

ORDINANCE NO. 2016- 34

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A RENEWAL OF THE LEASE AGREEMENT WITH DONO DEVELOPMENT LIMITED PARTNERSHIP FOR PROPERTY LOCATED AT 1205 WEST MAIN STREET, KENT, OHIO AND DECLARING AN EMERGENCY.

WHEREAS, the Kent Parks and Recreation Department previously needed to lease space for various programs they sponsor in the City, and leased the property at 1205 W. Main Street, Kent which has served their needs; and

WHEREAS, City Council wishes to enter into a renewal of the Lease Agreement with Dono Development Limited Partnership for property owned by the City and located at 1205 West Main Street, Kent; and

WHEREAS, time is of the essence as the Kent Parks and Recreation Department’s current lease is ending soon.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That Kent City Council does hereby authorize the City Manager, or his designee to enter into a renewal of the Lease Agreement with Dono Development Limited Partnership, for property located at 1205 West Main Street, in substantial conformity with a copy of which is marked as Exhibit “A”, attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance 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 of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: 04/20/2016
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016- 34 was duly enacted this 20th day of April, 2016 by the Council of the City of Kent, Ohio.

Clerk of Council

EXHIBIT "A"

LEASE

THIS LEASE is made and executed as of the date of the last party to sign below, by and between **DONO DEVELOPMENT LIMITED PARTNERSHIP**, an Ohio limited partnership, whose address is P.O. Box 1403, Stow, Ohio 44224, hereinafter referred to as "Lessor" and **CITY OF KENT PARKS AND RECREATION** whose address is 497 Middlebury Rd. Kent, Ohio 44240 hereinafter referred to as "Lessee".

In consideration of the mutual undertakings of the parties, as hereinafter set forth, it is agreed to by and between the parties as follows:

1. **PREMISES:** Lessor does hereby let and lease unto Lessee, and Lessee does hereby take and hire from Lessor, the premises commonly known as the Building and the land owned by Lessor on which such Building is situated, including the parking spaces, entranceways, exit-ways, and driveways, commonly known as 1205 West Main Street, Kent, Ohio 44240, hereinafter referred to as the "Premises".
2. **TERM:** The initial term of this Lease will commence effective May 01, 2016 and will end at midnight on April 30, 2017 ("Initial Term") Subject to annual appropriations by the Lessee.
3. **LEASE YEAR:** As used herein the term "Lease Year" means May 1 – April 30.
4. **BASE RENT:** Lessee must pay to Lessor, as rent for the Initial Term, on the first day of each month, in advance, the following monthly rent:
 - a. \$2,600.00 per month for the period of time from May 1, 2016 through April 30, 2017.
 - b. \$2,650.00 per month for the period of time from May 1, 2017 through April 30, 2018.
 - c. 2,700.00 per month for the period of time from May 1, 2018 through April 30, 2019.
5. **OPTION TO RENEW:** Provided Lessee, at all times, has faithfully, promptly and fully complied with its obligations as contained in this Lease, Lessee will have the exclusive right and option to renew this Lease for an additional one (1) year term ("1st Renewal Term"), by giving prior written notice to the Lessor at least ninety (90) days prior to the commencement date of each such Renewal Term of its election so to renew. Such first option to renew shall start at \$2,750.00 rent per month
6. **"AS-IS" CONDITION:** Except as otherwise set forth in this Lease, Lessee is taking the Premises as is. Lessor makes no representations or warranties whatsoever concerning the Premises, including but not limited to warranties as to the existing zoning or other governmental requirements lawfully permit the use of the Premises for such purposes; or whether the Premises are free from environmental contamination or free from contamination by hazardous wastes, hazardous substances, toxic wastes, toxic substances or any other substances, by whatever name called, which are prohibited, restricted or otherwise regulated by any federal, state or local governmental entity or authority, including but not limited to the United States EPA, the Ohio EPA and/or any municipal or county health department.
7. **SECURITY DEPOSIT:** Lessee has paid under prior lease to Lessor a security deposit in the sum of \$4,600.00. Lessor will have no obligation to pay interest thereon. Such security deposit may be returned to Lessee upon the termination of this Lease, provided that, at such time, no uncorrected Event of Default exists. If, during the term of this Lease or any renewals thereof, Lessee should commit an Event of Default, Lessor will have the right, but not the obligation, to use such security deposit to the extent which is necessary to pay for the cost of carrying any such Event of Default and, upon written notice begin given by Lessor to Lessee describing such Event of Default and any expenditures made by Lessor, Lessee must, forthwith, pay the amount of such expenditures to Lessor so that such security deposit, at all times, is maintained at the initial level of \$4,600.00.
8. **IMPROVEMENTS BY LESSEE:** Lessee will remove and discard stained and torn carpeting and install a portable floating floor system. Lessee will not remodel, improve, alter or otherwise change the Premises or any improvements situated thereon or any landscaping or other vegetation situated thereon without the express prior written consent of Lessor, which consent will not be

