

LONGVIEW COMMUNITY CENTER USE AND OPERATION AGREEMENT

THIS LONGVIEW COMMUNITY CENTER USE AND OPERATION AGREEMENT (hereinafter "**Agreement**") is entered into as of the date last written below (the "**Effective Date**") by and between THE CITY OF LEE'S SUMMIT, MISSOURI BY AND THROUGH THE LEE'S SUMMIT PARKS AND RECREATION BOARD (hereinafter "**LSPR**") and THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI A/K/A METROPOLITAN COMMUNITY COLLEGE (hereinafter "**MCC**.")

RECITALS

WHEREAS, LSPR and MCC have entered into an Agreement for the Purchase and Sale of Real Estate of even date herewith (the "**Real Estate Agreement**") which contemplates the sale from MCC to LSPR (the "**Transaction**") of the real property (the "**Property**") located at 3801 SW Longview Road, Lee's Summit, Missouri, and the improvements located thereon commonly known as the Longview Recreation Center (hereinafter the "**Facility**") and a proposed closing date ("**Closing**") on or before September 1, 2018; and,

WHEREAS, as further consideration for the Transaction, and with the negotiated "Purchase Price" (as such term is defined in the Real Estate Agreement) having been offset to account for such further consideration, LSPR and MCC desire to agree to various conditions related to the future use of the Facility by MCC, as well as various concessions and opportunities to be provided by LSPR to the students and employees of MCC; and

WHEREAS, LSPR and MCC desire for those conditions, concessions and opportunities to be valid and enforceable, and, accordingly LSPR and MCC have reduced said conditions, concessions and opportunities to writing and desire to enter into this Agreement to memorialize the same.

NOW, THEREFORE, in consideration of the mutual promises contained herein, LSPR and MCC hereby agree as follows:

1. **Incorporation of Recitals; Definitions.** The foregoing Recitals are true and correct and are incorporated by reference as if fully set forth below. Any definitions used in this Agreement not otherwise defined shall have the meaning set forth in the Real Estate Agreement.
2. **Facility Transition Plan.**
 - a. **Possession.** Pursuant to and subject to the terms and conditions set forth in the Real Estate Agreement, exclusive possession and ownership of the Facility by LSPR (hereinafter "**Possession**") shall commence the date of the Closing, or such other date as may be provided in the Real Estate Agreement.
 - b. **Fees.** Unless specifically stated otherwise in this Agreement, all obligations by LSPR under the terms of this Agreement including, without limitation, substantial improvements and renovations, providing space for various purposes, offices, and facilities, non-competition of classes, membership resident rates, usage of the facility, trial memberships and limited memberships for student athletes and physical education students are at no cost to MCC for the Term of the Agreement.
 - c. **Transition.** For purposes of this Agreement, the term "Transition" shall mean the period of time commencing upon Possession and terminating on the date that substantial material improvements and renovations to the Facility, as determined in the reasonable discretion of LSPR, are substantially complete. It is anticipated that Transition shall end on or before November 1, 2018; however, LSPR reserves the right to extend this date for a reasonable period

of time, to accommodate construction or other related delays, following verification to MCC of construction performance and anticipated delivery dates with applicable subcontractors. Written notice of LSPR's Transition conclusion date shall be provided by LSPR, within three (3) business days following LSPR's final determination thereof. In the event of an anticipated delay, LSPR will make reasonable efforts to provide MCC ten (10) business days' notice of delay prior to November 1, 2018 (or, if it is not reasonably practicable to provide ten (10) business days' notice to MCC, such advance notice as is commercially reasonable, with LSPR exercising best efforts). LSPR agrees to accommodate MCC's continuous permitted use of the Facility through alternative means as identified in Section 2 of this Agreement until Transition is completed. MCC shall be entitled to any and all other remedies at law or in equity which MCC shall have for LSPR's failure to comply with this provision.

- d. **Existing Memberships.** MCC has communicated to all individuals or groups on an existing Facility membership that said membership will no longer be valid or effective as of end of business on Tuesday, July 31, 2018, and further agrees to issue such remaining balances or refunds as may be due and owing as per MCC's membership agreements as of end of business on Tuesday, July 31, 2018. LSPR agrees to extend a free "Trial Membership" to any existing member of MCC for use at the Legacy Park Community Center from Saturday, September 1, 2018 through Wednesday, October 31, 2018, or such later date which is the end of the Transition. Any existing member or individual on a Trial Membership shall have the opportunity to purchase a new membership at any LSPR facility at the then existing rates for residents or non-residents, as applicable and subject to the provisions of this Agreement, following the termination of his or her existing membership or Trial Membership.
- e. **Fall 2018 Athletic Team Access During the Transition.**
 - i. **Women's Volleyball Practice.** During the Transition, LSPR hereby agrees to provide the MCC-Longview Women's Volleyball Team access to one volleyball court at Harris Park Community Center or another facility which can accommodate the requirements outlined herein, in accordance with the following practice schedule as set forth in Exhibit A-2018 Master Schedule.
 - ii. **Women's Volleyball Games and Tournaments.** During the Transition, LSPR hereby agrees to provide the MCC-Longview Women's Volleyball Team access to one volleyball court at Harris Park Community Center or another facility which can accommodate the requirements outlined herein for the following dates/times which constitute home games for the MCC Women's Volleyball Team as set forth in Exhibit A-2018 Master Schedule:
 - iii. **Athlete Facility Memberships.** During the Transition, in order to provide MCC student athletes an opportunity to continue strength and conditioning training necessary to participate in their respective sports programs, LSPR agrees to extend a limited membership to Legacy Park Community Center, free of charge, to any Fall 2018 athlete participating in MCC-Longview's Women's Volleyball, Men's Cross Country, Women's Cross Country, Men's Golf, or Women's Golf from Saturday September 1, 2018 through the end of the Transition. MCC shall provide LSPR a list of all athletes who are on a roster for an above-listed sport for the Fall 2018 season no later than August 15, 2018 so that said limited memberships can be issued.
 - iv. **Cross Country Shower Facilities.** MCC agrees to identify alternate arrangements for athletes participating in cross country to have access to shower facilities, but LSPR shall

have no responsibility to provide such shower facilities at the Facility during the Transition.

