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Executive Summary

The market is clearly ripe for the construction of an ice skating rink in Novi. Over the past five years, figure skating in Michigan has grown at an average rate of 7.4%. Hockey, fueled partly by the interest in in-line skating is on a long term growth spurt. Currently, the growth rate for hockey is 12.2% a year, 15% - 31% is states where ice time is available, but lower in established markets where thousands of children are being turned away at the door for lack of ice time. Michigan, one of the nations largest hockey states, is one of those states with a severe shortage of ice time. The opening of four new sheets of ice in Detroit accommodated only a 9.5% growth, well less than the real demand. Mt. Clemens's new rink immediately created a new program filling two surfaces. Detroit Skating Club added a third rink, and now wants a fourth, and City Sports Center in downtown Detroit is filled by children in Grosse Pointe and St. Clair Shores, 8-25 miles away. The new rinks are open in Farmington Hills and start with a full program of 1000 hockey players having turned away 300 who they could not accommodate. Today 110 Novi residents are enrolled in the Farmington Hills Hockey program however within two seasons, it is anticipated that Farmington Hills will need all its ice time just to meet the needs of its citizens.

The following documents establish **Community Clubs of Novi**, a private non-profit corporation with trustees appointed by the Mayor and City Council. Community Clubs will lease land from the City and finance the construction of a new, state-of-the-art double ice skating rink. Center Ice Management, Inc. will design and build the facility for Community Clubs, and will manage it for the initial three to five year period. The result is a public/private partnership to bring to the citizens of Novi, badly needed ice skating facilities of the highest quality where the private market will bear all the risks associated with financing the facility, while all "profits" from the operation of the facility will accrue to the community.

Community Clubs of Novi

Community Clubs of Novi a Michigan non-profit corporation, (established as Community Clubs of Michigan, but to be renamed upon approval of this contract) has been established to develop, own and manage the facility. The Mayor and City Council of Novi will appoint all the Trustees, except for one Trustee designated by the developer/manager, and this Board of Trustees will have complete control over the facility subject to agreements with the City outlined in the Ground Lease.

Project Finance

As a non-profit Corporation, eligible for tax treatment by IRS under section 501(c)(3), Community Clubs will be able to finance 100% of the costs of the project through the issuance of tax-exempt revenue bonds secured solely by the rink and the assets of the non-profit corporation. Neither the City of Novi nor Center Ice will bear any responsibility nor risk association with these borrowings. In order to qualify under 501(c)(3), Community Clubs must be judged to be either an educational or philanthropic organization, or to be one which is "relieving the burdens of government." To qualify under this last criteria, the City must recognize that provision of such skating facility is one which it considers a worthy burden. Such recognition should be included in any approving resolution, and is inherently recognized by the provision of the land for the site, by the fact that ownership of the facility will revert to the City once the ground lease expires, and by the ongoing participation of the Mayor and City Council in appointing the Board of Trustees.

I: Development Agreement

The entire development process is controlled by a tri-party Development Agreement between the City of Novi, Community Clubs of Novi and Center Ice Management, Inc. Center Ice will act as developer, will obtain financing, organize programs, prepare feasibility studies, and will build a "turn-key" facility delivered to Community Clubs ready to operate. Community Clubs will lease the site from the City and will operate the facility to benefit the community with all profits being plowed back into programs for Novi residents. This Development Agreement sets the terms and conditions under which the parties will cooperate including the Ground Lease (Exhibit "A"), the Design-Build Construction Contract (Exhibit "C-1") including the Architectural Contract (Exhibit "C-2"), and the Management Agreement (Exhibit "D"). The development agreement also provides for Center Ice and the City each to make short term loans to Community Clubs, in amounts not to exceed $100,000, for the purpose of financing the predevelopment costs. Upon receipt of financing, Center Ice and the City will both be repaid in full, including interest at the rate of 7% per annum. In the event that the project turns out not to be feasible, or of if the City of Novi decides to back out of the project, the parties will each lose the money they had loaned to Community Clubs.

II: Ground Lease - Exhibit "A"

Upon receipt of financing and approval of plans, a Ground Lease will be provided by which Community Clubs leases from the City, the site for the facility. The term of the lease will be twenty years with ground rent beginning at $50,000 per year, and escalating pro rata to the Consumer's Price Index. At the termination of the Lease, ownership of the facility will revert to the City. The "net present value" of these payments over the twenty year term is equivalent to a purchase price of approximately $600,000 or $63,000 per acre. At such a price, hockey and figure skaters are truly paying 100% of the costs of their programs, with no public support. The ground lease specifies that the site must be used for a skating rink and prevents the facility from being converted to industrial or any other purpose other than the community use specified. This lease, and the City's appointment of Trustees to Community Clubs assures that any surpluses (profits) from operations be used for the benefit of the local community. Such surpluses, which are projected to exceed $300,000 per year, may be used to provide scholarships for skaters who otherwise may not be able to afford to participate, to underwrite the general costs of youth programs, to subsidize special educational programs, to fund development costs for other programs, or to expand or to build new facilities. In order to provide assurance to creditors of Community Clubs, the Ground Lease specifies that in the event that the funds from operations are inadequate to pay expenses and debt service, under supervision of a City named auditor, the City will agree to temporarily delay collection of some or all of its ground rent until such expenses can be paid.

III: RFP Proposal - Exhibit "B"

This document is the submission of Center Ice, submitted last year to the Recreation Department in response to its request for proposals to build and operate a skating rink in the city. This document is referenced in the Development Agreement to establish an indication of the intent of the parties in the case of disagreement among the parties.

IV: Design-Build Agreement - Exhibits "C-1" and "C-2"

Center Ice is to design and deliver to Community Clubs a "turn-key" facility, ready to operate, for a price based on competitive bids and a fixed overhead and profit. The **Standard Form of Design-Build Agreement and General Conditions Between Owner and Contractor,** Exhibit "C-1" sets the terms for this agreement. During the initial period, Center Ice's architect will work with the City to accommodate its needs in the design, to finalize the site plan, to resolve zoning issues, and will work with Center Ice's contractor to value-engineer the building. The conclusion of this phase will come with agreement by all parties on the form and design of the building, site plan and zoning approvals, and agreement on a Guaranteed Maximum Price based on the actual construction costs, as determined by competitive bidding, with a 7.0% mark-up for contractor's overhead and profit. The GMP once established, will be entered onto "Amendment No. 1" and made a part of this contract. With a GMP, the City and Community Clubs are assured that, absent any alterations in the building requested by the customer, the contractor will guarantee that any savings in construction will benefit the customer, while the cost of the building will not exceed the agreed upon GMP.

As part of the Design-Build Agreement, ArchEnomics Associates, Inc., the architect will be retained by Center Ice, with the fee added to the cost of the project. A copy of the **Standard Form of Agreement Between Contractor and Architect/Engineer for Design-Build Projects** with a fee fixed at 5% of project costs has been agreed to and is included in the documents.

V: Management Contract - Exhibit "D"

This contract between Community Clubs and Center Ice specifies Center Ice's responsibilities and compensation for two phases of activity; for 1) its responsibilities as developer during the design and construction period, and 2) its responsibilities as manager during the first 3-5 years of operation.

As developer employed by Community Clubs under Sections 1-3 of the contract, Center Ice has negotiated these agreements, has established the Corporation and worked with IRS to obtain approval for tax treatment under Section 501(c)(3). It must work to coordinate the architect and contractor in the design and pricing of the facility. Along with their broker-dealer, Center Ice must obtain financing, plan and sell the tax exempt revenue bonds, coordinate the project with the City, with Community Clubs, and with the general public, and must develop programs to utilize the facility once it is completed, prelease ice time, determine business costs such as for hiring and training staff, pre-opening promotions, and etc.

Under Section 7, Center Ice will be paid $25,000 for the feasibility study which is necessary to finance the project, plus hourly fees for its other development services prior to the facility opening for business. Hourly fees are set at 2.5 times direct payroll expenses, or $95.00 per hour for Terry Seyler.

Under Section 4, as manager of the facility after opening, Center Ice will be responsible to hire, train and supervise the staff, to market ice time, to supervise maintenance of the facility, to assist organizing youth hockey and figure skating programs, and to establish and maintain accurate financing reporting systems. While most rink managers just lease ice time to independent organizations who operate hockey and figure skating programs, we intend also to supervise the promotion and organization of youth hockey and figure skating programs. We have several reasons for this. First, unlike most other programs which claim exemption but which are inadequately managed and risk audit and disallowal of tax-deductibility of prior contributions, Community Clubs will be a certified 501(c)(3) program. Second, we do not want to take the risk that volunteers will be found with the necessary experience and expertise to found sound, local programs which can guarantee necessary skaters from day one to carry the costs and debt service. With our expertise, Community Clubs will have the capital and time to bring in the people necessary to promote programs, train coaches, managers and league officials, to build programs from scratch, and to develop self-governing youth hockey and figure skating structures which can grow to assume control of their programs. Finally, we will be able to simplify administration of these programs. Families will be able to use Master Charge or Visa accounts to pay for ice bills, instruction, dues or team expenses, and we can better control the allocation of ice time. Independent associations have to contract ahead for their ice time; they then divide up what ice time they have reserved among whomever shows up. This works all right with established leagues with unlimited applicants; for our new program, we must have closer control over registration and ice allocations to assure that any ice time we cannot utilize in our own youth programs is quickly reallocated to other, paying customers.

As compensation for managing the facility, Section 8 establishes that Center Ice will be paid a base fee of $6,000 per month, plus an incentive for maximizing ice sales, of $4.00 for each hour of ice sold. Under Section 8(d), Should Community Clubs get involve in operating programs other than youth hockey and youth figure skating programs, Center Ice will be paid an "additional compensation" equal to 5% of such program revenue. An example of such other programs might be a summer hockey camp organized and run by Community Clubs; were the ice time leased out to a private school however, no administration fee would be paid.

The term of the contract is five years, with an option for Community Clubs to terminate after three years with no penalty. Fees over that term will escalate based on cost of living. In the event of maleficence or misfeasance, or should we fail to make revenue projections, there are options for termination prior to the expiration of the normal term.

VI: Site Plan - Exhibit "E"

A preliminary site plan has been prepared and submitted. It is understood by all concerned that this plan has to be reviewed in the context of any possible extension plan for Taft Road, and coordinated with other uses of the park site. Should Taft Road extend through this site, or should other uses be imminent, all concerned would welcome the opportunity to provide common access and to coordinate the layout of the various uses.

VII: Preliminary Project Budget - Exhibit "F"

A preliminary budget of predevelopment expenses has been provided. Since Architectural fees will be based on the GMP, which has yet to be determined, a budget for the initial phase has been agreed upon, with the understanding that once the final GMP is established, appropriate adjustments will be made. Likewise legal and development fees will be determined as we go along and as governed by the Development Agreement, so we have budgeted and agreed upon these fees with similar adjustments to be made once the actual amounts are determined.

VII: Revised Articles of Incorporation of CCofN

Community Clubs was founded as Community Clubs of Michigan so that application for exemption under IRS article 501(c)(3) could be obtained. IRS approval is currently pending awaiting evidence of the City's participation in the venture. Upon approval of these contracts, the name and Articles of Incorporation will be amended as per this document. The articles specify important limitations which are required by IRS for 501(c)(3) approval. 1), the purposes of the corporation will be limited to appropriate activities, 2) the Mayor and City Council appoint a controlling number of the Board of Trustees (all but one Trustee appointed by the manager) and 3), upon dissolution of the corporation, all assets will revert to the City or will be distributed to another eligible 501(c)(3) organization.

VIII: Proposed By-Laws of CCofN

The By-Laws govern the structure of the organization, the number of Trustees, the responsibilities of the officers, etc.

Summary of Fees & Charges by Center Ice

Compensation under Article 7 of the Design-Build Contract includes:

1) Costs as defined in Design-Build Contract (AGC No. 410), Article 8, including but not limited to:

- Architectural & Engineering Services specified as $112,000 for design phase services (Article 7.2.2) and 5.0% of building costs as the total cost of design phase and construction phase activities (not including reimbursable expenses or changes requested by owner). These contract amounts are set by the Architect's contract with Center Ice, Exhibit "C-2".
- Surveys & Impact Studies
- Wages & Labor directly related to performance of work: includes tradesman, foremen, labor and clean-up, clerical and timekeepers (on site), review of shop drawings and project accounting (off site).
- Materials, equipment rentals and subcontracted work.
- Temporary storage of materials, security, temporary site offices, power and light, insurance premiums, taxes and fees, project clean-up.

2) Fee of Seven (7.0%), of costs, Article 7.3.1, includes contractor's compensation for its overhead and profits including:

- Value engineering services provided to Architect & Engineers.
- Contractors risks associated with its guarantee of GMP price.
- Bidding the project.
- Selection of suppliers through bidding process.
- Scheduling the work.
- Contractor's expertise to organize and manage construction activities.
- Coordinating and selection of tradesman and installers of equipment.
- Verification of work performance and correspondance with billings.
- Provision of warranties and guarantees.
- Contractor's profit and overhead.

Compensation under Management Contract includes:

1) Development Activities compensated pursuant to Section 7, at hourly rates plus reimbursement pursuant to responsibilities of the Management Contract, Sections 1, 2, and 3 (prior to opening day), including but not limited to:

- Preparation and negotiation of contracts between City, Community Clubs and Center Ice.
- Obtaining building permits and approvals

- Organization of, and obtaining IRS approvals for Community Clubs
- Feasibility Study ($25,000)
- Work obtaining financing (Except preparation of GMP)
- Coordinating work of Contractor and Architect with City, Community Clubs and project finance.
- Pre-lease ice time
- Organize youth hockey, youth figure skating, adult hockey, and skating instruction programs.
- Hire and train employees of facility (zamboni drivers, bookkeeper, maintenance person, assistant managers.)
- Establish bookkeeping and computer systems
- Advertising and promotion of rink within local market
- Sale of rink advertising
- Lease pro shop
- Organize food service or lease food service concession

2) Management Activities compensated pursuant to Section 8, by $6,000 monthly fees plus $4.00 Per hour ice utilization fee, for activities specified in the Management Contract, Section 4 (after opening day), including but not limited to:

- Hire and supervise operating personnel
- Establish and supervise operating, maintenance and other programs
- Supervise leasees and concessionaires
- Supervise (work with) youth hockey and youth figure skating programs (committees).
- Lease on and off ice facilities on hourly basis to third party users
- Supervise promotion and advertisement of facility and programs
- Establish and maintain financial record keeping & reporting systems

3) Management Activities compensated under Section 8(d) "additional compensation," 5.0% of fees for activities listed in Section 5 (after opening day), including but not limited to:

- Plan and manage food service (if food service not leased to concessionaire).
- Organize and supervise adult hockey program (if adult hockey is not leased to third party organizer)
- Organize instruction programs (if such programs are not provided by independent contractors leasing ice time from clubs)
- Organize tournaments or other fund raising events which gain income above and beyond ice rental fees.
- Organize other programs and events such as school nights or teen nights, exercise classes, which events and programs utilize the facilities generating income beyond ice rental fees. Does not include casual rentals of off ice facilities to third party operators who organize and promote such events.

Skating Rink Development Agreement

This Agreement, made this ______ day of _______, 1995, by and between **The City of Novi,** a Michigan municipal corporation having its address at 45175 West Ten Mile Road, Novi, Michigan 48375, referred to as "City", "Landlord" or "Lessor", **Center Ice Management, Inc.**, a Michigan Corporation having its address at 2190 E. Jefferson Ave., Rear Suite, Detroit, MI 48207-4208 referred to as "Center Ice", "Developer", and **Community Clubs of Novi, Inc.**, a Michigan Non-Profit Corporation having its address 45175 W. Ten Mile Rd., Novi, Michigan 48375, referred to as "Community Clubs", Tenant" or "Lessee".

Recitals

Whereas the City of Novi, has acquired property on the north Side of Twelve Mile Road, west of Dixon Road, for the purpose of public use as park space ("Property");

Whereas the City has not yet prepared final plans for the full use of the entire park property;

Whereas the City has determined that it desires to have built upon a portion of the property, a double surface ice skating rink to specifications approved by the City and for the benefit of Citizens and guests of the City;

Whereas the City has determined that it is in the best interests of the community that such Arena be built and operated financially independent of the City and public revenues, and that it is in the best interests of the community to lease a portion of the property (the "site") to a private, non-profit organization which would be responsible to build and to operate the facility for not less than twenty years,

Whereas Community Clubs of Novi, Inc., is a non-profit corporation newly formed specifically to build and own community-oriented recreational facilities to be located in, and serving the people of the City of Novi, and is interested in building and operating the proposed facility;

Whereas Center Ice Management, Inc. is a consultant to Community Clubs, and in response to a Request For Proposals from the City Purchasing Department, has prepared and submitted preliminary plans for the design, finance, construction and operation of such Arena on behalf of Community Clubs, and that such Proposal has been selected by the City for implementation;

Whereas before construction can start, a number of conditions must be met including agreement among the parties as to the final design of the building, a determination of the availability of public utilities to service the site, a determination of the buildability of the site, agreement on a final site plan, a rezoning of the parcel or other amendment of the Novi Zoning Ordinance to permit construction of the Arena, site plan approval by the City of Novi Planning Commission, approval by the Novi Building Department of a building permit, receipt of a feasibility study endorsing the economic feasibility of revenue bond financing in sufficient amount to finance 100% of the cost of the project, and the successful marketing and sale of revenue bonds in the required amount; and

Whereas the parties desire to set forth the terms and conditions under which they can each go forward with the planning, execution, and satisfaction of these precedent conditions, comfortable in the knowledge that upon successful completion of the precedent requirements, that a ground lease will be executed by the City and Community Clubs so that Community Clubs will be permitted to build and operate the proposed Arena,

Now, Therefore, in consideration of the mutual covenants contained herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

Article I
Ground Lease Terms

The City of Novi and Community Clubs, upon satisfaction of the Conditions Precedent in Article X and Article XI respectively, at a time of closing as determined in Article VI herein, will enter into a Ground Lease in the form of the attached Exhibit "A", whereby Community Clubs will lease the site from the City for a period of not less than twenty years, under the terms and conditions as listed herein.

A. <u>The Site</u> The site shall be approximately 15.35 acres consisting of two pieces described as Parcel "A" and Parcel "B" depicted on the attached Exhibit "E". In the event that the City provided alternative direct access to the site by either the construction of an access road providing general access to the City's park property, or by constructing an extension to Taft Road which abuts Parcel "A" allowing accessway to the site and parking areas as they have been developed, then within a reasonable time to permit Tenant to construct a new entrance way, Tenant shall vacate Parcel "B" and that area will be deleted from this Lease. This deletion of Parcel "B" from the Lease shall not result in a modification of the rental payments provided under the Lease.

B. <u>Permitted Improvements</u> Community Clubs will be required to build on said Site, a double rink, ice skating facility as described in the plans and descriptions contained in the proposal from Developer dated May 26, 1994 and submitted to the City of Novi, Parks and Recreation Department, pursuant to a request for proposals from the Novi Purchasing Department (Exhibit "B" Attached hereto). It is understood and agreed that the building improvements will comply to all codes and ordinances of the City of Novi and the State of Michigan, and that alterations to the submitted plans reasonably necessary to be made in order to for the improvements to conform to these codes and ordinances shall be permitted.

C. <u>Site Maintenance</u> Community Clubs will be responsible to maintain that portion of the Site utilized for the building, for access roads and walkways, for parking or loading, for signs, storage or exposed utilities, or for installed or required landscaping directly related to any of those elements. The parties anticipate that the City will develop other portions of the property abutting the Site for park and recreation purposes.

Article II

Center Ice's Obligations

A. <u>Meet with City</u> Developer shall conduct whatever meetings as may be necessary, with representatives designated by the City of Novi, to determine the needs and desires of the City and shall use its best efforts to determine if and how those items can best be satisfied within the scope and intention of the plans contained in Exhibit "B."

B. **Preparation of Plans** Developer shall obtain Architectural plans and specifications, including site plans, building floor plans, and building elevations conforming to Exhibit B, incorporating alterations as reasonably necessary to meet the City's needs and desires, and shall submit those plans to the City of Novi Department of Parks and Recreation for its approval, and to the City of Novi Planning Commission for site plan approval, making alterations as necessary to obtain required approvals. Upon receipt of said approvals, Developer shall complete final building plans, submitting same for approval by the Department of Parks and Recreation, and to the Building Department in application for a building permit.

C. **Feasibility Study** Developer shall prepare, or obtain, a feasibility study satisfactory to the investment banker chosen by Developer to be responsible for the sale of the tax exempt revenue bonds, demonstrating the economic results of the proposed skating arena.

D. **Project Budget** Based on site and building plans approved by the City, and consistent with the facility described in the feasibility study, Developer shall prepare a firm Project Budget, including all hard and soft costs; a design-build "turn key" construction price, including all equipment and furnishings, a budget for start up training and initial operating reserves, and whatever reserve for debt service as may be required by the revenue bond sales agent. Such Project Budget to be reviewed and acceptable to the City.

E. **Project Finance** Developer is to obtain firm commitment for funds from tax exempt revenue bonds to be issued by Community Clubs, sufficient to pay all costs included in the project budget.

F. **Finance of Initial Costs** Center Ice shall be responsible to provide interim financing for one half of the costs of those project development expenses expected to be incurred prior to the receipt of revenue bond financing, in a total amount not exceeding $100,000, and distributed to

Community Clubs pari passu with a like loan disbursement from the City of Novi, and which are specified in the project development budget attached hereto and labeled Exhibit "F". The contribution of Center Ice may be provided in the form of valuable services pursuant to a Management Agreement (Exhibit "D" attached hereto) or Design-Build Agreements (Exhibit "C-1" and "C-2" attached hereto). From time to time, Center Ice shall submit to Clubs, invoices for services and reimbursable expenses. After adjusting said invoice for any other credits or charges which might be added to, or deducted from project costs, Clubs will pay Center Ice fifty percent of the total adjusted invoice, and the unpaid balance will be credited to Center Ice as its required loan contribution.

In the event that it should become necessary to incur initial development costs in excess of the funds available to Clubs, with the prior consent of the City, Center Ice may, (but shall not be obligated to) increase its loan contribution to fund such necessary costs. Upon receipt of project financing from the sale of revenue bonds, Community Clubs shall reimburse Center Ice for 100% of its loan contribution, including interest at the rate of 7.0% per annum.

Article III
Community Clubs' Obligations

A. **Board of Trustees** Community Clubs of Novi will form an initial board of Trustees with full authority to oversee the operation and financial affairs of the Arena and its related businesses, consisting of a representative of Developer, and not less that nine other persons who shall be appointed by the City of Novi.

B. **Tax Exempt Certification** Community Clubs shall submit an application and take whatever actions as may be necessary to obtain approval expeditiously from the United States Internal Revenue Service as a 501(c)(3) tax exempt organization.

C. **Financial Organization** Community Clubs shall establish such accounting procedures and policies to assure that any "profits" or surplus cash flow from the operations of the Novi

Arena, after establishment of prudent reserves for repair and replacement, are invested or spent for the benefit of the local Community, including but not limited to the Citizens of Novi.

D. **Project Construction Contract** Community Clubs shall immediately enter into a contract with Developer, in the form of AGC Document 410, *Standard form of Design-Build Agreement and General Conditions between Owner and Contractor*, a copy of which is attached hereto and labeled Exhibit"C-1", which contract shall provide for Developer to retain an Architect as provided by the Contractor/Architect Agreement which is marked Exhibit C-2 and attached hereto, and to prepare sufficient documentation and specifications so as to obtain final approval of the design and location from the City, to be able to apply for required site plan approvals and to determine a Guaranteed Maximum Price ("GMP").. Using these plans, Developer shall obtain competitive prices for major building and project components, and using the lowest qualified bidders, shall prepare a GMP. Upon approval by Clubs of GMP and receipt of funds from the sale of bonds, the contract will provide for Developer to complete the design and to build the Arena, to plans approved in advance by Clubs and the City, delivering same to Community Clubs on a "turn-key" basis, complete and ready to operate including all Architectural, Mechanical, Electrical and Ice Making systems, dasher boards, office and common area furnishings, and whatever other capital equipment as may be required for smooth and efficient operation of the facility. Upon execution of Exhibit "C-1" the GMP shall be computed. The GMP along with the payment schedules, shall be inserted into Amendment No. 1 to Exhibit "C-1" and shall include 1) all contracted and building costs including costs of required insurance and surety bonds, 2) architectural and engineering fees as specified in the contract between the Developer and the Architect, a copy of which is attached hereto as Exhibit "C-2", and 3) contractors overhead and profit, not to exceed Seven (7.0%) Percent of the contracted costs as defined in Exhibit "C-1".

