

RESOLUTION NO. 2016-\_\_\_\_\_

**CITY OF POMPANO BEACH**  
**Broward County, Florida**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, APPROVING AND AUTHORIZING THE PROPER CITY OFFICIALS TO EXECUTE A REVOCABLE LICENSE AGREEMENT BETWEEN THE CITY OF POMPANO BEACH AND PAYLESS SWIM LLC FOR THE AQUATIC CENTER PRO SHOP; PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA:**

**SECTION 1.** That a Revocable License Agreement between the City of Pompano Beach and Payless Swim LLC for the Aquatic Center Pro Shop, a copy of which Agreement is attached hereto and incorporated by reference as if set forth in full, is hereby approved.

**SECTION 2.** That the proper City officials are hereby authorized to execute said Revocable License Agreement between the City of Pompano Beach and Payless Swim LLC.

**SECTION 3.** This Resolution shall become effective upon passage.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
**LAMAR FISHER, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**ASCELETA HAMMOND, CITY CLERK**

/jrm  
6/1/16  
l:reso/2016-224

**City of Pompano Beach**

**LICENSE AGREEMENT**

**with**

**Payless Swim LLC**

## **LICENSE AGREEMENT**

**THIS LICENSE AGREEMENT** ("Agreement"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between:

**CITY OF POMPANO BEACH**, a municipal corporation located in Broward County, Florida (hereinafter "CITY"),

and

**PAYLESS SWIM, LLC**, a Florida limited liability company (hereinafter "LICENSEE").

**WHEREAS**, the CITY issued Request for Proposals E-20-16 (Exhibit A) to locate a qualified firm to provide operation of a full-service swim shop servicing all competitive aquatic services to the City located at 820 NE 18 Avenue in Pompano Beach, Florida (the "Aquatic Center"); and

**WHEREAS**, on \_\_\_\_\_, the CITY declared Payless Swim LLC as the sole proposer to RFP E-20-16 (Exhibit B), which conditions and terms shall be incorporated into this Agreement, and directed staff to negotiate a License Agreement (the "Agreement") between the parties; and

**WHEREAS**, in accordance with the terms and conditions set forth herein, LICENSEE is able and prepared to provide the goods and services described in this Agreement and in Exhibits attached hereto and made a part hereof; and

**WHEREAS**, the CITY has determined entering into this License Agreement with LICENSEE is in the best interest of the public; and

**WHEREAS**, the CITY and LICENSEE desire to enter into this Agreement setting forth the parties' mutual understandings and undertakings.

**NOW, THEREFORE**, in consideration of the conditions, covenants and mutual promises herein contained, the CITY and LICENSEE agree as follows.

### **ARTICLE 1 REPRESENTATIONS**

A. **Representations of CITY.** CITY makes the following representations to LICENSEE which CITY acknowledges LICENSEE has relied upon in entering into this Agreement.

1. This Agreement is a valid, binding and permissible activity within the power and authority of the CITY and does not violate any CITY Code, Charter provision, rule, resolution, ordinance, policy or agreement of the CITY or constitute a default of any agreement or contract to which the CITY is a party.

2. The individuals executing the Agreement on behalf of the CITY are duly authorized to take such action, which action shall be, and is, binding upon the CITY.

3. LICENSEE shall be entitled to rely upon the accuracy and completeness of any information or reports supplied by CITY or by others authorized by the CITY's Recreation Programs Administrator.

B. **Representations of Payless Swim, LLC.** LICENSEE makes the following representations to CITY which CITY relies upon in entering into this Agreement.

1. Payless Swim, LLC is a Florida limited liability company duly organized, existing and in good standing under the laws of the State of Florida with the power and authority to enter into this Agreement.

2. LICENSEE's execution, delivery, consummation and performance under this Agreement will not violate or cause Payless Swim, LLC, Inc. to be in default of any provisions of its governing documents, rules and regulations or any other agreement to which LICENSEE is a party or constitute a default thereunder or cause acceleration of any obligation of LICENSEE thereunder.

