A RESOLUTION BY COUNCIL MEMBERS
H. LAMAR WILLIS AND HOWARD SHOOK
AS SUBSTITUTED BY COMMUNITY
DEVELOPMENT/HUMAN RESOURCES COMMITTEE

02-R-0567
April 1, 2002

AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH THE GARDEN HILLS POOL AND PARK ASSOCIATION, INC., FOR A PERIOD OF THREE (3) YEARS WITH AN OPTION TO RENEW FOR AN ADDITIONAL TWO (2) YEAR PERIOD, FOR THE PURPOSE OF ALLOWING THE ASSOCIATION TO OPERATE/ MANAGE THE GARDEN HILLS PARK SWIMMING POOL, RECREATION CENTER AND BALLFIELD, ON BEHALF OF THE DEARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS, BUREAU OF RECREATION; AND FOR OTHER PURPOSES.

Whereas, the City of Atlanta has previously leased the Garden Hills Swimming Pool and Recreation Center to the Garden Hills Pool and Park Association, Inc. for the past several years; and

Whereas, the lease has been deemed successful and beneficial to the City of Atlanta; and

Whereas, the Association and the Department of Parks, Recreation and Cultural Affairs, Bureau of Recreation have a desire to continue the on-going lease arrangement; and

Whereas, in 1998, the Association raised and donated funding in excess of One Hundred Fifty Thousand ($150,000.00) for the renovation and expansion of the Pool and has managed such renovation and expansion, all to the benefit of the City and the community.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor be and is hereby authorized to enter into a lease agreement with the Garden Hills Pool and Park Association, Inc. for a period of three (3) years, with one option to renew for an additional two (2) year period, for the purpose of allowing the Association to operate and manage the Garden Hills Park Swimming Pool, Recreation Center and Ball field, on behalf of the Department of Parks, Recreation and Cultural Affairs, Bureau of Recreation; and for other purposes.

Section 2: That for the period of this lease agreement the Association shall operate/manage the Garden Hills Parks Swimming Pool, Recreation Center and Ball Field and further agrees to pay all related personnel expenses.

Section 3: That Monday through Friday except on holidays the Swimming Pool shall be available to anyone between the hours of 10:00 a.m. to 12:00 p.m. for Free Swim to the General Public. The Association agrees that the hours and charges for the Swimming Pool and Recreation Center shall be as follows:

CHARGES: **-10:00 a.m.- 2:00 p.m.-Daily Rates**
10:00 a.m. –12:00 p.m.-Free Swim
6:00 p.m. – 8:30 p.m.- Subscriber's Rates

FEES: **- Children- $2.00**
Adults- $3.00

Season Passes: -	**Subscription Costs**
Family Size	
1	**$100.00**
2	**$140.00**
3	**$180.00**
4	**$220.00**
5	**$250.00-(maximum)**

Family-Membership will not exceed $250.00 regardless of how many members.

CHARGES FOR THE RECREATION CENTER RENTAL:

Daytime Rates	**City Resident**	**Non-City Resident**
Monday-Friday, before 5:00p.m.	**-$25.00/per hr.**	**$35.00/per hr. 2hour minimum**
Saturday-Sunday, before 5:00 p.m.	**- $30.00/per hr.**	**$30.00/per hr. 2 hour minimum**

Evening Rates		
Sunday-Thursday, after 5:00 p.m.	**$30.00/per hr.**	**$30.00/per hr. 2 hour minimum**
Friday-Saturday, after 5:00 p.m.	**$250.00 flat rate**	**$300.00 flat rate**

Section 4: That the City will maintain the Swimming Pool and Grounds.

Section 5: That said lease agreement shall be reviewed by the City Attorney as to form and prepared for the Mayor's signature, with the City incurring no liability there under until the lease agreement has been executed by the Mayor and delivered to the Association.

STATE OF GEORGIA

COUNTY OF FULTON

GARDEN HILLS POOL AND RECREATION CENTER LEASE AGREEMENT

This Lease Agreement is made and entered into this_____, day of _____, 2002, by and between the City of Atlanta, a municipal corporation of the State of Georgia, (hereinafter referred to as the "City"), and the Garden Hills Pool and Park Association, Inc. (hereinafter referred to as "Association").