E. **Facility Management Contract** Community Clubs shall enter into a Management Contract with Center Ice, a copy of which is attached hereto and labeled Exhibit "D" to develop the project, and to manage and operate the facility after completion.

F. **Revenue Bonds** Community Clubs shall finance construction, furnishing and the initial operations of the proposed rink through the issuance of revenue bonds, to be repaid solely by

Community Clubs, to be sold through an agent designated by Developer, in an amount sufficient to pay 100% of such costs as are reasonably necessary to build and open the facility, and shall agree to and execute whatever documents as are necessary for the acceptance of the responsibility for the repayment, and for the issuance of such revenue bonds.

G. Finance of Initial Expenses From time to time, Community Clubs shall borrow, from the City and from Center Ice, funds which are to be used solely to pay initial development expenses. Center Ice and Community Clubs shall each have the right to review and approve the appropriateness and amounts of all expenses to be paid from these funds, including invoices submitted on account of work performed by Center Ice or its agents, to verify that the work was performed satisfactorily, to verify that the work was authorized either by this Agreement, or by other agreement approved by Community Clubs. Upon receipt of the proceeds from the sale of revenue bonds, Community Clubs shall repay Center Ice and The City of Novi for the entire amount of loans made and/or invoices accrued unpaid in finance of initial expenses of the project as specified in the project development budget, exhibit "F", plus interest at the rate of 7.0% per annum.

Article IV
Obligations of the City of Novi

A. Phase I Environmental Study The City shall provide to Community Clubs and Center Ice, a Phase I Environmental Study certifying the site suitable for development with no history or evidence of prior contamination. In the event that there are extra costs involved in the preparation of this survey, these costs shall be included in the project budget and the City shall be repaid for these costs out of the proceeds of revenue bond financing.

B. Boundary & Topographic Survey The City shall provide a boundary and topographic survey, showing elevations at Two Foot intervals, and showing all significant natural features including trees by size and species. In the event that there are extra costs involved in the preparation of this survey, these costs shall be included in the project budget and the City shall be repaid for these costs out of the proceeds of revenue bond financing.

C. <u>Zoning</u> Upon the request by Center Ice and Community Clubs, the City will consider and act on amendments to the City of Novi Zoning Ordinance necessary to permit utilization of the site for the Arena use. In the alternative, upon application by Center Ice and Community Clubs, the City will consider and act on the rezoning of the site or a variance for the site, as may be necessary to permit utilization of the site for the Arena use. The parties agree that the City cannot by contract assure the granting of any such ordinance amendment, rezoning, site plan approval or variance. The granting of such relief shall be a condition to the remaining obligations of the parties under this Agreement. If such relief is not granted, this Agreement shall be terminated and treated as null and void.

D. <u>Title Commitment</u> At least 30 days prior to the closing date, The City shall deliver to Community Clubs a commitment to issue to Community Clubs a Lessee's Policy of Title Insurance issued by a title insurance company selected by the City, which shall guarantee title to the Site to be in the condition required by the Ground Lease. The premium for the Lessee's Policy of Title Insurance shall be included in the project budget and paid to the City out of the proceeds of revenue bond financing.

E. <u>Owner's Approvals</u> The City shall act upon those items requiring its approval and decision as expeditiously as necessary for the orderly progress of the Developer's obligations as otherwise required herein.

F. <u>Ground Lease</u> Upon satisfaction by Developer and Lessee of their obligations under this Agreement, including Conditions Precedent listed in Article XI, the City will enter into and deliver to Lessee, an executed Ground Lease as attached hereto and labeled Exhibit "A".

G. <u>Finance of Initial Costs</u> The City of Novi shall be responsible to provide interim financing for one half of the costs of project development expenses expected to be incurred prior to the receipt of revenue bond financing, in an amount not exceeding $100,000, and which is to be distributed to Community Clubs pari passu with a like loan distribution from Center Ice, and which expenses are listed in the preliminary project budget attached hereto and labeled Exhibit "F". The City's contributions shall be provided in the form of working capital loans paid in monthly draws to Community Clubs, or in the form of payments paid directly to vendors, including Center Ice, in amounts specified by Center Ice and approved by the City of Novi. The City shall have the right to review in advance for accuracy and appropriateness, all invoices submitted for reimbursement from these funds by Center Ice, and to verify that any loans required to be made by Center Ice have in fact been disbursed by Center Ice, or that any work performed by Center Ice as a credit toward its loan commitment, has in fact been duly authorized in advance by Community Clubs or by this Agreement, and that the work in fact has been satisfactorily performed. Upon receipt of project financing from the sale of revenue bonds, Community Clubs shall reimburse the City of Novi for 100% of its prior contribution, including interest at the rate of 7.0% per annum.

Article V

Mutual Covenants of Lessor, Developer and Lessee

A. __Cooperation__ Lessor, Developer and Lessee hereby agree to meet at reasonable times with each other upon request to discuss any aspect of the project during the term of this Agreement. Each party shall designate an individual who shall be such party's designated representative for purposes of such discussions. Developer and Lessee acknowledge the inherent limitations imposed by law and charter upon the authority of any representative designated by Lessor.

B. __Ground Lease__ On the closing date, as hereinafter defined, and subject to the satisfaction or waiver of the conditions precedent, Lessor, and Lessee shall enter into the Ground Lease. Any information to be inserted in the Ground Lease on the closing date shall be based upon the approvals and agreements made during the term of this Agreement.

Article VI
Closing

A. **Closing Date** The closing date for the execution and delivery of the Ground Lease shall be scheduled to occur on Jan. 1, 1996, or sooner upon but not less than fifteen (15) days after delivery by Developer to the City of satisfactory evidence of financing.

B. **Closing** Closing shall take place in the offices of the City, at 45175 West Ten Mile Road, Novi, Michigan 48375

C. **Delay of Closing** In the event that Developer or Lessee will not be able to meet the Lessee's Conditions Precedent to Closing as listed in Article X, of if the feasibility study, in the opinion of the financial advisor to the revenue bond sales agent, does not justify financing the Arena at the present time, Developer may request one or more delays in the date of closing till any date, reasonably convenient to both parties, not after April 15, 1997. In such instance, the time of closing shall be rescheduled not later than ten days after presentation to the City of evidence of satisfactory financing.

Article VII
Representations of The City of Novi

A. **Organization & Qualification** The City of Novi is a municipality incorporated under the laws of the State of Michigan and has all requisite power and authority to enter into and perform the terms of this Agreement, including the Ground Lease.

B. **Authorization** The execution and delivery of the Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the elected City Council of the City of Novi, and this Agreement constitutes a valid and binding agreement of the City, enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as may be further limited by the Laws of the State of Michigan, which may affect some of the remedies provided for herein but which will not affect practical realization of the benefits to be provided by this Agreement.

C. **Restraints** To the knowledge of the City, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or government entity, the municipal ordinances of the City, or any agreement to which the City is a party or by which it is bound.

D. **Disclosure** No representation or warranty by the City, or any statement or certificate furnished to Developer or Lessee pursuant hereto or in connection with the transactions contained thereby, contains or will contain any untrue statement or a material fact or omits or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

E. **Project Site** The City owns the site, free and clear of all liens and encumbrances, except those permitted under the terms of the Ground Lease.

Article VIII
Representations and Warranties of Lessee

Community Clubs of Michigan hereby represents and warrants to the City of Novi and Center Ice, which representations and warranties shall be true and correct as of the date hereof and as if made anew on the closing date and shall survive the Closing:

A. **Organization & Qualifications** Lessee is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has applied for tax exempt status with the Internal Revenue Service Code, Section 501(c)(3), and has all requisite power and authority to enter into and perform the terms of this Agreement.

B. **Authorization** The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Lessee and this Agreement constitutes a valid and binding agreement of the Lessee enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as may be further limited by the laws of the State of Michigan which may affect some of the remedies provided for herein but which will not affect practical realization of the benefits to be provided by this Agreement.

C. **Restraints** To the knowledge of Community Clubs, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or government entity, the municipal ordinances of the City, or any agreement to which the Lessee is a party or by which it is bound.

D. **Disclosure** No representation or warranty by Community Clubs, or any statement or certificate furnished to Developer or Lessor pursuant hereto or in connection with the transactions contained thereby, contains or will contain any untrue statement or a material fact or omits or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

Article IX
Representations and Warranties of Developer

Center Ice Management, Inc. hereby represents and warrants to the City of Novi, and to Community Clubs, which representations and warranties shall be true and correct as of the date hereof and as if made anew on the closing date and shall survive the Closing:

A. **Organization & Qualifications** Developer is a Corporation duly organized, validly existing and in good standing under the laws of the State of Michigan and has all requisite power and authority to enter into and perform the terms of this Agreement.

B. Authorization The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Developer and this Agreement constitutes a valid and binding agreement of the Developer enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and except as may be further limited by the laws of the State of Michigan which may affect some of the remedies provided for herein but which will not affect practical realization of the benefits to be provided by this Agreement.

C. Restraints To the knowledge of Developer, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby is in violation of any provision of any existing law or regulation, order or decree of any court or government entity, the municipal ordinances of the City, or any agreement to which the Developer is a party or by which it is bound.

D. Disclosure No representation or warranty by Developer or any statement or certificate furnished to City or Lessee pursuant hereto or in connection with the transactions contained thereby, contains or will contain any untrue statement or a material fact or omits or will omit to state any fact necessary to make the statements contained herein or therein not misleading.

Article X

Conditions Precedent to Lessee's Obligations

The obligations of Lessee to enter into a Ground Lease, as set forth in Article I hereof, is subject to the following conditions precedent which must be satisfied, as required herein, or waived as provided for in Article XI, Paragraph G hereof, on or before the closing date, except as otherwise specifically provided herein:

A. Representations and Warranties The representations and warranties of the City, as set forth in Article VII hereof, shall be true and correct in all material respects on the date of this

Agreement and on the closing date as if made anew on the closing date.

B. **No Defaults** There shall have been no breach of any of the covenants and agreements required to have been observed or performed by the City under the terms of this Agreement on or before the closing date.

C. **Certification** On the closing date, the City shall deliver to Lessee, a certificate dated the closing date and executed by the City Clerk, certifying in form and substance satisfactory to Lessee and to the counsel that to the best of the knowledge and belief of the signatory, after due inquiry, the conditions specified in Article VII paragraphs "A" and "B" hereof have been satisfied.

D. **Legal Opinion** Lessor shall deliver, at the closing, the opinion of its independent legal counsel, in form and substance satisfactory to Lessee, and its legal counsel, to the effect that the matters set forth in Article VIII, Paragraphs "A" "B" and "C" are correct.

E. **Title Insurance** The City shall have delivered to Lessee the title insurance commitment referred to in Article IV, Paragraph D hereof, on or before a date (30) days prior to the closing date.

F. **Zoning & Required Approvals** The City shall have provided proper Zoning Approval as per Article IV, Paragraph C, Site Plan approval and shall have issued a Building Permit.

G. **Construction Contract** Lessee and Developer shall have executed a project construction contract as provided for in Article III, Paragraph D, and a facility management contract as provided for in Article III, Paragraph E.

H. **Waiver of Conditions Precedent** Lessee alone may waive, in writing, any of the conditions precedent set forth in Article X hereof, on or before the date specified for the satisfaction thereof. In the event that any such conditions precedent are not satisfied or waived within the time for performance, Lessee shall, within seven (7) days following the date for the condition which remains unsatisfied, give written notice to the City setting forth the condition which remains unsatisfied, whereupon the closing date shall automatically be extended for thirty (30) days from the date of receipt of such notice to enable the City to attempt to satisfy the unsatisfied Condition Precedent. In the event that any such conditions precedent are not satisfied by such subsequent date, Lessee may, upon written notice to the City, given within seven (7) days following such subsequent date (i) elect to further extend the closing date for an additional thirty (30) days; or (ii) elect to terminate any obligations it may have hereunder. In the event Lessee shall elect to terminate this Agreement, or shall elect to further extend the closing date and such conditions precedent are not satisfied by such subsequent date, each party shall be relieved from any further liability to the other by virtue of this Agreement or the termination thereof; provided, however, in no event shall the City be relieved by virtue of a termination by Lessee under this Article X of any liability to Lessee upon the occurrence of an uncured event of default by the City.

Article XI

Conditions Precedent to City's Obligations

The obligations of City to enter into a Ground Lease, as set forth in Article I hereof, is subject to the following conditions precedent which must be satisfied, as required herein, or waived as provided for in Article I hereof, on or before the closing date, except as otherwise specifically provided herein:

A. <u>Representations and Warranties</u> The representations and warranties of the Lessee and Developer, as set forth in Article VIII and Article IX hereof, shall be true and correct in all material respects on the date of this Agreement and on the closing date as if made anew on the closing date.

B. <u>No Defaults</u> There shall have been no breach of any of the covenants and agreements required to have been observed or performed by the Lessee or Developer under the terms of this Agreement on or before the closing date.

C. <u>Exempt Status</u> Community Clubs shall have received, and presented a copy of same to the City, a determination from the Internal Revenue Service that Clubs shall qualify for exemption of payment of income taxes under Section 501(c)(3) and that interest payments received by purchasers of the revenue bonds sold to finance the skating rink will be exempt from taxation.

D. **Certification** On the closing date, the Lessee shall deliver to the City, a certificate dated the closing date and executed by the a senior officer of Lessee certifying in form and substance satisfactory to the City and to its counsel that to the best of the knowledge and belief of the signatory, after due inquiry, the conditions specified in Article VIII, Paragraphs "A" and "B" hereof have been satisfied.

On the closing date, the Developer shall deliver to the City, a certificate dated the closing date and executed by a senior officer of Developer certifying in form and substance satisfactory to the City and to its counsel that to the best of the knowledge and belief of the signatory, after due inquiry, the conditions specified in Article IX, Paragraphs "A" and "B" hereof have been satisfied.

E. **Legal Opinion** Lessee shall deliver, at the closing, the opinion of its independent legal counsel, in form and substance satisfactory to lessor, and its legal counsel, to the effect that the matters set forth in Article VIII, Paragraphs "A" "B", "C" and "D" are correct.

Developer shall deliver, at the closing, the opinion of its independent legal counsel, in form and substance satisfactory to lessor, and its legal counsel, to the effect that the matters set forth in Article IX, Paragraphs "A", "B", "C" and "D" are correct.

F. **Financing** The Developer or Lessee shall have delivered to the City, at least thirty (30) days prior to the closing date:

a) A certificate of a professional consultant of recognized standing, who shall be acceptable to Lessee and may be the Architect for the project, which shall certify the estimated costs of the project including a reasonable allowance for contingencies (hereinafter referred to as the "project cost") and the estimated date on which the project will be placed in service.

b) Such evidence as may be satisfactory to the City in its sole judgement, demonstrating that Lessee has sufficient financing to pay the project cost.

G. **Required Approvals** Lessee shall have obtained site plan approval and a building permit.

H. **Waiver of Conditions Precedent** The City alone may waive, in writing, any of the conditions precedent set forth in Article XI hereof, on or before the date specified for the satisfaction thereof. In the event that any such conditions precedent are not satisfied or waived within the time for performance, the City shall, within seven (7) days following the date for the condition which remains unsatisfied, give written notice to the Lessee setting forth the condition which remains unsatisfied, whereupon the closing date shall automatically be extended for thirty (30) days from the date of receipt of such notice to enable Lessee to attempt to satisfy the unsatisfied condition precedent. In the event that any such conditions precedent are not satisfied by such subsequent date, the City may, upon written notice to the Lessee given within seven (7) days following such subsequent date (i) elect to further extend the closing date for an additional thirty (30) days; or (ii) elect to terminate any obligations it may have hereunder. In the event the City shall elect to terminate this Agreement, or shall elect to further extend the closing date and such conditions precedent are not satisfied by such subsequent date, each party shall be relieved from any further liability to the other by virtue of this Agreement or the termination thereof; provided, however, in no event shall Lessee be relieved by virtue of a termination by the City under this Article XI of any liability to the City upon the occurrence of an uncured event of default by the Lessee.

Article XII
Termination by City

Anything to the contrary in this Agreement notwithstanding, (including any time periods otherwise specified herein), the City shall have the right to terminate this Agreement, at any time, with or without cause, upon ten (10) days written notice to Developer and Community Clubs.

A. <u>**Termination Without Cause**</u> In the event the City shall terminate this Agreement without cause, or because it does not approve the Developer's plans, the damages and contingent liability of the City to Developer and Community Clubs shall be limited to fifty percent of project costs, but not exceeding $100,000 (the amount the City would otherwise have been obligated to loan to Clubs). In the event that, with the prior permission of Clubs and the City, that Center Ice has loaned more than $100,000 to Clubs and that total project expenses incurred prior to the date of termination exceed $200,000, the damages and contingent liability of the City to Community Clubs and Center Ice shall be fifty (50.0%) percent of the first $200,000 of such expenses, and one hundred (100%) percent of any such additional amounts. Total project expenses shall mean; 1) the value of all services provided pursuant to this Agreement, the Management Contract or the Design-Build Agreement, including but not limited to architectural and engineering services, feasibility studies, development activities and any other services provided by Developer, their agents or subcontractors, and 2) the actual cost of any other expenses paid or incurred on behalf of the project, including but not limited to travel expenses, site plan or building permit fees, accounting or legal fees, fees or expenses associated with revenue bond financing. Prior to termination shall mean 48 hours after receipt by Community Clubs and/or Developer of written notice of formal intent by the City to terminate this agreement.

a. As a condition of payment, the Developer and Community Clubs shall furnish the City a release of all claims against the City.

b. The exclusive ownership and use of all Architectural plans and specifications, and of any feasibility studies or other development work will remain with Developer. Notwithstanding anything to the contrary in the Design-Build contract, upon payment to Developer of any amounts which the Developer may have loaned to Clubs, and provision to Developer of a release from liability for work not yet complete, and for work which may be altered or changed after delivery by Developer, the City may have the right to utilize such plans and studies for the construction of the facility. Developer will not be obligated to alter or complete such plans without additional compensation.

B. <u>**Termination With Cause**</u> The occurrence or happening of any one or more of the following shall be events of default hereunder. In the event that such events of default are not cured within the applicable time period as hereinafter set forth (hereinafter referred to as an "uncured event of default") the City shall be entitled to terminate this Agreement without waiving any other right or remedy of City and without any liability to Developer.

a. Developer shall fail to commence the performance in accordance with the provisions of this Agreement or fail to diligently prosecute and carry out such obligations within the times herein specified, and except as otherwise provided in Article X, Paragraph G, Developer shall fail to cure such default within fifteen (15) days after written notice thereof from the City.

b. Any representation or warranty made by Developer or Community Clubs shall prove to have been inaccurate or misleading in any material respect as of the date upon which such representation or warranty was made.

c. Developer or Community Clubs shall file a voluntary petition in bankruptcy; be adjudicated insolvent; obtain an order for relief under Section 301 of the Bankruptcy Code (II USC Section 301); file any petition or fail to contest any petition filed against it seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any laws relating to bankruptcy, insolvency or other relief for debtors; seek or consent to or acquiesce in the appointment of any trustee, receiver, master or custodian or seek or consent to or acquiesce in the liquidation of it or its property; make an assignment for the benefit of creditors; make an admission in writing of its inability to pay its debts generally as they become due, and Developer shall fail to cure such default within thirty (30) days after written notice thereof from Owner.

The exclusive ownership and use of the architecutrual plans and specifications and any feasibility studies or other development work will remain with the Developer. Notwithstanding anything to the contrary in the Design-Build contract, in the event of such termination with cause, and upon provision to Developer of a release from liability for work not yet complete, and for work which may be altered or changed after delivery by Developer, the City may have the right to utilize all plans and studies for the construction of the facility. Developer will not be obligated to alter or complete such plans without additional compensation.

Article XIII

Termination by Developer

Developer shall have the right to terminate this Agreement, only under the following circumstances:

A. **Feasibility Study** It is understood and agreed by all the parties that this is a best efforts attempt to build a skating Arena, and that numerous factors can affect the economic feasibility and ability to obtain financing, including a substantial change in the availability or cost of financing and/or a decision by another competitor to build (an) ice skating rink(s) in direct competition in the market area. In the event the Developer is unable to obtain financing at rates and under terms satisfactory to both the City and Center Ice, then this Agreement may be terminated by either party upon ten days' written notice from Developer to the City and to Community Clubs, or from the City to the Developer, stating that the project is deemed unfeasible within the current time frame. As an alternative to termination, the City and Developer may mutually agree to extend the time deadlines contained within this Agreement. In the event that this project is unfeasible, the City or Developer may mutually agree to extend the time frame beyond the April 15, 1997 date, or accept the termination. In the event of such termination, all plans and specifications will remain the property of Developer. In the event of such termination, damages and contingent liabilities of the Developer to the City shall be limited to fifty (50.0%) percent of total project expenses (being the amount already loaned, or to be loaned, to the project by the City), not to exceed $100,000.. Total project expenses shall mean; 1) the value of all services provided pursuant to this Agreement, the Management Contract or the Design-Build Contract, including but not limited to architectural and engineering services, feasibility studies, development activities and any other services provided by Developer, their agents or subcontractors, and 2) the actual cost of any other expenses paid or incurred on behalf of the project, including but not limited to travel expenses, site plan or building permit fees, accounting or legal fees, fees or expenses associated with revenue bond financing. Prior to termination shall mean 48 hours after receipt by the City of written notice of formal intent by the Developer to terminate this agreement.

B. Default by City In the event any representation or warranty made by City shall prove to have been inaccurate or misleading in any material respect as of the date upon which such representation or warranty was made and such inaccurate or misleading statement impairs Developer's ability to proceed, developer may terminate this Agreement. Upon such termination, Developer shall retain the ownership and exclusive rights to use all materials, plans and specifications produced.

Article XIV
Indemnity

A. Indemnification by Developer Center Ice agrees to indemnify, defend and save harmless the City and its agents and employees from and against any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including without limitation, reasonable fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the City by reason of any act or omission of Developer, its personnel, agents, or contractors. The foregoing indemnification by Developer shall not extend to acts or omissions of the City.

Article XV
Amendments

A. Amendments The parties hereto may from time to time consider it in their best interest to change, modify or extend a term, condition or covenant of this Agreement. Any such change, addition, deletion, extension or modification, which is mutually agreed upon by and between the City, Developer and Lessee shall be incorporated in written amendments (herein called "amendments") to this Agreement. Such amendments shall not invalidate this Agreement nor relieve or release either party of any of their respective obligations under this Agreement except as expressly stated in such Amendment.

B. **Form of Amendments** No amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, and is signed and acknowledged by duly authorized representatives of all parties.

Article XVI

Notices

Except as otherwise specified herein, all notices, consents, approvals, requests and other communications required or permitted under this Agreement shall be given in writing and either delivered in person or mailed by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

A. **If to City**

Mr. Daniel R. Davis, Director
Parks and Recreation Department
City of Novi
45175 West Ten Mile Road
Novi, MI 48375

with copies to:

Dennis Watson
Fried, Watson & Bugbee, P.C.
30700 Telegraph Road, Suite 3655
Bingham Farms, MI 48025

B. <u>If to Developer</u>

Mr. Terry S. Seyler
Center Ice Management, Inc.
2910 East Jefferson, Rear Suite
Detroit, MI 48207-4208

with copies to:

Timothy Stoepker
Abbott, Nicholson, Quilter, Esshaki
& Youngblood, P.C.
19th Floor
One Woodward Avenue
Detroit, MI 48226

C. <u>If to Lessee</u>

Community Clubs of Novi
45175 West Ten Mile Road
Novi, MI 48375

with copies to:

(Legal Counsel, name to be added later)

D. <u>Time Given, Change of Address</u> All notices shall be deemed given on the day of mailing, or if delivered in person, on the day received. Any party to this Agreement may change its address for the receipt of Notices at any time by giving notice thereof to the other as provided in Article XIV. Any notice given by a party hereunder must be signed by an authorized representative of such party.