- v. **Coaching Offices.** MCC agrees to identify alternate arrangements for coach offices during the period which renovations are being undertaken at the Facility, but LSPR shall have no responsibility to provide coaching offices at the Facility during the Transition.

- f. **Physical Education Classes During Transition.** In light of the renovation schedule for the Facility, MCC shall be responsible for coordinating Physical Education classes at MCC-Longview for the Fall 2018 semester. LSPR shall provide notice to MCC no later than November 1, 2018 if it is anticipated that the Transition will extend beyond November 1, 2018, and if Facility will not be capable of hosting students enrolled in for-credit Physical Education classes by January 1, 2018.

3. Athletics and Physical Education Classes Access and Use Following Transition

a. Volleyball.

- i. **Practice, Game and Tournament Facilities.** Following the Transition, as defined herein, and thereafter, for the "Term" (defined in Section 5 below) of this Agreement, LSPR shall provide the MCC-Longview Women's Volleyball team non-exclusive access to the Property. The non-exclusive access to the Property shall be extended to MCC-Longview visiting teams and guests during tournaments. The MCC-Longview Women's Volleyball Team shall have exclusive access to that portion of the Facility for games and tournaments and exclusive access to a volleyball court as identified by LSPR and consistent with the master schedule provided for, space and equipment defined in Section 3(a)(iii) below, adequate to accommodate the practice, game and tournament schedule for the MCC-Longview Women's Volleyball Team, so long as the team is in existence and is based at MCC's Longview campus. In the event that the MCC-Longview Women's Volleyball team is based out of any other campus or site of MCC, then the provisions of this section shall become null and void. Further, in the event that the National Junior College Athletic Association (hereinafter "NJCAA") modifies the requirements applicable to space and equipment needs for Volleyball, MCC shall provide a minimum of thirty (30) days' advance notice of the change in requirements to LSPR. LSPR will exercise its' best efforts to comply with the requirements. In the event that any modification is required which results in any financial investment, MCC shall be responsible for modification or construction performance to include the selection of contractors, subject to LSPR's approval, and MCC shall be responsible for bearing the costs of such modifications. LSPR shall have the right to inspect and accept or reject the final work related to any modifications made to the Facility consistent with this provision. LSPR will coordinate with MCC to ensure cost containment and scheduling deadlines are met to the best of LSPR's ability. The practice schedule for Volleyball shall be from Monday through Friday from 2:00pm-4:30pm for the Fall 2018 season. In the event that MCC desires to modify this practice schedule, it shall submit, in writing, a detailed request identifying the modification sought, to LSPR for consideration. LSPR shall review the request to determine whether the schedule modification, in its sole discretion, poses challenges to the Facility schedule or its' operations. LSPR shall act in good faith to accommodate a schedule modification request and shall not unreasonably deny a modification request; however, it shall retain the authority to deny a request for practice schedule modification. LSPR shall provide its' determination of acceptance or rejection of schedule modifications in writing within fifteen (15) calendar days of receipt.

- ii. **Schedule to be Provided by MCC.** Not later than May 15 and October 15 of each year for the Term of this Agreement, MCC shall provide LSPR a written schedule of the planned practices, games and tournaments for the upcoming Fall and Spring Volleyball seasons, respectively. Notwithstanding any other provision in this Agreement, in the event that MCC does not provide the schedule by these deadlines, LSPR's sole remedy is that LSPR cannot guarantee accommodations as required herein for the sport season.
 - iii. **Specifications and Equipment.** LSPR shall ensure that the allocated space for Volleyball practices, games and tournaments shall, subject to the provisions of Section 3.a(i), above, at all times for scheduled events meet the current academic year NJCCA specifications and equipment requirements including but not limited to:
 - 1. **Court:** LSPR shall ensure that there is a clearly identified and designated area for the MCC-Longview Women's Volleyball team use containing Court dimensions of 59'x29.6' with a "Free Zone" surrounding entire court of at least 10' and a "Free Zone" past the end line of at least 15;' as well as an "Attack Line" placed 9'-10' from the Center Line on both sides of the Court.
 - 2. **Nets:** Nets and Net Antennas for use at all MCC-Longview Women's' Volleyball Team practices, games and tournaments shall be provided by MCC. Net Poles shall be provided by LSPR and shall accommodate a net with dimensions of 39"x31' 2" to be hung 7' 4 1/4" high. LSPR shall have no right or access to use Nets and Net Antennas which are owned by MCC.
 - 3. **Referee Stand, Scoreboard and Bleachers.** LSPR shall ensure that the following equipment is in place for MCC-Longview's use during practices, games and tournaments: a moveable Referee Stand, Bleachers for spectator use, and a Score Board.
 - iv. **Access to Facility for Team Workouts During Athletic Season.** Following the Transition, as defined herein, and thereafter for the Term of this Agreement, members of the MCC-Longview Women's Volleyball team will have access to the Facility for team workout events and activities to be held in the fitness areas of the Facility. MCC shall provide a schedule of workouts to be held by the team no later than May 15 and October 15 for the upcoming Fall and Spring Volleyball seasons, respectively, and shall further provide LSPR with a roster of the individuals who are members of the team for the applicable season. MCC shall notify LSPR if at any time the roster of athletes changes mid-season. Notwithstanding any other provision of this Agreement, in the event that MCC does not provide the schedule by these deadlines, LSPR's sole remedy is that LSPR cannot guarantee accommodations as required herein for the sport season.
 - v. **Access to Locker Room Facilities.** Following the Transition, as defined herein, and thereafter, for the Term of this Agreement, during all scheduled practices, games and tournaments, and for a reasonable time before and after each such activity or event, students who are members of the Volleyball team, as well as visiting teams, shall have access to the locker rooms at the Facility.
- b. Cross Country.**
- i. **Access to Facility for Team Workouts During Athletic Season.** Following the Transition, as defined herein, and thereafter for the Term of this Agreement, LSPR shall provide the MCC-Longview Men's and Women's Cross Country Teams non-exclusive access to the Property. The Men's and Women's Cross Country teams shall have access to that portion of the Facility for team workout events and activities to be held in the fitness

