, IDENTIFIED AS A PORTION OF TAX PARCEL NO. 156A-D-001, FOR THE CONSTRUCTION AND OPERATION OF A MULTIFUNCTIONAL SPACE FOR RECREATION AND COMMUNITY ACTIVITIES, SPECIFICALLY FOR RECREATIONAL, LEAGUE, AND TOURNAMENT PLAY FOR SOCCER AND OTHER SPORTS, FOR A LEASE TERM OF FORTY (40) YEARS, SUBJECT TO HUD APPROVAL.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Mayor or his designee to enter into a Ground Lease Agreement with Chattanooga FC Foundation, in substantially the form attached, for approximately a thirteen (13) acre portion of 1151 E. 23rd Street, identified as a portion of Tax Parcel No. 156A-D-001, for the construction and operation of a multifunctional space for recreation and community activities, specifically for recreational, league, and tournament play for soccer and other sports, for a lease term of forty (40) years, subject to HUD approval.

ADOPTED: August 24, 2021

/mem/v2

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("Lease") is made this ____ day of _____, 2021 (the "Effective Date"), by and between **THE CITY OF CHATTANOOGA**, a Tennessee municipal corporation ("Landlord"), and **CHATTANOOGA FC FOUNDATION**, a Tennessee nonprofit corporation ("Tenant").

WITNESSETH:

1. **Leased Premises.** For the rent and upon the agreements, covenants, terms and conditions contained in this Lease, Landlord leases to Tenant and Tenant hereby rents from Landlord the real property situated in Chattanooga, County of Hamilton and State of Tennessee comprising a portion of Montague Park, and being approximately 13 acres, more or less, which is more particularly depicted on **Exhibit "A"**, attached hereto and incorporated by reference herein, together with (i) all of the easements, rights, privileges and appurtenances thereunto belonging; (ii) all improvements presently situated thereon; and (iii) all rights of ingress, egress and access from all public and private thoroughfares (all of the foregoing, including any improvements thereto, are hereinafter called the "Premises").

2. **Term.** The term of this Lease shall be for a period of forty (40) years commencing on the ____ day of _____, 2021 and ending on the ____ day of _____ 2061 (the "Term").

3. **Permitted Use; Fees; Land Use Restrictions; Soil Management Plan.**

(a) Landlord and Tenant mutually agree that the Premises may be used to construct and operate a multifunctional space for recreation and community activities and specifically for: (i) recreational, league, and tournament play for soccer and other sports including without limitation ultimate Frisbee, lacrosse, and rugby; and (ii) operation of a youth program (the "Facility"). Tenant covenants that it will not use or permit the use of the Premises otherwise than in a safe and reasonable manner and in compliance with all applicable laws, regulations, restrictions of record, codes and ordinances, and that no nuisance will be permitted, nor shall any waste be committed upon the Premises.

(b) The Premises authorized for use by this Lease shall be open to the public and shall be used in a nondiscriminatory manner. During the Term of this Lease, Tenant shall activate and make available fields and facilities for soccer and other sports. At a minimum, the gates to the Facility shall be open from sunrise to sunset.

(c) The Premises shall be used for park purposes only as required by Deed recorded in Book D11, Page 593, Register's Office of Hamilton County, Tennessee.

(d) Tenant agrees that the fees charged for use of the fields shall be reasonable and affordable. Tenant agrees that any fees charged and any other revenue generated on the Premises will serve only to fund Tenant's personnel and pay for the upkeep and maintenance of the Improvements (defined below).

(e) Tenant acknowledges and agrees to abide by the Land Use Restrictions recorded in Book 7942, Page 759, Register's Office of Hamilton County, Tennessee. Tenant shall be responsible for payment of any civil penalties, attorneys' fees and costs for failure to abide by the land use restrictions.

(f) All intrusive work shall be conducted in accordance with a Tennessee Department of Environment & Conservation Division of Remediation ("DoR") approved Soil Management Plan. Tenant agrees to provide notification to DoR at least one (1) week prior to conducting any intrusive activities on the Premises. Notification will include any plans related to intrusive activities and anticipated remedial actions. Upon completion of such intrusive activities, Tenant shall submit a Remedial Action report to DoR that documents all activities related to the remedial actions, including, but not limited to: a narrative of the remedial work conducted; final cover conditions (locations, thickness, as-builts); disposal manifests, if any, and details of any vapor mitigation systems deemed necessary through prior soil vapor testing.

(g) The Senior Advisor for Economic Opportunity (the "Administrator"), or his designee, shall be the Landlord's agent for the purpose of any action that may be taken by the Landlord.

