

THE STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**FACILITIES USE AGREEMENT**

**THIS FACILITIES USE AGREEMENT** (“Agreement”) made and entered into and between Border Swimming Inc., a Texas non-profit corporation (“Border Swimming”) and it’s eight member teams, identified as; El Paso Aqua Posse, Desert Sharks Swim Club, El Paso Borderland Swim Team, Barracuda Aquatic Team, Radford Aquatics Swim Team LLC, D.B.A. Revolution Aquatics Swim Team, WETT Swim Club, El Paso SWAT Inc. and Just Care Aquatic Team (individually, a “Team” and collectively, the “Teams”);

**WHEREAS**, Border Swimming has entered into a License Agreement with the City of El Paso, Texas (the “License Agreement”), which is the owner of certain recreational aquatics facilities (the “Premises” defined in **Exhibit “A”**), and the City exercises control over the same Premises designed to be utilized for purposes compatible with, and supportive of, the mission of the El Paso Parks & Recreation Department;

**WHEREAS**, this Agreement shall be subordinate to and subject to all terms and conditions as provided for in the License Agreement;

**WHEREAS**, Border Swimming desires to permit the Teams temporary usage of the Premises as described herein to further the objectives and primary purpose of Border Swimming which is for the education, instruction and training of individuals to develop and improve their capabilities in the sport of swimming;

**NOW THEREFORE**, for good and valuable consideration, Border Swimming and the Teams agree to enter into this Agreement for use of the Premises subject to the following terms and conditions.

**1. TERMS**

1.1 Authorization for Use. Subject to the terms and conditions set forth below and per the License Agreement, Border Swimming authorizes the Teams to temporarily use the Premises for the purpose of enhancing swimming opportunities by providing Olympic-style competitive swimming for the West Texas region.

1.2 Term. The term of this Agreement shall be for six (6) months effective upon the Effective Date of this Agreement. For purposes of this Agreement, the Effective Date is the date when all parties sign this Agreement on behalf of the Teams and Border Swimming. Notwithstanding the foregoing, this Agreement shall terminate simultaneously upon termination of the License Agreement.

1.3 Consideration. The Teams agree to pay Border Swimming \$120.00 per hour for use of Locations #1 and #2 and \$60.00 per hour for use of Location #3, of the Premises, during the term of this Agreement. Border Swimming will invoice the Teams on the 10<sup>th</sup> of each month and

the fee shall be paid no later than the 20<sup>th</sup> of each month. Notwithstanding the foregoing, the Teams may mutually agree to share use of the Facilities and pay Border Swimming a prorated amount of consideration based on actual usage by Team. If a third or fourth lifeguard is required, then the Teams will reimburse Border Swimming at a mutually agreeable hourly rate.

## 2. OBLIGATIONS

### 2.1 Obligations of the Teams.

2.1.1 Teams shall provide a monthly request for hours they will be using the pool at least two weeks in advance of each month. Time blocks shall be in at least one-hour increments.

2.1.2 At the time of submitting a monthly request for hours, Teams shall provide a full roster of ALL individuals (athletes, coaches, team/parent representatives and volunteers) including contact information, athletes ages and lane assignments, for the upcoming month (the “Roster” defined in Exhibit “B”). No subsequent changes to the monthly Roster will be allowed and Teams shall ensure that no persons, not specifically identified on the Roster, shall be provided access to the Premises.

2.1.3 Teams shall abide by the most recent Texas Governor’s Order related to recreational swimming pools and sports.

2.1.4 Teams shall maintain appropriate roster sizes and only permit a maximum number of swimmers per lane, in accordance with all minimum COVID-19 requirements, in accordance with all USA Swimming guidelines, recommendations and requirements, and in such manner that is safe for each Team to utilize the Premises.

2.1.5 In addition to all Obligations outlined in this Section 2 herein, Teams shall further abide by the following guidelines: Coaches and Staff Compliance Guidelines (the “Coaches Guidelines” defined in Exhibit “C”), Parent & Second Responder Compliance Guidelines (the “Parent Guidelines” defined in Exhibit “D”) and COVID-19 Guide for Safe Re-entry to Pool Facilities, (the “COVID-19 Guide” defined in Exhibit “E”).

