

Doug Fox



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

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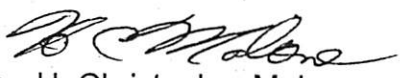
**OFFICE OF
THE GENERAL COUNSEL**

By Facsimile and by Mail

January 26, 2004

MEMORANDUM

To: Eileen Basaman
Assistant County Attorney


From: H. Christopher Malone
Associate General Counsel

Subject: Ground Lease-Germantown Indoor Swim Center

Attached is a fully executed original of the Ground Lease for the Germantown Indoor Swim Center (Attachment). The Commission executed the Ground Lease on December 8, 2003.

Attachment

cc: Mike Riley, Chief, Park Development Division
Rick D'Arienzo, Planner, Park Development Division
Michele Rosenfeld, Associate General Counsel
Mike Little, Park Manager, South Germantown Recreational Park
Marc Atz, Executive Director, Revenue Authority
William Novak, Montgomery County DPWT
James Cumbie, Esq.

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GERMANTOWN INDOOR SWIM CENTER

GROUND LEASE
December 8, 2003
DATED ~~October 27, 2003~~

BETWEEN

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION,
LESSOR

AND

THE MONTGOMERY COUNTY REVENUE AUTHORITY,
LESSEE

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GROUND LEASE

THIS GROUND LEASE (the "Ground Lease") entered into this 8 day of December, 2003, between the MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION, a body corporate and politic and an instrumentality of the State of Maryland ("M-NCPPC"), Lessor, and the MONTGOMERY COUNTY REVENUE AUTHORITY ("MCRA"), (M-NCPPC and MCRA together the "Parties").

RECITALS

WHEREAS, M-NCPPC owns certain real property located in Montgomery County, Maryland known as the South Germantown Recreational Park with a street address of 14501 Schaeffer Road, Germantown, MD 20874 (the "Property"); and

WHEREAS, the Leased Premises is part of the Property owned by M-NCPPC and improved with an athletic complex containing a variety of existing and planned athletic facilities to serve upcounty residents, including a soccer complex, athletic fields, an indoor aquatic facility, and an indoor tennis facility; and

WHEREAS, Montgomery County, Maryland (the "County") has agreed to construct an indoor swim center and parking and other supporting facilities (the "Swim Center") on the portion of the Property that MCRA will lease from M-NCPPC (the "Leased Premises"), and to provide for the maintenance and operation of the Swim Center. The Leased Premises are more particularly shown on **EXHIBIT A**, which is attached to this Lease and incorporated as if fully set forth;

WHEREAS, MCRA will construct and equip the Swim Center on the Leased Premises, including indoor swimming pools, water slides, and shower and changing facilities along with related structures and site improvements to be located on the Leased Premises (the "Project") as described more fully in the project description form attached as **EXHIBIT B** and incorporated as if fully set forth.

NOW, THEREFORE, in consideration of the above recitals and of the covenants and mutual promises contained in this Lease, and of the payment of rent and construction of improvements as required under this Lease, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties mutually agree as follows:

1. RECITALS. The Recitals set forth above are incorporated into this Lease as if fully set forth.

2. PREMISES. M-NCPPC does hereby lease and demise unto MCRA, and MCRA hereby enters into this Ground Lease with M-NCPPC, for the exclusive use of the Leased Premises, together with all easements, rights, provisions, advantages, or appurtenances pertaining or appertaining thereto.

3. TERM. The term of this Ground Lease is twenty (20) years, commencing on the date stated above, and terminating on December 8, 2023 (the "Lease Term"). The Parties may agree to additional terms only in conformance with the provisions Md. Ann. Code Art. 28, §5-110, (1957, 1997 Repl. Vol.), as amended from time to time.

4. RENT. MCRA must pay annual rent of One Dollar (\$1.00) to M-NCPPC for the Leased Premises, for a total rent of \$20.00 during the Lease Term. M-NCPPC hereby acknowledges the receipt and adequacy of the rent from MCRA.

