

SWIMMING POOL FACILITY USE AGREEMENT

This Swimming Pool Agreement (this "Agreement") is made and entered into as of September 6, 2016, by and between the Villages at Westminster Homeowners' Association, Inc., a Virginia Nonstock Corporation (the "Association") and 757swim, Inc., a Virginia Nonstock Corporation ("757swim").

RECITALS

WHEREAS, the Association owns and operates a swimming pool facility located at 4820 Wellesley Blvd., Williamsburg, Virginia 23188 ("Pool Facility");

WHEREAS, 757swim is a sanctioned USA Swimming affiliate, competitive swim team consisting of up to one hundred fifty (150) swimmers between the ages of 4 and 18 (the "Swimmers");

WHEREAS, Article II, Section 1(f) of the Association's Declaration permits the Association to establish an outside pool membership for persons other than Owners, their family members, guests and invitees to use the Pool Facility;

WHEREAS, 757swim desires to become a member of the Pool Facility and to use the Pool Facility for practice during the months of September through May, subject to the terms of this Agreement.

AGREEMENT

1. **Membership.** The Association hereby grants membership to the Pool Facility to 757swim as an organization, inclusive of its swimmers, coaches and staff.

2. **Use.** The Association hereby agrees to let 757swim use the Pool Facility for team practices as listed on Exhibit A, "Pool Facility Use Schedule," attached hereto and made a part hereof. The Pool Facility is comprised of the primary pool, pool deck, lifeguard room, restrooms and the mechanical room, as well as the lifeguard equipment, swim team equipment, pool maintenance and pool cleaning equipment. No competition events or exhibition events will be conducted at the Pool Facility. Additional use will require prior written approval by the Association Board of Directors.

3. **Term.** The Commencement Date of this Agreement shall be September 6, 2016, and the Expiration Date, unless earlier terminated shall be May 26, 2017. Approved times are Monday through Friday, 3:00 pm - 7:00 pm and Saturday 8:30 am - 1:00 pm. Usage outside of these times should be approved by the Association.

4. **Storage.** 757swim may store team-related items and equipment at the Pool Facility during the term of this Agreement in areas approved by the Association. 757swim is responsible for securing such items and the Association is not responsible for any items or equipment stored at the Pool Facility by 757swim. Approved storage areas are:

- a. Within the fenced area of the pool;
- b. The lifeguard room; and
- c. The mechanical room.

5. 757swim Responsibilities. 757swim warrants and agrees to do the following during the term of this Agreement:

- a. Comply with all safety and liability certifications and regulations established by USA Swimming.
- b. Reimburse the Association for any and all expenses incurred by the Association as a result 757swim's use of the Pool Facility, including, but not limited to, utilities, increased insurance premiums or additional premiums related to additional coverage, attorneys' fees for the preparation of this Agreement, water, lifeguard staffing and maintenance and repair as set forth in Paragraph 8 below.
- c. Follow Best Practices in evacuating the Pool Facility during inclement weather.
- d. Provide qualified and authorized coaches to supervise Swimmers at all times.
- e. Permit a maximum of seventy-five (75) Swimmers to utilize the Pool Facility at one time.

6. Association's Priority Use. If, during the term of this Agreement, the Association wishes to utilize the Pool Facility, upon seven (7) days' notice by the Association, 757swim will make every effort to adjust its schedule to accommodate the Association which should have priority use of the Pool Facility in such limited situations.

7. Pool Security. 757swim further warrants and agrees to:

- a. Keep gate locked at all times.
- b. Secure the Pool Facility after each use.
- c. Permit only coaches and Board Members to use facility keys.
- d. Refrain from making any duplicate keys to the Pool Facility.

757swim shall be responsible for any vandalism or damage to the Pool Facility resulting from its failure to adhere to the above security requirements.

