

**BILL NO. 1672
INTRODUCED BY: WITTICH**

ORDINANCE NO. ____

**AN ORDINANCE AUTHORIZING A LEASE AGREEMENT
WITH THE WARSON WOODS SWIMMING CLUB, INC.**

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON
WOODS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

SECTION 1. The Mayor is hereby authorized to enter into a lease agreement with the Warson Woods Swimming Club, Inc., for the premises consisting of the Warson Woods Pool in Royal Oak Park which lease shall be substantially in the form of the lease attached hereto and incorporated herein as "Exhibit 1" (the "Lease").

SECTION 2. After its execution, the Lease shall be in effect for a period of ten (10) years from its date of execution.

SECTION 3. This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

**PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR
TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS,
MISSOURI, THIS 20th DAY OF NOVEMBER, 2018.**

Laurance M. Howe, Mayor

ATTEST:

Kathy Mahany, City Clerk

APPROVED AS TO FORM:

Paul V. Rost, City Attorney

Exhibit 1
LEASE AGREEMENT
(Warson Woods Swim Club Facilities)

This Lease Agreement (“Lease”) is made and executed as of _____, 2018, by and between the CITY OF WARSON WOODS, Missouri (the “City”) and the WARSON WOODS SWIMMING CLUB, INC., a non-profit corporation registered in the State of Missouri (the “WWSC”), collectively referred to herein as “Parties.”

WHEREAS, the provisions of Sections 70.210 to 70.320 RSMo., empower Missouri municipalities and any private person, firm, association or corporation to contract and cooperate with each other for the planning, development, construction, acquisition or operation of any public improvement or facility or for a common service; and

WHEREAS, for sixty years, the City and WWSC have been parties to a certain lease dated December 1, 1958, as amended (the “1958 Lease”), under which the City leased to WWSC certain real estate (the “Premises” described below) on which WWSC constructed and continues to operate a pool facility and swimming club; and

WHEREAS, the 1958 Lease provides that, after its initial 30-year term, it could be extended for one additional 30-year term which was exercised in 1988, but the 1958 Lease provides for no further extension; and

WHEREAS, the City and WWSC wish to enter into this new lease for the Premises on the terms and conditions set forth below.

NOW, THEREFORE, the Parties agree as follows:

1. PREMISES. The Premises includes the “Warson Woods Pool,” 900 Warson Woods Drive, Warson Woods, Missouri as further defined herein. The Warson Woods Pool consists of the fenced pool area in the City’s Royal Oak Park. The Warson Woods Pool facility includes the pool, lap pool, toddler activity pool, restrooms, pool mechanical building, guard room, picnic/covered area, and all associated areas as more particularly shown in **Exhibit A**, attached hereto and incorporated herein by reference.

2. TERM. The term of this Lease shall be for a period of ten (10) years (“Term”) commencing on December 1, 2018 (“Commencement Date”) and ending November 30, 2028, unless extended as hereinafter provided.

The Lease Term may be extended for a term of ten (10) additional years by the parties on the same terms as set forth herein upon written authorization of both parties (the “Renewal Term”).

3. RENT. In consideration of WWSC’s operation of the pool and use of the Premises at its sole financial responsibility as provided by this Lease, the City leases the Premises to WWSC for an annual rent (“Rent”) in the amount of One Dollar (\$1.00). WWSC shall operate and maintain the Premises at no cost to the City. WWSC will remit the Rent payment to the City on the first day of each new term of the Lease.

Throughout the Term, WWSC shall pay directly to any utilities providing service to the Premises. In addition, WWSC shall perform and pay for maintenance and repair obligation costs set forth in

Section 14.

4. EXCLUSIVE USE OF PREMISES. Subject to the terms of this Lease, WWSC shall have exclusive use of the Premises for purposes of conducting aquatics programs, including, but not limited to, at its discretion, a swim team, swim lessons, fitness training, recreational swimming, and other aquatics programs that WWSC chooses to offer. WWSC shall have the exclusive right to staff, supervise and contract for such uses of the Premises, subject to the terms of this Lease.

5. OPERATION OF PREMISES. WWSC 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.

6. COMMUNITY ACCESS AND SCHEDULING. WWSC will be solely responsible for the operations and schedule of the Warson Woods Pool. WWSC shall provide reasonable community use and access of the Premises by Warson Woods residents in accordance with WWSC rules and regulations regarding membership.

