



**CITY OF WESTLAKE, OHIO
ORDINANCE NO. 2015-25:**

**AN ORDINANCE AUTHORIZING THE
MAYOR TO ENTER INTO A LEASE
AGREEMENT WITH THE WESTLAKE
SWIM CLUB TO UTILIZE SPACE WITHIN
THE WESTLAKE RECREATION CENTER.**

WHEREAS, the Mayor and the Director of Recreation recommend that Council authorize the Mayor to enter into a Lease Agreement with the Westlake Swim Club to utilize space within the Westlake Recreation Center for youth swim team practices beginning March 1, 2015; and

WHEREAS, said Lease Agreement shall be for a period of eighteen (18) months commencing March 1, 2015 and terminating on August 31, 2016.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WESTLAKE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

Section 1: That the Mayor be and he is hereby authorized and directed to enter into a Lease Agreement with the Westlake Swim Club to utilize space within the Recreation Center for Westlake Swim Club practices for a period of eighteen (18) months commencing March 1, 2015 and terminating on August 31, 2016, as set forth in said Lease, attached hereto as Exhibit "A", with such revisions not affecting the substance of such Lease as are approved by the Director of Law.

Section 2: That it is found and determined that all formal actions of this Council concerning and relating to this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 10, Article XI of the Charter of the City of Westlake and Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

First Reading: 2/19/15

Second Reading: _____

CITY OF WESTLAKE, OHIO
ORDINANCE NO. 2015-25
PAGE 2

Passed: 2/19/15




Michael F. Killeen
President of Council

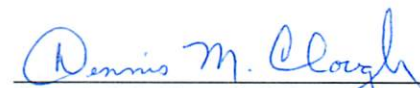
Presented to Mayor: 2/20/15

Approved: 2/20/15

ATTEST:



Denise L. Rosenbaum, Clerk of Council



Dennis M. Clough, Mayor

I, Denise L. Rosenbaum, Clerk of Council of the City of Westlake do hereby certify that Ordinance/Resolution no. 2015-25 adopted 2/19/15 was duly posted on 2/20/15 and remained posted for a period of 15 days thereafter in not less than 2 of the most public places in the City as determined by the Charter of said City.

LEASE AGREEMENT

This Lease Agreement ("Agreement") is hereby made and entered into this ____ day of _____, 2015 between the **City of Westlake**, an Ohio municipal corporation ("Owner") and the **Westlake Swim Club** ("Lessee").

WITNESSETH:

1. Owner, by and through Ordinance No. 2015-____, hereby grants to Lessee the right to use space within the Westlake Recreation Center, 28955 Hilliard Boulevard, Westlake, Ohio ("Premises") for the purpose of:

- a. **Westlake Swim Club Practices (Beginning on or about March 1, 2015):**

Westlake Swim Club practices may be held by Lessee two (2) hours per day, five (5) days a week (Monday - Friday only) from 4:00 p.m. to 6:00 p.m. Practices may be held on Sundays at a time set by the Director of Recreation and at the sole discretion and option of the Director of Recreation. The Director of Recreation has the final and sole approval on the days and times above and may change or cancel said days and times as necessary. The Director of Recreation yearly schedules special holiday hours, as well as dates during holidays for which the pool will be closed and may not be used by Lessee. Special holiday and closed hours shall be scheduled at the sole discretion of the Director of Recreation.

- b. All members of the Westlake Swim Club, including a minimum of two (2) coaches shall also be members of the Westlake Recreation Center in good standing or hold a WAVES pass good only during designated WAVES swim team times.

2. **Description of Premises:** The right to use the Premises granted herein shall be for the facilities and equipment hereinafter set forth for the purpose of carrying out the principal activities described in paragraph 1.

- a. **Facilities:** Maximum use of four (4) lanes of the lap pool, use of pool locker rooms (including showers), restrooms, parking lots and all ways of ingress and egress to, from and within the Premises. Lessee understands and agrees that Owner operates a public facility at all times. It shall be the Director of Recreation's sole determination if on any given date, Lessee may have exclusive use and possession of the facilities listed herein. Lessee shall not have use of any other facilities on the Premises.

b. **Equipment:** Lane lines, starting blocks, kickboards and pull buoys. Any equipment needed by Lessee and not provided by Owner shall be supplied by Lessee at Lessee's cost if approved by Owner. No equipment shall be permanently affixed to the Premises by Lessee.

3. **Owner's Right of Inspection:** The granting of this Agreement does not act to restrict or limit Owner's right to, at any and all times during the period of this Lease, enter the Premises for the purpose of inspection and supervision or any other purpose to protect the interest of Owner.

4. **Term:** The term of this Agreement shall be for a period of eighteen (18) months commencing on March 1, 2015 and terminating August 31, 2016. Either party may terminate the Agreement during the eighteen (18) month period with sixty (60) days written notice to the other.

