

ORDINANCE NO. 00-100 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT AND LEASE WITH THE BOARD OF PARK COMMISSIONERS, LORAIN COUNTY METROPOLITAN PARKS DISTRICT, FOR THE CONSTRUCTION AND OPERATION OF A PUBLIC AQUATIC FACILITY AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into an agreement and lease with the Board of Park Commissioners, Lorain County Metropolitan Parks District, for the construction and operation of a public aquatic facility, copies being attached hereto and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, to wit:

"to ensure development of a public swimming facility at the earliest possible date",

and shall take effect immediately upon passage.

PASSED: 1st Reading - October 2, 2000 (E)
2nd Reading -
3rd Reading -

ATTEST:

CLERK OF COUNCIL



CHAIR OF COUNCIL

POSTED: October 3, 2000

EFFECTIVE DATE: October 3, 2000

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 30th day of ~~September~~ ^{October} 2000, by and between the BOARD OF PARK COMMISSIONERS, LORAIN COUNTY METROPOLITAN PARK DISTRICT (hereinafter referred to as "Park District"), having an office at 12882 Diagonal Road, LaGrange, Ohio 44050 and the CITY OF OBERLIN, OHIO (hereinafter referred to as "Oberlin") having an office at 85 South Main Street, Oberlin, Ohio 44074.

WITNESSETH

WHEREAS, the parties hereto are considering the feasibility of a regional family aquatic center to be located within the geographical boundaries of the City of Oberlin; and

WHEREAS, in order to further consider the regional family aquatic center as a viable project, it is necessary to formulate an agreement between the parties as to the participation of the parties with respect to this project as well as other terms and conditions relating thereto; and

WHEREAS, the parties hereto desire to set forth those duties and responsibilities as well as the relevant terms and conditions by which each would be bound;

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

I. Conditions Precedent.

The parties agree that in order for this agreement to be in full force and effect, and the parties obligated to fulfill their duties and obligations as set forth herein, the following conditions must first be satisfied;

- A. The securing of adequate funding for the project as determined by Park District in its sole discretion;
- B. The location for the project accepted and approved by both parties;
- C. Approval by the parties of a ground lease as referenced herein;
- D. Assurance of compliance with all federal, state and local statutes, laws, regulations and ordinances relating to the construction and operation of the project to the satisfaction of the Park District, except as may be modified herein.

The parties agree that if any one or more of the above conditions are not met or fully satisfied by December 31, 2000 then the parties are released from duties, obligations and responsibilities set forth in this agreement.

2. **Duties and Obligations of Oberlin.**

- A. **Capital Contribution:** Oberlin shall, in accordance with Annex A, attached hereto and incorporated hereto by reference, contribute to the Park District for the regional aquatic facility consideration amounting to approximately One Million Eight Hundred Thousand Dollars (\$1,800,000.00) in cash, capital improvements and labor.
- B. **Site Location:** Oberlin shall provide the site location set forth and described in Annex B, attached hereto and incorporated herein by reference, which site shall be the subject of a ground lease with the Park District for an initial term of fifty (50) years at a lease price of one dollar (\$1.00) per year, said lease to be in the form set forth in Annex C, attached hereto and incorporated herein by reference.
- C. **Plan Approval/Permit Fees:** Oberlin shall receive and review for approval, per applicable city codes, all plans and specifications as prepared either by or under direction of the Park District in as reasonable but expeditious time frame as possible. Oberlin agrees, to the extent possible, to waive all local permit fees, including water and sewer tap in fees, curb cut fees and other fees customarily charged for construction projects by the City of Oberlin. Fees owed to the State of Ohio must be collected and transmitted by the City of Oberlin.

3. **Duties and Obligations of the Park District.**

- A. **Construction and Operation:** Park District agrees and shall be responsible for the construction of the regional family aquatic center and shall also be responsible for the operation and maintenance of the aquatic center for the term of this agreement.
- B. **Favored Status:** The Park District shall recognize that the residents of the City of Oberlin, because of the passage of a tax levy to offset some of the costs of the project, shall have a favored status with respect to the standard fees charged for the use of the aquatic center facility. In that regard, such residents as identified by the City of Oberlin, shall receive a fifty percent (50%) reduction of the standard fees charged by the Park District for the use of the aquatic center. Provided however, such favored status shall apply only to individuals residing in the City of Oberlin, meeting the qualifications

established by Oberlin, and shall not apply to any other type of entity or employees, designees or assigns of such entities. This Oberlin residency status and the permit identification shall be reviewed on an annual or more periodic basis by Oberlin and the Park District.