Article XVII

Miscellaneous

A. <u>Severability</u> If any one or more provisions of this Agreement or in any instrument or other document delivered pursuant to this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extend permitted by law.

B. Entire Agreement This instrument, including the exhibits attached hereto, which are made a part of this Agreement, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither party has made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by either party by implication or otherwise unless expressly set forth herein.

C. Terminology Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

D. Covenants and Conditions All the terms and provisions of this Agreement shall be deemed and construed to be "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions were used in each separate term and provision.

E. Captions The headings of the Articles or Sections in this Agreement are for convenience only and shall not be used to construed or interpret the scope or intent of this Agreement or in any way affect the same.

F. No Waiver No failure by the City, Developer or Lessee to insist upon strict performance of any term, covenant or provision of this Agreement or to exercise any right, term or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant or provision. No waiver of any breach shall affect or alter this Agreement, but each and every term, covenant or provision of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

G. Governing Law All actions under this Agreement shall be governed by, subject to, and construed according to the laws of the State of Michigan. Each party agrees, consents and submits to the personal jurisdiction of any competent court in Oakland County, Michigan, for any action brought against it arising out of this Agreement; agrees that service of process at the address and in the manner specified in Article XVI will be sufficient; agrees that it will not commence any action against the other party hereto because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those of Oakland County, State of Michigan.

H. **Force Majeure** In the event of forced delay in the performance by either party of obligations under this Agreement due to acts of God or of the public enemy, acts of the other party or its employees or against, strikes, lockouts, unusual delay in transportation, unavailability of materials, fires, floods, epidemics, adverse weather conditions, riots, insurrection, war or unavoidable casualties, the time for performance of such obligations and for the satisfaction of the conditions precedent shall be extended for the period of the forced delays, but in no event for a period in excess of ninety (90) days.

I. **Successor and Assigns** City, Developer and Lessee, respectively, bind themselves, their partners, successors, permitted assigns and legal representatives to the other parties to this Agreement and to the partners, successors, permitted assigns and legal representatives of such other party with respect to all terms, covenants and provisions of this Agreement.

Agreed, this ______ day of _____, 1995

WITNESS: CITY OF NOVI, a Michigan municipal corporation

______________________ ______________________

BY: KATHLEEN MCLALLEN
its: MAYOR

______________________ ______________________

BY: TONNI BARTHOLOMEW
ITS: CITY CLERK

COMMUNITY CLUBS OF NOVI, INC., a Michigan Non-Profit Corporation

______________________ ______________________

BY:
ITS: CHAIRMAN OF THE BOARD

____

CENTER ICE MANAGEMENT, INC. a Michigan Corporation

______________________ ______________________

BY: TERRY S. SEYLER
ITS: PRESIDENT

____

Ground Lease Agreement

This **Lease** is made and executed on the _______ day of ________, 1995, by and between **The City of Novi**, a Michigan municipal corporation, having its address at 45175 West Ten Mile Road, Novi, Michigan 48375, referred to as "Lessor" or "Landlord", and **Community Clubs of Novi**, A Michigan Non-Profit Corporation, having its address at 45175 W. Ten Mile Road, Novi, MI 48375, referred to as "Lessee" or "Tenant".

The parties agree as follows:

1 **Lease of Premises** The Landlord, in consideration of the rents to be paid, the services to be provided to the community, and the covenants and agreements to be performed by Tenant, does hereby lease onto the Tenant, land situated in the City of Novi, Oakland County, the State of Michigan, described in Exhibit "E" attached hereto and made a part of this Agreement, according to the following terms and conditions:

2. **Lease Term** The term of this lease will be not less than **twenty (20) Years** commencing with the actual first day of opening for business. Upon obtaining site plan approval and a building permit, Tenant will immediately be permitted to enter onto the site and to commence construction at its earliest opportunity.

3. **Lease Extensions** Not less than one year prior to the expiration of the original term of this lease, so long as the Tenant is at that time in compliance with all terms of this Lease, the parties will enter into good faith negotiations for one or more five year extensions of this Lease Agreement, on rental terms satisfactory to both parties.

4. **Mandatory Lease Extension** In the event of the renegotiation of the terms of repayment of revenue bond financing as necessitated by threat of impending or of the actual default in the payment of any interest or principal payment, the necessity of such renegotiation to be verified by an independent auditor of Landlord's choosing, and so long as the terms of the Lease Agreement are not otherwise in default, the term of this lease may be extended without objection from the Landlord, for a period, as determined in the sole judgement of the designated bond servicing agent, as will be required to fully satisfy the repayment of all amounts due on the revenue bonds.

5. Rental Payments For the term of this lease, Tenant will pay unto Landlord, monthly rentals in advance, the first payment due September 15, 1996, or thirty days after the first day of opening if later than Sept. 15, 1996, in the amount of **Four Thousand One Hundred Sixty-Six and 67/100 ($4,166.67) Dollars**, and said regular monthly payments continuing for the full term of the lease.

6. Annual Rent Increases On the one year anniversary of the first lease payment, and on each subsequent annual anniversary, the amount of the lease payment shall be adjusted based on the cost of living as calculated and published by the U.S. Labor Department for the City of Detroit region ("COL"), as follows; monthly rentals will be increased or decreased proportional to the following equation:

$$\frac{COL_{(\text{Date of Adjustment})}}{COL_{(\text{Date of 1st Payment})}} = \frac{Rent_{(\text{Coming Month})}}{Rent_{(\text{1st Month})}}$$

7. Rent Suspension In the event that cash flow from operations in any month, added to any surplus cash flow accumulated from prior operations, are insufficient to pay 1) all operating costs and management fees, 2) to fund adequate reserves for repair or replacement, and 3) to pay or set up reserves to pay that period's pro rata share of debt service or principal repayment on revenue bonds, then the required rental payment for that period shall be temporarily suspended and accrued, in full, or to whatever extent is necessary to enable Tenant to pay all operating costs, fees and debt service, and to fund required reserves for repair or replacement, until such time as income is sufficient to pay in full, all amounts accrued unpaid.

The determination as to whether the conditions defined above are met shall be verified by an independent auditor employed by the Landlord at the request of the Tenant. All costs associated with the employment of the auditor shall be paid by the Tenant.

Tenant shall keep on the demised premises a permanent, accurate set of books and records of all sales of merchandise and revenue derived from business conducted on the demised premises, and all supporting records such as tax reports and banking records. All books and records shall be retained and preserved for at least 24 months after the end of the calendar year to which they relate, and shall be subject to inspection and audit by Landlord and Landlord's agent at all reasonable times.

8. **Permitted Improvements** Tenant will be required to build a double rink, ice skating facility in accordance with the plans and specifications approved by the Landlord and for which site plan approval and a building permit has been issued, attached hereto and made a part of this Agreement. In the event the Tenant desires to make further alterations or additions to the leased premises at any time in the future, Tenant will first obtain the written permission from the Landlord consenting to such alterations or additions prior to applying for any revised site plan or building permit.

9. **Site Improvement: Maintenance & Repairs** Tenant will be responsible to improve and to maintain that portion of the site utilized for the building, for access roads and walkways, for parking or loading, for signs, storage or utilities, or for installed or required landscaping directly related to any of those elements. Tenant, at its own cost, shall be responsible to maintain and repair all buildings and improvements on the site, at no cost to Landlord, and upon termination of this Lease, to deliver same to the Landlord in good condition, normal wear and depreciation excepted. The damage, destruction or partial destruction of any building or other improvement that is a part of the demised premises shall not release Tenant from any obligation under this Lease Agreement, except as expressly provided below. In case of damage to or destruction of any such building or improvement, Tenant shall at its own expense promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction. Without limiting the obligations of Tenant, it is agreed that the proceeds of any insurance coverage damage or destruction shall be made available to Tenant for repair or replacement. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description, whatsoever to the demised premises or any buildings or improvements on the demised premises.

10 **Waste and Nuisance** During the term of this Lease, Tenant shall comply with all applicable laws affecting the demised premises, the breach of which might result in any penalty on Tenant or forfeiture of Tenant's title to the demised premises. Tenant shall not commit, or suffer to be committed, any waste on the demised premises, or any nuisance.

11 **Abandonment** Tenant shall not vacate or abandon the premises at any time during the term of this Lease Agreement. If Tenant abandons, vacates, or surrenders the demised premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be encumbered to Landlord.

12 **Right of Entry** Tenant shall permit Landlord and the agents and employees of Landlord to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the premises, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the premises occasioned by the entry.

13 **Permitted Use** It is agreed and understood that during the full term of this Lease, the facilities will be used and occupied exclusively for recreation, education and social purposes, including public skating, figure skating, ice hockey, meetings and instruction relating to those activities, or other recreational and support activities in conjunction with those activities. The operation of a retail "pro shop" or sports store, of food service and banquet service, and of electronic games for the enjoyment of participants and guests will be permitted. Activities will predominantly be available to the general public, although participants may be required to pay reasonable admission or use fees, and/or to join leagues, clubs or associations which govern certain activities. It is the intention of Tenant to expand programs based on demonstrated need and the Landlord will reasonably cooperate and approve program expansions not in conflict with City goals or other uses on the site or the park located at the property. Tenant shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the demised premises, the improvements on or any activity or condition on or in the premises. Use by Tenant of the premises in a manner contrary to any statue, ordinance, law or regulation, or contrary to the terms of this Lease shall be grounds for termination of this Lease by Landlord. Execution of this Lease shall not be deemed as granting or guaranteeing the granting of any permits, licenses or other approvals within the jurisdiction of the City of Novi.

14 **Default** In the event of material breach of this Agreement by Tenant, Landlord shall provide to Tenant, written notice of such default clearly stating the nature of the default. In the event that Tenant disagrees with Landlord's claim of default, Tenant shall have Ten (10) days from receipt of notice of default to respond to Landlord's claim of default. In the event Tenant agrees with Landlord's claim of default, or for those limited aspects of a broader claim of default with which Tenant does not object, Tenant shall have an additional Thirty (30) days from the date of its response to cure such default, or to provide such additional security to Landlord guaranteeing that Tenant will cure the outstanding default in an expeditious manner so as to prevent further defaults. In the event of tenant's failure to cure or provide such security, in addition to any other remedy, Landlord shall also have the right, with or without terminating this Lease Agreement, to reenter the demised premises and to relet them. Tenant hereby agrees to pay Landlord the cost or recovering possession of the demised premises, the expenses of reletting, and any other costs or damages arising out of tenant's default. Tenant further covenants and agrees to make good to Landlord any deficiency arising from the reletting of the demised premises at a lesser rental than agreed to in this Lease Agreement. Tenant shall pay to Landlord such deficiency each month as the amount of the deficiency is ascertained by Landlord and billed to Tenant. Landlord is obligated to use good faith efforts to mitigate his damages.

15. **Quiet Enjoyment** The Landlord covenants that the said Tenant, on payment of all the aforesaid installments and performing all the covenants provided herein, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid.

16. **Community Benefit** During the term of this Lease, and immediately thereafter, any surpluses obtained from the operations of the Arena are to be used at the discretion of Tenant but solely for facilities installed or programs conducted within the City of Novi or which originate from the arena facility, and which will serve local residents and their guests.

17. **Indemnification** Landlord shall not be liable for any loss, injury, death, or damage to persons or property that at any time may be suffered or sustained by Tenant or by any person whosoever may at any time be using or occupying or visiting the demised premises to be in, on, or about the demised premises, whether the loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Tenant or of any occupant, subtenant, visitor, or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth. Tenant shall indemnify Landlord against any and all claims, liability, loss or damage whatsoever on account of any loss, injury, death or damage.

18 **Insurance**

(A) *Insurance coverage of Premises.* Tenant shall at all times during the term of this Lease Agreement and at Tenant's sole expense, keep all improvements that are now or hereafter a part of the premises insured against loss or damage by fire and the extended coverage hazards for one hundred percent (100%) of the full replacement value of the improvements, with loss payable to Landlord and Tenant as their interest may appear. Any loss adjustment shall require the written consent of both Landlord and Tenant.

(B) *Personal Injury Liability Insurance.* Tenant shall maintain in effect throughout the term of this Lease personal injury liability insurance covering the premises and its appurtenances and the sidewalks fronting on them in the amount of One Million Dollars ($1,000,000.00) for injury to or death of any one person, and Three Million Dollars ($3,000,000.00) for injury to or death of any number or persons in one occurrence, and property damage liability insurance in the amount of Five Hundred Thousand Dollars ($500,000.00). Such insurance shall specifically insure Tenant against all liability assumed by it under this Lease Agreement, as well as liability imposed by law, and shall insure both Landlord and Tenant but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for Landlord and Tenant.

(C) *Landlord's right to pay premiums on behalf of Tenant.* All of the policies of insurance referred to in this section shall be written in a form satisfactory to Landlord and by insurance companies satisfactory to Landlord. Tenant shall pay all of the premiums for insurance and deliver policies, or certificates of policies, to Landlord. In the event of the failure of Tenant, either to effect insurance in the names called for in this Lease Agreement or to pay the premiums for the insurance or to deliver the policies, or certificates of the policies, to Landlord, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums for the insurance, which premiums shall be repayable to Landlord with the next installment of rental. Failure to repay the same shall carry with it the same consequence as failure to pay any installment or rental. Each insurer mentioned in this section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, that it will give to Landlord thirty (30) days' written notice before the policy or policies in question shall be altered or canceled. Landlord agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Tenant.

(D) *Cost of Insurance deemed additional rental.* The cost of insurance required to be carried by Tenant in this section shall be deemed to be additional rental under this Lease Agreement.

(E) *Reasonable Increase in Insurance Coverage.* On the fifth, tenth and fifteenth year of the lease term, the Landlord and Tenant shall review the amount of insurance covered provided herein to determine its reasonable adequacy for the nature of the leasehold premises as described herein and whether or not a reasonable increase is required to maintain adequate protection. Any increase in the insurance coverage shall be reasonable and shall directly relate to coverages for similar uses then in existence within southeastern Michigan.

19. <u>Utilities</u> Tenant shall fully and promptly pay for all water, gas, heat, light, power, telephone service and other public utilities of every kind furnished to the premises throughout the term of this Lease Agreement, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation, and maintenance of the premises and all activities conducted on the premises, and Landlord shall have no responsibility of any kind for any such utilities. Tenant shall fully and promptly pay any real or personal property taxes assessed to in under the laws of this state, including but not limited to MCL 211.181; MSA 7.7(5), and Landlord shall have no responsibility of any kind for any such taxes.

20. Signs Tenant will be permitted to erect and maintain a lighted pedestal sign of design approved by the Landlord, at the Twelve Mile Road entrance to the site, and such directional arrows or signs reasonably necessary to direct patrons within the site to the Arena, parking areas, walkways, and loading areas. All signs and directional arrows at the site shall conform to the terms of Chapter 26 of the City of Novi Code of Ordinances (Signs), and any variance granted pursuant to said Chapter.

21. Assignment Tenant agrees not to assign or transfer this lease, or sublet said premises without the written consent of Landlord, except as specifically permitted herein. Such prohibition on assignment shall not prohibit or restrict tenant from subleasing space within the facility to operators of a "pro shop" or sports equipment store, or to operator of food and banquet service nor restrict Tenant's ability to rent ice time either in hourly blocks or under contracts with major ice users.

22. Mortgage In accordance with Paragraphs 8 and 9 of this Agreement, Tenant has agreed to build and own a community-oriented double rink, ice skating facility on the land that is the subject of this lease. In order to obtain necessary financing for the construction and equipping of said facility, it will be necessary for Landlord to subordinate its ground lease as good faith security toward the repayment of the debt service on revenue bonds proposed to be issued to finance said construction. Landlord hereby agrees to consent to the subordination of its ground lease interest to the interests of the holders of the revenue bonds. The parties agree that the City has a right to review the terms of any financing, refinancing or subordination, to assure that the City itself shall not become liable for repayment of any of the indebtedness, and that the City will receive adequate notice and opportunity to cure any failure which failure to cure might lead to default of the financing or refinancing agreement.

23. Amendments The parties hereto may from time to time consider it in their best interest to change, modify or extend a term, condition or covenant of this Agreement. Any such change, addition, deletion, extension or modification, which is mutually agreed upon by and between the Landlord and Tenant shall be incorporated in written amendments (herein called "Amendments") to this Agreement.

Such amendments shall not invalidate this Agreement nor relieve or release either party of any of their respective obligations under this Agreement except as expressly stated in such amendment. No amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, and is signed and acknowledged by duly authorized representatives of both parties.

24. Notices Required Except as otherwise specified herein, all notices, consents, approvals, requests and other communications required or permitted under this Agreement shall be given in writing and either delivered in person or mailed by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to City

Mr. Daniel R. Davis, Director
Parks and Recreation Department
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

with copies to:

Dennis Watson
Fried, Watson & Bugbee, P.C.
30700 Telegraph Road, Suite 3655
Bingham Farms, MI 48025

If to Tenant

Community Clubs of Novi, Inc.
45175 West Ten Mile Road
Novi, MI 48375-3024

with copies to:

(Bond Servicing Agent: to be named)

25. Severability If any one or more provisions of this Agreement or in any instrument or other document delivered pursuant to this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the validity, legality and enforceability of the remainder of this Agreement, or the application of such provision to persons or circumstances other

than those as to which it is invalid or unenforceable shall not be affected or impaired thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extend permitted by law.

26. **Entire Agreement** This instrument, including the Exhibits attached hereto, which are made a part of this Agreement, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither party has made any representations except those expressly set forth herein, and no rights or remedies are or shall be acquired by either party by implication or otherwise unless expressly set forth herein.

27. **Terminology** Unless the context otherwise expressly requires, the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section or other subdivision.

28. **Covenants** All the terms and provisions of this Agreement shall be deemed and construed to be "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions were used in each separate term and provision.

29. **Captions** The headings of the articles or sections in this Agreement are for convenience only and shall not be used to construed or interpret the scope or intent of this Agreement or in any way affect the same.

30. **Absence of Waiver** No failure by the Landlord or Tenant to insist upon strict performance of any term, covenant or provision of this Agreement or to exercise any right, term or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such term, covenant or provision. No waiver of any breach shall affect or alter this Agreement, but each and every term, covenant or provision of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

31. **Governing Law** All actions under this Agreement shall be governed by, subject to, and construed according to the laws of the State of Michigan. Each party agrees, consents and

submits to the personal jurisdiction of any competent court in Oakland County, Michigan, for any action brought against it arising out of this Agreement; agrees that it will not commence any action against the other party hereto because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those of Oakland County, State of Michigan.

32. Force Majeure In the event of forced delay in the performance by either party of obligations under this Agreement due to acts of God or of the public enemy, acts of the other party or its employees or against, strikes, lockouts, unusual delay in transportation, unavailability of materials, fires, floods, epidemics, adverse weather conditions, riots, insurrection, war or unavoidable casualties, the time for performance of such obligations and for the satisfaction of the conditions precedent shall be extended for the period of the forced delays, but in no event for a period in excess of ninety (90) days.

33. Successor and Assigns Landlord and Tenant, respectively, bind themselves, their partners, successors, permitted assigns and legal representatives to the other parties to this Agreement and to the partners, successors, permitted assigns and legal representatives of such other party with respect to all terms, covenants and provisions of this Agreement.

The parties agree to execute whatever papers and documents as may be necessary to effectuate the terms of this Lease Agreement.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed at ______________________ on the date indicated above.

WITNESS:

CITY OF NOVI, a Michigan municipal corporation

BY: KATHLEEN MCLALLEN
its: MAYOR

BY: TONNI BARTHOLOMEW
ITS: CITY CLERK

COMMUNITY CLUBS OF NOVI, INC., a Michigan Non-Profit Corporation

BY:
ITS: CHAIRMAN OF THE BOARD

Rink Development Proposal

Novi Ice Skating Arena

ArchEnomics Associates, Inc.
2910 East Jefferson Ave., Rear Suite
Detroit, MI 48207-4208
(313) 567-1333 Fax 567-2122

Architect

Center Ice Management, Inc.
2910 East Jefferson Ave., Rear Suite,
Detroit, MI 48207-4208
(313) 567-1333 Fax 567-2122

Rink Consultant

Roth Companies, Inc.
554 E. Maple Road
Troy, MI 48083
(810) 485-1221 Fax 583-1116

General Contractor

Serv-Ice Refrigeration, Inc.
17500 Fairway
Livonia, MI 48152
(313) 462-2060 Fax 462-3010

Rink Contractor

Table of Contents

Summary of Proposal
City of Novi

We hereby propose to design, finance, build and operate an advanced design, double rink ice skating arena in the City of Novi. **It is our contention that no rink currently operating within 200 miles, including new rinks under construction in Mt. Clemens and Port Huron, is designed or built to realize the full potentials inherent in skating rinks.** The revolution in rink design and marketing will parallel recent changes in understanding and marketing of major sports stadiums. Not long ago, such stadiums were regarded as financial losers to be subsidized by communities who were anxious to attract major league sports franchises. Then, as voters tired of subsidizing rich sportsmen, stadium designers were introducted to the realities of the private marketplace. While <u>cost savings</u> from construction provided significant opportunities for improvements, the real break through was recognition of the important opportunities to <u>increase the revenues</u> from the facilities. Not only could a good facility increase attendance and utilization, but it could provide ancillary marketing opportunities, new and increased sources of income from current clients. Aspects neglected or underutilized include private box rentals, parking revenues, souvenirs, and improved food service before, during and after the events, all of which generate substantial income.

As designers learned to properly address such opportunities, the economics of stadiums made a 180° turnaround, and stadiums became profitable for private investors. While hockey rink are a different animal, we see the potential for a similar revolution. By introducing aggressive management, which goes beyond just renting ice to increase utilization and productivity, and by developing ancillary marketing opportunities to exploit additional income sources, this skating arena can become a profitable facility, a prototype for arenas of the 21st century. Based on our in-depth analysis of the marketing opportunity, the facility we propose will be in the forefront of this revolutionary building type.

Proposed Building

The building will be our advanced design containing approximately 85,000 sq. ft. The facility will contain two rinks, a main arena accommodating seating for approximately 1,300 persons, and a secondary rink accommodating 150-200 persons. In a pre-engineered building, space itself is relatively inexpensive. Most rink designers misunderstand the economics of space, the minor burden that additional space adds to long term operating costs, and the tremendous advantages to marketing such supporting spaces can bring. While children do most of the skating, it is the parents, who pay the bills, who are our primary customers. Making everyone comfortable while generating additional income will be:

- A major restaurant overlooking the ice,
- Large hockey changing rooms accessible from the warm core rather than the cold arena,
- Separate changing rooms with lockers for figure skaters,
- Locker rooms for officials and instructors who attract pupils,
- A changing lobby with coin operated lockers for casual skaters.
- A training facility for off-ice aerobic exercise and dance practice for figure skaters, space for adult exercise classes and hockey weight training,
- A large pro shop suitable not only for emergency hockey supplies, but for all equipment and for parents to browse for casual sports wear.

Not only will these additional facilities pay for themselves (locker rentals, etc.) but they will lock our skaters into this arena as the first choice when they are looking for ice time, even in the slower spring and summer months. Parents can end up spending hours a week at the rink and these ancillary facilities provide opportunities for adults to work out, to browse for children's sports clothes in the "pro shop" or to visit with their friends within the restaurant.

Proposed Site

The facility would be constructed on proposed park land on the North side of Twelve Mile Road, approximately 3/4 miles West of Novi Road. We would ask that the city lease to the project, sufficient land, including egress rights, on which to build the facility, under a 20 year term and at nominal initial cost. Since definitive information on this site was not available, no attempt has been made to prepare a site plan nor accurately estimate site improvement costs.

