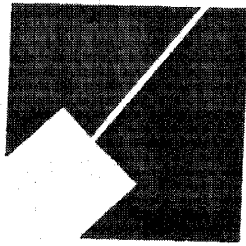


M-NCPPC



Montgomery County Department of  
THE MARYLAND NATIONAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20901

WRB

Item # 12  
5-11-06

**Memorandum**

TO: The Montgomery County Planning Board

VIA: Mary Bradford, Director of Parks

FROM: Bill Mooney, Acting Deputy Director

A handwritten signature in black ink, appearing to read "Bill Mooney".

SUBJECT: Amended and Restated Ground Lease for the operation of the SoccerPlex and South Germantown Recreational Park

Recommendation: Approval of the Restated Lease after resolution of several issues as detailed below and approval to transmit lease to the County Council for review and action.

The attached Amended and Restated Lease for the operation of the Soccerplex at South Germantown Recreational Park is submitted for approval by the Planning Board. Changes in the lease were proposed by the Maryland Soccer Foundation (MSF) in order to create more capacity for games through expansion of facilities as envisioned in the original lease; incorporation of artificial turf and lighting on new fields; changes in requirements for resting fields and times of operation. The Commission has proposed changes that strengthen the reporting and oversight provisions of the lease.

The Secretary-Treasurer received financial projections from MSF on April 27, 2005. These projections incorporate the expected financial impact of the grant funding, the proposed field development and the expanded use of fields. The Secretary-Treasurer will be reviewing the information and will provide comments regarding the financial impact of the proposed changes in a report to the Board next week.

The Board should note that the Executive Director has convened a meeting of approximately 10 clubs who are users of the SoccerPlex, which is scheduled for May 2, 2006. It is scheduled so that the final lease as it will be posted on the web can be made available to the clubs and they then have an opportunity to comment on it. If any issues raised result in changes in the recommendations, they will be provided in a subsequent memorandum for consideration at the work session.

The amended and restated lease reflects staffs' recommendations after consultation with the Planning Board on all of the issues. Staff and MSF are in agreement on all of the issues in the lease with the exception of one. In the provision of the lease which requires that the current advisory board of the MFS be maintained, staff recommends that three members be added to that board; one from the Parks and two from the community (which can be accomplished if the community member is on either the governing board or the advisory board). MSF feels that the advisory board should be comprised only of the clubs who use the SoccerPlex. (ref 2.b. and 13.f)

**Below is a summary of proposed substantive revisions:**

*Note: Many of the proposed revisions to the Lease are not included in the following summary are clean up of provisions/requirements which are no longer applicable or which have already been fulfilled.*

**Advisory Board and Community Input [2.b and 13.e].** The Advisory Board must be maintained to advise MSF on use of the Soccer Fields, Field-Use Fees and, and any other matters that impact the continued successful operations of the SoccerPlex. Board members will include representatives from the Commission, users of the SoccerPlex, including the organized soccer clubs, and neighboring communities to the Park.

**MSF Board [23.e].** MSF agrees to confer membership on its governing board by providing one voting seat to a member selected by the Commission.

**Purpose of Lease and Use of SoccerPlex [6.a].** The purpose of this Lease is to develop and maintain a premier facility to meet the needs of the Montgomery County and the Maryland soccer communities by leveraging the assets of both the public and the private sectors, while preserving the interests of each; to provide quality soccer fields that are accessible and affordable to the public, while assuring the financial viability of the facility. Meeting the needs of the Montgomery County and the Maryland soccer communities will be determined based on MSF's Field Usage Allocation Guidelines, with minimum criteria established by the Commission, including i) preference to upcounty, Montgomery County and Maryland recreational leagues who use the SoccerPlex during the outdoor seasons, balanced against the ability of new, viable and active clubs to gain access to the SoccerPlex, ii) payment of use fees (unless scholarships are awarded) based maintenance and operating costs, and iii) all users must agree to a form of dispute resolution between the user and the MSF.

**Operating Restrictions [various Sections].** Field resting requirements, hours of operations, restrictions on number of games, and other similar operating restrictions are limited based on the maximum allowable level of traffic with regard to the road network surrounding and within the Park.

**Traffic and Parking Management Plan [13.a].** All tenants or other primary users of the Park, including the MSF and the Commission will enter into a Traffic and Parking Management Plan for the coordination of events and activities in the Park so that such use stays within the approved traffic standards.

**Additional Improvements to SoccerPlex [14.c].** MSF can use the proceeds from revenues earned at the SoccerPlex to construct additional improvements, such as additional bleachers seats at the Championship Field, an additional indoor field, lighting and/or artificial turf for the Soccer Fields designated as Soccer Fields 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20, additional comfort stations, and outdoor picnic shelters, all subject to and in accordance with County approval and permitting processes.

**Construction of Phase 2 Improvements [7.b].** All conditions precedent to the right of the MSF to commence Phase II construction have been met, except the amendment to public funding to shift responsibility to the Commission to relocate the Baseball Field C (which will be setoff against Phase 3 infrastructure funding).

**Construction of Phase 3 Improvements [7.c].** Before it can begin construction of Phase 3, MSF must provide evidence that i) it holds sufficient funds for the payment of the cost of such construction, ii) that the Traffic Standards a) have not been exceeded as a result of Phase 2, and b) will not be exceeded as a result of Phase 3, (iii) Baseball Field C has been completed and is ready for use, and (iv) the County Council has approved the funding for Phase 3.

**Park Maintenance Facility [9.c].** MSF shall have the right to use space in the Park Maintenance Facility without charge except for its proportionate share of the electricity

**Sponsorships and Naming Opportunities [11].** MSF shall have the right to offer sponsorships without Commission approval, but naming rights require Commission approval.

**Licenses or Concessions [23.c].** MSF has the right to grant licenses and concessions for retail, food and other permitted uses allowed under the Lease without the necessity of obtaining the consent or permission of Commission, subject to permitting as may be required by law. The licensees or concessionaires may distribute their products anywhere within the SoccerPlex, and such products shall be superior quality and have sufficient quantity to serve the users of the SoccerPlex.