- C. **Purpose:** For the duration of this agreement, Park District shall maintain and operate a facility for the purpose of providing activities that are exclusively recreational in nature and accessible to the general public, consistent with Park District policies and practices.
4. **Indemnity.** The Park District hereby agrees, to extent permitted by law, to indemnify, defend and hold harmless Oberlin from and against any all liability, claims and causes of action resulting from injury to persons or damage to property claimed or caused by the negligence of the Park District, its agents or employees and assigns with respect to the operation of the aquatic center. Oberlin agrees to promptly notify Park District of any such claim and to authorize the Park District to act in its behalf against all such claims.
5. **Insurance.** Park District agrees to provide and maintain such general liability and property insurance as is deemed reasonable and necessary to protect the interest of the parties hereto, and to name Oberlin as an additional insured or co-insured to the extent of Oberlin's interests in the facility; Park District shall provide Oberlin with a copy of the policy or policies and shall keep Oberlin notified of any change, amendment, endorsement, cancellation or termination of said policy or policies.
6. **Dispute Resolution.** In the event that a dispute arises concerning the terms of this agreement, Oberlin and Park District agree to attempt to amicably resolve the dispute at the earliest possible date, and with the least amount of expense and inconvenience to the parties. If the dispute is not able to be settled and resolved between the parties, then the controversy shall be submitted to final and binding arbitration as follows:
- A. Oberlin will select an arbitrator.
 - B. Park District will select an arbitrator.
 - C. The two arbitrators so selected shall select an impartial arbitrator who shall serve as the chairperson of the arbitration panel.
 - D. The issues by and between Oberlin and Park District shall be submitted to the panel who will hear and take evidence and will render a final decision which shall be binding upon the parties.
 - E. The expenses of the arbitration shall be borne one-half (½) by Park District and one-half (½) by Oberlin.

7. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns. If any part of this Agreement shall be found to be invalid or unlawful, it shall not be deemed a waiver of the other terms and conditions hereof which shall remain in full force and effect.
8. **Governing Laws.** This Agreement shall be governed by the laws of the State of Ohio.
9. **Entire Agreement.** This Agreement, and the Lease Agreement attached hereto as Annex C, constitutes the entire agreement between the parties hereto and the parties hereto are not bound by any other agreements, representations, warranties, understanding or conditions except those contained and referenced herein. This Agreement shall not be modified or amended, except by an instrument in writing signed by the parties to be bound.
10. **Reverter.** In the event that the Park District materially breaches this Agreement or the Lease Agreement as set forth in Annex C, then the property, and all improvements thereon, shall revert to Oberlin, according to the terms of the Lease Agreement.
11. **Termination.** This Agreement shall only be terminated for breach of the terms and conditions set forth herein and or in the Lease Agreement attached as Annex C.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year above written.

Park District:

BOARD OF PARK COMMISSIONERS,
LORAIN COUNTY METROPOLITAN PARK DISTRICT

By: _____

James D. Martin, Director/Secretary

Oberlin:

CITY OF OBERLIN, OHIO

By: _____

Robert DiSpirito, City Manager

Approved As To Form:

By: _____

Eric R. Severs, City Solicitor

DISBURSEMENTS TO LORAIN COUNTY METRO PARKS

PROJECTED QUARTERLY PAYMENTS, BASED ON REVENUES GENERATED THROUGH
THE OBERLIN RECREATION INCOME TAX LEVY, BEGINNING IN DECEMBER 2000

Year	March 31st	June 30th	September 30th	December 31st		Collected	Balance Due
2000	0	0	0	365,000		365,000	1,800,000.00
2001	93,750	93,750	93,750	93,750		375,000	1,435,000.00
2002	93,750	93,750	93,750	778,750	(1)	1,060,000	0.00
						\$1,800,000	

- (1) In the fourth quarter of 2002 the City would advance the remaining balance by issuing a 2 year tax anticipation note in the amount of \$685,000. The note would then be repaid with the proceeds of the Recreation Income Tax Levy over the following two remaining years of collection.

ANNEX C

LEASE AGREEMENT

BETWEEN

CITY OF OBERLIN, OHIO

AND

BOARD OF PARK COMMISSIONERS,
LORAIN COUNTY METROPOLITAN PARK DISTRICT

Dated: October 30, 2000

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	DEMISED PREMISES -1-
ARTICLE II	TERM -1-
ARTICLE III	RENT -2-
ARTICLE IV	RENT TO BE NET TO LESSOR -2-
ARTICLE V	USE OF PREMISES -2-
ARTICLE VI	TAXES AND UTILITY EXPENSES -2-
ARTICLE VII	IMPROVEMENTS, REPAIRS, ADDITIONS, REPLACEMENTS -4-
ARTICLE VIII	REQUIREMENTS OF LESSEE -5-
ARTICLE IX	COVENANT AGAINST LIENS -6-
ARTICLE X	ACCESS TO PREMISES -7-
ARTICLE XI	ASSIGNMENT AND SUBLETTING -7-
ARTICLE XII	SIGNS -7-
ARTICLE XIII	INDEMNITY -8-
ARTICLE XIV	INSURANCE -8-
ARTICLE XV	WAIVER OF SUBROGATION -9-
ARTICLE XVI	DAMAGE OR DESTRUCTION -10-
ARTICLE XVII	UTILITY EASEMENTS AND HIGHWAY ALIGNMENT -10-
ARTICLE XVIII	PERFORMANCE BY SUBTENANT -10-
ARTICLE XIX	QUIET ENJOYMENT -10-
ARTICLE XX	DEFAULTS -11-
ARTICLE XXI	USAGE FEES AND PERMITS -13-

