

INTERMUNICIPAL LEASE

LEASE made as of DECEMBER, 2016, between the Village of LeRoy, with offices at 3 West Main St., LeRoy, NY, hereinafter referred to as "Landlord" and the Town of LeRoy, with offices at 48 Main St., LeRoy, NY, hereinafter referred to as "Tenant".

RECITALS:

Landlord owns a parcel of property at Munson Street Ext., Village of LeRoy, Genesee County, New York, on which parcel a community swimming pool is located. Landlord wishes to lease to Tenant and Tenant wishes to take from Landlord that portion of said property consisting of:

- a. the swimming pool and wading pool and deck and grounds enclosed by the chain-link fence, including the chain link fence
- b. the pool house, which contains changing areas and space for lifeguard staff, including all equipment, plumbing fixtures, lockers, and other fixtures within that structure
- c. the pavilion to the west of the pool and
- d. the gravel parking lot and entrances/exits onto Munson Street Extension. (Tenant shall have non-exclusive use of the parking lot, which shall also be used by tennis players, and players and spectators for the baseball fields to the west of the pools).

Excluded from the scope of the lease are the tennis courts to the east of the pool and the baseball fields to the west of the pool.

1. **Term.** The term of this lease shall be five (5) years, commencing June 1, 2017 and ending May 31, 2022. The lease shall be automatically renewed for successive five-year terms unless at least 90 days prior to the end of a five-year term either party enacts a resolution terminating the lease and serves notice of enactment of such resolution on the other party, both at least 90 days prior to the end of the term. Service of such resolution shall be made on the Clerk of the municipality which did not elect to terminate the lease, during regular business hours of that Clerk.

2. The Tenant, in lieu of rent to the Landlord, will provide the following services, in kind, on behalf of the residents of the Town of LeRoy and Village of LeRoy:

- a. swimming instructions, for such ages and at such levels of expertise as the Tenant may determine
- b. recreational swimming at such times as the Tenant may determine
- c. staffing for swimming instructions
- d. lifeguards for all periods when recreational swimming is scheduled and
- e. supervision of swimmers from other communities' recreation programs.

3. **Operations and Maintenance.** During the five-year term of this Lease, Landlord shall pay \$11,000.00 per year to the Tenant to be applied toward the cost of chemicals,

maintenance and repairs. Tenant shall deposit that sum in a reserve account, dedicated solely to the expenses for operating and maintaining the pool. Landlord shall pay that sum to Tenant no later than April 1 in all years this Lease is in effect. Landlord shall pay 50% of all expenses of the parking lot entrances and exits for grading, stoning and elimination of potholes. No blacktopping shall be undertaken without the joint approval of the boards of Landlord and Tenant.

Benefactors have agreed to assist in funding the reinstatement and ongoing maintenance of swimming at the pool. Benefactors shall not be required to contribute funds to the operation of the pool, but both parties to this lease expect their monetary support to continue.

4. Contingencies. This Lease is expressly contingent upon the following factors:

a. Contribution by the benefactors of time, materials and money sufficient to repair the pool and facilities supporting the pool to the extent that the Genesee County Department of Health approves of the pool remaining open to the public.

b. For all terms of the Lease, contribution by the benefactors of time, materials and money sufficient to keep the pool and supporting facilities in good repair and operating condition to the satisfaction of the Genesee County Health Department. At no time shall Tenant be obligated to pay for any repair or item of maintenance the cost of which, in labor and materials, exceeds \$500.00 ("major repairs"). The benefactors shall be responsible for any and all items of maintenance and repair which exceed \$500.00 for the costs of labor and materials. In no event shall the repair expenses of the Tenant exceed \$1,500.00 per year.

In the event that the benefactors do not perform repairs and maintenance sufficient to secure the approval of the Genesee County Health Department for the pool remaining open to the public, Tenant may cancel this Lease at its option and in its sole discretion.

In the event that the benefactors refuse or fail to perform major repairs at any time as requested by Tenant, Tenant may cancel this Lease at its option and in its sole discretion. To effect a cancellation, Tenant shall serve a written notice on the Landlord and on the designated representative of the benefactors (currently Thomas Spadaro). The cancellation of the Lease shall be effective thirty (30) days after service of a written notice of cancellation on the Landlord and on the benefactors.