8. Pool Facility Equipment, Maintenance and Repair.

- a. 757swim shall accept the Pool Facility in “as is” condition on the Commencement Date. At the Association’s discretion, the Association and 757swim may conduct a walk-through or inspection of the Pool Facility in order to establish the condition of the Pool Facility on the Commencement Date and to identify any areas of concern regarding maintenance or repair. Such inspection does not create any duty on the part of the Association to upgrade or improve the Pool Facility.
- b. 757swim must immediately notify the Association of any damage to the Pool Facility that occurs during the term of this Agreement, in addition to any safety issues, other hazards or problems or potential dangers, whether or not 757swim caused such issue.
- c. 757swim shall be responsible for the cost of repairs for damage to or destruction of the Pool Facility caused by 757swim, however, nothing herein shall be construed to obligate 757swim to make repairs for items that are due to ordinary wear and tear.
- d. 757swim shall make all adjustments to its maintenance practices and/or procedures as instructed by the Association’s pool management company subsequent to periodic inspections.
- e. 757swim shall purchase all chemicals required for maintenance of the Pool Facility from the Association’s pool management firm. Any equipment, chemicals or test kits left at the Pool Facility beyond the Term of this Agreement shall become property of the Association.
- f. 757swim shall be responsible for the cost of any additional cleaning fees that result from its use of the Pool Facility.
- g. 757swim shall test, adjust and document Chlorine and pH one (1) time per day.
- h. 757swim shall test, adjust and document the Total Water Chemistry one (1) time every other week.
- i. 757swim shall check filtration system one (1) time per week and document Flow Rate and Filter Pressure.
- j. 757swim shall clean the hair strainer and skimmer baskets on an as-needed basis.
- k. 757swim shall backwash filters as needed.
- l. 757swim shall add algacide as needed.
- m. 757swim shall vacuum and/or brush the walls and floors of the pool as needed.
- n. After each use, 757swim shall leave the Pool Facility in clean and serviceable condition, including the removal all trash from the premises, cleaning and restocking the restrooms and securing all equipment in the appropriate storage area(s).

9. Association Pool Rules. The Association's Pool Rules are hereby incorporated hereto by reference and shall be observed by 757swim at all times.

10. Gift. In appreciation for the membership and use of facility granted by the Association, 757swim agrees to gift the following improvements or services to the Association:

- a. The Association grants 757swim permission to install a new pool pump and motor at the facility at the sole expense of 757swim that shall be installed by a qualified contractor who is properly licensed, bonded and insured. The parties agree that the pool pump and motor shall become the property of the Association. 757swim further agrees to assign any warranties or maintenance plans for the pump and motor to the Association.
- b. The thermal pool coverings and storage reel purchased by 757swim to assist in maintaining water temperature and chemical levels shall become the property of Villages of Westminster. 757swim further agrees to assign any warranties or maintenance plans for the blankets and reel to the Association. The Association agrees that under the current or any future facility usage agreement, 757swim has permission to use the pool coverings and reel.
- c. At the request of Villages of Westminster, 757swim shall install a magnetic swipe card access system at the pool area and the clubhouse. 757swim shall pay no more than \$5000 toward the system and its installation and will contribute up to \$5000 if the system and installation exceed that amount. The system shall be installed by a qualified contractor who is properly licensed, bonded and insured. The system will be approved by the Association prior to purchase, and become the property of the Association after installation. 757swim further agrees to assign any warranties or maintenance plans for the magnetic swipe card access management system to the Association.
- d. The Association may request 757swim to provide certified lifeguards for Association swim time throughout the period of the Agreement. The request will be delivered at least seven days in advance, and the number of hours will not exceed 20 hours. 757swim's swimmers and coaches shall not serve as lifeguards directly due to personal liability concerns, but they may be contracted by a lifeguarding service with proper liability coverage.

11. Concessions. 757swim shall not operate any concessions on Association property.

12. Alcohol/Smoking. The consumption of alcohol is prohibited within the Pool Facility. Smoking is similarly prohibited.

13. Noise. 757swim agrees to maintain a reasonable noise level during its use of the Pool Facility, including keeping music levels at a reasonable level that does not interfere with the Association members' use and enjoyment of their property.

14. Parking. 757swim agrees to park in designated parking spaces at the Pool Facility. Double-parking is prohibited and street parking is permitted with the prior written approval of the Board of Directors.

15. Association Name. The name "Villages at Westminster" (aka "Villages of Westminster") is a proprietary term and 757swim shall not use the Association name for any reason without prior written permission from the Association.

16. Compliance with Applicable Law. During the Term of this Agreement, 757swim shall comply with all lawful requirements of local, county, state and national authorities applicable to its use of and responsibilities concerning the Pool Facility. In the event that it becomes necessary for any portion of the Pool Facility to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101-12213 (2000)), such compliance will be at the sole cost and expense of 757swim.

17. Insurance. From and after the Commencement Date, 757swim shall maintain at its sole cost and expense a general liability insurance policy with coverage limits of not less than One Million Dollars (\$1,000,000.00) combined each occurrence and in the aggregate insuring against liability of the insured with respect to the use of the Pool Facility. The general liability insurance policy shall name the Association as an additional insured. 757swim shall additionally maintain the necessary worker's compensation insurance. 757swim will deliver to the Association copies of the required insurance policy(ies) at least five (5) days prior to the Commencement Date. If 757swim's insurance is terminated or cancelled at any time, 757swim shall immediately notify the Association and shall not use the Pool Facility until proof of current insurance is provided to the Association.