Building Finance

Based on our ongoing market studies, we have secured a commitment from a major investment bank for financing of a double rink in the Northwest Detroit area. They have agreed to underwrite a non-profit, revenue bond issue, whether issued by a community's building authority, or by the Michigan Strategic Fund on behalf of a non-profit, 501(c)(3) corporation established within the community. In either case, this commitment will provide 100% of the funding necessary to build the facility secured solely by the income from the facility and with no recourse to the community or its taxpayers.

Building Design

This prototype is designed to be built into the side of a gently sloping hill with the front entrance at the upper level, and the rear, service entrance at the lower level. This bi-level feature gives the facility three significant advantages: 1) it lowers the profile and oppressive bulk of the necessarily large enclosure, reducing the amount of costly exterior wall coverings materials, 2) it allows us to segregate "back house" dressing and maintenance areas from the general public which can remain in the more comfortable surroundings of the upper lobby and restaurant area overlooking the ice surface, and 3) it improves the energy efficiency of the rink area.

Development Alternatives

With conventional, private market financing, the maximum hard cost budget for a rink is approximately $1.6-$2.0 million dollars per surface. A facility to this budget can be built within an all metal "pole barn," on a site with minimal landscaping, parking and exterior lighting, and by cutting corners on amenities and operating efficiencies. Such a facility clearly will not meet the requirements expressed in Novi's RFP, nor will it adequately differentiate this rink from the competition of other, more expensive, public facilities within the competitive market. To build an ice skating arena meeting Novi's expressed needs, and responding to the realities of the market will cost at least $2.5 million (hard costs only) per surface. Since the operating efficiencies alone are insufficient to support this additional debt, to finance this project it will be necessary to utilize low-cost, tax exempt financing.

We offer two alternatives whereby we can obtain such financing through our finance source, both are "revenue" bonds secured solely by the assets and revenue of the facility, require no approvals from the voters of the community.

A) Foundation Alternative - Michigan Strategic Fund

By financing the facility with revenue bonds issued through the Michigan Strategic Fund, the taxpayers of Novi will be clearly isolated from any financial liability for the debts of the bond financing.

We will establish a non-profit, 501(c)(3) corporation (the "Foundation"), with trustees from the local business and civic community, selected from your recommendations, to own and operate the facility. Through our source and for the benefit of this Foundation, we would ask the Michigan Strategic Fund to issue tax exempt revenue bonds for the full cost of the project. We would design and build the facility for a fixed price, then manage the operations on a short term, fixed price contract, as required by IRS, and all the "profits" would accrue to the Foundation, which then could use such funds 100% for programs which benefit the community. We would also suggest that the Foundation pay land rent to the City in the amount of $30,000 per year to amortize its portion of the park acquisition and development cost.

B) Leaseback Alternative - Local Building Authority

By financing the facility with revenue bonds issued by the City through a local building authority, investors will identify the community as a potential alternative source of debt repayment, and such bonds will be easier to sell and will carry an interest advantage of approximately 50-100 basis points.

After the local building authority received the proceeds from the bonds, we would build the project for a fixed price on a turnkey basis, delivering to the city, a fully operational arena complex which would then be leased back to us on a twenty year lease. Under this lease, after payment of all operational expenses debt service, any surplus would be divided 50% to us for management, and 50% to the city as land rent.

Facility Management

Center Ice Management, Inc. will promote and manage programs within the facility under either of the following two alternatives.

A) Fee - Short Term Contract Alternative

Financing this arena by way of tax-exempt bonds issued by a 501(c)(3) non-profit corporation will prohibit our participation in the income of the facility and will limit the term of our management contract to five years or less. We have proposed management terms satisfying these limitations and of course would be open to renewing our contract after its initial term expired.

B) Long Term Profit Sharing

Under Development Alternative B, we would be willing to share in the risk by tieing compensation to a share of "profits."

In the first case we would be reporting to and serving at the pleasure of the Foundation board. In either case, rather than simply acting as a rental agent, hiring and supervising maintenance personnel, **Center Ice** will take an aggressive management role, promoting and encouraging skating activities, and sponsoring and supervising leagues and associations centered in the facility and dedicated to serving the residents of Novi.

Serv-Ice Refrigeration

Design and installation of the skating surface and refrigeration will be the responsibility of **Serv-Ice Refrigeration**. In addition to providing on-going maintenance on various local rinks and commercial refrigeration systems, Serv-Ice packages and installs rink surfaces. Recently installations include the second ice floor at the Tam O'Shanter Club in Sylvania, Ohio, the Dallas Stars practice rink in Irvine, Texas, and the fourth surface at the Lakeland Arenas. Currently Serv-Ice is the refrigeration contractor on the Detroit Skating Club expansion project. While refrigeration systems are common technology utilized in warehouses, meat packing plants and factories throughout the world, many rink owners turn to out-of-state specialists, whose primary asset is marketing expertise, for the prefabrication of proprietary package compressor/chiller units and chiller coils. Serv-Ice not only has all the expertise, they are free to assemble the best packages including whatever proprietary systems we prefer available, they will be available over the coming years to assure continuous operation of the mechanical package.

The Roth Companies

To construct the building, we have affiliated with **The Roth Companies**, engineers and contractors. The Roth Companies have over 40 years experience specializing in design-build of light manufacturing, warehouses, offices and auto dealerships. In most aspects, a rink is a relatively common building type, utilizing construction skills within the capability of most experienced contractors. Building layout and materials will be the responsibility of architects, but The Roth Companies have a great deal of experience designing and constructing commercial coolers and freezer buildings. The affects of the permanently cold arenas on the design and installation of insulation, vapor barriers, foundations and sub-soil bearing are comparable, although not as severe as found in freezer buildings.

Furthermore, the most economical building structure for this type of installation is a pre-engineered building. The Roth Companies are primary dealers and contractors of pre-engineered buildings, and their participation will assure the most economical, highest quality installation.

II: The Proposed Facility

Design Goals

As the newest facility, facing established competitors with the price advantage of partially or fully amortized facilities, the marketing imperative is that we make this facility the first choice of all skaters within a 10-15 mile service radius. While all our prime hours will be immediately sold, no matter what the design of the facility, to keep costs low we will have to market the ice late at night, and during spring and summer hours when users are harder to find. To answer this challenge, our design will utilize the cohesive forces within the skating community to create more than just a place to skate; to create a focal point, with private club like qualities where a skating community form and sink its roots.

With budget considerations paramount, achieving the marketing goals necessitates a careful allocation of financial resources. Long term economy dictates that spending first be directed to the areas that affect long term operating costs; low maintenance and cost efficient ice making and mechanical and lighting systems, strong hockey dasher boards and a well insulated enclosure. Next we must proved the spaces and facilities necessary to support our marketing program, with special emphasis on secondary income opportunities. Lastly we must consider the building shell which creates the image and most important first impression of the facility.

ArchEnomics Associates, Inc. has developed an exclusive prototype for a state-of-the-art, highly efficient ice skating facility which we propose to build for Novi. This prototype was designed to accommodate several very specific goals, including:

- To combine the functionality and convenience of spectator arenas designed for competition (Joe Louis, Fraser's fourth rink) with the economics of typical rinks designed solely for the utility of hockey players and figure skaters.
- To design a facility which appealed to the real customers, the parents who make the decisions and pay the fees, and who often never set foot on the ice.
- To enhance the ancillary business opportunities by vertically segregating the skaters, changing rooms and rink maintenance on a separate, lower level, while the public activities; spectator access, food service and pro shop are located on an "interior street" on the upper, entrance level. The principal result will be to maximize viewing convenience, either from stands within the rinks, or from warm, comfortable seating in the restaurant area.
- To improve the appearance of the facility by reducing the bulk, burying half the building below grade.

Building Space Program

Specific features of this prototype design include:

Arena Spaces

The rinks are the core of any skating arena. Most general use rinks are designed first for skaters, convenience and seating for spectators is almost an after thought. The proposed arenas are designed for both. Lighting will be high pressure metal halide for natural color rendition, 50% brighter than industry recommendations and bright enough for high quality video recorders. Seating will be stadium style starting right at the dasher boards, with rear access and no spectators or traffic in a main aisle along the ice blocking the view of the skaters. Initially, the large arena will include seating capacity for 600 persons, with space for an additional 700 seats in the future on the other side of the rink.

Hockey Changing Rooms

Clean, roomy changing rooms are critical for hockey players. Changing benches in corners are almost useless, long, narrow spaces provide the most bench space to dress at. At a length of 26', these rooms are among the largest in the market; and a width of 14' provides adequate space between the benches to stash hockey bags and allow movement about the room. Each dressing room has its own, private shower/toilet room. While interconnecting two adjacent dressing rooms sharing a single shower/toilet appears cost efficient, not only are the separating gates susceptible to easy trespass raising questions of security; the sounds from older skaters who have just lost a game is not conducive for preparing another team to go on the ice, especially if that second team is considerably younger.

By locating these changing room off a central hallway rather than in the rink proper, parents can deliver their children, and pick them up, without going into the cold arena, and without interfering with the traffic flow of the next game which might be underway.

Locker Rooms for Figure Skaters

Figure skaters are often second-class citizens in hockey rinks. Girls especially have to dress to skate, feel uncomfortable in hockey changing rooms, and for competitions need sinks and make-up areas. In most rinks, figure skaters choose (are forced) to change in cramped toilet rooms. Private lockers in their own changing rooms give female (and male) figure skaters a home within the arena, a place to store and lock their skates and skating outfits, and a reason to schedule practice sessions only in this rink. By renting the lockers on monthly or seasonal basis, these locker rooms will more than pay for their own costs and space.

Official's Dressing Rooms

While a private dressing room is necessary for hockey referees, a second, female dressing room will be valuable for figure skating instructors and officials. Instructors who spend several hours a day within the rink need a place to withdraw from their students between lessons; by giving them their own space, they will have additional incentive to schedule as many lessons as possible within this arena.

Changing Lobby

Open skating is not only an important function of rinks, an opportunity for new skaters to try out skating before they enroll in hockey or classes, but very profitable from its own admission fees. We intend to have open skating sessions as many as five days a week, and public skaters as well as young beginning and intermediate figure skaters, will not be using the formal changing rooms, but do need a place to tie their skates, often with the help of their parents. Providing a dedicated changing area, separate from the main lobby, not only protects the integrity of the lobby, it allows space for public skaters to retreat from the ice during sessions. Most rinks expect children at skating classes, or everyone at public skating sessions, to leave their shoes and outer wear on benches around the rink. With so many children wearing expensive footwear and coats, coin operated lockers will be well used and the income therefrom will provide substantial revenue to the operation.

Exercise/Dance Facility

A large, off-ice space will be provided on the lower level outfitted with thick mat rubber flooring and full height mirrors and railings on one or more walls. These spaces can be used as an exercise room for adult aerobic exercise sessions (perhaps scheduled while children are skating), as a weight room for hockey players, or as dance instruction space for figure skaters. Only a few rinks in this market offer such opportunity, but when available, these spaces provide an important opportunity for additional instruction, additional income with only minimal initial or operating investment.

Retail - Pro Shop

Pro shops in most rinks are small facilities subsisting on tape, laces, sticks and skate sharpening. With a prominent location and adequate space for the storage and display of merchandise, this shop can become a cost competitive retail outlet meeting all the needs of the rinks cliental. Furthermore, with parents forced to spend hours a week waiting for their children at practice, the pro shop can become a place for mothers to browse, and an important outlet for impulse, sportswear.

Food Service

The most prominent feature of this rink is its extensive restaurant facility. Overlooking both rinks, this facility is not only a place for parents to relax while their children skate, but a restaurant for hockey or figure skating families too busy to cook regular meals. It is especially important for adult hockey players who are almost always interested in a place to eat after playing, and for families and dates attending open skating sessions.

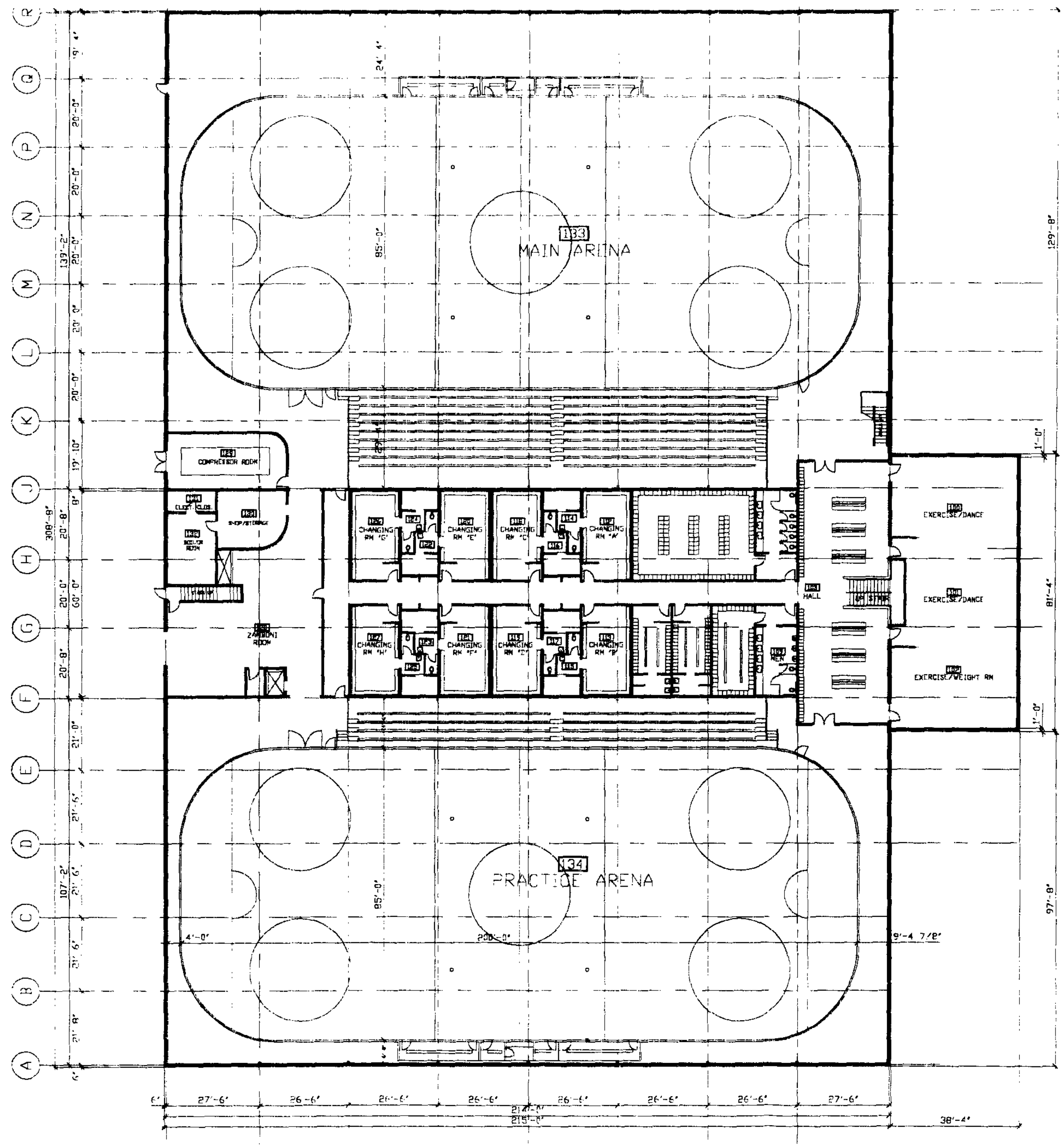
Key to the success of this restaurant will be high quality food service priced for the market. While large, closed circuit television and electronic games will provide diversions for patrons, good food including pizza, burgers and a distinctive, limited service menu will make this restaurant competitive with anything within the market. It is our feeling that this location can become a club like home for the hockey and figure skating clienteles. Skating families develop such relationships with current and former teammates, and their families, that like a private club, this will be a popular restaurant to visit even though one may not be skating that evening.

Meeting/Banquet Rooms

Private rooms adjacent to the restaurant will have important uses including for meetings for the hockey and figure skating associations, for other affiliated or not affiliated community groups, as hospitality suites for tournaments or skating competitions, and as party rooms for youth or adult teams. Hockey families spend so much time together that social agendas, including pizza parties or team banquets are frequently scheduled. With a game room and good pizza, it will become very easy for teams to schedule such events here, immediately after practices, when they know that most everyone is available to attend.

Arena Space Program

Primary (Income) Spaces		
Large Arena	Seat 1,300	29,890
Small Arena	Seat 250	24,075
Community Facility		2,570
Food Service Area	Seat 256	5,760
Game Room		560
Private Banquet Room	1,900	
Pro Shop		1,440
Dance Studio, Exercise/Weight Room		3,117
Skaters Long Term Rental Lockers		1,323
Skaters Day Lockers		1,000
Total Primary (Income) Spaces	**69,735**	
Secondary (Non-Income) Support Spaces		
Hockey Changing Rms	4 each at 519 sf	2,076
Officials Changing Rm.	2 each at 351 sf	702
General Offices		2,200
Main Lobby		2,260
Toilets - Lower Floor	(Men & Women)	676
Toilets - Upper Floor	(Men & Women)	540
Total Secondary (Non-Income) Spaces		**8,454**
Mechanical and Utility Spaces		
Compressor Room		570
Zamboni Room		1,922
Electrical Closet		98
Boiler Room		294
General Storage/Work Room		350
Total Mechanical and Utility		**3,234**
Corridors, walls etc.		3,425
TOTAL GROSS AREA		**84,848**



A+E
ArchEnomics Associates, Inc.

2910 E. Jefferson Ave., Rear Suite
Detroit, MI 48207-4208

(313) 567-1333 Fax 567-2122

Prototype Ice Rink

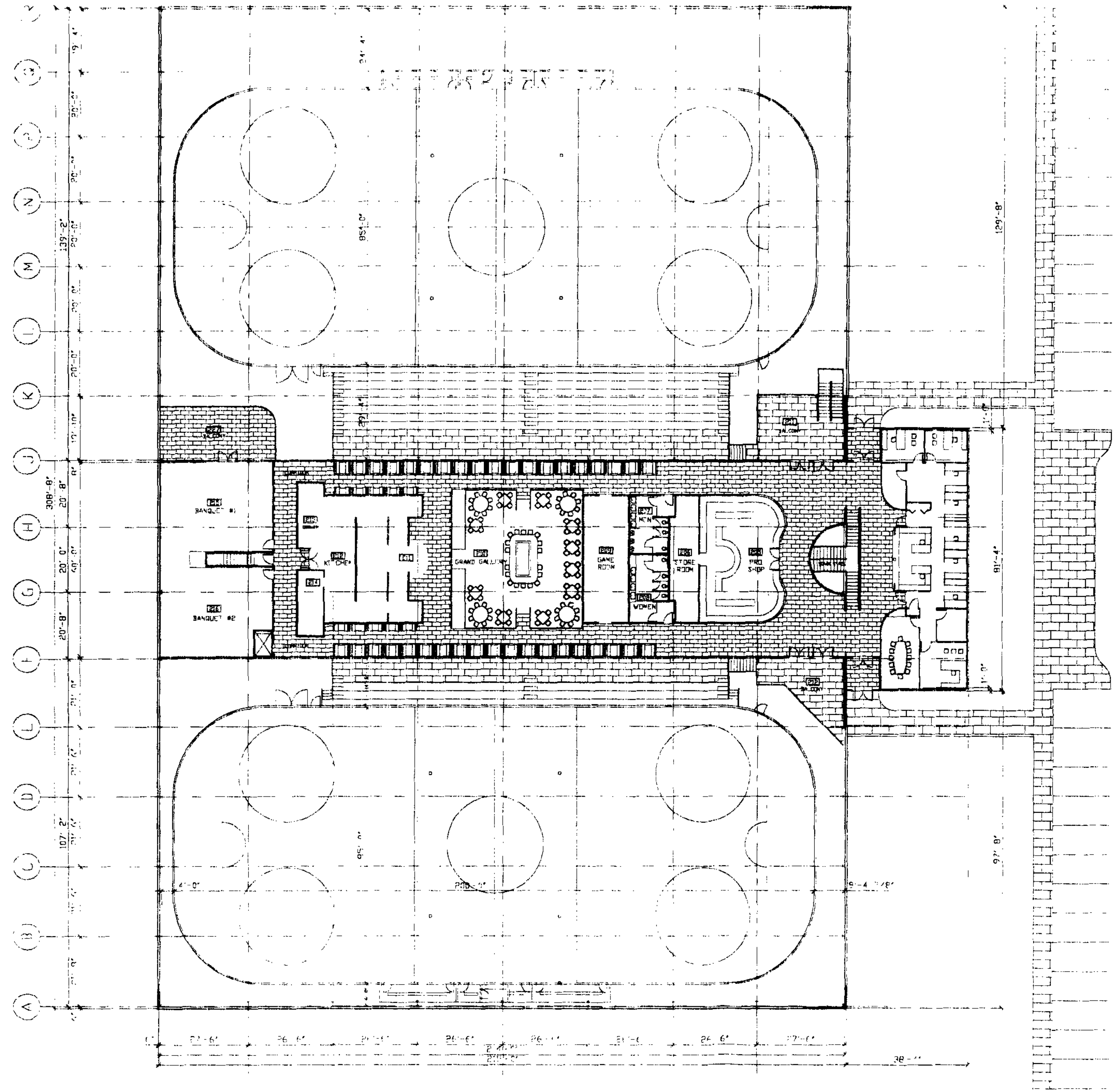
Alternate C

Schematic Plans issued for budget estimating purposes only.

March 30, 1994

Lower Level
Scale: 1/32" = 1'-0"

100



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Prototype Ice Rink

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Schematic Plans issued for budget estimating purposes only.

March 30, 1994

Upper Level
Scale: 1/32" = 1'-0"

101

Building Design & Construction

While final designs will be made in conjunction with the City, following are some of our specific thoughts on issues raised by the City in its request for proposals.

Site Plan: We anticipate siting the facility near the Twelve Mile Road frontage at approximately a 45 degree angle to the road and built within the slope with the front entrance on the North side of the building. The rear entrance (Southeast side) would be for service and the ground might be mounded and landscaped between the building and road to hide the service area and to reduce the mass of the structure. At the front would be approximately 500 parking spaces with appropriate landscaping barriers and high pressure sodium lights on 40' poles. We would like to site the facility with expansion space sufficient for two additional ice sheets, an indoor or outdoor swimming pool, and for ancillary service spaces.

Building Structure: The arena buildings would be pre-engineered steel buildings. Roofs would be 24 ga., standing seam steel panels with aluminum-zinc alloy coating. The metal roof and wall panels will be insulated with R-19 fiberglass blanket insulation. The core (between the arenas) will be structural block bearing walls with prefabricated concrete plank floor for the upper level.

Exterior Elevations: Final design of the exterior will be studied and determined within the context of the site, when and if we are chosen to develop this facility. With this plan, approximately 40% of the exterior walls will be buried below grade, will not be visible. Above grade, to a height 12' above the interior floor level of the main building, we propose that the walls be integrally colored, split and scored concrete block. Above the 12' elevation will be 26 ga. steel with 20 year, baked coating. The front wing, including the office and entrance lobby provides an opportunity for special design attention. We are open to the use of brick on exterior walls, if necessary, but feel that the split masonry is more appropriate.

Floor Finishes: Much of the ground floor accessible to skaters, including the locker and dressing rooms, the bathrooms, the dance/exercise room, and the connecting corridors will be covered with 3/8" thick rubber tile appropriate for skaters or heavy exercise.

Building Systems and Long Term Economics

Many private rinks strive to risk as little as possible in initial investment, hope to achieve early profits after which they can deal with the high utility and maintenance costs associated with inexpensive and inefficient building and ice making systems. Every hour, day or week these systems are down represent not only lost revenues; but customer frustration and bad will. Special attention has been paid to the following systems:

> **Ice Making System and Compressors:** A number of manufacturers promote and install inexpensive ice making systems which can save an owner $150,000-$250,000 in initial installation cost. Some systems utilize a single very large compressor which, while cheaper to install, does not provide for variable levels of operation; minimal cooling during cold winter months, heavy use during hot summer months; and in the case of breakdown, provide no backup potential. Other manufacturers install several small, light duty compressor units of the type designed to be utilized in air conditioning systems, not designed for the heavy use expected in ice making systems.

