

Memorandum of Agreement

This memorandum of agreement ("Agreement") is entered on this ___ day of _____, 2018, by and between the Lexington-Fayette Urban County Government ("LFUCG"), an urban county government organized and operated pursuant to KRS 67A, which has as its primary place of business 200 East Main Street, Lexington, Kentucky 40507, and Transylvania University, a Kentucky non-profit corporation (the "University"), which has its principal office at 300 North Broadway, Lexington, Kentucky 40508.

WHEREAS, LFUCG wishes to make improvements to Coolavin Park, located at 550 West 6th Street, Lexington, Kentucky, for the benefit of the public; and,

WHEREAS, the University wishes to have access to additional tennis courts near its Athletic Center; and,

WHEREAS, the University's anticipated use of the tennis courts is of a nature that would cause minimal interference with public access thereto;

NOW, THEREFORE, in consideration of the promises and obligations contained herein, the parties hereby agree and covenant as follows:

- I. **TERM.** This Agreement shall take effect upon execution by both parties and shall remain in effect for twenty (20) years therefrom. It shall automatically renew for two (2) additional terms of ten (10) years each, unless either party provides the other with notice of its intent not to renew the Agreement at least two years before the prospective automatic renewal or the agreement is otherwise terminated early as provided herein.
- II. **INVESTMENT IN COOLAVIN PARK.** The University shall install eight (8) collegiate tennis courts, along with accompanying tennis fencing, lights, utilities (to the extent additional utilities are needed by the University for its usage of the tennis courts), in Coolavin Park in the location identified in Exhibit A and according to the specifications to be agreed upon by the parties. Spectator seating location will be upon mutual agreement of University and LFUCG. The real property on which such improvements are made and improvements shall be referred to collectively as "the premises."
- III. **PRIORITY LICENSE.**
 - a. In consideration of its investment in Coolavin Park, described in Section II, LFUCG shall grant the University a priority license for use of the premises for at least one hundred fifty (150) days each year this Agreement is in effect. On all such days, the premises shall be available for public use when not being used by the University.
 - b. By no later than November 15th of each calendar year, the University shall submit to LFUCG a written statement identifying the dates and times during the following calendar year that it would like to reserve the premises for use and the number of courts to be reserved. LFUCG shall respond to this written statement no later than December 15th of each calendar year. LFUCG shall make good faith efforts to accommodate all requested reservations, but shall, under no circumstances, provide the University with reservations on fewer than one hundred fifty (150) days, unless requested by the University. In no case shall LFUCG accept other reservations for the premises for the upcoming calendar year prior to responding to the written statement from the University. After LFUCG has confirmed the reserved dates for the year, it will consult with the University for any events or rentals which might impact participants or spectators on the NW and SW portions of Coolavin Park on

competition dates. LFUCG will not schedule other events for the premises which conflict with reserved dates.

- c. LFUCG will make good faith efforts to accommodate all reasonable requests to alter the reservation schedule as needed for weather make-up days or for other reasons.
- d. The priority license granted to the University herein is not transferrable. The reservations made hereunder shall only be used by students, staff, and faculty of the University, and others attending events at the premises hosted and managed by the University. This usage includes, but is not limited to, varsity men's and women's tennis practice and matches, student recreational tennis, university-affiliated tennis camps, and third-party rentals such as the United States Tennis Association to utilize the University's priority days in order to host events.
- e. All revenue generated by the University from use of the priority license shall be used solely for the purpose of defraying the cost of events hosted at the premises and for maintenance and capital improvements to the premises.
- f. The University may post temporary and permanent signage at the premises with the approval of LFUCG, which approval shall not be unreasonably withheld.
- g. The University shall notify LFUCG within twenty-four (24) hours if emergency medical or law enforcement services are required at the tennis courts as a result of its use thereof.
- h. In its use of the priority license and premises, the University shall abide by all local, state, and federal laws and regulations.