unreasonably withheld or delayed. Lessee, at its option, may remove the floating floor system at the end of the Lease.

9. **USE OF PREMISES:** Lessee will use and occupy the Premises solely for the purpose of conducting a recreation facility thereon and for other uses and purposes reasonably incidental thereto.

Lessee must, at all times, keep the Premises clean, neat and tidy, and free of accumulations of trash, debris and rubbish. Lessee must cause all trash, debris and rubbish generated from its business operations to be promptly placed into suitable containers on the Premises and promptly removed from the Premises, at least once per week. Lessee must not commit waste.

In addition, Lessee will be responsible for promptly picking up and placing into containers within the Premises any bottles, glass, cans, paper, trash or other debris placed, discarded, thrown or otherwise deposited on the parking areas or other portions of the grounds by Lessee and by any of its agents, servants, employees, invitees, customers and/or contractors.

10. **COMPLIANCE WITH LAWS:** Lessee must use and occupy the Premises in compliance with all applicable laws, statutes, ordinances, rules, regulations and lawful directives of all political entities having jurisdiction thereof.

11. **NO MECHANIC'S LIENS:** In the event that any mechanic's lien should be filed against the Premises as a result of any work performed and/or materials furnished on, at or for the benefit of the Premises, by Lessee, or by any person or party claiming by, through or under Lessee, including but not limited to any contractor, subcontractor, materialman, laborer, architect or engineer, Lessee must, within thirty (30) days following its receipt of written notice from Lessor that any such lien has been filed, cause such lien to be discharged as a cloud against the title of Lessor by payment, release or use of the statutory bonding procedure.

12. **REPAIRS AND MAINTENANCE:** Lessor must make all repairs and replacements to the Premises and maintain the Premises so as to keep the entire Premises, and also any sidewalk abutting the Premises, in a good state and condition of repair, in a lawful condition, in a safe condition, and, where applicable, in good working order, both interior and exterior, mechanical and non-mechanical, structural and non-structural, foreseen and unforeseen. Lessee may not alter the Premises without the express prior written consent of Lessor. Lessor's obligations hereunder will include but are not limited to the roof and all doors of the Premises and all hardware thereof. It will be the obligation of Lessee to promptly replace all glass that is broken, cracked or perforated, and door locks.

Without limiting the foregoing, it will be the obligation of Lessee, as concerns any HVAC system serving the Premises, and as concerns any hot water tank located within the Premises, to use and operate the same in a careful and safe manner and in accordance with the operating and maintenance requirements of the manufacturers thereof, and cause the same to be periodically inspected and serviced, including adjustments, replacement of filters, cleaning and lubrication, all at the sole cost and expense of Lessee.