**MSF Reporting to Commission [15].** In addition to standard financial reporting to the Commission, such as audited financial statements and operating projections, each year, MSF shall make a presentation to the Planning board of its operation of the SoccerPlex during the preceding calendar year, including, i)

how it is meeting the needs of the Montgomery County youth soccer programs and recreation leagues and ii) actual and anticipated game allocations. Further, the Commission has the right to audit and inspect MSF's books under certain circumstances.

**Default by Foundation [25].** Default provisions were expanded to include tightened requirement of MSF to meet the minimum criteria for field usage allocation. A finding of the Montgomery County Planning Board that the MSF is failing to meet the criteria will put MSF in default.

### **Other Issues:**

County Council staff in a recent memorandum circulated to Council members has raised several issues. This section of the staff report provides information of how those issues are addressed in the lease (*Council staff comments are in italics; M-NCPPC comments follow and are indented*):

*Fee schedule. MSF should submit to the Planning Board the fee schedule for the pending season at least 3-4 months before facility use agreements will be sent to leagues. Planning Board review should focus on whether fees are equitable across leagues and necessary to cover operating costs and debt. (Staff notes that if the Board determines that the fees are both equitable and necessary to cover costs, but still exorbitant, it could consider whether to recommend a County subsidy to reduce fees.)*

Section 15 (b) states in part: "On or before December 20 of each calendar year, Foundation shall provide to Commission, for review and comment, (1) operating projections for the forthcoming calendar year, (2) its Field Usage Allocation Guidelines, and Field-Use Fees for use of the Soccer Fields and for the Indoor Multi-Purpose Facility for the forthcoming calendar year, and actual usage and fees for the previous year, (3) a comparison of the past year's projections and actual figures, . . ."

The board review will result in a finding as stated in the recommendation.

*Allocation Formula. MSF should present, for Planning Board approval, a formula for calculating the number of games each league is eligible for in the coming year. Staff suggests the following: For each league with a majority County soccer players, determine what percentage that league represents of the total number of soccer players in County leagues and assign them that percentage of total games. Actually calculation of league allotments should be updated periodically (once each year?) so that new leagues have the opportunity for a greater percentage of games as they grow. This formula should assure that specific leagues are not arbitrarily favored, but would also allow new leagues an opportunity to play at the SoccerPlex. The SoccerPlex should also reserve a small number of games for programs for the economically disadvantaged. If there are no interested entities, these games can be permitted to other users.*

As described above, Section 15(b)(2) requires reporting on field use guidelines for review and comment. The lease has in section 6(3) the following criteria for field allocation: "Other than Tournament play, the majority (at least fifty-one percent (51%)) of the combined use of the Indoor Multi-Purpose Facility and the Soccer Fields shall be for sports-related activities and shall be primarily for the use of Montgomery County and Maryland soccer communities, with preference to upcounty teams for Saturday play during Outdoor Soccer Seasons. Notwithstanding, this obligation shall not apply in the event sports-related users are not contracting for use of the Indoor Multi-Purpose Facility and the Soccer Fields."

### ***Timing of Facility Use Agreements.***

*Predictability is essential – both for MSF who must book fields and for the leagues that need ample time to consider options and convene meetings of their Boards of Directors.*

- *Once fees are set and the allocation formula is used to calculate the number of games each league is entitled to, County soccer leagues should received facility use agreements well in advance of the season, with at least 30 days turn-around time. (Since the Planning Board will review the costs and allotment calculations, the leagues should have additional notice of fees and numbers of games.)*
- *If County leagues do not return the facility-use agreements within the predetermined time period, MSF should be free to reassign time to other leagues, providing a preference to in-County leagues with a majority of County players.*

Staff agrees with this concept, which is covered in the allocation guidelines that require that users "honor the terms and conditions of contracts and meet the published deadlines." The Planning Board will review these guidelines each year.

### ***Tournaments***

*Reviews of the cost and allocation of games should also consider policies related to tournaments. Tournaments provide an opportunity for significant income and it is unclear to staff whether these opportunities should continue to be given to leagues (and if so, the Planning Board's role in determining whether the tournaments are fairly assigned to different leagues) or whether MSF should operate all tournaments and use the proceeds to help pay debt service.*

Staff concurs that the issue of tournaments is a significant issue but believes that it is addressed in the lease. MSF has the ability to schedule tournaments, which can include additional tournaments. The current tournament schedule is comprised of events with historic operators and should be dealt with between the MSF and the clubs.

Staff recommends that a **predictable schedule** be established. For example

- *September 1: MSF submits cost and allocation calculation to the Planning Board for the following fall season.*
- *Planning Board reviews fees and allocation policy by December 15.*
- *MSF submits fall facility use agreements to leagues by February 1*
- *Leagues required respond to MSF with written agreements by March 1.*
- *After March 1 MSF may contact **County** leagues that want more games than allotted. If no County leagues are interested in additional games, MSF may contact out-of-County leagues.*

*These dates should be set to allow MSF to fully book all fields and therefore the time table may need to be adjusted earlier to assure that MSF has sufficient time to contact alternative leagues if County leagues do not wish to use their full allocation.*

Section 15(b) (5) also requires as part of the reporting “a calendar showing the actual uses of the SoccerPlex the previous year all uses scheduled at the SoccerPlex for the upcoming year, and (6) any other information reasonably requested by Commission.” It is expected that the calendar would cover these dates as described above.