5. Approval of Repairs and Maintenance. All repair and maintenance work undertaken by the benefactors or volunteers shall be subject to the supervision and approval of the Town Highway Superintendent and Village DPW Superintendent.

6. Catastrophic Event or System Breakdown. In the event that the pool is damaged by an earthquake, falling tree, the freeze/thaw cycle or other cataclysmic event to the extent that repairs necessary to make it operational and to secure the approval of the Genesee County Health

Department will require the expenditure of \$30,000.00 or more, the Tenant may cancel this Lease in the same manner as set forth in the prior paragraph.

In the event that the poolhouse is damaged by fire, earthquake, wind storm, or other cataclysmic event to the extent that repairs necessary to make it operational and to secure the approval of the Genesee County Health Department will require the expenditure of \$30,000.00 or more, the Tenant may cancel this Lease in the same manner as set forth in the last paragraph of article 4 above.

In the event of the following events, the Tenant may cancel this Lease in the same manner as set forth in the last paragraph of article 4:

- a. Failure or cave-in of a pool wall
- b. Collapse of the roof of the pool house
- c. Collapse of a wall of the pool house
- d. The pump does not function and cannot be repaired but must be replaced.
- e. The filter does not function and cannot be repaired but must be replaced.
- f. The drain system does not function and cannot be repaired but must be replaced.

7. Return of Operation and Maintenance Contribution by Landlord. In the event of a cataclysmic event as described in article 5, which occurs after Landlord has paid its annual operation and maintenance contribution followed by a lease cancellation, Tenant shall make the following reimbursement to Landlord of the operation and maintenance contribution for the coming year:

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|----|------------------------|------|
| a. | April 1 – May 31 | 100% |
| b. | June 1 – June 30 | 75% |
| c. | July 1 – August 31 | 50% |
| d. | September 1 – April 30 | 0% |

8. Operational Revenue. Tenant shall, in its sole discretion, establish all fees and charges for swimming lessons, open swimming, and other uses of the pool. Tenant shall retain 100% of all revenues it derives from all such fees and charges.

9. Tenant shall occupy the premises solely for the purposes of swimming instruction, recreational swimming, and other related activities.

10. Tenant will pay all fire and extended coverage insurance premiums including coverage of Tenant's property. The Village of LeRoy shall be listed as a loss payee on the Tenant's insurance policy which covers the structure on the leased premises. Tenant will arrange for removal of its trash and garbage.

11. Tenant shall and will throughout the term of this Lease, at its own cost and expense keep itself and the Landlord insured against public liability and casualty in the limits of at least \$3 million aggregate/\$1 million per individual for personal injury, death, and property damage or loss suffered or claimed to have been suffered by persons in and about the premises. Tenant shall deliver a certificate attesting to said insurance coverage to Landlord prior to the commencement date of this Lease. In addition, Tenant has and will maintain a \$3 million umbrella policy. The Landlord, along with its respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on the Tenant's Liability Policy, which coverage shall be primary and noncontributory with respect to the additional insureds, all at no charge or expense to the Tenant.

12. Except as set forth above, Tenant will, at its own expense, take good care of the premises and appurtenances thereto, and will surrender them to Landlord at the termination of this Lease in as good condition and repair as they were in at the commencement of the term, except for reasonable wear and tear.

13. Tenant will not make or allow to be made any alterations or additions to premises without first obtaining Landlord's written consent, except for repairs required by the Genesee County Health Department as a precondition to reopening the pool and continuing the pool operation, which repairs Tenant may make without such consent.

14. Tenant shall permit Landlord or its agents to enter the premises for the purposes of inspection at reasonable hours.

15. Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the federal, state and county governments and of any and all their departments and bureaus applicable to the premises.

16. Tenant, its successors and assigns, shall not assign, mortgage or otherwise encumber this Lease.

17. If Tenant defaults in the performance of any of the covenants or conditions herein contained, Landlord may give to Tenant thirty (30) days' written notice thereof, and if such default has not been cured or the objectionable conduct stopped within said thirty (30) day period, then at the expiration of said thirty (30) days Landlord may give Tenant fifteen (15) days' notice of the termination of this Lease, and at the expiration of said fifteen (15) days' notice the term of this Lease shall expire and Tenant shall then surrender the leased premises to Landlord. After such surrender Tenant shall not remain liable to Landlord, and Landlord shall be responsible for all costs associated with shutting down the pool and securing the premises. If the thirty (30) day notice above provided for shall have been given and the fifteen (15) day period shall have elapsed without such default having been cured or the objectionable conduct having been stopped, and the fifteen (15) day notice above provide for shall have been given and the fifteen (15) day period shall have elapsed, or if the leased premises becomes vacant or deserted,