4. **Rent.** Commencing on the Effective Date, Tenant agrees, without demand and without any abatement, deduction or setoff to pay annual rent (the "Rent") to Landlord, at Landlord's address set forth in Paragraph 23, or at such other place as Landlord may, from time to time designate the amount of One and 00/100 Dollars (\$1.00), payable annually on each anniversary of the date of this Lease.

5. **Taxes.** Tenant shall pay any and all taxes assessed or imposed upon Tenant's fixtures, equipment, sales and personal property located on the Premises. Landlord and Tenant hereby agree that the Premises and the Improvements located thereon have been exempted from real estate taxes because of the ownership of the Premises by Landlord as a governmental entity. If at any time during the term of this Lease the Premises or the leasehold interest therein is made subject to real estate taxes, ad valorem taxes, general and special assessments, or other governmental charges (collectively, the "Taxes"), the Tenant shall be responsible for payment of the Taxes which are attributable to the Premises.

6. **Condition of the Premises.** Landlord makes no representation of warranty of any kind (express or implied) regarding the suitability of, or compliance with applicable laws by, the Premises, as maintained, for any aspect of the Tenant's intended use. Accordingly, Tenant acknowledges and agrees that it has made an adequate investigation and inspection of the Premises

and its own determination regarding the suitability thereof for Tenant's intended use. **TENANT FURTHER ACKNOWLEDGES AND AGREES THAT THE PROPERTY SHALL BE DELIVERED BY LANDLORD TO TENANT "AS IS," "WHERE IS," AND "WITH ANY AND ALL FAULTS," AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND (EXPRESS OR IMPLIED), INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS AND WARRANTIES AS TO THE MARKETABILITY AND FITNESS FOR USE OF ANY PARTICULAR PURPOSE, AND SHALL BE USED BY TENANT AT TENANT'S OWN RISK.** Tenant is responsible for any and all destruction of any portion of the Premises by the general public or Tenant's invitees onto the Premises during the Term of this Lease.

7. **Improvements.**

(a) Tenant, at its sole cost and expense, shall construct and operate a multifunctional space for recreation and community activities on the Premises as more particularly described on **Exhibit "B"**, make improvements, alterations, renovations, improvements and additions to the Premises or any part thereof (collectively the "Improvements"), required to operate and maintain the Facility.

(b) The Improvements shall be constructed expeditiously and in a good and workmanlike manner and not impede use of adjacent portions of Montague Park. Until the Improvements are completed, Tenant shall deliver a summary report to the City's Real Property Office every six months regarding the status of the Improvement.

(c) Tenant shall pay all costs and expenses and discharge any liens arising, should they arise, with respect to any equipment or personal property on the Premises or any Improvements;

(d) All contracts entered into by Tenant relating to the erection of structures on the Premises shall contain the following statement:

"This agreement/contract shall in no way bind the City of Chattanooga, its officials, employees or representatives, nor obligate them for any costs or expenses whatsoever under this agreement/contract, or which are in any manner connected with the subject matter of this agreement/contract."

(e) All contractors must be licensed and shall comply with all requirements of the State of Tennessee Contractor's Licensing Act. The Tenant and Landlord shall jointly approve selection of the Construction Manager.

(f) The Improvements shall comply with the statutory requirements of all applicable building, plumbing and electrical codes, along with administrative regulations implementing same, regardless of whether such codes have been implemented by local ordinance or otherwise adopted by local authorities;

(g) Title to the Improvements shall be vested in and remain the property of Tenant at all times during the Term of this Lease; provided, however, upon the expiration of this Lease, or earlier termination for any reason other than Landlord's default, whichever event shall first occur, title to such Improvements shall immediately and automatically vest in, remain and become the property of Landlord subject, however, to Tenant's right to remove its personal property.

(h) At the timely request of Tenant, but not less than ten (10) days, Landlord shall execute and deliver to Tenant such authorizations and other documents as may reasonably be required in connection with any application for permits, licenses, consents, approvals, entitlements and other authorizations required for any such Improvement.

(i) Tenant shall use its best efforts to begin construction within thirty (30) days after receipt of all necessary permits, license, and approvals and shall proceed to complete the Improvements no later than July 1, 2024. Failure to complete the Improvements by this date shall constitute a material breach of this Lease.

8. **Surety Bonds.** The construction contract shall require that the general contractor constructing the Facility furnish and keep in force throughout the performance of the construction of the Facility a separate payment bond and separate performance bond, each in an amount and form satisfactory to the City Attorney. The bonds shall also guarantee to the Landlord that the work shall be free of all mechanic's and materialman's liens upon the Premises. The bonds shall name the Landlord as obligee and shall be in such form and with such sureties as the Landlord may approve prior to commencement of construction.

