

## SWIMMING POOL USE AGREEMENT

24 This Swimming Pool Use Agreement (the "Agreement") is made and entered into as of January 24, 2014 by and between Rudgear Estates Homeowners Association, a California nonprofit mutual benefit corporation ("REHA") and Rudgear Estates Swim Team, Inc., a California nonprofit corporation ("REST").

### RECITALS

A. REHA owns and operates a swimming pool facility located at 970 Palmer Road in Walnut Creek, California ("Pool Facility").

B. REST is youth recreational swim team consisting of up to 185 swimmers between the ages of 4 and 18, and their parents, guardians, and coaches. REST practices and competes during the months of May through August ("swim season"). REST is a member of the Walnut Creek Swim Conference.

C. REST desires to use the Pool Facility for practice, meets and social events during the swim season, subject to the terms of this Agreement.

D. REHA desires to allow REST to use the Pool Facility during the swim season, subject to the terms of this Agreement.

### AGREEMENT

1. Use. REHA hereby agrees to allow REST to use the Pool Facility for practices, meets, and social events as listed on Exhibit A, "Facility Use Schedule", attached hereto. REST shall use the Pool Facility only for the listed events. Additional events will require the prior approval of the REST Board.

2. Term. The Term will begin on April 1, 2014, ("Commencement Date") and continue through the last day of the County Meet in August 2016 ("Expiration Date"). REST shall have an option to renew this Agreement for an additional two (2) years. If REST wants to renew the Agreement, a written request must be given to REHA by August 31, 2016. REHA shall approve or deny REST's renewal request within 30 days of receipt.

3. Membership.

(a) Pool Membership Required. All REST members must also be (a) REHA members, or (b) pool members (i.e., are not REHA members, but have purchased a membership to the Rudgear Estates Pool), or (c) pay a splash fee to REST (i.e., purchase a "swim team only membership" to the Rudgear Estates Pool).

REST shall pay the splash fees set by REHA. All splash fees are due to REHA no later than June 1. Any fees received after this date are subject to late charges and interest in the maximum allowable by law. When there is ambiguity about pool memberships, the REST registrar and the REHA Property Manager will work together to determine if the REST member is a pool member or if they should be charged a splash fee,

(b) Maximum Number of Swimmers. REST may not have more than 185 swimmers, except with the permission of the REHA as stated in section 3(c).

(c) Homeowners and pool members are guaranteed membership on the REST if they register by the REST registration deadline. Homeowners who apply after the registration deadline may petition the REHA Board of Directors for a waiver of the 185 swimmer limit and permission to join the REST if the 185 swimmer limit has been reached at the time of their application.

- (d) REHA shall not refund fees for any time the Pool Facility is out of service or unavailable due to maintenance or repair.
4. Storage. REST shall be allowed to store team-related items at the pool during the Swim Season. All storage areas shall remain locked when not in use. REHA is not responsible for any of the equipment of items stored on the premises by REST. Approved storage areas are:
- a. The snack shack area;
  - b. The equipment storage room located behind the snack shack;
  - c. Designated areas inside the lifeguard shack;
  - d. The storage lockers; and
  - e. The shed on the pool deck
5. REST Responsibilities. REST agrees to do the following during the Term:
- a) Provide a competitive recreation level swim team program for youth that meet the need of a beginner swimmer through advanced swimmer and is in compliance with the rules of the Walnut Creek Swim Conference.
  - b) Employ, train, schedule, supervise, and discipline coaches and staff used to operate the swim team;
  - c) Provide adequate supervision for all swimmers based on their swimming abilities, including having at least one coach who is also a certified lifeguard on deck at all times that REST is using the pool, and further providing all necessary first aid, life guarding supplies and equipment needed by REST;
  - d) Maintain a reasonable level of cleanliness and tidiness of the pool area, including the snack shack, restrooms, and showers at all times;
  - e) Keep the REST snack shack in compliance with all applicable health safety and sanitation laws; and
  - f) Provide to all team members and take reasonable efforts to enforce REHA's standard Rules and Regulations for pool use, a current copy of which will be provided to REST by REHA no later than April 1 each year and is incorporated herein by reference.
  - g) Resolve/conclude all outstanding bills with REHA by August 31st annually.
6. Pool Security. In addition to adhering to all Pool Rules, REST agrees;
- a) The front gate is never to be propped open or left open by any means;
  - b) The baby pool shall not be used by REST at any time, including but not limited to practice, meets, and social events;
  - c) Information relating to REST may be posted only on the pool bulletin boards along the west fence between the pool office and the south fence and records board on the west side of the lifeguard office;
  - d) Facility access codes and keys provided by REHA to REST must be kept and used by coaches and REST Board Members only. REHA shall have the authority to change pass codes and locks if the need arises, in the sole judgment of REHA. Further, should the need to change pass codes and locks arise because of the conduct of REST, the cost of changing pass codes and locks shall be borne by REST.
7. Pool Facility Maintenance and Repair.
- a) REST shall accept the Pool Facility in "as is" condition on the Commencement Date. If desired, REST and REHA may conduct a preseason walk-through or inspection of the Pool Facility in order to establish the condition of the Pool Facility on the Commencement Date and identify any arrears