3. The individual executing this Agreement and related documents on behalf of Payless Swim, LLC is duly authorized to take such action which action shall be, and is, binding on LICENSEE.

4. There are no legal actions, suits or proceedings pending or threatened against or affecting Payless Swim, LLC or its principals that LICENSEE is aware of which would have any material effect on LICENSEE's ability to perform its obligations under this Agreement.

5. LICENSEE represents it has the ability, skill and resources to complete its requisite responsibilities under this Agreement.

6. The standard of care for all professional services furnished by LICENSEE and its employees, subLicensees or other agents under this Agreement will be the skill and care used by professionals currently practicing under similar circumstances in the same locality.

7. CITY shall be entitled to rely upon the professional and technical skills of LICENSEE or by others authorized by LICENSEE under this Agreement.

8. LICENSEE represents and warrants it has and will continue to maintain all licenses and approvals required to conduct business and provide services under this Agreement and that it will at all times conduct its business activities in a reputable manner.

## **ARTICLE 2 NON-ASSIGNABILITY AND SUBCONTRACTING**

This Agreement is not assignable and LICENSEE agrees it shall not sell, assign, transfer, merge or otherwise convey any of its interests, rights or obligations under this Agreement, in whole or in part, to any other person, corporation or entity.

Any attempt by LICENSEE to assign or transfer any of its rights or obligations under this Agreement without first obtaining CITY's written approval will result in CITY's immediate cancellation of this Agreement. Specifically, no assignment of any right or obligation under this Agreement shall be binding on the CITY without the written consent of the City Commission of Pompano Beach.

In addition, this Agreement and the rights and obligations therein shall not be assignable or transferable by any process or proceeding in court, or by judgment, execution, proceedings in insolvency, bankruptcy or receivership, and in the event of LICENSEE's insolvency or bankruptcy, CITY may at its option terminate and cancel this Agreement without any notice of any kind whatsoever, in which event all rights of LICENSEE hereunder shall immediately cease and terminate.

Nothing herein shall be construed to create any personal liability on the part of the CITY or its agent(s) nor shall it be construed as granting any rights or benefits hereunder to anyone other than CITY and LICENSEE.

## **ARTICLE 3 TERM AND RENEWAL**

The City hereby engages LICENSEE to operate a full service Pro Swim Shop specializing in the sale of recreational and competitive swimwear, training accessories and equipment for a term of three (3) years, commencing \_\_\_\_\_, 2016, and ending \_\_\_\_\_, 2019. The CITY reserves the right to extend this Agreement for one (1) two-year renewal option provided both parties agree in writing to said extension. Renegotiation should commence at least 180 days prior to normal termination.

## **ARTICLE 4 RESPONSIBILITIES OF LICENSEE**

LICENSEE shall provide operation of a full-service Pro Swim Shop servicing all competitive aquatic disciplines to the CITY and specializing in full time, on-site management for the Pro Swim Shop and all its operations consistent with policies adopted by CITY which specifically require LICENSEE to at all times perform its obligations under this Agreement in a professional manner and also develop and adhere to written protocols to ensure public resources are properly tracked and appropriated. LICENSEE agrees to follow the policies and directives of

the CITY's Recreation Programs Administrator but in the absence thereof, LICENSEE shall exercise its reasonable judgment in discharging its duties hereunder.

LICENSEE shall perform the duties set forth below at the Pompano Beach Aquatic Center, including such other duties as the CITY may, from time to time, require in connection with the requirements provided for pursuant to this License Agreement.

1. LICENSEE shall plan, coordinate and direct the overall operations of the Pro Swim Shop and shall work closely with the CITY Recreation Programs Administrator, or designee, to set up all hours of operation which shall include being open during all CITY aquatic events and swim meets. It is expressly understood that LICENSEE shall only have access to CITY Aquatic Center during facility operating hours.

2. LICENSEE shall be responsible for the general cleanliness of the Pro Swim Shop and patio, which includes coordinating daily collection of debris from the aforesaid areas prior to opening them to the public and from time to time throughout the day as conditions require to maintain a state of cleanliness. It is expressly understood that no garbage may be stored by LICENSEE during business hours and/or within sight of the public.