5. **Rent:** For the period of March 1, 2015 through August 31, 2015, Lessee shall pay to Owner as rental for said Premises the sum of Seven Hundred Fifty Dollars (\$750.00) per month. For the period of September 1, 2015 through August 31, 2016, Lessee shall pay Owner as rental for said Premises the sum of Eight Hundred Dollars (\$800.00) per month. Lessee shall be invoiced monthly and shall submit payment within fifteen (15) days of receipt of invoice. Failure to forward full payment shall cause Lessee to incur a ten percent (10%) late charge per month.

6. **List of Participants:** Lessee shall furnish to the Director of Recreation by March 31, 2015, a complete list of the names of the coaches, assistant coaches, managers, team members and any other persons associated with Lessee's teams using the Premises rented for the days and times as approved in paragraph 1 herein and shall keep such list current at all times throughout the period of this Lease. Lessee shall also furnish the addresses and phone numbers of all team members. These lists shall be updated and submitted monthly with rent payment listed in paragraph 5 herein.

7. **Utilities:** Light, gas, water, sewer, heating fuel, electricity and utilities shall be furnished and paid for by Owner.

8. **Attendance:** Owner reserves the right to limit attendance by members of the Lessee at the Premises and to suspend further admittance at any time when attendance has reached a size such as to create a hazard to the health or safety of persons utilizing the Premises or to the general public.

9. **Compliance with Law:** Owner and Lessee shall use and occupy the Premises in a safe and lawful manner, shall comply with all laws, rules, regulations of the State or Federal government and all ordinances in force in the City of Westlake, Ohio and all special rules and regulations relating to the use of the Premises. All State, Federal and local laws, as well as rules and regulations of Premises, shall be and are part of this Agreement as if set forth herein. Owner represents that the Premises will meet all accessibility and other requirements of the Americans with Disabilities Act.

10. **Condition of Premises:** The parties agree to not do any act or suffer any act to be done, during the term of occupancy under this Agreement, which will in any way mar, deface, injure or damage any part of the Premises. Lessee shall deliver up to Owner all of the Premises in a good condition and repair as the same shall have been at the beginning of the Lease less normal wear and tear, loss by fire, not caused by the Lessee, or natural casualty alone excepted.

If any repairs to the Premises are necessary by reason of damage caused by Lessee, following reasonable notice [at least ten (10) days] to Lessee, if Lessee has not commenced making such repairs in a manner satisfactory to Owner, Owner may make such repairs or maintenance as necessary to restore the Premises, provided that to the extent practicable, any such work shall be scheduled so as to minimize interference with Lessee's use of the Premises. Lessee agrees to reimburse Owner for the costs and expense of such repairs and/or maintenance within thirty (30) days of receipt of Owner's notice of reimbursement. Failure to forward full payment for reimbursement shall cause Lessee to incur a ten percent (10%) late charge per month.

11. **Use of Premises:** Owner and Lessee shall use the Premises, facilities, equipment only in the manner permitted in this Lease. Neither party shall use or permit the use of the Premises, facilities and equipment in any immoral, objectionable, negligent or unlawful. Lessee shall not erect banners and signs on the Premises.

12. **Indemnification:** Lessee shall indemnify and save the Owner harmless from any and all damages, loss or liability of any kind whatsoever occasioned upon the Premises, or premise adjacent thereto, by reason of any injury to person or property occasioned by any act or omission, neglect or wrong of the Lessee or any of its officers, representatives, guests, employees, invites, or other persons permitted on the Premises by Lessee, and shall at its own costs and expense defend and protect the other party against any and all such claims or demands. Liability insurance in the forms and amounts as approved by the Owner, shall be obtained, maintained and furnished by Lessee to the Owner and Owner shall be listed as an additional insured thereunder.

13. **Property Insurance:** Owner shall, at its own cost, insure the Recreation Center facility and contents in an amount equal to the replacement value thereof against loss from fire and other perils included in the so-called "Special Perils" insurance endorsement/form. Notwithstanding any provision to the contrary in this Lease, in the event of damage or destruction to the Recreation Center due to fire or other casualty, Owner agrees to look solely to the proceeds from its fire and casualty insurance to rebuild and refurnish such facility and/or compensate Owner for such loss, except that if the cause of such loss is an act or omission, neglect or wrong of Lessee or any of its officers, representatives, guests, employees, invitees, then the indemnification in paragraph 16 shall apply, but solely to the extent of compensating the Owner for the amount of its insurance deductible or \$50,000, whichever amount is less.

