

## AGREEMENT FOR INSTRUCTIONAL SERVICES AND USE OF FACILITIES

THIS AGREEMENT is entered into by and between Talega Maintenance Corporation, a California nonprofit public benefit corporation (“ASSOCIATION”) and \_\_\_\_\_ (“INSTRUCTOR”) for services rendered to Talega Homeowners by INSTRUCTOR as a skilled instructor and for use by INSTRUCTOR of certain facilities of ASSOCIATION in connection with providing such services. ASSOCIATION and INSTRUCTOR are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

1. **INDEPENDENT CONTRACTOR.** The INSTRUCTOR is an independent contractor and shall not be deemed to be an employee or agent of ASSOCIATION.
  
2. **SERVICES.** INSTRUCTOR intends to provide swim instructions to the student or students as generally described in Exhibit "A", which is attached hereto and incorporated herein by this reference. Such instruction is intended; for the benefit of ASSOCIATION homeowners ONLY.
  - INSTRUCTOR is responsible for all expenses associated with the instruction.
  - INSTRUCTOR shall meet student(s) with student’s responsible adult in the parking lot at instruction time. All communication regarding meeting times and/or cancellations shall be between the student(s) and the parent(s).

This agreement permits swim instruction only by the specific INSTRUCTOR noted herein. This agreement does not extend to or permit employees, assistants or substitute instructors to provide instruction at any ASSOCIATION facility and INSTRUCTOR is not authorized to permit any such instruction at the ASSOCIATION.
  
3. **TERM.** The term of this Agreement shall begin the first of the new calendar year by INSTRUCTOR and ASSOCIATION and automatically terminate on December 31, at the end of the calendar year. This Agreement shall not automatically renew.
  
4. **USE OF FACILITIES.** The student instruction shall be held at the location noted in Exhibit "A" of this Agreement (“Facilities”). The location of the instruction may be held at a different facility in the event of a primary location closure. Instructors will be notified of any long-term facility closure.
  - INSTRUCTOR shall use the Facilities on an "as is" basis and may make no changes to the Facilities. Further, INSTRUCTOR will not monopolize any portion of the facility at any time. Non-resident INSTRUCTORS are guests of resident student(s) and will therefore enter and exit the facilities with the student(s) and their responsible adult(s).
  
5. **RULES AND REGULATIONS.** INSTRUCTOR shall comply and ensure compliance by student(s) and their responsible adult(s) with ASSOCIATION’s Rules and Regulations (“Rules”), a copy of which has been received by the INSTRUCTOR. ASSOCIATION may, in its sole and absolute discretion, immediately discontinue INSTRUCTOR’S access if Rules violations occur. If an inconsistency exists between the Rules and this Agreement, then the terms of this Agreement shall govern.
  - INSTRUCTOR agrees to carry the original, current, signed version of this agreement with them any time they are instructing in the Talega facilities. INSTRUCTOR further agrees to produce the original signed version of this document any time they are instructing if it is requested by a pool monitor, member of the ASSOCIATION’s Board of Directors, member of the management company, member of the security company, member of the cleaning company, or any Talega resident. Failure to produce the original, current signed version of the document upon request will result in immediate loss of facilities privileges.

**6. ADVERTISING AND INSTRUCTIONAL MATERIALS.** No written materials advertising or promoting INSTRUCTOR may include any reference to ASSOCIATION without ASSOCIATION's prior written consent. All written materials to be used by INSTRUCTOR in connection with the instruction, including but not limited to advertising materials, handouts, schedules and instructional materials, shall be approved by ASSOCIATION prior to their use.

**7. FACILITIES MAINTENANCE AND REPAIR.** INSTRUCTOR shall cause the Facilities to be left after each use in a clean and useable condition. INSTRUCTOR is responsible for ensuring clean-up of the Facilities and the surrounding areas following each use. Failure to keep these areas useable, clean and free of equipment, clothing, supplies, trash, litter, debris and the like may result in ASSOCIATION having the area cleaned and/or restored to useable condition. Any cost associated with such cleaning and/or restoration effort will be billed to INSTRUCTOR and INSTRUCTOR shall reimburse ASSOCIATION for such cost within thirty (30) days of the date of the invoice. INSTRUCTOR is financially responsible for all injury and/or damage to ASSOCIATION property which occurs in connection with the instruction.

**8. STUDENT PARTICIPANTS.** Only residents of the Talega community may be students. INSTRUCTOR may teach no more than 2 (two) students at any given time.