3. At LICENSEE's sole risk and expense, LICENSEE shall manage and maintain an inventory of aquatic related goods and merchandise for public sale at the Pro Swim Shop including, but not limited to, recreational and competitive swimwear, training accessories and equipment supplied by all the major brands recognized in the aquatic industry.

4. In addition to providing items for public sale, LICENSEE shall sell to CITY all lifeguard suits, training accessories or equipment supplied through any supplier at a reduced rate of twenty-five (25) percent off the Manufacturer's Suggested Retail Price (MSRP) pricing. LICENSEE's provision of all merchandise and services at the Pro Swim Shop shall be offered at competitive prices for the Broward County area. LICENSEE must seek and receive written permission from the CITY's Recreation Programs Administrator prior to providing any goods or services not enumerated in this Agreement or Exhibits.

5. LICENSEE shall be responsible to pay any and all sales taxes and other charges of any nature or kind which may be assessed against LICENSEE's provision of services or merchandise sales under this Agreement, including real estate taxes. LICENSEE shall be responsible for any corresponding equipment necessary for operations and shall not make any improvements, additions or repairs without prior written approval from the CITY. If any such approvals are given by CITY, LICENSEE agrees to return the area to original working condition at its own expense at the expiration or termination of Agreement.

6. LICENSEE shall utilize the Pro Swim Shop exclusively for the activities described herein and not allow any part thereof to be used for any immoral or illegal purposes. LICENSEE shall not allow, suffer or permit the Pro Swim Shop of Aquatic Center to be used for any purpose, business, activity, use or function to which the CITY objects, including gambling.

7. LICENSEE is responsible for hiring and managing its own staff of employees sufficient to provide operation of a Pro Swim Shop. LICENSEE's employees and

personnel shall be a minimum of eighteen years old, under LICENSEE's exclusive direction and control and not deemed employees or agents of the CITY.

8. LICENSEE shall be solely responsible for compensating its employees and complying with all federal, state and local laws, ordinances and regulations pertaining to employment of such persons including, but not limited to, the provisions of workers' compensation insurance and all other benefits required by law.

9. LICENSEE shall be responsible to ensure that all of its employees are suitable for employment in a municipal facility in terms of general character, knowledge, ability, public relations potential, manner and conduct.

10. For each employee, at LICENSEE's sole expense and prior to allowing any of its employees to provide services at the Aquatic Center, LICENSEE shall (i) provide the CITY's Recreation Programs Administrator a written background check from a reputable company approved by the CITY or (ii) allow the CITY to conduct its own background check at the LICENSEE's sole expense. LICENSEE's failure to comply with the obligations of this paragraph shall be deemed a material breach of this Agreement.

11. LICENSEE shall promptly respond to complaints about its employees from the CITY and Aquatic Center patrons and timely take appropriate disciplinary action as warranted by the circumstances.

12. LICENSEE shall immediately inform the CITY's Recreation Program Administrator of any repairs or maintenance necessary to keep all Pro Swim Shop areas in good and safe condition. LICENSEE agrees to accept the concession area, as is, and the City shall not be obligated to make any improvements as a condition precedent to this Agreement. LICENSEE shall provide signage to be approved by CITY prior to installation.

13. LICENSEE shall operate and conduct the business covered by this Agreement in accordance with all applicable federal, state and local laws, including the laws of Broward County and the charter, ordinances and other regulations of the City of Pompano Beach as may now exist or as may hereafter be adopted. LICENSEE, at its sole expense, shall purchase all necessary licenses and permits required by the State of Florida, Broward County, and the City of Pompano Beach, and be responsible to pay any and all sales taxes and other charges of any nature or kind, which may be assessed against LICENSEE's provision of goods and services under this Agreement. Proof of such licenses, approvals and sales tax payments shall be submitted to the CITY's Recreation Programs Administrator upon request.

