

**LEASE AGREEMENT**  
(Menlo Park Aquatic Facilities)

This Lease Agreement ("Lease") is made and executed as of March 15, 2011, by and between the City of Menlo Park, a municipal corporation ("City"), and Team Sheeper, L.L.C., a California limited liability company ("Provider") and collectively referred to herein as "Parties".

**WHEREAS**, City is the owner of certain premises ("Premises") described below, and City and Provider wish to enter into a lease for the Premises on the terms and conditions set forth below.

**NOW, THEREFORE**, the Parties agree as follows:

1. **PREMISES.** The Premises includes both the "Burgess Pool", 501 Laurel Street, Menlo Park, CA and the "Belle Haven Pool", 100 Terminal Avenue, Menlo Park, CA as defined herein. Burgess Aquatic Facility ("Burgess Pool") consists of the fenced pool area at the City's Civic Center campus at Burgess Park. Burgess Pool includes the lap pool, instructional pool, toddler activity pool, locker rooms and restrooms, offices, lawn area, pool mechanical room, lobby area, and all associated areas in the City of Menlo Park, County of San Mateo, State of California, as more particularly shown in Exhibit A, attached hereto and incorporated herein by reference. The Belle Haven Pool ("Belle Haven Pool") is a five lane x 25 meter outdoor swimming pool located adjacent to the Onetta Harris Community Center. Belle Haven Pool includes a high dive and low dive, locker room, shower facilities, mechanical room, office and small children's wading pool in a fenced area as shown in Exhibit B, attached hereto and incorporated herein by reference.

2. **TERM.** The term of this Lease shall be for a period of period of five (5) years ("Term") commencing on May 20, 2011 ("Commencement Date") and ending five (5) years from the Commencement Date, unless automatically extended as hereinafter provided. If during the first four years of the Term, Provider has completed capital improvements with the written consent of the City to either or both the Burgess Pool and/or the Belle Haven Pool with a total cumulative cost of \$200,000 or more, the Term shall automatically be extended by five (5) years to May 19, 2021. Notwithstanding the foregoing, Provider shall have the option to terminate this Lease solely as to the Belle Haven Pool between October 1, 2012 and December 31, 2012, and October 1, 2013 and December 31, 2013, if in Provider's opinion it cannot operate a financially viable program at the Belle Haven Pool.

3. **RENT.** In consideration for Provider's use of the Premises as granted by this Lease, Provider assumes sole financial responsibility for the operation and maintenance of the Premises and shall operate and maintain the Premises at no cost to the City. Additionally, Provider will remit monthly rent ("Rent") in the

amount of Three Thousand Dollars (\$3,000.00) to the City for use of the Burgess Pool on the first day of each month for the first year of the Term. Each year thereafter, the Rent shall increase pursuant to the Consumer Price Index ("CPI") for all Urban Consumers (All Items) in the San Francisco-Oakland-San Jose Area (U.S. Department of Labor, Bureau of Labor Statistics), with a minimum increase of two percent (2%) and a maximum increase of five percent (5%) per annum.

Should Provider cease to operate the Belle Haven Pool as provided in Section 2 of this Lease, Provider and City shall renegotiate the Rent to the then Fair Market Value ("FMV") rental rate for the Burgess Pool with consideration given to gross revenues for the Burgess Pool, the fixed costs of operating the Burgess Pool, the profitability of the Burgess Pool operations, the rental rate for similar facilities and the other terms and conditions of this Lease.

If the Term is extended for an additional five years as provided for in Section 2 of this Lease, effective at the beginning of the sixth year of the Lease, the Rent shall be adjusted to the then-prevailing FMV rental rate (which under no circumstances shall be less than the rental rate paid in the preceding year), with consideration given to gross revenues for the Burgess Pool, the fixed costs of operating the Burgess Pool, the profitability of the Burgess Pool operations, the rental rate for similar facilities and the other terms and conditions of this Lease. The FMV rental rate shall be determined by mutual agreement, or if the Parties cannot agree by a neutral third party arbitrator selected by the Parties. Each year thereafter, the Rent shall increase pursuant to the CPI for all Urban Consumers (All-Items) in the San Francisco-Oakland-San Jose Area (U.S. Department of Labor, Bureau of Labor Statistics), with a minimum increase of two percent (2%) and a maximum increase of five percent (5%) per annum.

Throughout the Term, Provider shall pay to the City within fifteen (15) days of receipt of written invoice submitted to Provider by City, or directly to the provider thereof, in addition to the Rent, and as additional rent ("Additional Rent") the following:

- a. The full cost of the separately metered utilities for the Premises;
- b. The cost of the utilities for the locker rooms and the portion of the Premises occupied by Provider (if not separately metered) prorated according to Provider's usage (proration to be determined by mutual agreement, or if the Parties cannot agree by a neutral third party arbitrator selected by the Parties);
- c. If the City elects to install solar equipment on the Premises, Provider shall pay monthly to the City the calculated savings from the reduced utility bills for the Term hereof; and
- d. The maintenance and repair obligation costs set forth in Section 14.