ARTICLE XXII	WAIVERS	-13-
ARTICLE XXIII	LIMITATION OF LIABILITY	-13-
ARTICLE XXIV	GAS WELLS AND ENVIRONMENTAL MATTERS	-14-
ARTICLE XXV	TITLE	-14-
ARTICLE XXVI	UTILITIES	-15-
ARTICLE XXVII	FORCE MAJEURE	-15-
ARTICLE XXVIII	NOTICES	-15-
ARTICLE XXIX	CERTIFICATES	-16-
ARTICLE XXX	GOVERNING LAW	-16-
ARTICLE XXXI	PARTIAL INVALIDITY	-16-
ARTICLE XXXII	SHORT-FORM LEASE	-16-
ARTICLE XXXIII	INTERPRETATION	-17-
ARTICLE XXXIV	ENTIRE AGREEMENT	-17-
ARTICLE XXXV	SOIL TESTS	-17-
ARTICLE XXXVI	PARTIES	-18-

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), made at Lorain County, Ohio, as of this 30th day of ~~September~~ ^{October}, 2000, by and between City of Oberlin, Ohio ("Lessor") and Board of Park Commissioners, Lorain County Metropolitan Park District, ("Lessee").

W I T N E S S E T H:

ARTICLE I

DEMISED PREMISES

Lessor hereby leases and lets to Lessee, and Lessee hereby takes and hires from Lessor upon and subject to the terms, conditions, covenants and provisions hereof, all that certain tract, piece or parcel of land, situated in the City of Oberlin, County of Lorain and State of Ohio, more particularly described on Exhibit "A" attached hereto and made a part hereof and outlined in red on the plot plan attached hereto and made a part hereof and marked Exhibit "B", together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or appertaining thereto (the "Demised Premises").

ARTICLE II

TERM

(a) The term of this Lease shall commence on the Effective Date hereof and shall continue for a period of fifty (50) years beginning on the Rent Commencement Date hereinafter set forth and ending fifty (50) years thereafter, renewable by agreement of the parties upon the same terms, covenants and conditions as provided in this Lease. The effective date shall be the first day of operation of the facility.

(b) Notwithstanding the Effective Date as set forth in paragraph (a) of this Article II, the obligation of Lessee to pay the rent reserved under Article III hereof shall commence ("Rent Commencement Date") on the first day of the first calendar month following the date the policy of title insurance required by Article XXV has been furnished to Lessee by Lessor.

(c) Within seven (7) days after the occurrence of the Rent Commencement Date, Lessor and Lessee shall complete this Article II of this Lease by inserting the Rent Commencement Date in the spaces hereinafter provided or shall establish the same by a letter confirmed by an appropriate supplement to this Lease which the parties hereby agree to execute. The Rent Commencement Date of this Lease is _____, 2000.

ARTICLE III

RENT

(a) Lessee shall pay to Lessor for the Demised Premises, without offset or deduction and without previous demand therefor, a total net basic rent of one dollar per year.

All basic rent per annum shall be payable by Lessee in equal annual installments during the term of this Lease, payable at the office of Lessor or at such other place of which Lessor shall have given Lessee written notice at least thirty (30) days in advance.. Lessee may, without penalty, prepay the entire rental due for the lease term, at any time after the Rent Commencement Date.

(b) As hereinafter used the term "rent" shall be deemed to include the basic rent and the additional rent, if any, payable by Lessee to Lessor hereunder.

ARTICLE IV

RENT TO BE NET TO LESSOR

It is the intention of the parties that the rent payable hereunder shall be net to Lessor so that this Lease shall yield to Lessor the net annual rent specified herein during the term of this Lease, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Demised Premises shall be paid by Lessee.

ARTICLE V

USE OF PREMISES

The Demised Premises shall be used for a regional aquatic facility open to the general public upon such terms and conditions as Lessee in its sole and exclusive discretion may decide.

ARTICLE VI

TAXES AND UTILITY EXPENSES

(a) (i) Lessee shall, during the term of this Lease, pay and discharge punctually, as and when the same shall become due and payable, all taxes, special and general assessments, water rents, rates and charges, sewer rents and other governmental impositions and charges of every kind and nature whatsoever.

extraordinary as well as ordinary ("Taxes"), and each and every installment thereof which shall or may during the term of this Lease be charged, levied, laid, assessed, imposed, become due and payable, or liens upon or for or with respect to the Demised Premises or any part thereof, or any buildings, appurtenances or equipment owned by Lessee thereon or therein or any part thereof, together with all interest and penalties thereon, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the Federal, State, County, Town and City Governments and of all other governmental authorities whatsoever and all sewer rents and charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services, furnished to the Demised Premises or the occupants thereof during the term of this Lease ("Utility Expenses").

(ii) To the extent that the same may be permitted by law, Lessee or its designees shall have the right to apply for tax exemption, the conversion of any assessment for local improvements assessed during the term of this Lease, or any other tax abatement or relief as proscribed by law; otherwise, Lessee shall pay and discharge punctually said installments as they shall become due and payable during the term of this Lease. Lessor agrees to permit the application for the foregoing exemption and or conversion to be filed in Lessor's name, if necessary, and shall execute any and all documents requested by Lessee to accomplish the foregoing result.

