



**Abaris Realty, Inc.**

7811 Montrose Road, Suite 110, Potomac, MD 20854

301-468-8919 • Fax: 301-468-0983

Web Site: [www.abarisrealty.com](http://www.abarisrealty.com)



December 14, 2020

Danny Kessel  
American Pool LLC  
[dkessel@americanpool.com](mailto:dkessel@americanpool.com)

Re: Tanyard Springs HOA  
6920 Heritage Crossing  
Glen Burnie, MD 21060

Dear Danny:

The Board of Directors for the above referenced community has accepted your contract for the management of the pool for the 2021, 2022, and 2023 seasons, as outlined in your proposal. Attached is a signed copy of the contract for your records. We look forward to working with you in the 2021 pool season. Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Shireen Ambush'.

Shireen Ambush, PCAM  
Property Manager

Cc: Board of Directors



**PART 1 GENERAL SPECIFICATIONS**

American Pool, LLC, operating as American Pool (CONTRACTOR) agrees to manage the Tanyard Springs HOA swimming facility (OWNER), located at 6920 Heritage Crossing; Glen Burnie, MD 21060, from Saturday, May 29, 2021 through Monday, September 6, 2021 in accordance with the following specifications:

**A. POOL HOURS**

Normal Operating Hours:

	<u>Open</u>	<u>Close</u>
Monday	11:00 AM	08:00 PM
Tuesday	11:00 AM	08:00 PM
Wednesday	11:00 AM	08:00 PM
Thursday	11:00 AM	08:00 PM
Friday	11:00 AM	08:00 PM
Saturday	11:00 AM	08:00 PM
Sunday	11:00 AM	08:00 PM
Holiday	11:00 AM	08:00 PM

Operating Hours when Public School is in session:

	<u>Open</u>	<u>Close</u>
Monday	11:00 AM	08:00 PM
Tuesday	11:00 AM	08:00 PM
Wednesday	11:00 AM	08:00 PM
Thursday	11:00 AM	08:00 PM
Friday	11:00 AM	08:00 PM
Saturday	11:00 AM	08:00 PM
Sunday	11:00 AM	08:00 PM
Holiday	11:00 AM	08:00 PM

**B. PERSONNEL**

Manager	40.00 hrs/wk	1	40.00	Projected Daily Peak Bather Load: 80
Asst Manager	40.00 hrs/wk	1	40.00	
Lifeguard	40.00 hrs/wk	5	200.00	
<b>Total Hours/Week:</b>			<b>280.00</b>	

**C. COMPENSATION**

OWNER agrees to pay CONTRACTOR the total amount of: \$77,990.00

The payments shall be due as follows:

January 1, 2021	\$0.00	May 1, 2021	\$15,598.00	September 1, 2021	\$7,799.00
February 1, 2021	\$0.00	June 1, 2021	\$15,598.00	October 1, 2021	\$0.00
March 1, 2021	\$0.00	July 1, 2021	\$15,598.00	November 1, 2021	\$0.00
April 1, 2021	\$7,799.00	August 1, 2021	\$15,598.00	December 1, 2021	\$0.00

**D. SPECIAL NOTES**

Contract calls for four (4) guards on duty at all times. All guards will arrive 30 min early and remain 30 min after closing daily.

Contract includes all chemicals (chlorine, ph up/down, sodium bicarb, calcium chloride, winter algaecide, testing kit/reagents & stabilizer) and pool operating permit + associated fees.

Note, American Pool hires 95% domestic lifeguard staff.

Owner/Representative Initials



**American Pool**  
**Extension of 2021 Pool Management Agreement**  
**Tanyard Springs HOA**

The 2021 Swimming Pool Management agreement will be extended for the 2022 season and the 2023 season at a cost of 81,090.00 and \$84,290.00 respectively.

The opening and closing dates for 2022 will be May 28, 2022 and September 5, 2022. The opening and closing dates for 2023 will be May 27, 2023 and September 4, 2023.

**\*\* The 2022 and 2023 contract pricing includes the scheduled State of Maryland minimum wage increases; they go into effect on January 1, 2022, from \$11.75 to \$12.50 and January 1, 2023, from \$12.50 to \$13.25.**

**Note: Owner has until 11/1/21 to cancel the 2022 extension, subsequently Owner has until 11/1/22 to cancel the 2023 extension. Cancellation must be received in writing prior to the November 1 dates above.**

\_\_\_\_\_  
 American Pool, LLC

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date

*Shireen Ambush*  
 \_\_\_\_\_  
 Owner/Agent

*Shireen Ambush*  
 \_\_\_\_\_  
 Print Name

*12-14-20*  
 \_\_\_\_\_  
 Date

**In order for this pricing to be honored, this extension must be returned with the 2021 signed contract.**

NOW THEREFORE, in consideration of the promises and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## **PART 2 – SUMMERIZATION**

CONTRACTOR will render the swimming pool operational by completing the following services:

- A. Schedule and perform opening Health Department swimming pool inspection. CONTRACTOR shall apply for the Health Department operating permit upon OWNER's written request. The OWNER shall be responsible for all permit fees, including a processing fee. If an opening health department inspection fails as a result of health department required equipment not being on site or items which need to be completed are not done because OWNER failed to approve the purchase of the items or authorized CONTRACTOR to complete the requisite items, the OWNER will be responsible for the reinspection fee. An additional service call fee for the reinspection may also be charged to OWNER if CONTRACTOR is required to be present.
- B. Remove and store on facility property swimming pool cover if pool is equipped with cover. If requested, CONTRACTOR will move the cover to an offsite location for a fee of \$350.00. If the cover is removed and stored at CONTRACTOR'S warehouse on OWNER's request and if available, the fee will be \$500.00
- C. Reclamation of pool water will be attempted as the primary opening procedure. If CONTRACTOR determines draining and acid cleaning of the pool is necessary an additional fee of \$450.00 may be billed.
- D. Assist OWNER in filling pool. The OWNER will be responsible for monitoring the filling of the pool. OWNER responsible for turning off the water once pool has been filled.
- E. Check inventory supplies.
- F. Reassemble existing filter plant and startup system after pool is filled with water.
- G. Cooperate with any contractors in preparing pool for operation.
- H. County Permit Agreement - if OWNER wishes to have CONTRACTOR apply for their County Pool Permit for a processing fee of \$125. Please initial to indicate acceptance: \_\_\_\_\_ Initial
- I. Hazmat Permit Agreement (where applicable) - if OWNER wishes to have CONTRACTOR apply for their Hazmat Permit for a processing fee of \$125. Please initial to indicate acceptance: \_\_\_\_\_ Initial

## **PART 3 - MAINTENANCE OF POOL**

A general cleaning will be performed prior to opening the pool each day. CONTRACTOR will be responsible for the following:

- A. Maintaining water purity, in conformance with local Health Department regulations.
- B. Operating pool in accordance with rules established by governing Health Department's recognized safety rules. CONTRACTOR reserves the right to prohibit admittance of children under the age of 14 unless accompanied by a responsible adult. All adults and legal guardians utilizing the facility will agree to adhere to the facilities posted pool rules which shall, at a minimum, include those attached at the end of this agreement. CONTRACTOR will be responsible to enforce the pool rules agreed to and accepted by OWNER and CONTRACTOR. If CONTRACTOR identifies violation(s) of the pool rules, and brings them to the attention of the individual(s) violating the rules, and the violators will not stop or leave, CONTRACTOR shall have the right to close the pool and ask all patrons to leave the pool area for the balance of the day.
- C. CONTRACTOR will not be responsible for gate control and wading pool safety unless OWNER authorizes CONTRACTOR to provide additional personnel specifically for these duties.
- D. CONTRACTOR will not be responsible for functionality of any pool furniture and equipment including but not limited to filtration equipment, pool steps and ladders, chairs, chaise lounges, tables, and umbrellas.
- E. CONTRACTOR will not be responsible for the perimeter barrier of the pool (i.e., fencing), any locking mechanisms of the barrier, or security surrounding the pool area.
- F. CONTRACTOR will perform cleaning functions as necessary to maintain the pool.
  - 1. Vacuum pool
  - 2. Brush pool
  - 3. Clean skimmer baskets
  - 4. Clean waterline tile
  - 5. Backwash filtration system
  - 6. Remove facility trash to OWNER's onsite facility if applicable
  - 7. Fill water to proper level
  - 8. Test and adjust pool water chemistry
  - 9. Skim leaves from the pool.

## **PART 4 – PERSONNEL**

- A. All personnel employed by CONTRACTOR for work under this agreement shall be employed solely by and will be employees of CONTRACTOR and CONTRACTOR will be responsible for paying these employees and shall pay all taxes and costs incident to the work of the employees.
- B. All lifeguards employed by CONTRACTOR shall have proper Red Cross or other state sanctioned certification. CONTRACTOR shall have the sole discretion as to the hours and days of work of employees.
- C. OWNER and CONTRACTOR have based the personnel required to safely manage the site upon the anticipated peak bather load, if peak bather load is exceeded OWNER will be notified and required to increase personnel.

- D. Staff schedules may be adjusted to suit the particular needs of the OWNER. Additional hours or days may be added at the OWNER'S request for an additional fee with prior written approval by CONTRACTOR.
- E. Pool will not be opened on any day that public school is in session during the contract term, unless specifically addressed on page one of this contract.
- F. At facilities where one lifeguard is on duty, 45 minute swim periods will be established to accommodate secondary duties. Each Swim Period will begin at the top of the hour and end at the 45 minute mark. During the 15 minutes at the end of each hour, the pool will be cleared so that the lifeguard can inspect the pool, test water chemistry and check filter operations. Lifeguards will be entitled to ½ hour lunch break for every shift five hours or longer. No swimming will be allowed in single guard facilities while the lifeguard is on break.