Attachments:

Amended and Restated Lease  
Testimony of MSF from Board worksession

**AMENDED AND RESTATED GROUND LEASE**

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EXHIBITS

Exhibit A.	Site Plan of South Germantown Recreational Park [§§ 1(a)(1) and 2(xx)]
Exhibit A-1.	Legal Description of Premises [§ 2(iii)]
Exhibit B.	List of SoccerPlex Improvements and Park Infrastructure Improvements [§§ 2(xx) and 2(qqq)]
Exhibit C.	Certificate of Commencement [§ 4(a)]
Exhibit D.	[Intentionally Omitted]
Exhibit E.	Portions of Water and Sewer Infrastructure North of Schaeffer Road to be Maintained by Foundation and Commission [§ 9]
Exhibit F.	[Intentionally Omitted]
Exhibit G.	Transportation Management and Traffic Operations Plan [§ 10(e)]
Exhibit H-1.	SoccerPlex Traffic Generation Rates [§§ 13(d)(2) and 13(f)]
Exhibit H-2.	Non-Soccer Facility Traffic Generation Rates [§§ 13(a) and 13(f)]
Exhibit H-3.	Traffic Counting Procedures [§§ 13(d)(2)]
Exhibit I.	[Intentionally Omitted]
Exhibit J.	Reserve Fund Payment Schedule [§ 14(a)(4)]
Exhibit K.	Water Monitoring Program [§ 17]
Exhibit L.	[Intentionally Omitted]
Exhibit M.	Commission Self Insurance Agreement [§ 20]
Exhibit N.	Description of the Indoor Multi-Purpose Facility Area [§ 24(a)]

**AMENDED AND RESTATED GROUND LEASE**

This Amended and Restated Ground Lease (this "Lease") is between MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a body corporate and politic ("Commission"), and MARYLAND SOCCER FOUNDATION, INC., a Maryland non-profit corporation ("Foundation"), and amends and restates a Ground Lease Agreement (the "Basic Lease"), dated June 28, 1999, between the Commission and the Foundation, as amended by an Amendment to Ground Lease Agreement (the "First Amendment"), a Second Amendment to Ground Lease Agreement (the "Second Amendment"), dated June 15, 2000, and a Third Amendment to Ground Lease Agreement (the "Third Amendment"), dated October 29, 2002 (the "Third Amendment"), (together with the Basic Lease, the First Amendment, the Second Amendment, and the Third Amendment, the "Original Lease").

**WITNESSETH**

WHEREAS, Commission and Foundation entered into the Original Lease, covering approximately 162 acres in the South Germantown Recreational Park, Germantown, Maryland; and

WHEREAS, the parties wish to amend and restate the Original Lease to correct, modify or clarify certain of its provisions.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend and restate the Original Lease as follows (terms used herein and not elsewhere defined herein are used as defined in Section 2):

**1. Introductory Provisions.**

(a) Fundamental Lease Provisions. Certain fundamental Lease provisions are presented in this Section in summary form solely to facilitate convenient reference by the parties hereto, and while they may be material conditions or provisions, enumeration herein is not indication of a definition of a material condition or provision:

- |                                   |   |                               |
|-----------------------------------|---|-------------------------------|
| 1. <u>Premises</u>                | Approximately 162 acres in the South Germantown Recreational Park, Germantown, MD | [See Section 3 and Exhibit A] |
| 2. <u>Lease Commencement Date</u> | December 2, 2000  | [See Section 2(hh)]           |

3. Lease Term 25 years commencing on the [See Section 4]  
Lease Commencement Date,  
plus two (2) optional extension terms,  
the first extension term of five (5)  
years and the second extension term of  
ten (10) years, but in no event shall the  
Lease Term exceed 40 years

4. Base Annual Rent \$1.00 [See Section 5]

5. Commission's Notice Address The Maryland-National Capital [See Section 32]  
Park & Planning Commission  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
Attention: Director of Parks

with a copy to:

The Maryland-National Capital  
Park & Planning Commission  
6611 Kenilworth Avenue  
Riverdale, Maryland 20737  
Attention: General Counsel

6. Foundation's Notice Address Maryland Soccer Foundation, Inc. [See Section 32]  
18031 Central Park Circle  
Boyd's, MD 20841

with a copy to:

Maryland Soccer Foundation, Inc.  
4903 Auburn Avenue  
Bethesda, Maryland 20814

and a copy to :

Arent Fox PLLC  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339  
Attn: Sean W. Glynn

7. Lease Execution Date Date of execution of the Lease by the  
last party to execute the Lease

(b) References and Conflicts. References appearing in Section 1(a) are intended to designate some of the other places in the Lease where additional provisions applicable to the particular fundamental Lease provisions appear. These references are for convenience only and shall not be deemed all inclusive. Each reference in this Lease to any of

the fundamental Lease provisions contained in Section 1(a) shall be construed to incorporate all of the terms provided for under such provisions, and such provisions shall be read in conjunction with all other provisions of this Lease applicable thereto. If there is any conflict between any of the fundamental Lease provisions set forth in Section 1(a) and any other provisions of the Lease, the latter shall control.

(c) Exhibits. The following drawings and special provisions are attached hereto as exhibits and hereby made a part of this Lease:

- Exhibit A. Site Plan of South Germantown Recreational Park  
[§§ 1(a)(1) and 2(xx)]
- Exhibit A-1. Legal Description of Premises [§ 2(jjj)]
- Exhibit B. List of SoccerPlex Improvements and Park Infrastructure  
Improvements [§§ 2(xx) and 2(qqq)]
- Exhibit C. Certificate of Commencement [§ 4(a)]
- Exhibit D. [Intentionally Omitted]
- Exhibit E. Water and Sewer Infrastructure North of Schaeffer  
Road to be Maintained by Foundation and Commission [§ 9]
- Exhibit F. [Intentionally Omitted]
- Exhibit G. Transportation Management and Traffic Operations Plan [§ 10(e)]
- Exhibit H-1. SoccerPlex Traffic Generation Rates [§§ 13(d)(2) and 13(f)]
- Exhibit H-2. Non-Soccer Facility Traffic Generation Rates [§§ 13(a) and 13(f)]
- Exhibit H-3. Traffic Counting Procedures [§§ 13(d)(2)]
- Exhibit I. [Intentionally Omitted]
- Exhibit J. Reserve Fund Payment Schedule [§ 14(a)(4)]
- Exhibit K. Water Monitoring Program [§ 17]
- Exhibit L. [Intentionally Omitted]
- Exhibit M. Commission Self Insurance Agreement [§ 19]
- Exhibit N. Description of the Indoor Multi-Purpose Facility Area [§ 24(a)]
- Exhibit O. Traffic Standards [§§ 2(www)]

2. Definitions. For purposes of this Lease, Commission and Foundation hereby agree that the following terms shall have the indicated meanings:

(a) **“Additional Rent”** means all sums of money or charges required to be paid by Foundation to Commission under this Lease other than Base Annual Rent, whether or not such sums or charges are designated as “Additional Rent”.