(iii) All real estate taxes, including assessments which have been converted into installments as set forth above, for the tax years during which the term of this Lease shall commence or terminate shall be apportioned pro rata between Lessor and Lessee in accordance with the respective portions of such years during which such term shall be in effect. Lessee shall pay all respread taxes and assessments, both general and special, levied or assessed, laid and imposed and for improvements commenced, as to all of the foregoing, as of the commencement of the term of this Lease.

(iv) Lessee shall be deemed to have complied with the covenants of this paragraph (a) if payment of such Taxes shall have been made either within any period allowed by law or by the governmental authority imposing the same during which payment is permitted without penalty or interest or before the same shall become a lien upon the Demised Premises, and Lessee shall produce and exhibit to Lessor satisfactory evidence of such payment, if Lessor shall demand the same in writing.

(b) (i) Lessee or its designees shall have the right to contest or review all such Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Lessee or its designees shall conduct promptly at its own cost and expense, and free of any expense to Lessor, and, if necessary, in the name of and with the cooperation of Lessor, and Lessor shall execute all documents necessary to

accomplish the foregoing). Notwithstanding the foregoing, Lessee shall promptly pay all such Taxes if at any time the Demised Premises or any part thereof shall then be immediately subject to forfeiture, or if Lessor shall be subject to any liability, arising out of the nonpayment thereof.

(ii) The legal proceedings referred to in the preceding subparagraph (i) shall include appropriate certiorari proceedings and appeals from orders therein and appeals from any judgments, decrees or order. In the event of any reduction, cancellation or discharge, Lessee shall pay the amount finally levied or assessed against the Demised Premises or adjudicated to be due and payable on any such contested Taxes.

(c) If there shall be any refunds, remissions or rebates on account of the Taxes paid by Lessee under the provisions of this Lease, such refunds, remissions or rebates shall belong to Lessee. Any refunds received by Lessor shall be deemed trust funds and as such are to be received by Lessor in trust and paid to Lessee forthwith. Lessor will, upon the request of Lessee, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay to Lessee such refund or rebate as received by Lessor. Lessor shall, on request of Lessee at any time, and from time to time, but without cost to Lessor, make application individually (if legally required) for separate tax assessments for such portions of the Demised Premises as Lessee shall at any time, and from time to time, designate. Lessor shall, upon request of Lessee, execute such instruments and give Lessee such assistance in connection with such applications as shall be required by Lessee.

ARTICLE VII

IMPROVEMENTS, REPAIRS, ADDITIONS, REPLACEMENTS

(a) Lessee shall have the right, at its own cost and expense, to construct on any part or all of the Demised Premises, at any time and from time to time, such buildings, parking areas, driveways, walks, gardens and other similar and dissimilar improvements as Lessee shall from time to time determine, provided that the same shall be in compliance with all then applicable building codes and ordinances.

(b) Lessee shall, at all times during the term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Demised Premises, and shall use reasonable precautions to prevent waste, damage or injury. Lessor shall not be required to furnish any services or facilities or to make any improvements, repairs, or alterations in or to the Demised Premises during the term of this Lease.

(c) Subject to all applicable federal, state and local laws, statutes and ordinances, Lessee may, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements and improvements to the Demised Premises as it may deem desirable, including the improvement and/or modification of structures as hereafter may be situated or erected on the Demised Premises; provided however, Lessee shall give Lessor notice of material alterations which require a building permit, in writing, at least 60 days prior to the date of the intended action, emergencies and exigent circumstances excepted.

(d) Until the expiration or sooner termination of this Lease, title to any building or buildings or improvements situated or erected on the Demised Premises and the building equipment and other items installed thereon and any alteration, change or addition thereto shall remain solely in Lessee's name, with all rights and benefits thereto accruing to the benefit and favor of Lessee.

(e) On the last day or sooner termination of the term of this Lease, Lessee shall quit and surrender the Demised Premises, and the buildings and permanent improvements then thereon, broom clean and in good condition and repair (ordinary wear and tear, and damage by fire or other casualty excepted) to Lessor, free and clear from liens and encumbrances, unless otherwise agreed to between the parties. It is the intent of the parties that Lessor shall have title to all improvements on the Demised Premises at the time of lease termination.

ARTICLE VIII

REQUIREMENTS OF LESSEE

(a) Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the Federal, State, County, Town, Village and City Governments and of all other governmental authorities having jurisdiction over the Demised Premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the term of this Lease or may in the future be passed, enacted or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Article VIII. Provided however, Lessee shall not be required to pay any permit fees to the City of Oberlin, such fees being specifically exempted and waived by the City, including fees and costs for building permits, curb cuts, water and sewer tap-in fees, and inspection permits.

(b) Lessee shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of the Lessee, or Lessor (if legally required), or both (if legally required), without cost or expense to Lessor, the validity or application of

any law, ordinance, rule, regulation or requirement of the nature referred to in paragraph (a) of this Article and, if compliance with any such law, ordinance, rule, regulation or requirement therewith may legally be delayed pending the prosecution of any such proceeding, Lessee may delay compliance therewith until the final determination of such proceeding.

