

DATE: MARCH 20, 2014

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
TONY M. TOWNSEND, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 32 - 2014

BY: PARKS AND RECREATION COMMITTEE

TITLE: AN ORDINANCE authorizing the Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into a ground lease agreement with Massillon CIC for the area known as part of Out Lot 561 and part of Out Lot 1031 along Nave Rd SE containing 22.048 acres as part of the Legends of Massillon Golf Course, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, be and is hereby authorized to execute on behalf of the City of Massillon, Ohio, a ground lease agreement with Massillon CIC for the area known as part of Out Lot 561 and part of Out Lot 1031 along Nave Rd SE containing 22.048 acres as part of the Legends of Massillon Golf Course.

Section 2:

That the Lease Agreement shall pertain to part of Out Lot 561 and part of Out Lot 1031 along Nave Rd SE containing 22.048 acres as part of the Legends of Massillon Golf Course. A copy of the proposed Lease Agreement is hereby attached and made a part of this ordinance.

Section 3

That said premises shall be leased for an amount of Ten Dollars (\$10.00) per year.

Section 4:

The Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, shall execute the lease only upon the final approval of the Director of Law in that the language of the lease has yet to be finalized.

Section 5:

This Ordinance is declared to be an emergency measure immediately necessary for the preservation of the health, safety and welfare of the community and for the additional reason that it is necessary to lease the 22.048 acres as part of the Legends of Massillon Golf Course for use by Massillon CIC for the purpose of constructing a 120,000 square foot integrated aquarium and water park. Provided it receives the affirmative vote of two-thirds of the elected members of Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014

APPROVED: \_\_\_\_\_  
MARY BETH BAILEY, CLERK OF COUNCIL

\_\_\_\_\_  
TONY M. TOWNSEND, PRESIDENT

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
KATHY CATAZARO-PERRY, MAYOR

### LAND LEASE DESCRIPTION OF A 22.047 ACRE AREA

Situated in the City of Massillon Corporation Limits, County of Stark, State of Ohio and known as being part of the Southwest Quarter of Section 21, (T-10-N, R-9-W). Also being part of outlot 1031, and part of outlot 561 as recorded in Instrument Number 200609120056305 and O.R. Vol 1544, PG 948 of the Stark County Deed Records, and further described as follows:

Beginning at a Stark County Disk found and used at the southwest quarter of Section 21 (T-10-N, R-9-W) and known as being PER 113; thence S 88°06'41" E, a distance of 381.83 feet along said quarter section line to a point; thence N 00°10'08" E, a distance of 49.57 feet to a point also being on the north right of way line of Nave Road S.E. (R/W varies); thence N 00°10'08" E, a distance of 85.84 feet to a 5/8" Iron bar found and used with Hinton cap; thence N 21°24'35" E, a distance of 250.00 feet to a point and further known as being the True Place of Beginning of the of the land area herein described, thence continuing the following courses;

- 1) Thence N 21°24'35" E, a distance of 126.03 feet to a point;
- 2) Thence S 89° 19'17" E a distance of 452.28 feet to a point;
- 3) Thence N 28°45'08" E a distance of 488.18 feet to a point;
- 4) Thence N 77°05'29" E a distance of 873.70 feet to a point;
- 5) Thence S 14°30'31" E a distance of 629.64 feet to a point also being on the north right of way line of Nave Road S.E. (R/W varies);
- 6) Thence along said right of way line S 71°43'13" W a distance of 740.79 feet to a point;
- 7) Thence continuing along said right of way line S 01°49'43" W a distance of 31.93 feet to a point;
- 8) Thence continuing along said right of way line S 70°28'56" W a distance of 98.15 feet to a 1/2" iron bar with H&A cap found and used;
- 9) Thence continuing along said right of way line N 17°55'43" W a distance of 30.00 feet to a 1/2" iron bar with H&A cap found and used;
- 10) Thence continuing along said right of way line S 83°22'53" W a distance of 76.50 feet to a 1/2" iron bar with H&A cap found and used;
- 11) Thence continuing along said right of way line S 71°55'17" W a distance of 247.79 feet to a 1/2" iron bar with H&A cap found and used;
- 12) Thence continuing along said right of way line S 71°55'17" W a distance of 4.81 feet to a 1/2" iron bar with H&A cap found and used;

