



## MEMORANDUM

TO: Scott Gunning

FROM: Rhonda Ritzi *RRitzi*

DATE: January 27, 2023

RE: Request to Approve Lease Agreement with Independence Soccer Club and Fusion FC NKY jointly for the facility management at the Pioneer Park Soccer Fields

At the last Recreation Commission meeting, the board voted unanimously to award the facility management contract at the Pioneer Park soccer fields to Independence Soccer Club and Fusion FC NKY jointly.

As in past agreements, Independence Soccer Club and Fusion FC NKY will be responsible for developing and maintaining the soccer fields to the specifications set forth by the Fiscal Court, not limited to mowing all areas both on and outside the playing fields, field lining, aerating and reseeding the fields as needed.

The term of this Lease Agreement shall be for an initial period beginning on January 1, 2023, and ending on December 31, 2026. This Lease Agreement shall automatically renew for an additional four years through December 31, 2030, and thereafter for additional four years unless and until either the Lessor or Lessee determine that it no longer wishes to continue the terms of this Agreement. A copy of the lease agreement is attached for your review.

Thank you for your consideration and I look forward to discussing with you further.

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## PIONEER PARK SOCCER FIELD LEASE AGREEMENT

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This Lease Agreement is entered into by and between the Kenton County Fiscal Court, Kenton County, Kentucky, 1840 Simon Kenton Way, Suite 5200, Covington, Kentucky, (hereinafter referred to as the “Lessor”), Independence Soccer Club Inc., PO Box 207, Independence, Kentucky, and Fusion FC NKY, Inc., PO Box 18554, Erlanger, KY, (hereinafter referred to jointly as “Lessees”),

WITNESS, that in consideration of the mutual covenants and promises set forth herein, the parties agree as follows:

1. **Premises.** The Lessor agrees to lease to Lessees the 8.3 acres areas depicted in exhibit A, attached hereto and incorporated fully herein, of Pioneer Park, in Covington, Kenton County. The area being leased is hereinafter referred to as “premises” or “soccer fields.”
  - a. In consideration of the use of said premises, Lessees shall be jointly and severally liable to pay Lessor the sum of one (\$1.00) Dollar per year, payable within five (5) business days of the first day of each lease year.
2. **Term, effective date of Agreement.** The term of this Lease Agreement shall be for an initial period beginning on January 1, 2023, and ending on December 31, 2026.

This Lease Agreement shall automatically renew for an additional four years through December 31, 2030, and thereafter for additional four years unless and until either the Lessor or Lessee determine that it no longer wishes to continue the terms of this Agreement and terminates same in accordance with the provisions of paragraph three (3) below. The effective date of this agreement is January 1, 2023, regardless of the date executed by Lessor and Lessee.

### 3. **Early Termination of Agreement**

- a. Lessees may terminate this agreement prior to the end of the lease term for any reason upon ninety (90) days written notice to the Lessor.
- b. Lessor may terminate this lease agreement prior to the end of the term for cause upon thirty (30) days written notice of a breach of Lessees’ performance obligations under the terms of this agreement, except a material breach which shall be governed by Section 3(c) *infra*.
  - i. Lessee may cure any breach in its performance under Section (3)(b) during the 30 day notice period. If the breach is cured to Lessor’s satisfaction pursuant to the terms of this agreement, Lessor shall rescind its termination.
  - ii. Lessees’ failure to cure the defect within the 30 day notice period shall terminate this lease without further notice to Lessees.

- c. Lessor may immediately terminate this lease agreement at any time upon written notice to the Lessees of a material breach of the terms of this agreement.
  - i. The parties hereby expressly agree that failure to strictly comply with the following Sections and/or Subsections of this agreement shall be considered a material breach:
    - 1. Section 1(a)
    - 2. Section 4(a) and 4(b)
    - 3. Sections 5(b), 5(c), and 5(d)
    - 4. Section 6(a)
    - 5. Section 12
    - 6. Section 16

**4. Capital Improvements.**

- a. Within ninety (180) days of the effective date of this agreement, Lessees, at their sole expense, shall complete or have entered into contracts with the requisite service providers to:
  - i. Install separate utility meters for any portion of the premises requiring water, gas, or electric service.
  - ii. Make any necessary repairs to existing fencing and gates on the premises.
  - iii. Re-grade and seed the western portions of the premises previously used by Lessor as a dog-park and convert the area(s) to a soccer field(s).
  - iv. Aerate, over-seed, and fertilize any existing grass playing areas.
  - v. Install new signage, subject to the provisions of Section 15 herein.
- b. During the one hundred eighty (180) day window to complete or initiate these capital improvements, Lessees may request a reasonable extension of time to complete the improvements due to weather conditions, the availability of service providers and/or necessary materials, or any other impediment to completion of the capital improvements which is not due to an act or omission of Lessees.

