

REHA / REST FACILITY USE AGREEMENT

This Swimming Pool Use Agreement (the "Agreement") is made and entered into as of 09/01/2022 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"). REST is a youth recreational swim team consisting of swimmers between the ages of 4 and 18, and their parents, guardians, and coaches.
- B. REST practices and competes during the months of April through August ("swim season"), with a clinic in March. 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.

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 November 1, 2022 ("Commencement Date") and continue through November 1, 2024 ("Expiration Date").

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 July 15th. 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.

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4. Maximum Number of Swimmers

REST may not have more than 220 swimmers, except with the permission of the REHA as stated in section 5.

5. Homeowner Membership on REST

Homeowners and pool members are guaranteed membership on the REST if they register by the REST registration deadline. Homeowners and pool members who apply after the registration deadline may petition the REHA Board of Directors for a waiver of the 220 swimmer limit and permission to join the REST if the 220 swimmer limit has been reached at the time of their application.

6. Refunds

REHA shall not refund fees for any time the Pool Facility is out of service or unavailable due to maintenance or repair.

7. Storage

REST shall be allowed to store team-related items at the pool. All storage areas shall remain locked when not in use. REHA is not responsible for any of the equipment or items stored on the premises by REST. REHA may ask REST to use its equipment should it so desire. Permission to use the equipment shall not be unreasonably withheld, e.g. PA system, kick boards, a pop up or extra chairs. Approved storage areas are:

- A. The snack shack area;
- B. Designated areas inside the lifeguard shack;
- C. The north shed near the bike racks
- D. The south shed on the pool deck
- E. Storage of the scoreboard/clock on pool deck
- F. Shallow end of pool (near baby pool) for lane lines

REHA will be permitted to use REST owned lane lines as needed for lap swimming outside of swim team hours.

8. REST Responsibilities

- A. Provide a competitive recreation level swim team program for youth that meets the needs of a beginner swimmer through advanced swimmers 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.
- F. Provide to all team members and take reasonable efforts to enforce REHA's standard

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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. REST will ensure that pool and deck personnel capacities are monitored and kept within legal limits during their events.
- H. Provide the REHA property manager with the following: season event schedule, coaching staff roster, REST Board contact information and a detailed team registration list no later than April 20th each year and an updated list by June 1st.
- I. Comply with all the local, state and federal laws.
- J. Immediately notify the REHA of any incident or issue that COULD cause a negative impact on the REHA, its members or employees.
- K. Ensure the information listed on its website is up to date.
- L. Ensure those entering the facility during REST events are authorized users.

9. Pool Security

In addition to adhering to all Pool Rules, REST agrees;

- A. The front gate should never be propped open unless it is actively monitored; REST will assign a gate monitor at all home meets as an additional security measure.
- 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; REST shall promptly remove outdated material at the end of the swim season.
- 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.

10. 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 areas of concern regarding maintenance or repair. The preseason walkthrough 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 pickups which result from REST events.
- F. After every use, REST will leave the entire Pool Facility clean and will put away and

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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.
- H. REHA will make every effort to make prompt facility repairs to malfunctioning items that are deemed to affect REST swimmers' safety.

11. ADA/Disability Access

REST agrees to make reasonable modifications to its programs as necessary to allow participation by swimmers with disabilities who use the Pool Facility in connection with REST events.

12. Pricing:

- A. REST will pay REHA an annual facility use fee of \$15,000.00 or all monies collected as "Splash" fees as determined by the REHA Board of Directors, whichever amount is larger. For 2023 and 2024, the "Splash" fee shall be \$200.
 - a. REST will pay REHA an additional \$95 per swimmer for each swimmer above 185, up to the maximum of 220.
- B. In the event that city, county, state or national government restrictions prevent the execution of the swim season, REST will be responsible to pay for the portion of the regular season completed as determined by the REST calendar.

13. Insurance

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

- A. 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
- B. Workers Compensation insurance as required by law.
- C. REST will deliver to REHA certificates of coverage or copies of the policies of insurance that REST is required to carry as soon as it is available from the insurance provider on an annual basis.

14. Indemnity

REST hereby agrees to indemnify, defend and hold REHA and its directors, officers, members, employees, property managers 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 REST's use of the Pool Facility. This release of liability shall be effective and binding upon REST, and REST 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.

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15. 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.

16. Termination; Default

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

- A. REST persistently 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 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.

17. 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.