9. **Insurance and Indemnification.**

(a) Tenant, at its sole cost and expense, shall keep the Premises, with all Improvements thereon, whether owned by Landlord, Tenant, or an independent, third-party, insured under an "all risk" policy coverage against loss or damage by fire and lightning, including, by an extended coverage endorsement, windstorm, hail, explosion and smoke damage for the benefit of Landlord and Tenant during the Term of this Lease. In the event of any casualty damage to the Improvements on the Premises, Tenant shall use the proceeds of insurance to restore or repair such Improvements. Such insurance shall be maintained with insurance carriers and in amounts equal to the full replacement value of the Premises and the Improvements located thereon. Notwithstanding the foregoing, in the event (i) any buildings on the Premises are damaged to the extent of fifty (50%) percent or more of their value, or (ii) the damage occurs during the last two (2) lease years of the Term, then Tenant shall have the right to terminate this Lease by directing written notice thereof to Landlord within sixty (60) days following the casualty. Tenant, at its sole cost and expense, shall maintain, for the mutual benefit of Landlord and Tenant, general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises, and on, in or about the adjoining public and private thoroughfares, such insurance to afford protection to the limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(b) Tenant, at its sole cost and expense, shall purchase and maintain automobile liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage and also purchase worker's compensation insurance and employer's liability insurance in accordance with statutory requirements, with a limit of \$500,000 for each accident.

(c) Tenant shall maintain a policy of insurance covering physical abuse and sexual molestation with coverage of no less than \$1,000,000 combined single limits, per occurrence and aggregate. The coverage shall be maintained for the term of the Lease. The coverage must contain no sub-limits and apply to all Tenant employees, agents, contractors, and volunteers.

(d) Tenant shall require any contractor performing work on or at the Premises at the Tenant's direction to carry and maintain, at no expense to Landlord, a comprehensive general liability insurance policy, including, but not limited to, contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement and contractor's protective liability coverage, with insurance carriers and in amounts reasonably acceptable to Landlord and worker's compensation or similar insurance, covering all persons employed by Tenant and Tenant's sublessees and assigns on the Premises, in form and amounts required by law.

(e) Certificates of all such insurance required pursuant to this section shall be delivered to Landlord within thirty (30) days of the date of execution of this Lease agreement.

(f) Landlord shall have the right to require Tenant to increase the amount of insurance coverage after this Lease has been in effect for five (5) years and require commercially reasonable increases thereafter during the Term.

(g) Tenant shall indemnify, hold harmless, protect and defend Landlord, and its officials, employees, administrators, successors or assigns (the "Indemnified Parties") for and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and attorney's fees (the "Indemnified Matters"), directly or indirectly, arising out of any property damage or loss, bodily injuries, sickness, disease or death, in connection with the Tenant's or Tenant's agents, officers, representatives or invitees occupancy or use of the Premises or from any violations of all laws, including, without limitation, copyright laws, by every person connected with Tenant's occupancy and use of the Premises covered by this Agreement. Tenant's indemnification obligations under this Indemnification paragraph shall apply whether the Indemnified Matters are due in part to the contributory fault or negligence of the Indemnified Parties or others; provided, however, that Tenant shall not be obligated to indemnify the Indemnified Parties for the Indemnified Parties' respective primary negligence. Tenant's defense obligations under this Indemnification paragraph shall be with attorneys approved by Landlord. Notwithstanding anything in this Agreement to the contrary, the provisions of this Indemnification paragraph shall survive any expiration or termination of this Agreement and each Party shall remain obligated to the other Party under all provisions of this Agreement that expressly or by their nature extend beyond and survive the expiration or termination of this Agreement.

(h) All policies of insurance insuring the Premises or the improvements thereon shall include a waiver by the insurer of all right of subrogation against the other party to this Lease in connection with any loss or damage thereby insured against to the extent of the coverage provided by the respective insurance policies carried by any party hereto. Each party to this Lease does hereby waive all rights of recovery and causes of action against the other and all persons claiming through or under such other party, by way of subrogation or otherwise, for any damage to the perils covered by such general public liability insurance (or broader coverage, if applicable), notwithstanding that any such damage or destruction may be due to the negligence of such other party or of the persons claiming through or under such other party.

(i) All such insurance policies required to be carried by Tenant hereunder shall be with an insurance provider licensed in the State of Tennessee. Public liability insurance policies evidencing such insurance shall name Landlord and its designee as additional insured and shall also contain a provision requiring the insurer to give at least thirty (30) days' prior written notice to Landlord of any cancellation, modification or non-renewal of such insurance. If Tenant shall fail to perform any of its obligations under this Section, Landlord may perform the same and the cost of same shall be deemed additional rent and shall be payable upon Landlord's demand.