- 13) Thence continuing along said right of way line S 36°46'30" W a distance of 17.67 feet to a 1/2" iron bar with H&A cap found and used;
- 14) Thence continuing along said right of way line S 84°07'20" W a distance of 527.80 feet to a 1/2" iron bar with H&A cap found and used;
- 15) Thence continuing along said right of way line S 66°06'08" W a distance of 74.15 feet to a 1/2" iron bar with H&A cap found and used;
- 16) Thence continuing along said right of way line N 72°05'08" W a distance of 28.36 feet to a 1/2" iron bar with H&A cap found and used, also being the southeast corner of a parcel conveyed to the Ohio Edison Company by instrument number 200609120056305;
- 17) Thence continuing along the easterly line of said Ohio Edison parcel N 20°59'42" E a distance of 61.85 feet to a 1/2" iron bar with H&A cap found and used;
- 18) Thence continuing along the easterly line of said Ohio Edison parcel N 31°39'04" E a distance of 243.36 feet to a 1/2" iron bar with H&A cap found and used, also being the northeast corner of said Ohio Edison parcel ;
- 19) Thence continuing along the northerly line of said Ohio Edison parcel N 68°35'49" W a distance of 150.00 feet to a point also being the True Place of Beginning;

The above described land area contains 22.047 acres, none of which is within the public road right of way.

The basis of bearings is Ohio State Plane Coordinate System, North Zone (3401) NAD 83 (1986). The SCGRS points used as reference stations to establish the datum are designated as PER 113 and PER 112.

Subject to any and all easements, reservations, restrictions and conveyances of record.





## LEASE

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by the MASSILLON COMMUNITY IMPROVEMENT CORPORATION, an Ohio nonprofit corporation, 137 Lincoln Way E., Massillon, Ohio 44646 (LESSOR) and HAMMOND AQUALIFE, LLC, an Oregon Limited Liability company, (LESSEE)

WHEREAS, LESSEE is desirous of leasing the premises described herein, and

WHEREAS, it is the desire of both LESSOR and LESSEE to enter into such agreement to permit and accomplish the leasing of the premises.

BE IT, THEREFORE, RESOLVED, that in consideration of the mutual promises set forth herein, the parties agree as follows:

1. **CONSIDERATION.** LESSOR, in consideration of the rent and upon the covenants and conditions herein contained, hereby leases on to LESSEE the premises herein in the City a Massillon with a legal description contained in Exhibit "A" attached. Any and all rights to any minerals contained in the lease premises shall remain with the City a Massillon.

2. **SUBORDINATION.** This lease shall be subordinate to any bond indebtedness on the premises in favor of the State of Ohio. The LESSEE agrees from time- to- time upon demand to execute any and all instruments as may be required to evidence such subordination.

3. **TERM OF LEASE.** The term of this lease shall be for an initial term of thirty (30) years. LESSOR hereby grants to LESSEE the right and option to renew and extend this lease for two additional terms of five years. Should LESSEE desire to exercise an option to renew, LESSEE shall give notice to its election to exercise such option, in writing, by certified mail, return receipt requested, to LESSOR at the address shown above or at such address as LESSOR shall designate in writing. Each notice of election to renew an extension, if given shall be given no later than the date which is ninety (90) days prior to the expiration of term the lease then in effect, whether such

term is from the initial term or an extended term resulting from the prior exercise lessee of its foregoing option.

The obligation of LESSEE to pay the yearly rental amount shall commence upon the first month of the signing of this agreement. The parties shall execute a memorandum designating the annual date upon which the obligation of LESSEE to pay the yearly rental amount shall begin.