of concern regarding maintenance or repair. The preseason walk-through or inspection of the Pool Facility is not intended to create any duty on the part of REHA to upgrade or improve the Pool Facility.

b) Nothing herein contained shall be construed to obligate REST to make repairs for damage which is due to ordinary wear and tear.

c) REST must immediately notify the Pool Manager of any damage to the Pool Facility which has occurred during the times REST has use of the Pool Facility.

d) In the event of damage to or destruction of the Pool Facility or any part of the Pool Facility due to the acts, negligent or otherwise, of REST employees, members, volunteers or guests, reimbursement for replacement or repair thereof shall be made by REST to REHA.

e) REST shall be responsible for the cost of any additional cleaning fees and/or garbage pick-ups which result from REST events.

f) After every use, REST will leave the entire Pool Facility clean and will put away and secure all equipment in the appropriate storage area.

g) At the end of the Swim Season, REST will conduct a thorough clean-up of all areas used by the team.

8. ADA/Disability Access. REST agrees to make reasonable modifications to its programs as necessary to allow participation by persons with disabilities who use the Pool Facility in connection with REST events.

9. Insurance.

a) From and after the Commencement Date, REST will maintain at its sole cost and expense, the following types of insurance:

1) Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) combined each occurrence and in the aggregate insuring against liability of the insured with respect to the use of the Pool Facility. The Commercial General Liability Insurance maintained by REST will name REHA and its property management company as additional insureds; and

2) Workers Compensation insurance as required by law.

b) REST will deliver to REHA certificates of coverage or copies of the policies of insurance that REST is required to carry pursuant to this Paragraph 9 as soon as it is available from the Walnut Creek Swim Conference.

10. Indemnity. REST hereby agrees to indemnify, defend and hold REHA and its directors, offices, members, employees, and agents harmless from and against any claims, losses, damages (including but not limited to consequential damages), injuries, liabilities, judgments, costs, and expenses, including attorneys' fees incident to, arising from, or related in any way whatsoever resulting from or arising out of the actions, or omissions of REST, its agents or invitees, in connection with RESTS' use of the Pool Facility. This release of liability shall be effective and binding upon REST, and REST's guests, next of kin, executors, administrators, successors, and assigns in the event of property damage, illness, and/or personal injury including death. The provisions of this Paragraph 10 shall survive the termination or expiration of this Agreement.

11. Casualty; Condemnation. In the event of any casualty or condemnation of the Pool Facility or any part thereof; REHA may elect to terminate this Agreement immediately upon written notice thereof to REST.

12. Termination; Default.

This Agreement may be terminate for cause by the REHA Board of Directors after reasonable written notice and opportunity for mitigation are provided to REST if:

- a) REST fails to adhere to Pool Rules resulting in property damage or unsafe conditions;
- b) REST persistently misuses the Pool Facility, including but not limited to using the Pool Facility at times not listed on the Exhibit A schedule;
- c) REST members or guests are cited for or found guilty of vandalism of the Pool Facility;
- d) REST Board members, coaches, or volunteers commit significant illegal acts charged as felonies in connection with REST use of the Pool Facility;
- e) REST use of the Pool Facility leads to a legal claim or lawsuit against REHA; or
- f) REST defaults in the performance of any substantive part of this Agreement, including but not limited to adherence to REHA Rules, timely payment of fees, protection and maintenance of the Pool Facility, and operation of a safe swim team for all members, coaches and guests of REST.

13. Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance to any extent is held void and invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held void or invalid will not be affected thereby, and each provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

14. Relationship of Parties. Nothing contained in this Agreement will be deemed, construed or implied as creating the relationship of principal and agent, landlord and tenant, partnership, joint venture or any other relationship between the parties hereto, other than the relationship of REHA and REST as is expressly set forth herein. Nothing contained in this Agreement will be deemed, construed or implied as creating an employment or agency relationship between REHA and REST's employee's or agents.

15. Binding Effect. Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words imparting such covenants and conditions were used in each separate paragraph hereof. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement is governed by the law of the State of California.

16. Amendments. This Agreement cannot be amended or modified except by written instrument signed by both of the parties to his Agreement.

17. ENTIRE AGREEMENT. THIS INSTRUMENT CONSTITUES THE ENTIRE AGREEMENT BETWEEN REHA ND REST RELATIVE TO THE POOL FACILITY IT IS UNDERSTOOD THAT THIS AGREEMENT SUPERSEDES AND CANCELSL ANY AND ALL PRVIOUS NEGOTIATS, ARRANGEMENT, AGREEMENTS OR REPRESENTATIONS, AND UNDERSTANDINGS, IF ANY, BETWEEN THE PARTIES HERETO.

18. Attorneys' Fees. In the event of a dispute over any terms or conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have respectively executed this Agreement to be effective as of the date first set for hereinabove.

REHA:

RUDGEAR ESTATES HOMEOWNERS  
ASSOCIATION

By: Richard G. Slank

Its: President

REST:

RUDGEAR ESTATES SWIM TEAM

By: Scott Dossa

Its: Co-President

By: Kelly Dossa

Its: Co-President

EXHIBIT A

USE BY REST

APPROVED BY THE REHA BOARD OF DIRECTORS

Note. REST may not use the Pool Facility at any time other than those listed herein without prior approval of the REHA Board of Directors.

Swim Practices:

Spring Season: (Last Week of April through Last Day of Walnut Creek School District School year):

Two weeks prior to pool opening: Lanes 1-6, 3:30 – 7:00 pm, Monday through Friday  
REST is to pay the heating costs for the days REHA would not be paying otherwise.

Starting first Monday after pool opens: Lanes 3-6, 3:30pm – 7:00pm, Monday through Friday

REST Sponsored Adult Lap Swim: 1:00 – 2:30 pm, Monday through Friday (entire Spring Season)

Summer Season (1<sup>st</sup> Monday after Last Day of Walnut Creek School District School year through County Meet)

Morning Practice

Full Use: 7am – 12 pm, Monday – Friday

Shared use (2 lanes): 12 – 12:30 pm, M, T, Th, F (until end of July)

Evening Practice/Lessons:

Lanes 3 – 4, 7:00 pm – 8:00 pm, Tuesdays and Thursdays

Lessons from 12:30 – 5:00 pm Monday – Friday. The number and lane designation to be determined by the lifeguards and pool manager who have the right to allow the expansion and contraction of lanes (to be no less than 2 lanes) as conditions permit.

Swim Meets:

Home swim meets shall be scheduled on Wednesday evenings (5:00 pm – 10:00 pm) or Saturday mornings (8:00 am – 1:00pm). REST has the option of scheduling swim meets on either Wednesday or Thursday nights, but never in the same week.

REST to have the option of scheduling an invitational meet on a Sunday, but not in the same week a Saturday home meet is scheduled. Extending the hours was permitted, but the duration remains negotiable.

The schedule of home swim meets shall be given by REST to REHA no later than April 1 of each year.

“ORIGINAL”

INITIALS:

BT  
ED  
KO

Social Events:

A schedule of social events to be held at the Pool Facility, including an indication of whether or not the pool itself will be used during the event, shall be given by REST to REHA no later than April 1 of each year.

Other Provisions:

REST may not permit sponsorship banners to be posted in the pool area throughout the summer, but may have sponsorship banners on the wall during home swim meets.

REST may hold an Adult Swim Program in the early mornings prior to practice. This program is to be at no charge to REHA members who want to participate. This would need to be proposed in April and the details approved by the REHA Board at that time.

REST may display a banner on the pool fence to advertise swim team.

"ORIGINAL"

INITIALS:

RA  
SD  
LD