areas of the Facility in accordance with the requirements of the NJCCA. In the event that the NJCAA modifies the requirements applicable to space and equipment needs for Cross Country, MCC shall provide a minimum of thirty (30) days' advance notice of the change in requirements to LSPR. LSPR will exercise its' best efforts to comply with the requirements. In the event that any modification is required which results in any financial investment, MCC shall be responsible for modification or construction performance to include the selection of contractors, subject to LSPR's approval, and MCC shall be responsible for bearing the costs of such modifications. LSPR shall have the right to inspect and accept or reject the final work related to any modifications made to the Facility consistent with this provision. LSPR will coordinate with MCC to ensure cost containment and scheduling deadlines are met to the best of LSPR's ability. MCC shall provide a schedule of workouts to be held by the team no later than May 15 and October 15 for the upcoming Fall and Spring Cross Country seasons, respectively, and shall further provide LSPR with a roster of the individuals who are members of the team for the applicable season. MCC shall notify LSPR if at any time the roster of athletes changes mid-season. Notwithstanding any other provision of this Agreement, in the event that MCC does not provide the schedule by these deadlines, LSPR's sole remedy is that LSPR cannot guarantee accommodations as required herein for the sport season.

- ii. **Access to Locker Room Facilities.** Following the Transition, as defined herein, and thereafter, for the Term of this Agreement, LSPR shall provide locker room facilities to student athletes participating in the Men's and Women's Cross Country Teams, as well as visiting teams. Said access shall be provided for the period of time which practices and tournaments or activities are being held at the MCC-Longview Campus and for a reasonable time before and after each such activity or event. Not later than May 15 and October 15 of each year, MCC shall provide LSPR a written schedule of the planned practices, tournaments and activities for the upcoming Fall and Spring Men's and Women's Cross Country seasons, respectively. Notwithstanding any other provision of this Agreement, in the event that MCC does not provide the schedule by these deadlines, LSPR's sole remedy is that LSPR cannot guarantee accommodations as required herein for the sport season.

c. Golf.

- i. **Access to Facility for Team Workouts During Athletic Season.** Following the Transition, as defined herein, and thereafter, for the Term of this Agreement, LSPR shall provide the MCC-Longview Men's and Women's Golf Teams non-exclusive access to the Property. The MCC-Longview Men's and Women's Golf teams shall have access to that portion of the Facility for team workout events and activities to be held in the fitness areas of the facility in accordance with the requirements of the NJCCA. In the event that NJCAA modifies the requirements applicable to space and equipment needs for Golf, MCC shall provide a minimum of thirty (30) days' advance notice of the change in requirements to LSPR. LSPR will exercise its' best efforts to comply with the requirements. In the event that any modification is required which results in any financial investment, MCC shall be responsible for modification or construction performance to include the selection of contractors, upon LSPR's approval, and MCC shall be responsible for bearing the costs of such modifications. LSPR shall have the right

to inspect and accept or reject the final work related to any modifications made to the Facility consistent with this provision. LSPR will coordinate with MCC to ensure cost containment and scheduling deadlines are met to the best of LSPR's ability. MCC shall provide a schedule of workouts to be held by the team no later than May 15 and October 15 for the upcoming Fall and Spring Golf seasons, respectively, and shall further provide LSPR with a roster of the individuals who are members of the team for the applicable season. MCC shall notify LSPR if at any time the roster of athletes changes mid-season. Notwithstanding any other provision of this Agreement, in the event that MCC does not provide the schedule by these deadlines, LSPR's sole remedy is that LSPR cannot guarantee accommodations as required herein for the sport season.

ii. **Access to Locker Room Facilities.** Following the Transition, as defined herein, and thereafter, for the Term of this Agreement, LSPR shall provide locker room facilities to student athletes participating in the Men's and Women's Golf Teams, as well as visiting teams. Said access shall be provided for the period of time during which practices and tournaments or activities are being held at the MCC-Longview Campus and for a reasonable time before and after each such activity or event. Not later than May 15 and October 15 of each year, MCC shall provide LSPR a written schedule of the planned practices, tournaments and activities for the upcoming Fall and Spring Men's and Women's Golf seasons, respectively. Notwithstanding any other provision of this Agreement, in the event that MCC does not provide the schedule by these deadlines, LSPR's sole remedy is that LSPR cannot guarantee accommodations as required herein for the sport season.