4. **USES, PURPOSES AND DEVELOPMENT OF PREMISES.** The LESSOR grants the LESSEE the right to use, occupy and develop the premises for the purposes of creating and developing an aquarium and water park, together with a sea lion encounter facility which will be designed to provide assisted therapies and interactive swimming programs to people Ohio.

5. **ASSIGNMENT.** LESSEE may not assign the lease or sublet the lease premises, or any portion thereof without the express written consent of the City of Massillon, said consent to not be unreasonably withheld, but such assignment shall not relieve LESSEE of its duties, responsibilities and obligations or any liability hereunder.

6. **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 this lease, setting forth a description of the premises, the terms of this lease, and any other portion here of, accepting the rental provisions as either party may request.

7. **ANNUAL RENT.** The lease price for said subject premises shall be \$10 per year and shall be paid on or before the second day of each new year, unless the parties pursuant to memorandum set forth in paragraph 3 of this lease agreement designate a different date for the yearly payment of the rental fee.

8. **PAYMENT OF TAXES.** LESSEE shall pay no less than 10 days before the same become delinquent, all real estate taxes and assessments properly assessed against the lease premises many other improvements from time to time erected thereon. LESSOR shall deliver by certified mail the tax bill to the lessee at least 20 days before the date due for payment.

9. **NEW CONSTRUCTION.** LESSEE will submit plans and specifications in final form to the City a Massillon building and permit department for a permit for the construction of buildings and improvements to be situated on the demised premises. LESSEE will commence the construction of such demised buildings as soon as reasonably possible after the plans and specifications therefore have been mutually approved in writing, and will diligently prosecute to the completion such construction.

Is further understood and agreed by the LESSEE, that should LESSEE fail to complete the construction of the facilities outlined in paragraph 4 of this lease agreement within two years of the date of the signed lease agreement, the LESSOR shall notify LESSEE in writing, and this lease shall then cease and terminate.

10. **USE OF PREMISES.** LESSEE shall have the right to use the demised premises for any lawful purpose that is not inconsistent with the provisions of this lease and paragraph 4 of this lease agreement, or any requirements of law affecting the demised premises or any part thereof. LESSEE shall not use or occupy or permit the use or occupancy of the demised premises or any part thereof, or the improvements to be hereafter constructed thereon in any unlawful manner, or for any illegal purposes, or in such manner as to constitute a nuisance or violate any of the terms of any law or ordinance applicable to the demised premises or the improvements to be hereafter constructed thereon.

11. **CARE OF PREMISES AND IMPROVEMENTS.** LESSEE covenants and agrees that it shall maintain the improvements erected on the demised premises in good condition, and shall not permit or maintain a nuisance thereon or permit waste on the premises.

12. **INSURANCE.** LESSEE and its sole cost and expense, provide and maintain general public and liability and property damage and liability insurance, which policy shall ensure both the LESSOR and the LESSEE as named insured against all claims (including all costs and expenses of defending same), for personal injury, sickness, disease or death, or for damage or injury to the property occurring in or about the demised premises, improvements to be hereafter constructed thereon or on adjoining streets, alleys passageways, sidewalks, gutters, curbs, ball or vault space or any elevators, public utility installations, or any amounts customary and prudent



for this type of property in metropolitan areas, but in at least \$1 million (1 million) in combined single limit insurance.

LESSEE shall name LESSOR as an additional insured on said policy. LESSEE agrees to have the insurance company notify LESSOR of default and premium payment if the same is not paid 10 days before the due date of default.