13. **FIRE AND EXTENDED COVERAGE INSURANCE BY LESSOR:** Lessor will, at all times, keep the Building, including the Premises (but not the contents thereof) insured with a broad form policy of fire and extended coverage insurance in an amount not to exceed 100% of the replacement cost thereof, and Lessor shall pay all premiums pertaining to such insurance coverage. The company or companies providing such insurance coverage must have and must maintain a rating of "A", or better, as such rating is defined by Best's Insurance Rating Service.

In the event the Building (including the Premises) should be damaged by a risk insured against pursuant to such insurance coverage, Lessor will promptly repair and restore the same to substantially that condition prevailing immediately prior to the date of such damage, as soon as reasonably practicable after Lessor's receipt of the insurance proceeds payable as a result of such damage, except as otherwise hereinafter provided.

If, in the event of any such damage as described herein, the usability of the Premises for the business purposes of Lessee should be adversely affected, the rent that Lessee is required to pay to Lessor will be reduced and abated in proportion to such diminished usability of the Premises for the business purposes of Lessee from the date of such damage until the date on which such repair and restoration work has been completed, or four (4) months, whichever is the shorter period of time, but only in the event that such damage was not caused or contributed to, in any respect, by Lessee or any of its agents, servants, employees, invitees, customers and/or contractors.

Provided further, however that if such damage to the Building is so extensive that the cost of repair and restoration should exceed twenty-five percent (25%) of the then replacement cost of such Building, Lessor will have the right, upon written notice given to Lessee within thirty (30) days after the date of such damage, to elect not to repair and restore, but to terminate this Lease, in which event Lessee must promptly remove all of its property and effects from the Premises and both parties will be relieved of all further obligations hereunder except those which have then accrued.

Provided further that in the event of damage, under circumstances where Lessor has the obligation of performing the required repair and restoration work, or has elected to do so, if Lessor has not completed the required repair and restoration work pertaining to the Premises within four (4) months following the date of such damage, Lessee will have the right, by giving written notice to Lessor within fifteen (15) days following the end of such four (4) month period of time, to terminate this Lease, whereupon both parties will be relieved of all further obligations hereunder except those which have then accrued.

14. **LIABILITY INSURANCE BY LESSEE:** Lessee must, at all times, keep the Premises, and all uses and activities conducted thereon, insured with a broad form policy of liability insurance which, initially, will be in the amount of at least \$1,000,000.00, single limit, for bodily injuries (including death) and property damage. Lessee must pay all premiums pertaining to such insurance coverage. Lessor must be named as an additional insured pursuant to such insurance coverage. Lessee must at all times keep on deposit with Lessor current certificates of insurance evidencing the continued existence of such insurance coverage. Such insurance coverage will not be modified or cancelled except upon at least thirty (30) days prior written notice being given to Lessor. The company or companies providing such insurance coverage must have and must maintain a rating of "A", or better, as such rating is defined by Best's Insurance Rating Service, and the form of the policy or policies evidencing such insurance coverage will be subject to the written approval of Lessor, which approval will not be unreasonably withheld or delayed. Lessor will have the right to require Lessee to increase the amount of such coverage, from time to time, in reasonable increments, to compensate for inflation and other economic factors.

15. **REAL ESTATE TAXES AND ASSESSMENTS**

In the event of the enactment of any tax imposed against rent, as such, or the right to receive rent, as such, whether the same is denominated as a "sales tax", or is called something else, any such tax which pertains to the rent described in this Lease must promptly be paid by Lessee either to Lessor or to the appropriate taxing authority, whichever is designated by Lessor, to the end that no such tax will diminish the net rent to be received by Lessor pursuant to this Lease.

In the event that any new special assessments should be imposed against the premises of Lessor at this location following the date hereof, which, by law, can be paid in installments, Lessor will elect to have the same paid in the maximum number of installments permitted by law.

Lessee must promptly pay to the appropriate taxing authority all personal property taxes assessed against any personal property of Lessee located on the Premises.