d. **Access for Students Enrolled in Physical Education Classes.** LSPR agrees to grant limited memberships free of charge for up to 150 MCC-Longview students per semester who are enrolled in for-credit physical education classes at MCC-Longview. Said memberships shall be valid for only the dates which the class in which the student is enrolled is in session, but shall entitle the student to full access to the Facility as if he/she had a paid membership. At least (15) calendar days prior to the beginning of any for-credit physical education class for which memberships must be issued, MCC shall submit a roster containing information which will be requested by LSPR containing a specific list of items to be included. To the extent applicable, LSPR shall take steps to safeguard all student information in accordance with the Family Educational Rights and Privacy Act ("FERPA"). In the event that students enroll in for-credit physical education classes after the fifteen (15) calendar day period above ("late enrollment"), MCC shall submit a late enrollment roster to LSPR for which memberships must be issued. Students will be required to sign a Limited Membership Agreement and Acknowledgment and will be required to have their photo taken for identification as a member, to be used in conjunction with a FOB to be issued for membership identification. All MCC students and athletes will be expected to follow all of LSPR's facility rules. Failure to do so will result in that physical education student or athlete's forfeiture of the Limited Membership which he or she has been provided and will result in that student or athlete's inability to enter or utilize the facility. LSPR shall notify MCC as soon as practicable should a physical education student or student athlete forfeit their Limited Membership.

e. **Dedicated Space; Additional Space Needs.**

i. **Office Space for Coaches, Physical Education Instructors, and Physical Education Coordinator(s).** LSPR shall identify and designate reasonable adequate space within the Facility, to consist of at least one (1) enclosed office space with room for two (2) or

more commercially standard cubicles, as well as a private enclosed area capable of use as an Athletic Training Room to address athlete injuries and for informal meetings, discussions and instruction, for the exclusive use by MCC-Longview Coaches, Instructors, and Physical Education Coordinator(s). LSPR will notify MCC of the location of the designated space as soon as practicable to permit MCC reasonable time to plan for appropriate furniture and equipment needs. LSPR may change or relocate said designated space within the Facility at its sole discretion, but no more frequently than once per year (annually) as long as the minimum standards listed herein are provided in any alternate location identified and accommodates MCC's furniture and equipment needs, and provided that such alternative space shall be within reasonably close proximity to the areas of the Facility used for Athletics and Physical Education Classes. All furniture, fixtures, and equipment for said space shall be the responsibility of and shall be owned by MCC, which shall be responsible for its condition and insurance sufficient to replace the furniture, fixtures and equipment, in the event of damage thereto. At the end of the Term of this Agreement, MCC shall have a limited scope right of entry for the purposes of removing the furniture, fixtures and equipment from the Facility.

- ii. **Storage Space for Athletics Equipment.** LSPR shall identify and designate a minimum of 150 square feet within the Facility so MCC may store athletics equipment, including volleyball (i.e. nets, net antennas, and balls), golf and cross country equipment. LSPR agrees to make reasonable efforts to locate the designated storage space near the gymnasium for MCC's ease of access to equipment. LSPR may change or relocate said designated space within the Facility at its sole discretion as long as the minimum standards listed herein are provided in any alternate location identified, and provided that such alternative space shall be within reasonably close proximity to the areas of the Facility used for Athletics and Physical Education Classes. All equipment shall remain the property of MCC, which shall be responsible for its condition as well as insurance sufficient to replace in the event of damage to the Facility.
- iii. LSPR understands that MCC may modify its sports programming and LSPR agrees to negotiate with MCC in good faith to identify potential future needs and propose terms and conditions related to the accommodation of such sports programming, provided that such change in scope shall not result in a substantially greater burden to LSPR, which LSPR shall determine, in its reasonable discretion. MCC shall notify LSPR in writing of any sports programming modification request within sixty (60) days of the next academic semester. Within thirty (30) days of receiving the request, LSPR shall determine if the proposed change in scope in sports programming modifications may result in a substantially greater burden to LSPR. LSPR shall notify MCC in writing of such determination (the "Determination"), and in such Determination, shall set forth in detail the bases upon which LSPR has ascertained such change in scope is likely to result in a substantially greater burden. MCC may provide feedback and input to LSPR regarding the Determination, which LSPR shall consider in its sole but reasonable discretion. Such decision may include notice by LSPR to MCC that such accommodation shall be conditioned upon the imposition of reasonable fees associated with additional or different uses than those contemplated in this Agreement.
- iv. **Availability of Additional Space.** To the extent that additional space needs are identified by MCC for instruction, programs, meetings, events, or activities, MCC shall be granted

priority consideration by LSPR to reserve any open and available space at the Facility at the then-applicable rental rates.

