

**JOINT USE AND FUNDING AGREEMENT  
BETWEEN SONOMA SPLASH AND  
SONOMA VALLEY UNIFIED SCHOOL DISTRICT  
(Sonoma Valley High School Pool Facilities)**

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into this 21<sup>st</sup> day of April, 2021, ("Effective Date") by and between SONOMA VALLEY UNIFIED SCHOOL District of Sonoma County, California, a public school district, hereinafter referred to as "District" and SONOMA VALLEY HEALTH AND RECREATION ASSOCIATION, dba SONOMA SPLASH, a 501(c)(3) nonprofit organization of the State of California, hereinafter referred to as "Splash." Collectively Splash and District are referred to as "Parties" herein.

**RECITALS:**

- A. WHEREAS, the District is the owner of certain real property situated in the District of Sonoma, County of Sonoma, State of California, commonly known as Sonoma Valley High School, located at 20000 Broadway, Sonoma, CA 95476 more particularly described in Exhibit A attached hereto and incorporated herein by this reference, (hereinafter "SVHS"). District operates an accredited comprehensive high school program at SVHS including a physical education and recreation curriculum for grades nine through twelve; and
- B. WHEREAS, the District is in the process of planning and designing a substantial reconstruction of SVHS. As part of the SVHS project, the District desires to construct new pool facilities which will include a community clubhouse ("Pool Facilities" as defined below and as shown in Exhibit B attached hereto and incorporated herein by this reference ); and
- C. WHEREAS, Splash desires to build a sustainable, multi-use aquatic facility accessible to residents of Sonoma Valley. Splash has expressed an interest in becoming the exclusive provider of community services and operating pool facilities which includes a community clubhouse, on the SVHS campus; and
- D. WHEREAS, Splash has represented to District that it has an aquatic background and will bring the expertise necessary to provide the services herein described; and
- E. WHEREAS, Splash desires to assist the District in the funding of construction of the Pool Facilities, and related improvements, in exchange for providing community services and joint use of the Pool Facilities; and
- F. WHEREAS, California Education Code sections 10900, et seq., empower the District and Splash to cooperate with each other and enter into agreements for the purposes of organizing, promoting, and conducting programs for community recreation, and acquiring, constructing, improving, maintaining, and operating recreational centers, including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums; and
- G. WHEREAS, Education Code section 10910 provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public

authority for the purpose of organizing, promoting and conducting community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system; and

- H. WHEREAS, the Parties share the objective of increasing and enhancing recreational opportunities for both students and neighbors of the District for the greater overall benefit of all community members; and
- I. WHEREAS, the Parties wish to establish an agreement that addresses the Parties' joint use and funding of the Pool Facilities identified in this Agreement.

**IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**SECTION I - AGREEMENT**

- 1. **Purpose of Agreement.** The purpose of this Agreement is to provide for the shared funding of the Pool Facilities owned and operated by the District, in exchange for Splash's joint use of the Pool Facilities at a schedule to be determined by the Parties on an annual basis, pursuant to and subject to the terms and conditions of sections 10900 *et seq.* of the California Education Code as may be amended from time to time. The annual schedule shall cooperatively allow shared use of the Pool Facilities by the public.
- 2. **Term.** The permission for Splash to use the Pool Facilities granted by this Agreement is non-exclusive and shall be for 25 years ("Initial Term"), commencing upon the opening day of the Pool Facilities, except as otherwise provided herein, and may be renewed upon mutual written consent by both Parties for an additional term of 25 years as provided herein. Either party may terminate this Agreement upon 30 days' written notice to the other party for the material breach of Agreement by the other party as described further herein. Within ten (10) days of such notice, the Parties will meet to discuss the impacts of such cessation of use on the terms of this Agreement.
- 3. **Definitions.**
  - A. **"Pool Facilities"** means the following areas and facilities that are considered to be part of the SVHS pool area, its facilities, and buildings:
    - a) Mechanical Room
    - b) Storage facilities
    - c) Adjacent Parking Area with approximately 17 spaces and 1 handicap
    - d) Landscaped Area
    - e) Community Clubhouse of approximately 2640 square feet (which will contain a restroom, locker room, showers, changing areas, storage, and reception area for use by members of the community and Splash members)
    - f) Fencing between the two pools
    - g) Community access portal to the Pool Facilities
    - h) A 132 foot x 75 foot competition swimming pool

- i) A 40 foot x 60 foot instructional pool
- j) Associated deck space surrounding the pools

SVHS currently has a locker room on the campus for student use only. The Parties intend for the community clubhouse to serve as a locker room for Splash's (community/adult) use only.