14. **CONDEMNATION OF ALL DEMISED PREMISES.** If, during the term of this lease, substantially all of demised premises and improvements to be hereafter constructed thereon or improvements made, shall be taken as a result of the exercise of the power of eminent domain, all right, title and interest of LESSEE hereunder, except it's right to be paid the value of its interest in the condemned premises shall cease and come to an end on the date of the vesting of title pursuant to such proceedings; substantially all of the demise premises improvements to be hereunder constructed thereon shall be deemed to have been taken if (1) taking results in the enjoyment of the leasehold estate being uneconomic without demolishing the improvements which remain after such taking, or (2) the remaining portion of the demised premises may not be economically used by LESSEE under the terms of this lease. LESSOR and LESSEE agree to request the court in any condemnation proceeding to make separate awards to LESSOR and to LESSEE for the value of their respective interests. LESSEE'S interest shall include the entire value of the LESSEE'S improvements on the property. LESSOR'S interest shall include the balance of the value of the premises. If such court is prohibited by law from making separate awards, then notwithstanding any such statute or law prohibiting separate awards, any compensation which may be awarded on account of taking of such premises by eminent domain shall be fairly allocated between the ownership of the fee and the leasehold estate in accordance with the loss or damage suffered by each, taking into consideration all of the relevant facts and circumstances. Pending such allocation, any party receiving any portion of the total award will hold the same interests to be paid in accord with the allocation.

15. **CONDEMNATION OF PORTION OF DEMISED PREMISES.** In the event less than substantially all of said demise premises shall be taken as a result of the exercise of the power of eminent domain, the award shall be apportioned as determined in the preceding paragraph hereof, but in such event, this lease shall continue in full force and effect.

16. **DAMAGE OR DESTRUCTION OF IMPROVEMENTS.** The LESSEE shall be responsible for all repairs, resurfacing, landscaping, maintenance and snow plowing for the premises.

17. **INSURANCE PROCEEDS.** All insurance proceeds payable by reason of damage or destruction of the improvements situated on the leased premises shall be available to the LESSEE for the purpose of performing of repairs, reconstruction or rebuilding which under the terms of this agreement LESSEE is obligated to do.

18. **EVENTS OF DEFAULT.** The following events shall be deemed to be events of default by the lessee under the lease:

a) LESSEE shall fail to pay any installment on the rent hereby reserved upon the respective due date and such failure shall continue for a period of thirty (30) days as to rent and as to any event of default including but not limited to any payment of obligations described herein, which LESSEE shall not cure within twenty (20) days after written notice thereof to LESSEE.

b) LESSEE shall become insolvent, and or LESSEE shall commit an act of bankruptcy or shall make an assignment for the benefit of creditors, or LESSEE shall admit in writing its inability to pay its debtors as they become due.

c) LESSEE shall file a petition under a section of the US Bankruptcy Act, as amended, or any similar law or statute of the United States or any state thereof, or LESSEE shall be adjudged bankrupt or insolvent in the proceedings filed against LESSEE thereunder.

d) A receiver or trustee shall be appointed for all or substantially all of the assets of the LESSEE or of the leased property in any proceeding brought by LESSEE, or such receiver or trustee shall be appointed in any proceeding brought against LESSEE and shall not be discharge within one hundred twenty (120) days after such appointment or LESSEE shall consent to or acquiesce in such appointment.

If an event of default as outlined above shall have occurred, the LESSOR may, in its sole discretion, declare the lease terminated, and of no further effect, and LESSOR shall thereupon be entitled to enter upon the premises and take possession the leased property as its former estate. Any holdover by

LESSEE after termination of the lease by LESSOR shall be deemed to extend the term of the lease beyond a day -to -day basis. In the event of the automatic termination of this lease by LESSOR as provided above, the LESSOR shall be entitled to recover from LESSEE all of the fixed rentals or other charges as defined herein for security or utilities accrued and unpaid for a period up to and including such termination date. No right or remedy hereunder conferred upon or reserved by LESSOR is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be accumulative and addition any other right or remedy given hereunder or now hereunder existing of law or in equity or by statute.