4. Mutual Agreements

- a. Membership Fees for Students and Employees of MCC-Longview.** LSPR agrees to offer all students and employees of MCC-Longview a membership at the then applicable Resident Rate for membership at the Facility, regardless of residency. LSPR shall set a cap on the total memberships allowed under this provision at 1,000 active memberships, exclusive of memberships provided to students who are enrolled in a Physical Education for-credit course or who are members of an active athletics team as contemplated herein.
- b. Event Admission Fees.** MCC-Longview has expressed an interest in the ability to charge admission fees for events and activities which are contemplated under this Agreement. LSPR agrees to grant MCC-Longview the right to arrange for the collection of admission fees for events which take place at the Facility under the following conditions:
 - i. Admission Fees shall only be collected in connection with a bona fide fundraiser or other similar activity which is clearly identified, and shall not be collected for the purposes of general revenue generation for MCC-Longview or any affiliated entity.
 - ii. Written notice shall be provided by MCC-Longview to LSPR at least fifteen (15) calendar days in advance of the date of the activity for which fees are to be collected.
 - iii. MCC-Longview shall provide all personnel required for the collection of fees.
 - iv. LSPR shall designate the location where fees may be collected.
- c. Agreement Not to Compete with Courses offered at MCC-Longview and Coordination for Non-Credit/Lifelong Learning Courses.** LSPR agrees for the Term of the agreement that it will not offer any courses at the Facility during the Term of this Agreement in which the course content is the same or similar to any MCC continuing education or community education courses offered at MCC and which directly compete with such MCC courses. Course catalogs are located on MCC's website and may be used by LSPR to identify the content of such courses, to ensure its compliance with this provision. In addition, MCC shall provide a list of any continuing education and community education courses in order to provide notice to LSPR for programming purposes for the remainder of the 2018-2019 academic term. MCC agrees to provide a list of continuing education and community education courses it will offer for the upcoming academic years to LSPR by April 15th of each year to provide LSPR with notice for programming purposes. LSPR shall have the authority to offer any course which complies with this section upon the Effective Date of this Agreement. In the event that MCC wishes to cooperate and/or coordinate with LSPR in the offering of continuing education or community education courses, it shall present a request in writing to LSPR containing a description of the course to be jointly programmed, along with the proposed terms and conditions of the cooperating agreement. LSPR shall consider the request and may, through separate written agreement, engage in a joint program of course offerings. The provisions of this paragraph shall be applicable only to programming at the Facility, and shall in no way limit LSPR's right to offer competing courses or programs at any other LSPR facility, unless such facility is within one (1) mile of the Facility. LSPR agrees that the restrictions in this section are reasonable and necessary to protect the interest of MCC. Further, in the event that LSPR begins offering programming at the Facility which is not provided by MCC-Longview in accordance with this section, MCC agrees to not subsequently initiate the offering of the same or substantially similar program in competition with or in an effort to prevent LSPR from the opportunity to continue the program. The provisions of this section shall not be applicable to the offering of any fitness class which is offered as a part of the standard membership for the Facility

and which does not generate additional fees or revenues. In the event that MCC believes that an offering exists at the Facility which is in violation of this provision, it shall have the responsibility of notifying LSPR, after which time LSPR shall have a reasonable opportunity, not to exceed ten (10) days, to arrange for the cancellation and removal of said offering.

- d. Marketing.** LSPR agrees to allow MCC to provide signage and advertising for events and activities which are the subject of this Agreement, with prior approval from the LSPR Administrator which approval shall not be unreasonably withheld.
- e. Shared Access and Maintenance of Driveways.** In accordance with and except as otherwise provided in the Cross Easement executed at the Closing, LSPR shall be responsible for all maintenance and repair of that portion of the parking located on the Property; MCC shall be responsible for all maintenance and repair of that portion of the parking not located on the Property. MCC agrees to maintain the shared access roads to the Facility in a safe condition, and further agrees to execute snow and ice removal operations on the shared access road at the same time as MCC executes other snow and ice removal operations on the MCC-Longview Campus. Further, MCC grants LSPR a right to access and engage in snow and ice removal activities of the shared access roads in the event that MCC does not provide snow and ice removal services consistent with the terms of this Agreement or to the extent that the services are provided in a manner which LSPR deems inappropriate and inadequate for access to the Facility. In such instances where LSPR elects to access and engage in snow and ice removal activities on shared access roads, LSPR shall be responsible for all associated costs and LSPR agrees to hold harmless MCC and assume responsibility for any matters or claims which arise from the access and engagement of snow and ice removal on shared access roads.
- f. Facility Rentals.** MCC warrants and represents that, as of the Closing, any and all Facility rentals and reservations for use which MCC has previously entered into with other parties or entities have been canceled or otherwise extinguished. To the extent allowed by applicable law, MCC agrees to hold harmless and assume responsibility for any matters which arise from the cancellation or failure to notify a party with regard to cancellation of an Agreement entered into prior to the Effective Date. LSPR shall have the opportunity to enter into new agreements with third parties and entities for facility use and reservations at rental rates to be determined solely by LSPR, and subject to revision from time to time as LSPR may deem appropriate. No such agreements may be inconsistent with this Agreement or any other agreement between the parties.
- g. Trophies and Banners.** LSPR understands that the Facility will, for all intents and purposes during the Term, be designated by MCC as the home facility of the MCC-Longview Women's Volleyball Team, Men's and Women's Golf Teams, and Men's and Women's Cross Country Teams, and that awards, accolades, and announcements in connection therewith (the "**Memorabilia**") have historically been housed at the Facility. To that end, LSPR agrees to allow MCC to continue to display existing and future Memorabilia, including, but not limited to, banners representing the Facility as the "home" facility for the sports teams mentioned herein; championship banners for the teams, and other trophies and awards. LSPR shall have the sole discretion to determine where and how much space shall be allotted to MCC for Memorabilia, and reserves the right to change or modify the space(s) provided under this subsection at any time, with or without prior notice to MCC. Any such relocation of Memorabilia shall be performed by MCC pursuant to a limited right of entry for such purpose, and at the end of the Term, the removal thereof shall be the sole responsibility of MCC. LSPR shall have no liability for damage to or destruction or theft of the Memorabilia, except when such damage, destruction or theft is a result of the gross

negligence or intentional misconduct of LSPR and its employees, agents, designees, successors and assigns. All Memorabilia located at the Facility is the property of MCC.