14. LICENSEE, while acting pursuant to this Agreement, shall not discriminate against any worker, employee, patron, or member of the public on the basis of race, creed, religion, age, sex, disability or national origin.

15. LICENSEE shall record all fees and sales under this Agreement on a daily basis and submit monthly gross revenue reports to the CITY's Recreation Programs Administrator.

16. LICENSEE shall give CITY prompt written notice of any accidents occurring at the Aquatic Center in which damage to property or injury to a person occurs.

## **ARTICLE 5 RESPONSIBILITIES OF CITY**

A. CITY is responsible to maintain the Aquatic Center facilities and surrounding outdoor areas, including the building systems (plumbing, electrical, painting, ceilings, walls, floors, roof, public restrooms, etc.), and general maintenance (shrubbery and lawn care, garbage pickup, etc.). CITY shall provide electricity, Internet access will be provided via a CITY public Wi-Fi feed.

B. CITY shall provide LICENSEE with a designated area in the Aquatic Center to operate, stock and sell merchandise and services as provided for in this Agreement and Exhibits. Said area shall be referred to as the Pro Swim Shop. LICENSEE may advertise and promote the sale of its merchandise and services provided all signs and advertisements comply with all applicable laws, ordinances, regulations and CITY policies.

C. CITY shall provide LICENSEE a schedule of all meets, competitions, special events and scheduled practices of both local home based programs and visiting teams.

## **ARTICLE 6 COMPENSATION AND METHOD OF PAYMENT**

A. LICENSEE shall pay CITY compensation in the amount of one hundred (\$100) dollars a month in association with the terms and conditions of this Agreement. Payment shall be due on the first day of each month or as agreed to in writing by both parties. A late fee of twenty-five (\$25.00) dollars shall be assessed if payment is not received by the fifth day of the month.

## **ARTICLE 7 ACCOUNTING AND RECORD KEEPING PROCEDURES**

A. Both CITY and LICENSEE shall conform to generally accepted accounting methods and procedures and those set forth in this Agreement.

B. LICENSEE and its employees providing services and merchandise hereunder shall be required to record and preserve complete and accurate records attendant to this Agreement for a period of five (5) years after its termination or, if an audit has been initiated and audit findings have not been resolved at the end of this five (5) year period, the records shall be retained until resolution of the audit findings.

LICENSEE shall make available locally at reasonable time for CITY's examination and audit all such financial records, supporting documents, statistical records and any other documents, including state sales tax returns. If such examination or audit discloses a liability of fees, LICENSEE shall promptly pay the amount due. If such liability exceeds three percent (3%) of the fees, LICENSEE shall pay CITY the amount due and also pay for the cost of the CITY's audit within 10 calendar days.



Incomplete and incorrect entries in LICENSEE's records will be grounds for the CITY's allowance of any fees based upon such entries as well as termination of this Agreement.

C. The City of Pompano Beach is a public agency subject to Chapter 119, Florida Statutes. The LICENSEE shall comply with Florida's Public Records Law, as amended. Specifically, the Licensee shall:

1. Keep and maintain public records required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the Licensee does not transfer the records to the City.
4. Upon completion of the contract, transfer, at no cost to the City, all public records in possession of the Licensee, or keep and maintain public records required by the City to perform the service. If the Licensee transfers all public records to the City upon completion of the contract, the Licensee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Licensee keeps and maintains public records upon completion of the contract, the Licensee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records in a format that is compatible with the information technology systems of the City.

Failure of the LICENSEE to provide the above described public records to the City within a reasonable time may subject Licensee to penalties under 119.10, Florida Statutes, as amended.