(b) **“Advisory Board”** means the Advisory Board established by the governing board of the Foundation who shall invite and shall use commercially reasonable efforts to achieve the composition, at a minimum, (1) a representative of the Commission, (2) users of the SoccerPlex, and (3) two (2) community members from neighboring communities to the Park (provided that, either or both of such community members may instead be members of the Foundation’s governing board), to advise Foundation on use of the Soccer Fields, Field Use Fees, and any other matters of interest to the Foundation that impact the continued successful operations of the SoccerPlex and its impact on neighboring communities, which Board shall meet no less than quarterly each year beginning within sixty (60) days of the Effective Date.

- (c) **"Affiliated Organization"** [Intentionally deleted.]
- (d) **"Affiliated Organization Assessment"** [Intentionally deleted.]
- (e) **"Base Annual Rent"** shall have the meaning set forth in Section 1(a)(4).

(f) **"Baseball/Softball Fields"** means the fields in the Park designated by the Commission for use for the playing of baseball and/or softball by the public. The Baseball/Softball Fields are shown as Fields C, D, E and F on the attached Exhibit A.

(g) **"Business Day"** means any Monday through Friday, except any Commission-authorized holiday. On or before January 1 of each calendar year, or as soon as practicable after adoption by Commission, Commission shall provide, in writing, its list of holidays to Foundation. If Commission fails to timely provide such list, the Commission-authorized holidays for the prior calendar year shall be deemed to be the Commission-authorized holidays for the forthcoming calendar year.

(h) **"Capital Improvements"** means the Indoor Multi-Purpose Facility and related improvements and the following improvements, only:

(1) Subject to and in accordance with the approval and permitting processes established for installation of such improvements in Montgomery County, the installation of lighting and/or synthetic turf for the Soccer Fields designated as Soccer Fields 9, 10, 12, 13, 14, 15, 16, 17, 18, 19 and 20 on Exhibit A;

(2) The installation of additional bleacher seats around the Championship Field so that the total number of bleacher seats around the Championship Field is up to 7,500, but in no event more than the maximum number allowable under the Traffic Standards;

(3) The construction of one additional soccer field in the Indoor Multi-Purpose Facility; and

(4) The installation or construction of such improvements that are intended to improve the use of the Soccer Fields for the users (such as additional comfort stations, storage facilities, and additional outdoor picnic shelters); provided however, such improvements are not anticipated to allow for traffic in excess of the Traffic Standards.

(i) **"Capital Repairs"** means those repairs and replacements to the Capital Improvements and any Improvements Foundation is obligated to maintain under Section 9 of this Lease, which will have a useful life beyond the year in which the improvement, repair or replacement is made or which will prolong the life of the SoccerPlex, based upon generally accepted accounting principles, consistently applied.

(j) **"Casualty"** means a fire or other casualty which damages or destroys the SoccerPlex Improvements and/or the Park Infrastructure Improvements.

- (k) **“Central Park”** means the area of the Park within the Central Park Circle.
- (l) **“Central Park Circle”** means the road between the Premises and the central park area of the Park, shown on the attached Exhibit A.
- (m) **“Certificate of Commencement”** means the certificate, in the form of the attached Exhibit C, to be executed by the parties pursuant to Section 4(a) of this Lease.
- (n) **“Championship Field”** means that Soccer Field located in the SoccerPlex and designated by Foundation as the Championship Field with bleacher seating for up to 7,500 people, but in no event greater than an amount that would violate the Traffic Standards. The Championship Field is shown as Field 11 on the attached Exhibit A.
- (o) **“Comfort Stations”** means those fully-enclosed permanent facilities located in the Premises and serving the SoccerPlex, containing restrooms and related equipment (shown as Comfort Stations 1 through 4 on the attached Exhibit A).
- (p) **“Commission”** means the Maryland-National Capital Park and Planning Commission, a body corporate and politic created and existing under the laws of the State of Maryland with the full legal right, power and authority to enter into agreements for the development, maintenance and operation of park facilities in Montgomery County, Maryland.
- (q) **“Community Facilities”** means those facilities and areas to be provided in the Park for community and regional use that are not revenue-producing as authorized in Maryland State Code Ann. Article 28, §6-101, (e.g., playgrounds, picnic areas, ballfields).
- (r) **“Community Soccer Fields”** means soccer fields designated for use and enjoyment by the public, and shown as Fields A and B on the attached Exhibit A. The Community Soccer Fields are not “Soccer Fields” for purposes of this Lease.
- (s) **“Contractor”** means an individual, firm, corporation or other entity awarded a contract for the construction in the Park by Commission or Foundation.
- (t) **“Cost of Construction”** means the cost of the design, permitting and construction of the Capital Improvements, limited to the following:
- (1) construction costs covered under a general contract of construction
  - (2) site improvements for the building including site grading and pad preparation, sidewalks, landscaping, signage, utilities and phone systems
  - (3) fixtures and equipment to be located within the building or on the adjacent exterior plaza area,
  - (4) interest during the period of construction
  - (5) all design and consulting services required to design and construct the improvements above

(6) cost of water for irrigation of Soccer Fields during construction.

“Cost of Construction” shall not include any fees, compensation or other amounts paid to any entity controlled by Foundation, which are not bona fide and commercially reasonable or which are in excess of those which would be payable in an arm’s length relationship.

(u) “**Council**” means the County Council of Montgomery County, Maryland.

(v) “**County**” means Montgomery County, Maryland.

(w) “**Days**” means calendar days, unless specific reference is made to Business Days.

(x) “**Director of Parks**” means the Director of Parks for the Montgomery County Department of Park or his/her designee.

(y) “**Event of Default**” shall have the meaning set forth in Section 25(a).