16. **TRASH REMOVAL AND SNOW PLOWING:** The parties specifically understand and agree that, under no circumstances, will Lessor have the obligation of or be liable for removal of trash or the removal of snow and/or ice or snowplowing and the Lessee will be required to make its own arrangements, separately, as concerns the services described herein.

17. **UTILITY AND SECURITY SERVICES:** Effective as of May 1 2016, Lessee must pay for all utility services furnished to the Premises, which payment will be made directly to the governmental entity or public utility company furnishing such services on or before the due date thereof. If Lessor elects, in Lessor's sole discretion, to furnish any of the above utilities, Lessee must pay Lessor for the cost of such utilities, but the rate will be the same as would apply if Lessee could obtain similar services directly from the utility company.

18. **SUBORDINATION OF LEASE:** Lessor reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon the Premises, and the Lessee covenants and agrees to execute and deliver, upon demand, such further instruments subordinating or evidencing the subordination of this Lease to the lien of any such mortgage or mortgages as may be desired by the Lessor or by any mortgagee, or proposed mortgagee, and hereby irrevocably appoints the Lessor the attorney in fact of the Lessee to execute and deliver any such instrument or instruments to so subordinate this Lease for and in the name of the Lessee, provided that the holder of any such mortgage or any person claiming under said mortgage must enter into an

agreement with Lessee, in recordable form, that in the event of foreclosure or other right asserted under the mortgage by the holder or any assignee thereof, this Lease and the rights of Lessee hereunder will continue in full force and effect and will not be terminated or disturbed unless the Lessee is in default under this Lease.

19. **ESTOPPEL CERTIFICATES:** Each party hereto agrees to furnish to the other party hereto, within a reasonable time after receipt of written request therefor, a customary type of estoppel certificate in general use by institutional lenders whose main office is situated in Summit County, Ohio provided that:

- a. The execution of any such estoppel certificate may not impose upon the party executing the same any obligations or duties which are different from or are in addition to those obligations and duties set forth in this Lease, with only one exception, to-wit, the obligation of notifying such lender in the event of a default of this Lease and affording to such lender the same period of time as is set forth in this Lease to correct any such default; and
- b. As a condition to the execution of any such estoppel certificate, and before delivery thereof, the party requesting such certificate must pay to the party who is being requested to execute such certificate the reasonable attorneys' fees of such latter party incurred in connection with the review of such certificate and/or the modification thereof to bring such certificate into compliance with the provisions of this Lease.

20. **TRADE FIXTURES:** Lessee will have the right to install, replace, substitute, use and remove its trade fixtures (including its machinery, equipment and the floating floor) provided that, at the termination of this Lease, Lessee must remove the same from the Premises and must repair all damages to the Premises resulting from the installation, replacement, substitution, use and removal thereof. Lessee agrees that any equipment, fixtures, or personal property left after expiration or termination of this Lease will be deemed abandoned and will become the sole property of Lessor.

21. **EMINENT DOMAIN:** If, as a result of eminent domain proceedings, or settlement under threat or in lieu thereof, any portion of the Building should be taken, or The company or companies providing such insurance coverage must have and must maintain a rating of "A", or better, as such rating is defined by Best's Insurance Rating Service twenty percent (20%) or more of any parking spaces situated on the premises of Lessor at this location should be taken, and in the further event that, because of any one or more of the foregoing, the Premises are rendered no longer reasonably fit and suitable for the business purposes of Lessee, then Lessee will have the right to terminate this Lease as of the date that possession is required by the public body.

All proceeds from the entity doing the eminent domain resulting from any of the foregoing events entitling Lessee to terminate this Lease, and pursuant to which Lessee does, in fact, terminate this Lease, must be paid to Lessor, with the following exceptions:

- a. If any trade fixtures of Lessee are taken, the award or settlement relating thereto will belong to Lessee.
- b. Lessee will have the right to make claim against the public entity for Lessee's moving and relocation expenses, provided that the payment of such claim does not reduce or diminish the award or settlement to which Lessor would otherwise be entitled.