Landlord may at any time thereafter resume possession thereof by any lawful means, and remove Tenant or other occupants and their effects, by dispossess proceedings, or otherwise, without being liable to prosecution or damage therefor, and holding the premises as if this Lease had not been made. In any case, Landlord may at Landlord's option relet the premises or any part thereof as agent of Tenant or otherwise, and receive the rent therefor, applying the same first to the payment of such expenses as Landlord may have incurred in connection with said resumption of possession and reletting, including cleaning and repair, and then to the performance of the other covenants of Tenant as herein provided. After surrender or abandonment of the premises, Tenant hereby waives all right of redemption to which Tenant or any person claiming under Tenant might be entitled by any law now or hereafter in force.

18. Landlord covenants that Tenant, on performing the covenants and agreements herein contained shall at all times during the demised term peaceably and quietly have, hold and enjoy the premises in accordance with covenants, encumbrances and restrictions applicable thereto.

19. This Lease may not be altered, modified or canceled except by an instrument in writing duly acknowledged by the parties hereto.

20. All notices may be given by mail addressed to the Tenant at 48 Main Street, LeRoy, NY 14482 and to the Landlord at 3 West Main Street, LeRoy, NY 14482 or such further addresses as may be given to the other party during the term of this Lease.

21. The failure of Landlord to insist upon strict performance of any of the covenants or conditions of this Lease or to exercise any option herein conferred in any one or more instances, shall not be construed as a waiver or relinquishment for the future of any such covenants, conditions or options, but the same shall be and remain in full force and effect.

22. The Tenant agrees to indemnify and save the Landlord, its officers, agents and/or employees harmless from any liability imposed upon the Landlord, its officers, agents and/or employees arising from the negligence, active or passive, of the Tenant by reason of this Lease or by reason of occupying the premises.

23. The Mayor of the Village of LeRoy has executed this Lease pursuant to a resolution adopted by the Board of Trustees at a meeting thereof held on _____, 2016. The Mayor, whose signature appears hereafter is duly authorized and empowered to execute this Lease and enter into this Lease on behalf of the said Village. This instrument shall be executed in duplicate. A copy of this Lease shall be permanently filed after execution thereof, in the office of the Clerk of the Village of LeRoy.

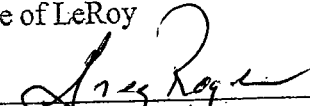
24. The Supervisor of the Town of LeRoy has executed this Lease pursuant to a resolution adopted by the Town Board at a meeting thereof held on _____, 2016. The Supervisor, whose signature appears hereafter is duly authorized and empowered to execute

this Lease and enter into this Lease on behalf of the said Town. This instrument shall be executed in duplicate. A copy of this Lease shall be permanently filed after execution thereof, in the office of the Clerk of the Town of LeRoy.


25. All the provisions, covenants and conditions contained in this Lease shall apply to and bind and enture to the benefit of the successors and assigns of the parties hereto.

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

Village of LeRoy

By: 
Greg Rogers, Mayor

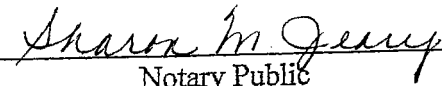
Town of LeRoy

By: 
Stephen R. Barbeau, Supervisor

State of New York)
County of Genesee) ss:

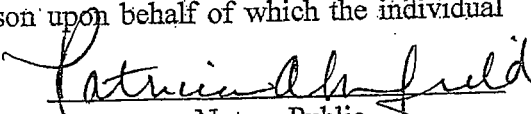
On May 16, ²⁰¹⁸ 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Greg Rogers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

SHARON M JEARY
Notary Public, State of New York
Qualified in Genesee County
Reg. No. 01JE4657814
Commission Expires April 28, 2022


Notary Public

State of New York)
County of Genesee) ss:

On Dec 15, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Stephen R. Barbeau, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

PATRICIA A. CANFIELD
Notary Public, State of New York
No. 01CA6049581
Qualified in Genesee County
Commission Expires October 23, 2018