14. **Default:** If Lessee, at any time during the term of this Lease, shall fail to observe or perform any of Lessee's covenants, agreements or obligations hereunder, and if any such default shall not be cured within thirty (30) days after the Owner shall have given to Lessee written notice specifying such default or defaults, and if at the expiration of said number of days after the service of such default shall continue to exist; then Owner may at its option give Lessee notice of the Owner's intention to terminate this Lease and all Lessee's rights hereunder, on a date specified in such notice, which date shall not be less than ten (10) days after the date of the giving of such notice and on the date specified in such notice, this Lease and all rights granted to Lessee hereunder shall come to an end without in any way thereby incurring any liability whatsoever to Lessee or any other person claiming under or through Lessee, and without waiver on the part of the Owner of any other rights of Owner existing under the terms and provisions of this Agreement. Thereafter, Owner may forthwith enter on the Premises and exclude and remove all persons from the Premises without service of notice or resort to legal process.

If Owner, at any time during the term of this Lease, shall fail to observe or perform any of Owner's covenants, agreements or obligations hereunder, and if any such default shall not be cured within thirty (30) days after Lessee shall have given to the Owner written notice specifying such default or defaults, and if at the expiration of said number of days after the service of such notice the default shall continue to exist; then Lessee may at its option give the Owner notice of Lessee's intention to terminate this Lease, on a date specified in such notice, which date shall not be less than ten (10) days after the date of the giving of such notice and on the date specified in such notice, this Lease shall come to an end without in any way thereby incurring any liability whatsoever to the Owner or any other person claiming under or through the Owner. Lessee's and Owner's remedies specified herein shall be cumulative, non-exclusive and in addition to any other remedies available to Lessee and provided by law.

15. **Cancellation:** Owner, because of extenuating circumstances or a special event, shall have the option to cancel any of the contracted practice sessions.

16. **Surrender of Possession:** Lessee shall, on the last day of the term, or upon earlier termination of this Lease, peaceably and quietly surrender and deliver the Premises in good condition and repair, except for reasonable wear, tear and loss, damage or destruction caused by fire, flood, windstorm, earthquake, strikes, riots, civil commotions, acts of public enemy, acts of God, or other casualty caused by negligence of Owner, it agents, employees or invitees.

17. **Assignment and Subletting:** Lessee may not assign or sublease this Agreement or any rights hereunder provided.

18. **Amendment of Lease:** This Agreement may not be amended or modified by either party without the express written consent of Lessee and Owner by legislative action of Council.

19. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter and supersedes all prior or contemporaneous agreements with this subject matter

20. **Destruction of Premises:** In the event that the Premises shall be rendered untenable by fire or other casualty, Owner shall, within thirty (30) days of notice of such damage or destruction, make a study and reach a conclusion as to the feasibility and desirability of repair or reconstruction. In the event Owner shall determine that it will not repair or rebuild the Premises, this Lease shall terminate as of the date of such destruction of damage.

In the event that Owner shall determine to repair or rebuild the Premises, it shall notify Lessee within said thirty (30) day period of the length of time required to complete such repairs. In the event that the length of time to complete the repairs exceeds one hundred and twenty (120) days from the date of damage or destruction, Lessee or Owner shall have the right to terminate this Lease by giving the other party written notice of such termination within thirty (30) days after receipt of the notice from Owner advising Lessee of the length of time required to make the repairs. During such period of time as the Premises shall be untenable, the rental amount payable herein shall be abated.

21. **Conflict with Law and Severability:** Should any provision of this Agreement or the application of any provision of this Agreement to any person or circumstances be held invalid, the remainder of the Agreement and application of such provision to other persons or circumstances shall not be affected.

22. **Notices:** Any notice, permitted or required hereunder, shall be in writing and shall be deemed to have been properly given by mailing such notice by certified mail, return receipt requested, postage prepaid, addressed to such party as follows:

- a. To the Westlake Swim Club, Attention: John Bailey, 29218 Sunset Drive, Westlake, Ohio 44145, or such other address as such party may from time to time designate in writing at least fifteen (15) days in advance of such notice.
- b. To the CITY OF WESTLAKE, OHIO, Attention: Director of Recreation at 28955 Hilliard Boulevard, Westlake, Ohio 44145, or such other address as such party may from time to time designate in writing at least fifteen (15) days in advance of such notice.

23. **Successors and Assigns:** The terms, covenants and conditions contained in this Lease shall be binding and shall inure to the benefit of the respective successors of the parties hereto, their heirs, legal representative, distributees, and assigns.

IN TESTIMONY WHEREOF, the parties hereto have thereunto set their hands the date and year above written.

OWNER: CITY OF WESTLAKE, OHIO

LESSEE: WESTLAKE SWIM CLUB

By: _____
Dennis M. Clough, Mayor

By: _____
Title: _____

Approved as to form:

John D. Wheeler
Director of Law