4. **Grant of Non-Exclusive Right to Joint Use.** The District hereby grants to Splash and Splash hereby accepts from the District, a non-exclusive right to jointly use the District's Pool Facilities (as more particularly shown on the attached Exhibit B) to be constructed on the SVHS campus. For example only and not by way of limitation, Splash shall have the right to rent the Pool Facilities to outside organizations such as swim teams, water polo teams, masters groups, and other organizations for the purpose of training, hosting events, and other uses consistent with the programming goals of Splash and with approval of the Steering Committee. The exact terms and conditions of Splash's joint use of the Pool Facilities are as stated in this Agreement herein and as shall be set forth on an annual basis by the Parties in a memorandum of understanding as described in Section III (1) below not inconsistent with the provisions hereof.

5. **Consideration.**

- A. In consideration of the right to use the Pool Facilities, Splash agrees to share the cost of constructing the Pool Facilities as specified herein in an amount of \$1,500,000.00 ("Initial Contribution"). Splash's payment for its portion of the project is considered a conditional gift of funds.
- B. Splash shall be solely responsible for its Initial Contribution. It is understood that Splash is entitled to obtain funds from non-District sources, may, with prior approval of the Steering Committee, place and maintain signage or other means of recognizing donors in the Pool Facilities, and shall be entitled to expend such funds on this or other Pool-related projects. Splash will pay its Initial Contribution in full on or before December 31<sup>st</sup>, 2021, contingent upon the final payment by Springs Investors Group, LP (SIG) for the purchase of the Verano property from Splash under that certain Secured Promissory Note from SIG to Splash (the "SIG Note"), a copy of which has been provided to District.  
The SIG Note demonstrates the necessary proof of funds on behalf of Splash. Splash may engage in fund-raising activities in its discretion to fund any gap between the proceeds timing of their receipt under the SIG Note funds required of it hereunder.

**SECTION II - CONSTRUCTION OF POOL FACILITIES ON THE SVHS CAMPUS**

1. **Consideration.**

- A. The District shall be responsible for arranging for the developing and constructing of the Pool Facilities in accordance with the plans and specifications approved by the District, after consultation with approval by Splash, not to be unreasonably withheld, conditioned or delayed.
- B. The Pool Facilities to be constructed shall consist of those facilities defined in Exhibit B.

It is the intent of the Parties that the Pool Facilities be constructed in time to be operational no later than July 1<sup>st</sup> 2022

2. **Financing the Pool Facilities Construction.** This Agreement is contingent upon the availability of sufficient funds to finance this Pool Facilities project. If the District does not commence construction of the Pool Facilities within 365 days of the date of this Agreement, this Agreement shall terminate and be of no force and effect, unless both Parties agree in writing upon an extension of this period. In the event of such early termination of this Agreement prior to commencement of construction, Splash's Total Financial Contribution shall be returned in full. If for any reason this Agreement terminates early after funds have been spent on the project, Splash's Total Financial Contribution will be returned to it on a pro-rata basis of its contribution in ratio to the total cost of the Pool Facilities project after deducting the funds spent from the total project cost. Subject to termination, Splash's obligation to pay the District its Initial Contribution towards the total cost of the Pool Facilities, as specified herein, shall be irrevocable upon the District receiving DSA approval of plans for the Pool Facilities.
3. **Changes and Alterations.** Except for changes required by law, the Division of the State Architect or for safety reasons, the District shall make no material change, alteration or improvement to the Pool Facilities Project without first consulting with Splash on the impact of the proposed change, alteration or improvement, including but not limited to the timing and effect of such alteration, change or improvement upon Splash's joint use of the Pool Facilities. Splash and District shall review and either approve or disapprove such changes within five working days of receipt of notice of such change provided to both Splash and District.

### **SECTION III - JOINT USE AFTER CONSTRUCTION**

1. **Annual Memorandum of Understanding for the Joint Use of the Pool Facilities.** During the Term of this Agreement, designated representatives of each party shall meet as needed, at a time and place to be mutually determined, to negotiate an annual Memorandum of Understanding in which the details of their joint use of the Pool Facilities shall be set forth.
  - A. The Parties shall negotiate through their Steering Committee, as defined below, an annual Memorandum of Understanding ("MOU") by May for the following year. The MOU shall address operation, maintenance, repair, use schedules, revenue plan for the Pool Facilities and operational budget of the Pool Facilities in accordance with this Agreement. The objective of the Parties is that Splash will have joint use of the Pool Facilities in connection with its public recreational program on behalf of the community, at times when the District is not using the Pool Facilities all on terms and conditions further set forth in the annual MOU not inconsistent with the provisions of this Agreement.
  - B. Splash and District shall form a Steering Committee that shall meet at least twice a year to establish specific facility use schedules and operational budget based on use, for the fall term and the spring/summer terms, respectively. When establishing facility use schedules, the District's schedule and use shall have priority. Once the District's facility use schedule is established, Splash will then formulate its schedule. The Parties may mutually agree to certain instances where use of the facilities will overlap. In all such instances, the District's use and