10. **Risk of Damage.** All Tenant's personal property of every kind or description including, without limitation, inventory and trade fixtures which may at any time be in the Premises shall be at Tenant's sole risk, or at the risk of those claiming under Tenant, and Landlord shall not be liable and shall be held harmless by Tenant against all claims, losses, liability and expenses (including, but not limited to, subrogation claims by Tenant's insurance carrier) for any damage to said property or loss suffered by the business or occupation of Tenant caused by any source whatsoever, including, without limitation, the bursting, overflowing or leaking of sewer or steam pipes or from the heating or plumbing fixtures or from electric wires or from gas, fumes or odors.

11. **Maintenance of the Premises.**

(a) **Landlord's Maintenance Obligations.** Landlord shall maintain the common areas and the multi-use sports fields until such time as Tenant has received its building permit. Tenant shall promptly provide Landlord with a copy of the building permit. Upon issuance of the building permit, Tenant shall be responsible for maintenance of the common areas and the multi-use sports fields during the Term of this Lease.

(b) **Tenant's Maintenance Obligations.** Tenant, at its sole cost and expense, shall maintain the Premises on par with other public parks owned and maintained by Landlord. Such maintenance and repair shall include routine day-to-day maintenance for all grounds, public buildings and facilities along with any Improvements located on the Premises. It shall be the specific obligation of the Tenant to perform the following:

(i) grounds keeping, including landscaping, watering, fertilizing, mowing, weeding, edging, grading or grounds keeping services provided by a qualified sports field manager

who is a member of the Sports Turf Managers Association comparable to those which Landlord provides now and in the future to any other public park owned and operated by Landlord;

(ii) routine trash removal;

(iii) maintenance of facilities on the Premises including restrooms, water fountains, sidewalks, steps, parking lots, driveways, and buildings, on both a routine and as needed basis, and including the providing of electrical, welding, plumbing, HVAC, carpentry, engineering and architectural services;

(iv) construct or install park signage as may be required for the use of the Premises as set forth in this Lease and in compliance with all laws.

(c) **Tenant's Specific Maintenance Obligations.** Tenant shall have the specific obligations to perform the following:

(i) install as needed sidewalks, driveways, roads and parking in accordance with the building codes for the City of Chattanooga and as required by written notice from the Landlord; (language clarifying that it is Tenant's obligation to install parking, driveways and sidewalks in accordance with Landlord's approval)

(ii) provide labor for conducting special events and all additional costs for provision of tents, sound system, electrical, tables and chairs and regulations governing care and maintenance of the Facility. Tenant shall peacefully surrender the Premises to Landlord at the expiration or termination of this Lease in reasonably good condition, ordinary wear and tear, damage by casualty and any taking (as defined herein) of all or any portion of the Premises excepted. Tenant shall not be required to pay the cost of repair of any destruction caused by fire or other casualty to the extent such repair, and the cost thereof, is covered by standard fire and extended coverage insurance.

12. **Environmental Indemnification; Removal of Hazardous Materials.** Landlord, pursuant to the TGTLA, hereby indemnifies and holds Tenant harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the Premises or due to the act or omission of Landlord or its agents, contractors or employees. Tenant hereby indemnifies and holds Landlord harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the Premises after the date of this Lease due to the act or omission of Tenant, its contractors or employees or arising from the exercise of rights granted Tenant hereunder.

For purposes hereof, the term "Hazardous Materials" means (i) any "hazardous wastes" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in or for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "superfund" or "super lien" law, or any other federal, state or local statute, law, ordinance, code,

rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, and specifically identified and known as a hazardous, toxic or dangerous waste, substance or material as of the date this Lease including any petroleum, petroleum products or waste.

Upon expiration of the Term or earlier termination of this Lease, the Tenant shall deliver possession of the Premises to Landlord free from any and all hazardous materials introduced to the Premises by Tenant. Therefore, upon expiration or earlier termination of this Lease, Tenant shall cause any hazardous material used by, or otherwise arising out of or related to the use or occupancy of the Premises by Tenant to be removed from the Premises and properly transported for use, storage or disposal in accordance with all environmental laws and requirements. Failure to Comply with this Section 11 shall, in addition to constituting an event of default under this Lease, constitute (without limiting any cause of action available to Landlord): (a) a continuing trespass upon the Premises by Tenant; (b) a continuing nuisance; and (c) at Landlord's option, a failure to tender possession of the Premises to Landlord with the result that the Tenant shall be deemed to be a holdover tenant of the Premises in accordance with Section 21 below, until all such hazardous materials are removed from the Premises by the Tenant at Tenant's sole cost and expense in accordance with all environmental laws and requirements.

