

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2019-130

Council Meeting Date: 05-20-2019

Date Adopted: 05-20-2019

TITLE: RESOLUTION AUTHORIZING THE EXTENSION OF THE AGREEMENT OF LEASE BETWEEN THE BOROUGH OF NEW PROVIDENCE AND THE NEW PROVIDENCE COMMUNITY POOL AND RECREATION, INC.

Councilperson Muñoz submitted the following resolution, which was duly seconded by Councilperson Geoffroy.

BE IT RESOLVED by the Mayor and Borough Council of the Borough of New Providence, County of Union and State of New Jersey, that they do hereby approve and authorize the extension of the agreement of lease between the Borough of New Providence and the New Providence Community Pool and Recreation, Inc., in the form attached hereto, terminating on April 30, 2024.

BE IT FURTHER RESOLVED the Mayor and Borough Clerk are authorized to execute same on behalf of the Borough of New Providence.

APPROVED, this 20th day of May, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO	X			
GEOFFROY	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 20th day of May, 2019.

Wendi B. Barry, Borough Clerk

AGREEMENT OF LEASE EXTENSION

THIS AGREEMENT OF LEASE (the "Agreement"), made this _____ DAY OF _____ 2019 by and between the BOROUGH OF NEW PROVIDENCE in the County of Union, a municipal corporation of the State of New Jersey, with principal offices at 360 Elkwood Avenue, New Providence, New Jersey 07974 (hereinafter referred to as the "Borough"); and, NEW PROVIDENCE COMMUNITY POOL AND RECREATION, INC., a non-profit corporation of the State of New Jersey, with its principal office in the Borough of New Providence, Union County, New Jersey (hereinafter referred to as the "Pool Corporation").

WHEREAS, the Borough of New Providence (Borough) and the New Providence Community Pool and Recreation, Inc. (NPCPR) have maintained a lease for many years with the current lease expiring on April 30, 2019, and;

WHEREAS the Borough and NPCPR wish to continue the lease and cooperative relationship, and;

WHEREAS, the Borough desires a strong partnership and recognizes the value the NPCPR bring to the community of New Providence, and;

NOW, THEREFORE the Borough and the NPCPR enter into a lease as outlined herein.

WITNESSETH:

That, in consideration of the mutual covenants, promised and agreements herein contained, said parties do hereby covenant, promise and agree to and with each other as follows:

1. **PERMISSION GRANTED FOR USE**

The Borough of New Providence does hereby grant the Pool Corporation permission to occupy and use the property more particularly described in Schedule "A", attached hereto and made a part hereof, for the purpose of operating and maintaining a community swimming pool, bathhouse, offices, filter house, parking lot and other related facilities, as approved by the Mayor and Borough Council, provided, however, that there is specifically excluded from the leased premises as described in Schedule "A" that portion of the property upon which there is

maintained and operated a fitness course trail by the Recreation Department of the Borough of New Providence.

2. **TERM OF AGREEMENT**

This Agreement, based upon the terms and conditions herein stated, unless terminated sooner, shall commence on May 1, 2019 and terminate on the 30th day of April 2024.

3. **COMPENSATION FOR USE AND OCCUPATION**

A. The Pool Corporation does hereby agree to pay to the Borough as compensation for the use and occupation of the aforesaid tract of land, the annual sum of \$500.00 per year. This sum is due and payable annually in advance, during the term of this Agreement, commencing with May 1, 2019

It is understood and agreed that the Pool Corporation shall not be subject to taxes on improvements on the said premises, but it shall pay any personal, taxes which may be levied upon its personal property.

B. The Pool Corporation further hereby agrees to pay to the Borough a fee for permission to discharge its pool backwash into the Borough Sanitary Sewer System. Such fee shall be an Equivalent Dwelling Unit (EDU) fee based upon the annual EDU fee charged by the Borough to the Township of Berkeley Heights. The number of EDUs shall be calculated by dividing the estimated annual discharge flow by the average annual discharge per residential dwelling unit, with a minimum charge based on one (1) EDU. The Pool Corporation shall also pay the Borough an annual inspection fee of \$150.00.

4. **SERVICES PROVIDED FOR THE BOROUGH OF NEW PROVIDENCE**

The NPCPR agrees to provide the services outlined in Schedule C during the term of this agreement. In addition to these services, the annual membership fee to families in need, identified as those eligible for the free or reduced lunch program of the Board of Education (BOE), shall be reduced by 25%. In addition, those families shall be permitted to pay the capital requirement on a

pro-rata basis for a three year period and the annual fee shall be divided by four and paid monthly in May, June, July and August. This shall be accomplished by sending a letter of invitation to those eligible through the Community Activities Department no later than April 15th of each year.