schedule shall have priority over Splash's use and schedule. Splash will have priority over all other public use. During their scheduled time of use, each party shall be solely responsible for developing and operating their own programs and collecting any applicable facility fees for use of the Pool Facilities. In the event of a conflict in agreeing on scheduling, funding, maintenance, or any related matter, the Parties agree to make best efforts to resolve the conflict in good faith. If unable to reach an agreement after good faith efforts, the District's representative(s) shall have voting power on the issue equivalent to 51% and Splash's representative(s) shall have 49%. The Steering Committee shall also be responsible for all financial management related to the Pool Facilities, including but limited to the accounting of any additional contributions from Splash and expenditures related to the Pool Facilities.

- C. In addition to duties outline in this Agreement, Splash and the District will submit all financial statements related to the use, operation, and maintenance of the Pool Facilities to the Steering Committee for review at least twice a year on or before the planning meetings described in section III.1.B. above. The Parties agree to cooperate in an effort to maintain financial transparency with respect to the operation, maintenance, and use of the Pool Facilities.
- D. Splash and District shall also establish an Operating Committee that shall report to the Steering Committee and meet approximately bi-weekly to address regular daily, weekly and monthly updates to pool schedules, conditions of the Pool Facilities including repairs and use to ensure cooperation, coordination and integration of Pool Facilities use. The Operating Committee shall also be responsible for allocating any unscheduled time that remains after the District and Splash have established their respective schedules of use as per Section III.1.B of this Agreement. In the event of a conflict relating to the allocation of unscheduled time, the Operating Committee shall refer the matter to the Steering Committee to resolve the conflict as per the terms set out in Section III.1.B of this Agreement.
- E. District shall be responsible for the operation and maintenance of the Pool Facilities; provided, however, that Splash shall be responsible for payment from revenues it collects from its members and community users of the Pool Facilities for the variable costs it generates from conducting its programs. All of Splash's net revenues from its activities hereunder shall be paid to the District at the end of each quarter for the exclusive purpose of operating and maintaining the Pool Facilities. The Steering Committee shall account for all revenues associated with the Pool Facilities, which such books of account shall be available for review and audit at any reasonable time. Splash's net revenues are gross revenues derived from the use of the pool facility, minus its operating expenses, which include, but are not limited to, programmatic expenses, labor expenses, insurance premiums, marketing and fundraising expenses, and associated legal and accounting fees and a small operating reserve determined by the executive committee. The Steering Committee and operating committee shall jointly determine how to manage the day-to-day activities of the Pool Facility.
- F. District shall be responsible for all long-term repairs, maintenance and capital improvements of and to Pool Facilities during the Term hereof, all of which shall be considered by the Steering and Operating Committee prior to implementation. District shall maintain a cash reserve fund for such purposes at all times reasonably necessary for such purposes, to which District shall contribute no less than 15% of the annual revenues it receives from Splash, exclusive of Splash's Initial Contribution. Further, the Steering Committee shall separately

account for all revenues associated with the Pool Facilities separate and apart from other District revenues and expenditures, which such books of account shall be available for review and audit at any reasonable time. All revenues paid to District by Splash shall be used exclusively for operation and maintenance of the Pool Facilities and reserves in connection therewith, and not for any other District purposes or District employee salaries, benefits or other District expenses. The Parties recognize that Splash may raise (but is not required to raise) additional funds to contribute to long-term repairs, maintenance and capital improvements beyond its Initial Contribution specified above ("Additional Contributions" and together with the Initial Contribution "Total Contributions").

- G. Each MOU shall also address and include: supervision of programs and activities at the Pool Facilities, indemnification of the District by Splash (and vice versa), termination for breach of contract, liability and property damage insurance, workers' compensation insurance, prohibition of discrimination, emergency use, and safety/security/fingerprinting. The Parties recognize and will incorporate into each MOU that the use and/or possession of tobacco, alcohol, and/or controlled substances are strictly prohibited on the Pool Facilities or other District property at all times.