## **PART 5 - CLIENT CARE / SUPERVISION**

CONTRACTOR agrees to conduct site visits to advise OWNER of the general pool operation. At the request of OWNER, CONTRACTOR will meet with the OWNER'S representative to discuss CONTRACTOR'S findings

## **PART 6 - WINTERIZATION**

CONTRACTOR will perform the following services necessary to close and winterize the pool:

- A. Backwash and drain filters
- B. Drain pool to proper level. CONTRACTOR will not be responsible for maintaining the water level after winterization.
- C. Drain pumps and hair/lint strainers that require draining.
- D. Fill bathhouse fixtures and skimmers with antifreeze if requested in writing by OWNER (additional charges will apply).
- E. Drain pool circulating and vacuum lines that require draining and are so constructed that they can be drained.
- F. Store first aid, emergency, maintenance, and test equipment in filter room.
- G. Secure and store automatic chemical feeder if applicable.
- H. Drain and store hoses, rails, and ladders.
- I. Secure pool cover to existing anchor system. Any missing or damaged anchors / springs will be replaced and invoiced separately to the OWNER (if applicable). If OWNER has stored pool cover off site, OWNER is responsible for returning cover to the pool. (\$225.00 for additional crew to go back and install safety cover if not on site at time of winterization.)
- J. Notify OWNER/AGENT on completion of pool closing.
- K. If pipes are below drain points, or behind walls or in ceilings which are not visible, CONTRACTOR will not be held responsible for any freeze damage.
- L. If main water cut off is not accessible, or is in an unsecured area, CONTRACTOR will not be held responsible for any freeze damage.
- M. Upon completion of winterization, CONTRACTOR assumes no responsibility for freeze damage, damage to water meters or damage or loss of any equipment or supplies. This includes any freeze break that occurs after April 1 of the following contract year.

OWNER shall be responsible for winterizing all other areas. OWNER shall be responsible for informing CONTRACTOR of all isolated or concealed drain valves. Any equipment and supplies to be stored over the winter will be stored in conveniently located space inside the pool enclosure designated by the OWNER.

## **PART 7 - CHEMICALS AND SUPPLIES**

- A. CONTRACTOR will order, deliver, and install all chemicals necessary to maintain water purity. Payment for chlorine and pH adjusters will be the responsibility of CONTRACTOR, unless the pool leaks, at which time OWNER agrees to pay for additional acid and chlorine. Bromine and calcium hypochlorite (shock) is excluded from this list and will be billed incrementally as necessary.
- B. OWNER agrees to be responsible for, and pay upon billing, any additional chemicals needed and supplied, such as granular chlorine (Calcium hypochlorite), test reagents, sodium bicarbonate, calcium chloride, cyanuric acid, algaecide, etc., any additional chemicals supplied and chemicals needed specifically for Accu Tab Feeders.
- C. Three doses of algaecide (Spring, Summer and Fall) will be added and billed throughout the season.
- D. Water balancing chemicals will be added in the Spring and adjusted frequently throughout the season. This shall be billed in June and July.
- E. If the swimming pool leaks, the OWNER will be responsible for payment for additional chemicals as needed.
- F. Test Reagents will be billed at a rate of \$200 per body of water. Billing will occur in June.
- G. CONTRACTOR will obtain authorization before providing supplies and completing repairs unless:
  - 1. Supplies/Repairs are required by the Health Department to keep the facility in compliance with state and local jurisdictional regulations.
  - 2. Supplies/Repairs are necessary for the pool to remain open and operate safely.
- H. If CONTRACTOR is contracted to provide cleaning supplies, standard and generic supplies shall be provided. Cleaning supplies are:
  - 1. Floor cleaner
  - 2. Powered cleaner
  - 3. Scouring pads
  - 4. Sponges.

- I. If CONTRACTOR is contracted to provide bathhouse supplies, standard and generic supplies shall be provided. Boxed soap is not included as a standard generic item. Bathhouse supplies are:
  1. Toilet paper
  2. Paper towels
  3. Trash bags
  4. Refillable soap