WITNESSETH:

Whereas, the City has previously leased the Garden Hills Pool Recreation Center and Ball field to the Association; and

Whereas, the lease agreement has been deemed successful and beneficial to the City and to the Garden Hills community; and

Whereas, this lease agreement was authorized by a Resolution adopted by the Atlanta City Council on the _____, day of _____, 2002 and approved by the Mayor on the _____, day of _____, 2002, a copy of said Resolution being attached hereto and marked as Exhibit "A".

NOW, THERFORE, in consideration of the mutual covenants between the parties contained herein, and for other good and valuable consideration, the parties agree as follows:

Section 1. The City hereby leases unto the Association and the Association does hereby lease from the City, subject to the terms and conditions hereinafter set forth, the leased premises (swimming pool; recreation center and the ball field) and all buildings and other improvements thereon, but not the playground and creek located between the swimming pool and the recreation center, for the purpose of operating and managing the leased premises and for other such purposes as are incidental thereto. The swimming pool, recreation center and ball field are located in the areas bounded by Pinetree Drive on the north, on the east by 341 Pinetree Drive and by 338 East Wesley Road on the south and Rumson Road on the west.

Section 2. The Association shall have the right to operate and manage the Pool, Recreation Center and Ball field subject to the terms and conditions hereinafter set forth:

(a) To charge admission fees;
(b) To sell annual passes for use at the Pool;
(c) To provide swimming lessons individually and in groups for a fee;
(d) To operate a food and drink concession;
(e) To schedule the use of the Ball field; and
(f) To receive all proceeds from the above sales and instructions, except as set out herein.

Section 3. The Association shall operate the Pool, Recreation Center and Ball field in such a manner that it shall become self-supporting from earned revenues during the term of the Agreement. All revenues from activities described in Paragraph 2 above, must be used for the operation of the Pool, Recreation Center and Ball field. In the event there are excess funds not required for the operation of the Pool, Recreation Center, or Ball field, such excess funds will be used for capital improvements and /or maintenance costs. In the event such excess funds are not required for capital improvements or maintenance of the Pool, Recreation Center or Ball field, such excess funds may be used by the Association for the Pool, Recreation Center or Ball Field related functions and/or programs deemed beneficial to the Garden Hills community by the Association as approved in writing by the City. The Association proposals to the City shall be deemed approved if there is no response from the City within five (5) working days of receiving the proposal.

Section 4. The Association shall bear the responsibility for providing all chemicals for the Pool, staff and personnel to operate the Pool, Recreation Center, and Ball field. All costs and expenses incurred as a result of said chemicals and personnel shall be the responsibility of the Association except that the Department of Parks, Recreation and Cultural Affairs shall allocate $750.00 to assist the Association in the purchase of pool chemicals. The necessary staffing level of the Pool shall not be less than what is required by the Fulton County Health Department and the State of Georgia or the City's staffing pattern for the Pool as outlined in the City's "Aquatics Manual", which is attached hereto and marked as Exhibit "B", and incorporated herein by reference.

Section 5. The Association agrees to insure that all water safety staff are certified in Lifeguard Training, CPR, First Aid and automatic external defibrillator (AED) training. The Association further agrees to provide written proof of staff certifications to the Department of Parks, Recreation and Cultural Affairs, Aquatics Program Manager prior to the Pool opening.

Section 6. The City agrees to maintain the Pool, Recreation Center and Ball field in good operating condition and to bear all maintenance costs including capital repairs and utilities, unless excess funds are generated subject to Section 3 above. The City will not provide onsite personnel and staffing, except in the Department of Parks, Recreation and Cultural Affairs programmed activities. The Association is authorized to order supplies. The Association shall make routine written requests to the City for repairs and

maintenance, as needed. The City will respond to such routine repair requests in a reasonable manner through its work order system.

Section 7. The Association agrees to manage and operate the Pool in a manner consistent with the Fulton County Health Department's regulations and in accordance with the rules and regulations of the City's Department of Parks, Recreation and Cultural Affairs and the policies outlined in the Aquatics Manual.

Section 8. The Association agrees that the Pool shall be in operation from the Friday before Memorial Day, annually, through the first week in September, annually, during the term of the Agreement. The hours of operation shall be within the discretion of the Association, provided, however, that the number of hours of operation shall not be less than forty (40) hours per week. The Association agrees that after the Pool is filled it will be maintained on a daily basis.

Section 9. The City agrees to have the Pool cleaned, filled and ready for use by the Friday before Memorial Day.