Any payment due by the Provider not received by City within fifteen (15) days of the due date shall be subject to a late payment penalty of five percent (5%) of the amount due.

At the initiation of the City's Community Services Director not later than December 31, 2011, the Provider and Community Services Director shall explore whether charging a surcharge to non-resident participants/users by Provider would generate additional revenues without adversely affecting Provider's operation of the pool facilities. This exploration will be done through such tasks as market pricing comparisons, surveys, or other such means so as not to negatively affect any of Provider's business during the period of exploration. If is the Community Services Director and Provider determine that such a surcharge would not adversely affect the Provider's operation of the pool facilities, Provider shall charge such a surcharge which shall be passed through to the City as additional rent, less any administrative, programming or system enhancement costs that are incurred by Provider to implement such surcharge, including additional staffing that may be required to verify City residency and to track and submit such fees to the City. The pass through of non-resident surcharges as additional rent payable to the City shall not apply to existing non-resident fees charged by Provider for open swim and lap swim. The City shall set aside such additional revenue derived from non-resident surcharges in a separate fund and shall utilizes such funds to pay the City's cost of repair, maintenance and capital improvements.

4. EXCLUSIVE USE OF PREMISES. Subject to the terms of this Lease, Provider shall have exclusive use of the Premises for purposes of conducting aquatics programs, including, but not limited to, a masters swim program, swim team, swim lessons, fitness training, recreational swimming, community rentals and other aquatics programs that Provider offers and provides for reasonable public access to and use of the Premises pursuant to Section 6 of this Lease. Provider shall have the exclusive right to staff, supervise and contract for such uses of the Premises, subject to the terms of this Lease.

Provider shall have non-exclusive use of the locker rooms, as depicted on Exhibit A and Exhibit B, to accommodate Provider's use of the Premises. The Parties agree that use of the locker rooms shall be limited to persons participating in programs and activities offered by Provider or City or other members of the public upon payment to Provider of fees for such use. Specifically, City reserves the right to use the locker rooms for any City program, including facility rentals and programs and for public use on a "pay for use" basis. The Provider may only refuse locker room access when patrons fail to follow the rules of conduct approved by the City. Patrons shall have the right to appeal Provider's decision to the Director of Community Services, if the Patron feels denial of locker room access was unreasonable. The Director of Community Services' decision shall be final.

5. OPERATION OF PREMISES. The Provider will be solely responsible for operation of the Premises including all costs and expenses associated with such operation and shall be entitled to all revenues from the operation of the Premises, except where otherwise provided in this Lease. The Provider may use

the Premises between the hours of 5 a.m. to 10 p.m. seven (7) days a week and 365 days a year.

6. COMMUNITY ACCESS AND SCHEDULING. The Provider will be solely responsible for the operations and schedule of the Burgess Pool and the Belle Haven Pool. The Provider shall provide reasonable public access and community use of the Premises. Provider will not reduce the public access and community use without prior City approval. The Director of Community Services is authorized to finalize the City's schedule of use of the Premises. When evaluating the pool space and time allocation, the Provider shall consider and give scheduling priority for programs based on the number and percentage of City residents.

Notwithstanding the forgoing, the Provider shall accommodate the SOLO swim team's use of Burgess Pool in accordance with schedule and terms set forth in Exhibit C, which schedule and terms shall not be modified or reduced without mutual agreement of Provider and SOLO, unless SOLO is in breach of its sublease agreement with Provider.

Minimum public access and community use at the Burgess Pool will include:

- a. Year-round lap swim, seven (7) days per week (except holidays);
- b. Seasonal open/recreational swim daily from Memorial Day through Labor Day for a reasonable amount of time and with adequate pool space;
- c. Reasonable availability for other community organizations/users
- d. Programs and reasonable accommodation for all ages and abilities;
- e. Inclusive programs for people with disabilities when possible; and
- f. Winter programming by providing a dome over the instructional pool if possible.

Minimum public access and community use at the Belle Haven Pool:

- a. Open to the public for a minimum of ten (10) weeks during the summer season in June, July, and August. During that time period, the pool shall be open for a minimum of six (6) days a week, Monday through Saturday; and
- b. Open/recreational swim hours will be at least three (3) hours per day, six (6) days per week but will be allowed on a "pool sharing" basis with other programming.

7. PROGRAM FEES. The program fees charged by Provider shall be as follows:

- a. The fees charged by the Provider for public lap swimming, open/recreational swim, and swim lessons shall be comparable to rates and fees charged by other aquatic facilities in surrounding communities and in alignment with the approved business model.