(z) “**Extension Term(s)**” means two (2) optional terms following the Initial Term, the first such extension term for five (5) years and the second such extension term for ten (10) years; provided, however, that (1) the Extension Terms shall be granted so long as there is no Event of Default with respect to the Foundation under the terms of the Lease at the time such Extension Term is to commence, and (2) the second Extension Term shall be less than ten (10) years if necessary to make the total Lease Term a forty (40) year period, but no more.

(aa) “**Field-Use Fee**” means that fee as may be established by Foundation from time to time, and charged by Foundation for using a Soccer Field in the SoccerPlex.

(bb) “**Field Usage Allocation Guidelines**” means the policies, guiding principles and criteria for permitting Soccer Fields at the SoccerPlex that are established and adopted by the Foundation in order to meet the purposes of the Lease as set forth in Section 6 herein.

(cc) “**Foundation**” means the Maryland Soccer Foundation, Inc., a Maryland non-profit corporation, organized as a 501(c)(3) corporation.

(dd) “**Governmental Authorities**” means all public officials, agencies, municipalities, counties and courts having jurisdiction over the Park.

(ee) “**Hazardous Material**” means any hazardous or toxic substance, material, or waste including, but not limited to, those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172. 101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials, and wastes that are or become regulated under any applicable federal, state, or local law, ordinance, or regulation including, but not limited to, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA” or “Superfund”), the Clean Air Act, and the Clean Water Act.



(ff) **"Hours of Operation"** means the time period when the SoccerPlex is open to the public.

(gg) **"Improvements"** means the Park Infrastructure Improvements and the SoccerPlex Improvements.

(hh) **"Indoor Multi-Purpose Facility"** means that building located in the SoccerPlex initially containing two (2) soccer fields, and with the potential to contain a third (3<sup>rd</sup>) soccer field, subject to Council approval of such third (3<sup>rd</sup>) field through an amendment to the PDF.

(ii) **"Indoor Multi-Purpose Facility Area"** means the area within the Premises which is described on the attached Exhibit N.

(jj) **"Initial Term"** means the period commencing on the Lease Execution Date and ending December 31, 2025, which is twenty-five (25) years after the Lease Commencement Date plus the number of days from the day of the month on which the Lease Commencement Date falls to the last day of such month.

(kk) **"Institutional Lender"** means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a pension or retirement fund, an insurance company organized and existing under the laws of the United States or any state thereof, a real estate investment trust existing in compliance with Sections 856 through 860 of the Internal Revenue Code of 1986, as amended; provided, that each of the above entities shall qualify as an Institutional Lender within the provisions of this definition only if it (1) is qualified to do business in the State of Maryland, (2) has a net worth of not less than \$100,000,000, determined in accordance with generally accepted accounting principles, as reflected in its most recent annual financial statements, which financial statements are audited by a nationally recognized independent accounting firm and delivered to Commission for review, and (3) is approved by Commission's Secretary-Treasurer, which approval shall not be unreasonably withheld and shall be transmitted to Foundation within ten (10) business days after Foundation's request therefor. "Institutional Lender" shall also mean any other entity meeting the criteria set forth in clauses (1), (2) and (3) above. Notwithstanding anything contained in this Lease to the contrary, the term "Institutional Lender" shall also include any governmental or quasi-governmental entity or authority that issues bonds or similar evidence of indebtedness for the purpose of funding, directly or indirectly, any Leasehold Mortgage - Secured Debt.

(ll) **"Laws"** means any and all applicable laws, orders, ordinances, codes and regulations, including, without limitation, all zoning, subdivision, building and land use laws, orders, ordinances and regulations of any and all courts and governmental bodies, agencies and authorities having jurisdiction over the Park, including, without limitation, all zoning, subdivision, building and land use laws.

(mm) **"Lease"** means this Amended and Restated Ground Lease Agreement.

(nn) **"Lease Commencement Date"** shall have the meaning set forth in Section 1(a)(2).

(oo) "**Lease Term**" means the Initial Term and, if exercised, the Extension Term(s), not to exceed a cumulative total of forty (40) years.

(pp) "**Lease Year**" means an annual period (provided that the first Lease Year may exceed one calendar year in length), with the first Lease Year commencing on the Lease Commencement Date and lasting one full year plus, if the Lease Commencement Date is not the first day of a month, the number of days from the Lease Commencement Date until the end of that month, the second Lease Year commencing the following day, and each subsequent Lease Year commencing on the anniversary of such day. The first Lease Year being December 2, 2000 through December 31, 2001, and each subsequent Lease Year running from January 1 through December 31 of the same year; provided however, the final Lease Year may be shortened because the Lease Term may not exceed a cumulative total of forty (40) years.

(qq) "**Leasehold Mortgage**" means any mortgage, deed of trust or other similar security agreement covering Foundation's leasehold interest in the Facility, that are Premises that is permitted by Section 24(a) of this Lease.

(rr) "**Leasehold Mortgagee**" means any mortgagee or beneficiary under a Leasehold Mortgage.

(ss) "**Leasehold Mortgage-Secured Debt**" means any debt secured by a Leasehold Mortgage.

(tt) "**Major Taking**" means a taking or condemnation, as a result of the exercise of any power of eminent domain or any purchase in lieu thereof, of all of the Premises or a portion thereof such that Foundation, in its reasonable business judgment, determines it is incapable of continuing its operations on the remaining Premises.

(uu) "**Minor Taking**" means a taking or condemnation, as a result of the exercise of any power of eminent domain or any purchase in lieu thereof, of a portion of the Premises such that Foundation, in its reasonable business judgment, determines it is capable of continuing its operations on the remaining Premises.

(vv) "**Notice**" means any written notice, demand, request or other instrument which may or is required or permitted to be given from one party to another under this Lease by either (1) hand-delivery (with a receipt therefor), (2) delivery by a nationally-recognized courier service with a reliable tracking-delivery system, or (3) mailing through the United States Mail (Registered or Certified), postage prepaid, return receipt requested.

(ww) "**Outdoor Soccer Seasons**" means (i) late August through November 30, and (ii) early March through June 30, of any year.

(xx) "**Park**" means that 655± acres of land in that area currently known as South Germantown Recreational Park located in Germantown, Montgomery County, Maryland and more particularly described in the Park Master Plan Amendment (as may be amended), and as shown on the Site Plan attached hereto as Exhibit A.