## **PART 8 – OWNER’S RESPONSIBILITIES**

- A. OWNER will be responsible for filing all permits and associated fees. If applicable, scheduling and performing of the annual visual electrical inspections, filing for hazmat permits, as well as securing necessary bonding and grounding certifications will be the sole responsibility of the OWNER.
- B. Provide CONTRACTOR with three (3) sets of working keys and lock box to the pool enclosure and facilities. If three (3) sets of keys are not given to the CONTRACTOR, the OWNER may not bill back any locksmith or new lock charges to the CONTRACTOR. If no lock box is provided to CONTRACTOR, one will be purchased and back to the OWNER with a cost not to exceed \$45.00.
- C. Complete all needed repairs inside pool enclosure, such as plumbing, decking, fencing, locking mechanisms, caulking, area lights, depth markings, etc.
- D. OWNER will maintain the perimeter barrier of the pool fence and any and all locking mechanisms of the swimming pool area or enclosure, and will be responsible for security of the pool area. OWNER to ensure that the pool enclosure can be secured by the CONTRACTOR against entry during hours when the pool is not open. This includes fencing that complies with State and Local codes, along with gates/doors that can be locked either by the CONTRACTOR or an automatic electronic system. If the pool area is unable to be secured, or otherwise allows access during hours when the pool is closed; OWNER agrees to indemnify, defend and hold harmless CONTRACTOR from any and all claims, actions, losses, causes of action, damage, lawsuits, and judgments, including attorneys' fees and costs arising out of or relating to the inability to secure the pool area.
- E. If OWNER provides pool furniture (including chairs, lounges, tables, umbrellas and umbrella bases) it will be of good working condition. OWNER will supply one base for each umbrella. CONTRACTOR will not be responsible for any damages to pool furniture or liable for injury to patrons caused by pool furniture.
- F. The OWNER shall ensure that the swimming pool facility complies with all building codes and the Local Health Regulations in effect. The OWNER shall provide, in good working condition, all necessary equipment for the safe operation of the facility, including but not limited to filtration equipment, pool ladders, rescue tubes, backboard with straps, head immobilizer, deep water divider ropes, CONTRACTOR reserves the right to provide an umbrella to provide shade for the lifeguard at which time OWNER will be invoiced the cost of said umbrella.
- G. OWNER will have a telephone at the pool prior to official opening date available to the guards at all times. Where pre-opening Health Department inspections are conducted a turn on date of April 15<sup>th</sup> is required. OWNER shall verify that the telephone provided adequately notifies 911 of the facility location of the facility. If OWNER fails to verify that the telephone provided adequately notifies 911 of the location of the facility OWNER will indemnify and save harmless the CONTRACTOR from liability for any damage or loss of any type which may arise as a result of any type of failure associated with the telephone provided or supplied by the OWNER. OWNER agrees to defend CONTRACTOR against any claims brought or actions filed against the CONTRACTOR with respect to the subject of this indemnity.
- H. OWNER will provide long distance, 900 service, toll and internet blocks to prevent additional charges on any telephone provided. CONTRACTOR is not responsible for any charges incurred on OWNER phones.
- I. OWNER will provide CONTRACTOR and CONTRACTOR'S employees with free parking to service the facility.
- J. OWNER will provide all utilities; water, electricity and gas (if needed) for the operation of the pool.
- K. OWNER will provide CONTRACTOR with a copy of OWNERS approved pool rules for the community. The rules, at a minimum, will include those rules attached hereto.
- L. OWNER will provide CONTRACTOR a safe working environment.
- M. OWNER shall provide, free of charge, adequate and conveniently located well ventilated storage space for cleaning materials and equipment of CONTRACTOR and shall be responsible to CONTRACTOR for the security of such place.
- N. OWNER will provide all utilities, water, electric and gas (if needed) for the operation of the pool. Water and electric must be turned on prior to April 1<sup>st</sup> to avoid a late opening. If CONTRACTOR arrives on site and finds no water or electricity the OWNER will be moved to the end of the opening list and could potentially cause the pool to open late.
- O. OWNER has an affirmative obligation to notify CONTRACTOR of the name and address of any registered sex offender, known to them, that may have access to the pool area. In the event CONTRACTOR observes any conduct on the part of a registered sex offender which CONTRACTOR believes calls into question the safe operation of the pool, CONTRACTOR has the right to ask them to leave and OWNER agrees to assist CONTRACTOR in removing the individual from the pool area and bar them from returning. In the event OWNER refuses to bar the individual(s) from the pool, OWNER, at their expense, shall provide security during pool operational hours.
- P. OWNER hereby agrees that CONTRACTOR is utilizing OWNER'S property and CONTRACTOR will not be held liable for damage or injury that is caused by OWNER'S equipment failure or condition of the OWNER'S property.

## **PART 9 - ALCOHOL**

CONTRACTOR strongly recommends that alcohol not be permitted within the pool enclosure. OWNER agrees to inform CONTRACTOR if alcohol will be permitted within the pool area. The OWNER shall be responsible for any claims, accidents, injuries, and damages should alcohol play any part in an event at the pool. OWNER agrees to and does hereby indemnify

CONTRACTOR and save it harmless and shall defend it from and against any and all claims, damages, liability and judgments in connection with personal injury and/or damage to property arising from or out of any patrons consumption of alcohol prior to or within the pool area. In the absence of express permission of the OWNER authorizing alcohol, OWNER will post conspicuously, independently or as part of the pool rules that alcohol is not permitted. Irrespective of the OWNER'S permission to allow alcohol, if, in the discretion of CONTRACTOR, or their agents, someone arrives at the pool in a condition not suitable to utilize the pool or, as a result of consumption of alcohol within the pool area becomes unsuitable to utilize the pool, CONTRACTOR shall have the right to prevent entry or remove the individual(s) from the pool area. If the individual(s) will not leave voluntarily, CONTRACTOR shall be permitted to close the pool to all patrons and OWNER will assist CONTRACTOR in doing so. CONTRACTOR shall be permitted to call the police to have the offending parties removed as trespassers.