- b. The Provider shall provide rental space for other community organizations and users for competitive youth swimming programs, instructional programs, fitness training, etc., on a reasonable and comparable fee basis.
- c. Review of the program fees shall be included in the annual report to the City.
- d. Provider and City shall mutually agree to exchange an equal amount of field space and activity room hours for pool hours for their respective programs (i.e. summer camp) in lieu of charging rental fees. If either party's request exceeds the number of hours requested by the other party, the additional hours will be charged at the current approved fees for use of the facilities.

8. PROGRAM ADMINISTRATION. The Provider shall have a method for the public to register, pay, and receive adequate customer service in an easy and effective manner. Provider shall provide adequate administrative staff and assistance to support all hours of operation. Policies and procedures for handling registration, refunds, and complaints are required. The Provider shall provide sufficient communication and marketing in order to inform the public of the programs and services. The Provider shall maintain a customer database and appropriate records retention. The City will provide reasonable marketing space in the tri-annual activity guide for the Provider to promote their aquatics programs at the Premises. The Provider shall be responsible for meeting the deadlines and providing accurate and sufficient information to City staff.

The Provider shall take appropriate steps to maintain a high level of customer service and overall satisfaction at all times. Provider shall attend monthly meetings with City staff and attend annual meetings of an Aquatics Users Group which shall be convened by the City. Additionally, the Provider shall provide an annual report no later than January 30 of each year during the Lease Term to staff which will be presented to the City's Parks & Recreation Commission for review and comment by the Commission at its February meeting. The annual report should include the following items:

- a. Total program hours by program area;
- b. Participation statistics by program area including resident and non-resident percentages;
- c. Customer satisfaction survey results;
- d. User group feedback by program area or rental;
- e. Pool schedule and allocation by program for previous year and projections to the upcoming year;
- f. Fees by program area and fee comparison to other public pools in the region;
- g. Annual audits and reviews demonstrating standards of care, outlined in Section 11, below, are met;
- h. Risk management documentation, outlined in Section 12, below; and
- i. Training certifications listed by staff members.

The Provider shall maintain reasonable evidence and documentation of these statistics and results and have these records accessible to the City at any time following ten (10) days written notice.

In the event of a third party dispute or conflict arising out of or related to this Lease, the City will use best efforts to notify and discuss the issue with Provider before engaging in any dialogue with the third party involved.

9. COMPLIANCE WITH LAWS AND REGULATIONS. The Provider shall comply with all city, county, state, and federal laws and regulations related to pool and aquatic program operations. These regulators and laws include but are not limited to:

- a. City of Menlo Park
- b. Menlo Park Fire Department
- c. San Mateo County Health Department
- d. California Department of Health Services
- e. California Department of Labor
- f. Occupational Safety and Health Administration (OHSA)
- g. Emergency Medical Services Authority (EMSA)
- h. Consumer Product Safety Commission & Virginia Graeme Baker Act
- i. Americans with Disabilities Act
- j. California Department of Fair Employment and Housing

10. HEALTH AND SAFETY. The Provider is required to maintain health and safety standards in a reasonable and acceptable manner for the Premises, participants, and its employees in compliance with City standards and the other regulatory agencies listed above. These standards include but are not limited to:

- a. Employee Injury and Illness Prevention Plan
- b. Hazardous Materials Communications and Business Plan
- c. Blood borne Pathogens and Bio Hazardous Exposure Control Plan
- d. Lifting and Fall Prevention
- e. Electrical Safety
- f. Emergency Action Planning
- g. First Aid
- h. Heat Illness and Sun Protection
- i. Confined Spaces
- j. Chemical Storage
- k. Personal Protective Equipment
- l. Recreational Waterborne Illnesses (RWI's)
- m. Signage

The Provider is responsible for keeping up to date with all changes, additions, or amendments to the laws, regulations and codes related to pool operations and aquatics programs.

11. STANDARD OF CARE. The Provider will provide aquatic programs and manage the Premises in a manner that is comparable to or above the standard of care that is reasonable and acceptable for a public pool in the surrounding communities. This standard of care should be demonstrated in all areas of operations including: supervision and lifeguard coverage, surveillance techniques, staff training, record keeping, maintenance and janitorial, cleanliness of facilities, safety, and risk management. The Provider is expected to ensure this standard of care by conducting annual audits by qualified external experts and including this information in the annual report to city staff and the City's Parks and Recreation Commission mentioned in Section 8, above.