5. USE OF THE PREMISES. MCRA must use the Leased Premises only for the development, construction, equipping, operation, and maintenance of the Project, subject to the provisions of this Ground Lease. M-NCPPC and MCRA agree that the Leased Premises must not be used in any way that would cause the bonds issued by the MCRA to fund the Project to be considered "private activity bonds" within the meaning of §141(a) of the Internal Revenue Code of 1986, as amended, nor take or permit to be taken any other action that would or might adversely affect the excludability of the interest payable on the Bonds from the gross income of the registered owners thereof for federal income tax purposes or impair any collateral securing the Bonds.

6. COOPERATION IN SCHEDULING. M-NCPPC and MCRA agree to cooperate in scheduling events so that there is no conflict between major events to ensure that adequate traffic flow and parking is maintained during any major event. A "major event" is one that is likely to generate excess traffic or parking demands on park resources during a time of normal operation. The hours of operation for the Germantown Indoor Swim Center will be consistent with the hours of operation of other indoor aquatic facilities in the County to permit practice and use of the facilities as appropriate and required by users of the facility.

7. CONSTRUCTION AND IMPROVEMENTS. MCRA is responsible for the design, construction, and equipping of the Project on the Leased Premises. The Project must be designed, constructed, and equipped in conformance with local, State, and federal codes and regulations relating to the design, development, and/or construction of such structures, and as may be required by the Montgomery County Department of Permitting Services and the Office of the Fire Marshal, and the construction permit issued by M-NCPPC.

8. ADMINISTRATION OF THE PROJECT. The Project and the Leased Premises shall be operated under the rules and regulations of the County and M-NCPPC, in accordance with the policies established now or hereafter by the County for the operation of the Project.

9. ALTERATIONS AND IMPROVEMENTS. MCRA agrees to accept the Leased Premises in "as is" condition after the Project is constructed and equipped by the County. Any proposed modifications to the design or configuration of the Project after

initial construction will be submitted to M-NCPPC for review and comment under M-NCPPC's mandatory referral authority in Article 28, §7-112 of the Maryland Annotated Code. Modifications made during routine maintenance or to replace obsolete, worn, or damaged equipment or facilities are not modifications that require approval of M-NCPPC. MCRA must obtain all permits, approvals, and certificates required by law for the construction and occupancy of the Project. All fixed improvements made to the Leased Premises shall, at the expiration or termination of this Ground Lease, remain and be surrendered with the Leased Premises, and thereafter MCRA shall have no further interest in the Leased Premises or the Project.

10. OPERATING EXPENSES AND RESPONSIBILITY. (A) Project.

MCRA must keep the Project in good repair, working order, and operating condition at all times during the Initial Term and any Optional Terms of this Lease. MCRA is responsible for all aspects of the operation and maintenance of the Project. During the term of this Lease, MCRA will pay for the maintenance and repair of the building and equipment, including fixtures, roof, windows, electrical systems, utilities, janitorial services, refuse removal, telephone service, maintenance and repair of heating and air conditioning systems, plumbing systems, pest control, and normal expenses incurred by virtue of the use, maintenance, and operation of the Project. MCRA will collect all user fees in connection with the operations and programs of the Project and any related facilities, and will hire and supervise employees and contractors to operate and maintain the Project, and cooperate with M-NCPPC to provide appropriate safety equipment and personnel for the operation of the Project. All user fees collected by MCRA will be retained by MCRA for the operation of the Project. The Parties agree that MCRA may enter into one or more collateral agreements with other persons or entities to provide services necessary for the operation and maintenance of the Project.

(B) Leased Premises. During the Lease Term, MCRA will keep the Leased Premises in good condition and will maintain the building, equipment, parking lot, green space, sidewalks, landscaping and grounds upkeep, cleaning and refuse removal, exterior lighting, snow and ice removal, and other work necessary to operate and maintain the Leased Premises in a commercially reasonable manner.

11. LIABILITY, PROPERTY DAMAGE, AND FIRE INSURANCE. MCRA will maintain liability insurance, with bodily injury limits of not less than Two Hundred Thousand Dollars (\$200,000) for an accident or death to one person, and not less than Five Hundred Thousand Dollars (\$500,000) for bodily injury and property damage for each occurrence during the Lease Term. MCRA reserves the right to self-insure.