**5. Exclusive rights.** Lessees shall have the exclusive right to use the premises during the park's normal operating hours (currently 7:00 A.M. to dusk, daily), subject to the exceptions set forth below:

- a. Lessees shall, to the extent reasonably practical, share the use of the premises with other organizations subject to Lessees' approval and scheduling limitations. Any licensee using the premises under the permission of Lessees shall be required to furnish Lessor proof of insurance equivalent to that which Lessees are required to carry under the terms of this agreement. Lessees will schedule all games, tournaments and other special soccer events. Lessees may charge a reasonable usage fee to any club, team, or organization seeking license to use the soccer fields.
- b. Lessees agree that the fields are open to the public when not in use by Lessees or any licensee(s) pursuant to Section (5)(a).

- c. Kenton County Parks and Recreation events shall have scheduling priority over that of Lessees or its licensee(s).
  - d. Lessees agree to coordinate with Lessor during certain recreation events and close all fields with thirty (30) days prior notice of said event. Lessor's request of closure may not exceed two occurrences per calendar year.
  - e. Lessees shall grant Lessor access to view Lessees' online scheduling system/scheduling calendar in order to mitigate schedule conflicts.
6. **Field Maintenance.** Lessees agree to maintain the fields in practice and/or game condition to ensure they are safe and suitable for play. Lessees shall cut the grass on the property or reimburse the Lessor for all expenses associated with mowing based on the reasonable and necessary specifications set forth by the Lessor. Lessees shall inform the Lessor of its decision to either cut the grass or reimburse the Lessor by February 1<sup>st</sup> of each year. Lessees will supply all maintenance needs for the premises, including, but not limited to: mowing all areas both on and outside the playing fields, field lining, aerating and reseeding the fields as needed, field leveling, drainage/erosion control, maintenance and replacement of all fencing and seating, and trash pickup and removal, including providing waste receptacles. Lessees shall supply all equipment, materials and supplies at their expense to accomplish the required maintenance.
- a. **Modifications.** Lessees shall seek the written approval of the Lessor prior to making any modifications or alterations to the premises outside of the enumerated maintenance duties of Lessee pursuant to Section 6, or any initial capital improvements pursuant to Section 4. Lessees may petition the Lessor to perform any such modifications or alterations at the cost to the Lessor; however the decision to proceed with any such modification or alteration shall be at the sole discretion of the Lessor and any modification completed by Lessor shall not alter the duties of either party under this agreement.
7. **Bathroom Facilities.** Lessor agrees to permit Lessees to use the common bathroom facilities of Pioneer Park. The bathrooms shall be closed from October 30 – April 15, weather depending. Lessees shall have the right to provide temporary facilities (i.e. porta-a-lets) on the premises during special events hosted by Lessees. Any temporary facilities shall be removed from the premises no later than three (3) days after the conclusion of the event. Lessees shall provide all necessary labor or equipment to insure any temporary facilities are maintained in a clean and healthy manner while on the premises.
8. **Utilities.** All electric, gas, and water bills associated with the premises as well as associated operations at the park shall be the responsibility of Lessee, who shall have said facilities separately metered from the remainder of any Pioneer Park facilities.
9. **Parking.** Lessees agree to insure that ample parking exists so that the public has ready access and parking capabilities at the public shelter house located near the premises.
10. **Economic Hardship Policy.** During the term of this agreement Lessees shall implement a policy or program to facilitate participation in each of Lessees' leagues utilizing the

premises by those who present a demonstrable economic hardship which would otherwise prevent or severely limit their participation in Lessees' league(s).

- a. Lessees shall report to Lessor at the conclusion of each league season the terms/criteria of the economic hardship policy and the number of participants assisted therefrom.

