

MINUTES OF COMMITTEE OF THE WHOLE
July 9, 2018
Auditorium

Present: Councilmembers Anderson, George, Litten, O’Leary, O’Malley

Also Present: Human Resources Director Yousefi, Finance Director Pae, Law Director Butler, Mayor Summers, Public Works Director Beno

Call to Order: 6:07 p.m.

ORDINANCE NO. 33-18 - Authorizing and directing the Mayor to enter into a first amendment to the amended and restated lease agreement with IceLand USA-Lakewood, LLC for the lease of the real property located at 14740 Lakewood Heights Boulevard, known as Serpentine Arena at Winterhurst, pursuant to Section 155.08 of the Codified Ordinances.

Mayor Summers explained that in 2017 the current tenant at Winterhurst reached out and made it known that the existing lease agreement was not economically sustainable for them due to the high costs of running an ice rink such as energy costs and mechanical systems.

Subsequent to that conversation the City began speaking with the public and Ice Land’s competitors to better understand the lay of the land. Users of Winterhurst came out in strong support of the facility and convinced Mayor Summers that the City ought to try harder to maintain an ice rink with the current array of programming. Mayor Summers distributed a hand out listing more than 18 different user groups including many high schools and leagues that use Winterhurst.

Mayor Summers was contacted by a competitor of Ice Land who expressed interest in operating Winterhurst. However, that competitor operates many local ice rinks and operating Lakewood’s would give them a regional monopoly. Also, the competitor did not express a commitment to maintaining the same diverse community programming that Ice Land provides. Instead, the competitor would be more focused on hockey. Considering all of this Mayor Summers expressed his position that the best option moving forward is to sign up with the current tenant – Ice Land.

In response to a question by Councilmember Rader, Director Butler and Director Pae provided background information about the current tenant’s tax situation. They currently owe \$400,000. The amended lease stipulates that Ice Land will become current on its tax liability. They had always intended to pay and will become current either way. Directors Butler and Pae explained that the rink initially received a tax valuation that was erroneously high and it took many years for it to be corrected with the county resulting in confusion over taxes.

The Committee discussed other terms of the lease including the following:

- Ice Land’s rent will increase \$1,000/year
- The City will not be responsible for the repair and maintenance of the chillers

In response to a Councilmember question, Director Pae explained that the City's 2017 tax bill for Winterhurst was \$58,000.

The Committee acknowledged that a significant portion of Ice Land's rent goes toward paying the tax bill.

In response to Councilmember questions, Director Beno explained some of the repairs and maintenance the City has completed since 2013. He clarified that Ice Land takes responsibility for mowing and snow removal.

Director Pae explained that the City receives the electric and gas bills for Winterhurst, pays them, and then invoices Ice Land. Ice Land always pays them in a timely manner.

Mayor Summers mentioned the recent change in management at Ice Land and his confidence in the new manager Pat Metzger.

Councilmember Litten offered his impressions of Ice Land and its management from his perspective as a parent with children involved in sports there. He noted that other municipalities subsidize ice rinks, that Rocky River shuts its rink down during the summer and that a percentage of the taxes Lakewood pays on the rink come back to our community.

Director Beno remarked that at least once Ice Land shut down one of its rinks during the summer but that they ultimately decided it wasn't worth the trouble.

Councilmembers contemplated adding a stipulation into the agreement that would require the rink to remain open 12 months of the year and that open skate remain.

The administration explained why Ice Land's original tax bill was reduced from \$403,000 to \$388,000. Under Ice Land's prior management, they repaired their chillers. The City objected because Ice Land did this without prior notice or approval of the City. The City went back and confirmed to the best of its ability that the work was done and agreed to deduct \$15,000 from the taxes owed to cover chiller repair.

Council President O'Leary expressed support for the lease agreement and the level of subsidy the City is being asked to provide in order to preserve ice activities in the City. He supported the suggestion to amend the agreement to require 12 month operation.

In response to Councilmember questions Director Pae stated that it is unknown whether the \$1,000/year rent increase will cover the expected increase in taxes. It is an unknown risk at this time.

Councilmember Litten expressed confidence that it is in Ice Land's best interest to maintain open skate and 12 month operation.

Councilmember George agreed but expressed a preference for formalizing this expectation in the lease.

Councilmember O'Malley had to excuse himself from the meeting at 7:00 p.m. but upon leaving expressed support for Councilmember George's proposal to add a stipulation that would require the rink to remain open 12 months of the year and that open skate remain.

Councilmember O'Leary summarized the options before Council which were to reject the lease, to adopt it as is, or to adopt it with the suggested amendments.