## **PART 10 - SURVEILLANCE CAMERAS**

CONTRACTOR has the right to review any surveillance systems maintained by OWNER or OWNER's AGENT which depicts the front gate to the swimming pool(s), any perimeter fencing around the swimming pool(s) and any area within the pool(s) perimeter fencing and OWNER or OWNER's AGENT will give CONTRACTOR access upon request. If the surveillance equipment records, OWNER or OWNER's AGENT will permit CONTRACTOR to review recordings of the front gate, perimeter fencing and area within the perimeter fencing which contains the pool(s). At CONTRACTOR's request OWNER OR OWNER's AGENT will provide CONTRACTOR with any portion of the recording CONTRACTOR requests in a format readily available to the public at large or provide CONTRACTOR with the software necessary to review the recording at a later date. There shall be no cost to CONTRACTOR to obtain the recording if CONTRACTOR provides OWNER or OWNERS AGENT with a storage device capable of maintaining the data.

## **PART 11 - INSURANCE**

- A. CONTRACTOR currently maintains Comprehensive General Liability insuring the legal liability for bodily injury and property damage for a combined limit of One Million Dollars (\$1,000,000) per occurrence, and covering at least the following hazards: (a) CONTRACTOR'S Premises and Operations; (b) CONTRACTOR'S Protective for its legal liability in connection with sub-contractor's operations; and (c) Contractual.
- B. CONTRACTOR maintains Employers Liability insuring the legal liability for bodily injury of all employees of the CONTRACTOR for limits of at least One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) for disease for each employee and One Million Dollars (\$1,000,000) for Disease Policy Limit.
- C. Workers Compensation Insurance as required by state statute, covering all employees of the Contractor.
- D. CONTRACTOR maintains Automobile Liability insuring the legal liability for bodily injury and property damage for a combined single limit of not less than One Million Dollars (\$1,000,000) per accident and covering any accident arising out of or resulting from the operation, maintenance or use by the CONTRACTOR on the Property of any owned, non-owned or hired automobiles, trailers or other vehicular equipment to be licensed.
- E. CONTRACTOR currently maintains Excess Liability totaling Thirty Six Million Dollars (\$36,000,000) in excess of liability limits shown in A, B and C. In the event CONTRACTOR'S coverage falls below Ten Million Dollars (\$10,000,000), the CONTRACTOR will endeavor to notify OWNER.
- F. OWNER agrees to and does hereby indemnify CONTRACTOR and save it harmless and shall defend it and any and all other persons, firms, and corporations, both known and unknown of and from any and all past, present and future actions, causes of actions, suits, judgments, claims, demands, damages, costs, loss of services, expenses, and all consequential damage, in law or in equity, known and unknown, foreseen and unforeseen, past, present, and future, for which it now has or may hereafter arising from or out of maintenance, operation, repairs or use by the OWNER and/or its agents, servants, employees, invitees, licensees, contractors and/or trespassers or any breach of the Agreement.
- G. OWNER will maintain general liability insurance policy of at least Five Million Dollars (\$5,000,000) evidencing property damage, bodily injury, products & completed operations, contractual liability and personal injury coverage for the subject premises, including the pool area OWNER will provide to Contractor a certificate of insurance evidencing the coverage naming Contractor as additional insured. OWNER expressly waives all rights of subrogation against CONTRACTOR for damages caused by perils to the extent covered by insurance obtained or required to be obtained pursuant to this Agreement, or any insurance coverage applicable to the premises which is the subject of this Agreement. The waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or not the person or entity has an insurable interest in the property damaged.
- H. OWNER agrees to inform CONTRACTOR of any activities conducted at the pool during hours not listed in the General Specifications per Part 1 and organized activities during hours specified in Part 1 (i.e. pool parties, camps). The OWNER shall be responsible for any claims, accidents, injuries, and damages during such activities. OWNER agrees to and does hereby indemnify CONTRACTOR and save it harmless and shall defend it from and against any and all claims, damages, liability and judgments in connection with personal injury and/or damage to property arising from or out of maintenance, operation or use by the OWNER and/or its agents, servants, employees, invitee's, and licensees 1) outside of the hours listed in the General Specifications, 2) during any organized activities, and 3) brought forth by other contractors and/or trespassers.