19. **REMEDIES OF LESSOR.** If any of such events provided for the previous paragraph no.18 occur, LESSOR may:

- a) Cancel and terminate this lease by notifying LESSEE of LESSOR'S election of this remedy and upon the giving of such notice, the lease will cease and terminate, or
- b) LESSOR may, without notice to LESSEE and at the expense of LESSEE cure said default of LESSEE whereupon LESSEE shall immediately reimburse or otherwise paid to LESSOR as additional rent, any payments made or expense incurred by LESSOR in curing said default plus interest thereon, or
- c) LESSOR may relet said premises or any part thereof as agent for LESSEE and received the rent therefore; LESSEE shall pay to LESSOR for all its reasonable expenses in connection with such reletting.

20. **CONSENT.** Neither party shall hold or delay its consent or approval when requested hereunder, capriciously or without reason.

21. **SUCCESSION.** Each provision hereof shall extend to and shall, as the case may require, inure to the benefit of LESSEE and LESSOR and their respective heirs, legal representatives and successors and assigns.

22. **MODIFICATION.** It is agreed that no modification of this lease be binding on the LESSOR and LESSEE unless such parties shall execute a written consent to such modification.

23. **ENTIRE AGREEMENT.** This lease sets forth the entire agreement between the parties and revokes and supersedes any prior lease agreement and no amendment or modification of this lease shall be binding or valid unless expressed in writing and executed by both of the parties hereto.

24. **BINDING EFFECT.** All of the covenants, agreements and terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their successors and to the extent the assignment is permitted hereunder their respective executor, administrator and assigns.

25. **FORCE MAJEURE.** LESSOR and LESSEE shall not be found in default for any delay in the performance or inability to perform any of the covenants of this lease when such delay or inability is prevented or delayed by cause or causes beyond the reasonable control, including but not limited to acts of God, civil commotion, strikes, war or government acts.

**IN WITNESS WHEREOF.** the parties have hereto executed this lease as of the date first written above.

**WITNESS;**

\_\_\_\_\_  
\_\_\_\_\_

**LESSOR:**

MASSILLON COMMUNITY  
IMPROVEMENT CORPORATION,  
OHIO NON PROFIT CORPORATION

BY:

**LESSEE:**

\_\_\_\_\_  
\_\_\_\_\_

HAMMOND AQUALIFE, LLC

BY:



**STATE OF OHIO, STARK COUNTY, SS**

**BEFORE ME**, a Notary Public, in and for said County and State, personally appeared the above-named Massillon Community Improvement Corporation, and Ohio nonprofit corporation, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed as such officer.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

**STATE OF OHIO, STARK COUNTY, SS**

**BEFORE ME**, a Notary Public, in and for said County and State, personally appeared the above-named Hammond Aqualife, LLC and Oregon limited liability company, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed as such officer.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public



## LEASE

**THIS AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by the CITY OF MASSILLON, a municipal corporation, One James Duncan Plaza, Massillon, Ohio 44646, (LESSOR) and the MASSILLON COMMUNITY IMPROVEMENT CORPORATION, an Ohio nonprofit corporation, 137 Lincoln Way E., Massillon, Ohio 44646, (LESSEE),

WHEREAS, LESSEE is desirous of leasing the premises described herein, and

WHEREAS, it is the desire of both LESSOR and LESSEE to enter into such agreement to permit and accomplish the leasing of the premises.

BE IT, THEREFORE, RESOLVED, that in consideration of the mutual promises set forth herein, the parties agree as follows:

1. **CONSIDERATION.** LESSOR, in consideration of the rent and upon the covenants and conditions herein contained, hereby leases on to LESSEE the premises herein in the City a Massillon with a legal description contained in Exhibit "A" attached. Any and all rights to any minerals contained in the leased premises shall remain with the City a Massillon.

2. **SUBORDINATION.** This lease shall be subordinate to any bond indebtedness on the premises in favor of the state of Ohio. The sea agrees from time to time to upon demand to execute any and all instruments as may be required to evidence such subordination.