13. **Utilities.** During the term of this Lease, Tenant shall contract for, in its own name, and shall pay before delinquency for (i) all utilities and services used or consumed by Tenant upon the Premises; (ii) all water and sewage charges attributable to the Premises; (iii) any charges made for the installation of new or additional connections or modifications in such services made during the Term hereof and (iv) all taxes or other charges levied on such utilities. Landlord shall not be responsible for any interruption, discontinuance or termination of utilities to the Premises. Landlord agrees to execute any documentation necessary in order for Tenant to obtain utility services for the Premises, including, but not limited to, the granting of any required easements to utility providers.

14. **Signs.** Tenant may place signs on the Premises advertising the Facility or any business of Tenant. All such signs shall comply with all laws, ordinances or regulations relating to signage.

15. **Rules and Regulations.** Tenant's use of the Premises shall be subject at all times during the Term of this Lease to the rules and regulations established by the Tenant and approved by Landlord. The rules and regulations shall be submitted to Landlord for approval no later than March 31, 2022.

16. **Assignment and Subletting.** Tenant may not assign or sublease this Lease without the prior written consent of Landlord.

17. **Remedies Upon Breach.** If any of the following shall occur:

(a) **Landlord's Remedies Upon Tenant's Breach.** In the event Tenant is in breach of this Lease (and in addition to any other remedies provided elsewhere in this Lease), Landlord,

at its option and after any applicable notice and cure periods have expired, but without additional notice or demand from Landlord, may, in addition to all other rights and remedies provided in this Lease or otherwise at law or in equity, terminate this Lease and Tenant's right of possession of the Premises.

(b) **Tenant's Remedies Upon Landlord's Breach.** In the event Landlord is in breach of this Lease, (and in addition to any other remedies provided elsewhere in this Lease) Tenant shall be entitled to terminate this Lease upon written notice to Landlord or exercise and pursue all rights and remedies available at law or in equity.

18. **Default.**

(a) **Landlord Breach Provisions.** Landlord shall be deemed in breach of this Lease if Landlord fails, whether by action or inaction, to timely comply with or satisfy any of the obligations imposed on Landlord under this Lease for a period of thirty (30) days (unless otherwise herein specified) after Tenant's delivery to Landlord of written notice of such default; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but Landlord commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then Tenant shall not exercise its remedies under Paragraph 16(a).

(b) **Tenant Breach Provisions.** Tenant shall be deemed in breach of this Lease if (a) Tenant fails to pay Rent or any other payment due hereunder within ten (10) days after written notice from Landlord of such failure to pay; or (b) Tenant fails, whether by action or inaction, to timely comply with or satisfy any or all of the obligations imposed on Tenant under this Lease (other than the obligation to pay Rent or other amounts due hereunder) for a period of thirty (30) days after Landlord's delivery to Tenant of written notice of such default; provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then Landlord shall not exercise its remedies under Paragraph 16, or (c) Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Tenant under any state or federal bankruptcy or insolvency law that is not dismissed within ninety (90) days, or whenever a petition is filed by or against (to the extent not dismissed within ninety (90) days) Tenant under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any law or like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Code or similar law, or whenever a receiver of Tenant, or of, or for, the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

19. **Landlord's Right to Enter Premises.** Provided Landlord shall not unduly interfere with or interrupt the operations of Tenant on the Premises, Tenant agrees to permit Landlord and any authorized representatives of Landlord to enter the Premises to perform

Landlord's obligations and observance of Tenant's compliance with terms of this as set forth in this Lease agreement.

20. **Audit Provision.** The City or its assigns may audit all financial and related records (including digital) associated with the terms of this agreement including timesheets, reimbursable out of pocket expenses, Improvements, materials, goods, and equipment claimed by the Tenant. The City may further audit any of Tenant's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The Tenant shall at all times during the term of this agreement and for a period of five (5) years after the end of the contract, keep and maintained records of the work performed pursuant to this Agreement. Records to be kept and maintain shall include proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the Tenant. Documents shall be maintained by the Tenant necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The Tenant shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

21. **Eminent Domain.**

(a) If at any time during the term hereof (i) the whole of the Premises shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain; or (ii) any part of the Premises shall be so taken, such that Tenant determines, in its sole discretion that the Premises are not or shall not be tenantable or shall be insufficient for the operation of Tenant's business as previously operated prior to the reduction resulting from such taking, then, upon written notice from Tenant to Landlord of such determination, the term of this Lease, and all rights of Tenant hereunder, shall immediately cease and terminate, and the rent, insurance, and other items payable under this Lease shall be adjusted and paid to the time of such condemnation. In the event of a termination pursuant to the provisions of this section, any award attributable to the value of the land shall be paid to Landlord and any condemnation award attributable to the value of any improvements on the land shall be paid to Tenant.

(b) In the event that a taking shall not be sufficient under the provisions of this Paragraph 23 to terminate this Lease, this Lease shall remain in effect.