(c) Lessor shall execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Lessee to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement, and shall fully cooperate with Lessee in such contest.

ARTICLE IX

COVENANT AGAINST LIENS

(a) If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against any portion of the Demised Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from Lessor to Lessee of the filing thereof unless Lessee shall contest the validity of such liens by appropriate legal proceedings diligently conducted in good faith and without expense to Lessor; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims and demands on account thereof. If Lessee shall fail to cause such liens to be discharged of record or bonded within the aforesaid ninety (90) day period or satisfy such liens within sixty (60) days after any judgment in favor of such lien holders from which no further appeal might be taken, then Lessor shall have the right to cause the same to be discharged. All amounts paid by Lessor to cause such liens to be discharged shall constitute additional basic rent payable by Lessee to Lessor.

(b) If, because of any act or omission of Lessor, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the Demised Premises, Lessor shall, at Lessor's own expense, cause the same to be discharged of record or bonded within ninety (90) days after written notice from Lessor to Lessee of the filing thereof, and Lessor shall indemnify and save harmless Lessee against and from all costs, liabilities, suits, penalties, claims and demands on account thereof. If Lessor shall fail to cause such liens to be discharged or bonded within the aforesaid ninety (90) day period, Lessee shall have the right to cause the same to be discharged. All amounts paid by Lessee to cause such liens to be discharged shall be payable by Lessor to Lessee upon demand.

ARTICLE X

ACCESS TO PREMISES

Lessor or Lessor's agents and designees shall have the right, but not the obligation, to enter upon the Demised Premises at all reasonable times after reasonable notice to examine same for whatever purpose provided such entry does not interfere with the activities being conducted at the Demised Premises.

ARTICLE XI

ASSIGNMENT AND SUBLETTING

Lessee may assign, sublease (in whole or in part or parts), mortgage or otherwise encumber this Lease (in whole or in part or parts) or any sublease of all or any part of the Demised Premises and may permit its subtenant or subtenants to assign, sublease (in whole or in part or parts), mortgage or otherwise encumber this Lease or any sublease of all or any part of the Demised Premises, without being required to obtain Lessor's consent therefor, provided that the public purpose of the Demised Premises does not change. Lessee agrees to furnish to Lessor written notice of the assignment of this Lease within thirty (30) days thereafter, together with the name and address of the assignee. Any assignment shall not relieve Lessee of its responsibilities to Lessor under the terms of this lease.

Lessor may assign this Lease without requiring consent therefor. Lessor agrees to furnish to Lessee written notice of his assignment of this Lease within thirty (30) days thereafter, together with the name and address of the assignee.

ARTICLE XII

SIGNS

Lessee and Lessee's subtenants shall have the right to install, maintain and place in, on or over or in front of the Demised Premises or in any part thereof, such signs and advertising matter as Lessee may desire, provided Lessee shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this Article XII, the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether same be temporary or permanent.

ARTICLE XIII

INDEMNITY

(a) Lessee shall, to the extent permitted by law, indemnify and save harmless Lessor from and against any and all liability, damage, penalties or judgments arising from injury to person or property sustained by anyone in and about the Demised Premises resulting from any act or acts or omission or omissions of Lessee, or Lessee's officers, agents, servants, employees, contractors, or sublessees. Lessee shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against Lessor or in which Lessor may be impleaded with others upon any such above-mentioned matter, claim or claims, except as may result from the acts as set forth in paragraph (b) of this Article XIII.

(b) Except for its affirmative acts or negligence or the affirmative acts or negligence of its officers, officials, agents, servants, employees or contractors, Lessor shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Demised Premises, including any damage or injury to Lessee or to any of Lessee's officers, officials, agents, servants, employees, contractors, customers or sublessees.

ARTICLE XIV

INSURANCE

(a) Lessee shall provide or cause to be provided at its expense, and keep in force during the term of this Lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in the State of Ohio, selected by Lessee, and reasonably satisfactory to Lessor in the amount of at least Three Million Dollars (\$3,000,000.00) with respect to injury to or death of any one person and Five Million Dollars (\$5,000,000.00) with respect to injury to or death of more than one person in any one accident or other occurrence and One Million Dollars (\$1,000,000.00) with respect to damage to property. Such policy or policies shall include Lessor as an additional insured or co-insured, as its interests may appear. Lessee shall deliver certificates of such insurance to Lessor as of the rent commencement date and thereafter not less than ten (10) days prior to the expiration of any such policy. Such insurance shall be non-cancelable without ten (10) days' written notice to Lessor.

(b) During the term of this Lease, Lessee shall cause all buildings and improvements erected by Lessee on the Demised Premises at any time to be insured for the benefit of Lessor and Lessee as their respective interests may appear, against loss or damage by fire and customary extended coverage in a minimum amount necessary to avoid the effect of co-insurance provisions of the applicable policies. All such policies or certificates thereof

shall be held by Lessee. All proceeds payable at any time and from time to time by an insurance company under such policies shall be payable to Lessee. Any proceeds paid directly to Lessee shall be retained by Lessee and Lessor shall not be entitled to, and shall have no interest in, such proceeds or any part thereof. Lessor shall, at Lessee's cost and expense, cooperate fully with Lessee in order to obtain the largest possible recovery and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as hereinbefore provided. Lessor shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Lessee hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Lessee's insurance.

