

## LEASE AND OPERATIONS AGREEMENT

This Lease and Operations Agreement (the “Agreement”) is entered into by and between the City of Breckenridge, a Texas home-rule municipality whose mailing address is 105 N. Rose Avenue, Breckenridge, Texas, 76424 (the “City”), and \_\_\_\_\_, a Texas \_\_\_\_\_ whose mailing address is \_\_\_\_\_, Breckenridge, Texas, 76424 (“Operator”).

### **Article 1. Leased Premises**

1.1 Leased Premises. The City hereby leases to Operator, and Operator leases from the City, the following real property (the “Property”):

Lots 1, 2, 3, 4, and 7 of Block B of the East Breckenridge Addition to the City of Breckenridge, Stephens County, Texas, commonly known as the Breckenridge Aquatic Center.

### **Article 2. Term; Rent**

2.1 Effective Date. This Agreement shall take effect on April 6, 2021 (the “Effective Date”).

2.2 Term. This Agreement shall be for a term of one (1) year commencing on the Effective Date, unless terminated sooner as provided in this Agreement.

2.3 Rent. In lieu of a rental payment, Operator shall operate the Breckenridge Aquatic Center pursuant to the terms of this Agreement.

### **Article 3. Use of Leased Premises**

3.1 Use of the Property. Operator may operate the Property as a public pool pursuant to the terms of this Agreement. Operator agrees that it will comply with all local, state, and federal regulations in its use of the Property.

3.2 Condition of the Property. The City makes no representations as to the condition of the Property or its suitability for any particular purpose. Operator has inspected the Property and agrees that the condition of the Property is acceptable for Operator’s use.

3.3 Surrender of the Property. At the end of this Agreement, whether by expiration or termination, Operator shall surrender the Property to the City and all improvements made to the Property by Operator will become the property of the City.

### **Article 4. Repairs and Maintenance; Utilities**

4.1 Repairs and Maintenance by City. The City will, throughout the term of this Agreement, at its own expense and risk, maintain the Property and all improvements on the Property in good order and in a clean and neat condition. This includes mowing and weed-eating, all maintenance and repairs to the Property, and application of chemicals to the pool.

4.2 Utility Charges. The City will be responsible for paying for all utility services to the Property.

### **Article 5. Pool Operations**

5.1 Fees. Operator agrees to charge customers of the pool the fees established in the attached Exhibit "A". Operator may keep all proceeds from said fees.

5.2 Schedule. Operator agrees to operate the pool according to the schedule in the attached Exhibit "A".

5.3 Rules. Operator agrees to comply with and enforce the rules established in the attached Exhibit "B".

5.4 Customers. Operator must allow any customer who pays the appropriate fee(s) described in Exhibit "A" and who complies with the rules in Exhibit "B" to have access to the pool. Operator shall not discriminate against anyone wishing to use or continue using the pool.

5.5 Employees. Operator may hire employees or independent contractor to assist Operator in operating the pool. Operator is solely responsible for all hiring, firing, and disciplinary decisions. Except as provided in Section 5.6, Operator is solely responsible for any and all training provided to Operator's employees.

5.6 Training. The City agrees to send two representatives of Operator to Certified Pool Operator Training, at the City's sole expense.

5.7 Expanded Activities. Operator may provide additional services or activities to pool customers which are related to the operation of the pool, including but not limited to the provision of food services, at Operator's sole discretion and expense.

5.8 Reporting. Operator shall provide the City with revenue and expense reports on a monthly basis on or before the last Tuesday of each month during the term of this Agreement.

### **Article 6. Insurance and Indemnity**

6.1 Insurance. Operator will maintain liability insurance covering bodily injury or death on the Property in the amount of at least \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. Operator will name the City as an additional insured on any said insurance policy. Operator shall also provide statutory workers compensation coverage for its employees working on the Property. Operator shall provide the City with certificates of insurance within thirty (30) days of the Effective Date.