22. **No Waiver by Landlord.** No waiver of any of the terms, covenants and provisions, conditions, rules and regulations required by this Lease, and no waiver of any legal or equitable relief of remedy shall be implied by the failure of Landlord or Tenant to assert any rights, or to declare any forfeiture, or for any other reason, and no waiver of any of said terms, provisions, covenants, rules and regulations shall be valid unless it shall be in writing signed by the waiving party.

23. **Holdover.** Any holding over by Tenant of the Premises after the expiration of this Lease shall operate and be construed as a tenancy from month to month governed by the terms hereof. Tenant shall also pay all other charges payable under the terms of this Lease, prorated for each month during which Tenant is in possession.

24. **Short Form Lease.** This Lease shall not be recorded, but a Memorandum of Lease describing the Premises, giving the term of this Lease as set forth herein, may be recorded in its place, at Landlord's or Tenant's discretion. Tenant and Landlord each hereby agree to execute such a Memorandum of Lease.

25. **Notices.** All notices required or permitted by this Lease shall be in writing, and shall be deemed properly delivered when and if (i) hand-delivered with receipt on the date set forth on the receipt or (ii) by overnight carrier, with receipt, on the date set forth on the receipt or (iii) sent in the United States mail, postage prepaid, certified or registered mail, return receipt requested on the date set forth on the receipt, addressed to the parties hereto at their respective addresses set forth below or as they may hereafter specify by written notice delivered in accordance herewith:

If to Landlord:

City of Chattanooga
Real Property Office
101 E. 11th Street, Suite G4
Chattanooga, TN 37402
With a copy to:

Office of City Attorney
100 East 11th Street
Suite 200
Chattanooga, TN 37402

If to Tenant:

Chattanooga FC Foundation
1271 Market St., Suite C
Chattanooga, TN 37402
Attention: Krue Brock

With a copy to:

26. **Estoppel Certificate.** Landlord and Tenant mutually agree that, at any time and from time to time, upon not less than ten (10) days' prior request by either party, the parties shall

execute, acknowledge and deliver a statement in writing certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and identifying the modifications); (ii) the dates to which the rent and other charges have been paid; and (iii) that, to the best of the certifying party's knowledge, such requesting party is not in default under any provisions of this Lease (or if there has been a default, the nature of said default). It is intended that any such statement may be relied upon by any person proposing to acquire any interest in this Lease or the Premises, or any prospective mortgagee or assignee of any mortgage upon, such interest

27. **Invalidity of Particular Provisions.** If any covenant, agreement or condition of this Lease or the application thereof to any person, firm or corporation or to any circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such covenant, agreement or condition to persons, firms or corporations or to circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby. Each covenant, agreement or condition of this Lease shall be valid and enforceable to the fullest extent permitted by law.

28. **Quiet Enjoyment.** Landlord hereby covenants and agrees that, if Tenant and its sublessees and assigns shall perform all of the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the term of this Lease agreement have the peaceable and quiet use, enjoyment, and possession of the Premises without any manner of let or hindrance from Landlord or from any person or persons lawfully claiming the Premises.

29. **Successors and Assigns.** The terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and Tenant, and their respective heirs, administrators, successors and assigns.

30. **Captions.** All captions, headings, titles, numerical references and computer highlighting are for convenience only and shall have no effect on the interpretation of this Lease.

31. **Independent Covenants.** Each covenant, agreement, obligation or other provision of this Lease to be performed by Tenant are separate and independent covenants of Tenant, and not dependent on any other provision of the Lease.

32. **Number and Gender.** All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include the appropriate number and gender, as the context may require.

33. **Time is of the Essence.** Time is of the essence of this Lease and the performance of all obligations hereunder.

34. **Waiver of Jury Trial.** Landlord and Tenant waive trial by jury in the event of any action, claim, proceeding or counterclaim, whether judicial, civil, administrative or otherwise, brought by either Landlord or Tenant against the other in connection with or arising out of this Lease.

35. **Governing Law.** This Lease shall be governed according to the laws of the State of Tennessee.

36. **Construction.** The terms and provisions of this Lease shall not be construed against or in favor of a party hereto merely because such party or its counsel is the draftsman of this Lease.

37. **Brokers.** Landlord and Tenant each represent and warrant to the other that no broker is involved in this Lease transaction, and each party agrees to indemnify, defend and hold the other harmless from and against any claim for fee, commission or sum claimed or due to any broker or agent in connection with this Lease transaction.

38. **Complete Agreement.** This writing contains the entire agreement between the parties hereto, and no agent, representative, or officer of Landlord hereto has authority to make or has made any statement, agreement or representation, either oral or written, in connection herewith, modifying, adding or changing the terms and conditions herein set forth. No modification of this Lease shall be binding unless such modification shall be in writing and signed by the parties hereto.