12. RISK MANAGEMENT. The Provider shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence by the Provider. The Provider shall manage their risk by demonstrating proficiency in the following areas:

- a. Emergency Action Plan
  - Staff Training to Plan
  - Drills Conducted
  - Emergency Equipment
  - Communication Process
- b. Facilities & Equipment
  - Inspection
  - Maintenance
  - Checklists
  - Signage
- c. Supervision
  - Quality
  - Quantity
  - Lessons Plans & Progression
- d. Training
  - Requirements
  - Appropriate Staff
- e. Documentation
  - Manuals
  - Waivers
  - Medical Screening
  - Skills Screening
  - Risk Information Provided to Public
  - Policies
  - Evaluations

13. EMERGENCY ACTION PLAN AND PROCEDURES. The Provider shall create and maintain all emergency procedures and emergency action plans for the Premises. An emergency action plan is required under Title 29 of Federal Regulations Sections 1910.38/.120/.156, and Title 8 California Code of

Regulations, Sections 3220 and 3221. The emergency action plan covers all employees and non-employees who may be exposed to hazards arising from emergency situations. It must contain information for all of the Provider's employees, including administration and line level employees using the plan in order to reduce the severity of emergency situations and minimize the risk to life and property.

14. MAINTENANCE. The Provider shall maintain the Burgess Pool and the Belle Haven Pool in an orderly, clean and professional condition at all times. The Provider will be responsible for the maintenance and repair of the equipment and facilities at both of these sites including:

a. Burgess Pool:

- Three pools
- Offices
- Lobby
- Locker Rooms & Shower Area
- Restrooms
- Pool Decks
- Fences and Gates
- Lawn Area
- Supply Storage Areas
- Equipment/Mechanical Rooms
- Chemical Storage Areas
- Lights on Premises

b. Belle Haven Pool:

- Two pools
- Office
- Locker Rooms & Shower Area
- Restrooms
- Pool Decks
- Fences and Gates
- Supply Storage Areas
- Equipment/Mechanical Rooms
- Chemical Storage Areas
- Lights on Premises

The Provider shall maintain standard operation procedure manuals and maintenance records and logs. These records will include:

- Daily Pool & Chemical Log
- Check lists for routine maintenance and janitorial duties (Daily, Weekly, Monthly, Quarterly, Bi-annual, and Annual)
- Equipment Logs for each piece of major equipment with the maintenance schedule, maintenance contracts, record of work or repairs conducted, manufacturer guidelines, and specifications



The Provider shall maintain and continue all preventative maintenance agreements and contracts to ensure the quality and life of the equipment. The Provider will be responsible for all maintenance and repairs to equipment. Provider shall be responsible for repairs and replacement of all equipment due to failure or damage where the cost is less than One Thousand Five Hundred Dollars (\$1,500) per item at the Belle Haven Pool and Two Thousand Five Hundred Dollars (\$2,500) per item at the Burgess Pool. Provider shall arrange and be billed directly by the vendor for such repair(s) and/or replacement(s). Provider will also be responsible for any damage that is outside the normal wear and tear of the Premises and/or for failure to adequately maintain the Premises or any equipment. If damage beyond normal wear and tear of the Premises or any equipment is determined by the City, the Provider will be required to make the appropriate repairs within thirty (30) days of written notice. The City shall be responsible for individual repair/replacement for any item of equipment having a cost greater than One Thousand Five Hundred Dollars (\$1,500) per item at the Belle Haven Pool. For individual repair/replacement for any item of equipment at the Burgess Pool having a cost of between Two Thousand Five Hundred Dollars (\$2,500) and Twelve Thousand Five Hundred Dollars (\$12,500) per item, the City shall pay for the cost of the item, but the cost shall then be amortized over the greater of the life expectancy of the item or the Term of the Lease remaining, and Provider shall pay the monthly amortized cost of the replacement equipment with a reasonable rate of interest for the remaining Term of the Lease. If the cost of the item exceeds \$12,500, the City shall be responsible for the cost of the work. City shall be responsible for payment of the cost of replacement and reserves the right to perform replacement of the item. The Provider is responsible for reimbursing the City for the cost of repairs and replacement due to misuse, poor maintenance and/or damage caused by Provider, Provider's employees, agents and service users. The Provider shall assist the City by providing the necessary bids and due diligence for replacement of an item of equipment having a cost greater than \$2,500 to ensure an expedited process when possible and reduce any loss of operations. The City shall use its best efforts to respond to the Provider for all replacements for which the City is responsible within two (2) business days with a decision based on the information provided by the Provider.