6.2 Indemnification. Operator agrees to indemnify and hold harmless the City from and against any and all claims, suits, actions, losses, costs, liabilities, and damages (including, but not limited to, attorney's fees) for injury to persons, including death, or for damage to property resulting from any act or omission of Operator, including Operator's agents, servants, employees, contractors, customers, or invitees, occurring on, or relating to the use of, the Property. Operator agrees to hold the City

harmless for any claim relating to the condition of the Property, Operator having accepted the Property “as is”.

## **Article 7. Termination**

7.1 Termination at Will. In addition to the right to terminate this Agreement after default by Operator, the City shall have the right to terminate this Agreement, for any reason or for no reason at all, upon ninety (90) days written notice to Operator.

7.2 Default by Operator. If Operator violates any of the provisions of this Agreement, Operator shall be in default under this Agreement if the violation is not cured by Operator within thirty (30) days of written notice by the City.

7.3 City’s Remedies. Upon the occurrence of any default by Operator under this Agreement, the City may, in its sole discretion, have the option to pursue any one or more of the following remedies:

a. The City may terminate this Agreement, in which event Operator shall immediately surrender the Property to the City. If Operator fails to do so, the City may, without prejudice to any other remedy that it may have for possession or arrearages on rent, enter on and take possession and expel or remove Operator, without being liable for prosecution or any claim for damages for such entry and removal. Operator shall be liable to the City for, and shall upon demand pay to the City the amount of, any and all loss and damage that the City suffers by reason of the termination.

b. The City may enter on and take possession of the Property and expel and remove Operator, by any lawful means, without liability for such removal. No re-entry or taking possession shall be construed as an election by the City to terminate this Agreement, unless written notice of such intention is given to Operator.

c. Exercise any or all other remedies available to the City under this Agreement, at law, or in equity.

7.4 Non-Waiver. Failure on the part of the City to complain of any action or non-action on the part of Operator, no matter how long the same may continue, shall not be deemed to be a waiver by the City of any of its rights under this Agreement. Further, it is covenanted and agreed that no waiver at any time of any of the provisions hereof by the City shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

## **Article 8. Miscellaneous**

8.1 Ad Valorem Taxes. Should any ad valorem taxes be assessed against the Property during the term of this Agreement due to Operator’s use of the Property, Operator shall be responsible for the timely payment of same.

8.2 Attorney’s Fees and Other Expenses. In the event either party hereto defaults in the faithful performance or observance of any of the terms, covenants, provisions, agreements or conditions contained in this Agreement, the party in default shall be liable for and shall pay to the non-defaulting

party all expenses incurred by such party in enforcing any of its remedies for any such default, and if the non-defaulting party places the enforcement of any or all part of this Agreement in the hands of an attorney, the party in default agrees to pay the non-defaulting party's reasonable attorney's fees.

8.3 Liens. Operator shall not place, or permit to be placed as a result of any action taken by Operator, any lien or security interest of any nature whatsoever on the Property or any part thereof or right thereto, and shall cause any such liens which are placed on the Property to be immediately released or discharged.

8.4 Landlord's Entry. The City may enter in and upon the Property from time to time to inspect same, perform maintenance and other activities pursuant to Section 4.1 of this Agreement, and for any other purposes, provided that such entry (except in the case of emergency) shall be made only in a manner so as not to unreasonably interfere with Operator's use of the Property.

8.5 Assignment. Operator shall not assign this Agreement without the written consent of the City.

8.6 Notices. All notices required or permitted under this Agreement shall be in writing and may be given or served by depositing such notice with the United States Postal Service, certified mail return receipt requested, postage prepaid, or by delivering the same in person, addressed to the party at the address first listed in this Agreement.

8.7 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the City and Operator and may be modified or amended only by a written document duly executed by both the City and Operator.

8.8 Governing Law and Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. All legal actions regarding this Agreement shall be brought in Stephens County, Texas. If any provision hereof is invalid or unenforceable, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

8.9 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative, and either party's using any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

8.10 No Joint Venture; Third Party Beneficiaries. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between the City and Operator. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties and are made solely and specifically for their benefit. No other person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

8.11 Force Majeure. Neither the City nor Operator is required to perform any term or covenant of this Agreement so long as performance is delayed or prevented by *force majeure*, which includes acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the City's or Operator's control and that the City or Operator, by exercising due diligence, cannot prevent or overcome in whole or in part.