4. **PURPOSE OF CORPORATION**

The Pool Corporation is a non-profit organization incorporated to construct, operate and maintain a public swimming pool and related recreational facilities; and the aforesaid premises are to be used solely for this purpose; but, said purpose shall also be deemed to include any incidental uses necessary to the operation of the swimming pool and related facilities and such other recreational uses as may be approved from time to time by the Pool Corporation and the Mayor and Council of the Borough of New Providence.

It is also understood that said swimming pool and its appurtenances and other recreational facilities (hereinafter referred to collectively as "pool facilities") will be transferred and conveyed to the Borough at the termination of this lease unless the parties shall mutually agree to an extension of the lease with such amended provisions as the parties may agree to. It is further agreed that the Pool Corporation shall not, after the date of this lease, borrow money without the consent of the Mayor and Council of the Borough of New Providence.

Except as otherwise provided, it is further understood and agreed that the Borough can exercise its right to a transfer and conveyance of the pool facilities at any time that the Borough reasonably believes that the Pool corporation is not conducting its activities consistent with what the Mayor and Council of the Borough of New Providence perceive to be in the best interest of the Borough; provided, however, that such right will be exercised only upon written notice thereof to the Pool Corporation and provided further that the effective date of such written notice will not be between March 1 and October 1 in order not to disrupt the use and operation of the pool facilities.

It is further provided that the Borough shall provide the Pool Corporation with written

notice of any such conduct or activities which are perceived to be inconsistent with the best interest of the Borough. The Pool Corporation shall have sixty (60) days from the date of such notice within which to correct or remedy such conduct or activities.

5. **USE OF THE FACILITIES**

The use of the pool and other recreational facilities of the Pool Corporation are to be restricted to members of the Pool Corporation and their guests under the conditions set forth in the bylaws of said Corporation. Membership rights and privileges shall be in accordance with said bylaws, but said membership shall be open to all residents of the Borough of New Providence.

6. **RECEIPT OF MONIES**

The Pool Corporation and its facilities shall be operated on a non-profit basis. This provision shall not preclude reasonable charges being made for the use of these facilities. Activities conducted in connection with the community swimming pool shall be conducted by the Pool Corporation, and no franchise or permit shall be granted for the operation of any activity other than a snack bar on said premises; and no compensation shall be paid by the Pool Corporation to anyone based upon the profits of any activity. Undisbursed monies shall be retained in the treasury of the Pool Corporation to be used for the operation and maintenance of the community swimming pool or related recreational

7. **APPROVAL OF BUDGET, POLICIES AND PRACTICES**

The Mayor and Borough Council shall annually review and approve or modify the budget, current policies and practices of the Pool Corporation. The Pool Corporation shall, however, be solely responsible for the day-to-day operations of the community swimming pool and related facilities, including the hiring and dismissal of persons required for operation of the pool and related facilities.

8. **COMPLIANCE WITH APPLICABLE RULES, ETC.**

The Pool Corporation and its facilities shall be, at all times, subject to and shall comply with all the ordinances, codes, rules and regulations and orders of the Borough of New Providence and the State of New Jersey, particularly the sanitary requirements and fire and police requirements, and shall pay all fees in connection with the construction, operation and maintenance of the premises and its facilities. Officials and designated personnel of the Borough of New Providence shall, at all times, have access to the premises and records for the purpose of checking the observance of all the provisions of this Agreement and enforcing the same.

9. **RESPONSIBILITY FOR LIABILITY**

The Pool Corporation assumes all risks of or liability for injury to persons and damage to property incurred or alleged to be incurred through the use of any portion of the demised premises or on account of any condition existing on the demised premises and shall indemnify and save harmless and defend the Borough, its elected and appointed officers, employees and agents from or against any and all expenses resulting from or in connection with claims, demands, actions, suits and judgments which may be made, instituted or recovered against the Borough of New Providence, its elected or appointed officers, employees or agents or account of injuries to person or persons, including death, at any time, damage to property, goods or materials alleged to have been sold and delivered, work alleged to have been performed or on account of any other claim alleged to have occurred or arisen through or in connection with the use of the demised premises, whether such claim is alleged to have arisen as the result of the act or failure of the Pool Corporation, or act or failure to act of any other person. The Pool Corporation, at its expense, will, from time to time, furnish the Borough with and keep in force and effect for the full term of this Agreement liability and property damage insurance in the usual form and for the following amounts or such other amounts as may be required by the Borough:

10. INSURANCE

Pool will provide and maintain the following insurance, which will be primary to any insurance carried by The Borough of New Providence.