We propose utilizing three, heavy duty Vilter compressors of different sizes in an efficient ammonia refrigeration system. While more expensive, commercial grade Vilter compressors are simply the best. Longevity and savings on maintenance over an extended period of operation easily justify the additional investment. Furthermore, by turning on and off compressors in various combinations, we can obtain the precise level of cooling appropriate to the current load, and on the hottest day, the loss of any one compressor would not affect our ability to maintain the ice and operate the rink for an extended period while repairs were made.

The ice floor will be a sand base with 1" I.D. polyethylene piping, 3.5" on centers with butt welded steel headers utilizing brine as the cooling medium. Below the coolant piping will be sand, a 6 mil vapor barrier, and 4" of styrofoam insulation. Below the insulation will be sub-soil heating pipes to prevent freezing and to allow 12 month per year operation.

Energy Savings: Not only will we install R-19 insulation and vapor barriers throughout the rink buildings (chiefly to keep out summer heat), we plan to install a sophisticated heat reclamation unit on the rink refrigeration unit. Essentially, any refrigeration (or air conditioning) system draws heat out of a transfer medium, in this case brine, which once cooled transfers this cooling to the ice surface. The heat once accumulated in the ammonia must be continually expelled either through a finned tube, air cooled heat exchanger or through a water cooled evaporative condenser (water cooling tower). Hot ammonia will be passed through a tube with a "jacket" on the outside. In our energy recovery system, water passing through the jacket will be heated and will be used for domestic purposes, showers, Zamboni water and the ice melting pit.

Desiccant Dehumidification: The least expensive rinks do without dehumidification at all, but moist summer air brings considerable moisture which when brought in contact with the ice condenses first as fog than as condensation on the surface of the ice, as well as the boards and building structure. Dehumidification not only makes the environment more pleasant for users, prevents rusting of exposed steel and matting of blanket insulation; it reduces considerably the cost of maintaining the ice surface. Water condensation on the ice surface freezes building up the ice surface, and in the process drawing additional cooling from the compressors. While traditional dehumidification systems are less expensive to install, desiccant systems are more effective, and are less costly to operate, drawing less power.

Dasher Boards and Glass Shields: The quality of the ice surface depends mostly on the quality of daily maintenance so the most important design initial consideration to satisfy the skaters is not the ice, but the dasher boards and glass shielding. Through heavy use, dasher boards and glass absorb considerable abuse therefore we have specified especially rugged, heavy gauge, all welded galvanized steel supports and solid "stay-white" plastic liners on the dasher boards. Furthermore, rather than plastic "glass" shields, as found in most rinks, and which scratch from use and from maintenance, above the dasher boards will be installed 1/2" thick (5/8" thick around the ends) tempered glass protective panels, 5' high above the boards.

Project Budget

	Item Cost
Land Cost	**$0**
Hard Costs	
Site Work & Parking [1]	515,000
Building Improvements	2,972,000
Ice Surface/Equipment	527,000
Dasher Boards	190,000
Zamboni	75,000
FF&E	185,000
Total Hard Costs	**4,464,000**
Soft Costs	
Architect & Engineer	174,000
Legal Fees	90,000
Underwriters Discount	126,000
Development Fee	250,000
Capitalized Interest	251,000
Offsetting Interest Income	(101,000)
Total Soft Costs	**790,000**
TOTAL PROJECT COST	**$5,204,000**
Contingency [2]	450,000
Operating Reserve (1 yr.)	631,000
Contingency & Reserve	**1,081,000**
TOTAL PROJECT BUDGET	**$6,285,000**

(1) Estimate for site improvements is budget figure only based on no actual site information.

(2) Contingency based on the uncertainties in program at this early stage.

Food Service

The food service operation would be a concession leased to a third party and who would be responsible for furnishing their own restaurant and kitchen equipment. While we have conceptualized our ideas as to the type of service required, and will market the business opportunity to managers who seem to share our vision, the exact design and management of that facility will by subject to the tenant's experience, vision and judgement.

Marketing Basis for Food Service

Like a private club, the Arena is a place where people spend a lot of time among a population with whom they have a lot in common. The proposed Arena will act as a magnet for people, both participants in hockey and skating events as well as parents and siblings forced to wait for practices and games to occur. We propose going one step further; making the location into a place they want to visit and within that environment providing food service.

A model for this is the successful "Chuck E Cheese's" Pizza Time Restaurants. While geared to a youthful cliental, these restaurants are first a place where people want to be and only secondly are they places where one goes to eat. We will generate our excitement with views to the on-ice activities, from a large, electronic game room, and with televised sports events. The people are already here; with the excitement of the view, the games, and the televised sports motif, why go someplace else to eat.

Our market therefore includes team mates (and families) sharing the hockey or figure skating experience, looking forward to extending the social experience to shared meals, families already at the rink who haven't had time (or too tired) to prepare a family dinner, skaters coming off the ice hungry, team parties and banquets (a major source of business), and teams visiting from out of town (another large source of business. Furthermore, if price, service, food and atmosphere are successful, this restaurant can generate business independent of activity on the ice.

Decorative Motif

A theme for a restaurant is more than a promotional or marketing tool; used to its best advantage, a theme should enhance the food on the menu. It should make one want to order steak in a steak house, or fish in a seafood restaurant. Successful contemporary restaurants put us in the mood to eat Lasagna at the Olive Garden, Fajitas at Chi Chi's, or Shrimp at the Red Lobster. No matter how good the cook, I doubt many people would order southern fried barbecued chicken from a Japanese Steak House.

A strong ethnic theme for the proposed operation would be inappropriate. To avoid the neutral sterility of the typical "family" restaurant, we propose developing an outdoor, street scape environment with a picnic motif. Sports are traditional outdoor activities associated with stadiums, ponds and fields. The associated dining experience is a picnic, with "hand" food served in baskets, and outdoor cafes where one lingers over fun food while observing (by satellite TV) the activities of the environment. Such a motif would easily accommodate a menu with broad variety; grilled hamburgers, fajitas, small steaks, chicken breasts, barbecue beef, pork or chicken sandwiches. Pizza would fit, and considering the proportion of children among the cliental might be a required necessity. For dinner hour and banquets, a more extensive menu can be assembled.

III: Proposal: Terms & Compensation

Advantages For the City of Novi

Under this proposal, skaters would pay 100% of the costs of their programs, including their share of land acquisition, finance and construction of their rink and all operating and maintenance costs. Unlike little league baseball, basketball, soccer or football programs, youth hockey and figure skating programs would cost the taxpayers nothing.

Financial Benefit to the Community: Whether developed under the Foundation Alternative, or the Leaseback Alternative, substantial distributions will be made to the community over the life of this project. Whether specific amounts should be specified as being paid to the City or Recreation department (as land rent or such other payments) is up to the city to decide however, such obligations, if included, should be subordinated to operations and debt service. While our analysis suggests that this rink should be able to break even and generate a small "profit" in its first year of operation, it would be best not to count on such revenue for the first two to three years.

Service Benefit to the Community: The principal benefit to the citizens will be access to convenient figure skating and hockey opportunities. The best, prime hours will be allocated to youth hockey and youth figure skating programs, and to open skating sessions for the community. We intend to operate a full program providing:

- At least six hours per week (during the winter season) of prime time open skating sessions,
- Beginning and intermediate skating lessons,
- Figure skating patch sessions and after school group lessons,
- Hockey skills and skating classes,
- Youth and adult hockey leagues,
- Summer day camp, hockey & figure skating programs,
- Afternoon & evening drop-in adult hockey sessions.

Benefit of Aggressive Management: Under either development alternative, we will manage the facility like a private business; responsive to the needs of our patrons, and disciplined by the realities of the marketplace. Focused by the necessity of achieving economic stability, management and staff will be particularly attentive to the needs and desires of the customers whose patronage provides the remuneration for their livelihoods.

Management Role in Skating Programs: Unlike traditional rink managers, whose roles are generally limited to maintenance and leasing ice time to users, **Center Ice Management, Inc.** feels that it is imperative for rink management to become intimately involved in the hockey and figure skating programs utilizing the facility; to participate in the promotion and management of such programs calling the community and facility home. Since the community does not now have organized hockey or figure skating programs, as rink managers, we will take the responsibility to organize independent, non-profit hockey and figure skating associations. From our experience both with MAHA and with local Associations, we will recruit both participants as well as volunteer leadership for the youth hockey and youth figure skating associations.

- While the youth hockey association will be established as a private, internally managed association, we will work with local advocates to promote initial sign-up and to recruit leadership and coaches. While MAHA mandates and provides minimal instruction for youth hockey coaches, we will supplement that training by supplying experienced, professional staff to work with new coaches. We will also provide skaters with classes in introductory and developmental skating and hockey skills. Finally, we will provide clerical assistance with organization and operation of the league.

- We will organize, promote and manage hockey tournaments on all levels, and spring and summer youth hockey leagues (which are not normally promoted by the local associations)
- For the youth figure skating program, we will retain professional instructors and promote and conduct introductory skating classes. As incentive for our youthful skaters, we will also organize and finance an annual ice show. While the figure skating association will reserve certain hours for its own internal use, we will supplement their efforts by conducting patch sessions when individual skaters and coaches can practice, and generally support the figure skating program with organizational, promotional and clerical support.
- We will organize and manage a senior hockey league with competition for all age groups, and at all levels. While most adult hockey programs are self-operated by the participants, we will organize and promote internally managed programs with better control of officiating, competition and enforcement of rules and sportsmanship. Individuals and teams will be solicited and all teams will be registered with and governed by the rules of MAHA.
- We will sponsor and conduct instruction in hockey and figure skating at all levels.

Management services will be provided to the non-profit Foundation under the following terms and conditions, which are designed to comply with IRS requirements for 501(c)(3) corporation. Compensation for management of the rink and will start beginning 60 days before scheduled opening in order to provide for hiring and training of operating personnel.

Projections of Operations

Estimates of projected operations are dependent on various factors not under our control. Based on studies conducted on this market, we have estimated the income and expenses for a rink similar to the proposal, put into operation in the fall of 1994. Ice rental rates, wage levels and interest rates for a rink put into operation at a date in the future will vary based on changing economic factors.

The operating results presented, rather than projections intended for presentation to a lender or investor, which we would discount somewhat to enhance our credibility, are realistic estimates of what we believe we can achieve, and which we would prepare and use for internal planning.

The operating plan would be based on twelve month utilization as a skating and hockey facility. While we have considered the opportunities for off season, dry floor uses of the facility, we firmly believe that skating will be the most productive use of the equipment, even throughout the summer months when many other rinks in this area are closed. While dry floor hockey played with in-line skates is often suggested as an alternative, summer use; we are concerned about the liability aspects of that sport. There are far more injuries reported resultant from in-line skating than ice hockey, and there is no national organization comparable to AAHA providing low cost, individual liability policies.

Furthermore, we know we can rent the ice, at higher rates than the dry floor, for more hours, during every summer month. Were in-line skating a desirable goal, a separate, outdoor surface with appropriate boards would be an inexpensive alternative.

There would be different operating results dependent on whether the project were financed under the Foundation Alternative "A" or the Leaseback Alternative "B". The principal differences would be in salaries, including management fees, and interest rates. The following estimates are based on the Foundation Alternative, with interest rates similar to what might be available today. Since rates are currently increasing, there might be a significant difference in interest costs once this project is financed.

Sources of Revenue [1]

	Year 1	Year 3
Ice Rental Revenues		
Winter Season	$811,000	$928,000
Spring Season	101,000	172,000
Summer Season	202,000	306,000
Concessions		
Pro Shop	30,000	32,000
Food Service	108,000	114,000
Misc. Rentals		
Lockers - daily	6,000	8,000
Lockers - Monthly	25,000	31,000
Dance/Exercise	71,000	89,000
Weight Training	8,000	10,000
Team Rooms	8,000	10,000
Other Income		
Rink Advertising	18,000	22,000
Interest - Reserves	12,000	23,000
Total Sources	**1,400,000**	**1,745,000**

Uses of Revenue [1]

	Year 1	Year 3
Operating Expenses		
Salaries	272,600	340,400
Utilities	128,000	135,900
Maintenance	57,000	66,800
Other Exp.	100,000	106,300
Total Operating	557,600	649,400
Net Operating Income	**$848,400**	**$1,095,400**
Debt Service [2]	613,000	631,000
Reserve & Surplus [3]	**$235,400**	**$464,800**
Total Uses of Funds	$1,400,000	$1,745,000

(1) Assuming inflation of 3.0% per annum.
(2) Debt Service $6.285 million, 20 years at 8.0%

Terms: Foundation Alternative "A"

The Foundation alternative, has two principal advantages: 1) the Foundation as structured can meet IRS tests for issuance of tax exempt revenue bonds through the Michigan Strategic Fund, bonds which have no financial impact on the City and Taxpayers of Novi, and 2) operating through the Foundation allows community leaders, rather than the profit motive, to determine financial goals and ice rental rates.

Another significant advantage is depoliticization of rink management. Most municipally owned and operated rinks are poorly run, have costly personnel policies, pay too much for services, favor their powerful tenants with advantageous rates, and generally avoid innovative or unusual decisions which might be distorted. An elected representative is subjected to political pressures from constituencies with their own goals, goals often antagonistic to the best interests of the rink. A carefully selected board of trustees with hands on business experience and operating outside the glare of public scrutiny, can do a better job of overseeing the operations of the rink. They can make the hard decisions; raise ice rates, fire employees, satisfy their clienteles as must be done every day in private business.

Structure of the Foundation

The foundation would be a 501(c)(3) non-profit corporation governed by 5-11 Trustees chosen from the community. We will prepare and file a charter and by laws for the approval of the city and then an initial set of trustees will chosen by consensus between the city and the developer. Trustees should be respected community leaders who can demonstrate expertise in business and financial management as well as sports and community affairs. The initial board should consist of 1-2 elected representatives of the City, a representative of youth hockey interests, perhaps a past officer of an association, a representative of figure skating interests, again possibly a past officer, someone knowledgeable about and close to the school system's athletic programs, and general members with legal, accounting and business experience.

The Foundation & The City of Novi

The Foundation while chartered to serve the needs of the community, will be independent from City Government. The Foundation will enter into an agreement with the City of Novi to lease the site then we will assist the Foundation to obtain financing, to build and to operate the arena.

Management and the Trustees

Center Ice Management Company will have ex officio representation on the Foundation board; while not voting, it should have the right to attend and participate in all board and committee meetings. The management company will also provide all clerical and organizational services as may be necessary to support the board. All agreements for us as the developers to build and to manage the rink will be made with and supervised by the Trustees. We will provide to the foundation, a fixed price, turnkey price on the physical plant (such cost based on the enclosed budget, as modified by negotiations which might take place with the city), and a management contract based on the enclosed specifications.

Financial Benefit to the Community: All "profits" from the operation will be controlled by the Foundation which will be charged to utilize such funds solely for the benefit of the community. Once income from the facility is sufficient to pay all ongoing expenses, and reasonable reserves is established; determinations regarding allocations of accumulated surpluses will be made by the foundations' trustees, community members chosen with the community's consent. The Trustees can choose to subsidize certain youth activities with lower ice rates, to sponsor other activities, or to use the surplus revenues to expand its capital facilities.

Financial Opportunities for Citizens: While we would be open to allowing the community to utilize its allocated share of revenue to purchase and operate programs (ether through the Foundation, or through the Recreation Department in the alternative proposal), we would prefer to operate most programs ourselves. Our preference would be to have the Foundation (or the Recreation Department) utilize some of their revenues to issue scholarships paying a portion of each resident's participation fee for youth programs. This would allow the arena to operate based on market forces, with first class, privately managed programs, while citizens of Novi could benefit from reduced costs commensurate with the communities investment in the facility.

Long Range Benefit of the Foundation: With accumulation of surpluses, and success in making timely payments on the original bonds, the existence of the Foundation will itself become a community asset. With a proven cash flow and borrowing record, the Foundation will be a credit worthy institution capable of additional borrowing for program expansions. Governed by the Trustees, the Foundation will be financially responsible and capable of additional borrowing. Additional opportunities might include construction of additional rinks, a swimming pool, tennis courts, an indoor racquet sports facility, a senior facility, arts and crafts facilities.

Land Rent

While all the "profits" of the facility will accrue to the benefit of the community, we propose to utilize a portion of those funds specifically to repay the City for the arena's share of land acquisition. After an initial period of "lease-up," the Foundation will be in a position to pay annual land rent in the amount of $30,000, beginning in the fourth year of operation, such amount escalating thereafter pro rata to the cost of living but not more than 3.0% per annum. While the building and parking will occupy 7-8 acres, and assuming an acquisition cost of $20,000 per acre which is financed over the balance of 20 years, this amount will amortize the cost of double the land we will be utilizing.

Management Contract Terms

(Foundation Alternative)

Basic Responsibilities: Under the term of this proposal, we will be responsible to supervise all day to day activity in the rink including 1) renting space and ice time, 2) day-to-day operations and maintenance of the facility, and 3) establishing and maintaining appropriate financial and business record keeping systems. We will supervise all management and operating personnel in the facility (not employed by concessionaires), maintain relations with major ice users, administer leases or concession agreements with permanent building tenants, and work with other parties to promote special events such as tournaments and ice shows.

Additional Responsibilities: As additional responsibilities, we will organize and promote special programs to utilize ice or to benefit the community. Such programs may include figure skating classes, summer day camp instructional programs, adult hockey leagues, general instructional programs, and on or off-ice social, recreational or educational programs.

Financial Reporting and Money Management: As rink manager, we will be responsible to establish accounting and reporting procedures, acceptable to the Foundation, for receipt and disbursement of all revenues received from rentals and user fees. All funds so received will be deposited daily into a bank account and from such deposits, the Foundation shall transfer prearranged amounts to one or more operating or reserve accounts from which, based on pre-approved budgets, we will be authorized to disburse funds for payment of appropriate expenses of the operation. In some cases, Center Ice may act as agent on behalf of leagues or associations who are major clients of the rink and may collect and hold money paid by individuals for their league fees and/or ice time. In these cases, arrangements will be made for the expeditious transfer or credit of such funds to the appropriate league or association.

Compensation

Under the terms of this proposed contract, Center Ice Management, Inc. shall be compensated as follows:,

1) **Direct Reimbursement:** The operations will reimburse Center Ice for 100% of all direct and indirect personnel expenses for all on-site operations, maintenance and administration of the activities of the center. Basic personal (full, part-time or contracted out) included for such reimbursement will include Zamboni drivers, janitorial and maintenance, clerical, book and record keeping, and two assistant managers who will be responsible for all the day to day supervision of operations. To the extent that other on or off-ice programs are organized and administered by the rink, user fees from such programs will be allocated to pay not only direct costs of such programs, but for all related overhead and administrative costs. Periodically, Center Ice will provide, for the approval of the Foundation, compensation schedules for all personnel to be so reimbursed by the Foundation. Such schedules shall include base pay, benefits, overhead and any incentive or bonus agreements.

2) **Base Fee:** A base fee paid monthly in advance, for Basic Responsibilities of $5,000 per month.

3) **Capitation Fee:** To recognize the varying levels of responsibilities resultant from periodic changes or normal growth in the Basic Responsibilities, Center Ice shall also be paid on a monthly basis, an additional fee equal to $4.00 per hour for every hour of ice time sold during

that period. In the event the Foundation shall donate, or utilize ice time for its own purposes, such time shall be counted as "sold" for the purposes of this paragraph.

4) **Additional Compensation:** For any additional programs managed or promoted by Center Ice, additional management fees will be added, on a program by program basis, to be paid out of revenues generated by such programs. Unless specifically agreed otherwise in writing, such fees will be equal to Five (5.0%) Percent of gross program income. In addition, should any major alterations, expansion or renovation of the facility be undertaken, additional fees, comparable to the additional work or responsibility, will be negotiated.

For expenses to be directly reimbursed by the rink, the rink shall loan or otherwise advance to Center Ice sufficient operating funds from which to pay such expenses on a timely schedule, in advance of invoicing and receipt of reimbursement compensation from the rink. Any interest or fees associated with such loans or advances will be normal, reimbursable expenses of the business under item 1, above.

Contract Term, Escalation and Termination

The term of this contract shall be five years and at each anniversary of the first starting date, the compensation rates shall be adjusted pro rata to any increase in the cost of living as measured by the Bureau of Labor Statistics CPI cost of living index for the Detroit Metropolitan area.

The Foundation shall have the option to terminate this contract for the following reasons:

1) **Failure to Make Revenue Projection:** This contract may be cancelled at any time after the first anniversary of its start, and after advance written notice, for cause of failure to generate sufficient revenues from operations to meet debt service requirements. Such cause shall occur when the revenues (as adjusted below) from the past 12 month period were not sufficient to pay 1) all direct expenses, and 2) all required debt service payments, and the projected revenues for the coming twelve month period, including all valid contracts and adjusting for seasonal or inflation variances, will not cure such deficiencies.

The Foundation shall provide 90 day advance written notice of intent to terminate this contract. During that period, if Management is able to cure such shortfalls or to secure contractual business which will cure such shortfalls within a reasonable period of time, then the contract will not be cancelled. For the purposes of estimating revenues, the full amount of any revenue lost for any ice not available for sale by management because it has been utilized by the Foundation for its own purposes, or donated for less than full price, shall be subtracted from the deficit to determine whether or not there is a shortfall.

2) **Option to Terminate:** Upon the date of the third anniversary of the beginning date of this contract, the Foundation shall have the option to terminate this contract without cause. To exercise this option, the Foundation shall provide not less that 180 days advance written notice of intent. Upon the date of termination, Center Ice will be compensated for all unpaid fees or unreimbursed expenses but there shall be no other termination fees or penalties.

3) **Maleficence or Misfeasance:** In the event of Maleficence or Misfeasance, upon receipt of written notice, Center Ice shall have 30 days to cure said defects. Upon failure to cure said defects within that period, this contract may be immediately cancelled without termination fee or

penalty.

In the event of termination for any reason listed above, or for other termination upon mutual agreement or upon expiration of the five year term of this contract, the Foundation, or any other entity with whom it may contract with to manage this facility, will be restrained for a period of twelve months of employing any key employee of Center Ice Management, Inc. including managers or assistant managers of the facility.

Terms: Leaseback Alternative "B"

Should the community prefer the facility to be financed through a local building authority with community revenue bonds, we can save 50-100 basis points on interest and offer a Leaseback alternative whereby we lease the facility directly from the Building Authority, paying a share of the profits directly to the City of Novi. Such revenue bonds will continue to be secured solely by the income of the arena, and would not be general obligations which in the event of default the City could be forced to repay out of general revenues. Effectively, such bonds would be issued by the City with the specific condition that purchasers would not be able to look to the city or tax base for repayment of said obligations should revenue from the rinks be insufficient. In practice, a default on these bonds could affect the community's own credit rating on future borrowing and many communities do choose to make good before the bonds are defaulted.

Leaseback Alternative Terms

Under this alternative, we will "turnkey" the design and construction of the facility as outlined herein for a fixed price (price subject to further agreement on the specific design of the facility), delivering the facility complete including a reserve for debt service equal to one year's payments. Upon delivery of the completed building, we will assume full responsibility for operation and debt service under a triple-net lease under the following general terms:

1) **Term**: Five years with three five year extensions contingent on satisfaction of goals agreed upon and stated in the initial lease.

2) **Rent**: After payment of all operating and maintenance expenses, we will pay additional rent equal to 1) the cost of required debt service payments, and 2) 50% of the net surplus or "income" after expenses.

   Income will be calculated including all contract or hourly ice rental revenues, admission fees to open skating sessions, and rental fees received from tenants for the pro shop and restaurant, and miscellaneous rentals received from use of the meeting rooms or exercise room, and locker rental income. It shall not include the gross revenue of the tenants of the pro shop or restaurant, nor the revenue received by parties (such as skating instructors) leasing ice from the arena for "resale" to students, teams or groups which might be clients of the party.