Section 10. The City agrees to provide signs for the rules and regulations. The Association agrees to provide all other signage (e.g. hours of operation).

Section 11. The Association agrees that the hours and charges for the Swimming Pool and Recreation Center shall be as follows:

Hours- 10:00 a.m.- 6:00 p.m.- Open to the General Public
10:00 a.m.- 12:00 p.m.- Free Swim/General Public
6:00 p.m.- 8:30 p.m.-Subscribers' Swim

The Association may close the Swimming Pool as needed for maintenance, safety instruction, and community swim meets, and shall have the right to adjust the charges for swimming pool services and recreation center rental in any year of the lease agreement, with prior written approval from the Commissioner of the Department of Parks, Recreation and Cultural Affairs being granted.

Charges-

10:00 a.m.- 12:00 p.m.: Free Swim
12:00 p.m.- 6:00 p.m.: Daily Fee Rates
6:00 p.m.-8:30 p.m.: Subscribers' Rates

Daily Fees:
Children-$2.00
Adults - $3.00

Season Passes

Family Size	Subscription Costs
1	$100.00
2	$140.00
3	$180.00
4	$220.00
5	$250.00-(maximum)

Family-Membership will not to exceed $250.00 regardless of how many members.

CHARGES FOR THE RECREATION CENTER RENTAL:

Daytime Rates	City Resident	Non-City Resident
Monday-Friday, before 5:00 p.m.	$25.00/per hr.	$35.00/ per hr. 2 hour minimum
Saturday-Sunday, before 5:00 p.m.	$30.00/per hr.	$30.00/ per hr. 2 hour minimum

Evening Rates		
Sunday-Thursday, after 5:00 p.m.	$30.00/per hr.	$30.00/per hr. 2 hour minimum
Friday-Saturday, after 5:00 p.m.	$250.00 flat rate	$300.00 flat rate

Section 12. The Association agrees to honor all existing and future Season Swim passes issued by the City during the Bureau of Recreation swim period, 10:00 a.m.-2:00 p.m., subject to any restrictions or stipulations the City may place on said membership through the Department of Parks, Recreation and Cultural Affairs.

Section 13. The Association agrees to provide free admission to the participants in the City's programmed swim functions during the hours of 10:00 a.m.- 2:00 p.m., provided the City gives the Association reasonable notice prior to the proposed use of the Pool. The City agrees to give the Association seven (7) days prior notification of the City's programmed swim activities which have ten (10) or more participants.

Section 14. The Association agrees that no school age children will be allowed in the Pool during school hours, during the period when the Pool is open prior to the end of the Atlanta Public School term, nor after the new school term begins.

Section 15. The Association agrees to staff and maintain security at the Pool after the Pool is filled with water prior to the formal opening of the Pool and thereafter until the Pool is drained and closed at the conclusion of the season.

Section 16. The Association agrees to maintain security for the Pool after the Pool is filled on days when the Pool is closed from 10:00 a.m. until 9:00 p.m.

Section 17. The parties agree that the term of this Agreement shall be for a three (3) year period, with one option to renew for two (2) additional years, to begin on the date this Agreement is executed by the Mayor.

Section 18. The Association agrees to obtain and maintain during the operation of the Pool and Recreation Center the following types of Insurance in the amounts stipulated:

INSURANCE/BONDING REQUIREMENTS
The Garden Hill Pool and Park Association/Proposed Lease Agreement

A. General Preamble

The following general requirements apply to any and all leases. Compliance is required by all Lessees and Sub-Lessees of any tier. Insurance/Bonding requirements are based on information received as of date of lease. **The City of Atlanta reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this contract.**

1. Evidence of Insurance Required Before any modification Work Begins

No Lessee or Sub-Lessee shall commence any work of any kind under this contract until all Insurance and Bond requirements contained in this lease shall have been complied with as outlined below, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. **The Acord Certificate of Insurance or a pre-approved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**

2. Minimum Financial Security Requirements

Any and all companies providing insurance required by this lease must meet certain minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the Acord Certificate of Insurance Form.

For all Contracts, regardless of size, companies providing Insurance of Bonds under this contract must have a current:

i) Best's Rating not less than A- and current
ii) Best's Financial Size Category not less than Class IX.
iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia, furthermore, all bid, performance and payment bonds must be a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by the City to the lessor who shall promptly obtain a new policy or bond issued by an insurer acceptable to the City, and shall submit evidence of the same to the City as required herein.