If Lessee, having the right to terminate this Lease, as provided above, does not elect to so terminate, or if there should be a taking of a minor nature, which does not permit Lessee to terminate this Lease pursuant to the provisions stated above, and if the taking which has occurred materially and adversely affects the value of the Premises for Lessee's business purposes, then the Base Rent which Lessee is otherwise required to pay will be appropriately reduced in proportion to such reduced value, all proceeds resulting from any of the foregoing events will be paid to Lessor, and Lessor will use the same to repair and restore the Premises, to the extent reasonably possible, to that condition existing immediately prior to the taking, and the balance thereof, if any, will be retained by Lessor.

If eminent domain proceedings should be commenced against Lessor, Lessor will, as soon as reasonably practicable, notify Lessee, in writing, of the commencement of such proceedings and provide Lessee with a copy thereof.

22. **ACCESS TO PREMISES BY LESSOR:** Lessor and its duly authorized agents, employees, representatives and independent contractors will have the right to enter upon the Premises,

at all reasonable times after reasonable notification to Lessee, if it is not an emergency situation, for the purpose of examining and inspecting the Premises and all buildings and other improvements thereon, performing repair, maintenance and other work, and showing the Premises to prospective purchasers and lessees.

23. **DEFAULT BY LESSEE:** Each of the following will be considered as an Event of Default of this Lease by Lessee:

- a. If Lessee should fail to pay any installment of Base Rent, Additional Rent, or any other monetary obligation required to be paid by Lessee by the due date thereof, and such failure should continue for five days, or more, after Lessee's receipt of written notice from Lessor specifically describing any such failure.
- b. If Lessee should fail to keep and perform any other term, covenant, or condition of this Lease and such failure should continue for thirty (30) days, or more (except as hereinafter provided for), after Lessee's receipt of written notice from Lessor specifically describing any such failure.
- c. If bankruptcy, or any other type of debtor relief proceedings should be filed by Lessee, as a result of which any creditor of Lessee or court appointed official legally obtains possession of the Premises.
- d. If bankruptcy, or any other type of debtor relief proceedings should be filed against Lessee, as a result of which any creditor of Lessee or court appointed official legally obtains possession of the Premises, and any such proceedings should not be terminated within sixty (60) days following the filing date thereof.

Provided, however, that if Lessee should fail to perform any term, covenant or condition of this Lease other than one requiring the payment of rent or other monetary payment required to be paid by Lessee, and Lessor has given the required written notice to Lessee as provided for above relative to such failure, and Lessee, within the above stated grace period of thirty (30) days, diligently and in good faith undertakes to attempt to rectify or cure such failure, but is not able to do so during such grace period because of a cause or causes beyond Lessee's reasonable control, and provided further that Lessee continues diligently and in good faith to attempt to cure or rectify such failure and does in fact cause the same to be cured or rectified within a reasonable time after the cause or causes preventing performance by Lessee no longer exist, then Lessee will be deemed to have cured and rectified such failure within the thirty (30) day grace period and no Event of Default will have occurred.

If any Event of Default should occur, Lessor will have the right to any or all of the following: (1) terminate this Lease, upon written notice to Lessee, in which event Lessee must forthwith vacate the Premises and remove all of its property and effects therefrom; (2) expend whatever sums of money are reasonably necessary to correct such Event of Default, in which event all such sums expended by Lessor will forthwith become due and owing by Lessee to Lessor, together with interest thereon at the highest rate of interest permitted by law; (3) specifically enforce the provisions of this Lease; (4) repossess the Premises to the extent permitted by law; and/or (5) Lessor may elect to pursue any other rights or remedies available to it pursuant to the laws and statutes of the State of Ohio, no single right or remedy being exclusive to Lessor.