(c) Any insurance required to be provided by Lessee pursuant to this Lease may be provided by blanket insurance covering the Demised Premises and other locations of Lessee provided such blanket insurance complies with all of the other requirements of this Lease with respect to the insurance involved.

ARTICLE XV

WAIVER OF SUBROGATION

All insurance policies carried by either party covering the Demised Premises, including, but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same shall be obtainable without extra cost, or if extra cost shall be charged therefor, so long as the other party pays such extra cost. If cost shall be chargeable therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

Lessor and Lessee each hereby waive all claims, causes of action and rights of recovery against the other, and their respective agents, officers and employees, for any damage to or destruction of property or business which shall occur on or about the Demised Premises and shall result from any of the perils insured under any and all policies of insurance maintained by Lessor and Lessee, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers and employees, but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

ARTICLE XVI

DAMAGE OR DESTRUCTION

In the event that, at any time during the term of this Lease, the buildings and improvements on the Demised Premises shall be destroyed or damaged in whole or in part by fire or other cause, then Lessee shall have the option of:

(a) Restoring, repairing, replacing, rebuilding or altering the buildings or improvements on the Demised Premises, or

(b) Terminating this Lease, by giving written notice of such termination to Lessor on or prior to the date ninety (90) days after the date of such damage or destruction. In the event Lessee elects to terminate this Lease then:

(i) Those insurance proceeds, if any, received by Lessee or recoverable under the policies carried by Lessee pursuant to paragraph (b) of Article XIV shall first be paid to Lessor in the amount of Lessor's contribution to the Aquatic Facility, less depreciation, and the balance of such proceeds, remaining after such payment shall be paid to Lessee.

(ii) Lessee shall, at its sole cost and expense, totally remove from the Demised Premises all destroyed and damaged buildings and structures then existing and shall fill and grade the Demised Premises where necessary as a result of such removal.

(iii) The rental payable hereunder shall be adjusted to the day Lessee has removed all buildings and structures from the Demised Premises pursuant to subparagraph (ii) of paragraph (b) of this Article XVI and neither party shall have any further rights or liabilities hereunder.

ARTICLE XVII

UTILITY EASEMENTS AND HIGHWAY ALIGNMENT

Lessee shall have the right to enter into reasonable agreements with utility companies creating easements in favor of such companies as are required in order to service the buildings and improvements on the Demised Premises, and Lessor shall consent thereto and shall execute any and all documents, agreements and instruments, and take all other actions in order to effectuate the same, all at Lessor's cost and expense.

ARTICLE XVIII

PERFORMANCE BY SUBTENANT

Any act required to be performed by Lessee pursuant to the terms of this Lease may be performed by any sublessee of Lessee occupying all or any part of the Demised Premises and the performance of such act shall be deemed to be performance by Lessee and shall be acceptable as Lessee's act by Lessor.

ARTICLE XIX

QUIET ENJOYMENT

(a) Lessee, upon paying the rent and additional rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Demised Premises during the term of this Lease, without hindrance or molestation by anyone.

(b) Lessor represents and warrants to Lessee that it is the owner of the fee simple title to the Demised Premises and has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by it hereunder. Lessor further represents and warrants to Lessee:

(i) That the Demised Premises are free from all encumbrances, liens, defects in title, violations of law, leases, tenancies, easements, restrictions and agreements.

(ii) That at the time of the commencement of the term, sole and undisturbed physical possession of the entire Demised Premises will be delivered to Lessee free and clear of all liens, defects in title, encumbrances, restrictions, agreements, easements, tenancies and violations of law.

(iii) That at all times Lessee shall have unobstructed and adequate means of ingress and egress to the Demised Premises from all abutting streets, roads and highways.

(c) If Lessor shall be in default under this Article XIX, Lessee, in addition to any and all remedies it may have in law and/or equity, may terminate this Lease upon written notice to the Lessor.

ARTICLE XX

DEFAULTS

(a) In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided:

(i) Lessee's failure to pay any installment of basic rent or additional rent when the same shall be due and payable and the continuance of such failure for a period of sixty (60) days after receipt by Lessee of notice in writing from Lessor specifying in detail the nature of such failure; or

(ii) Lessee's failure to perform any of the other covenants, conditions and agreements herein contained on Lessee's part to be kept or performed and the continuance of such failure without the curing of same for a period of sixty (60) days after receipt by Lessee of notice in writing from Lessor specifying in detail the nature of such failure, and provided Lessee shall not cure said failure as provided in paragraph (b) of this Article XX;

(iii) failure to construct the facility according to the approved plans and specifications in a timely manner after notice to cure and reasonable opportunity to do has expired;