**-If any student is under 18 years of age, then: INSTRUCTOR hereby represents and warrants that instruction is a "parent participation program" pursuant to which a parent, adult guardian or other responsible adult (e.g., relative, babysitter, etc.) will be present during every instruction session and responsible for supervising the participant.**

-INSTRUCTOR will provide to ASSOCIATION a student roster with the names of all students for which instruction was provided in the prior month to. This roster must be provided to ASSOCIATION no later than the 7<sup>th</sup> day of each month. The roster shall include the following information of each participant: name, parents' or legal guardians' names (if participant is under the age of 18 years of age), address, telephone #, and emergency contact.

-INSTRUCTOR shall require each student (or student's parent or legal guardian, if participant is under 18 years of age) to sign a waiver and release form, the form for which is attached hereto as Exhibit "B" and incorporated herein by this reference. Provide copy with Roster.

**9. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS.** INSTRUCTOR shall keep informed of applicable laws and regulations which in any way pertain to or affect the performance of INSTRUCTOR's service pursuant to this Agreement. INSTRUCTOR shall at all times observe and comply with all such laws and regulations. ASSOCIATION, FirstService Residential, and their respective directors, officers, employees and agents shall not be liable at law or in equity occasioned by failure of INSTRUCTOR to comply with this section and INSTRUCTOR will indemnify these parties from any such liability as further described in this Agreement.

**10. INDEMNIFICATION.** INSTRUCTOR shall indemnify, defend and hold ASSOCIATION, FirstService Residential, and each of their respective directors, officers, employees, and agents free, clear, and harmless from any and all claims, suits, demands, losses, damages or liability arising out of or resulting in connection with the classes taught or instruction provided or INSTRUCTOR's or INSTRUCTOR'S performance or non-performance of its obligations under this Agreement.

**11. INSURANCE.** Before commencement of any services provided by INSTRUCTOR pursuant to this Agreement, INSTRUCTOR shall obtain and continuously maintain in full force and effect,

comprehensive general liability insurance that shall name ASSOCIATION, FirstService Residential, and each of their respective directors, officers, agents, employees and management agents as additional insureds and shall protect ASSOCIATION, FirstService Residential, and each of their respective directors, officers, agents, employees and management agents against any liability the INSTRUCTOR may incur on account of bodily injury or death to one person to the extent of not less than One Million Dollars (\$1,000,000.00) and on account of bodily injuries to or the death of more than one person to the extent of not less than One Million Dollars (\$1,000,000.00), and on account of damage to or destruction of any property to the extent of not less than One Million Dollars (\$1,000,000.00) for each accident and One Million Dollars (\$1,000,000.00) aggregate.

The liability insurance policy required by this Agreement shall waive all rights of subrogation against ASSOCIATION, FirstService Residential, and their respective elected or appointed officers or employees when acting within the scope of their employment or appointment, and shall also provide that any insurance maintained by ASSOCIATION and FirstService Residential, will apply in excess of, and not contribute with, insurance provided by the policy required hereunder. No insurance required by this section may be cancelled without at least 10 days' prior to notice to ASSOCIATION in writing.

**12. TERMINATION OF AGREEMENT.** This Agreement may be terminated at any time by any Party upon thirty (30) days prior written notice. While either party reserves the right to terminate without cause, generally, ASSOCIATION will only exercise the right to terminate this Agreement for failure by INSTRUCTOR to comply with any requirements within this Agreement, including, but not limited to, teaching a NON-Talega resident, use of the Talega Pools not listed in Exhibit A, entering the facility without a Talega resident, or unacceptable behavior.

**13. NOTICES.** Any notices which any Party may desire to give to any other Party must be in writing and may be given either by (a) personal service, (b) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, or (c) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the Party as set forth below or at any other address as that Party may later designate by Notice:

To ASSOCIATION:

Talega Maintenance Corporation  
c/o FirstService Residential  
100 Calle Altea  
San Clemente, CA 92673  
Attention: Marcy Maulorico  
Telephone (949) 361-8466

To INSTRUCTOR: As set forth in Exhibit "A"

**14. LICENSES.** At all times during the term of this Agreement, INSTRUCTOR shall have in full force and effect all licenses required of it by law for the performance of the services described in this Agreement.

**15. JURISDICTION AND ATTORNEYS' FEES.** Any action or proceeding brought by any Party concerning this Agreement shall be brought within the jurisdiction of Orange County, California. The prevailing Party in any action or proceeding (including without limitation arbitration and/or legal action that does not result in formal legal proceedings) to enforce this Agreement shall be entitled to recover from the other Party reasonable attorneys' fees, costs and expenses incurred in the prosecution or defense of the action or proceeding.