24. **LATE CHARGE:** In the event Lessee should fail to pay any installment of rent or any other monetary obligation required to be paid by Lessee by the due date thereof, and such failure should continue for fifteen (15) days, or more, following such due date, Lessee will be obligated to pay a late charge equal to five percent (5%) of any such installment of rent or other monetary obligation which was not paid by the due date thereof, for each month that all or any part of any such installment of rent or other monetary obligation remains unpaid.

25. **ASSIGNMENT AND SUBLETTING:** Lessee may not assign this Lease, and Lessee may not sublet the Premises, or any part thereof, except with the express prior written consent of Lessor, which consent Lessor will not be obligated to give.

26. **LESSEE'S SIGNS:** Lessee will have the right to identify the Premises by one or more appropriate signs located on the Premises provided that all of such signs, in all respects, and at all times, fully comply with all building, zoning and other code requirements of the City of Kent. Any such sign so constructed, placed, erected or attached will remain the property of Lessee and will be treated as a trade fixture of Lessee, which must be removed at the termination of this Lease, and all damages caused by the construction, erection, placement, affixing, use and removal thereof will be repaired by Lessee on or

before the termination of this Lease. Lessee, at all times, must keep and maintain such signs in a good state and condition of repair, and of good appearance, at its sole cost and expense.

27. **COVENANT OF QUIET ENJOYMENT:** Provided that Lessee has performed its obligations hereunder, Lessee will have the peaceable and quiet enjoyment of the Premises, and all parts thereof, without let or hindrance by Lessor, or any party lawfully claiming said Premises or any part thereof by, through or under Lessor, subject to the terms of this Lease.

28. **TITLE TRANSFER BY LESSOR:** In the event title to the Premises should be transferred or conveyed by Lessor, Lessor will have no further obligations hereunder except to perform those Lessor obligations which are in existence and have accrued as of the date of such transfer or conveyance, conditioned upon the fact that the new owner of the Premises will agree, in writing, to perform the obligations of Lessor as set forth in this Lease from and after the date of such transfer or conveyance.

29. **SURRENDER OF PREMISES:** At the termination of this Lease, Lessee must deliver up and surrender the Premises, and all parts thereof, in as good state and condition of repair as Lessee received the premises at the beginning of the Lease, and (where applicable) in good operating condition (normal wear and tear excepted), and as elsewhere set forth in this Lease. Lessee must remove all contents from the Premises, including trash and debris, and must leave the Premises in a "broom clean" condition, and must deliver to Lessor all keys to the Premises.

30. **"NET-NET-NET" LEASE:** The parties intend that this Lease be a "net-net-net" lease, sometimes referred to as a "triple net" lease, meaning that, in addition to the rent provided for herein, Lessee must pay, cause to be paid and/or provide for all costs and expenses relating to the Premises and Lessee's use and occupation thereof, foreseen and unforeseen, which may arise or become due during the term of this Lease and any renewals thereof. Lessor shall provide separate utility meters for the space described herein in order to calculate Lessee's utility bills.

31. **BINDING EFFECT:** The provisions hereof will be binding upon and will inure to the benefit of the parties hereto and their heirs, executors, administrators, successors and assigns.

32. **ENTIRE AGREEMENT:** This Lease expresses the complete and entire agreement between the parties and no promise, representation, warranty, covenant, agreement or other undertaking not specifically contained herein will be binding upon or inure to the benefit of either party hereto.

33. **TITLE HEADINGS:** The title headings hereof are intended for convenience purposes only and will not be used to construe or interpret this Lease.

34. **NO MODIFICATIONS:** This Lease will not be altered, changed or otherwise modified except by a written document executed by all parties hereto.

35. **MEMORANDUM OF LEASE:** This Lease will not be recorded. However, at the request of either party hereto, a short form memorandum of lease may be drafted by the party making the request, executed by both parties, and recorded at the cost of the party making the request so as to make this Lease a matter of public record.