## **PUBLIC RECORDS CUSTODIAN**

**IF THE LICENSEE HAS QUESTIONS REGARDING  
THE APPLICATION OF CHAPTER 119, FLORIDA  
STATUTES, TO THE LICENSEE'S DUTY TO PROVIDE  
PUBLIC RECORDS RELATING TO THIS CONTRACT,**

**CONTACT THE CUSTODIAN OF PUBLIC RECORDS  
AT:**

**CITY CLERK  
100 W. Atlantic Blvd., Suite 253  
Pompano Beach, Florida 33060  
(954) 786-4611  
RecordsCustodian@copbfl.com**

**ARTICLE 8  
LICENSEE'S INDEMNIFICATION OF CITY**

A. LICENSEE shall indemnify, defend and save harmless the CITY from and against all claims, demands, losses, costs, damages, suits, judgments, penalties, expenses and liabilities of whatsoever kind arising directly or indirectly out of or in connection with the provision of services and merchandise under this Agreement whether same occurs or the cause arises on or away from the Aquatic Center and Pro Swim Shop.

B. LICENSEE shall be solely responsible for insuring all stock and inventory at the Pro Swim Shop against damage or loss of any nature or kind. LICENSEE has permission from CITY to install new locks on the entry doors to the Pro Swim Shop. LICENSEE agrees to provide CITY with a key to same in case of emergency. LICENSEE acknowledges and agrees that CITY assumes no responsibility whatsoever for any property placed at the Aquatic Center and that CITY is hereby expressly released and discharged from any and all liability for any loss, injury or damage to persons or property which may be sustained by reason of LICENSEE's presence and occupancy at the Aquatic Center.

**ARTICLE 9  
INSURANCE**

LICENSEE shall maintain insurance in the amounts and subject to all conditions set forth on the standardized insurance form attached as Exhibit C.

**ARTICLE 10  
INDEPENDENT LICENSEE**

Both CITY and LICENSEE agree that LICENSEE is an independent Licensee and not a CITY employee.

**ARTICLE 11  
DEFAULT AND DISPUTE RESOLUTION**

A. If either party claims the other is in default of this Agreement, the parties may, but are not required to, timely schedule a conference or meeting and make every reasonable effort to

reach an amicable resolution. Both parties shall be entitled to have representatives present at any such meeting or conference.

B. If there is a default of any covenant or obligation under this Agreement, the defaulting party shall be given ten (10) calendar days to cure said default after written notice to the other in accordance with Article 17 herein.

C. If the party receiving written notice of default provides written notice denying same within ten (10) calendar day of receipt or the alleged default has not been remedied within ten (10) calendar days after written notice of same and is continuing, either party may appeal in writing to the City Manager for the CITY in accordance with Article 17 herein.

Upon receipt of said written appeal or demand, the City Manager for the CITY may request additional information relating to the dispute from either or both parties which shall be provided within a reasonable time. Upon the City Manager's receipt and timely review of the disputed matter, the City Manager may make a decision regarding the alleged default as he/she deems appropriate under the circumstances. If the City Manager's decision is not implemented within the deadline set forth therein, the forty-five (45) day advance written notice provision set forth in Article 14 herein shall not apply and it shall be lawful for CITY to immediately terminate this Agreement and in addition to any other remedies provided by law, CITY may possess itself of all rights and privileges heretofore enjoyed by LICENSEE.

## **ARTICLE 12 TERMINATION**

CITY may terminate this Agreement, in whole or in part, for convenience, cause, default or negligence upon forty-five (45) days advance written notice to LICENSEE in accordance with Article 17 herein.

If any service hereunder is in progress but not completed as of the date of termination, then upon the CITY's written approval, this Agreement may be extended until said services are completed and accepted by CITY.

## **ARTICLE 13 EQUAL OPPORTUNITY EMPLOYMENT**

LICENSEE agrees not to discriminate against any of its or the CITY's employees under this Agreement because of race, color, religion, sex, age, national origin or disability.