   Expenses to be deducted from income before calculation of net surplus will include all promotion, maintenance and operating expenses, insurance, debt service, taxes and other expenses required or directly incurred in the operation of the facility. This will include all personnel involved in maintenance or operation of the facility including clerks and book keepers or persons required to oversee, administer or assist programs of tenants, but shall not include the rink manager, persons employed by the restaurant or pro shop, nor of parties leasing ice from the arena.

   The surplus will be distributed annually as follows: 1) the first $100,000 of income will be allocated to Management (to cover its fixed and variable management costs), 2) the second $100,000 will be allocated to the City, 3) any additional income will be allocated pari pasu, 50% to each party.

3) **Options to Extend**: It will be the intent of the parties for this contract to run a full twenty years with five year reviews to determine that the goals and purposes of both parties are being met. Specific criteria for non-renewal will be negotiated and agreed upon, and continuing to achieve stated criteria will obligate the city to honor our requests for renewal at five year intervals. Notwithstanding, malfeasance or misfeasance at any time, with proper notice and opportunity to cure, will be cause for termination of the contract.

Conformance to "General Conditions" Issues to be Addressed

This proposal is made in conformance with the requirements of the "General Conditions" stated in the request for proposals, except as specifically addressed or clarified within this proposal. As the City reserves the right to negotiate specific terms of proposals received, we must likewise qualify this proposal, our estimates of project cost, financing availability and requirement, and rental considerations proposed, based on assumptions we have made regarding location, site and building design requirements, and operating restrictions. If selected by the community, we feel confident that we can come to specific agreements under terms not significantly different than those outlined herein. Likewise, we feel we have significant flexibility to make alterations in our proposal if we have misunderstood the wishes or requirements of the City of Novi.

Project Timing: Expeditious timing of this proposal is of the essence. Interest rates and the availability of bond financing can change, and while such money is available today under reasonable interest rates, conditions are not expected to improve in the near future. Furthermore, two other communities within this market area are contemplating building their own ice skating rinks; should one or both of those facilities receive firm commitment prior to the sale of the proposed revenue bonds, it may not be feasible to sell revenue bonds through the Michigan Strategic Fund, or such bonds may necessitate substantially higher interest rate.

If we are selected to develop this rink, we would take all steps to let the financial community understand that this facility was firmly committed to proceed, and that an investment made in a second rink within this market area would bear a substantially higher risk.

Project Schedule: Assuming no new competition, we would move to immediately begin the process.

- Within four weeks of coming to agreement on terms, we will have updated and finalized our preliminary building plans sufficient to fix a final price.
- It will then take approximately 16 weeks to issue and sell such bonds, during which time we can prepare final plans, bid and let contracts.
- Once contracts are let, dependent on availability of utilities, we can build the facility, ready for skating in ten months, from letting the first contract to Certificate of Occupancy.

Additional time must be allocated for the following activities whose time requirements are outside our control, included are:

- Time necessary to consider and approve this proposal, including negotiating specific contracts and leases,
- Time necessary to obtain necessary hearings and resolutions from the City of Novi and/or the Michigan Strategic Fund, should that alternative be chosen,

- Time necessary for site plan review and building permit approval.
- Time necessary to bring required utilities to the site,

- A significant factor in this process is the time necessary to obtain required IRS approvals of the 501(c)(3) certificate for the Foundation. Bonds can not be issued until legal council can issue an opinion that such Foundation is so certified. Under normal circumstances, it requires 6-9 months for such IRS approval. One possible alternative would be to find an existing non-profit corporation with the required certification, which would be willing to assume this role. Such corporations are not uncommon and might be restructured to fit the immediate need.

A reasonable schedule would be to allocate 12-15 months for the Foundation alternative, and 9 months for the Leaseback Alternative. Assuming availability of site utilities and concurrence with your planning commission on site plan issues, we could fast tract the Leaseback Alternative in as little as 6 months.

Site Design and Utilities: While we have considered the marketability of the proposed site, we have made only preliminary studies into the availability and cost of site improvements. The project budget is merely a budget, a definitive cost estimate can not be provided until specific engineering studies are completed. Clearly, this project cannot, under the terms proposed, afford to bring utility lines to this site, nor can we afford running such lines, or access roads, deep within the available site. Furthermore we have not studied soil and bearing conditions, water tables and availability, and possible soil contaminations, all of which would impact building costs. Assuming required utilities are available close to the building site, and reasonable drives, we feel we have adequate budget for required improvements and 500 parking spaces.

Hours of Operation: The RFP addresses a concern for the "hours of operation." It is our firm belief that extended hours are necessary to spread operating costs and debt service over a larger base, thereby reducing the ice fees charged to youth hockey and figure skating programs. During the winter season, we would hope to rent ice around the clock friday and saturday evenings, and well into the morning hours the rest of the week. These uses do not generate large traffic flows or noise, and should not be objectionable to the community.

Subletting: We can have no objection to limitations on leasing or transfer of our responsibilities under this proposal, but we must be careful to preserve our ability to manage the facility. Our principal activity will be to "sublease" portions of the facility; to rent ice sheets on season contracts or on an hourly basis, to rent patches of ice to figure skaters, to rent rooms for meetings or classes, and to rent lockers. Furthermore we need the flexibility to choose and supervise concessionaires to operate the pro shop and food service within the facility. We interpret the limitation on subletting not to restrict such activities.

Initial Development Costs - Leaseback Alternative: Under the Leaseback Alternative, where management can participate in the profits or income of the facility, we can assume all responsibility to finance the initial risk in developing this rinks.

Initial Development Costs - Foundation Alternative: On the other hand, under the Foundation Alternative, IRS regulations limiting compensation to management are specifically written to prohibit management from benefiting other than from a salary reasonably commensurate with his or her ongoing efforts. While we could be repaid any funds advanced the project under this Alternative, we can not expect compensation commensurate with the risks we would be assuming by fronting all of these costs. While we can minimize and share in this risk, we clearly can not front this entire costs. In order to proceed, we will need to find some assistance, probably in the form of initial working capital loans to the Foundation to support some of the costs associated with architectural, legal and accounting fees, surveys, soil borings and environmental studies.

Once bonds are issued, initial funds advanced from the community will be repaid and subsequent expenses will be paid out of bond proceeds. A budget for development related expenses are as listed below, of these amounts, we can fund approximately 50% of the cost:

- **Development Costs:** For preparation of the revenue bond financing package, including time and expertise in preparing the required feasibility study, working with the investment banker, presenting the investment to bond purchasers, and coordinating the business aspects of setting up the Foundation and receiving the revenue proceeds from the bond issue **$75,000**

- **Architectural Fee:** For design and preparation of working drawings under standard AIA contract terms . . . . **.$125,000.**

IV: The Development Team

ArchEnomics Associates, Inc.

ArchEnomics Associates, Inc. is a Michigan Corporation, a confederation of experienced developers, architects, and construction professionals from which can be assembled the unique skills and state-of-the-art expertise as is necessary and appropriate for the specific needs of any particular job.

Integrated Responsibility

As the building industry splinters into a profusion of fragmented responsibilities, creating a duplication of efforts and multiplication of costs; ArchEnomics reaches back to reinvent the historic **master builder**, that single-source responsibility for all aspects of design and construction of not just buildings, but of functioning environments. A small team of hands-on experts which quickly and effectively can address problems and generate solutions without the overhead and complexity often found dealing with traditional organizations. A single team, from start to finish, to provide continuity, to eliminate duplications, and to assure that commitments made on day one are honored throughout the entire process.

Balance Sheet

ArchEnomcis Associates, Inc. is a newly formed service company. Assets are limited to computers, furniture, office equipment and a library together valued at approximately $25,000. Against these assets there is no debt.

James W. Smith AIA

James W. Smith is a registered architect experienced in all phases of building design, drawing production, construction observation and architectural project administration.

Major Projects with primary Architectural Responsibility:

- **Troy Officenter I**: Troy, Michigan. Three 6-story, multi-tenant office buildings, 450,000 sq. ft.; 1,000 car parking. $21 million.
- **Troy Officenter II**: Troy, Michigan. Two 6-story, multi-tenant office buildings, 300,000 sq. ft. and parking structure for 700 cars. $14.6 million.
- **Oakland University Library Addition**: Rochester, Michigan. Renovate existing 76,000 sq. ft. library plus add two 4-story wings, 88,000 sq. ft. $9 million.
- **EDS/Bendix Research - Office Building Renovation**: Southfield, Michigan. 2-story building, 87,000 sq. ft., $2.5 million.
- **JVJ Office Building:** Cleveland, Ohio, 3-story addition, 85,300 sq. ft. $6.2 million.
- **Travelers Tower II**: Southfield, Michigan. 13-story, multi-tenant office building, 385,500 sq. ft. plus 1,650 sq. ft. parking structure, $27.5 million.
- **100 North Center (Ameritech)**: Troy, Michigan. 14-story, multi-tenant office building, 336,700 sq. ft. and 540 car parking deck. $17.2 million.
- **GM Building (Downtown Pontiac Development Corp.)**: Pontiac, Michigan. 8-story office building, 200,700 sq. ft. $11.5 million.
- **Ottawa Tower (Downtown Pontiac Development Corp.)**: Pontiac, Michigan. 8-story multi-tenant office building, 218,000 sq. ft., $10 million.
- **Winston Churchill Jr. High School**: Royal Oak, Michigan. 78,500 sq. ft., 12 classrooms, cafeteria. $4.2 million.
- **Bendix World Headquarters:** Southfield, Michigan. 4-story corporate office building, 135,000 sq. ft., $8.7 million.
- **Office Building (Kelly Services)**: Troy, Michigan. 10-story office building, 185,000 sq. ft., $4 million.
- **United Airlines Reservation Center**: Dearborn, Michigan. 2-story computer intensive office building, 35,800 sq ft., $1.5 million.
- **Ford Heavy Truck Plant**: Louisville, Kentucky. 1 million sq. ft., $100 million.

Other major projects as designer:

- **Aquatic Studies Station, Laboratory & Dormitory**: University of Michigan, Pelston. $900,000
- **Oakland Museum**: Oakland, California, $6 million.
- **CBS Office Building**: New York, NY. 46-story office building, $20 million.
- **Dullas International Airport Terminal**, Washington, D.C. $15 million.

Stadiums & Sports Facilities:

- **Tiger Stadium Renovation**: Detroit, Michigan. Selective renovation, structural repair, new seats, scoreboard. $15 million.
- **Heilmann Rink Temporary Improvements:** Install temporary inflatable structure, lighting and utilities over existing outdoor skating rink.
- **Heilmann Rink Permanent Improvements**: Permanent structure, lobby, dressing rooms and office over existing outdoor skating rink.
- **Northwest YWCA Tennis Building**: Detroit, Michigan.

Gerald J. Kelly

Gerald J. Kelly has over twenty years experience in construction and construction management, culminating in the development and management of a construction management division for a major general contracting company, generating $1 billion a year in annual sales.

Major Construction Management Projects secured and performed by Mr. Kelly's group:

- **Chrysler Technology Center**: Auburn Hills, Michigan. $1.1 Billion, multi-building corporate headquarters. (Mr. Kelly was personally responsible for developing and implementing the entire organization and strategic Plan).
- **Rehabilitation Institute Addition**: Detroit, Michigan. Addition and major architectural and HVAC replacement.
- **Assembly Plant, American Motors Corp**. Brampton, Ontario.
- **Fiero Assembly Plant, GM Corp.**: Pontiac, Michigan.
- **Kellogg Foundation Headquarters**: Battle Creek, Michigan
- **Three Marriott Hotels**, Southeastern, Michigan.
- **Muskegon Regional Correctional Facility and Temporary Facility**: Muskegon, Michigan.

Major construction projects supervised by Mr. Kelly:

- **Southern Illinois Power Corp.**: Marion, Illinois. 200 Megawatt coal fired power plant.
- **Tokomak Fusion Test Reactor**: Princeton, New Jersey. $250 million facility built for the U.S. Department of Energy.
- **GM Truck Assembly Plant**: Pontiac, Michigan. Two million sq. ft. GM Truck and Coach Division plant and office building.
- **GM Engine Assembly Plant**: Lansing, Michigan. Nine million sq. ft. plant for Oldsmobile Division, G.M.C.
- **IBM Office Building**: Southfield, Michigan. 14-story signature type office building.
- **Medical Office Building**: Southfield, Michigan. 10-story Providence Hospital multi-tenant physician's office building.

Center Ice Management, Inc.

Center Ice Management, Inc. is a Michigan Corporation formed in 1992 to study opportunities for development and management of Ice skating facilities. In additions to consulting with a number of communities and hockey associations considering construction and operation of rinks, the company was responsible for the interim renovation and operation of the Heilmann Skating rink for the 1993-94 season. In late August, Center Ice entered into an agreement with the Grosse Pointe Hockey Association, which had lost all but a few hours of its weekly ice time, to provide 40 hours a week in a temporary facility in the City of Detroit. Within less than 60 days, the company obtained a temporary lease from the City of Detroit to utilize a then closed, outdoor rink. They obtained and erected a temporary, inflatable structure, installed electric power and lighting, a gas line and heating, renovated the boards and rebuilt much of the compressor equipment.

Due to this extraordinary effort, the company was able to "keep the association in business" for the season. Over the winter, plans to install a permanent facility at that location were made, but once Mayor Young announced his decision not to run for reelection, the city here reluctant to finalize their preliminary agreement for a long term lease and plans to further improve that facility were dropped.

Balance Sheet

The business is primarily a service business with minor equipment and assets.

Terry S. Seyler

Terry Seyler has a broad range of experience in planning, architecture, construction, real estate development and business administration. Principal business experiences include:

- **Heilmann Skating Rink**: Detroit. Build and operate a temporary ice skating rink for the 1993-94 season. In 60 days, we obtained a lease and build a temporary structure as an emergency, short term skating facility for the Grosse Pointe Hockey Association.
- **400 International Center Executive Suites**: Managed a multi-tenant, serviced office suite providing luxury individual offices plus a broad range of secretarial and clerical services.
- **Architectural & Development Services**: Consultant services for various projects, particularly in the youth treatment and environmental fields where we represented clients in difficult zoning appeals process, and for several restaurant and office building projects.
- **Darin & Armstrong Development Corp.**: Chief operating officer for a real estate development operation of one of Michigan's (then) largest construction companies. Projects included a 140,000 sq. ft. office building, 40 acre industrial park and 250 room, $18 million hotel.
- **Marquette Building Co.**: Detroit, Michigan. General Partner in ownership and redevelopment of 10-story, 200,000 sq. ft. office building. Purchased the building and obtained initial financing and tenants for what then was, other then Renaissance Center, the only significant private, office development in downtown Detroit in almost 15 years.
- **General Contracting**: Primary responsibility for construction of various projects including two, 55,000 sq. ft. retail stores for Service Merchandise Corp., a party store with three apartments, and over half a million sq. ft. of tenant improvements for multi-tenant office buildings.
- **Trapper's Alley**: Detroit. Found and conceived the Detroit Greektown development. Purchased the property, obtained the initial financing and assembled most of the political entities which eventually led to this redevelopment project.
- **Project Planner**: City of Detroit, City Plan Commission, Housing Commission and Community & Economic Development Department. Planner on various projects including the Lafayette, Elmwood Park, Forest Park and Wholesale Distribution Center (Eastern Market) Projects.

Balance Sheet
Center Ice Management, Inc.

March 31, 1994

Assets

Fixed Assets			
Furniture & Equipment	17,500		
Rink Equipment	6,576		
Machinery & Equipment	13,750		
Buildings	82,149		
Less Accumulated Depreciation	(1,802)		
Total Fixed Assets		**118,172**	
Deposits	876		
Total Other Assets		**876**	
Total Assets			**$119,048**

Liabilities & Equity

Current Liabilities			
Accounts Payable	6,244		
Total Current Liabilities		**6,224**	
Long Term Liabilities			
Long Term Note	74,809		
Shareholder Loans	54,852		
Total Liabilities		**135,905**	
Common Stock	7,000		
Current & Retained Earnings	(23,519)		
Total Equity		**(16,519)**	
Total Liabilities			**$119,048**

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

STANDARD FORM OF DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR

(Where the Basis of Payment is the Cost of the Work Plus a Fee, with a Guaranteed Maximum Price Option)

TABLE OF ARTICLES

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

STANDARD FORM OF DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR

(Where the Basis of Payment is the Cost of the Work Plus a Fee, with a Guaranteed Maximum Price Option)

ARTICLE 1

AGREEMENT

This Agreement is made this ________________ day of ________________________________ ◆

in the year 1995, by and between the

OWNER COMMUNITY CLUBS OF NOVI, INC. ◆
(Name and Address) 45175 W. Ten Mile Rd.
Novi, Michigan 48375-3024

and the
CONTRACTOR CENTER ICE MANAGEMENT, INC. ◆
(Name and Address) 2910 E. Jefferson, Rear Bldg.
Detroit, MI 48207-4208

for services in connection with the following
PROJECT NOVI ICE SKATING ARENA ◆

Notice to the parties shall be given at the above addresses.

ARTICLE 2

GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP The Owner and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the date of Substantial Completion, if they are established by Amendment No. 1. The Contractor agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the Work.

2.2 ARCHITECT/ENGINEER Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor, or as permitted by the law of the state where the Project is located. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Architect/Engineer. The Architect/Engineer for the Project is ArchEnomics Associates, Inc. ◆

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.

2.4 DEFINITIONS

.1 The Contract Documents consist of:

a. Change Orders and written amendments to this Agreement signed by both the Owner and Contractor, including Amendment No. 1 if executed;

b. this Agreement except for the existing Contract Documents set forth in item e below;

c. the most current Documents approved by the Owner pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;

d. the information provided by the Owner pursuant to Clause 4.1.2.1;

e. the Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;

f. the Owner's Program provided pursuant to Subparagraph 4.1.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.

.2 The Work is the Design Phase Services procured in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.8, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

.3 The term Day shall mean calendar day.

.4 A Subcontractor is a person or entity who has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Owner or any separate contractor's subcontractors.

.5 A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

.6 Substantial Completion of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Contractor. The certificate shall state the respective responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction.

.7 The Owner's Program is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall be responsible for procuring the design and for the construction of the Work consistent with the Owner's Program, as such Program may be modified by the Owner during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its services, but does not warrant or guarantee schedules and estimates other than those that are part of the GMP proposal.

3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY EVALUATION The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the Owner's Program and other relevant information.

3.1.2 PRELIMINARY SCHEDULE The Contractor shall prepare a preliminary schedule of the Work for the Owner's written approval. The schedule shall show the activities of the Owner, Architect/Engineer and Contractor necessary to meet the Owner's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the Owner in writing.

3.1.3 PRELIMINARY ESTIMATE When sufficient Project information has been identified, the Contractor shall prepare for the Owner's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the Owner's budget, the Contractor shall make written recommendations to the Owner.

3.1.4 SCHEMATIC DESIGN DOCUMENTS The Contractor shall submit for the Owner's written approval Schematic Design Documents, based on the Owner's Program and other relevant information. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the site. One set of these documents shall be furnished to the Owner. The Contractor shall update the preliminary schedule and estimate based on the Schematic Design Documents.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS The Contractor shall submit for the Owner's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Owner. The Contractor shall update the schedule and estimate based on the Design Development Documents.

3.1.6 CONSTRUCTION DOCUMENTS The Contractor shall submit for the Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Owner prior to commencement of construction. ~~If a GMP has not been established, the Contractor shall prepare a further update of the schedule and estimate~~. (see 3.1.6, Addendum #1, Pg. 16)

3.1.7 OWNERSHIP OF DOCUMENTS ~~All Documents shall remain the property of the Contractor and are not to be used by the Owner without the written consent of the Contractor.~~

(See 3.1.7, Addendum #1, Pg. 16)

3.2 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

3.2.1 When the drawings and specifications are sufficiently complete, the Contractor shall, if requested by the Owner, propose a GMP, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the Contractor's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9.

3.2.2 If a GMP is not established, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement as provided in Articles 7 and 8. In the absence of a GMP, however, the parties may establish a date of Substantial Completion.

3.2.3 The estimated Cost of the Work may include the Contractor's contingency, a sum established by the Contractor for use at the Contractor's discretion to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE The Contractor shall include with the GMP proposal a written statement of its basis, which shall include:

.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP proposal;

.2 a list of allowances and a statement of their basis;

.3 a list of the assumptions and clarifications made by the Contractor in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications;

.4 the date of Substantial Completion upon which the proposed GMP is based, and the Schedule of Work upon which the date of Substantial Completion is based;

.5 schedule of applicable alternate prices;

.6 schedule of applicable unit prices;

.7 statement of Additional Services included, if any; and

.8 the time limit for acceptance of the GMP proposal.

3.2.5 The Contractor shall meet with the Owner to review the GMP proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

3.2.6 Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the GMP proposal shall not be effective without written acceptance by the Contractor.

3.2.7 Prior to the Owner's acceptance of the Contractor's GMP proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.

3.2.8 Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in Amendment No. 1. The GMP and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9.

3.2.9 The GMP shall include in the Cost of the Work those taxes which are applicable at the time the GMP is established. If in accordance with the Owner's direction an exemption is claimed for taxes, the Owner agrees to indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the Owner's direction.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by the Owner of a written notice to proceed with construction. If construction commences prior to execution of Amendment No. 1, the Owner's written notice to proceed shall list the documents that are applicable to the part of the Work which the Owner has authorized.

3.3.2 In order to complete the Work, the Contractor shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

3.3.3 The Contractor shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

3.3.4 The Contractor shall prepare and submit a Schedule of Work for the Owner's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work.

3.3.5 The Contractor shall assist the Owner in securing the building permits necessary for the construction of the Project.

3.3.6 The Contractor shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the Owner or its employees, agents, separate contractors or tenants. The Owner agrees to cause its employees, agents, separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

3.3.7 The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.3.8 The Contractor shall provide periodic written reports to the Owner on the progress of the Work as agreed to by the Owner and Contractor.

3.3.9 The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the Owner at mutually agreeable intervals.

3.3.10 At all times the Contractor shall maintain the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

3.4 HAZARDOUS MATERIAL

3.4.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Contractor shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Project site has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.4.2 If after the commencement of the Work, known or suspected Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area, and the Contractor shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.4.3 The Contractor shall not be required to perform any Work relating to or in the area of known or suspected Hazardous Material without written mutual agreement.

3.4.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless.

3.4.5 If the Contractor incurs additional costs and/or is delayed due to the presence of known or suspected Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the GMP and/or the date of Substantial Completion.

3.4.6 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Architect/Engineer, Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, costs and expenses incurred in connection with litigation or arbitration, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee.

3.4.7 The terms of this Paragraph 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.5 ROYALTIES, PATENTS AND COPYRIGHTS The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Contractor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

3.6 TAX EXEMPTION If in accordance with the Owner's direction an exemption is claimed for taxes, the Owner agrees to defend, indemnify and hold the Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the Owner's direction.

3.7 WARRANTIES AND COMPLETION

3.7.1 The Contractor warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of one year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

3.7.2 Those products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. **All other warranties expressed or implied including the warranty of merchantability and the warranty of fitness for a particular purpose are expressly disclaimed.**

3.7.3 The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the Owner.

3.7.4 The Contractor shall collect all written warranties and equipment manuals and deliver them to the Owner.

3.7.5 With the assistance of the Owner's maintenance personnel, the Contractor shall direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

3.8 ADDITIONAL SERVICES The Contractor shall provide or procure the following Additional Services upon the request of the Owner. A written agreement between the Owner and Contractor shall define the extent of such Additional Services. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment No. 1.

.1 Documentation of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

.3 Surveys, site evaluations, legal descriptions and aerial photographs.

.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

.6 Consultations and representations other than normal assistance in securing building permits, before governmental authorities or others having jurisdiction over the Project.

.7 Investigation or making measured drawings of existing conditions or the verification of drawings or other Owner-provided information.

.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.

.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations.

.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Contractor.

.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

.14 The premium portion of overtime work ordered by the Owner including productivity impact costs.

.15 Document reproduction exceeding the limits provided for in this Agreement.

.16 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, Contractor's office, Owner's office and the Project site.

.17 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start up, and adjusting and balancing of systems and equipment.

.18 Services for tenant or rental spaces not a part of this Agreement.