### 2.2 Obligations of Border Swimming.

2.2.1 Border Swimming shall maintain the Premises in such a manner that the Premises remains in a usable and safe condition, including providing necessary supplies to properly sanitize and clean the Premises in order to comply with COVID-19 requirements.

2.2.2 Border Swimming shall provide one or two lifeguards at all times including current certifications for all lifeguards. Each lifeguard shall be currently certified by the American Red Cross, Lifeguard, First Aid, and CPR.

2.2.3 Border Swimming shall ensure that at all times one lifeguard will be on stand during hours of use and will be actively watching the pool and not taking on or assisting in other duties including coaching.

2.2.4 Border Swimming shall have authority to make determinations of Premises closures or practice cancelations due to safety issues, unscheduled maintenance or changes to local, state, or federal orders related to the COVID-19 Pandemic. This includes any Teams lack of safety preparedness or inability to comply with this Agreement.

2.2.5 Border Swimming shall have the authority to verify that Team participants match their monthly Roster.

### **3. COMPLIANCE**

3.1 Teams shall not harass or create a hostile work environment for any Border Swimming or City of El Paso staff member, volunteer, or volunteer applicant. Teams shall comply with all federal, state, local laws, and City policies, in the performance of activities conducted on the Premises. Violation of this provision is a material breach of this Agreement.

3.2 Teams shall not discriminate against any Border Swimming or City of El Paso staff member, volunteer, or volunteer applicant because of race, religion, creed, color, gender, age, disability, national origin, or any other basis to the extent prohibited by federal, state, or local law. Violation of this provision is a material breach of this Agreement.

### **4. TEAMS DEFAULT IN OBLIGATIONS AND COMPLIANCE**

4.1 In the event any Team defaults in its compliance, or obligations as outlined in 2.1 herein, Border Swimming shall have authority to without grace period, demand or notice (the same being hereby waived by Teams), and in addition to all other rights or remedies Border Swimming may have as specified in Section 9 herein, shall have the right to pursue any one or more of the following remedies: (a) Suspend Teams access to the Premises for 24 hours and Teams shall continue to be obligated to pay the consideration fee (b) Suspend Teams access to the Premises for 5 days and Teams shall continue to be obligated to pay the consideration fee (c) Suspend Teams access to the Premises for 14 days and Teams shall continue to be obligated to pay the consideration fee.

### **5. ASSIGNMENT OF AGREEMENT/NON-POSSESSORY INTEREST**

5.1 Assignment of Facility Use Agreement. Teams are without right to and shall not assign this Agreement or any part thereof.

5.2 Non-Possessory Interest. Border Swimming and the Teams shall have no permanent or possessory interest in the Premises based upon this Agreement or any activities that Border Swimming or the Teams may conduct.

### **6. ASSUMPTION OF RISK**

6.1 Teams assume all risk of loss or damage to Team property within the Premises.

## **7. INDEMNITY**

AS A CONDITION OF THIS AGREEMENT, TEAMS OR ITS INSURER WILL INDEMNIFY, DEFEND AND HOLD THE BORDER SWIMMING, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, INCLUDING BUT NOT LIMITED TO ALL JUDGMENTS, SETTLEMENT AMOUNTS, ATTORNEYS' FEES, COURT COSTS AND EXPENSES INCURRED IN THE INVESTIGATION, HANDLING, DEFENSE AND LITIGATION OF ANY CLAIM OR SUIT, INCLUDING BUT NOT LIMITED TO ANY CLAIM OR SUIT FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON REGARDLESS OF THE MERITS OF OR OUTCOME OF SUCH CLAIM OR SUIT ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS INDEMNIFICATION PARAGRAPH SHALL APPLY EVEN WHERE SUCH BODILY OR PERSONAL INJURY, ILLNESS, LOSS OF SERVICES, PHYSICAL OR MENTAL IMPAIRMENT TO OR DEATH OF ANY PERSON, OR FOR DAMAGE OR DESTRUCTION TO ANY PROPERTY RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE BORDER SWIMMING, ITS OFFICERS, AGENTS OR EMPLOYEES. Without modifying the conditions precedent for preserving defenses, asserting claims or enforcing any legal liability, against Border Swimming as required any law, Border Swimming shall promptly forward to the respective Team every demand, notice, summons or other process received by Border Swimming in any claim or legal proceeding contemplated herein. The Teams will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as Teams may deem expedient; and 3) defend or cause to be defended on behalf of the Border Swimming all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Teams will pay all judgments in actions defended by Teams pursuant to this section along with all attorneys' fees and costs incurred by the Border Swimming including interest accruing to the date of payment by Teams and premiums on any appeal bonds. Border Swimming, at its election and its expense will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. Border Swimming will not be responsible for any loss of or damage to Teams property from any cause.