39. **No Partnership.** Nothing contained in this Lease shall be construed to create a partnership, joint venture or relationship of principal and agent between Landlord and Tenant. No provision of this Lease shall be construed to confer any rights or remedies upon any party other than Landlord and Tenant.

40. **Force Majeure.** Should any matter or condition beyond the reasonable control of either Landlord or Tenant such as, but not limited to war, public emergency, acts of terrorism, calamity, fire, earthquake, flood, acts of God, strikes, labor disturbances, pandemics or epidemics, or actions, civil disturbances or riots, or any governmental restriction, prevent performance of this Lease in accordance with the provisions hereof, in whole or in part, performance of this Lease by either party shall be suspended or excused to the extent commensurate with such interfering occurrence.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first above written.

LANDLORD:

CITY OF CHATTANOOGA, TENNESSEE,

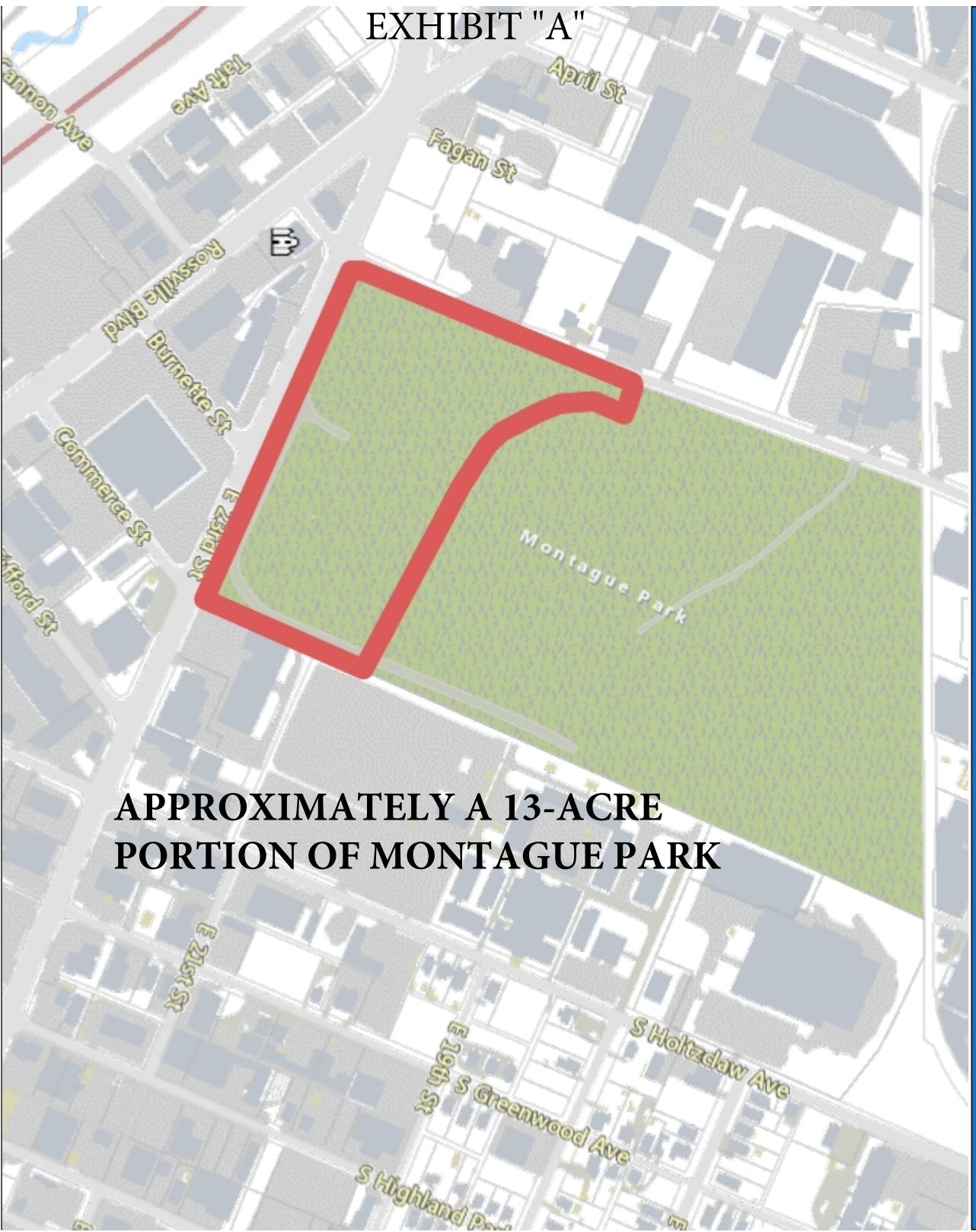
By: _____
Jermaine E. Freeman, *Senior Advisor for Economic Opportunity*

TENANT:

CHATTANOOGA FC FOUNDATION, a Tennessee non-profit corporation,

By: _____
Krue Brock, *Executive Director*

EXHIBIT "A"



**APPROXIMATELY A 13-ACRE
PORTION OF MONTAGUE PARK**

0 4000.0 8000.0 Feet
 NAD_1983_StatePlane_Tennessee_FIPS_4100_Feet
 © Latitude Geographics Group Ltd.