## PART 12 - ADDITIONAL PROVISIONS

- A. CONTRACTOR will advise the OWNER of needed repairs prior and during the operating period. All repairs needed to render the pool in operational condition will be made by the OWNER at their expense. CONTRACTOR, if requested by the OWNER, may perform, arrange for, or supervise the work at an agreed upon fee.
- B. REPAIRS, BILLS, AND INVOICES: OWNER shall pay all repair bills and invoices submitted by CONTRACTOR within 30 days of receipt. All materials supplied by CONTRACTOR remain the property of CONTRACTOR until materials are paid in full. If paying by credit card for an invoice, a 2.5% convenience fee will be charged at the time of processing the credit card payment. To the extent any repairs are made pursuant to a separate agreement, failure to make timely payment of the repair agreement shall be considered a breach of this agreement entitling CONTRACTOR to close the pool until payment has been made. This provision does limit or preclude CONTRACTOR from bringing an action against OWNER for payment and damages associated with OWNER'S failure to pay.
- C. All applicable sales taxes (i.e. Federal, State) for any equipment, labor, chemicals, or any other sales are not included in the prices represented by CONTRACTOR and shall be applied as an extra amount to all invoices.
- D. If OWNER requires vendor to register with a company in order to receive payment for their services (eg. Compliance Depot) OWNER will reimburse VENDOR the cost of the fee plus a \$125 processing fee.
- E. OWNER agrees not to hire or contract with CONTRACTOR'S current or past employees to work at, service, or be connected in any way with the pool for a period of two years from the date that the contract terminates, or two years from the date of termination of the CONTRACTOR'S employees. In the event that the OWNER breaches this, the OWNER agrees to pay CONTRACTOR, a placement fee equal to 30% of the total contract price per Part 1.
- F. Any increases in federal, state or county minimum wage subsequent to the submission of this contract will be passed onto the OWNER at an amount calculated at 118% of the minimum wage increase multiplied by the number of hours for season that the pool will be open per Part 1.
- G. In the event that OWNER shall become bankrupt, insolvent, or shall make a voluntary assignment for the benefit of creditors, CONTRACTOR, at its option, may terminate this agreement immediately.
- H. OWNER hereby agrees to contract with CONTRACTOR to manage and operate the pool site during the term of this Agreement. If OWNER is not the actual OWNER of the pool site, but rather a management company or person acting as the agent of the OWNER of the property, OWNER hereby declares and affirms that it is acting within the scope of its authority in entering into and executing this Agreement.
- I. This Agreement may not be amended or modified except by written instrument executed by the parties.
- J. It is agreed and understood that in the event any sums of money which are due to CONTRACTOR under and by virtue of this agreement are not paid in full by OWNER within thirty (30) days subsequent to the receipt of an invoice for the same, said sum shall bear interest at the rate of 1.5% per month. This provision shall be applicable in addition to any rights and remedies, which CONTRACTOR may have under any other provisions of this agreement.
- K. This Agreement shall be governed and construed in accordance with the laws of the State where CONTRACTOR is domiciled.
- L. Contractor shall have the authority to close the pool during inclement weather. Weather shall be considered "Inclement" when there is cloud cover and temperatures fall below 70 degrees, or in the case of rain. In the case of rain, guards shall close the pool and return if it clears up, unless rain starts within one (1) hour of closing time. Should the pool not open by 4:00pm on any day due to inclement weather, the pool will be closed for the remainder of the day. Inclement weather days are built into the contract. In the event of a thunderstorm, the water will be cleared for 30 minutes from the most recent observation of thunder, and the deck will be cleared for 60 minutes from the most recent observation of lightning.
- M. Storm related clean up, broken glass vandalism, fecal treatment and other things not contemplated as part of CONTRACTOR'S duties will be billed separately.
- N. Should the pools operating hour schedule per PART 1 have the pool closed on any day that is a holiday than the pool will remain open for the holiday and close the following day.
- P. CONTRACTOR cannot be held liable for any hydrostatic conditions that cause damage to the pool structure and surrounding area.
- Q. Restrictive endorsements or other statements on checks accepted by CONTRACTOR will not apply and in no way alter this contract.
- R. If "Part 1 school hours" are active as part of this contract, CONTRACTOR has set a school date of June 16th as the date the pool will go fulltime.
- S. If OWNER is required to provide an Automated External Defibrillator "AED" due to State, County or municipal code, and has not done so, CONTRACTOR reserves the right to supply these items and invoice OWNER. CONTRACTOR strongly recommends that all facilities regardless of code have an AED on site.
- T. CONTRACTOR will provide first aid equipment including minimum requirements in accordance with local Health Department. First aid supplies not located on property will be provided by CONTRACTOR and billed to OWNER.
- U. A test kit is required in accordance with local Health Department. If a test kit is not on site, one will be provided by CONTRACTOR and billed to OWNER.
- V. CONTRACTOR cannot guarantee the pool will open on the scheduled opening day if the contract is signed less than 75 days before said opening day.
- W.. CONTRACTOR will adhere to local, county and/or state regulations regarding patron to lifeguard ratio. If additional staff is required to meet this standard CONTRACTOR will advise OWNER of the additional cost for approval. CONTRACTOR reserves the right to supply additional staff to meet a patron to guard ratio and invoice OWNER.
- X. OWNER agrees to indemnify and hold harmless CONTRACTOR from any and all claims, actions, losses, causes of action, damage, lawsuits, judgments, including attorneys' fees and costs arising out of or relating to the instance of broken glass entering the pool and under the circumstances where OWNER does not approve the draining and cleaning of the pool as the remedy.
- Y. If OWNER has a cartridge filter system and the cartridges need to be cleaned more than once per week, CONTRACTOR reserves the right to charge an additional service call fee of \$125.00 to clean/change said cartridges.