(yy) [Intentionally deleted.]

(zz) **"Park Infrastructure Improvements"** means the items all or any portion of which are to be paid for by Commission, as shown on the attached Exhibit B, as the same may be amended from time to time in accordance with Section 35(a).

(aaa) **"Park Maintenance Facility"** means the maintenance building, support buildings and facilities and yard that has been or is to be constructed by Commission in the Park, but not on the Premises, to be used by Commission and Foundation in connection with their maintenance activities.

(bbb) **"Parking Areas"** means those areas within the Premises designated for the parking of motorized vehicles for use in connection with the SoccerPlex.

(ccc) **"PDF"** means a budget appropriation document approved by the Council to authorize the expenditure of funds for the design and construction of the Park, and setting other criteria for development of the Park.

(ddd) **"Permittee"** means any person or organization granted by Foundation a permit to use a Soccer Field during the Hours of Operation, subject to the terms of this Lease.

(eee) **"Phase I"** means that period of time from the commencement of construction of the following Improvements until the commencement of Phase II: the Indoor Multi-Purpose Facility, the Championship Field (Field 11 on the attached Exhibit A), sixteen (16) additional Soccer Fields (Fields 3 through 17, 21 and 22 on Exhibit A), two (2) soccer fields constructed for the use of the community (Fields A and B on Exhibit A), one Baseball/Softball Field (Field D on the attached Exhibit A), a temporary parking lot serving Field D, and certain other Park Infrastructure Improvements.

(fff) **"Phase II"** means that period of time from the commencement of construction of the next three (3) Soccer Fields (Fields 18,19 and 20 on the attached Exhibit A), and a portion of another Parking Area (the Field 18 – 22 Parking Area on the attached Exhibit A), until the commencement of Phase III.

(ggg) **"Phase III"** means that period of time from commencement of construction of the next two (2) Soccer Fields and one (1) Parking Area (Fields 1 and 2 and the Field 1 and 2 Parking Area on the attached Exhibit A), provided however, Fields 1 and 2 may be redesigned, subject to the appropriate governmental approvals and permits, to allow for a single surface that can accommodate both Fields 1 and 2, and one (1) Parking Area (Field C and Field C and D permanent Parking Area on Exhibit A).

(hhh) **"Play Opportunity Capacity"** [Intentionally deleted.]

(iii) **"Pledge-Secured Debt"** [Intentionally omitted.]

(jjj) **"Premises"** means the approximately 162 acres of park land, more particularly described on the attached Exhibit A-1 and shown shaded on the attached Exhibit A, together with all buildings, structures and other improvements now or hereafter located on said land, and also together with all easements, rights-of-ways, licenses, and appurtenances appertaining to said land; provided, however, that notwithstanding anything to the contrary in

this Lease, (1) Soccer Fields 18, 19 and 20 (shown on the attached Exhibit A) and the area of the Park designated as Phase II on the attached Exhibit A shall not be part of the Premises until construction of Phase II is commenced, and (2) Soccer Fields 1 and 2 (shown on the attached Exhibit A) and the area of the Park designated as Phase III on the attached Exhibit A shall not be part of the Premises until construction of Phase III is commenced, subject to Section 9(b)(6)(2) and (3) of this Lease.

(kkk) "**Project**" means the Improvements to the Park funded pursuant to PDF 998712 and PDF 998729.

(lll) "**Pumping Station**" means the sanitary sewer force main pumping station located within the Central Park Circle.

(mmm) "**Rent**" means all Base Annual Rent and Additional Rent payable by Foundation to Commission under this Lease.

(nnn) "**Reserve Fund**" shall have the meaning set forth in Section 14(a)(3).

(ooo) "**Soccer Fields**" means those areas of the SoccerPlex, exclusive of the Indoor Multi-Purpose Facility, of which the Foundation has constructed (or will construct) and/or paid (or will pay) for the construction either through the raising of private funds, or through issuance of debt or debt proceeds of which the Foundation is responsible, including Fields A and B on the attached Exhibit A.

(ppp) "**SoccerPlex**" means the Premises and all SoccerPlex Improvements and Park Infrastructure Improvements on the Premises.

(qqq) "**SoccerPlex Improvements**" means the items which are to be paid for entirely by Foundation, either through the raising of private funds, or through issuance of debt or debt proceeds of which the Foundation is responsible as shown on the attached Exhibit B, as the same may be amended from time to time in accordance with Section 35(a).

(rrr) "**Germantown Park Drive**" means the internal Park road from Maryland Route 118 to the Central Park Circle.

(sss) "**Storm Water Management Facilities**" means those facilities located on or adjacent to the Park and used for the purposes of quantity and quality control of storm water.

(ttt) "**Temporary Taking**" means a temporary taking or condemnation of all or any portion of the SoccerPlex as a result of the exercise of any power of eminent domain, or purchase in lieu thereof.

(uuu) "**Tournament**" means an organized soccer competition which utilizes more than seventy-five percent (75%) of the playing capacity of the Soccer Fields for a period of no more than three (3) days, unless a fourth (4<sup>th</sup>) day does not interfere with regularly scheduled play.

(vvv) "**Traffic and Parking Management Plan**" means that upon the availability of all uses planned for the Park, a plan to be coordinated with and entered into by all tenants and other primary users in the Park, including the Foundation and the Commission, to ensure that traffic generated within the Park upon full utilization thereof does not exceed Traffic Standards and available parking spaces in the Park. The Traffic and Parking Management Plan shall be prepared and coordinated by the Commission. The Commission acknowledges that all tenants and facilities in the Park managed and/or maintained by the Parks Department will be subject to the Traffic and Parking Management Plan and that it will require the provision for a Traffic and Parking Management Plan to be included in all of its Leases, Operating Agreements, other contracts and/or other arrangements for use of the Park with all tenants and other primary users in the Park, including the Swim Center, the Tennis Center, and the Golf Driving Range. "Primary users," as used in this Lease, means the Commission and any parties to whom the Commission has directly granted rights to use the Park.