18. 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.

19. 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.

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20. Amendments

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

21. ENTIRE AGREEMENT

THIS INSTRUMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN REHA AND REST RELATIVE TO THE POOL FACILITY. IT IS UNDERSTOOD THAT THIS AGREEMENT SUPERCEDES AND CANCELS ANY AND ALL PREVIOUS NEGOTIATIONS, ARRANGEMENTS, AGREEMENTS OR REPRESENTATIONS, AND UNDERSTANDINGS, IF ANY, BETWEEN THE PARTIES HERETO.

22. 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 herein above.

REHA:

RUDGEAR ESTATES

HOMEOWNERS ASSOCIATION

By: _____

Jason Granskog

Its: President

REST:

RUDGEAR ESTATES SWIM TEAM

By: _____

Daniel Sanom

By: _____

Nicole Main

Its: Presidents

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EXHIBIT A - FACILITY USE SCHEDULE

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. REHA reserves the right to modify the lane assignments so long as the total number of lanes available to REST are not decreased.

SWIM PRACTICES:

Spring Season Practice: (Starting April 5, or coinciding with the first day practices are permitted by the Walnut Creek Swim Conference):

- A. Prior to pool opening: Lanes 1-6, 3:00 — 8:00 pm, Monday through Friday. REST is to pay the incremental heating costs for the days REHA would not otherwise be paying
- B. After pool opening: 4 lanes (Lanes 3-6, or any 4 contiguous lanes as directed by REHA), 3:30 pm — 8:00 pm, Monday through Friday

Summer Season Practice: (1st Monday after Last Day of School through to the end of the County Meet)

Full Use: 7 am — 12:30 pm, Monday — Friday

Swim Lessons:

- A. No lessons allowed on days REST holds meets at REHA pool, or on weekends.
- B. Exclusive use of (2 lanes, 3 & 4 or any 2 contiguous lanes as directed by REHA): 2 pm – 5 pm, Monday - Friday (except weekday meets)
- C. REST will have 1 lane available for swim lessons from 1-2, in exchange for an additional \$500 fee per season.
- D. No swim lessons may be given after the County Meet

Spring Clinic Option: (Starting March 6, 2023 & March 4, 2024):

- A. REST will have the option to use the REHA swim pool to conduct swim team clinic, camp and swim lessons.
- B. **Spring Clinic** will be conducted between the hours of 3PM and 7PM Monday thru Friday.
- C. REST will have use of the pool over the weekends when not in conflict with REHA to conduct up to 8 hours of clinic/lessons per weekend.
- D. REST will notify REHA of intention to run **Spring Clinic** by February 15 each year.
- E. REST agrees and acknowledges that REHA may be resurfacing the pool in early 2023, in which case the pool is unlikely to be available for a 2023 spring clinic, and which may also delay the start of regular practice.

REST Agrees to pay incurred cost by REHA for the Spring Clinic:

- A. REST agrees to pay for the incremental Gas and Electricity usage for using the heated pool during the pre-heating period in February, March and the first half of April, assuming REHA is not using the pool during this time.
- B. “Incremental cost” is here defined as the additional monthly cost above a baseline cost which is equal to REHA operation cost for the month of January immediately preceding REST use.
- C. REST agrees to pay for the cost for trash collection by the Sanitation Company in March and April.

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- D. REST will agree to pay for incremental cost for pool service and chemical usage to maintain safe pool use during the months of March and April.
- E. REST will reimburse REHA for ½ of one month of the Pool Manager's normal salary for March 2023 and March 2024 if a Spring Clinic is held (approximately \$1,000).
- F. REST will pay facility janitorial services during March and April.

Swim Meets:

- A. Home swim meets shall be scheduled on Wednesday evenings (5:00 pm — 9:30 pm) or Saturday mornings (8:00 am — 1:00 pm). REST has the option of scheduling swim meets on either Wednesday or Thursday nights, but never in the same week.
- B. The schedule of home swim meets shall be given by REST to REHA for approval no later than April 1st annually.

Social Events:

- A. 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 June 1st of each year.

Other Provisions:

- A. REST may not post sponsorship banners in the pool area throughout the summer, but may have sponsorship banners posted during home swim meets.
- B. REST may hold an Adult Swim Program in the early mornings prior to practice. This program is to be at minimal cost 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.
- C. REST may display a banner on the pool fence to advertise swim team sign-up during registration period.