Commercial General Liability insurance in combined limits of \$ 5,000,000 bodily injury and property damage per occurrence, including contractual liability to cover Pool's obligations under the "Indemnity" clause of this Agreement and including The Borough of New Providence as an additional insured.

Automobile Liability insurance in combined limits of \$ 5,000,000 bodily injury and property damage per accident, including The Borough of New Providence as an additional insured.

Workers' Compensation and Employer's Liability Insurance as required by State Law

Pool agrees to provide certificates of insurance to The Borough of New Providence for the above referenced insurances. Certificates shall require Pool's insurer to give The Borough of New Providence thirty (30) days' prior written notice of cancellation or any material change in the policies and to waive the right of subrogation against The Borough of New Providence. Certificates will specify the contractual and additional insured requirements of paragraphs I, II, and III above and will include the "additional insured" endorsements affording the "additional insured" status, and the certificate shall be mailed to The Borough of New Providence prior to the commencement of this contract.

The insurance requirements noted above should be provided by insurance companies that have an AM Best Rating of A or higher and Class Size VIII or higher, and are licensed to do business in the New Jersey.

Acceptance of a Certificate does not in any way amend the requirements of the contract.

11. BOROUGH'S OBLIGATION RE: FITNESS COURSE and AGREEMENT RELATING TO BASKETBALL COURTS, PARKING LOT AND FOOTBRIDGE.

The provisions of paragraphs 9 and 10 of the Lease Agreement shall not be binding upon the Pool Corporation for such use and liability as may arise from the use of said fitness course trail by members of the public, whether same be members of the Pool Corporation or not. The Borough shall hold the Pool Corporation harmless from the use of such portion of the leased premises herein reserved and removed from the lease to the Pool Corporation by any members of the public or otherwise.

The terms and conditions of the AGREEMENT RELATING TO BASKETBALL COURTS, PARKING LOT AND FOOTBRIDGE are set forth in Schedule B hereto and are made a part of this Agreement as though set forth herein at length.

11. REQUIREMENTS OF CONSTRUCTION

All facilities and improvements performed by the Pool Corporation will be constructed, installed and maintained so as not to interfere with the use of or cause damage to any sanitary sewer, underground utility or Salt Brook as the same now exists or may hereafter exist. All construction work shall be performed by qualified contractors; and before any contracts are published for bid, the plans and specifications for such construction must be submitted to and approved or modified by the Planning Board and the Mayor and Council of the Borough of New Providence.

12. INSOLVENCY OR DISSOLUTION OF CORPORATION

In the event of the insolvency or dissolution of the Pool Corporation or termination of this Agreement pursuant to Paragraph 4 hereof, it is expressly understood and agreed that all structures, improvements and installations made by the Pool Corporation upon the premises shall be deemed to be a part of the realty and the property of the Borough and not to be removed or dismantled by the Pool Corporation or any person acting for or under the authority of the Pool Corporation unless requested by the Borough. This provision shall include installations and the equipment for servicing the water supply for the use of the pool. The provisions of this paragraph are also intended to cover a situation arising whereby the Borough might find it desirable to take over the facilities of the Pool Corporation prior to the expiration of this Agreement, in such condition as to permit continued operation without any obstruction of the same on the part of the Pool Corporation.

13. LIGHTING

The Pool Corporation shall illuminate the premises in such a manner as may be approved by the Borough. Every effort shall be made to avoid annoyance to nearby residents by reason of said illumination.

14. BANNING OF LOUD SPEAKERS, ALCOHOLIC BEVERAGES, ETC.

The Pool Corporation shall not permit a loud speaker system, juke boxes, music machines or dancing upon the premises, provided, however, that any of the foregoing prohibited activities may be permitted by written approval of the Mayor and Borough Council. No alcoholic liquor or alcoholic beverages may be sold or taken upon the premises.

15. DEFAULT IN PAYMENT FOR USE OR IN CONDITIONS OF USE

In case default shall be made in the payment for the use and occupation of the premises as agreed upon herein or in case default shall be made in the performance of any other covenant, condition or agreement herein contained (excluding the conditions of Paragraph 13) on the part of the Pool Corporation, and any such default shall continue for thirty (30) days after notice thereof in writing by the Borough, the Borough, at its option, may declare this Agreement terminated and may re-enter upon the premises, either with or without process of Law, and remove all persons therefrom.