(www) "**Traffic Standards**" means the maximum allowable level of traffic, and the flow thereof with regard to the road network surrounding and within the Park, which has been established by the Council as part of the County's Annual Growth Policy as set forth on the attached Exhibit O.

3. **Demise of SoccerPlex.** Commission leases to Foundation and Foundation hereby leases from Commission the Premises for the Lease Term, Rent, and upon the terms, covenants, and conditions set forth herein. As an appurtenance to the Premises, Foundation, its agents, employees, contractors, subtenants, licensees and invitees shall have the nonexclusive right to use the portions of the Park and the Park Infrastructure Improvements serving or providing ingress and egress to the SoccerPlex (including, without limitation, the Germantown Park Drive, the Central Park Circle, the Parking Areas, the Comfort Stations, asphalt trails and hiker/biker trails) during all Hours of Operation of the SoccerPlex and at all other times, when reasonable or necessary to exercise its rights and perform its maintenance obligations under this Lease, provided, however, that such access shall not be deemed an exception to or extension of the Hours of Operation.

4. **Lease Term.**

(a) **Initial Term.** The Lease Term shall consist of an Initial Term and any Extension Terms exercised by Foundation or any permitted successor or assign. The Lease Commencement Date has been established by Foundation and Commission as December 2, 2000, and as such, the parties have executed a Certificate of Commencement in the form of Exhibit C.

(b) **Extension Term(s).** If (1) this Lease has not been terminated sooner as provided herein, and (2) there is no Event of Default with respect to the Foundation under this Lease, Foundation shall have the option(s) ("Extension Option(s)") to extend this Lease for two (2) consecutive additional Extension Term(s) as set forth in Section 2(y) herein. Should Foundation, in Foundation's sole discretion, elect not to extend this Lease, then Foundation shall provide Commission with written notice of such election not later than one (1) year before the date of expiration of the Lease Term, failing which Foundation shall be deemed to have exercised the Extension Option.

For the purposes of this Section 4(b), any successor, assignee, collateral assignee or Leasehold Mortgagee-in-possession may exercise the extension rights of this Section 4(b).

5. **Rent.** Foundation covenants and agrees to pay to Commission Base Annual Rent in the amount of One Dollar (\$1.00) per year, payable in advance on the first day of each Lease Year throughout the Lease Term, at Commission's notice address set forth in Section 1(a)(5) or at such other place as shall be designated in writing by Commission.

6. **Purpose of Lease and Use of SoccerPlex.**

(a) **Purpose of Lease.** The purpose of this Lease is to develop and maintain a premier facility primarily to meet the needs of the Montgomery County and the Maryland soccer communities by leveraging the assets of both the public and the private sectors, while preserving the interests of each; to provide quality fields that are accessible to the public at reasonable rates that ensures the financial viability of the facility. The Commission and the Foundation each acknowledge that the Foundation's contribution of private funding and management, together with the Commission's contribution of public land and infrastructure within the Park will enable the development of such a facility, the SoccerPlex, earlier than either could accomplish alone. For purposes of this Section 6(a), Foundation shall be deemed to be meeting the needs of the Montgomery County and the Maryland soccer communities if Foundation is operating the SoccerPlex in accordance with the Field Usage Allocation Guidelines established by the Foundation, which shall, at a minimum, address the following criteria:

(1) Meet the purpose of the Lease as set forth in Section 6 herein, including to ensure the financial viability of the SoccerPlex.

(2) Use of the Soccer Fields and the Indoor Multi-Purpose Facility will be granted only to clubs and teams that pay Field-Use Fees, or have been awarded Foundation scholarships. The Field-Use Fee shall be based principally upon the cost of maintenance and operation of the Soccer Fields, the amortized cost of development of the Soccer Fields, capital improvements, operational reserves, and debt reduction, with credit as appropriate for any funding received that is directed to reduce the Field-Use Fees, including grants and sponsorships.

(3) Other than Tournament play, the majority (at least fifty-one percent (51%)) of the combined use of the Indoor Multi-Purpose Facility and the Soccer Fields shall be for sports-related activities and shall be primarily for the use of Montgomery County and Maryland soccer communities, with preference to upcounty teams for Saturday play during Outdoor Soccer Seasons. Notwithstanding, this obligation shall not apply in the event sports-related users are not contracting for use of the Indoor Multi-Purpose Facility and the Soccer Fields.

(4) Use of the Soccer Fields shall take into consideration the ability of new, viable and active youth soccer clubs and teams from Montgomery County to gain access to the SoccerPlex.

(5) Foundation will work in partnership with the Commission and Montgomery County Department of Recreation ("MCRD") to identify youth soccer teams from Montgomery County that are not able to make long-term commitments for use of the Soccer Fields with a goal of allocating five percent (5%) of the non-Tournament use of the Soccer Fields and the Indoor Multi-Purpose Facility; provided however, such Soccer Fields can be released for use by other users sixty (60) days prior to the time set aside for use if they are not scheduled for use in accordance with this provision.

(6) All users must agree to, and must participate in all components of, the Foundation's internal dispute resolution procedures between the user and the Foundation for issues related to use of the SoccerPlex before the user can seek redress with either the Commission or the Council.

Furthermore, the purpose of this Lease is to authorize Foundation to construct, manage and maintain both high quality outdoor Soccer Fields and an Indoor Multi-Purpose Facility primarily for the games of soccer and indoor soccer, but also for i) such other sports-related uses including, but not limited to basketball, lacrosse, in-line hockey, volleyball, sports-related meetings, dinners and functions, and ii) non-sports-related community activities in order to raise funds to support the ongoing operations of the SoccerPlex. The Foundation's primary use of the Indoor Multi-Purpose Facility shall remain sports-oriented, measured by time scheduled with the majority (at least fifty-one percent (51%) of the use dedicated to sport-oriented uses.