7. PROGRAM FEES. The program fees charged by WWSC shall be set at its discretion so long as the fees allow for revenues sufficient for continued operation, maintenance and improvements to the Premises. A listing of the program fees shall be included in the annual report to the City.

8. PROGRAM ADMINISTRATION. WWSC shall have a method for the public to register, pay, and receive adequate customer service in an easy and effective manner. WWSC shall provide adequate administrative staff and assistance to support all hours of operation. Policies and procedures for handling registration, refunds, and complaints are required. WWSC shall maintain appropriate records retention. Additionally, WWSC shall provide to the City Clerk an annual report no later than November 1 of each year during the Lease Term which will be presented by a representative of the WWSC to the City's Board of Aldermen for review at its regular November meeting. The annual report shall include but does not have to be limited to the following items:

- a. Names and email addresses of current and upcoming WWSC leadership;
- b. Pool membership statistics; and,
- c. Membership fees collected for previous year and membership projections and anticipated capital improvements for the upcoming year.

9. COMPLIANCE WITH LAWS AND REGULATIONS. WWSC shall comply with all applicable city, county, state, and federal laws and regulations, including but not limited to, those related to pool and aquatic program operations. For the purpose of this lease, applicable regulations and ordinances of the St. Louis Metropolitan Sewer District (MSD), its successor organizations, and other similar organizations having authority over sewer, storm sewer, potable water, and recreational water are included as legal compliance requirements.

10. HEALTH AND SAFETY. WWSC is required to comply with 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. WWSC 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 as well as accessibility.

11. STANDARD OF CARE. WWSC 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. WWSC 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.

12. RISK MANAGEMENT. WWSC shall take all appropriate and necessary steps to provide adequate risk management planning to minimize liability or negligence.

13. EMERGENCY ACTION PLAN AND PROCEDURES. WWSC shall create and maintain all emergency procedures and emergency action plans for the Premises. The emergency action plan covers all who may be exposed to hazards arising from emergency situations.

14. MAINTENANCE. WWSC shall maintain the Pool in an orderly, clean and professional condition at all times. WWSC will be responsible for the maintenance and repair of the equipment and facilities at the Premises including:

All pools	Picnic area
Office/Guard Room	Supply Storage Areas
Restrooms	Equipment/Mechanical Buildings/Rooms
Pool Decks	Chemical Storage Areas
Fences and Gates	Lights on Premises

WWSC shall maintain standard operation procedure manuals and maintenance records and logs. WWSC will be responsible for all maintenance and repairs to and replacement of equipment and facilities.

15. SIGNAGE. WWSC will be required to maintain and provide all necessary and required signage for safety on the Premises.

16. INSURANCE. WWSC shall acquire and maintain Workers' Compensation, Employer Liability, and Commercial General Liability relating WWSC's use of the Premises. WWSC will furnish City with certificates and copies of information or declaration pages of the insurance required. WWSC must provide the City with thirty (30) days' notice of any changes, cancellation, or non-renewals. WWSC will disclose any self-insured retentions or deductibles. WWSC'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). WWSC's insurance coverage shall be primary insurance with respect to City, its Board of Aldermen, Commissions, agents, officers, volunteers or employees, and any insurance or self-insurance maintained by City, for itself, and its Board, Commissions, agents, officers, volunteers or employees shall be in excess of WWSC'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:

Insurance Category	Minimum Limits
Comprehensive General Liability Insurance (including coverage for Bodily Injury and Property Damage)	\$ 420,606 - any one person in a single accident or occurrence \$2,804,046 - aggregate
Employer's Liability	\$2,804,046 - bodily injury by accident (each accident) \$2,804,046 - bodily injury by disease (each employee) \$2,804,046 - bodily injury policy limit

As a condition precedent to this Lease, WWSC shall provide to the City certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph. The City shall be named as an additional insured on WWSC's General Liability policy.

If WWSC 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. WWSC is responsible for any payments made by City to obtain or maintain such insurance and City may collect the same from WWSC as Additional Rent.

WWSC will ensure that any pool management or lifeguard company WWSC contracts with also has the above-referenced insurance coverage.