8.12 Authority. The signatories hereto represent and warrant that such person has been duly authorized to sign this Agreement on behalf of the respective party.

**EXECUTED TO BE EFFECTIVE AS OF THE EFFECTIVE DATE BY:**

**LESSOR:**

**CITY OF BRECKENRIDGE**

\_\_\_\_\_  
Bob Sims, Mayor

ATTEST:

\_\_\_\_\_  
Heather Robertson-Caraway, City Secretary, CCCII, TRMC

S E A L

**OPERATOR:**

By: \_\_\_\_\_  
\_\_\_\_\_ (Name, Title)

STATE OF TEXAS           §  
COUNTY OF STEPHENS   §

The foregoing instrument was hereby acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021,  
by \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

By: \_\_\_\_\_  
\_\_\_\_\_ (Name, Title)

STATE OF TEXAS           §  
COUNTY OF STEPHENS   §

The foregoing instrument was hereby acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021,  
by \_\_\_\_\_, on behalf of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT “A”**

**AQUATIC CENTER OPERATIONS 2021**

**DAYS & HOURS OF OPERATION**

June 9<sup>th</sup> through August 9<sup>th</sup>

Tuesday through Saturday: 1:00 P.M. – 4:00 P.M. & 4:30 P.M. – 7:30 P.M.  
Sunday: 2:00 P.M. – 6:00 P.M.

Adults Only: Tuesday - Friday: 7:30 A.M. – 8:30 A.M.  
(Aerobics)

Daycares: Wednesdays: 9:00 A.M. – 10:30 A.M. & 10:30 A.M. – 12:00 P.M.

The pool will close at 4:00 pm on July 4<sup>th</sup>.

**MAINTENANCE – POOL CLEANING**

Monday: All Day Maintenance  
Tues., Wed., Fri.: 6:00 A.M. – 7:00 A.M. & 7:30 P.M. – 8:30 P.M.  
Thursday: 6:00 A.M. – 7:00 A.M. & 7:30 P.M. – 8:30 P.M.  
Saturday: 12:00 P.M. – 2:00 P.M. & 7:30 P.M. – 8:30 P.M.  
Sunday: 1:00 P.M. – 2:00 P.M. & 6:00 P.M. – 7:30 P.M.

**FEES**

Tuesday through Sunday (per session) \$2.50  
3 and Under Free

**NO SEASON PASSES**

If for any reason the pool is closed after being open for 30 minutes or more, there will be **NO RAIN CHECKS** or **REFUNDS ISSUED**.

**POOL RENTAL**

Aquatic Center will be available for rental Tuesday through Saturday from 7:45 P.M. until 9:45 P.M. at a fee of \$70.00 per hour, accompanying up to 90 people. (This will include three certified lifeguards who are employees of the City only.) There will be a minimum one-hour charge. The pool may be rented in half hour increments after the initial hour rental. Rental times will be adjacent to opening and closing hours. Refunds will be made by the City due to weather only, at the City’s discretion. For parties that have more than 90 people, there will be an additional charge of \$10.00 per hour for increments of 1 through 30 people. (EXAMPLE 1 to 90 people - \$70.00 per hour, 91 to 120 people - \$80.00 per hour, 121 to 150 people - \$90.00 per hour, 151 to 180 people - \$100.00 per hour, etc.).

**AEROBICS**

Adults only will have use of the Aquatic Center on Tuesday – Friday mornings, 7:30 A.M. until 8:30 A.M., at a fee of \$2.50 per person. (The number of required lifeguards, employees of **the City**, will be on duty.)

**DAY CARE PROGRAM**

Day Care Centers will have use of the Aquatic Center on Wednesdays, 9:00 A.M. until 10:30 A.M. and 10:30 A.M. until Noon at a fee of \$1.50 per child, with a minimum fee of \$60.00 for the 1 ½ hour use up to 60 children and adults maximum. (This will include a supervisor and a minimum of 1 lifeguard, who are employees of **the City** only.)