IV. UTILITIES & MAINTENANCE

- a. The University shall ensure that the tennis courts are maintained in reasonably neat and orderly condition at all times, except as provided herein. Such duty shall include, without limitation: patching cracks in and repaving tennis courts as needed, applying regular color coating to tennis courts, repairing and replacing fencing around the courts, cleaning tennis courts, leaf removal, light repairs and lightbulb replacement, and spectator seating inspections and maintenance.
- b. LFUCG shall maintain the grounds and shall ensure that tennis court nets, sidewalks, and drinking fountains on the premises are maintained in reasonably neat and orderly condition at all times. LFUCG shall take reasonable steps to remove graffiti from and repair acts of vandalism to the premises as soon as reasonably practicable upon receiving notice of such.
- c. The cost of all utilities for the premises shall be paid by LFUCG, including installation of new electric and water meters.
- d. LFUCG, shall, as its expense, install any required sidewalks leading from parking areas to the tennis courts.

V. SIGNAGE

- a. The University may, contingent upon the advance written approval of place permanent signs at, on, or about the premises. LFUCG recognizes the significant contribution of Transylvania University and will work with the University to acknowledge donations within the parameters of LFUCG policies and should not be unreasonably withheld.
- b. No signs, other than temporary directional signs, may be placed at, on, or about the premises without the advance written approval of LFUCG. All temporary directional signs shall be put up and taken down on the same day as the event(s) to which they relate. Should the University fail to do so, LFUCG shall have the right to remove and dispose of the sign in its discretion. In such case, the University shall reimburse LFUCG at a rate of \$25 per sign removed.

VI. LIABILITY, INSURANCE, AND INDEMNITY

- a. Upon execution of this Agreement, the University shall provide LFUCG with a certificate of commercial general liability insurance written through a company with an A.M. Best rating of "A" or better with the minimum amount of \$1,000,000 per occurrence, listing the Lexington-Fayette Urban County Government as an "additional insured." A Declaration Page shall not be considered a valid substitute for a Certificate of Insurance.
- b. The University shall defend, indemnify, and hold harmless LFUCG, its officers, agents, employees, and officials from and against any and all liability loss, expense (including reasonable attorney's fees) or claims for injury or damages arising out of or in connection with the performance of this Agreement or the use of the premises by the University. Nothing herein shall be interpreted as or deemed a waiver of any defense available to LFUCG, including sovereign immunity.

VII. EARLY TERMINATION

- a. In the event of a breach of this Agreement by either party, the non-breaching party shall notify the other, in writing, specifying the nature of the breach and giving the other party thirty (30) days in which to cure the breach. If this breach is not cured within thirty (30) days, or within any extension of time agreed to by the parties, the non-breaching party may terminate this Agreement upon giving written notice to the other.

VIII. INTERPRETATION AND APPLICATION

- a. This Agreement constitutes the entire Agreement between parties, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them other than those herein set forth.
- b. The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may under no circumstances be considered in interpreting the provisions of the Agreement.
- c. Time is of the essence in this Agreement. In the computation of any period of time provided for in this Agreement or by law, any date falling on a Saturday, Sunday, or legal holiday shall be deemed to refer to the next day which is not a Saturday, Sunday, or legal holiday.
- d. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.
- e. This Agreement shall be construed under and in accordance with the laws of the Commonwealth of Kentucky. Any action arising, in whole or in part, from or in connection with this Agreement, shall be brought in Fayette County, Kentucky.
- f. This Agreement may only be modified by a writing signed by both parties.
- g. This Agreement, having been negotiated in good faith between the parties, shall not be construed against one party or the other.
- h. It is understood and agreed that nothing herein contained shall be construed in any way to constitute a partnership or joint venture between the parties.
- i. Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of any third party.
- j. This Agreement shall bind and inure to the benefit of the parties successors and assigns, where permitted under the terms of this Agreement.
- k. Any notice or communication required to be provided under the terms of this agreement shall be directed, if to LFUCG, as follows:

LFUCG, Division of Parks & Recreation
Attn: Monica Conrad, Director

469 Parkway Drive
Lexington, Kentucky 40504

And, if to the University, as follows:

Transylvania University
Attn: Vice President for Finance
300 North Broadway
Lexington, KY 40508

IN WITNESS WHEREOF, the parties hereto have set their hands the date first above written.

TRANSYLVANIA UNIVERSITY

By: _____
Seamus J. Carey, President

Date: _____

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

By: _____
Jim Gray, Mayor

Date: _____