Upon failure of the lessor to furnish, deliver and maintain such insurance or bonds as herein provided, this lessor, at the election of the City, may be declared forthwith suspended, discontinued or terminated. Failure of the lessor to take out and/or to

maintain any required insurance or bonds shall not relieve the lessor from any liability under the contract, nor shall these requirements be construed to conflict with the obligation of the lease concerning indemnification.

3. Insurance Required for Duration of Contract

Any and all Insurance and Bonds required by this lease shall be maintained during the entire length of this lease, including any extensions thereto, and until all work has been completed to the satisfaction of the City. The City shall have the right to inquire into the adequacy of the insurance coverages set forth in this lease and to negotiate such adjustments as reasonable appear necessary.

4. Mandatory 30-Day Notice of Cancellation or Material Change

The City of Atlanta shall, without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any Insurance or Bond required by this contract. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the Acord Certificate of Insurance and on any and all Bonds and Insurance policies required by this contract.

5. City of Atlanta as Additional Insured

The City of Atlanta shall be covered as Additional Insured under any and all Insurance and Bonds required by this contract, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the Acord Certificate of Insurance, and on any and all applicable Bonds and Insurance policies. However, this requirement does not apply to Workers' Compensation, Professional Liability Insurance or Payment and Performance Bonds.

6. Mandatory Sub-Lessee Compliance

Lessee shall incorporate a copy of these Insurance, Bond and Hold Harmless requirements in each and every contract with each and every Sub-Lessee of any tier, and shall require each and every Sub-Lessee of any tier to comply with all such requirements. Lessor agrees that if for any reason Sub-Lessee fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by lessor at Lessee's expense.

7. Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a Company affording coverage under this lease shall warrant when signing the Acord Certificate of Insurance that specific authorization has been granted by the Companies for the agent to bind coverage as required and to execute the Acord Certificate of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies, these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

B. Workers' Compensation and Employer's Liability Insurance

The Lessee shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under the contract:

Workers' Compensation ..... Statutory

Employer's Liability
Bodily Injury by Accident/Disease $100,000 each accident
Bodily Injury by Accident/Disease $100,000 each employee
Bodily Injury by Accident/Disease $500,000 policy limit

C. General Liability Insurance

The Lessee shall procure and maintain General Liability Insurance in an amount not less than $1,000,000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Acord Certificate of Insurance:

1. Comprehensive Form
2. Contractual Insurance - (Blanket or specific applicable to this contract)
3. Personal Injury
4. Broad Form Property Damage
5. Premises - Operations

D. Automobile Liability Insurance

The Lessee shall procure and maintain Automobile Liability Insurance with not less than $500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the Lessee does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either the Lessee's personal automobile policy or the Comprehensive General Liability coverage (c) required under this contract.

E. Property Insurance

The lessee shall procure and maintain for the life of this agreement All Risk Property Insurance, including Flood and Earthquake coverage. The policy must

name the City of Atlanta as a Named Insured and will not contain a deductible of more than $5,000 without written approval by the City of Atlanta. The policy will provide for full replacement cost of the physical structures and other real or personal property comprising the facility. The policy limit shall be no less than $370,000. The insurance values will be increased by an inflationary amount of at least 4% annually. Evidence of Property Insurance must be supplied to the City each year, which reflects the inflationary adjustments in the policy limit. The evidence of insurance will be submitted for annual review and approval on the anniversary date of this lease agreement.

F. Excess or Umbrella Liability Insurance

Lessee shall procure and maintain a policy providing Excess or Umbrella Liability Insurance, which is at least as broad as the underlying policy. This insurance, which shall be maintained throughout the life of the contract, shall be in an amount of not less than $5,000,000.

G. Hold Harmless Agreement

In addition to its agreement to obtain and maintain the insurance as set forth herein above, Lessee agrees to indemnify and hold harmless the City of Atlanta, its officers, agents and employees from any and all claims against the City of Atlanta, its officers, agents or employees which arise out of any negligent act or omission of Lessee or any sub-lessee employed by the Lessee or any of their officers, agents or employees, and any and all claims which result from any condition created or maintained by the Lessee or any sub-lessee employed by the Lessee or any of their officers, agents or employees, which condition was not specified to be created or maintained by this Agreement. Lessee further agrees that its agreement to indemnify and hold harmless the City of Atlanta, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Agreement and the attached specifications.