## **8. INSURANCE.**

8.1 Border Swimming shall provide liability insurance to the City of El Paso for bodily injuries/death growing out of any one accident or other cause for which Border Swimming or the Teams may be responsible in a minimum of \$1,000,000.00 for each person and \$2,000,000.00 for each single occurrence; and in addition shall provide a minimum sum of \$1,000,000.00 for each single occurrence for destruction of property.

8.2 Border Swimming shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent

jurisdiction against the City, its officers, agents, servants or employees and groups, its officers, agents, servants or employees.

## 9. TERMINATION

9.1 If any Team defaults in the performance of this Agreement, or materially breaches any of its provisions, Border Swimming, at its option, may terminate this Agreement by giving written notice to the individual Team.

9.2 Border Swimming may terminate this Agreement, for convenience, without cause, upon sixty (60) days prior written notice to the Teams.

10. Notices. Any notices required under this Agreement shall be sufficient if sent by certified mail, return receipt requested, to the parties. The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as shown in **Exhibit “F”** – Notice Addresses.

11. Law Governing Contract. The validity, construction and effect of this Agreement shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

12. Entire Agreement. This document contains the agreement between Border Swimming and the Teams and may not be modified, except by an agreement in writing signed by all parties. This Agreement will only be effective upon full execution of Border Swimming and the Teams.

13. Severability. The invalidity or illegality of any provision hereof shall not affect the remaining provisions hereof.

14. Survival. Each party shall remain obligated to the other under all clauses of this agreement that expressly or by their nature extend beyond the expiration or termination of this agreement, including but not limited to the indemnification provisions hereof.

15. Warranty of Capacity to Execute Agreement. The persons signing this Agreement on behalf of the Teams warrants that he/she has the authority to do so and to bind their respective Team to this Agreement and all the terms and conditions contained herein.

[Signatures on following page}

**EL PASO AQUA POSSE:**

\_\_\_\_\_  
Todd Roberts, President  
Date Signed: \_\_\_\_\_

**EL PASO BORDERLAND SWIM TEAM:**

\_\_\_\_\_  
Alfonso Ruiz del Hoya  
Date Signed: \_\_\_\_\_

**EL PASO SWAT INC.:**

\_\_\_\_\_  
Stephanie Otero, President  
Date Signed: \_\_\_\_\_

**WETT SWIM CLUB:**

\_\_\_\_\_  
Isaac Valles, President  
Date Signed: \_\_\_\_\_

**REVOLUTION AQUATICS SWIM TEAM:**

\_\_\_\_\_  
Gus Viveros, President  
Date Signed: \_\_\_\_\_

**BARRACUDA AQUATICS TEAM:**

\_\_\_\_\_  
Joe Olson, President  
Date Signed: \_\_\_\_\_

**DESERT SHARKS SWIM CLUB**

\_\_\_\_\_  
Ruben Pallares, President  
Date Signed: \_\_\_\_\_

**JUST CARE AQUATICS TEAM:**

\_\_\_\_\_  
Rey Rodriguez, President  
Date Signed: \_\_\_\_\_

**BORDER SWIMMING, INC.**  
**a Texas non-profit corporation**

\_\_\_\_\_  
Name: John Bernhard  
Title: General Chair

**Exhibit “A” – Premises**

Location #1 – Westside Natatorium; 650 Wallenberg Dr., El Paso, Texas 79912

Location #2 – Pavo Real; 110 Presa Place, El Paso, TX 79907

Location #3 – Marty Robbins; 11600 Vista Del Sol Drive, El Paso, TX 79936

**Exhibit “B” - Sample Roster**

**Exhibit “C” – Coaches and Staff Compliance Guidelines**

**Exhibit “D” - Parent & Second Responder Compliance Guidelines**

**Exhibit “E” - COVID-19 Guide for Safe Re-entry to Pool Facilities**

**Exhibit “F” – Notice Addresses**