- Z. If a vendor agreement is required for the execution of this contract, the language in this contract body will supersede that of the vendor agreement.
- AA. The Maryland Department of the Environment requires any pool that discharges to ground or surface water to have a discharge permit on file, and to submit yearly Discharge Monitoring Report (DMR) to the EPA's NetDMR portal. OWNER assumes all responsibility for the permit and its associated duties unless requested in writing to CONTRACTOR. In the event that the OWNER engages CONTRACTOR to complete any of these duties, OWNER acknowledges that CONTRACTOR does not have an intimate knowledge of the site's discharge plan or specific requirements, and agrees to save CONTRACTOR harmless from any liability or damage that may result from the filing of a permit or DMR. Unless informed otherwise, CONTRACTOR will operate the pool under the good faith assumption that the OWNER has been granted either a permit or an exemption from the state. If either the permit filing, or a DMR submission is required for this facility, CONTRACTOR can perform such duties for the fees indicated below. If so desired, OWNER may initial below to indicate acceptance:

PERMIT - \$150 + Permit Fee

\_\_\_\_\_

Initial

Discharge Monitoring Report - \$385

\_\_\_\_\_

Initial

- BB. SERVICE ANIMALS – Only "Service Animals" or "Emotional Support Animals" will be permitted within the pool enclosure. All other animals shall be barred from within the pool enclosure. "Service Animals" or "Emotional Support Animals" must be under the control of the handler. They must be harnessed, leashed or tethered, unless the individual's disability prevents using these devices or these devices interfere with the animals safe, effective performance of tasks. The individual must be able to maintain control of the animal through voice, signal, or other effective controls. **IN NO CIRCUMSTANCES SHALL THE ANIMAL BE ALLOWED TO ENTER THE WATER.** CONTRACTOR shall remove any individual, and their animal if they attempt to enter the water. CONTRACTOR shall close the pool and verify that the water is in satisfactory condition before reopening the pool to patrons.

### PART 13 - CLOSURES

CONTRACTOR reserves the right to close the pool in an emergency situation, inclement weather, breakdown of equipment, inadequate security for the protection of the lifeguards at the facility, violation of local or state ordinance, or any other condition or circumstances which, in the judgment of CONTRACTOR, endangers the health or safety of the lifeguards or patrons, which shall not constitute a breach by CONTRACTOR. If the emergency event causes the pool facility to be closed for more than seven (7) consecutive days and such event was not caused by any act or omission of the OWNER, its agents, servants contractors or employees, then CONTRACTOR shall refund to the OWNER the variable costs of the contract that are defined as fifty percent (50%) of CONTRACTOR'S actual daily operating cost beginning from the 8th day until the pool is reopened, or the end of the term of the Agreement, whichever occurs earlier.

### PART 14 -HYDROSTATIC CONDITIONS

Ground water pushes upward against the bottom and sides of a swimming pool in much the same way that water pushes upward against the bottom and sides of a boat. If this ground water pressure exceeds the downward and side pressure from the weight of the pool and the water it contains the pool may "float" or rise out of the ground or collapse.

Draining a pool reduces the downward and side pressure of the pool and therefore decreases resistance to the upward and side thrust of the ground water. Proceeding with the draining of a swimming pool, without first determining that the water table is not high and that all precautionary measures are still functional from when the pool was constructed, invokes certain amount of risk. Determination of the existence of a high water table and the proper functioning of the hydrostatic relief valve is costly. Unless the determinations are made by the OWNER, there is a risk of flotation any time a pool is drained. This risk must be assumed by the OWNER of the pool when it is drained. CONTRACTOR shall not be responsible for hydrostatic damage to the pool structure or surrounding area.

### PART 15 - DEFAULT

In the event that OWNER fails to make any of the payments required hereunder or fails to comply with any of the terms of this Agreement, the OWNER shall be in default and CONTRACTOR, at its sole option, shall have the right (i) to declare this Agreement "terminated" and immediately cease to provide any and all services, supplies and personnel to OWNER at the pool site or elsewhere, and (ii) avail itself of any and all remedies, both legal and equitable, it may be entitled to at the time of default, to specifically include but not be limited to the damages set forth below in liquidated damages.