(b) Permitted Use. Foundation shall have the right to use the Premises for the construction, maintenance and operation of the Soccer Fields, the Indoor Multi-Purpose Facility and all of the other SoccerPlex Improvements in accordance with the purposes, uses and terms of this Lease, and for no other purpose or use; provided however, all non-sports-related uses shall be subject to the approval of the Director of Parks, which approval shall not be unreasonably withheld, conditioned or delayed, given the nature of the request, the use requested and the financial impact to the Foundation that a delay might cause ("Use Request"). Such a Use Request shall be made in accordance with the provisions set forth in this Article 6. Upon such approval, the use, unless specifically conditioned otherwise, shall be deemed a Permitted Use. An ice rink or sheet of ice is specifically excluded as a Permitted Use. In addition, Foundation shall have the nonexclusive right to use all Park Infrastructure Improvements (such as water, sewer, electricity, gas and telephone) to facilitate its use of the Soccer Fields, the Indoor Multi-Purpose Facility and all of the other SoccerPlex Improvements; provided that Foundation's nonexclusive use of the Park Infrastructure Improvements shall be in accordance with the terms and conditions set forth in this Lease. This provision shall not be construed as providing Foundation with any rights to use of the parking lots inside and parking along the Central Park Circle and parking along Germantown Park Drive north of Schaeffer Road, except as may be otherwise set forth in the Lease.

(c) Any Use Request must meet the following conditions:

(1) The Foundation must submit each Use Request in writing to the Director of Parks, with a copy to the Park Police.

(2) The Director of Park's approval shall not be unreasonably withheld, conditioned or delayed, given the nature of the Use Request and the financial impact to the Foundation that a delay might cause. The Director of Parks has the reasonable discretion to grant or deny a Use Request, or to grant a Use Request with conditions, with the sole and subjective discretion to notify the public of any such request. The Director of Parks may provide notice, electronically or otherwise, of some or all Use Requests to the public or any community advisory group that the Director of Parks deems appropriate.

(3) Traffic capacity for an event for which a Use Request is sought will be presumed to be adequate if it is in accordance with the Traffic Standards and, upon its finalization, the Traffic and Parking Management Plan. The Foundation must submit with the Use Request its certification that the use for which the Use Request is being made is anticipated to meet the Traffic Standards and the Traffic and Parking Management Plan.

(d) Constraints. Foundation shall comply with all of the provisions of the PDFs and of all required permits in its use of the Premises and its construction and operation of the SoccerPlex Improvements. Foundation agrees not to commit waste on the Premises and not to knowingly use the Premises for any unlawful purpose or in violation of any certificate of occupancy, nor suffer any dangerous article to be brought on the Premises unless safeguarded as required by law. Foundation agrees to comply reasonably, promptly, and effectively with all applicable Laws of all Governmental Authorities. Commission agrees to give notice promptly to Foundation of any notice from any Governmental Authorities, person, group or organization in respect of the Premises including, without limitation, any notice pertaining to air and water quality, Hazardous Materials, waste disposal, air emissions, and other environmental matters, and any direction of any public agency that imposes any duty upon Commission or Foundation with respect to the use or occupancy of the Premises. Foundation may, in good faith, dispute the validity of any complaint or action taken pursuant to or under color of any of the foregoing, defend against the same, and in good faith, diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. Foundation agrees that any such contest shall be prosecuted to a final conclusion with reasonable dispatch, and Foundation will hold Commission harmless with respect to any actions taken by any Governmental Authorities with respect thereto.

**7. Construction of Improvements.**

(a) Phase I Construction. [Intentionally deleted.]

(b) Phase II Construction. All conditions precedent to the right of the Foundation to commence Phase II construction have been met. During Phase II construction, the Commission, at its sole cost and expense, shall relocate the Baseball Field C (as shown on Exhibit A), which was previously identified as a part of Phase III; provided however, the costs therefore shall be setoff against any public funding appropriated by the County Council as part of the Phase III funding. In order for Commission and Foundation to coordinate their respective obligations with respect to the SoccerPlex Improvements and the Park Infrastructure Improvements to be constructed during Phase II (and during Phase III as set forth in Section



7(c)), the parties shall enter into a Development and Construction Agreement, which shall also take into consideration relocation of Baseball Field C.

(c) Phase III Construction. The Foundation shall not commence any construction of any kind on Phase III until: (1) Foundation obtains in advance of construction all funding for Phase III from a source of funding not currently committed to operating revenue (e.g., an independent grant or donation) and has provided Commission with evidence that the Foundation holds, or has contracted for, sufficient funds for the payment of the cost of such construction, and; (2) Foundation has provided evidence that the Traffic Standards (i) have not been exceeded as a result of Phase II, and (ii) are not anticipated to be exceeded as a result of Phase III, (3) construction of the relocated Baseball Field C has been completed and the new field is ready for use, and (4) the County Council has approved an amendment to PDF No. 998712 (or a new PDF) allowing Phase III to proceed. The Commission and Foundation shall coordinate their respective obligations with respect to the SoccerPlex Improvements and the Park Infrastructure Improvements to be constructed during Phase III as part of the Development and Construction Agreement as set forth in Section 7(b).

8. Construction of Roads in and to Park. [Intentionally deleted.]

9. Maintenance and Repair.

(a) Foundation's Maintenance Responsibilities. Throughout the Lease Term, Foundation shall, at Foundation's sole cost and expense, keep the following improvements in good order and condition, reasonable wear and tear and damage by Casualty excepted:

- (1) Soccer Fields 1 through 22 (including turf and irrigation),
- (2) all Championship Field improvements (including seating, scoreboards, lights, miscellaneous related equipment and plaza areas),
- (3) the Indoor Multi-Purpose Facility, the plaza and the sidewalks adjacent thereto,
- (4) the field lights for any lighted Soccer Fields, except the Community Soccer Fields, if lighted,
- (5) the Parking Areas serving Soccer Fields 1 through 22 and the Indoor Multi-Purpose Facility, and the lighting (if any) for all such Parking Areas, but not the entrance roads from the Central Park Circle to said Parking Areas or the lighting for such entrance roads,
- (6) the Comfort Stations on the Premises, provided that, to the extent used by the Commission, the Commission is responsible for all maintenance of the Comfort Stations pertaining to the Commission's use (and, accordingly, no rental charge shall be due and owing to the Foundation),
- (7) the recharge trenches on the Premises,