12. EMINENT DOMAIN; DESTRUCTION OF PREMISES. A) If all of the Leased Premises shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, then the term of this Ground Lease shall cease as of the day possession shall be so taken. If less than all of the Leased Premises shall be taken permanently, or if all of the Leased Premises or any

part thereof shall be taken temporarily, under the power of eminent domain, then this Ground Lease shall continue in full force and effect and shall not be terminated by virtue of such taking, and the parties waive the benefit of any law to the contrary.

(B) In the event that the Leased Premises or the Project is destroyed or damaged from whatever cause so as to render all or a substantial portion of the Leased Premises or the Project unfit for the purposes for which the Leased Premises are subleased and the Project is leased to MCRA under the Lease Agreement, and sufficient monies are available from insurance proceeds and other funding sources to reconstruct the Leased Premises and the Project in accordance with the Lease Agreement, then this Ground Lease shall not terminate but shall continue in full force and effect.

13. DEFAULT. In the event of a monetary default by MCRA under this Lease which results in the termination of MCRA's right to possess the Leased Premises and the Project, M-NCPPC shall have the right to sublease the Leased Premises, without the consent of MCRA, to a new operator of the Project or, at its option, to operate the Project itself; provided, however, that nothing herein contained shall be construed to permit M-NCPPC to take any action that would or might cause the Bonds to be "private activity bonds" within the meaning of § 141(a) of the Internal Revenue Code of 1986, as amended, nor take or permit to be taken any other action that would or might adversely affect the excludability of the interest payable on the Bonds from the gross income of the registered owners thereof for federal income tax purposes.

14. ASSIGNMENT. MCRA must not assign its rights under this Ground Lease without the prior written consent of M-NCPPC, which consent shall not be unreasonably conditioned, delayed, or withheld; provided, however, that nothing in this Paragraph 13 shall be construed to prevent MCRA from assigning this Lease or from transferring its responsibilities under this Lease to the County or any agency or any instrumentality created by the County for the purpose of owning and maintaining public facilities for the benefit of County residents.

15. LIENS AND ENCUMBRANCES. MCRA must not permit any liens to stand or be maintained against the Leased Premises for any labor or material furnished to MCRA in connection with any work performed upon the Leased Premises by or at the direction of MCRA. In the event any mechanic's or materialmen's lien or other such lien is filed against the Property due to any act or omission, or alleged act or omission, of MCRA, then MCRA shall cause the same to be discharged of record or bonded at its expense within thirty (30) days after notice to MCRA of the filing of any lien.

16. SURRENDER OF POSSESSION. MCRA will, at the expiration or sooner termination of this Ground Lease, yield the Leased Premises and all improvements on the Leased Premises to M-NCPPC in broom clean condition together with all keys, locks, and other personal property affixed to the Leased Premises.

17. HOLDOVER. In the event that MCRA continues to occupy the Leased Premises or any part thereof after the expiration or sooner termination of this Ground Lease, the tenancy created by such holding over shall be deemed to be upon a month-to-month tenancy and may be terminated by either party giving the other not less than thirty (30) days' written notice, to expire on the first day of the month next succeeding the expiration of such thirty-day notice period. During any such month-to-month tenancy, both parties shall continue to perform and observe all agreements and covenants contained in this Ground Lease on its respective part to perform and observe.

18. QUIET POSSESSION. M-NCPPC covenants and agrees that MCRA shall, at all times during the Lease Term, and so long as MCRA is not in default under the terms of this Lease, have the peaceable and quiet enjoyment and possession of the Leased Premises for the purposes for which it leases the Leased Premises.

19. COMPLIANCE WITH LAWS. The Parties will comply with all applicable federal, state, county, and local laws and regulations during the Lease Term.

20. BENEFIT AND BURDEN. This Ground Lease is and shall be binding upon, and shall inure to the benefit of, the Parties, their successors and assigns.

21. WAIVER. No waiver of any breach of any covenant, condition, or agreement herein contained shall operate as a waiver of the covenant, condition, or agreement itself or of any subsequent breach thereof.

22. GOVERNING LAW. This Ground Lease shall be governed by and construed in accordance with the laws of the State of Maryland, and may be enforced only in a court of competent jurisdiction located in Montgomery County, Maryland.