3. **TERM OF LEASE.** The term of this lease shall be for an initial term of thirty (30) years. LESSOR hereby grants to LESSEE the right and option to renew and extend this lease for two additional terms of five years. Should LESSEE desire to exercise an option to renew, LESSEE shall give notice to its election to exercise such option, in writing, by certified mail, return receipt requested, to LESSOR at the address shown above or at such address as LESSOR shall designate in writing. Each notice of election to renew an extension, if given shall be given no later than the date which is ninety (90) days prior to the expiration of term the lease then in effect, whether such

term is from the initial term or an extended term resulting from the prior exercise lessee of its foregoing option.

The obligation of LESSEE to pay the yearly rental amount shall commence upon the first month of the signing of this agreement. The parties shall execute a memorandum designating the annual date upon which the obligation of LESSEE to pay the yearly rental amount shall begin.

4. **USES, PURPOSES AND DEVELOPMENT OF PREMISES.** The LESSOR grants the LESSEE and SUBLESSEE, Hammond Aqualife, LLC, the right to use, occupy and develop the premises for the purposes of creating and developing an aquarium and water park, together with a sea lion encounter facility which will be designed to provide assisted therapies and interactive swimming programs to people Ohio.

5. **ASSIGNMENT.** LESSEE may not assign the lease or sublet the lease premises, or any portion thereof without the express written consent of the City of Massillon, said consent to not be unreasonably withheld, but such assignment shall not relieve LESSEE of its duties, responsibilities and obligations or any liability hereunder. However, LESSOR and LESSEE acknowledge that LESSEE intends to sublet the lease premises to Hammond Aqualife, LLC. LESSOR hereby gives consent to LESSEE to the sublease the property to Hammond Aqualife, LLC.

6. **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 this lease, setting forth a description of the premises, the terms of this lease, and any other portion here of, accepting the rental provisions as either party may request.

7. **ANNUAL RENT.** The lease price for said subject premises shall be \$10 per year and shall be paid on or before the second day of each new year, unless the parties pursuant to memorandum set forth in paragraph 3 of this lease agreement designate a different date for the yearly payment of the rental fee.

8. **PAYMENT OF TAXES.** In addition to the annual rent as provided in paragraph 7 above, LESSEE agrees to require the SUBLESSEE to pay to LESSOR additional payments as follows:

A. SUBLESSEE shall be responsible for the payment of all real property taxes and assessments(hereafter, "real estate taxes"), if any, which may be levied or assessed against the leased premises by any lawful authority for each calendar year or portion thereof commencing on the first of the month after the execution of the Sublease Agreement with LESSEE.

9. **NEW CONSTRUCTION.** LESSEE will require SUBLESSEE, Hammond Aqualife, LLC to submit plans and specifications in final form to the City a Massillon building and permit department for a permit for the construction of buildings and improvements to be situated on the demised premises. LESSEE will commence the construction of such demised buildings as soon as reasonably possible after the plans and specifications therefore have been mutually approved in writing, and will diligently prosecute to the completion such construction.

Is further understood and agreed by the LESSEE, that should SUBLESSEE, Hammond Aqualife, LLC fail to complete the construction of the facilities outlined in paragraph 4 of this lease agreement within two years of the date of the signed lease agreement, the LESSOR shall notify LESSEE in writing, and this lease shall then cease and terminate.

10. **USE OF PREMISES.** LESSEE shall have the right to use the demised premises for any lawful purpose that is not inconsistent with the provisions of this lease and paragraph 4 of this lease agreement, or any requirements of law affecting the demised premises or any part thereof. LESSEE shall not use or occupy or permit the use or occupancy of the demised premises or any part thereof, or the improvements to be hereafter constructed thereon in any unlawful manner, or for any illegal purposes, or in such manner as to constitute a nuisance or violate any of the terms of any law or ordinance applicable to the demised premises or the improvements to be hereafter constructed thereon.

11. **CARE OF PREMISES AND IMPROVEMENTS.** LESSEE covenants and agrees that it shall maintain the improvements erected on the demised premises in good condition, and shall not permit or maintain a nuisance thereon or permit waste on the premises.