15. SIGNAGE. The Provider will be required to maintain and provide all necessary and required signage for both Premises. These signs include:

- a. Maximum Pool Capacity & Hours
- b. No Lifeguard on Duty
- c. Children under 14 not allowed without an adult
- d. Shallow Water Diving Warnings
- e. Chemical Storage
- f. No swimming allowed after dark
- g. Pool Rules
- h. 911 Emergency
- i. Shower Before Entering Pool

- j. No Running
- k. Depth Markers
- l. First Aid/CPR
- m. Other signs as needed or required

16. INSURANCE. Provider shall acquire and maintain Workers' Compensation, Employer Liability, and Commercial General Liability relating the Provider's use of the Premises. The insurance company(ies) must be approved by the City. Provider will furnish City with certificates and copies of information or declaration pages of the insurance required. Provider would need to provide the City with thirty (30) days notice if any changes, cancellation, or non-renewals. Provider is required to disclose any self-insured retentions or deductibles, which shall be subject to City's approval, not to be unreasonably withheld. Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement). Provider's insurance coverage shall be primary insurance with respect to City, its Council, Boards, Commissions, agents, officers, volunteers or employees, and any insurance or self-insurance maintained by City, for themselves, and their Council, Boards, Commissions, agents, officers, volunteers or employees shall be in excess of Provider's insurance and not contributory with it.

The minimum amounts of coverage corresponding to these categories of insurance per insurable event shall be as follows:

<b>Insurance Category</b>	<b>Minimum Limits</b>
Workers' Compensation	Statutory Minimum - include endorsement waiving the insurer's right of subrogation against the City, its officers, officials, employees and volunteers.
Employer's Liability	One Million Dollars (\$1,000,000) per accident for bodily injury or disease – include endorsement adding the City, its officers, officials, employees and volunteers as additional insured for both ongoing operations as well as products and completed operations; include endorsement to provide primary insurance and waive any rights of contribution from the City's coverage.
Commercial General Liability	Three Million Dollars (\$3,000,000) per occurrence for bodily injury, personal injury and premises damages. Must include all areas in Insurance Service Office (ISO) Form No. CG 00 01

(including Products and Completed Operations if food is served or for repairs done by the tenant, Contractual Liability, Broad form property damage, Participants and spectators coverage, and Personal and Advertising injury liability)

If Provider fails to maintain any of the insurance coverage required herein, then City will have the option to terminate this Lease, or may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverage may be maintained. Provider is responsible for any payments made by City to obtain or maintain such insurance and City may collect the same from Provider as Additional Rent.

Provider shall require any longer term renters and/or longer term sublessees (longer term shall mean and refer to renters/sublessees for more than a single use in any 12 month period) to maintain and carry the same coverage as described above, which policies shall name the City as an additional insured. Provider shall require such long term renters and/or long term sublessees to obtain and provide a certificate of insurance evidencing said coverage to the City.

Each party hereby waives and does hereby agree to obtain from each insurance carrier of the insured a "subrogation waiver endorsement" waiving its right of recovery to the extent of insurance proceeds, against the other party, the other party's officers, directors, agents, representatives, employees, successors and assigns with respect to any loss or damages, including consequential loss or damage to the insured's property caused or occasioned by any peril or perils (including negligent acts) covered by any policy or policies carried by the party.

17. INSPECTIONS AND AUDITS. The City reserves the right to conduct periodic and regular site inspections and operational audits.

- a. Safety: The Provider will be required to comply with the City's safety program guidelines and protocol. Quarterly inspections by an outside vendor will be conducted and recommendations for compliance will be enforced. City staff will be responsible for following up with the Provider on specific safety issues identified in the quarterly inspection. The Provider will be required to comply with the City's requests in a timely manner. In addition, documentation demonstrating compliance with all City, County, State and Federation Regulations will be required to be kept up to date and reviewed on an annual basis or more frequently as deemed necessary by the City.
- b. Maintenance: City staff reserves the right to conduct weekly, monthly, quarterly, and annual inspections of maintenance practices for the pool maintenance operations and facility cleanliness. The inspections will ensure the Provider is following the manufacturer's specifications

- c. Operations: An annual operational audit will be conducted by an external expert and industry professional approved by the City and paid for by the Provider. An observational audit, lifeguard skills assessment, and site inspection shall be conducted annually. An overall operational audit shall be conducted every two years. This audit should include but may not be limited to:
- Staff Skills Assessment
  - Staff Selection and Training procedures
  - Policies & Procedures Review
  - Site Inspection
  - Code Compliance and Record Keeping Practices
  - Adherence to Aquatic Safety Standards
- d. Financial Review/Audit: Provider shall provide complete financials for all aquatics programs and/or programs operated out of the Premises [with administrative costs/salaries that may be related to both aquatics and non-aquatics programs fairly allocated between such programs] prepared in accordance with generally accepted accounting principles and reviewed by an independent CPA for calendar years 2011-2014 on or before May 1, 2015 (or sooner if required to determine the FMV rate if Provider elects to terminate the Belle Haven Pool operations) for City staff and outside consultant review. The purpose for such review shall be for the negotiation of rent for the extended term and/or for purposes of negotiating a new lease. The City shall have the right to require audited financial statements in lieu of or in addition to the reviewed statements at the City's cost with an independent auditor to be selected by the City.