23. COUNTY ETHICS LAWS. (A) Montgomery County Code, (1994), as amended, § 11B-51(a), provides that a bidder, offeror, or contractor must not make or offer to make a gift to a public employee which the public employee is prohibited from accepting under Chapter 19A of the Montgomery County Code.

(B) Montgomery County Code, (1994), as amended, §11B-51(b) provides that it is unlawful for any payment, gift, or benefit to be made by or on behalf of a contractor, subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a prime contract, subcontract or order.

(C) Montgomery County Code, (1994), as amended, §11B-52(a) provides that, unless authorized by law, it is unlawful for any person transacting business with the County to employ a public employee (as defined in §19A-4(m)), for employment if the duties of the public employee include significant participation in the procurement matter.

24. NON-DISCRIMINATION. The Parties agree to abide by the provisions, as presently in effect or hereafter amended, of §11B-33 and §27-19 of the Montgomery County Code (1994), as amended, as well as all other applicable State and federal laws and regulations regarding employment discrimination. In accordance with applicable law, the Parties each represent that it does not, and each agrees that it will not, discriminate in any manner on the basis of age, color, national origin, race, creed, religious belief, gender, sexual preference, genetic status, or disability.

25. SEVERABILITY. In the event that any provision of this Ground Lease is deemed invalid, illegal, or unenforceable, such provision shall be considered severable, and the balance of this Ground Lease shall remain in force and be binding upon the Parties as if such provision had never been included.

26. FURTHER ASSURANCES. The Parties agree that they will, from time to time, take such further action and shall execute and deliver such further instruments or agreements as may be required and permitted by law for carrying out the intention of the Parties to, or facilitating the performance of, this Ground Lease.

27. EXHIBITS INCORPORATED INTO THIS LEASE. The Exhibits to this Lease are fully incorporated into this Lease as if they were set forth in full in the body of this Lease.

28. ENTIRE AGREEMENT. This Ground Lease and the Exhibits constitute the entire agreement of the Parties with respect to this Lease. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the Parties with respect to the Lease of the Leased Premises and the construction of the improvements other than as set forth in this Lease.

29. AMENDMENT. This Lease may only be amended by a written amendment executed by the Parties with all of the formalities of this Lease.

30. MAILING NOTICES. All notices required to be given under this Lease must be given in writing sent, and all payments required under this Lease must be made, by certified or registered mail, first-class postage and other fees prepaid and with return receipt requested, and shall be deemed to be effective when received (as evidenced by the return receipt) or refused by the addressee. Notices, or payments made, to a party shall be addressed and delivered to the other party as follows:

If to M-NCPPC, to:

Maryland-National Capital Park &
Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910
Attention: Chairman

with a copy that does not constitute notice
to:

Office of the Montgomery Regional
Counsel
8787 Georgia Avenue
Room 205
Silver Spring, MD 20910
Attention: Principal Counsel

If to MCRA, to:

MONTGOMERY COUNTY REVENUE
AUTHORITY
101 Monroe Street, 4th Floor
Rockville, Maryland 20850
Attention: Director

with a copy that does not constitute notice
to:

Office of the County Attorney
Executive Office Building, 3rd Floor
101 Monroe Street
Rockville, Maryland 20850
Attention: County Attorney

Either party may change its mailing address by giving notice thereof to the other in the manner set forth in this Paragraph 28.

31. LIMITATION OF LIABILITY. No covenant, agreement or obligation contained in this Lease shall be deemed to be a covenant, agreement or obligation of any present or future official, officer, employee or agent of MCRA or M-NCPPC in his or her individual capacity, nor shall any official, officer, employee or agent of MCRA or M-NCPPC incur any personal liability with respect to any other action taken in good faith pursuant to this Ground Lease.

32. SUBJECT TO APPROPRIATION: All monetary obligations of the County under this Lease are subject to appropriation by the Montgomery County Council.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Lease under seal, intending that the Lease be under seal, on the date and year first written above.