12. **INSURANCE.** LESSEE shall require SUBLESSEE to maintain, at its sole cost and expense, provide and maintain general public and liability and property damage and liability insurance, which policy shall ensure both the

LESSOR and the LESSEE as named insured against all claims (including all costs and expenses of defending same), for personal injury, sickness, disease or death, or for damage or injury to the property occurring in or about the demised premises, improvements to be hereafter constructed thereon or on adjoining streets, alleys passageways, sidewalks, gutters, curbs, ball or vault space or any elevators, public utility installations, or any amounts customary and prudent for this type of property in metropolitan areas, but in at least \$1 million (1 million) in combined single limit insurance.

LESSEE shall name LESSOR as an additional insured on said policy. LESSEE agrees to have the insurance company notify LESSOR of default and premium payment if the same is not paid 10 days before the due date of default.

**14. CONDEMNATION OF ALL DEMISED PREMISES.** If, during the term of this lease, substantially all of demised premises and improvements to be hereafter constructed thereon or improvements made, shall be taken as a result of the exercise of the power of eminent domain, all right, title and interest of LESSEE hereunder, except it's right to be paid the value of its interest in the condemned premises shall cease and come to an end on the date of the vesting of title pursuant to such proceedings; substantially all of the demise premises improvements to be hereunder constructed thereon shall be deemed to have been taken if (1) taking results in the enjoyment of the leasehold estate being uneconomic without demolishing the improvements which remain after such taking, or (2) the remaining portion of the demised premises may not be economically used by LESSEE under the terms of this lease. LESSOR and LESSEE agree to request the court in any condemnation proceeding to make separate awards to LESSOR and to LESSEE for the value of their respective interests. LESSEE'S interest shall include the entire value of the LESSEE'S improvements on the property. LESSOR'S interest shall include the balance of the value of the premises. If such court is prohibited by law from making separate awards, then notwithstanding any such statute or law prohibiting separate awards, any compensation which may be awarded on account of taking of such premises by eminent domain shall be fairly allocated between the ownership of the fee and the leasehold estate in accordance with the loss or damage suffered by each, taking into consideration all of the relevant facts and circumstances. Pending such allocation, any party receiving any portion of the total award will hold the same interests to be paid in accord with the allocation.

15. **CONDEMNATION OF PORTION OF DEMISED PREMISES.** In the event less than substantially all of said demise premises shall be taken as a result of the exercise of the power of eminent domain, the award shall be apportioned as determined in the preceding paragraph hereof, but in such event, this lease shall continue in full force and effect.

16. **DAMAGE OR DESTRUCTION OF IMPROVEMENTS.** The LESSEE shall require the SUBLESSEE to be responsible for all repairs, resurfacing, landscaping, maintenance and snow plowing for the premises.

17. **INSURANCE PROCEEDS.** All insurance proceeds payable by reason of damage or destruction of the improvements situated on the leased premises shall be available to the LESSEE for the purpose of performing of repairs, reconstruction or rebuilding which under the terms of this agreement LESSEE is obligated to do.

18. **EVENTS OF DEFAULT.** The following events shall be deemed to be events of default by the lessee under the lease:

a) LESSEE shall fail to pay any installment on the rent hereby reserved upon the respective due date and such failure shall continue for a period of thirty (30) days as to rent and as to any event of default including but not limited to any payment of obligations described herein, which LESSEE shall not cure within twenty (20) days after written notice thereof to LESSEE.

b) LESSEE shall become insolvent, and or LESSEE shall commit an act of bankruptcy or shall make an assignment for the benefit of creditors, or LESSEE shall admit in writing its inability to pay its debtors as they become due.

c) LESSEE shall file a petition under a section of the US Bankruptcy Act, as amended, or any similar law or statute of the United States or any state thereof, or LESSEE shall be adjudged bankrupt or insolvent in the proceedings filed against LESSEE thereunder.

d) A receiver or trustee shall be appointed for all or substantially all of the assets of the LESSEE or of the leased property in any proceeding brought by LESSEE, or such receiver or trustee shall be appointed in any proceeding brought against LESSEE and shall not be discharge within one hundred



twenty (120) days after such appointment or LESSEE shall consent to or acquiesce in such appointment.