.19 Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

.20 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

.21 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes in the Work made during the Construction Phase.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including the Owner's Program and other relevant information.

4.1.2 The Owner shall provide:

.1 all necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;

.2 inspection and testing services during construction as required by law or as mutually agreed; and

.3 unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.3 The Owner shall provide reasonable evidence satisfactory to the Contractor, prior to commencing the Work and during the progress of the Work, that sufficient funds are available and committed for the entire cost of the Project, including an allowance for changes in the Work as may be approved in the course of the Work. Unless such reasonable evidence is provided, the Contractor shall not be required to commence or continue the Work. The Contractor may stop Work after seven (7) days' written notice to the Owner if such evidence is not presented within a reasonable time. The failure of the Contractor to insist upon the providing of this evidence at any one time shall not be a waiver of the Owner's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of the Contractor's right to request or insist that such evidence be provided at a later date.

4.1.4 The Contractor shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

4.2 OWNER'S RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The Owner shall provide the Owner's Program at the inception of the Design Phase and shall review and timely approve schedules, estimates, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1, and the GMP proposal as set forth in Paragraph 3.2.

4.3 OWNER'S RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The Owner shall review and timely approve the Schedule of the Work as set forth in Subparagraph 3.3.4.

4.3.2 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Contractor.

4.3.3 The Owner shall communicate with the Contractor's Subcontractors, suppliers and Architect/Engineer only through the Contractor. The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.

4.3.4 The Owner shall provide insurance for the Project as provided in Article 11.

4.4 OWNER'S REPRESENTATIVE The Owner's representative is to be named by Board of Trustees , ◆ who is agreed to by the Contractor. The representative:

.1 shall be fully acquainted with the Project;

.2 agrees to furnish the information and services required of the Owner pursuant to Paragraph 4.1 so as not to delay the Contractor's Work; and

.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Contractor in advance in writing. The Contractor shall have the right to approve any successor representative.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Contractor with its own forces shall be performed by Subcontractors.

5.1 RETAINING SUBCONTRACTORS The Contractor shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to compensate the Contractor for any additional costs incurred by the Contractor as a result of such objection. The Contractor shall not be required to retain any Subcontractor to whom the Contractor has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS The Contractor shall be responsible for the management of the Subcontractors in the performance of their work.

5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS The Contractor shall provide for assignment of subcontract agreements in the event that the Owner terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the Owner shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

ARTICLE 6

CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK The Work shall commence on or about (see Add. #1, Pg. 16, 6.1) and shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to the provisions of Paragraph 3.4 and Subparagraph 4.1.3.

6.2 SUBSTANTIAL COMPLETION At such time as a GMP is accepted, a date of Substantial Completion of the Work shall be established as set forth in Amendment No. 1. If a GMP is not established and the parties desire to establish a date of Substantial Completion, it shall be set forth in Amendment No.1. If such a date is established, time shall be of the essence of this Agreement.

6.3 DELAYS IN THE WORK

6.3.1 If causes beyond the Contractor's control delay the progress of the Work, then the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner preventing the Contractor from performing the Work pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances.

6.3.2 In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 7

COMPENSATION

7.1 INITIAL PAYMENT Upon execution of this Agreement an initial payment of Fifteen Thousand ◆ dollars ($15,000) shall be made to the Contractor. The ◆ amount of the initial payment shall be credited to the Owner's account at final payment.

7.2 Design Phase Compensation

7.2.1 The cost of services performed directly by the Architect/Engineer is computed separately and is independent from the Contractor's compensation for work or services directly performed by the Contractor; these costs shall be shown as separate items on applications for payment. If an Architect/Engineer is retained by the Contractor, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Contractor and Architect/Engineer.

7.2.2 The Owner shall compensate the Contractor for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a GMP proposal as described in Paragraph 3.2, as follows:

(State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.) ◆

The stipulated sum for preliminary design services as provided in Section 3.1 shall be $112,000. Said sum shall be paid monthly as provided herein proportionate to the cost of the work in relationship to the total stipulated sum for said preliminary design services.

~~**7.2.3** Compensation for Design Phase Services shall be equitably adjusted if such services extend beyond_____ _________from the date of this Agreement for reasons beyond the reasonable control of the Contractor or as provided in Paragraph 9.1. For changes in Design Phase Services, compensation shall be adjusted as follows:~~ ◆ ◆

7.2.4 Payments for Design Phase Services shall be due and payable within ten (10) days following presentation of the Contractor's monthly invoice to the Owner. If the Owner fails to pay the Contractor as agreed, then the Contractor shall have the right to stop the Work and be entitled to payments due plus interest as provided in Subparagraphs 10.1.3 and 10.1.4.

7.3 CONSTRUCTION PHASE COMPENSATION

7.3.1 The Owner shall compensate the Contractor for Work performed following the commencement of the Construction Phase on the following basis:

.1 the Cost of the Work as allowed in Article 8; and

.2 ~~the Contractor's Fee in the amount of_____ _________dollars ($______), subject to adjustment as provided in Paragraph 7.5.~~ ◆ ◆

The Contractor's Fee shall be paid proportionately to the ratio that the monthly Cost of the Work bears to the total estimated Cost of the Work.

7.3.2 The compensation to be paid under this Paragraph 7.3 shall be limited to the GMP established in Amendment No. 1,

The Contractor's fee shall be in the amount of Seven (7.0%) Percent of the total contracted cost as defined in Article 8.

as the GMP may be adjusted under Article 9. In the event the Cost of the Work plus the Contractor's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be shared by the Owner and the Contractor as follows:

1) 87.5% to Owner
2) 12.5% to Contractor

7.3.3 Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Contractor shall also continue to be compensated as provided in Paragraph 7.2, or as mutually agreed.

7.4 CONTRACTOR'S FEE The Contractor's Fee includes the following:

.1 salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Subparagraph 8.2.2;

.2 general and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8; and

.3 the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

7.5 ADJUSTMENT IN THE CONTRACTOR'S FEE Adjustment in the Contractor's Fee shall be made as follows.

.1 for changes in the Work as provided in Article 9, the Contractor's Fee shall be adjusted as follows:

(See 7.5.1(a), Addendum #1, Pg. 16)
(See 7.5.1(b), Addendum #1, Pg. 16)

.2 for delays in the Work not caused by the Contractor, there will be an equitable adjustment in the Contractor's Fee to compensate the Contractor for increased expenses; and

.3 if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss, the Contractor shall be paid an additional Fee in the same proportion that the Contractor's Fee bears to the estimated Cost of the Work.

7.6 (See 7.6, Addendum #1, Pg. 16)

ARTICLE 8

COST OF THE WORK

The Owner agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Article 7.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase Services as provided in Paragraph 7.2.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work.

8.2.2 Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

1) Preparation and review of shop drawings
2) Accounting and billing services.

8.2.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Contractor's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.

8.2.6 Payments made by the Contractor to Subcontractors for work performed under this Agreement.

8.2.7 Fees and expenses for design services procured by the Contractor except as provided by the A/E and compensated in Paragraph 7.2.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage value on such items used, but not consumed that remain the property of the Contractor.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area.

8.2.10 Cost of the premiums for all insurance and surety bonds which the Contractor is required to procure or deems necessary.

8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.

8.2.12 Permits, fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Contractor is not responsible as set forth in Paragraph 3.5, and deposits lost for causes other than the Contractor's negligence.

8.2.13 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase and for a period of one year following the date of Substantial Completion.

8.2.14 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.15 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the site and reasonable petty cash expenses at the field office.

8.2.16 All water, power and fuel costs necessary for the Work.

8.2.17 Cost of removal of all nonhazardous substances, debris and waste materials.

8.2.18 Costs incurred due to an emergency affecting the safety of persons and/or property.

8.2.19 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and Contractor, reasonably and properly resulting from the Contractor's performance of the Work.

8.2.20 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contractor's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

8.2.21 (See 8.2.21, Addendum #1, Pg. 16)

8.3 DISCOUNTS All discounts for prompt payment shall accrue to the Owner to the extent such payments are made directly by the Owner. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

ARTICLE 9

CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished by Change Order without invalidating this Agreement.

9.1 CHANGE ORDERS A Change Order is a written instrument, issued after execution of this Agreement, signed by the Owner and Contractor stating their agreement upon a change and the adjustment in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. Each adjustment in the GMP resulting from a Change Order shall clearly separate the amount attributable to compensation for Design Phase Services, other Cost of the Work and the Contractor's Fee.

9.2 DETERMINATION OF COST An increase or decrease in the GMP resulting from a change in the Work shall be determined by one or more of the following methods:

.1 unit prices set forth in this Agreement or as subsequently agreed;

.2 a mutually accepted, itemized lump sum;

.3 costs determined as defined in Paragraph 7.2 and Article 8 and a mutually acceptable Contractor's Fee as determined in Subparagraph 7.5.1; or

.4 if an increase or decrease cannot be agreed to as set forth in Subparagraphs 9.2.1 through 9.2.3 and the Owner issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense and savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Contractor's Fee shall be adjusted as set forth in Subparagraph 7.5.1. In case of a net decrease in the GMP, the Contractor's Fee shall not be adjusted. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3 NO OBLIGATION TO PERFORM The Contractor shall not be obligated to perform changed Work until a Change Order has been executed by the Owner and Contractor, except as provided in Subparagraph 9.2.4.

9.4 ADJUSTMENT OF UNIT PRICES If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the Owner or the Contractor, the unit prices and the GMP shall be equitably adjusted.

9.5 UNKNOWN CONDITIONS If in the performance of the Work the Contractor finds latent, concealed or subsurface physical conditions which differ from the conditions the Contractor reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the GMP compensation for Design Phase Services, the Contractor's Fee, and/or the date of Substantial Completion shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or an extension in the date of Substantial Completion, the Contractor shall give the Owner written notice of the claim within twenty-one (21) days after the occurrence giving rise to the claim or within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) days after the decision is made not to proceed. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee, and/or date of Substantial Completion resulting from such claim shall be authorized by Change Order.

9.7 EMERGENCIES In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Article.

ARTICLE 10

PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 On the first day of each month after the Construction Phase has commenced, the Contractor shall submit to the Owner an Application for Payment consisting of the Cost of the Work performed up to the 25th. day of the previous month, including the cost of material stored on the site or at other locations approved by the Owner, along with a proportionate share of the Contractor's Fee. Prior to submission of the next Application for Payment, the Contractor shall furnish to the Owner a statement accounting for the disbursement of funds received under the previous Application. The extent of such statement shall be as agreed upon between the Owner and Contractor.

10.1.2 Within ten (10) days after receipt of each monthly Application for Payment, the Owner shall pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts previously paid by the Owner.

10.1.3 If the Owner fails to pay the Contractor at the time payment of any amount becomes due, then the Contractor may, at any time thereafter, upon serving written notice that the Work will be stopped within five (5) days after receipt of the notice by the Owner, and after such five (5) day period, stop the Work until payment of the amount owing has been received.

10.1.4 Payments due but unpaid shall bear interest at the rate the Owner is paying on its construction loan or at the current "prime rate" of NBD bank, whichever is higher, plus two (2) points.

10.1.5 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens."

10.1.6 The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.7 Upon Substantial Completion of the Work, the Owner shall pay the Contractor the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less a sum equal to the Contractor's estimated cost of completing any unfinished items as agreed to between the Owner and Contractor as to extent and time for completion. The Owner thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

10.2 FINAL PAYMENT

10.2.1 Final payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Contractor's Fee, less the initial payment made under Paragraph 7.1, shall be due and payable when the Work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

10.2.2 In making final payment the Owner waives all claims except for:

.1 outstanding liens;

.2 improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

.3 Work not in conformance with the Contract Documents; and

.4 terms of any special warranties required by the Contract Documents.

10.2.3 In accepting final payment, the Contractor waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 11

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

11.1 INDEMNITY

11.1.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold the Owner harmless from all claims for bodily injury and property damage (other than to the Work itself and other property insured under Paragraph 11.5), including resulting loss of use that may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions by the Contractor, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall not be required to defend, indemnify or hold harmless the Owner for any acts, omissions or negligence of the Owner, Owner's employees, agents or separate contractors.

11.1.2 The Owner shall cause any other contractor who may have a contract with the Owner to perform work in the areas where Work will be performed under this Agreement, to agree to indemnify the Contractor, Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and hold them harmless from all claims for bodily injury and property damage, other than property insured under Paragraph 11.5, that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to the Contractor.

11.2 CONTRACTOR'S LIABILITY INSURANCE

11.2.1 The Contractor shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from the Contractor's operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

.1 workers' compensation, disability and other employee benefit claims under acts applicable to the Work;

.2 under applicable employers liability law, bodily injury, occupational sickness, disease or death claims of the Contractor's employees;

.3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Contractor;

.4 usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Contractor or for damages to any other person;

.5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the Work itself and other property insured under Paragraph 11.5;

.6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle; and

.7 contractual liability claims involving the Contractor's obligations under Subparagraph 11.1.1.

11.2.2 The Contractor's Commercial General and Automobile Liability Insurance as required by Subparagraph 11.2.1 shall be written for not less than the following limits of liability:

.1 Commercial General Liability Insurance

a. Each Occurrence Limit	$1 million	◆
b. General Aggregate	$3 million	◆
c. Products/Completed Operations Aggregate	$ 1 million	◆
d. Personal and Advertising Injury Limit	$ 1 million	◆

.2 Comprehensive Automobile Liability Insurance

a. Combined Single Limit Bodily Injury and Property Damage	$ 1 million Eacn Occurrence	◆
or		
b. Bodily Injury	$ ________ Each Person	◆
	$ ________ Each Occurrence	◆
c. Property Damage	$ ________ Each Occurrence	◆

11.2.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy.

11.2.4 The policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be filed with the Owner prior to commencement of the Work.

11.2.5 Products and Completed Operations insurance shall be maintained for a minimum period of at least __2__ year(s) after either ninety (90) days following the date of Substantial Completion or final payment, whichever is earlier. ◆

11.3 PROFESSIONAL LIABILITY INSURANCE The Architect/Engineer's professional liability insurance for claims arising from the negligent performance of professional services under this Agreement shall be written for not less than $__1 million__ per claim and in the aggregate with a deductible not to exceed $__3 million__. These requirements shall be continued in effect for __7__ year(s) after the date of Substantial Completion. If the Architect/Engineer retains consultants for a portion of the design, their professional liability insurance coverage, including deductible amounts, shall be set forth in Article 14 of this Agreement. ◆ ◆ ◆

11.4 OWNER'S LIABILITY INSURANCE The Owner shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement may be purchased and maintained at the Owner's discretion.

11.5 INSURANCE TO PROTECT PROJECT

11.5.1 The Owner shall obtain and maintain property insurance in a form acceptable to the Contractor upon the entire Project for the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner, Contractor, Architect/Engineer, Subcontractors and Subsubcontractors. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage including without duplication of coverage at least: theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design, workmanship or material. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Owner shall be responsible for any co-insurance penalties or deductibles.

11.5.2 If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be cancelled or lapsed on account of partial occupancy. Consent of the Contractor to such early occupancy or use shall not be unreasonably withheld.

11.5.3 The Owner shall obtain and maintain boiler and machinery insurance as necessary. The interests of the Owner, Contractor, Architect/Engineer, Subcontractors and Subsubcontractors shall be protected under this coverage.

11.5.4 The Owner shall purchase and maintain insurance to protect the Owner, Contractor, Architect/Engineer, Subcontractors and Subsubcontractors against loss of use of Owner's property due to those perils insured pursuant to Paragraph 11.5. Such policy will provide coverage for expediting expenses of materials, continuing overhead of the Owner and the Contractor, Architect/Engineer, Subcontractors and Subsubcontractors, necessary labor expense including overtime, loss of income by the Owner and other determined exposures. Exposures of the Owner, Contractor, Architect/Engineer, Subcontractors and Subsubcontractors, shall be determined by mutual agreement with separate limits of coverage fixed for each item.

11.5.5 Upon the Contractor's request, the Owner shall provide the Contractor with a copy of all policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Contractor. The Contractor shall be given thirty (30) days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Contractor before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Contractor may obtain insurance in order to protect its interest in the Work as well as the interest of Architect/Engineer, Subcontractors and Subsubcontractors in the Work. The cost of this insurance shall be a Cost of the Work pursuant to Article 8, and the GMP shall be increased by Change Order. If the Contractor is damaged by failure of the Owner to purchase or maintain property insurance or to so notify the Contractor, the Owner shall bear all reasonable costs incurred by the Contractor arising from the damage.

11.6 PROPERTY INSURANCE LOSS ADJUSTMENT

11.6.1 Any insured loss shall be adjusted with the Owner and the Contractor and made payable to the Owner and Contractor as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

11.6.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with an arbitration award pursuant to Article 13. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 13.

11.7 WAIVER OF SUBROGATION

11.7.1 The Owner and Contractor waive all rights against each other, the Architect/Engineer, and any of their respective employees, agents, consultants, subcontractors and subsubcontractors for damages caused by risks covered by insurance provided in Paragraph 11.5 to the extent they are covered by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as trustees. The Contractor shall require similar waivers from the Architect/Engineer and all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements.

11.7.2 The Owner waives subrogation against the Contractor, Architect/Engineer, Subcontractors and Subsubcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

11.7.3 If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

ARTICLE 12

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM CONTRACTOR'S RESPONSIBILITIES

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 Upon seven (7) days' written notice to the Owner, the Contractor may terminate this Agreement for any of the following reasons:

.1 if the Work has been stopped for a thirty (30) day period

a. under court order or order of other governmental authorities having jurisdiction;

b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available; or

c. because of the Owner's failure to pay the Contractor in accordance with this Agreement;

.2 if the Work is suspended by the Owner for sixty (60) days;

.3 if the Owner materially delays the Contractor in the performance of the Work;

.4 if the Owner otherwise materially breaches this Agreement; or

.5 if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Subparagraph 4.1.3 of this Agreement.

12.1.2 Upon termination by the Contractor in accordance with Subparagraph 12.1.1, the Contractor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Contractor shall be paid an amount calculated as set forth either in Subparagraph 12.3.1 or 12.3.2, depending on when the termination occurs, and Subparagraphs 12.3.3 and 12.3.4.

12.2 OWNER'S RIGHT TO PERFORM CONTRACTOR'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

12.2.1 If the Contractor persistently fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days' written notice, during which period the Contractor fails to perform such obligation, undertake to perform such obligations. The GMP shall be reduced by the cost to the Owner of performing such obligations.

12.2.2 Upon seven (7) days' written notice to the Contractor and the Contractor's surety, if any, the Owner may terminate this Agreement for any of the following reasons:

.1 if the Contractor persistently utilizes improper materials and/or inadequately skilled workers;

.2 if the Contractor does not make proper payment to laborers, material suppliers or Subcontractors;

.3 if the Contractor persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or

.4 if the Contractor otherwise materially breaches this Agreement.

If the Contractor fails to cure within the seven (7) days, the Owner, without prejudice to any other right or remedy, may take possession of the site and complete the Work utilizing any reasonable means. In this event, the Contractor shall not have a right to further payment until the Work is completed.

12.2.3 If the Contractor files a petition under the Bankruptcy Code, this Agreement shall terminate if the Contractor or the Contractor's trustee rejects the Agreement or, if there has been a default, the Contractor is unable to give adequate assurance that the Contractor will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.2.4 In the event the Owner exercises its rights under Subparagraph 12.2.1 or 12.2.2, upon the request of the Contractor the Owner shall provide a detailed accounting of the cost incurred by the Owner.

12.3 TERMINATION BY OWNER WITHOUT CAUSE If the Owner terminates this Agreement other than as set forth in Paragraph 12.2, the Owner shall pay the Contractor for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Contractor shall be paid an amount calculated as set forth below:

.1 If the Owner terminates this Agreement prior to commencement of the Construction Phase, the Contractor shall be paid the balance of the Contractor's Design Phase compensation as set forth in Subparagraph 7.2.2, and 25% of the Contractor's Fee as set forth in Clause 7.3.1.2.

.2 If the Owner terminates this Agreement after commencement of the Construction Phase, the Contractor shall be paid the balance of the Contractor's Design Phase compensation as set forth in Subparagraph 7.2.2 and 100% of the Contractor's Fee as set forth in Clause 7.3.1.2.

.3 In either event, the initial payment as provided in Paragraph 7.1 shall be credited to the Owner's account at the time of termination.

.4 The Owner shall also pay to the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Contractor has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 12, the Contractor shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Contractor's rights and benefits to the Owner, including the execution and delivery of required papers.

12.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

12.4.1 The Owner may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

12.4.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 13

DISPUTE RESOLUTION

13.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to arbitration. Issues to be mediated are subject to the exceptions in Paragraph 13.2 for arbitration. The location of the mediation shall be the location of the Project. Once one party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request.

13.2 AGREEMENT TO ARBITRATE Any controversy or claim arising out of or relating to this Agreement or its breach not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notwithstanding Paragraph 14.2, this agreement to arbitrate shall be governed by the Federal Arbitration Act.

13.3 NOTICE OF DEMAND A written demand for arbitration shall be filed with the American Arbitration Association and the other party to this Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run.

13.4 AWARD The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction.

13.5 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

13.6 MULTIPARTY PROCEEDING The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of arbitrations.

13.7 COST OF DISPUTE RESOLUTION The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 ASSIGNMENT Neither the Owner nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

14.2 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

14.3 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.5 TITLES The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.6 OTHER PROVISIONS ◆

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows: ◆

1) Addendum #1 (Page 16)

This Agreement is entered into as of the date entered in Article 1.

OWNER: COMMUNITY CLUBS OF NOVI, INC. ◆

ATTEST: ______________________ BY: ______________________

PRINT NAME: ______________________

PRINT TITLE: ______________________

CONTRACTOR: CENTER ICE MANAGEMENT, INC. ◆

ATTEST: ______________________ BY: ______________________

PRINT NAME: Terry S. Seyler

PRINT TITLE: President

Addendum #1

3.1.6 Notwithstanding anything contained herein to the contrary, the preparation of the construction documents as defined herein shall be a part of the construction phase services.

3.1.7 The use and ownership of the documents by the Contractor and Owner shall be governed by the terms of the Development Agreement between the Contractor and Owner executed the same date.

6.1 upon execution of the contract by Owner and Contractor. The construction phase work will commence upon agreement of a GMP and upon verification by Contractor that Owner has financing as provided by the Development Agreement between Contractor and City of Novi with which to construct the project.

7.2.3 Upon the agreement between the Owner and Contractor as to the nature and scope of the additional design services. Any change in the design phase services shall be agreed upon in advance of any work performed by the Contractor.

7.5.1(a) For contract additions, add 10% of the added cost as defined in Article 8 as the contract fee.

7.5.1(b) For deductions to the contract cost as defined in Article 8, deduct 5% of the deducted contract cost from the Contractor's fee.

7.6 Management services provided by the Contractor pursuant to the management contract which has been executed by and between the Contractor and Owner are not included in the Contractor's fee and cost, as defined herein, and shall be accounted for and invoiced separately under the terms of the Management Agreement between the Owner and Contractor.

8.2.21 Compensation for preparation of the construction documents as provided in Section 3.1.6 which is being performed by the Architect and Engineer during the construction phase as well as compensation for all other services of the Architect and Engineer except for changes to the Architect and Engineer's contract as provided in the agreement between the Contractor and the Architect and Engineer, shall be an amount equal to 5% of the construction cost as defined in Article 8, exclusive of the Architect's and Engineer's cost. Said 5% shall be deemed to included compensation paid by the Owner to the Contractor for design phase services as provided in paragraph 7.2.

AMENDMENT NO.1, DATED ___________________,
TO DESIGN-BUILD AGREEMENT BETWEEN OWNER & CONTRACTOR

Pursuant to Paragraph 3.2 of the Agreement dated ____between ◆

the Owner, ____,and ◆

the Contractor, ____, ◆

for (the Project), ____ ◆

the Owner and Contractor desire to establish a GMP for the Work. Therefore, the Owner and Contractor agree as follows.