17. **FINANCIAL STATEMENTS.** For the City to be assured of the long-term viability and operation of the community pool, the WWSC shall provide complete financials prepared in accordance with generally accepted accounting principles for calendar year 2018 on or before May 1, 2019. WWSC shall provide financial statements annually thereafter on or before May 1 or such time as the parties may agree in writing. The purpose for such review shall be for the City's information and permanent file. The City, at its sole cost and using an independent auditor to be selected by the City, shall have the right to audited financial statements in lieu of or in addition to the financial statements.

18. **CITY ACCESS.** Upon reasonable prior written notice to WWSC, 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, including the storm water system, heretofore or hereafter installed and/or constructed in or upon Royal Oak Park.

19. **IMPROVEMENTS.** During the lease Term, WWSC may make, or

cause to be made, or allow to be made, any necessary or desired alterations or improvements to the Premises (including installation of any fixture affixed to the Premises). WWSC does not need the prior written consent of City, although WWSC will reference any such improvements in its annual report to the City. All improvements or alterations constructed or installed shall become part of the Premises and shall remain in place upon the termination of this Lease, in which case, title thereto shall vest in City; unless the prior written approval of City is secured allowing such improvements or alterations to be removed. All improvements undertaken pursuant to this Lease will be at WWSC's sole expense and WWSC will be responsible for the use and maintenance of the improvements. Improvements requiring permits or access through or on City owned property must be secured and follow all applicable City, County, and State laws and regulations, to include applicable building and life/safety/ health codes in force at the time of construction. Such permits include, but are not limited to, excavation permits, building/ construction permits, and right of way/ access permits.

20. NOISE. Except in the event of an emergency, WWSC shall not use any amplified sound, whistles, bullhorns, music, etc., between the hours of 10:00 P.M. and 6:30 a.m. during any day of operation. In order to minimize impacts of major events on residents of the surrounding neighborhood, WWSC will notify the City at least 48 hours prior to all swim meets or other large group events beyond normal operations to allow the City to notify the Warson Woods Police Department and/or the neighborhood in advance of such events.

21. TRAFFIC AND PARKING. Patrons of and those employed by WWSC (or its contracted pool operation service) may use the parking lot in Royal Oak Park (the "Parking Lot" as shown on **Exhibit B**) during the months that the Warson Woods Pool is in service. The City though shall maintain all authority and control over the parking lot and may limit some or all use of the Parking Lot when other City activities, events or public safety concerns require. The WWSC and its patrons must abide by all the requirements contained in the Traffic Code of the City of Warson Woods, St. Louis County, and the State of Missouri.

At least forty-eight (48) hours prior to any events (such as swim meets) for which it may reasonably be expected that Warson Woods Pool patrons may attempt to park on Warson Woods Drive or other City streets, WWSC shall give the City notice of such event. WWSC will instruct its patrons where parking is available and not to park where posted as "No Parking."

The City shall be responsible for the general maintenance and upkeep of the Parking Lot except that if the Parking Lot is damaged by WWSC or its agents or patrons, WWSC shall be responsible for City's cost for repairs.

22. WAIVER OF CLAIMS. City assumes no responsibility for the guarding or safekeeping of the Premises, equipment, or improvements installed or constructed by WWSC upon, or used in connection with, the Premises. WWSC waives all claims against City, its Board of Aldermen, officials, agents, officers, volunteers, contractors or employees for any damages to the improvements in, upon or about the Premises and for injuries to WWSC or its agents, invitees or contractors in or about the Premises from any cause arising at any time. In no event shall the City be responsible for loss of profits or any consequential damages to WWSC.

23. INDEMNIFICATION. WWSC will defend, indemnify and hold City, its Board of Aldermen, officials, agents, officers, volunteers, contractors and 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 WWSC, and WWSC's invitees, program participants, contractors and visitors, or from the failure of WWSC to keep the Premises in good condition and repair, or accessible, including all claims arising out of the negligence of WWSC, but excluding any damage or injury caused by the willful misconduct or negligence of City or its employees, agents or contractors.

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

24. HOLDING OVER BY WWSC. If WWSC remains in possession of the Premises after the expiration of the Term of this Lease (or the Renewal Term, if applicable), 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 WWSC shall pay to City on the first day of every month the FMV rental value of the Premises. Either party may terminate any year-to-year tenancy by giving the other party notice of termination to be effective upon not less than three (3) months prior written notice.