(iv) failure to operate the facility on a regular basis, open to the public, subject to reasonable suspension of operations for maintenance, repair, replacement, renovation and like-kind work;

then Lessor may, at its option, give to Lessee a notice of election to end the term of this Lease upon a date specified in such notice, which date shall be not less than ten (10) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Lessee of such notice from Lessor, and upon the date specified in said notice, the term and estate hereby vested in Lessee shall cease and any and all other right, title and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire term of this Lease had elapsed. Simultaneously with the sending of the notice to Lessee hereinabove provided for, Lessor shall send a copy of such notice to any sublessee(s) of the Demised Premises or portions thereof that Lessee may select, in writing, from time to time, and any additional persons or parties having an interest in the Demised Premises that Lessee may select, in writing, from time to time. The curing of any default(s) within the above time limits by any of the aforesaid parties or combination thereof, shall constitute a curing of any default(s) hereunder with like effect as if Lessee had cured same hereunder.

(b) In the event that Lessor gives notice of a default of such a nature that it cannot be cured within such sixty (60) day period, then such default shall not be deemed to continue so long as Lessee, after receiving such notice, commences to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default shall be deemed to continue if and so long as Lessee shall be so proceeding to cure the same in good faith or be delayed in or prevented from curing the same by any cause specified in this agreement.

(c) Notwithstanding anything to the contrary contained in this Article XX, in the event that any default(s) of Lessee shall be cured in any manner hereinabove provided, such default(s) shall be deemed never to have occurred and Lessee's rights hereunder shall continue unaffected by such default(s).

(d) Upon any termination of the term of this Lease pursuant to paragraph (a) of this Article XX, or at any time thereafter, Lessor may, in addition to and without prejudice to any other rights and remedies Lessor shall have at law or in equity, re-enter the Demised Premises and recover possession thereof and may dispossess any or all occupants of the Demised Premises in the manner prescribed by the statute relating to summary proceedings, or similar statutes.

ARTICLE XXI

USAGE FEES AND PERMITS

Lessee shall have sole and absolute discretion to determine the usage fees, permits and other charges and assessments, if any, for the use of the Demised Premises. Provided however, Lessee agrees that whatever fees are charged to the general public for use of the Demised Premises, or any part thereof, during normal operational periods, such fees shall be reduced by 50% for residents of the City of Oberlin. Provided further, such fee reduction shall not apply to special functions, group outings or rates, and shall not be construed as restricting Lessee from offering reduced fees and or discounts to the general public or specific groups as it may from time to time determine.

ARTICLE XXII

WAIVERS

Failure of Lessor or Lessee to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by

Lessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a partial payment on account.

ARTICLE XXIII

LIMITATION OF LIABILITY

Notwithstanding anything to the contrary herein provided in Article XX or elsewhere in this Lease (each and every term, covenant, condition and provision of Article XX and of this Lease being hereby made specifically subject to the provisions of this Article XXIII), it is specifically understood and agreed that there shall be absolutely no personal liability on the part of Lessee or any successor in interest of Lessee, whether any such successor in interest shall be a corporation, or an individual, joint venture, tenancy in common, firm or partnership, general or limited, or on the part of the members of such firm, partnership or joint venture with respect to any of the terms, covenants and conditions of this Lease, and Lessor shall look solely to the equity of Lessee or such successor in interest in the leasehold estate of Lessee in the Demised Premises for the satisfaction of each and every remedy of Lessor in the event of any breach by Lessee or by such successor in interest of any of the terms, covenants and conditions of this Lease to be performed by Lessee, such exculpation of personal liability to be absolute and without any exception whatsoever.

ARTICLE XXIV

GAS WELLS AND ENVIRONMENTAL MATTERS

(a) Lessor represents and warrants to Lessee that there are no gas wells located on the Demised Premises, or, if a gas well is discovered on the Demised Premises, Lessor warrants, represents and agrees that said gas well or wells shall be treated by Lessor, at Lessor's sole cost and expense, in such a manner that there will be no impediment or hindrance, legal or otherwise, to the construction, erection and maintenance of any and all buildings and improvements on the Demised Premises by Lessee. In the event Lessor fails to so treat such gas well or wells, within a reasonable period of time after having received notice of the existence of the same from Lessee, Lessor hereby agrees that Lessee may treat such gas well or wells and may deduct the cost of treating and capping any such gas well or wells from the basic rent payable pursuant to Article III hereof.

(b) Lessor represents and warrants to Lessee that, to the best of its knowledge and belief:

(i) No toxic or hazardous waste, substance or material of any kind or nature has been stored at, disposed of or is located in, on or about the Demised Premises;

(ii) No toxic or hazardous waste, substance or material of any kind has been buried or accumulated in, on or about the Demised Premises;

(iii) Neither the Demised Premises nor any part thereof is contaminated by or contains any toxic or hazardous waste, substance or material; and

(iv) No permit is required from the Ohio or Federal Environmental Protection Agency for the use or maintenance of any improvement or facility currently on or about the Demised Premises.

If any toxic or hazardous waste, substance or material is discovered on the Demised Premises that is not attributable to the acts of Lessee, then at Lessee's option, Lessee may terminate this Lease and all agreements with Lessor relating thereto.