#### **SECTION IV - TERMS OF THIS AGREEMENT**

1. **No Conveyance.** This Agreement does not constitute the conveyance of any interest in the Pool Facilities, nor does it create any lease in any person. Title to the Pool Facilities and ownership of all buildings and improvements shall be and remain in the name of the District. Improvements made by Splash at any time to the Premises during the terms of this Agreement shall be and remain the property of the District. Splash shall require any third parties using the Premises to pay for repairs or replacements which are occasioned or made necessary by reason of the third party's negligence or misuse of the Premises and Pool Facilities. Splash shall be responsible for recovering these costs from any third parties authorized by Splash to use the Premises or Pool Facilities. The District shall not be responsible to Splash for any damage or injury to persons or property which may occur as a result of the failure of Splash to make repairs, and vice versa. District recognizes that the Sonoma Valley community has contributed funds to Splash in order to make a community pool possible, and that Splash would not enter into this Agreement without obtaining the District's assurances that community funds shall be used as intended by Splash's donors. Thus, the District covenants and agrees to continue the Pool Facilities in full operation for and provide for community use, at a minimum, the Term of this Agreement.
2. **Indemnification.** The District and Splash shall each defend, indemnify, and hold harmless the other and its officers, officials, employees, agents, and volunteers of either organization from and against all claims, damages, losses and expenses, including attorney fees, arising out of or related to either party's acts or omissions in connection with this Agreement, except where the claim, injury, damage, loss, or expense is caused by the sole negligence or willful misconduct of the indemnified party.
3. **Successors and Assigns.** Neither party may transfer or assign its rights or obligations under this Agreement, in part or in whole, without the other party's prior written consent. The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and permitted assigns of the Parties.

4. **Amendments.** This Agreement can only be amended by a writing duly authorized and signed by both Parties.
5. **Force Majeure.** No party shall be in default on account of any failure of performance which is caused by circumstances beyond the reasonable control of such party, including strikes, lockouts, fires, floods, acts of God, war, pandemic, civil disorder or government regulations. This provision shall not excuse a delay in performance in excess of the actual delay so occasioned.
6. **No Joint Venture.** Nothing herein contained shall be deemed in any way or have any purpose whatsoever to constitute the District or Splash a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other.
7. **Severability.** In the event that any provision herein is held to be invalid by any court or arbitrator of competent jurisdiction, the invalidity of any such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect. The Parties agree to negotiate in good faith an amendment to this Agreement to address such invalidity so as to give maximum effect to their intent underlying the provision held invalid.
8. **Time is of the Essence.** Time is of the essence for each and all of the terms and provisions of this Agreement.
9. **Written Agreement.** Neither party has relied on any promise or representation not contained in this Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties regarding the subject matter of this Agreement and supercedes all prior written or oral understandings or agreements of the Parties. Upon execution of this Agreement by the Parties, all prior written agreements between the Parties as to the subject matter of this Agreement shall be deemed terminated in their entirety.
10. **Headings and Construction of Agreement.** The headings of the paragraphs are for convenience only and are not a part of this Agreement, nor shall they be considered in construing the intent of this Agreement nor affect any of the rights or obligations of the Parties. This Agreement shall be strictly construed neither against the District nor Splash, but shall be construed according to the fair meaning of its terms. No remedy or election given by any provision in this Agreement shall be deemed exclusive unless so indicated, but each shall, wherever possible, be cumulative with all other remedies in law or equity as otherwise specifically provided.
11. **Governing Law.** This Agreement shall be governed by the laws of the State of California and action brought relating to this Agreement shall be brought solely in a court of competent jurisdiction in Sonoma County, California.
12. **Attorney's Fees.** Any party may bring a suit or proceeding to enforce or require performance of the terms of this Agreement, and each party in that suit or proceeding shall be responsible for its own attorney's fees and costs.
13. **No Further Assurances.** Nothing in this Agreement, whether express or implied, is intended to or shall do any of the following: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons or entities other than the express Parties to this Agreement; (b) relieve

or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any Party to this Agreement.