WITNESS:

MARYLAND-NATIONALCAPITAL
PARK AND PLANNING COMMISSION

Patricia A. Hargrave
Secretary-Treasurer

By: Trudy Morgan Johnson (SEAL)
Executive Director

Approved as to form and legality:

Approved as to legal sufficiency
C. Malone
M-NCPPO Legal Department
Date 11/24/03

By: _____
Date: _____

WITNESS:

MONTGOMERY COUNTY REVENUE
AUTHORITY

Gayle Jamison

By: Marc Atz (SEAL)
Executive Director

Approved as to Form and Legality
by the Office of the County Attorney:

By: Eileen D. Bassner
Date: 10/15/2003

STATE OF MARYLAND)
Prince George's) SS:
COUNTY OF MONTGOMERY)

On this 8 day of December, 2003, before me, the undersigned officer, personally appeared Trudye Morgan Johnson, Executive Director of the Maryland-National Capital Park and Planning Commission, known to me to be the person whose name is subscribed to the within instrument and acknowledged that she as such Executive Director executed the same for the purposes therein contained, and further acknowledged the foregoing Lease to be the act of the Maryland-National Capital Park and Planning Commission.

WITNESS my hand and official seal.

(SEAL)

My Commission Expires:

August 1, 2006

Mechelle Myers
Notary Public

STATE OF MARYLAND)
) SS:
COUNTY OF MONTGOMERY)

On this 27th day of October, 2003, before me, the undersigned officer, personally appeared Marc Atz, Executive Director of the Montgomery County Revenue Authority, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he as such Executive Director executed the same for the purposes therein contained, and further acknowledged the foregoing Lease to be the act of the Montgomery County Revenue Authority.

WITNESS my hand and official seal.

(SEAL)

My Commission Expires:

May 1, 2006

Gayle Jamison
Notary Public

ATTORNEY'S CERTIFICATION

THE UNDERSIGNED, an attorney admitted to practice before the Court of Appeals of the State of Maryland, hereby certifies that the within instrument was prepared by her or under her supervision.

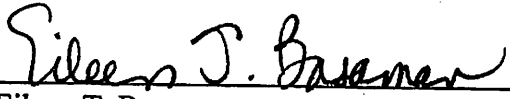

Eileen T. Basaman

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

LEASE PARCEL

**DESCRIPTION OF A
PORTION OF THE PROPERTY OF
THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION
LIBER 3585 FOLIO 228
6TH ELECTION DISTRICT
MONTGOMERY COUNTY, MARYLAND**

BEING PART of the property acquired by the Maryland-National Capital Park and Planning Commission from Sam Eig et al by deed dated January 10, 1967 and recorded in Liber 3585 at Folio 228 among the Land Records of Montgomery County, Maryland, and being more particularly described as follows:

BEGINNING for the same at a point on the northerly line of Central Park Circle and having a Maryland State Grid (NAD83) coordinate of North 540, 764.05 and East 1,226,170.30; thence running with the northerly line of said Central Park Circle the two (2) following courses and distances

- 1.) South 52° 55' 57" West, 408.32 feet to a point; thence**
- 2.) South 53° 56' 38" West, 132.55 feet to a point; thence**
- 3.) North 37° 02' 38" West, 389.63 feet to a point; thence**
- 4.) North 52° 57' 22" East, 171.56 feet to a point; thence**
- 5.) North 56° 33' 04" East, 79.58 feet to a point; thence**
- 6.) North 52° 57' 22" East, 289.87 feet to a point; thence**
- 7.) South 37° 02' 37" East, 386.76 feet to the point of beginning containing 210,137 square feet or 4.82408 acres of land**