If an event of default as outlined above shall have occurred, the LESSOR may, in its sole discretion, declare the lease terminated, and of no further effect, and LESSOR shall thereupon be entitled to enter upon the premises and take possession the leased property as its former estate. Any holdover by LESSEE after termination of the lease by LESSOR shall be deemed to extend the term of the lease beyond a day -to -day basis. In the event of the automatic termination of this lease by LESSOR as provided above, the LESSOR shall be entitled to recover from LESSEE all of the fixed rentals or other charges as defined herein for security or utilities accrued and unpaid four a period up to and including such termination date. No right or remedy hereunder conferred upon or reserved by LESSOR is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be accumulative and addition any other right or remedy given hereunder or now hereunder existing of law or in equity or by statute.

19. **REMEDIES OF LESSOR.** If any of such events provided for the previous paragraph no.18 occur, LESSOR may:

- a) Cancel and terminate this lease by notifying LESSEE of LESSOR'S election of this remedy and upon the giving of such notice, the lease will cease and terminate, or
- b) LESSOR may, without notice to LESSEE and at the expense of LESSEE cure said default of LESSEE whereupon LESSEE shall immediately reimburse or otherwise paid to LESSOR as additional rent, any payments made or expense incurred by LESSOR in curing said default plus interest thereon, or
- c) LESSOR may relet said premises or any part thereof as agent for LESSEE and received the rent therefore; LESSEE shall pay to LESSOR for all its reasonable expenses in connection with such reletting.

20. **CONSENT.** Neither party shall hold or delay its consent or approval when requested hereunder, capriciously or without reason.



21. **SUCCESSION.** Each provision hereof shall extend to and shall, as the case may require, inure to the benefit of LESSEE and LESSOR and their respective heirs, legal representatives and successors and assigns.

22. **MODIFICATION.** It is agreed that no modification of this lease be binding on the LESSOR and LESSEE unless such parties shall execute a written consent to such modification.

23. **ENTIRE AGREEMENT.** This lease sets forth the entire agreement between the parties and revokes and supersedes any prior lease agreement and no amendment or modification of this lease shall be binding or valid unless expressed in writing and executed by both of the parties hereto.

24. **BINDING EFFECT.** All of the covenants, agreements and terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their successors and to the extent the assignment is permitted hereunder their respective executor, administrator and assigns.

25. **FORCE MAJEURE.** LESSOR and LESSEE shall not be found in default for any delay in the performance or inability to perform any of the covenants of this lease when such delay or inability is prevented or delayed by cause or causes beyond the reasonable control, including but not limited to acts of God, civil commotion, strikes, war or government acts.

**IN WITNESS WHEREOF.** the parties have hereto executed this lease as of the date first written above.

**WITNESS;**

\_\_\_\_\_  
\_\_\_\_\_

**LESSEE:**

MASSILLON COMMUNITY  
IMPROVEMENT CORPORATION,  
OHIO NON PROFIT CORPORATION

BY: \_\_\_\_\_

**LESSOR:**

\_\_\_\_\_  
\_\_\_\_\_  
CITY OF MASSILLON, a municipal  
corporation

BY: \_\_\_\_\_

**STATE OF OHIO, STARK COUNTY, SS**

**BEFORE ME**, a Notary Public, in and for said County and State, personally appeared the above-named Massillon Community Improvement Corporation, and Ohio nonprofit corporation, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed as such officer.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

**STATE OF OHIO, STARK COUNTY, SS**

**BEFORE ME**, a Notary Public, in and for said County and State, personally appeared the above-named City of Massillon, a municipal corporation, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed as such officer.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public