## **ARTICLE 14 PUBLIC ENTITY CRIMES ACT**

Through execution of this Agreement and in accordance with Section 287.133, Florida Statutes, LICENSEE certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

**ARTICLE 15**  
**NOTICES AND DEMANDS**

Whenever it is provided herein that notice, demand, request, or other communication shall or may be given to, or served upon, either of the parties by the other, it must be in writing, sent by certified United States mail with return receipt requested, addressed to the party to whom it is intended at the places designated below until changed by written notice in compliance with the provisions of this Article. For the present, the parties designate the following respective places for giving of notice, to-wit:

**For CITY:**

City Manager  
City of Pompano Beach  
P.O. Drawer 1300  
Pompano Beach, Florida 33061  
[dennis.beach@copbfl.com](mailto:dennis.beach@copbfl.com)  
954-786-4601 office  
954-786-4504 fax

**With a copy to:**

Recreation Program Administrator  
City of Pompano Beach  
1801 NE 6<sup>th</sup> Street  
Pompano Beach, Florida 33060  
[mark.beaudreau@copbfl.com](mailto:mark.beaudreau@copbfl.com)  
954-786-4191 office  
954-786-4113 fax

**For LICENSEE:**

Michael McGoun, Payless Swim, LLC  
12270 NW 2<sup>nd</sup> Street  
Coral Springs, Florida 33071  
954-515-8689  
[paylessswim@hotmail.com](mailto:paylessswim@hotmail.com)

**ARTICLE 16**  
**GOVERNING LAW AND VENUE**

The Agreement shall be governed by the laws of the State of Florida, both as to interpretation and performance. CITY and LICENSEE submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit at law or in equity attendant to this Agreement shall be instituted and maintained only in courts of competent jurisdiction in Broward County, Florida.

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and in addition to every other remedy given herein, now or hereafter existing at law or in equity or by statute or otherwise.

**ARTICLE 17**  
**CONTRACT ADMINISTRATOR**

The CITY's Recreation Program Administrator or his/her designee shall serve as the CITY's Contract Administrator during the performance of services under this Agreement.

Michael McGoun shall serve as LICENSEE's Contract Administrator during the performance of services under this Agreement.

**ARTICLE 18**  
**NO CONTINGENT FEE**

LICENSEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for LICENSEE, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for LICENSEE any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

In the event of LICENSEE's breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability and, at the CITY's sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**ARTICLE 19**  
**ATTORNEY'S FEES**

In the event of litigation between the parties, the prevailing party shall be entitled to recover all costs of collection, including a reasonable attorney's fees and court costs. The provisions of this paragraph shall survive termination of this Agreement.

**ARTICLE 20**  
**FORCE MAJEURE**

Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, war, civil disorder, sabotage, accident, flood, acts of God or by any reason of any other matter or condition beyond the control of either party which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall economic hardship or lack of funds be considered an event of force majeure.

If CITY or LICENSEE are unable to perform, or are delayed in their performance of any obligations under this Agreement by reason of any event of force majeure, such inability or delay shall be excused at any time during which compliance therewith is prevented by such event and during such period thereafter as may be reasonably necessary for either party to correct the adverse effect of such event of force majeure.

In order to be entitled to the benefit of this Article, a party claiming an event of force majeure shall be required to give prompt written notice to the other party specifying in detail the event of force majeure and also diligently proceed to correct the adverse effect of any force majeure. The parties agree that, as to this Article, time is of the essence.

## **ARTICLE 21 WAIVER AND MODIFICATION**

Failure to insist upon strict compliance with any terms, covenants or conditions of this Agreement shall not be deemed a waiver of such, nor shall any waiver or relinquishment of such right or power at any time be taken to be a waiver of any other breach.

CITY and LICENSEE may request changes to modify certain provisions of this Agreement, including increasing or decreasing the scope of services to be provided. However, unless otherwise provided for herein, any such changes must be contained in a written amendment executed by both parties with the same formality of this Agreement.

## **ARTICLE 22 RELATIONSHIP BETWEEN THE PARTIES**

LICENSEE is being contracted by CITY for the purposes and to the extent set forth in this Agreement. LICENSEE is an independent Licensee and not an employee of the CITY.

## **ARTICLE 23 MISCELLANEOUS TERMS AND CONDITIONS**

A. LICENSEE may not make changes to any permanent fixtures at the Aquatic Center without prior written approval from the CITY's Recreation Program Administrator. Upon written approval of the CITY and receipt of all necessary and proper permits, LICENSEE may install permanent fixtures in the Pro Swim Shop area at its sole expense.