**16. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each Party is entering into this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material.

**17. AUTHORITY TO EXECUTE THIS AGREEMENT.** INSTRUCTOR warrants and represents that he or she has the authority to execute this agreement and to bind INSTRUCTOR to the performance of its obligations hereunder.

Dated: \_\_\_\_\_, 20\_\_

TALEGA MAINTENANCE CORPORATION,  
a California nonprofit public benefit corporation

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

Its: \_\_\_\_\_  
"ASSOCIATION"

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_

"INSTRUCTOR"

EXPIRATION DATE: \_\_\_\_\_, 20\_\_

**Exhibit A**

Name of Instructor: \_\_\_\_\_

Mailing Address of Instructor: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Cell Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

THE FOLLOWING INSTRUCTION AND FACILITIES INFORMATION IS SUBJECT TO  
CHANGE BY MUTUAL AGREEMENT OF THE PARTIES:

Talega Resident Seeking Swim Lessons:

Student Name: \_\_\_\_\_

Parent (or Legal Guardian) Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Responsible Adult Supervisor: \_\_\_\_\_ Relationship: \_\_\_\_\_

Lessons will be taught at:  Talega Swim and Athletic Club Lap Pool

Talega Swim and Athletic Club Recreation P

**“EXHIBIT B”**

**PARTICIPANT WAIVER, RELEASE AND ASSUMPTION OF RISK AGREEMENT**

The undersigned participant (“Participant”) hereby agrees to the following terms and conditions in exchange for his/her participation in swim activities held on Talega Maintenance Corporation property:

1. The Participant understands that his/her participation in the activity exposes him/her to the risk of potential property damage, illness, personal injury or death, and agrees to voluntarily assume all such risks, on behalf of him/herself and the Participant’s personal representatives, heirs, assigns, executors, and successors. Participant further agrees to release and discharge from any and all liability Talega Lifestyle Corporation, Talega Maintenance Corporation, FirstService Residential, and each of their directors, officers, agents, employees, and/or volunteers (collectively referred to as the “Released Parties”) for any illness, injury, death, or damage to him/herself or anyone, or loss of personal property, arising out of or related to, his/her participation in the activity, from whatever cause, including the active or passive negligence of the Released Parties or other participants. Participant also agrees to indemnify, defend and hold the Released Parties harmless from and against all liability, claims, suits or judgments arising out of or related to his/her participation in the activity. By this agreement, Participant voluntarily relieves the Released Parties of any duty to him/herself, without limitation, and assumes all risk of illness, injury, death or damage which might occur because of his/her participation in the activity.

2. Participant represents that he/she is physically capable of participating in the activity, based upon his/her current and past health history, age, weight and general mental and physical condition, and that he/she has consulted with a physician before making such representation.

3. If the Participant is under eighteen (18) years of age, then the Participant’s parent/guardian hereby certifies that the minor Participant has his/her permission to participate in the activity. The minor Participant’s parent/guardian hereby represents that he/she has read the terms of this Waiver, Release and Assumption of Risk Agreement and by registering the minor Participant for the activity, accepts the waiver and release willingly and voluntarily and agrees to its terms and conditions. The parent/guardian further certifies that the minor Participant is in good physical condition and can safely participate in the activity. The parent/guardian also acknowledges and agrees to be fully responsible for the minor Participant’s adherence to all rules and regulations for use of the facilities at which the activity shall take place.

4. Participant specifically waives any and all rights he/she may have pursuant to California Civil Code Section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The Participant hereby represents that he/she has carefully read and understand the terms of this Waiver, Release and Assumption of Risk Agreement and aware that this is a FULL RELEASE OF ALL LIABILITY AND THAT HE/SHE HAS GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND SIGNS IT VOLUNTARILY AND OF HIS/HER OWN FREE WILL.

Participant Name: \_\_\_\_\_ Participant Address: \_\_\_\_\_

Participant’s Parent/Guardian Name: \_\_\_\_\_ Cell Phone Number: \_\_\_\_\_

Participant’s Parent/Guardian Signature: \_\_\_\_\_ Date \_\_\_\_\_

Instructor: \_\_\_\_\_ Instructor Phone Number: \_\_\_\_\_

Instructor Signature: \_\_\_\_\_ Date: \_\_\_\_\_