14. **Notices.** All notices, including invoices, given hereunder shall be in writing and shall be deemed to have been given if personally delivered or deposited in the United States mail postage prepaid, certified or registered, return receipt requested, and addressed to the other party as follows or as otherwise designated by written notice hereunder from time to time:

To District:                      Sonoma Valley Unified School District  
   Superintendent  
   17850 Railroad Avenue  
   Sonoma, CA 95476

To SPLASH:                      Splash  
   Sonoma Valley Health & Recreation Association  
   P.O. Box 1544  
   Sonoma Ca 95476

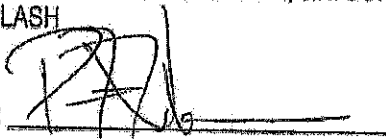
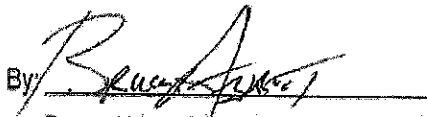
15. **Termination; Dispute Resolution.** Disputes under this Agreement shall be resolved as provided in this Section.

- A. Either party may terminate this Agreement upon an uncured, material default by the other, after 30 days' written notice of default and reasonable opportunity to cure and after an attempt to first resolve the dispute through the Steering Committee. During this time, Splash may request that District staff review the matter for public consideration before District's elected Board of Trustees.
- B. If a dispute under this Agreement remains after the steps identified above, the Parties shall submit the matter for non-binding mediation. If the Parties cannot agree on a mediator or procedure to initiate and complete mediation, then they shall mediate the matter in accordance with the rules and procedures of the Judicial Arbitration and Mediation Service (JAMS) or its successor in interest. If no successor in interest to JAMS is then in existence, the Parties shall utilize a mediation or similar alternative dispute resolution procedure available through the Sonoma County Superior Court. Mediation costs shall be divided equally between the Parties. Mediation shall not be required as a prerequisite to seeking provisional remedies in court.
- C. If mediation does not resolve the matter, any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this requirement to arbitrate, may be determined by non-binding arbitration entered into upon written mutual consent of the Parties. If the Parties are unable to agree on the procedure for conducting arbitration, then the arbitration shall be administered by JAMS in Santa Rosa, California, before one arbitrator, pursuant to its Streamlined Arbitration Rules and Procedures or other similar rules then available. If JAMS is not then in existence, arbitration shall be conducted by its successor in interest. If no successor in interest to JAMS is then in existence, then an action may be filed in

the Superior Court of Sonoma County. Judgment on an arbitration award may be entered in any court having jurisdiction.

D. Each party has invested significant time and resources and performed extensive planning in connection with this Agreement, and will be investing significant time and resources in performing rights and obligations hereunder. It is not possible to determine the sum of money which would adequately compensate a party for its efforts in connection with this Agreement. For the above reasons, damages may not be an adequate remedy if a Party fails to carry out its obligations under this Agreement, and each Party shall have the right to seek specific performance as a remedy for breach of any relevant obligation hereunder.

16. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties relating to the transactions it contemplates, and supersedes all prior understandings relating to them, whether written or oral. There are no obligations, commitments, representations, or warranties relating to them except those expressly set forth in this Agreement.
17. **Execution in Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and counterpart signature pages may be assembled to form a single document which shall be deemed an original document.
18. **Authorization.** Each person signing below represents that he or she is duly authorized to do so by the party he or she represents.

<p>SONOMA VALLEY HEALTH AND RECREATION ASSOCIATION, dba SONOMA SPLASH</p> <p>By: </p> <p>Paul F. Favaro, President</p>	<p>SONOMA VALLEY UNIFIED SCHOOL DISTRICT</p> <p>By: </p> <p>Bruce Abbott, Associate Superintendent</p>
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# Appendix B

## NEW AQUATIC CENTER THAT CONSIST OF THE FOLLOWING:

1.
  - a. 16- LANE 25 YARD SHORT COURSE COMPETITION SWIMMING POOL (9,960 SF) AND A LEARN TO SWIM SWIMMING POOL "COMMUNITY POOL" (2,330 SF).
  - b. PC SUNSHADE STRUCTURES.
  - c. FUTURE BLEACHES FOR SEATING CAPACITY OF APPROX. 250 SEATS.
  - d. POOL POLE LIGHTING, EXTERIOR AV EQUIPMENT SYSTEM, COLORADO TIME LED AQUATICS SCOREBOARD SYSTEM AND POOL FENCING AND GATES.
  - e. POOL EQUIPMENT BUILDING N (2,593 SF) THAT CONSIST OF POOL EQUIPMENT, STORAGE ROOMS, LIFEGUARD/FIRST AID OFFICE AND RESTROOMS.
  - f. RESTROOM/SHOWER BUILDING P (2,640 SF) THAT CONSIST OF RESTROOMS, SHOWERS AND CHANGING ROOMS, OFFICE, TICKET AND ACTIVITY ROOM.
2. Graphic Attached