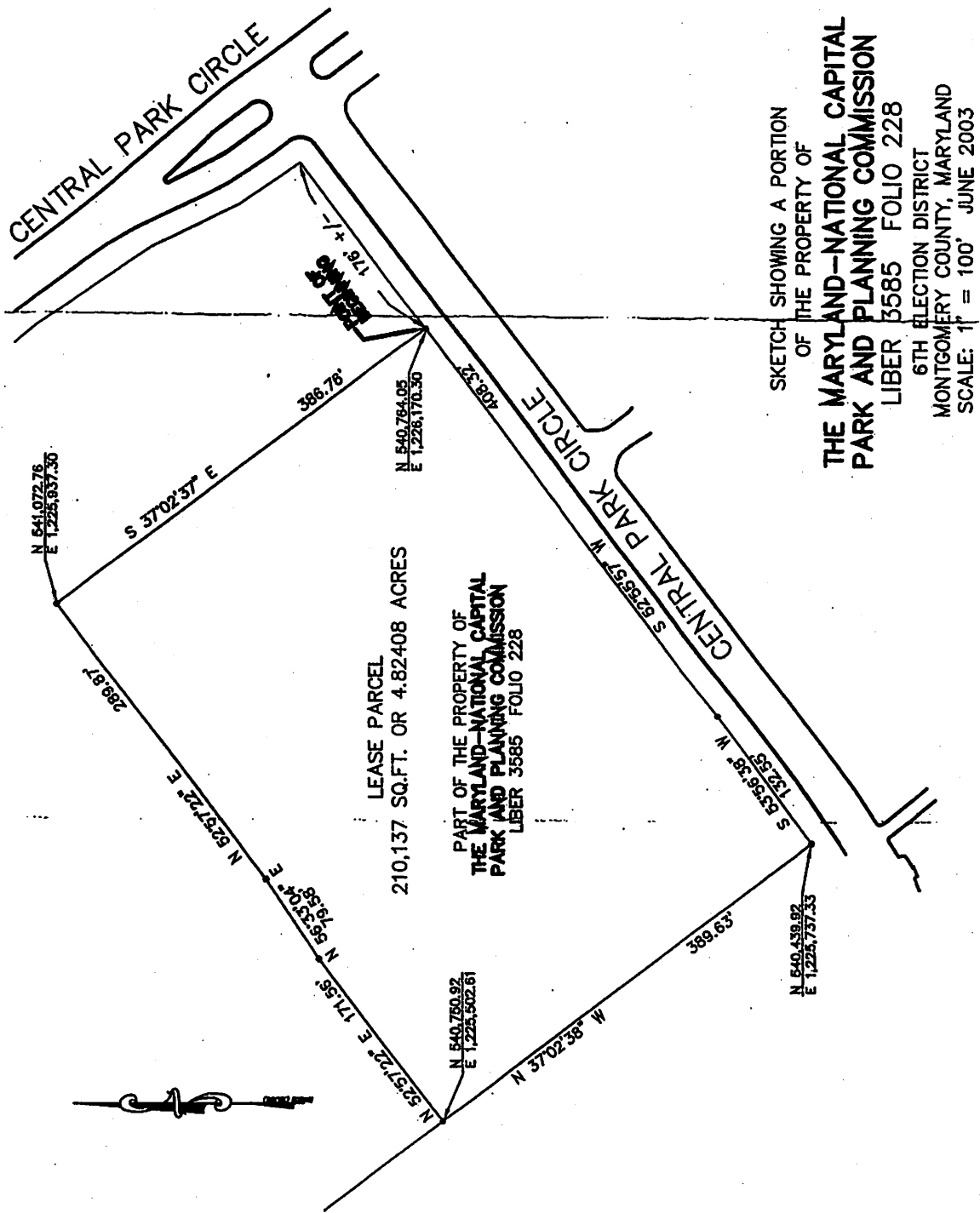


EXHIBIT B

DESCRIPTION OF PROJECT

This Project, located in Montgomery County, Maryland known as the South Germantown Recreational Park with a street address of 14501 Schaeffer Road, Germantown, MD 20874, is for the design and construction of an indoor aquatic facility to serve swimmers of all ages and abilities. The facility will include a competition pool, a recreation pool and a leisure pool. The competition pool will be 25 meter (8 lanes) long by 25 yards (10 lanes) wide. It will include a dive tower containing 5 meter, 7.5 meter and 10 meter platforms. The recreation pool is for instruction, recreation activities, water exercise, and lap swim. The leisure pool is to be used as a water playground for use by small children. It is configured as a free form pool to accommodate various activities within and around the pool. There will be two separate hydrotherapy pools. One will be located next to the leisure pool and the second next to the recreation pool. A coed sauna will be located on the pool deck. Size of the facility will be approximately 60,000 gross square feet.

The facility will include other service areas such as administrative offices, multi-purpose instruction rooms, party room, exercise room, lobby, vending area, public spaces, locker/shower rooms, rest rooms, and support areas. The site amenities will include parking, drop-off, service areas and plantings. A fenced sun deck may be provided if funds allow.