25. HAZARDOUS MATERIALS. WWSC 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 WWSC's operation of the Pool. WWSC shall not cause or permit the escape, release, or disposal of any Hazardous Materials in the Premises – including, but not limited to, discharges of stored chemicals to natural waterways such as Warson Woods Creek or to storm sewers or other natural pathways discharging to adjacent waterways. The WWSC shall store such chemicals and other hazardous materials in a manner legally compliant with all applicable city, county, state, and federal regulations. If any governmental agency requires any testing of the Premises to ascertain whether any Hazardous Materials have been released in, on, or about the Premises, WWSC 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 WWSC, its agents, employees, contractors or invitees. WWSC 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 WWSC, 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. ATTORNEYS' FEES. In any legal action brought by the City to enforce the terms of this Lease, the City is entitled to all costs incurred in connection with such an action, including reasonable attorneys' fees.

27. VENUE. The parties agree and hereby stipulate that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this Lease is the Circuit Court of St. Louis County, Missouri.

28. ASSIGNMENT AND NONTRANSFERABILITY. WWSC 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 WWSC to contract with other entities or organizations to provide operational assistance or programs at the Premises.

29. LIENS AND ENCUMBRANCES. WWSC shall have no authority to do anything that may result in a lien or encumbrance against the Premises. Without limiting the foregoing, however, WWSC 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 WWSC causes, leases, or suffers any lien or encumbrance to be asserted against the Premises related to activities associated with this Lease, WWSC, at its sole cost and expense, shall promptly cause such lien or encumbrance to be removed.

30. TERMINATION OF LEASE.

a. Default. City or WWSC 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. WWSC Failure to Operate. Should WWSC cease to operate the Warson Woods Pool continuously throughout any swim season (Memorial Day – Labor Day), the lease shall terminate automatically. Temporary closures during the swim season for typical operational issues shall not be considered a failure to continuously operate.

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

- the insolvency of WWSC;
- a failure to operate; or
- the administrative or other dissolution of WWSC.

Termination shall be effective not less than ninety (90) days after the date of any such notice. In the event City 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.

31. **CONDITION OF PREMISES UPON TERMINATION.** Upon the effective termination of the Lease, WWSC shall remove all personal property, including furniture, furnishings, vehicles, and equipment, belonging to WWSC or WWSC's employees, invitees, and agents. Should WWSC 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 WWSC waives all provisions for disposition of abandoned personal property required by Missouri law including but not limited any requirement of notice for reclaiming abandoned property and public sale for disposition.
- b. City has the right to take action to remove WWSC's personal property. Should City exercise this right, WWSC 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 WWSC from the Property after termination, if necessary. Invoices must be paid within ten (10) days of submission of invoice to WWSC. 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.

32. **NOTICE.** All notices under this Lease shall be in writing and, unless otherwise provided herein, shall be deemed validly given if hand delivered, 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 WWSC have a change of address, the other party shall immediately be notified as provided in this section of such change.

WWSC

Attn: President
At the address provided in annual report

City

City of Warson Woods
Attn: City Clerk
10015 Manchester Road
Warson Woods, MO 63122

33. 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.

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

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

36. 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 WWSC's violation of a covenant does not waive City's right to enforce any covenant of this Lease. No waiver 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 WARSON WOODS

By: _____
Mayor

Date: _____

Attest:

City Clerk

WARSON WOODS SWIMMING CLUB, INC.

By: _____
Its: _____

Date: _____

State of Missouri)

County of St. Louis)
)

On this _____ day of _____ in the year 2018, before me, personally appeared _____(name of officer), _____(title) of the Warson Woods Swimming Club, Inc., known to me to be the person who executed the within Lease Agreement in behalf of said corporation and acknowledged to me that he or she executed the same for the purposes therein stated.

Notary Public

SEAL

Exhibit A

900 Warson Woods Drive - City of Warson Woods



10/5/2018, 2:12:15 PM

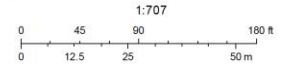


Exhibit B
Parking Lot

900 Warson Woods Drive - City of Warson Woods



10/5/2018, 2:12:15 PM

1:707

0 45 90 180 ft
0 12.5 25 50 m