Mayor Summers added that yet another option would be to enter into an agreement with Ice Land's competitor. He reiterated his concern that doing so would sacrifice the breadth of programming including speed skating, figure skating, and open skating. He also expressed concern about how the competitor plans to be profitable without increasing prices for customers.

A motion was made and seconded to recommend adoption of an amended lease agreement to include a requirement that operation be year round and there be guaranteed provision of public open skate.

Motion passed. All members voted in favor.

In response to a Councilmember inquiry, Director Butler confirmed that LHS's free usage of the facility is in writing.

Council Staffing Discussion

Director Yousefi stated that 145 resumes were received for the Clerk position. She explained how she narrowed the pool down to the top 12 candidates and the work experience and characteristics she was looking for.

Council discussed different options for office staffing including two full time employees verses one full time and one part time.

Council discussed when it would be appropriate to enter executive session. It was decided that it would enter executive session once discussion moved to individual candidates.

In response to a Councilmember question, Director Butler explained that few municipalities have a Clerk that is wholly owned by its Council. He suggested looking at Cleveland as an example.

Committee of the Whole agreed that each councilmember would select 3 external candidates they would like interviewed and email the names of those candidates to Director Yousefi by Friday. Director Yousefi will compile a list of the top five candidates. Interviews will be scheduled for July 30th.

Council Retreat

Councilmember O'Leary broached the topic of a potential retreat. He expressed openness to feedback and ideas. He remarked that he believes the ideal time for a retreat would be the end of this year and/or in the second year of the term.

Committee of the Whole adjourned at 7:35 p.m.

FIRST AMENDMENT TO THE
AMENDED AND RESTATED LEASE AGREEMENT
BETWEEN
ICELAND USA-LAKEWOOD, LLC
AND
CITY OF LAKEWOOD, OHIO

Dated as of _____, 2018

FIRST AMENDMENT TO THE
AMENDED AND RESTATED LEASE AGREEMENT

WINTERHURST ICE RINK
LAKEWOOD, OHIO

THIS FIRST AMENDMENT (“First Amendment”) to the Amended and Restated Lease Agreement dated July 24, 2013 (the “Amended Lease”) is entered into as of _____, 2018, by and between the City of Lakewood, Ohio, a municipal corporation under Ohio law, with its address at 12650 Detroit Avenue, Lakewood, Ohio 44107 (“Landlord” or the “City”) and Iceland USA-Lakewood, LLC, an Ohio limited liability company, with its principal office address at 14740 Lakewood Heights Boulevard, Lakewood, Ohio 44017 (“Tenant”).

RECITALS

WHEREAS, Landlord owns and operates a public ice skating rink (the “Ice Rink Facility”) upon certain property owned by Landlord (the “Premises”) located at 14740 Lakewood Heights Boulevard in Lakewood, Ohio; and

WHEREAS, Tenant is experienced in the operation of ice rink facilities; and

WHEREAS, from 2008 to August 31, 2013, Tenant operated the Ice Rink Facility upon the Premises under a certain lease agreement by and between Landlord and Tenant dated on or about August 22, 2008 (the “Original Lease Agreement”); and

WHEREAS, from September 1, 2013 to the present, Tenant has operated the Ice Rink Facility upon the Premises under the Amended Lease; and

WHEREAS, Landlord desires to continue to lease the Premises to the Tenant, and the Tenant desires to continue to lease the Premises from Landlord for the operation of an ice rink for public use and enjoyment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Defined Terms. Unless specifically defined herein, all capitalized terms used in this First Amendment shall have the meaning assigned to them in the Original Lease Agreement or the Amended Lease. In the event of a conflict, any terms in the Amended Lease shall supersede those in the Original Lease.

2. Recitals. The above Recitals are hereby affirmed and incorporated into this First Amendment by reference as if fully set forth herein.

3. Amended Provisions.

(A) Section 1.02 of the Amended Lease is hereby amended to read as follows:

Section 1.02. Key Terms. The following are certain of the key terms of this Agreement, cross-referenced to the sections of this Agreement in which they are more fully discussed.

- | | |
|--|--|
| (a) Premises (as particularly described in <u>Exhibit A</u> attached hereto and incorporated herein by reference): | Gross area of approximately 150,354 square feet of land.

Ice Rink building of approximately 59,355 square feet of enclosed area ("Ice Rink Facility").