18. Indemnity. 757swim hereby agrees to indemnify, defend and hold the Association and its directors, officers, members and agents harmless from and against any claims, losses, damages (including, but not limited to consequential damages), injuries, liabilities, judgments, costs, and expenses, including attorneys' fees incident to, arising from, or related in any way to whatsoever to the actions or omissions of 757swim, its agents, Swimmers or invitees, in connection with 757swim's use of the Pool Facility. This indemnity shall be effective and binding upon 757swim, and 757swim's guests, executors, administrators, successors, and assigns in the event of property damage, illness, and/or personal injury including death. The provisions of this Paragraph 18 shall survive the termination or expiration of this Agreement.

19. Waiver of Claims. 757swim waives any claims and/or causes of action related to the unavailability of the Pool Facility when such unavailability results from an event or condition that is outside of the Association's control, including, without limitation, power outages, inclement weather, etc.

20. Taxes. To the extent any local, state, and/or federal taxes are incurred as a result of 757swim's use of the Pool Facility, 757swim shall be 100% responsible for the payment of such taxes, either directly or as a reimbursement to the Association.

21. Casualty/Condemnation. In the event of any casualty or condemnation of the Pool Facility or any part thereof, the Association may elect to terminate this Agreement immediately upon written notice thereof to 757swim. In the event of such casualty, 757swim is not guaranteed to have continued use of the Pool Facility, however, the Association will pursue its restoration and repair with due diligence.

22. Termination/Default. Either party may terminate this Agreement with thirty (30) days' notice. In the event of such default, such non-defaulting party shall have the right to pursue all rights and remedies against the defaulting party as such non-defaulting party may have, both legal and equitable. All of the rights and remedies hereunder are cumulative. Additionally, the defaulting party shall be liable for reasonable attorneys' fees and costs incurred by the non-defaulting party, in connection with this transaction or the enforcement of this Agreement.

23. Severability. If a provision of this Agreement is declared invalid, the remainder of this Agreement shall remain in full force and effect.

24. Relationship of Parties. Nothing contained in this Agreement will be deemed, construed or implied as creating the relationship of principal and agent, landlord and tenant, partnership, joint venture or any other relationship between the parties hereto other than as expressly set forth herein.

25. Governing Law. All questions regarding the construction of the Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the Commonwealth of Virginia without regard to the conflict of law provisions thereof.

26. Amendments. This Agreement may not be altered, amended, restated, or repealed except by a writing signed by both parties.


27. Notice. Any notice required or permitted to be given pursuant to this Agreement shall be effective as of the date personally delivered, or if sent by mail, on the date deposited with United States Postal Service.

28. Entire Agreement. This Agreement contains the entire understanding among the parties and supersedes all prior written and oral agreements among them regarding the subject matter of this Agreement. No representation, agreement, arrangement or understanding, oral or written, exists among the parties relating to the subject matter of this Agreement that is not fully expressed herein.

29. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have respectively executed this Agreement to be effective as of September 6, ~~2017~~ ²⁰¹⁶ *MEL* 

VILLAGES OF WESTMINSTER HOMEOWNERS ASSOCIATION, INC.

By:  Cob Date: 2/21/17
Its: President

757SWIM, INC.

By: *Mary Lynch* Date: 2/21/17
Its: President



Exhibit A:

757swim Practice Schedule at Villages of Westminster

Monday	Gold Group	3:00-5:00 p.m.
	Silver II Group	4:45-6:45 p.m.
	Silver I Group	5:00-6:30 p.m.
Tuesday	Gold Group	3:00-5:00 p.m.
	Silver II Group	5:00-7:00 p.m.
Wednesday	Gold Group	3:00-5:00 p.m.
	Silver II Group	5:00-6:45 p.m.
	Silver I Group	5:00-6:45 p.m.
Thursday	Gold Group	3:00-5:00 p.m.
	Silver II Group	5:00-6:45 p.m.
	Silver I Group	5:00-6:45 p.m.
Friday	Gold Group	3:00-5:00 p.m.
	Silver II Group	5:00-6:30 p.m.
	Silver I Group	5:00-6:30 p.m.
Saturday	Gold Group	8:30-11:00 a.m.
	Silver II Group	11:00-12:30 p.m.
	Silver I Group	10:30-12:30 p.m.
Sunday	No Practice	

*Note: Coaches arrive up to 30 minutes before practice and stay up to 30 minutes after to open/prepare and close/clean the facility.