18. CITY ACCESS. Upon prior written notice to Provider, City shall have the right to restricted access to the Premises or any part thereof solely for certain municipal purposes which may include the performance of necessary maintenance and repairs of any and all structures or public improvements, heretofore or hereafter installed and/or constructed in or upon the Premises, the inspection of the Premises, or the use, maintenance, repair of adjoining areas; provided, as to maintenance or repair of the Premises, Provider has requested such maintenance or repairs or Provider has neglected such activity to the detriment of the Premises.

19. IMPROVEMENTS. Provider shall not make, nor cause to be made, nor allow to be made, alterations or improvements to the Premises not hereinabove specified (including installation of any fixture affixed to the Premises), without the prior written consent of City, not to be unreasonably delayed or withheld. All improvements or alterations constructed or installed

shall be removed and the Premises restored to substantially the same condition existing prior to such construction or installation, upon the termination of this Lease, unless the prior written approval of City is secured, allowing such improvements or alterations to remain in place, in which case, title thereto shall vest in City. All improvements undertaken pursuant to this Lease will be at Provider's sole expense and Provider will be responsible for the use and maintenance of the improvements.

20. NOISE. Except in the event of an emergency, Provider shall not use any amplified sound, whistles, bullhorns, music, etc., between the hours of 5:30 a.m. to 8:00 a.m., and/or from 8:00 p.m. to closing during any day of operation.

In order to minimize impacts of major events on residents of the surrounding neighborhood, the Provider will notify the City on a quarterly basis of all swimming meets or other large group events beyond normal operations to allow the City to notify the neighborhood in advance of such events.

21. PARKING. Provider shall instruct its patrons to park away from the nearest residences before 8:00 a.m. and after 8:00 p.m.

22. WAIVER OF CLAIMS. City assumes no responsibility for the guarding or safekeeping of the Premises, equipment, or improvements installed or constructed by Provider upon, or used in connection with, the Premises. Provider waives all claims against City, its Council, Commissions, agents, officers, volunteers, contractors or employees for any damages to the improvements in, upon or about the Premises and for injuries to any employees of Provider or their agents, invitees or sub-contractors in or about the Premises from any cause arising at any time, where City had no involvement or where such damages or injuries did not arise out of the instruction or guidance of the City. In no event shall the City be responsible for loss of profits or any consequential damages to Provider.

23. INDEMNIFICATION. Provider will defend, indemnify and hold City, its Council, Commissions, agents, officers, volunteers or employees harmless from any damage or injury to any person, or any property, from any cause of action arising at any time from the use of the Premises by Provider, and Provider's invitees, program participants, and visitors, or from the failure of Provider to keep the Premises in good condition and repair, including all claims arising out of the negligence of Provider, but excluding any damage or injury caused by the willful misconduct or negligence of City or its employees, agents or contractors. City will defend, indemnify and hold Provider, its members, agents, officers, volunteers or employees harmless from any damage or injury to any person, or any property, from any cause of action arising at any time from the willful misconduct or negligence of City or its employees, agents or contractors.

Each party's indemnification obligation set forth above will include any and all costs, expenses, attorneys fees and liability incurred by any indemnified party or person in defending against such claims, whether the same proceed to judgment or not. Each party will, at its own expense and upon written request by a party to be indemnified as provided hereinabove, defend any such suit or action brought against the party to be indemnified, its Council, Commissions, members, agents, officers, volunteers or employees (as applicable). This Section will survive the expiration or termination of this Lease.

24. HOLDING OVER BY PROVIDER. If Provider remains in possession of the Premises after the expiration of the Term of this Lease, and without executing a new lease but with the consent of City, then such holding over shall be construed as a year-to-year tenancy subject to all of the applicable conditions, provisions, and terms of this Lease, except that Provider shall pay to City the fair FMV rental value of the Premises as defined in Section 3. Either party may terminate any year-to-year tenancy by giving the other party notice of termination to be effective upon not less than six (6) months prior written notice.

25. HAZARDOUS MATERIALS. Provider shall not use or store any Hazardous Materials in, on, or about the Premises except in compliance with all applicable federal, state, and local laws, statutes, ordinances, and governmental regulations, and the highest standards prevailing in the industry for storage and use of any such Hazardous Materials, nor allow any Hazardous Materials to be brought in the Premises, except to use in the ordinary course of Provider's business, and then only after written notice to City of the Hazardous Materials to be used by Provider. Provider shall not cause or permit the escape, release, or disposal of any Hazardous Materials in the Premises. If any governmental agency or the beneficiary of any deed of trust against the Premises requires any testing of the Premises to ascertain whether any Hazardous Materials have been released in, on, or about the Premises, Provider shall reimburse City, as Additional Rent, for the cost of any such inspection if the inspection, together with any other evidence obtained by City, shows that the presence of such Hazardous Materials in the Premises was caused by Provider, its agents, employees, contractors or invitees.