Parking lot of approximately 57,250 square feet. |
| (b) Original Term: | Ten (10) years. [See Section 3.02.] |
| (c) Renewal Terms: | Two (2) Renewal Terms of five (5) years each. [See Section 3.03.] |
| (d) Rent to Landlord: | Rent shall be paid to the Landlord as follows: Eighty-Five Thousand Dollars (\$85,000) during the first Lease Year (as defined herein), increased by the sum of One Thousand Dollars (\$1,000) each Lease Year thereafter. [See Section 4.02.] |

(B) Section 3.02 of the Amended Lease is hereby amended to read as follows:

Section 3.02. Original Term. The "Original Term" of this Agreement shall commence (the "Commencement Date") on September 1, 2018. The Original Term shall continue for the number of years set forth in Subsection 1.02(b) hereof from the Commencement Date.

(C) Section 3.03 of the Amended Lease is hereby amended to read as follows:

Section 3.03. Renewal Terms. The Original Term of this Agreement may be renewed and extended at the option of the Tenant for two (2) additional five (5) year periods (each period a "Renewal Term"), each such option to be exercised by the Tenant with written notice to the Landlord no later than sixty (60) days prior to the expiration of the Original Term or Renewal Term as applicable.

(D) Section 4.01 of the Amended Lease is hereby amended to read as follows:

Section 4.01. Definitions.

- (a) (Reserved.)
- (b) (Reserved.)
- (c) Definition of Lease Year. For the purposes of this Agreement, the term "Lease Year" shall mean September 1 to August 31, with the first Lease Year being September 1, 2018 to August 31, 2019.

(E) Section 4.02 of the Amended Lease is hereby amended to read as follows:

Section 4.02. Rent. In the first Lease Year of the Term, the Tenant shall pay to Landlord as rent for the Premises the sum of Eighty-Five Thousand Dollars (\$85,000) (the "Original Rent"). For each Lease Year thereafter during the Original Term and any Renewal Term, the Original Rent shall increase annually by the sum of One Thousand Dollars (\$1,000). The Original Rent, together with any increases existing at the time, shall be called the "Rent." In the event of a partial Lease Year, the amount of the Rent shall be prorated based upon a 360-day year.

(F) Section 4.04 of the Amended Lease is hereby amended to read as follows:

Section 4.04. Payment of Rent. The Rent shall be payable in arrears within forty-five (45) days after the end of each Lease Year, with the first Rent payment due on or before October 15, 2018.

(G) Section 5.07 of the Amended Lease is hereby amended to read as follows:

Section 5.07. Tenant's Maintenance Responsibility. Except as otherwise set forth in Section 6.03 or elsewhere in this Agreement, Tenant shall perform, at its cost, all routine maintenance to the interior of the Ice Rink Facility. Tenant agrees to keep and maintain the interior of the Ice Rink Facility, the fixtures and equipment therein (including the ice resurfacing machines) and the appurtenances thereto in good repair and condition, ordinary wear and tear excepted, throughout the Term. In addition, Tenant agrees to perform, at its cost, the Landscaping and snow and ice removal of the parking areas and sidewalks on the Premises. In the case of damage or destruction by insurable casualty or by eminent domain, the obligations of Landlord and Tenant shall be controlled as hereinafter provided. In the event that an ice resurfacing machine is damaged beyond repair, Tenant shall be responsible to replace the machine; provided that in the event Tenant purchases a replacement ice resurfacing machine the replacement shall be Tenant's property; provided, further, that in the event Tenant leases the replacement ice resurfacing machine, then, at Tenant's option, upon termination of this Agreement Landlord will accept an assignment of the equipment lease in accordance with Section 11.05 of this Agreement. Tenant shall have an affirmative duty to notify Landlord promptly if Tenant believes Landlord must perform any maintenance or make any repairs under the terms of this Agreement. Tenant shall be obligated to keep door alarms in working order and shall be responsible to Landlord for the actual cost of police responding to more than four false alarms due to faulty equipment in any twelve-month revolving period. In addition, Tenant shall be responsible, at its cost, for all major repairs to and replacements of the ice rink chiller including sub floor piping.

(H) Section 5.12 of the Amended Lease is hereby amended to read as follows:

Section 5.12. Restriction on Competition. During the Term, Tenant agrees that neither Tenant nor any Affiliate will within a radius of five (5) miles of the perimeter of the Ice Rink Facility either directly or indirectly own, operate or be financially interested in, with or without others, the business of owning, operating and/or managing the operation of an ice rink.

(I) Section 6.03 of the Amended Lease is hereby amended to read as follows:

Section 6.03. Landlord's Repair and Maintenance Responsibility. Landlord shall perform, at its cost unless the damage is caused by Tenant, all maintenance and repairs pertaining to the structural portions of the Ice Rink Facility, and the roof, and perimeter walls of the Ice Rink Facility and all other exterior portions of the Ice Rink Facility and Premises, excluding landscaping and snow and ice removal of the parking areas and sidewalks on the Premises. For the purposes of this section, the structural portions of the Ice Rink Facility are its foundations, floor slabs, pile caps, columns, beams, struts, exterior walls, interior load-bearing walls, ties, plates,

joists and trusses.