## **ARTICLE 24 SEVERABILITY**

Should any provision of this Agreement or the application of such provisions be rendered or declared invalid by a court action or by reason of any existing or subsequently enacted legislation, the remaining parts or provisions of this Agreement shall remain in full force and effect.

## **ARTICLE 25 APPROVALS**

Whenever CITY approval(s) shall be required for any action under this Agreement, said approval(s) shall not be unreasonably withheld.

**ARTICLE 26**  
**ABSENCE OF CONFLICTS OF INTEREST**

LICENSEE represents it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance hereunder. LICENSEE further represents no person having any interest shall be employed or engaged by it for said performance.

LICENSEE shall promptly notify the CITY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence LICENSEE's judgment or quality of services being provided hereunder. Said notification shall identify the prospective business interest or circumstance and the nature of work that LICENSEE intends to undertake and shall request the CITY's opinion as to whether such association, interest or circumstance would, in the opinion of the CITY, constitute a conflict of interest if entered into by LICENSEE.

**ARTICLE 27**  
**BINDING EFFECT**

The benefits and obligations imposed pursuant to this Agreement shall be binding and enforceable by and against the parties hereto.

**ARTICLE 28**  
**NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by CITY.

**ARTICLE 29**  
**LICENSE NOT LEASE**

Both parties acknowledge and agree this license shall not be deemed a lease of the Aquatic Center but rather a license granted to LICENSEE by CITY for the full time, on-site management of the Pro Swim Shop located at the Aquatic Center and all its operations.

**ARTICLE 30**  
**ENTIRE AGREEMENT AND INTERPRETATION**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and both parties agree there are no commitments, agreements or understandings concerning the subject matter herein that are not contained in this Agreement. Accordingly, both parties agree no deviation from the terms herein shall be predicated upon any prior representations or agreements, whether oral or written.

Regardless of which party or party's counsel prepared the original draft and subsequent revisions of this Agreement, both CITY and LICENSEE and their respective counsel have had

equal opportunity to contribute to and have contributed to its contents, and this Agreement shall not be deemed to be the product of, and therefore construed against either party.

It is further agreed the omission of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties and that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document agreed to and executed by authorized representatives of both parties with the same formality of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year first above written.

**"CITY":**

Witnesses:

**CITY OF POMPANO BEACH**

\_\_\_\_\_

By: \_\_\_\_\_  
LAMAR FISHER, MAYOR

\_\_\_\_\_

By: \_\_\_\_\_  
DENNIS W. BEACH, CITY MANAGER

Attest:

(SEAL)

\_\_\_\_\_  
ASCELETA HAMMOND, CITY CLERK

Approved As To Form:

\_\_\_\_\_  
MARK E. BERMAN, CITY ATTORNEY

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **LAMAR FISHER**, as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND**, as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Acknowledger Typed, Printed or Stamped)

\_\_\_\_\_  
Commission Number

CLS/ds  
8/30/16  
L:/agr/2016-976a



**"LICENSEE":**

Witnesses:

C. Missy Kitts

C. Missy Kitts

Print Name

Scott Moore

SCOTT MOORE

Print Name

**PAYLESS SWIM LLC**, a Florida Limited Liability Company

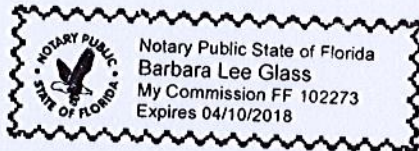
By: \_\_\_\_\_

Michael P. McGoun, Manager

STATE OF FLORIDA  
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of August, 2016, by Michael P. McGoun as Manager of Payless Swim LLC, a Florida Limited Liability Company. He is personally known to me or who has produced FDLMBD-SS-4920 (type of identification) as identification. exp 11/17

NOTARY'S SEAL:



Barbara Lee Glass  
NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

FF 102273

Commission Number