Disclaimer: This map is to be used for reference only, and no other use or reliance on the same is authorized. This map was automatically generated using HCGIS Mapping System. Parcel lines are shown for reference only and are not intended for conveyances, nor is it intended to substitute for a legal survey or property abstract.



- Legend**
- Parcels
 - Road Paved Surface
 - County Boundary
 - Recycling Centers
 - Healthcare Facilities
 - Emergency Services Locations
 - FIRE
 - MEDIC
 - POLICE
 - Cemeteries
 - Religious Facilities
 - Schools
 - Building Footprints
 - Miscellaneous Structures
 - Driveways
 - Parking
 - Water Bodies
 - Other Water Bodies
 - Recreational Areas
 - Surrounding
 - Hamilton

EXHIBIT B

(Improvements)

- Development requirements and timeline for completion:
 - Environmental Analysis – December 2021
 - Updated ALTA/Topographical Survey – January 2022
 - Field Design – April 2022
 - Fundraising – To be completed by October 2022
 - Civil Plan Commencement – February 2023
 - Civil Plan & General Contractor Bids – March 2023
 - Site Construction Completion – July 2024

- The Landlord will assign a project manager (“PM”) to the project for the duration of the project. Those duties shall include but not be limited to the oversight of the project schedule, the basis of the design in the best interest of the Landlord, in meeting all required codes, regulations, permits, etc. for local, state and federal provisions. The PM will be involved in the conceptual planning, 30-60-90% design reviews, and 100% design plans permitting. . The PM will be an oversight for the Construction Phase and will be involved in the regularly scheduled construction progress meetings and site inspections during construction for verification that the project is being built to the plans and specifications. The Tenant will remain in communication with the assigned PM for the duration of the project.

- During the Construction Phase, a Resident Project Representative (“RPR”), from the City’s Blanket RPR Services Contract, shall be provided by the Tenant and under the direction of the PM to be onsite daily for the inspection of the construction to final completion of the project.

- The Tenant shall also provide a Construction Materials Testing Company, from the City’s Blanket Construction Materials Testing Services Contract, to perform tests of all subgrades, fills, cuts, undercuts, foundations, along with compaction test for all earthen materials, stone and asphalt material placement, and concrete pours for mix strength, air content, slump test, water content, and 28 day structural cylinder breaks.

- The Tenant shall require all other industry standard testing on materials to be spelled out by the design consultants and to be the responsibility of the contractor to perform and provide results to the Construction Phase team.

- The Tenant shall also have the professional design consultants for the project to provide Construction Phase Services, to include but not be limited to the preparing of the agenda, attending, directing and providing minutes of the Pre-Construction Conference, as well as all bi-weekly or monthly construction progress meetings for the duration of the construction phase. Other duties shall include the review and approval of all submittals, RFI’s, shop drawings, etc., along with documenting and tracking of all approvals and denials until final approval, review and approval of all monthly construction pay request,

bi-weekly site visits and reports, review and approval of all Owner Manuals, perform a pre-final and final walk-throughs, prepare punch list, and all final closeout documents as required.

- Site Construction

- Two fields; each field will be, at a minimum, 210' x 320'. Playing surface will be grass or synthetic turf. If synthetic turf is utilized, it must be replaced, at expense of the Tenant, when the surface is determined to no longer be safe or in a usable condition. The fields, grass or synthetic, are to be constructed to American Society for Testing and Materials ("ASTM") standards.
- One grass field; it will be 210' x 320'. This is an existing field that will be improved and maintained.
- With support from US Soccer Foundation, a state of the art lighting system will be installed. The lighting will be installed in a manner that will limit intrusion to neighboring properties.
- Landscaping and beautification of the entire leased premises
- Integrate path system will provide connectivity
- Asphalt parking area will provide a minimum of one hundred eighty (180) spaces
- Concessions and restroom facility
- Pavilion - A pavilion will be constructed at a later date, not to exceed October 2027; however, the Tenant reserves the right to purchase and independently own an adjacent parcel on which the pavilion will be constructed.
- With the exception of the pavilion, all site construction shall be completed by July 1, 2024.
- Project shall be required to meet all regulatory permitting requirements for local, state and Federal requirements.