- h. Wireless Technology Equipment.** MCC will remove from the Facility access to MCC's information technology network. MCC will be permitted to remove any and all network equipment from the Facility by August 31, 2018. LSPR will arrange for its' own infrastructure related to technology equipment. All MCC students who are provided Limited Memberships to the Facility and MCC coaches and instructors who office at the Facility as contemplated in this Agreement will be provided the same benefits to utilize any applicable technology facilities as a regular member of the Facility.
- i. Joint Security.** Upon Closing on the sale of the Facility to LSPR, MCC's Police Department ("MCCPD") agrees to notify the appropriate policing authority of the change in ownership of the Facility. Further, LSPR and MCC agree to cooperate and exchange plans, information, and resources related to Active Shooter training and other security related matters which either of them deem appropriate or useful in establishing and maintaining safety protocols for the surrounding areas.
- j. Shared Use of Parking Lot.** In accordance with the Cross Easement executed at the Closing, LSPR and MCC shall be authorized to conduct various events throughout the year which involve the use of both the parking lot owned by MCC and the parking lot that is the subject of the Real Estate Agreement referenced herein and which shall become the property of LSPR upon the Closing. LSPR and MCC hereby agree to cooperate with each other in good faith to ensure that one another has reasonable access and use to each other's parking lots for events without the need for additional formal agreements between the parties. For purposes of this section, "event" shall mean any instance where anticipated traffic and/or parking needs are beyond routine use. For purposes of this provision, a request for use for events should be submitted to the Manager of the Facility a minimum of thirty (30) days' prior to the requested use. The Administrator of LSPR shall be designated as the individual responsible for approving use of that portion of the parking lot which is owned by LSPR, and the MCC-Longview Director of Campus Operations shall be designated as the individual responsible for approving use of that portion of the parking lot which is owned by MCC. Although each party retains the right to approve or deny a request, approval shall not be unreasonably withheld. Further, the parties agree that no fee shall be charged in connection with uses under this subsection.
- k. Repair.** LSPR will be solely responsible for maintenance and repairs, and will maintain the Facility in accordance with the exceptional standards it employs for all its' facilities.
- l. Parking Lot Repairs.** In accordance with and except as otherwise provided in the Cross Easement executed at the Closing, MCC acknowledges that it incorporated into its current budget repairs to be completed for a portion of the parking lot and shared access drive and understands and acknowledges that the conditions of the parking lot and shared access drive are currently in an unacceptable condition. MCC agrees to pave the shared use drive and each driveway aprons/turn ins to the Facility parking lots prior to conveying the Facility to LSPR. Enhancements beyond designated normal repair are at the costs of LSPR. MCC and LSPR both agree to select one vendor to complete the repaving of each parties' respective parking lots. MCC and LSPR agree to share the costs of said repaving equally.
- m. Utilities.** LSPR understands that the Facility does not have a separate water or gas meter. In accordance with and except as otherwise provided in the Cross Easement executed at the Closing, to ensure the continuance of water and gas services, MCC agrees to remit payment for all water and gas services for the Facility. Further, MCC shall invoice LSPR monthly for its allotted

expenses of the water and gas for the Facility. LSPR reserves the right to obtain a separate water and gas meter to service the Facility by providing MCC ten (10) days' notice. MCC understands that the parking lights on MCC's portion of the parking lot is serviced from an electrical meter at the Facility. In accordance with and except as otherwise provided in the Utility Easement executed at Closing, to ensure the continuance of electricity to MCC's parking lot lights, LSPR agrees to remit payment for all electrical services for the Facility. Further, LSPR shall invoice MCC monthly for its allotted expenses of services for the parking lot lights. MCC reserves the right to obtain separate electrical services to service the parking lot lights by providing LSPR ten (10) days' notice. Each party reserves the rights to obtain verification of the allotted expenses.

- n. Mass Notification System.** Subject to the Closing on the Real Estate Agreement, MCC will remove any and all supplemental equipment related to the mass notification system to include speakers from the Facility by August 31, 2018. MCC shall be responsible for removal of the supplemental equipment and all associated costs. MCC will coordinate the dates and times at which MCC shall cause the removal of the supplemental equipment within the stated timeframe with LSPR. MCC will exercise its' best efforts to relocate to its property and connect speakers to MCC's mass notification system to service the areas where the Property and Facility are located.
- o. Emergency Call Tower.** Subject to the Closing on the Real Estate Agreement, MCC will remove the Emergency Call Tower ("Tower") from the Property by August 31, 2018. MCC shall be responsible for removal of the Tower and all associated costs. MCC will coordinate the dates and times at which MCC shall cause the removal of the Tower within the stated timeframe with LSPR.
- p. Camera Systems.** Subject to the Closing on the Real Estate Agreement, MCC will remove the Facility security cameras from its network and systems. LSPR will be responsible for securing a system to operate the cameras if LSPR desires to do so. LSPR shall be responsible for all costs associated with operating the cameras. LSPR agrees to defend, indemnify and hold harmless and assume responsibility for any matters or claims which arise from the operation of the cameras after the date of the Closing. MCC agrees to cooperate with LSPR and provide information relevant to assist LSPR in the acquisition of necessary equipment and technology to operate said cameras.
- q. C-CURE System.** Subject to the Closing on the Real Estate Agreement, MCC shall remove the C-CURE equipment from its network. The C-CURE equipment comprises of card swipes and ISTAR box that controls access to certain doors and areas at the Facility. LSPR shall be responsible for securing a system to operate the C-CURE equipment or make alternative arrangements to operate the equipment if LSPR desires to do so. LSPR shall be responsible for all costs associated with operating the equipment. LSPR agrees to defend, indemnify and hold harmless and assume responsibility for any matters or claims which arise from the operation of the C-CURE equipment after the date of the Closing. MCC agrees to cooperate with LSPR and provide information relevant to assist LSPR in the acquisition of necessary equipment and technology to operate said C-CURE equipment.
- r. Fire Panel and Emergency Pull Stations.** Subject to the Closing on the Real Estate Agreement, MCC will disconnect the fire panel and emergency pull stations located at the Facility from its network. LSPR shall be responsible for reprogramming the fire panel and emergency pull stations to the appropriate emergency response authorities. LSPR shall be responsible for all costs associated with reprogramming the fire panel and emergency pull stations. LSPR agrees to defend, indemnify and hold harmless and assume responsibility for any matters or claims which arise from the operation of the fire panel and/or emergency pull stations after the date of the

Closing. MCC agrees to cooperate with LSPR and provide information relevant to assist LSPR in reprogramming the fire panel and pull stations.