ARTICLE XXV

TITLE

Within ninety(90) days after the Effective Date of this Lease, Lessor shall furnish to Lessee at Lessor's sole cost and expense, a policy of title insurance in the amount of Two Hundred Thousand Dollars (\$200,000.00) issued by a title company selected by Lessee and licensed to do business in the State of Ohio insuring Lessee's marketable title in the leasehold created hereunder free and clear of all liens, encumbrances and tenancies of any kind, nature and description except for current taxes not yet due and payable.

ARTICLE XXVI

UTILITIES

This Lease is conditioned upon all necessary and desirable utilities, including electricity, water, sewerage and gas being available to the Demised Premises without Lessee having to incur costs and expenses in obtaining such availability. For the purposes of this Article XXVI said utilities shall be deemed to be available to the Demised Premises if they are available for use by Lessee in the public street immediately abutting the Demised Premises. In the event that such costs and expenses must be incurred by Lessee, then Lessee shall have the right to terminate this Lease by giving written notice to such effect to Lessor at any time within sixty (60) days after the Effective Date of this Lease, and thereupon this Lease shall become null and void and of no further force or effect, with neither party having any rights or liabilities hereunder.

ARTICLE XXVII

FORCE MAJEURE

In the event that Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any act required hereunder (other than the payment of rent and other charges payable by Lessee) by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, riots, insurrection, the act, failure to act or default of the other party, war or any other reason beyond the reasonable control of the party who is seeking additional time for the performance of such act, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

ARTICLE XXVIII

NOTICES

Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Article XXVIII. The rent payable by Lessee hereunder shall be paid to Lessor at the same place where a notice to Lessor is herein required to be directed.

ARTICLE XXIX

CERTIFICATES

Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

ARTICLE XXX

GOVERNING LAW

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Ohio.

ARTICLE XXXI

PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE XXXII

SHORT-FORM LEASE

The parties will, at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of Lease, setting forth a description of the Demised Premises, the term of this Lease and any other portions thereof, except the rental provisions, as either party may request.

ARTICLE XXXIII

INTERPRETATION

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Lessor" and "Lessee", whenever used herein, shall mean only the owner at the time of Lessor's or Lessee's interest herein, and upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Lessor or Lessee, as the case may be.

ARTICLE XXXIV

ENTIRE AGREEMENT

No oral or prior written matter shall have any force or effect. Lessee agrees that it is not relying on any representations or agreements other than those contained in this Lease. This Agreement shall not be modified or cancelled except by writing subscribed by all parties. Provided however, that in addition to this Lease Agreement, there is another Agreement (referred to herein as the "Agreement") which the parties have entered into, executed on the same date and time as this Lease Agreement, and attached hereto as Exhibit C, which Agreement is also a part of this Lease Agreement and is incorporated herein by reference.

ARTICLE XXXV

SOIL TESTS

Within sixty (60) days after the execution and delivery of this Lease, Lessee and its designees may enter upon the Demised Premises for the purpose of inspecting, making surveys, studies and conducting test borings and other surface and sub-surface soil tests in order to determine whether it is economically feasible to use the Demised Premises for the Lessee's contemplated project. In the event that Lessee, in its sole discretion, shall determine that the surface, sub-surface or other physical conditions of the Demised Premises render the project contemplated by Lessee economically unsound, then Lessee may terminate this Lease by giving written notice to such effect to Lessor at any time within said sixty (60) day period, and thereupon this Lease shall become null and void with neither party having any further rights or liabilities hereunder, but Lessor shall forthwith return to Lessee any payments theretofore made by Lessee pursuant to this Lease.

ARTICLE XXXVI

PARTIES

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective heirs, successors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands as of the day and year first above written.

WITNESSES:

Ukendi A. Fleming
Crystal G. Howard

LESSOR:

Robert J. Smith
Salvatore Talano

LESSEE:

Joan Longbrake
Patricia M. McClellan

J. D. Martin

Approved as to form:

Eric R. Severs
Eric R. Severs
Oberlin City Solicitor

STATE OF Ohio)
) SS:
COUNTY OF Lorain)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, the above-named James D. Martin, who acknowledged that he did sign the foregoing instrument on behalf of said entity, duly authorized, and that the same is his free act and deed and the free act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at LaGrange, Ohio, this 30th day of October, 2000.

Joan Longbrake
Notary Public

JOAN LONGBRAKE
Notary Public, State of Ohio
My Commission Expires April 1, 2002

STATE OF Ohio)
) SS:
COUNTY OF Lorain)

Personally appeared before me, the undersigned, a Notary Public in and for said County and State, Robert D. Smith and Salvatore Tabacco, known to me to be the City manager and City Auditor, respectively, of City of Oberlin, the corporation which executed the foregoing instrument, and acknowledged to me that they did sign said instrument for and on behalf of said corporation, being thereunto duly authorized by its board of directors; that the same is their free act and deed as such officers and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Oberlin, OH, this 30th day of October, 2000.

Chrystal Howard
Notary Public

NOTARY PUBLIC
State of Ohio
Chrystal Y. Howard
My Commission Expires On:
July 1, 2003