36. **MISCELLANEOUS PROVISIONS.**

- a. **Notices.** All notices and other communications under this Lease must be in writing and will be considered to be effective as of:
- (i) the date personally delivered to that party at the address for that party set forth below;
 - (ii) the date sent by facsimile transmission (with electronic confirmation) to that party at the facsimile number for that party set forth below;
 - (iii) three (3) days after mailing by U. S. certified mail (postage prepaid and return receipt requested) at the address for that party set forth below; or
 - (iv) on the date of delivery by Federal Express or any similar express delivery service, fee prepaid, and addressed to the address for that party set forth below.

Lessor

DONO DEVELOPMENT LIMITED PARTNERSHIP
P.O. Box 1403
Stow, OH 44224
Fax # _____

Lessee

City of Kent – Parks and Recreation
497 Middlebury Rd.
Kent, OH 44240
Fax #330-673-8898

- a. Delivery under this Lease will be considered to be effective when made even though a party refuses to receive the communication. A party may change the party's facsimile number or address for communications under this Lease by giving the other party notice of such change in the manner specified above. If a party changes the party's address or facsimile number and does not notify the other party in the manner specified above, a notice or other communication will be effective three (3) days after it is sent by U. S. regular mail, postage prepaid, to the party's address set forth below.
- b. Governing Law. This Lease is governed by the laws of the state of Ohio, other than those relating to conflicts of laws.
- c. Gender and Number. Where permitted by the context, each pronoun used in this Lease includes all genders and numbers, and each noun used in this Lease includes other numbers.
- d. Non-waiver. A party to this Lease will not be bound by a waiver of any right or remedy that inures to the party's benefit under this Lease unless the waiver is in writing signed by the party. A failure by a party to enforce any right or seek any remedy for a breach by the other party of this Lease does not constitute a waiver of the first party's right to enforce that right or seek that remedy with respect to that or any other breach.
- e. No Third Party Beneficiaries. This Lease is not intended to confer any rights upon a person not a party to this Lease.
- f. Survival. The representations, warranties, and other provisions of this Lease will survive the closing of the transactions to be consummated under this Lease.
- g. Counterparts. This Lease may be executed in separate counterparts with different parties signing different counterparts so long as at least one has been signed by both of the parties. A party's execution and delivery of this Lease, or any other document relating to the transactions to be consummated under this Lease, may be effected by facsimile transmission.
- h. Timing. Time is of the essence in the fulfillment of each party's obligations under this Lease.
- i. Severability. If a court of competent jurisdiction determines a provision of this Lease to be unenforceable, the court is authorized to reform the provision so that it is enforceable to the maximum extent permitted by law. The unenforceability of any provision of this Lease will not affect the enforceability of any other provision of this Lease.
- j. Injunctive Relief. The parties acknowledge that monetary damages would be an inadequate remedy for a breach of this Lease and that, in addition to any monetary damages, the parties should be entitled to injunctive relief to enforce those provisions of this Lease.
- k. Mutual Drafting. In interpreting this Lease, the presumption that contracts are to be construed against the drafter may not be applicable. The preparation of this Lease was the result of the mutual drafting of the parties and it may not be construed for or against any party.

IN WITNESS WHEREOF, the parties hereto have set their hands on the dates hereinafter noted.

LESSOR:

**DONO DEVELOPMENT LIMITED
PARTNERSHIP**

By: _____
Peggy Lyn Donofrio Assaly,
General Partner

LESSEE:

**CITY OF KENT –
PARKS AND RECREATION**

By: _____
Name: John J. Idone
Its: Parks & Recreation Director

Date: _____

Date: _____

STATE OF OHIO, COUNTY OF _____, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by Peggy Lyn Donofrio Assaly, as General Partner of Dono Development Limited Partnership as Lessor.

Notary Public

My Commission Expires: _____

STATE OF Ohio, COUNTY OF Portage, SS:

The foregoing instrument was acknowledged before me this 26th day of April, 2013, by John J. Idone, the Parks & Recreation Director for the City of Kent Parks & Recreation Department, as Lessee.

Notary Public

My Commission Expires: _____