In the event that OWNER considers CONTRACTOR to have breached any provision of this Agreement or failed to perform or unsatisfactorily performed any obligation under this Agreement, OWNER shall have the right to terminate the services provided hereunder, provided: (1) a certified written complaint is made promptly to CONTRACTOR stating the precise nature of the deficiencies in performance and/or quality of service; (2) CONTRACTOR has not corrected the deficiencies within ten (10) days from the date written notification is

received; and (3) OWNER has complied in all material respects with its obligations under this agreement. Unless OWNER complies with Agreement, OWNER shall not be entitled to set off, reduce, offset or claim consequential damages or any other deduction whatsoever, for nonperformance of this agreement.

## **PART 16 - LIQUIDATED DAMAGES**

In the event of termination of performance by CONTRACTOR under the terms of this Agreement for nonpayment of any sum due hereunder by OWNER, it is expressly agreed and understood that CONTRACTOR shall be entitled to retain all sums of money previously received from the OWNER, and shall be entitled to collect all sums of money due including reasonable attorney's fees under the terms of the contract. The charges for any chemicals, supplies or labor that is outstanding are also due at the time of termination. In the event of a breach of this Agreement by OWNER prior to CONTRACTOR commencing summerization as defined in Part 2, CONTRACTOR shall be entitled to 20% of the total contract price as liquidated damages.

## **PART 17 - BINDING EFFECT**

The terms and provisions of this Agreement shall be binding on the OWNER, its successors and/or heirs and to the benefit of CONTRACTOR and its successors and assigns. OWNER shall not have the right to assign, pledge or encumber in any way any part of its interest in this Agreement without the prior written consent of CONTRACTOR. CONTRACTOR, however, shall have the right to assign any and all rights, services and obligations under this Agreement. If OWNER has provided CONTRACTOR documents as addendum to this agreement, should any term or provision of one document conflict with a term or provision of the other, the terms or provision contained in CONTRACTOR'S contract shall control.

## **PART 18 - EXTENSION OF SERVICE**

CONTRACTOR shall, if requested by the OWNER, for an agreed upon non-refundable or cancelable fee, operate the pool prior to or beyond the Dates specified in Part 1, provided the OWNER gives CONTRACTOR a minimum of two (2) weeks notice. The cost associated will be separately negotiated.

This Agreement shall be automatically renewed for the 2022 season, and each successive year thereafter, at the current contract price plus a maximum 6% increase, unless written notification to cancel is received by certified mail by CONTRACTOR prior to September 9<sup>th</sup> of that contract year. The only change will be the opening and closing dates. CONTRACTOR reserves the right to terminate this contract at any time at its sole discretion by giving OWNER written notice of intention to terminate sixty (60) days prior to pool opening. If CONTRACTOR elects to do so, this Agreement shall terminate without any further liability to CONTRACTOR.

## **PART 19 – SEVERABILITY**

**If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, it shall not affect the enforceability of any other provision of this Agreement. Rather, the invalid, illegal, or unenforceable provision shall be deemed severed from this Agreement, and this Agreement shall be enforced as if the Agreement did not contain the invalid, illegal, or unenforceable provision.**

## **PART 20 - MISCELLANEOUS**

This contract embodies the entire understanding between the parties, and there are no other agreements, representations or warranties in connection therewith. IN WITNESS HEREOF, the parties hereto have signed this contract by their duly authorized representative and/or agents who represent that they have the express authority to enter this agreement on behalf of each party.

The CONTRACTOR has the option to void this Agreement if it is not signed and returned by the OWNER within 30 days from date of submission.

## **PART 21 - FORCE MAJEURE**

CONTRACTOR will be relieved of its obligations under this contract if the failure to perform is due to any occurrence beyond the CONTRACTOR'S control, including without limitation, acts of God, fire, natural disaster, war, power failures, accidents, labor shortages, pandemics, epidemics, or government restrictions of any kind. OWNER's sole remedy will be the return of any deposits made by OWNER.

## **PART 22 – ACCOUNTS PAYABLE - Please Complete**

All invoices for services performed by CONTRACTOR pursuant to this agreement shall be provided to the following:

Name:

Address:

If invoices are to be electronically submitted by CONTRACTOR, they shall be sent via email to the following email address to the attention of Shireen Ambush Sambush@abarisrealty.com

If OWNER has an electronic system other than email for the purposes of processing invoices OWNER shall provide the name of the system: \_\_\_\_\_ . OWNER will provide written instructions to CONTRACTOR, within thirty (30) days, directing CONTRACTOR how to comply.

**OWNER acknowledges that it owns and/or operates the pool facility and has legal capacity and authority to enter into this Agreement and bind the property OWNER of the pool facility. This Agreement is a valid and legally binding obligation of OWNER and is fully enforceable against OWNER and the party which owns and operates the pool facility.**

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ACCEPTED:

American Pool, Inc.

CONTRACTOR

\_\_\_\_\_

Date: \_\_\_\_\_

CORPORATE ENTITY NAME (Required):

Tonyard Springs HOA

OWNER/AGENT

Shireen Ambush

Date: 12-14-20

Lfg Full 08/28/2020