- s. **HVAC.** Subject to the Closing on the Real Estate Agreement, MCC will disconnect the Facility from MCC's automated logic central server. LSPR will be responsible for obtaining a separate server or make alternative arrangements to operate the HVAC at its sole cost. LSPR agrees to defend, indemnify and hold harmless and assume responsibility for any matters or claims which arise from the operation of the HVAC after the date of the Closing. MCC agrees to cooperate with LSPR and provide information relevant to assist LSPR in the acquisition of necessary equipment and technology to operate said HVAC system.
5. **Term.** Subject to the Closing on the Real Estate Agreement, the term of this Agreement shall be for a period of ten (10) years, beginning on September 1, 2018 and ending August 31, 2028 and shall automatically renew for two (2) additional five (5) year periods ("Term"), provided that MCC does not provide notice of intent to terminate prior to the expiration of the Term. In the event that MCC wishes to terminate this Agreement, MCC shall provide ninety (90) days written notice.
6. **Miscellaneous**
 - a. **Force Majeure.** In no event shall either party be responsible or liable for any failure or delay in the performance of any obligation hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, exercising commercially reasonable efforts, including, without limitation, earthquake, fire, flood, or other casualty due to storm or other act of God or similar occurrence or condition beyond the reasonable control of the party.
 - b. **Indemnification and Insurance.**
 - i. LSPR hereby agrees, to the extent permitted by applicable law, to defend, indemnify, release, and forever hold harmless MCC, and their respective officers, agents, employees, attorneys, elected officials, and board trustees, and members to the Facility (collectively, the "MCC Parties"), each in their official and individual capacities, from and against all claims, demands, damages, loss or liabilities, including costs, expenses and reasonable attorney's fees incurred in connection with such claims, demands, damages, losses or liabilities, or incurred by MCC which are caused in whole or in part by LSPR, the City, and their respective officers, agents, employees, attorneys, elected officials, and board members, invitees and licensees (the "LSPR Parties") arising out of this Agreement, the Property or the Facility, except and to the extent such claim, demand, damage, loss or liability arises out of or is related to the sole or gross negligence of the MCC or the MCC Parties seeking indemnification. In no event do any of the obligations contemplated in this Agreement waive LSPR's right to sovereign immunity under law.
 - ii. MCC hereby agree, to the extent permitted by applicable law, to defend, indemnify, release, and forever hold harmless LSPR and the LSPR Parties, and their respective officers, agents, employees, attorneys, elected officials, and board each in their official and individual capacities, from and against all claims, demands, damages, loss or liabilities, including costs, expenses and reasonable attorney's fees incurred in connection with such claims, demands, damages, losses or liabilities, or incurred by LSPR or the LSPR Parties which are caused in whole or in part by MCC or the MCC Parties, arising out of this Agreement or the Facility, except and to the extent such claim, demand, damage, loss or liability arises out of or is related to the sole or gross negligence of the LSPR or the LSPR Parties seeking indemnification. In no event do any of the obligations contemplated in this Agreement waive MCC's right to sovereign immunity under law.

- iii. **Insurance.** Upon the date of the Closing, MCC shall provide a Certificate of Insurance, naming the City of Lee's Summit as additional insured, which shall cover all activities, equipment, personnel and property that are the responsibility or possession of MCC. Said insurance shall contain minimum liability limits of \$2,000,000 per occurrence and \$2,000,000 aggregate coverage. In the event that MCC does not maintain insurance as required under the terms of this Agreement, LSPR shall have the right to procure insurance on behalf of MCC sufficient to meet the minimums as contemplated herein, and shall be eligible for reimbursement of any premiums associated with said coverage.
- c. **Assignment of Alternate Accommodations.** In the event of an emergency or other exigent circumstances, and conditioned on MCC approval, LSPR shall identify and assign alternate physical accommodations associated with any of the obligations hereunder following: (i) verification to MCC of emergency or other exigent circumstances; and (ii) estimated timeframes of the alternate accommodation and estimated timeframe for conclusion of exigent or emergency circumstance. The alternative accommodations shall: (i) be reasonably equivalent with LSPR's obligations under this Agreement; (ii) be truly temporary in nature; (iii) to the extent possible and within LSPR's control, be within reasonable proximity to the Property (if alternative accommodation is outside of Facility); (iv) to the extent possible and within LSPR's control, not unreasonably interfere with or unduly burden MCC and the MCC Parties' use and enjoyment of the Facility; and, (v) to the extent practicable, be mutually agreeable to MCC. LSPR shall provide a minimum of thirty (30) calendar days' notice to MCC in advance of the assignment; provided, however, notice of fewer than thirty (30) days may be provided by LSPR to MCC, in the event of an emergency or other exigent circumstance. MCC shall be entitled to any and all other remedies at law or in equity which MCC shall have for LSPR's failure to comply with this provision.
- d. **Items Not Specifically Negotiated.** MCC and LSPR agree and acknowledge that, although numerous items are specifically identified and negotiated herein, certain subjects or items may arise which have not been specifically addressed in this Agreement. To the extent that issues arise regarding topics which are related to operations which are not specifically addressed herein, MCC and LSPR hereby agree and consent to engage in good faith discussions and negotiations to address those topics and to reduce the agreed upon terms and conditions to writing.
- e. **Project Managers and Point of Contact for Contract Implementation and Resolution of Contract Disputes.** In order to effectively and efficiently handle the implementation and interpretation of the provisions of this Agreement, LSPR and MCC shall each identify a primary Project Manager. Each party shall provide, in writing, the name of the Project Manager, and shall promptly notify the other party in writing if the Project Manager is changed. In the event that a dispute arises regarding the implementation or interpretation of this Agreement which cannot be resolved by the designated Project Managers, the matter shall be escalated to the Superintendent of Recreation for LSPR and the Vice Chancellor for Administrative Services & Chief Financial Officer for MCC. In the event that a dispute arises regarding the implementation or interpretation of this Agreement which cannot be resolved at the second level of review, the matter shall be escalated to the Administrator for LSPR and the Chancellor for MCC. In the event the parties' dispute cannot be resolved by the designated Administrator and Chancellor, either party shall be entitled to exercise any and all rights available to such party at law or in equity.
- f. **Notices.** All notices hereunder shall be sent by overnight delivery service or mailed by registered certified mail, postage prepaid, return receipt requested, addressed as follows:

If to LSPR:

Lee's Summit Parks and Recreation
Attn: Administrator
220 SE Green Street
Lee's Summit, Missouri 64063

If to MCC:

Metropolitan Community College
Attn: Chancellor
3200 Broadway
Kansas City, Missouri 64111

- g. Governing Law.** This Agreement shall be deemed to have been made within the County of Jackson, State of Missouri, and shall be interpreted, construed and enforced in accordance with the laws of the State of Missouri and before the Courts of Missouri in the County of Jackson.
- h. Severability.** In the event that any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or incapable of being enforced, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect.
- i. Waiver.** Any waiver by LSPR or MCC of any of the covenants, conditions, or agreements herein contained shall not be construed as a waiver of any subsequent breach or violation of this Agreement.
- j. Assignment.** This Agreement may not be assigned by either LSPR or MCC without the prior, written consent of the non-assigning party, which consent shall not be unreasonably withheld, conditioned or delayed.
- k. Termination.** If either party breaches any provision of this Agreement, and such breach is not remedied within sixty (60) days of receiving written notice of breach, the non-breaching party shall be entitled to exercise any and all rights available to such party at law or in equity.
- l. Cooperation Regarding Annexation.** MCC and LSPR acknowledge that a portion of the Facility and Property is located outside the corporate boundaries of Lee's Summit, Missouri. MCC understands that steps must be taken by LSPR to bring the Facility within the corporate boundaries of the City of Lee's Summit, Missouri, and hereby agrees to consent to assist, at no cost to MCC, in the annexation efforts by LSPR, and specifically agrees to not oppose the detachment of that portion of the Property and Facility outside the corporate boundaries of Lee's Summit, Missouri from the City of Kansas City, Missouri. MCC further agrees to support the incorporation by annexation of such property into the corporate boundaries of Lee's Summit, Missouri. MCC agrees to not intentionally take any action that would unreasonably or materially jeopardize LSPR's effort to annex said portion of the Facility and Property into the corporate boundaries of Lee's Summit, Missouri.
- m. Non-Discrimination.** The parties agree that no person shall be excluded from participation in, be denied the benefit of or otherwise subjected to discrimination in the performance of this Agreement on the ground of race, color, religion, age, sex, sexual orientation, disability, national origin, veteran status or any other status protected by applicable law.

- n. **Recordation.** A memorandum of this Agreement shall, at the Closing, be filed with the Recorder of Deeds for Jackson County, Missouri. The form of memorandum shall be reasonably acceptable to the parties.
- o. **Entire Agreement.** This Agreement contains the entire agreement with respect to the matters herein described, and there are no terms, conditions, promises, understandings or statements, express or implied, concerning the same. Except as may be provided in the Real Estate Agreement, Cross Easement, or the covenants and restrictions to be filed upon the Property prior to or on the Closing, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon LSPR or MCC, unless reduced to writing and signed by both LSPR and MCC.

IN WITNESS WHEREOF, the parties hereunto set their hand(s) as of the Effective Date and year indicated thereon.

[SIGNATURES APPEAR ON THE NEXT PAGE]

THE CITY OF LEE'S SUMMIT, MISSOURI, BY AND THROUGH THE LEE'S SUMMIT PARKS AND RECREATION BOARD

Administrator of Parks and Recreation

Date

APPROVED AS TO FORM:

Superintendent of Legal Services and
Human Resources/Staff Attorney

STATE OF MISSOURI)
)ss.
COUNTY OF JACKSON)

On this ___ day of _____, 2018, before me appeared _____, to me personally known, who being by me duly sworn, did say that s/he is the Administrator of the City of Lee's Summit, Missouri, by and through the Lee's Summit Parks and Recreation Board, a _____ of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said entity, and that said instrument was signed and sealed on behalf of said entity by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said entity

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC
My Commission Expires:

[SIGNATURES CONTINUE ON THE NEXT PAGE]

**THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN
KANSAS CITY, MISSOURI:**

Title

Date

STATE OF MISSOURI)
)ss.
COUNTY OF JACKSON)

On this ___ day of _____, 2018, before me appeared _____, to me personally known, who being by me duly sworn, did say that s/he is the _____ of THE JUNIOR COLLEGE DISTRICT OF METROPOLITAN KANSAS CITY, MISSOURI, a _____ of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said entity, and that said instrument was signed and sealed on behalf of said entity by authority of its Board of Directors, and said _____ acknowledged said instrument to be the free act and deed of said entity

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

NOTARY PUBLIC

My Commission Expires:

[SEAL]