16. PROHIBITED USE

In the event that any use of said public property by the Pool Corporation, as provided for herein, shall, at any time, be determined to be prohibited by any state, federal or other applicable law or governmental regulation, said prohibited use shall be discontinued immediately; and the said lands devoted to said use, as herein demised, shall revert to the Borough of New Providence and cease to form a part of the leased premises.

17. WAIVER OF CONDITIONS, ETC.

The failure of the Borough to insist upon strict performance of any of the covenants or conditions of this Agreement or to exercise any option herein conferred in any one or more instance, 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.

IN WITNESS WHEREOF, the Borough and the Pool Corporation have caused these presents to be signed by its Mayor and President, respectively, and attested to by its Borough Clerk and Secretary, respectively, the day and year first above written.

BOROUGH OF NEW PROVIDENCE

By: _____
Allen Morgan, Mayor

ATTEST:

Wendi Barry, Borough Clerk

NEW PROVIDENCE COMMUNITY
POOL AND RECREATION, INC.

By: _____
Timothy Clewell, President

ATTEST

Secretary

SCHEDULE A

Premises situated in the Borough of New Providence, County of Union and State of New Jersey:

Tract 1

Said tract includes all of Lot 42 in Block 8, formerly belonging to Shaw, and portions of Lot 41-1 and 41-3, formerly belonging to Tragno, in Block 8, as shown on the 1941 Tax Maps drawn by John J. Kentz and updated to 1960, excluding that portion lying to the rear of Lot 41-2 in Block 8, said portion being described as the second tract in this description and further excluding the 50-foot drainage right of way for Salt Brook as designated on the official 1970 Tax Maps of the Borough of New Providence.

Tract 2

Beginning at the southwest corner of Lot 41-2 in Block 8 as shown on the 1941 Tax Maps aforesaid and running thence (1) in a general southerly direction approximately 380 feet to the present line of the Board of Education, which is also the southerly sideline of the right of way for Salt Brook; thence (2) running in a general easterly direction along said line approximately 100 feet to a point; thence (3) in a general northerly direction approximately 330 feet to the southeast corner of Lot 41-2 aforesaid; thence (4) along the rear line of Lot 41-2 aforesaid in a general westerly direction 85 feet to the point and place of Beginning. It being the general purpose of this description to exclude that portion of present Lot 13 in Block 171, lying and being in the rear of present lot 12 as shown on the 1970 Tax Maps.

Tract 3

Being a portion of Lot 13 in Block 171 as shown on the present Official Tax Maps of the Borough of New Providence, and being also a portion of Lot 45-1 in Block 8 of the Official Tax Maps, Revised to 1960, and beginning at the most southerly corner of the dividing line between Lots 13 and 26 in Block 171 on the present Official Tax Maps of the Borough of New Providence as they presently exist; thence (1) in a northerly direction along said dividing line and continuing into Lot 13 aforesaid approximately 217 feet; thence (2) in a westerly direction into Lot 13 approximately 82.5 feet to a point; thence (3) in a northwesterly direction approximately 65.5 feet to the easterly sideline of property described as Tract 2; thence (4) southerly along said line approximately 264 feet to the dividing line between Lot 13 and 38; thence (5) along said dividing line approximately 123 feet to the point and place of beginning. Being also designated on a sketch plat prepared by the Office of the Borough Engineer dated December, 1970.

SCHEDULE B

AGREEMENT RELATING TO BASKETBALL COURTS,

PARKING LOT AND FOOTBRIDGE.

The following terms shall be incorporated into Agreement of Lease Extension between the Borough of New Providence and the New Providence Community Pool and Recreation , Inc.:

W I T N E S S E T H

Whereas, the Borough and the New Providence Community Pool and Recreation, Inc. (the "Pool Corporation") recognize the benefit to their respective constituencies to work together for the improvement of the basketball courts, located on the leased property of the Pool Corporation; and

Whereas, the Borough has acquired a matching grant from the Union County Kids Recreation Trust Fund for the purpose of initiating this improvement; and

Whereas, the initial estimates developed by Maser Consulting suggest the improvements to the basketball courts, including new fencing, basketball hoops, backboards and nets, resurfacing, colorizing courts, creating 2 four-square areas and moving the utility pole will cost approximately \$140,000; and