Section 19. The Capital Improvements, as agreed upon by the City and the Association shall be incorporated in the City of Atlanta Comprehensive Development Plan and the Capital Improvement Plan, and implemented subject to the availability of funds.

Section 20. The Association shall have the right to make improvements to the Pool, Recreation Center and Ballfield with the written approval of the City. All such improvements shall become a part of the Pool, Recreation Center or Ballfield, and shall become the property of the City upon termination of this Agreement.

Section 21. The Association agrees that it shall, at all times, grant to the City, the right of reasonable ingress upon the premises for the purposes of inspection of said premises and any other uses which the City may deem proper.

Section 22. The Association agrees that it shall maintain such bookkeeping and account methods and shall permit the City to accurately compute the attendance and revenue produced at the Pool and Recreation Center. Said records shall be made available to the City during the normal business hours of the Association. The Association agrees to deliver to the City (DPRCA Budget Manager) a weekly report of attendance and revenue. The Association shall provide the City with a Pool Activity Report, sixty (60) days after the end of the Pool season and an Annual Financial Report covering all revenue generated through the operation and/or rental of the Pool, Recreation Center and Ballfield, as prescribed herein by February 15th of each year.

Section 23. The Association agrees that it will follow the Sanitation procedures as outlined in Exhibit "B", attached hereto and incorporated herein by reference.

Section 24. The Association agrees that it will follow the Emergency procedures outlined in Exhibit "B", attached hereto and incorporated herein by reference.

Section 25. The Association agrees that during the term of this Agreement, it will comply with Administrative Order Number 83-7, 1983, of the City of Atlanta, as it relates to Equal Opportunity for Handicapped Persons, and requirements being attached hereto, as Exhibit "C" and made a part hereof by reference.

Section 26. The Association warrants as follows: We the supplier of goods, materials, equipment or services covered by this Agreement shall not discriminate in any way in connection with this Agreement in the employment of persons, or refuse to continue the employment of any person on account of the race, creed, religion, color, sex, national origin or handicap of such person.

Section 27. The Association warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Association, to solicit or

secure this Agreement, that it has not been paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the Association, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For a breach or violation of the above warrants, and upon a finding after notice and hearing, the City shall have the right to terminate the Agreement without any liability and at its discretion to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

Section 28. It is mutually agreed upon that this Agreement may be terminated for cause by the City or the Association, upon thirty (30) days prior written notice from one party to the other. All notices required pursuant to the provisions of this Agreement shall be deemed to have been given if sent by Certified Mail to the parties at the following addresses:

City: Commissioner-City of Atlanta
Department of Parks, Recreation and Cultural Affairs
675 Ponce De Leon Avenue, N.E.
8th Floor
Atlanta, Georgia 30308

Association: President
C/o The Garden Hills Pool and Park Association
P.O. Box 52934
Atlanta, Georgia 30355

Section 29. This Agreement represents the entire and integrated Agreement between the City and the Association and may be amended only by written instruments signed by both parties, which is either within the authority previously approved by the Atlanta City Council or is approved by a Resolution adopted by the Atlanta City Council and approved by the Mayor.

Section 30. The Association shall not transfer, assign or sublease any interest or responsibility under this Agreement, without prior written consent of the City.

Section 31. It is understood and agreed by the Association that this Agreement shall not become binding on the City, and that the City shall incur no liability upon same, until this Agreement has been executed by the Mayor and delivered to the Association.

IN WITNESSTH WHEREOF, The City and the Association have caused this Agreement to be executed by the duly authorized officials, the day and year first above written.

ATTEST:

_____

MUNICIPAL CLERK

CITY OF ATLANTA:

_____

MAYOR (SEAL)

ATTEST:

_____

Garden Hills Pool and Park Association, Inc./Secretary

PRESIDENT:

_____

Garden Hills Pool and Park (SEAL) Association, Inc.

APPROVED:

_____

Acting Commissioner, Department of Parks, Recreation and Cultural Affairs

RECOMMENDED:

_____

Chief Operating Officer

APPROVED AS TO FORM:

_____

Assistant City Attorney

APPROVED:

_____

Director, Bureau of Purchasing and Real Estate

APPROVED AS TO INTENT:

_____

Acting Director, Bureau of Recreation

APPROVED:

_____

Chief Financial Officer