(J) Section 6.05 of the Amended Lease is hereby amended to read as follows:

Section 6.05. Real Estate Taxes and Assessments. Beginning on the Commencement Date, Landlord shall be responsible and liable for the payment of all real estate taxes and assessments accruing on and after January 1, 2018 (payable in 2019). The Tenant shall remain responsible and liable for the payment of all real estate taxes and assessments accruing through December 31, 2017, or the reimbursement to the City of all real estate taxes and assessments accruing through December 31, 2017 already paid by the City.

4. Contingency. Landlord's obligation to enter into this First Amendment is contingent upon Tenant's delivery to Landlord of the sum of \$~~403~~388,686.65 on or before August 15, 2018, such sum representing the arrearage of taxes already paid by the Landlord but not yet reimbursed pursuant to Section 6.05 of the Amended Lease, less the agreed-upon cost of Tenant's repairs to compressors in 2017, for which Tenant was permitted to be reimbursed pursuant to Sections 5.07 and 6.03 of the Amended Lease.

5. Successors and Assigns. This First Amendment shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

6. Conflicts. In the event of a conflict between the provisions of this First Amendment and the provisions of the Amended Lease, the provisions of this First Amendment shall control.

7. Ratification. Except as expressly amended or modified herein, all of the terms, covenants and conditions of the Amended Lease, including and incorporating those as amended herein, shall remain unchanged and in full force and effect; and the Amended Lease, as herein amended and modified, is hereby ratified and confirmed.

8. No Third-Party Beneficiaries. This First Amendment is intended solely for the benefit of the parties hereto and not for the benefit of any other person or entity.

9. Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

Signatures on following page

IN WITNESS WHEREOF, Landlord and Tenant do hereby execute this First Amendment as of the date first above written.

LANDLORD:

CITY OF LAKEWOOD, OHIO
an Ohio municipal corporation

By: _____
Its: _____

TENANT:

ICELAND USA-LAKEWOOD, LLC
an Ohio limited liability company

By: _____
Its: _____

THE LEGAL FORM AND CORRECTNESS
OF THE WITHIN DOCUMENT IS HEREBY
APPROVED.

Kevin M. Butler, Director of Law
City of Lakewood, Ohio

STATE OF OHIO }
COUNTY OF CUYAHOGA } ss.

BEFORE ME, a Notary Public in and for said County, personally appeared the above-named CITY OF LAKEWOOD, OHIO, by Michael P. Summers, its Mayor, who acknowledged that he did sign the foregoing instrument and the same is his free act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2018.

Notary Public

STATE OF OHIO }
COUNTY OF CUYAHOGA } ss.

BEFORE ME, a Notary Public in and for said County, personally appeared the above-named ICELAND USA-LAKEWOOD, LLC, by _____, its _____, who acknowledged that he or she did sign the foregoing instrument and the same is his or her free act and deed as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2018.

Notary Public

FISCAL OFFICER'S CERTIFICATE
City of Lakewood, Ohio

The undersigned, fiscal officer of the City of Lakewood, Ohio, hereby certifies that the moneys required to meet the obligations of the City during the year 2018 under the Lease Agreement have been lawfully appropriated by the legislative authority of the City for such purpose and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Jennifer Pae, Finance Director
City of Lakewood



2016-18 Serpentine Winterhurst Resident Data/User Groups

1. Open Skate- 14,008 Residents vs. 10,775 Non Residents
2. Learn To Skate Program- 409 Residents (All Terms) vs 182 Non Residents
3. User Groups:
 - St. Edward High School
 - Lakewood High School
 - Bay High School
 - Avon High School
 - Avon Lake High School
 - Westlake High School
 - Lakewood Speedskating Club
 - Lakewood Figure Skating Club
 - Lakewood Winterhurst Hockey Club
 - Team Ohio Hockey Club
 - Ohio Prospects Hockey Club
 - Several men league users
 - Hockey North America
 - Hockey Time Productions
 - Special Olympics
 - Lakewood Broomball
 - Several other groups use facility- The users listed above call Winterhurst Home.

All of these users have several residents involved in their programs. We have many users that grew up in Lakewood that don't live in the city but still use the facility on a weekly basis.

Any given weekend one of the above user groups will host an event at the facility from late August to May 1st. These users will go to other businesses and establishments in Lakewood.

During a normal week we are booked solid with the above user groups from 3:00pm to 10:00pm Monday-Friday.