Whereas, the NPPC has agreed to fund forty thousand dollars (\$40,000) toward the aforementioned project, with the understanding that the Borough would advance the funds to pay for the improvement with the Pool Corporation repaying the \$40,000 to the Borough over a ten year period in equal annual installments; and

Whereas, the Borough agrees that any costs associated with changes to the configuration of the basketball courts, such as lighting would be borne exclusively by the Borough; and

Whereas, the Pool Corporation acknowledges that the public funds used for the improvement supports use of the facility by the general public; and

Whereas, the Borough acknowledges that the contribution by the Pool Corporation toward the project supports partial exclusive use by the NPPC members.

NOW, THEREFORE, BE IT AGREED, AS FOLLOWS:

1. The parties agree that the Borough and the Pool Corporation will work cooperatively toward the improvements at the basketball courts, located at the New Providence Community Pool.
2. The parties agree the Borough will manage the project and will fund the cost of the improvements. The Pool Corporation agrees to reimburse the Borough \$40,000 toward the overall cost of said improvements, based on a 10 year repayment schedule of \$4,000 per year. Payments shall be received by the Borough by June 1st of each year with the first payment due June 1st following the opening of the reconstructed basketball courts.

3. The parties agree that the Borough and the Pool Corporation will share the use of the facilities as follows:
 - a. The Basketball Courts shall be open to the public at all times, except;
 - b. The Basketball Courts shall be reserved for the exclusive use of Pool Corporation members between the hours of 1 PM and 7 PM on days when the pool is open and operating.
 - i. The basketball Court area shall be utilized by the Borough for summer camp related activities between 9:00 AM and 1:00 PM.
4. The parties agree that the parking lot and basketball courts will continue to be included in the lease between the Borough and the Pool Corporation.
5. The parties agree that the Borough will include the Pool Corporation Parking Lot and the Pool Corporation Basketball Courts on the Borough's liability insurance property schedule covering any and all use of these locations by the Borough.
6. The parties agree that the Pool Corporation will provide coverage for any claims that were to arise in the parking lot or basketball area during the pool operating hours with any Pool Corporation Members or their Guests. In this case, the Pool insurance would be primary and the Borough would be excess over the Pool Corporation's insurance coverage.
7. The parties agree that routine maintenance on the parking lot and the basketball courts will be provided by the Borough.
8. The Borough agrees to provide a proportional share of future capital improvements to the Parking Lot and Basketball Courts on the basis of 75% from the Borough and 25% from the Pool Corporation.
9. The parties agree that the footbridge connecting the parking lot to the pathways leading to the fitness trail, tennis courts and high school shall be part of this agreement with future capital improvements shared on the basis of 75% from the Borough and 25% from the Pool Corporation.

Dated: August 26, 2013

BOROUGH OF NEW PROVIDENCE

ATTEST:

Wendi B. Barry

Wendi Barry, Borough Clerk

By: J. Brooke Hern
J. Brooke Hern, Mayor

NEW PROVIDENCE COMMUNITY
POOL AND RECREATION, INC.

By: Timothy Clewell
Timothy Clewell, President

ATTEST:

Bernadette C. Cuccaro

Secretary

Schedule C

New Providence Community Pool Services for the benefit of the Borough of New Providence

- Senior Day. The New Providence will host a senior day where seniors (members and non-members) in our community can attend the pool for a designated day without charge. As in the past, food will be provided by the NPCP.
- Basketball tournament. The New Providence Community Pool will host two community basketball tournaments every year, where members and non-members are permitted to participate. A nominal entry fee may be charged for the awards. Other costs to be covered by the pool.
- The New Providence Community Pool will provide two lifeguards for the swim lessons provided by the Recreation Department. The reimbursement rate for the lifeguard will be the actual expense for said lifeguards. Additionally, the NPCP pledges to continue the support of the New Providence Recreation Department Summer Camp programs.
- Movie Nights – The pool shall provide three community movie nights every year; two for families and one for teens, where members and non-members are permitted to attend.
- Teen dances – The pool shall host two community teen dances every year where members and non-members are permitted to attend.
- NPCP shall permit the emergency services (Police, Fire and Rescue) of New Providence to use their facility for training as needed and availability permits.
- The NPCP will provide one *Community Day*, where all residents of New Providence will be welcomed to use the pool regardless of membership status. The community day will include various events and a concert and will be coordinated with the assistance of the Borough of New Providence.