ARTICLE 1. GUARANTEED MAXIMUM PRICE

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 and the Contractor's Fee as set forth in Paragraph 7.2, is ____ dollars ($____________________). ◆

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

EXHIBIT A	Drawings and Specifications, including Addenda, if any, dated ______________________________, __________ pages.	◆
EXHIBIT B	Allowance Items, dated ______________________________, __________ pages.	◆
EXHIBIT C	Assumptions and Clarifications, dated ______________________________, __________ pages.	◆
EXHIBIT D	A Schedule of Work, dated ______________________________, __________ pages.	◆
EXHIBIT E	Alternate Prices, dated ______________________________, __________ pages.	◆
EXHIBIT F	Unit Prices, dated ______________________________, __________ pages.	◆
EXHIBIT G	Additional Services included, dated ______________________________, __________ pages.	◆

ARTICLE 2. DATE OF SUBSTANTIAL COMPLETION

The date of Substantial Completion of the Work is:____. ◆

This Amendment is entered into as of ____. ◆

OWNER:_______________________________ ◆

ATTEST: ______________________________

BY: _________________________________

PRINT NAME: __________________________

PRINT TITLE:__________________________

CONTRACTOR: __________________________ ◆

ATTEST: ______________________________

BY: _________________________________

PRINT NAME: __________________________

PRINT TITLE:__________________________

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND ARCHITECT/ENGINEER FOR DESIGN-BUILD PROJECTS

TABLE OF ARTICLES

This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

STANDARD FORM OF AGREEMENT BETWEEN CONTRACTOR AND ARCHITECT/ENGINEER FOR DESIGN-BUILD PROJECTS

ARTICLE 1

AGREEMENT

This Agreement is made this ________________ day of ____ ◆

in the year 1995, by and between the

CONTRACTOR ◆
(Name and Address)

CENTER ICE MANAGEMENT, INC.
2910 East Jefferson Ave. Rear Suite
Detroit, MI 48207-4208

and the
ARCHITECT/ENGINEER ◆
(Name and Address)

ARCHENOMICS ASSOCIATES, INC.
2910 East Jefferson Ave., Rear Suite
Detroit, MI 48207-4208

for services in connection with the following
PROJECT ◆

NOVI ICE SKATING ARENA

whose **OWNER** is ◆
(Name and Address)

COMMUNITY CLUBS OF NOVI, INC.
2910 East Jefferson, Rear Suite
Detroit, MI 48207-4208

Notice to the parties shall be given at the above addresses.

ARTICLE 2

GENERAL PROVISIONS

The Contractor has agreed in its Design-Build Agreement with the Owner to procure the services of licensed design professionals to provide the architectural and engineering services required to design the Project in accordance with the Owner's requirements as outlined in the Owner's Program and other relevant data defining the Project, which is attached as Exhibit A. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer.

2.1 TEAM RELATIONSHIP The Contractor and Architect/Engineer agree to work together on the basis of trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. The Architect/Engineer agrees to furnish its best skill and judgment and cooperate with the Contractor in a manner consistent with good design practice.

2.2 DEFINITIONS

.1 The Contract Documents govern the relationship between the Contractor and the Architect/Engineer. The Contract Documents consist of this Agreement, including the Exhibits set forth in Article 11 plus written amendments to this Agreement as agreed to by the parties.

.2 The Architect/Engineer's Work shall be to provide the necessary architectural and engineering services required by the Contractor for the Project, including coordination of design services of subcontractors who may be procured by the Contractor to provide both design and construction services for certain Project elements. The Work includes Basic Services provided in the Design and Construction Phases plus Additional Services as may be authorized by the Owner and Contractor.

.3 The term Day shall mean calendar day unless otherwise specifically designated.

.4 The Owner's Program is an initial description of the Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

.5 Substantial Completion occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Contractor.

2.3 EXTENT OF AGREEMENT This Agreement represents the entire agreement between the Contractor and the Architect/Engineer and supersedes all prior negotiations, representations and agreements, either written or oral.

ARTICLE 3

ARCHITECT/ENGINEER'S RESPONSIBILITIES

3.1 PROJECT REQUIREMENTS The Architect/Engineer, in order to determine the requirements of the Project, shall review the information in Exhibit A. The Architect/Engineer shall review its understanding of the Project requirements with the Contractor.

3.2 BASIC SERVICES The Architect/Engineer's Basic Services consist of the provision of the Schematic Design Documents, Design Development Documents, Construction Documents, Guaranteed Maximum Price (GMP) Documents (if required), bidding or negotiation assistance, Construction Phase Services, and other basic services as may be provided in Subparagraph 3.2.18, and shall include normal architectural, structural, mechanical, electrical and site design. A schedule for the performance of Basic Services shall be agreed to in writing by the Architect/Engineer and Contractor. The schedule may be modified from time to time, subject to further agreement of the parties. Any Basic Services provisions that are not required under this Agreement shall be stricken.

3.2.1 SCHEMATIC DESIGN DOCUMENTS Based upon the Project requirements, the Architect/Engineer shall prepare, for approval by the Contractor and Owner, Schematic Design Documents consisting of drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the site. Two printed sets and one reproducible set of these Documents shall be provided to the Contractor. Following completion of the Schematic Design Documents, the Architect/Engineer shall cooperate with the Contractor in updating the preliminary schedule and estimate.

3.2.2 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents, the Architect/Engineer shall prepare, for approval by the Contractor, Owner and governmental authorities, including revisions necessary to secure such approvals, Design Development Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. Two printed sets and one reproducible set of these Documents shall be provided to the Contractor. Following completion of the Design Development Documents, the Architect/Engineer shall cooperate with the Contractor in updating the schedule and estimate.

3.2.3. CONSTRUCTION DOCUMENTS Based on the approved Design Development Documents and subject to the requirements of Subparagraph 3.2.4, if a GMP proposal has been prepared and accepted, the Architect/Engineer shall prepare, for approval by the Contractor, Owner and governmental authorities, including revisions necessary to secure such approvals, Construction Documents setting forth in detail the requirements for construction of the Project, consisting of drawings and specifications that comply with codes, laws and regulations enacted at the time of their preparation. Two printed sets and one reproducible set of these Documents shall be provided to the Contractor. Following completion of the Construction Documents, and if a GMP has not been prepared and accepted, the Architect/Engineer shall cooperate with the Contractor in updating the schedule and estimate.

3.2.4 GUARANTEED MAXIMUM PRICE (GMP) DOCUMENTS Upon request of the Owner and agreement by the Contractor, the Contractor will prepare a GMP proposal. If the proposal is prepared prior to completion of the Construction Documents, the Contractor will include in the proposal a statement of the assumptions and qualifications on which the GMP is based. Prior to submission of the proposal to the Owner, the Architect/Engineer shall review the proposal and advise the Contractor of any errors, omissions or inconsistencies it may discover. Following acceptance of the proposal by the Owner, the Architect/Engineer shall complete the Construction Documents, incorporating the agreed-upon assumptions and clarifications. The Contractor and Architect/Engineer shall work together to monitor the completion of the drawings and specifications so that the Project can be completed within the GMP and by date of Substantial Completion. Two printed sets and one reproducible set of the drawings and specifications on which the GMP is based shall be provided to the Contractor.

3.2.5 BIDDING AND NEGOTIATION ASSISTANCE The Architect/Engineer shall assist the Contractor in obtaining bids from subcontractors and major suppliers by providing necessary drawings, specifications and addenda, attending pre-bid meetings, and clarifying the scope and intent of the design documents as needed.

3.2.6 CONSTRUCTION PHASE SERVICES The Construction Phase will commence upon the issuance of a written notice from the Owner to proceed with construction. The Architect/Engineer shall furnish interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda or otherwise, as are necessary for the proper execution and progress of the Project. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

3.2.7 The Architect/Engineer shall timely review and approve or otherwise respond to the Contractor's submittals, including shop drawings, product data and samples. Submittals shall be checked for conformance with the design and scope of the Project and for compliance with the Construction Documents.

3.2.8 Approval by the Contractor or Owner shall not be deemed to be an assumption of responsibility by the Contractor or Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by the Architect/Engineer, its employees, subcontractors, agents or consultants.

3.2.9 The Architect/Engineer shall have reasonable access to the Project site at all times.

3.2.10 The Architect/Engineer shall communicate with the Owner and the Contractor's subcontractors and suppliers only through the Contractor.

3.2.11 The Architect/Engineer shall make periodic visits to the Project site to become generally familiar with the quality of the construction and to determine in general if the construction is proceeding in accordance with the Construction Documents. On the basis of these on-site observations, the Architect/Engineer shall endeavor to guard the Contractor against defects or deficiencies in the construction. If the Architect/Engineer becomes aware of any such defects, deficiencies or violations, it shall give prompt written notice to the Contractor. The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences and procedures, unless they are specified by the Architect/Engineer, or for ensuring that the Contractor's work is in accordance with the Construction Documents.

3.2.12 The Architect/Engineer is not responsible for safety precautions and programs. However, if the Architect/Engineer becomes aware of safety violations, the Architect/Engineer shall give prompt written notice to the Contractor.

3.2.13 The Architect/Engineer shall assist the Contractor and Owner in filing required documents with governmental authorities having jurisdiction over the Project.

3.2.14 The Architect/Engineer shall not be responsible for the acts or omissions of the Contractor or any of its subcontractors, or their agents or employees, or any other persons performing work on the Project who are not under the control or authority of the Architect/Engineer.

3.2.15 The Architect/Engineer shall attend meetings with the Owner and Contractor upon request of the Contractor.

3.2.16 All of the Services to be provided by the Architect /Engineer shall be rendered promptly so as not to delay the Contractor.

3.2.17 The Architect/Engineer shall assist the Contractor in conducting inspections to determine the date of Substantial Completion of the Contractor's subcontractors.

3.2.18 OTHER BASIC SERVICES The following services shall be included as part of Basic Services: ◆

3.3 ADDITIONAL SERVICES The following services shall be provided by the Architect/Engineer and paid for as Additional Services, if they are authorized in advance by the Contractor in writing, and are not included in Basic Services set forth in Paragraph 3.2:

.1 Documentation of the Owner's Program, Project budgeting, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

.3 Surveys, site evaluations, legal descriptions and aerial photographs.

.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.

.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

.6 Consultations and representations, other than normal assistance in securing building permits, before governmental authorities or others having jurisdiction over the Project.

.7 Investigation or making measured drawings of existing conditions or the verification of drawings or other Owner-provided information.

.8 Artistic renderings, models and mockups of the Project or any part of the Project.

.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Project.

.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations.

.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP (if any) after they have been approved by the Owner, Contractor, and governmental authorities, and which are due to causes beyond the control of the Architect/Engineer.

.12 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.

.14 The premium portion of overtime work ordered by the Contractor including productivity impact costs.

.15 Document reproduction exceeding the limits provided for in this Agreement.

.16 Out-of-town travel by the Architect/Engineer in connection with the Work except between the Architect/Engineer's office, Contractor's office, Owner's office and the Project site.

.17 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start up, and adjusting and balancing of the systems and equipment.

.18 Services for tenant or rental spaces not a part of this Agreement.

.19 Services requested by the Contractor which are not specified in this Agreement and which are not normally part of generally accepted design and construction practice.

.20 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

.21 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes made during the Construction Phase.

3.4 QUALIFICATIONS The Architect/Engineer warrants and represents that the Architect/Engineer and its consultants and subcontractors are duly qualified, licensed, registered and authorized by law to perform the Work.

3.5 CONSULTANTS AND SUBCONTRACTORS The Architect/Engineer shall not engage the services of any consultant or subcontractor without first obtaining the Contractor's written approval which shall not be unreasonably withheld. Such approval by the Contractor shall not be deemed to create any contractual relationship between the Contractor and any such consultant or subcontractor.

3.6 ARCHITECT/ENGINEER'S REPRESENTATIVE The Architect/Engineer's representative is ______________ ◆
______________________________________.

3.7 KEY PROJECT PERSONNEL The key project personnel whom the Architect/Engineer will assign are as set forth in Exhibit C, including the percentage of time to be devoted by each to the Architect/Engineer's Work. Such personnel shall not be changed without the approval of the Contractor, which shall not be unreasonably withheld.

3.8 ROYALTIES, PATENTS AND COPYRIGHTS The Architect/Engineer shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Architect/Engineer and incorporated in the Work. The Architect/Engineer shall defend, indemnify and hold the Owner and Contractor harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner and Contractor agree to defend, indemnify and hold the Architect/Engineer harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner or Contractor.

ARTICLE 4

CONTRACTOR'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY CONTRACTOR

4.1.1 To the extent the Contractor has obtained the information and services identified below from the Owner, the Contractor shall provide them to the Architect/Engineer. The Architect/Engineer shall be entitled to rely on such information and services to the same extent as the Contractor. However, the Contractor does not warrant the accuracy or completeness of such information or services.

.1 All necessary information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.

.2 Inspection and testing services during construction as required by law or as mutually agreed.

.3 Necessary approvals, site plan review, rezoning easements and assessments, necessary permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.2 The Contractor shall be responsible for the preparation of budgets, cost estimates and schedules.

4.1.3 The Contractor shall promptly report to the Architect/Engineer errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this Paragraph shall relieve the Architect/Engineer of responsibility for its own errors, inconsistencies and omissions.

4.1.4 The Architect/Engineer shall have the right, upon request, to receive from the Contractor such information as the Contractor has obtained relative to the Owner's financial ability to pay for the Project.

4.2 CONTRACTOR'S REPRESENTATIVE The Contractor's representative is ______________________________ ◆
______________________________.

ARTICLE 5

SCHEDULE

The Architect/Engineer shall provide the services required by this Agreement at such reasonable times as will enable the Contractor to complete its work in accordance with the schedules established by the Contractor.

5.1 DELAYS BY ARCHITECT/ENGINEER If the progress or completion of the Project is delayed by reason of any fault, neglect, error or omission of the Architect/Engineer, the Architect/Engineer shall compensate the Contractor for and indemnify it against all costs, expenses, liabilities or damages which may accrue as a result of such delay. In addition, the Architect/Engineer shall provide such services at its own cost, including any overtime costs required to make up schedule, and expenses as are necessary to make up for time lost by the Contractor because of such delay.

5.2 DELAYS BY CONTRACTOR OR OWNER If the Architect/Engineer is delayed in the performance of the Architect/Engineer's Work by any fault, neglect, error or omission of the Contractor or Owner, or by changes ordered by the Owner or Contractor which are due to causes beyond the Architect/Engineer's control, or a delay authorized by the Contractor pending dispute resolution, then the time allotted in the schedule for the Architect/Engineer's services shall be extended for the period of such delay or the Contractor shall authorize the Architect/Engineer to work overtime to make up such lost time.

ARTICLE 6

ARCHITECT/ENGINEER'S COMPENSATION AND PAYMENTS

6.1 COMPENSATION FOR BASIC SERVICES

6.1.1 For Basic Services as described in Paragraph 3.2, the Contractor shall compensate the Architect/Engineer on the following basis, including applicable sales taxes (strike options not applicable):

~~.1 Stipulated Fee.
The amount of ______________________________ ◆
dollars ($ ____________). ◆~~

~~.2 Guaranteed Maximum Fee. The actual cost of the following:~~

~~a. Architect/Engineer's personnel as listed in Exhibit B.~~

~~b. Services of professional consultants and subcontractors at a multiple of __________ (_____) times the amount billed to the Architect/Engineer for such services. ◆~~

~~c. Reimbursable expenses as set forth in Article 11, Exhibit D.~~

~~The Architect/Engineer shall be compensated for the above costs up to a Guaranteed Maximum Fee of ______________________________ ◆
dollars ($______________). ◆~~

.3 Other basis of Fee: ◆

Fee shall be 5.0% of all contracted costs including ice specialties and equipment, furnishings specified, and site improvements plus reimbursable expenses as listed in Article 11, Exhibit "D".

6.2 ADDITIONAL SERVICES

6.2.1 The Architect/Engineer shall be compensated for Additional Services as described in Paragraph 3.3 on the following basis: ◆

Time and materials; time charged at 2.2 times payroll expense, materials billed at 110% of cost.

6.3 PAYMENTS

6.3.1 The Architect/Engineer shall submit to the Contractor for its approval monthly Applications for Payment for Basic and Additional Services. The Contractor shall submit approved applications for payment together with its own to the Owner Payment shall be made within seven (7) days of the Contractor's receipt of payment from the Owner for the amount approved on the Architect/Engineer's application. Payments for Basic and Additional Services shall not exceed the following percentages of the total Fee for Basic and Additional Services at the completion of each Phase of the Architect/Engineer's Work:

Schematic Design Documents (1)	10.0% ◆
Design Development Documents	25.0%
GMP Documents	25.0%
Construction Documents	25.0%
Bidding and negotiation assistance	5.0%
Construction Phase	10.0%
TOTAL	100%

Upon receipt of payment from the Contractor, Architect/Engineer shall promptly make payment to its consultants and subcontractors as appropriate.

6.3.2 RETENTION If a portion of the Architect/Engineer's compensation is to be retained, the terms of retainage shall be as follows: ◆

None

6.3.3 Prior to final payment to the Architect/Engineer, the Architect/Engineer shall furnish evidence satisfactory to the Contractor that there are no claims, obligations or liens outstanding in connection with the services provided by the Architect/Engineer. Acceptance of final payment shall constitute a waiver of all claims by the Architect/Engineer for compensation for the Architect/Engineer's Work performed.

6.3.4 Should there be any claim, obligation or lien asserted before or after final payment is made that arises from the performance of the Architect/Engineer's Work, the Architect/Engineer shall reimburse the Contractor for any costs and expenses, including attorney's fees, costs and expenses, incurred by the Contractor in satisfying, discharging or defending against any such claim, obligation or lien, including any action brought or judgment recovered, provided the Contractor is making payments or has made payments to the Architect/Engineer in accordance with the terms of this Agreement.

6.3.5 Should the Architect/Engineer or its consultants or subcontractors cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Contractor shall have the right to withhold from any payment, or otherwise be reimbursed for, an amount sufficient to protect the Owner or Contractor from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.6 Expense records of the Architect/Engineer's personnel, consultants, subcontractors and services shall be maintained in accordance with generally accepted accounting principles and shall be available to the Contractor at mutually convenient times.

(1) Refer to Exhibit E.

ARTICLE 7

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

7.1 INDEMNITY

7.1.1 In addition to any liability or obligation of the Architect/Engineer to the Contractor that may exist under any other provision of this Agreement or by law or otherwise, to the fullest extent permitted by law the Architect/Engineer shall defend, indemnify and hold harmless the Contractor and Owner and their respective officers, agents, employees and Subcontractors from and against claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including legal fees, which the Contractor and Owner and their respective officers, agents and employees may sustain by reason of any act or omission by the Architect/Engineer, its officers, agents, employees or subcontractors, arising out of the Architect/Engineer's Work.

7.1.2 To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the Architect/Engineer, its officers, agents and employees from and against claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including legal fees, which the Architect/Engineer, its officers, agents and employees may sustain by reason of any act or omission by the Contractor, its officers, agents, employees or Subcontractors arising out of the Contractor's work.

7.2 INSURANCE

7.2.1 Before commencing its Work and as a condition of payment, the Architect/Engineer shall purchase and maintain such insurance as will protect it from the claims arising out of its operations under this Agreement, whether such operations are by the Architect/Engineer or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 The Architect/Engineer shall maintain at least the following insurance with a company satisfactory to the Contractor:

.1 Workers' Compensation and Employers Liability Insurance in accordance with the laws of the State in which the Project is located. Employers Liability coverage must have limits of liability of at least:

a. Bodily Injury by Accident Each Accident $ see (2) ◆

b. Bodily Injury by Disease Policy Limit $ see (2) ◆

c. Bodily Injury by Disease Each Employee $ see (2) ◆

(2) Michigan statutory limits.

.2 Commercial General Liability

a. Each Occurrence Limit $ 1,000,000 ◆

b. General Aggregate $ 1,000,000 ◆

c. Products/Completed Operations Aggregate $ 1,000,000 ◆

d. Personal and Advertising Injury Limit $ ________ ◆

.3 Comprehensive Automobile Liability

a. Combined Single Limit Bodily Injury and Property Damage $ 250,000 Each Occurrence ◆

or

b. Bodily Injury $ ________ Each Person ◆

$ ________ Each Occurrence ◆

c. Property Damage $ ________ Each Occurrence ◆

7.2.3 The Architect/Engineer shall require its consultants and subcontractors to maintain Commercial General Liability and Comprehensive Automobile Liability coverage with a company satisfactory to the Contractor and with limits acceptable to the Contractor.

7.2.4 The Architect/Engineer and any consultants retained by the Architect/Engineer shall maintain at least the following Professional Liability insurance with a company satisfactory to the Contractor, including contractual liability insurance against the liability assumed in Paragraph 7.1, and shall have specific minimum limits and maximum deductibles as set forth below:

Services	Minimum Limit	Maximum Deductible	
Architectural	$ 1,000,000	$ ________	◆
Structural	$ ________	$ ________	◆
Mechanical	$ ________	$ ________	◆
Electrical	$ ________	$ ________	◆
Plumbing	$ ________	$ ________	◆
Other	$ ________	$ ________	◆

The cost of any deductible shall be paid by the Architect/Engineer.

7.2.5 The Architect/Engineer shall furnish to the Contractor certificates of insurance evidencing the required coverages listed in this Paragraph 7.2 and, upon request of the Contractor, shall furnish a copy of its Professional Liability policy. No policy shall be cancelled or modified without (thirty) 30 days' prior written notice to the Contractor. The Professional Liability policies shall be continued in effect for ________years following final payment to the Architect/Engineer. ◆

Policies under Clauses 7.2.2.2 and 7.2.2.3 shall list the Contractor as an additional insured.

7.3 WAIVER OF SUBROGATION The Contractor and Architect/Engineer waive all rights against each other and the Owner, Subcontractors and Subsubcontractors for loss or damage to the extent covered by property or equipment insurance, except such rights as they may have to the proceeds of such insurance.

ARTICLE 8

TERMINATION

8.1 TERMINATION BY EITHER PARTY Either party may terminate this Agreement upon seven (7) days' written notice if the other party materially breaches its terms through no fault of the initiating party.

8.2 TERMINATION BY CONTRACTOR This Agreement may be terminated by the Contractor upon at least seven (7) days' written notice in the event that the Contractor's Agreement with the Owner is terminated.

8.3 COMPENSATION In the event of termination, the Architect/Engineer shall be compensated to the extent that the Owner pays the Contractor for the Architect/Engineer's Work.

ARTICLE 9

DISPUTE RESOLUTION

9.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association. Issues to be mediated are subject to the exceptions in Paragraph 9.2 for arbitration. The location of the mediation shall be the location of the Project. Once a party files a request for mediation with the other party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request.

9.2 AGREEMENT TO ARBITRATE Any controversy or claim arising out of or relating to this Agreement or its breach, except for claims which have been waived by the making or acceptance of final payment, not resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise. Notwithstanding Paragraph 10.3, this agreement to arbitrate shall be governed by the Federal Arbitration Act.

9.3 NOTICE OF DEMAND A written demand for arbitration shall be filed with the American Arbitration Association and the other party to this Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run.

9.4 AWARD The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction.

9.5 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Architect/Engineer shall continue to perform under this Agreement during any arbitration proceedings. If the Architect/Engineer continues to perform, the Contractor shall continue to make payments in accordance with this Agreement.

9.6 MULTIPARTY PROCEEDINGS The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the consolidation of arbitrations.

9.7 COST OF DISPUTE RESOLUTION The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 OWNERSHIP OF DOCUMENTS ~~All documents and information prepared or provided by the Architect/Engineer or its consultants or subcontractors for this Project are and shall be the property of the Contractor. In addition,~~ The Contractor shall have the right without limitation to access and use all computer aided design data and programs (CADD) utilized by the Architect/Engineer in the performance of design services furnished in connection with this Agreement. for the purpose of construction of this building only. The drawings and specifications and all other documents prepared by the Architect or his sub-contractors shall remain the property of the Architect.

10.2 ASSIGNMENT Neither the Contractor nor the Architect/Engineer shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

10.3 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

10.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.5 NO WAIVER OF PERFORMANCE The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

10.6 TITLES The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

10.7 Other Provisions: ◆