In addition, Provider shall, at City's request, execute affidavits, representations, or other documents concerning Provider's best knowledge and belief regarding the presence of any Hazardous Materials in the Premises. Provider shall indemnify, defend, and hold harmless City from any liability, cost, or expense, including reasonable attorneys' fees, arising from the use, storage, release or disposal of any Hazardous Materials in, on, or about the Premises by Provider, its agents, employees, contractors, or invitees. The provisions of this section shall survive the expiration or earlier termination of this Lease.

For the purposes of this Lease, the term "Hazardous Material" shall mean any substance or material which has been designated hazardous or toxic by any

federal, state, county, municipal, or other governmental agency or determined by such agency to be capable of endangering or posing a risk of injury to, or adverse effect on, the health or safety of persons, the environment, or property, including without limitation those substances or materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.

26. ATTORNEY'S FEES. In any legal action brought by either party to enforce the terms of this Lease, the prevailing party is entitled to all costs incurred in connection with such an action, including reasonable attorneys' fees.

27. ARBITRATION. Any dispute regarding the breach of this Lease shall be decided by binding arbitration pursuant to the rules of the American Arbitration Association, and not by court action, except as otherwise provided in this Section or as allowed by California law for judicial review of arbitration proceedings. Judgment on the arbitration award may be entered in any court having jurisdiction. The Parties may conduct discovery in accordance with California Code of Civil Procedure. This provision shall not prohibit the Parties from filing a judicial action to enable the recording of a notice of pending action for order of attachment, receivership, injunction, or other provisional remedy. Venue for the resolution of any such dispute or disputes shall be in San Mateo County, California.

BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTER INCLUDED IN THE ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

\_\_\_\_\_  
Provider

\_\_\_\_\_  
City

28. VENUE. Provider agrees and hereby stipulates that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this Lease is San Mateo County, California.

29. ASSIGNMENT AND NONTRANSFERABILITY. Provider understands and acknowledges that assignment of this Lease is absolutely prohibited without the written consent of City, and any attempt to do so without City's written consent may result in termination of the Lease at the will of City. Notwithstanding the foregoing, City shall grant permission to Provider to contract with other entities or organizations to provide some of the programs at the Premises and/or to sublease the Premises to other entities or organizations for certain hours, subject to prior notice to City. Such use is contingent, in part, upon said sub-user indemnifying and insuring City in the same manner and amount that Provider has indemnified and insured City under this Lease. City, its Council, Boards, Commissions, agents, officers, volunteers and employees shall be named as additional insureds. Any insurance policy maintained by a sub-user will be in addition to, and shall not replace, any insurance required of Provider.

30. LIENS AND ENCUMBRANCES. Provider shall have no authority to do anything that may result in a lien or encumbrance against the Premises. Without limiting the foregoing, however, Provider agrees to pay promptly all costs associated with the activities associated with this Lease and not to cause, Lease, or suffer any lien or encumbrance to be asserted against the Premises. In the event that Provider causes, leases, or suffers any lien or encumbrance to be asserted against the Premises related to activities associated with this Lease, Provider, at its sole cost and expense, shall promptly cause such lien or encumbrance to be removed.

31. TERMINATION OF LEASE.

a. Default. City or Provider shall have the right to terminate this Lease by written notice to the other party for any default or breach of any term or condition of this Lease by the other party; provided, however, the non-defaulting and non-breaching party must first deliver written notice to the other party of any such default or breach, and if such breach or default exists for more than thirty (30) days after the delivery of such notice without being cured, the non-defaulting and non-breaching party may elect to terminate this Lease by giving written notice of such termination to the defaulting party. Termination shall be effective on the date specified in the notice, which date shall not be less than thirty (30) days nor more than one hundred eighty (180) days following such notice. In addition to termination, the non-defaulting and non-breaching party shall be entitled to pursue any and all other remedies provided by law.



b. City Dissatisfaction. If City and/or Menlo Park community believes Provider has not satisfied community needs with respect to public access, service and program quality, public safety, noise restrictions and/or parking, City may deliver written notice to Tenant of such dissatisfaction and the Parties shall meet and confer within fifteen (15) days of Provider's receipt of such notice. If the matter is not resolved to the City Manager's satisfaction, City may terminate this Lease by giving written notice of such termination to Provider. Termination shall be effective not less than ninety (90) days after the date of such notice. Provider shall have the right to appeal such termination to the City Council within ten (10) days of Provider's receipt of such notice. Upon receipt of Provider's timely appeal, the Council shall place the matter on the City Council agenda and make the final determination with regard to the termination of the Lease and shall give written notice to Provider of such final determination. If the City Council determines the lease should be terminated, termination of the Lease shall be effective not less than ninety (90) days after the date of such notice.