**11. Hold Harmless Agreement.** Lessees and their successors and assigns hereby agree to indemnify, protect and hold harmless the Lessor, its officials, employees and agents, from any and all claims, demands, liabilities, damages or suits brought by any person or other entity arising from or related to Lessees' occupancy and/or use of the premises, including but not limited to indemnification for reasonable attorney's fees and cost of defending any action brought against the Lessor.

**12. Insurance.** Lessees shall maintain a policy of liability insurance on the property with a reputable insurance carrier in an amount not less than \$1,000,000, with the Lessor listed as a named insured on the policy. The policy must provide Lessor at least a ten (10) day advance written notice of any proposed cancellation or termination of the policy. A copy of the policy shall be provided to the Lessor prior to the beginning of each soccer season, but no later than April 1<sup>st</sup> of each year.

**13. Dissolution of Contract.** In the event any Lessee should become financially insolvent, this Agreement may be terminated by Lessor and the Lessor may resume any re-lease rights and field maintenance responsibility. Any Officer, Club Official, Referee, Member, Player or any other person associated with the Lessee would also be relieved from any obligation associated with this agreement.

**14. Signage.** All signage must be in compliance with all state, local and federal laws and regulations. The Lessor agrees to cooperate with Lessees to allow lawful signage at the soccer fields; however, Lessor shall retain the right to disallow and/or remove any signage at its sole discretion.

**15. Compliance with Law.** Lessees shall comply with all federal, state, city, and county laws, statutes and/or ordinances.

**16. Non-assignment of agreement.** This Agreement shall not be assigned or transferred by Lessees to any other organization or entity without the written consent of the Lessor.

**17. Law of Kentucky.** This Agreement will be construed according to the laws of the Commonwealth of Kentucky.

**18. Entire Agreement.** This Agreement is the entire agreement of the parties.

**19. Waiver of subrogation.** The parties agree that each waives all rights against the other or their agents any right of subrogation that may exist in an insurance contract or otherwise.

No third party insurance carrier or other entity will be allowed to assert subrogation rights against a party to this Agreement.

- 20. Inspection.** The Lessor reserves the right to enter upon the property at any reasonable time to inspect the premises in a manner that will not materially interfere with Lessees' operation of the facilities.
- 21. Surrender of premises.** Lessees agree to surrender the property to the Lessor in at least the same condition as they were delivered, reasonable wear and tear accepted. Any fixtures or structures installed, erected, placed, or constructed on the premises by Lessees shall become the property of Lessor upon the expiration or termination of this agreement unless waived in writing by Lessor.
- 22. No Unlawful Activity.** Lessees agree to make a good faith effort to prevent unlawful activity on the premises.
- 23. "As Is" Condition.** The leased premises are being delivered by the Lessor in an "as is" condition, and the Lessor makes no representations to Lessees as the condition of the premises.
- 24. Annual Report.** Lessee shall provide an annual report to the Lessor.

**IN WITNESS WHEREOF**, each party has set their signatures on the \_\_\_\_ day of \_\_\_\_\_, 2023.

**KENTON COUNTY FISCAL COURT**

\_\_\_\_\_  
BY: Kris Knochelmann, Judge/Executive

**INDEPENDENCE SOCCER LEAGUE, INC.**

\_\_\_\_\_  
BY: Blaine Edmonds, President

**FUSION FC NKY, INC.**

\_\_\_\_\_  
BY: Ben Lighthall, President



# Exhibit A

3952 Madison Pike, Covington KY 41017  
www.kentoncounty.org  
8.3 Acres



3.88 Acres

2.93 Acres

1.49 Acres

Pioneer Park

OLD MADISON PIKE

WILLIAMSCREEK WAY

MADISON PIKE  
MADISON PIKE

TUSCANYVIEW

MADISON PIKE

1:3,000  
1 in = 250 ft

0 125 250 Feet

LINK-GIS

PDS

1840 Simon Kenton Way  
Covington, KY 41011  
859.331.8980  
Office hours M-F 8-5  
www.linkgis.org

Parcel data provided by CCPVA, KCPVA,  
PCPVA and LINK-GIS.

**Date: 1/13/2023**

These GIS data are deemed reliable and every effort has been made to ensure their accuracy. They are, however, provided "as is" without warranty of correctness, timeliness, reliability, or completeness. Map elements do not represent a legal survey of land. Use of these data for any purpose should be with an acknowledgement of their limitations, including the fact that they are dynamic in nature and in a constant state of maintenance. Field investigation may be necessary.