c. Provider's Option. Provider may terminate the Lease at Provider's option upon the occurrence of any of the following:

- Upon the death of Tim Sheepser; or
- Upon the disability of Tim Sheepser, if such disability prevents him from running Provider's business operations for a continuous period of 60 consecutive days; or
- Upon financial hardship, which shall require not less than six (6) month written notice to terminate lease based on financial hardship

Termination shall be effective not less than ninety (90) days after the date of any such notice. In the event Provider does not elect to terminate the Lease as permitted herein, the Lease shall remain in full force and effect for the remainder of the Term, unless subsequently terminated for another cause or event as specified herein.

32. CONDITION OF PREMISES UPON TERMINATION. Upon the effective termination of the Lease, Provider shall restore the Premises to its condition prior to the execution of this Lease, remove all personal property, including furniture, furnishings, vehicles, and equipment, belonging to Provider or Provider's employees, invitees, and agents. Should Provider fail to perform those obligations by the effective termination date, the Parties agree to the following:

- a. Such remaining property shall be deemed abandoned and Provider waives all provisions for disposition of abandoned personal property required by California law including but not limited to California Code of Civil Procedure Section 1980 et. seq. (requiring notice for reclaiming abandoned property and public sale for disposition).

- b. City has the right to take action to remove Provider's personal property. Should City exercise this right, Provider shall be liable to City for:
- the actual cost of this removal, demonstrated by valid receipts and invoices;
  - a fifteen percent (15%) overhead to City for reasonable costs in contracting and supervising the removal work; and
  - any attorneys' fees incurred by City to remove Provider from the Property after termination, if necessary. Invoices must be paid within ten (10) days of submission of invoice to Provider. If not paid within this time, then interest will be charged at ten percent (10%) or the maximum extent allowed by law, whichever is less.

33. NOTICE. All notices under this Lease shall be in writing and, unless otherwise provided herein, shall be deemed validly given if sent by certified mail, return receipt requested, or via recognized overnight courier service, addressed as follows (or to any other mailing address which the party to be notified may designate to the other party by such notice). All notices properly given as provided for in this section shall be deemed to be given on the date when sent. Should City or Provider have a change of address, the other party shall immediately be notified as provided in this section of such change.

**Provider**

Team Sheeper, L.L.C  
Attn: Tim Sheeper  
501 Laurel Street  
Menlo Park, CA 94025  
(650) 369-7946

**City**

City of Menlo Park  
Attn: City Manager  
701 Laurel Street  
Menlo Park, CA 94025  
(650) 330-6610

34. COMPLETE AGREEMENT. This Lease contains the entire agreement between the Parties with respect to the matters set forth herein, and supersedes all prior or contemporaneous agreements (whether oral or written) between the Parties with respect to the matters set forth herein.

35. AMENDMENT. This Lease may be amended only by a written instrument executed by the Parties.

36. AUTHORITY. The individuals executing this Lease on behalf of Provider represent and warrant that they have the legal power, right and actual authority to bind Provider to the terms and conditions of this Lease.

37. NO WAIVER. Waiver by either party of a breach of any covenant of this Lease will not be construed to be a continuing waiver of any subsequent breach. City's receipt of rent with knowledge of Provider's violation of a covenant does not waive City's right to enforce any covenant of this Lease. No wavier by

either party of a provision of this Lease will be considered to have been made unless expressed in writing and signed by all parties.

**IN WITNESS WHEREOF**, the Parties have executed this Lease by their officers therein duly authorized as of the date and year first written above.

**CITY OF MENLO PARK**

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

**ATTEST:**

\_\_\_\_\_  
City Clerk

**TEAM SHEEPER, L.L.C.**  
501 Laurel Street  
Menlo Park, CA 94025

By: \_\_\_\_\_  
Tim Sheeper, Chief Executive Officer

**GUARANTY**

TIM SHEEPER hereby unconditionally personally guarantees all of the obligations arising or accruing during the term of the Lease and/or arising out of Provider's operation of the Premises. City is not responsible to enforce the terms of the Lease upon TEAM SHEEPER, L.L.C., or to first institute suit, or to pursue or exhaust its remedies against TEAM SHEEPER, L.L.C. TIM SHEEPER shall, without demand, pay City's reasonable attorneys' fees and all costs and expenses incurred by City in enforcing the terms of the Lease and/or this Guaranty.

This Guaranty shall inure to the benefit of City, its successors and assigns, and this Guaranty shall bind TIM SHEEPER, his legal representatives, and assigns.

\_\_\_\_\_  
TIM SHEEPER

## Exhibits

- A. Burgess Pool Site Map
- B. Belle Haven Pool Site Map
- C. SOLO Agreement