Each Day Care must provide:

- A. Two in-water assistants to stay in the shallow end of the pool.
- B. One assistant to remain on the pool deck to watch the pool area.
- C. Each day care will pay \$1.50 per child that will be swimming. The day care will be expected to pay in cash or with a check on the morning the day care uses the pool.
- D. All pool rules and regulations will be in effect while the day care is at the pool.

The following ratios of supervisory staff to children shall apply to use City swimming pool by any day care center:

Age of Child – Number of Staff to Number of Children

For Each		
0-23 months	–	1 to 1
2 years	–	1 to 2
3 years	–	1 to 6
4 years	–	1 to 8
5 years	–	1 to 10
6 years & older	–	1 to 12

Staff Member means any person who is employed by a day care center or agency which uses a City swimming pool.

**SWIMMING LESSONS**

**The City** will offer this service at a fee of \$35.00 per person. There will be 5 levels of swimming lessons. Lessons begin (1) **May 28, 2019 through June 20, 2019** and (2) **July 2, 2019 through July 25, 2019**. Lessons held on Tuesdays and Thursdays ONLY.

## **EXHIBIT “B”**

### **AQUATIC CENTER RULES**

**1. ENTRANCE RULES:**

Children 10 (ten) years and under of age **MUST** be accompanied/supervised by a responsible adult. This person must remain with the child at all times.

**2. POOL PATRON REQUIREMENTS:**

- Must be attired in a swimsuit
- Cutoffs and other makeshift swimsuits are not permitted
- Street clothed adults must be confined to the deck area
- During daily operation when the pools are open to the general public, every person seeking admittance must pay the regular admission fees
- Everyone must take a shower before entering the water

**3. DENIAL OF POOL ADMISSION:**

- Intoxication or under the influence of drugs
- Evidence of contagious disease
- Open wounds or sores
- Unable to care for self, due to physical or mental disability
- Any patron that may be detrimental to pool operations, upon the judgment of the Pool Manager
- The swimmer is wearing excessively brief or revealing swimwear or is otherwise wearing clothing inappropriate for swimming, i.e. cutoffs, shorts, etc. T-Shirts may be worn over swimsuits at Pool Manager’s discretion.
- Any other conditions that, in the opinion of the Manager, will jeopardize the health and safety of the general public.

**4. PROHIBITED ACTIONS:**

- Abusive or profane language
- Use of all tobacco products
- Alcoholic Beverages
- Drugs
- Use of Glass Bottles or Containers
- Running, dunking, riding on shoulders, fighting, rough play, pushing, shoving, either in water or on the deck
- Acts of physical affection
- Flips, back or splash dives from pool side and no diving in shallow areas
- Swimming in the diving area
- Standing on pool ropes, lifeguard stands, and ladders
- No loitering adjacent to the pool entrance or office area
- Animals inside the pool area
- Pool patrons wearing diapers **MUST** wear Swimmer’s Diapers



- Use of scuba gear
- Mistreatment or abuse of public property
- Non-swimmers in water deeper than their shoulders, unless a person can display the ability to swim two (2) widths of the pool using a recognized stroke, he/she is considered a non-swimmer
- Swimmers running and diving off the edge of the pool, diving or jumping off the lifeguard stands, diving from the deck backward, or doing flips off the side of the pool
- Spitting, spouting of water, blowing the nose, urinating, or defecating in the pool is strictly prohibited

**5. DIVING AREA RULES:**

- Only one (1) person is allowed on a diving board at a time
- Divers are allowed only one (1) bounce on a diving board per dive
- Divers must dive straight off the end of the board; NO FLIPS
- Divers must wait until the person in front of them has reached the side or ladder and the area is clear
- Hanging on the board, bombing, running, and cartwheeling are forbidden.

**6. MIRACLE SLIDE RULES:**

- Attendant personnel must be obeyed at all times
- User must be able to swim unless otherwise approved
- One slider at a time-No chains unless otherwise approved
- Stay seated or lying down in the flume-NO STOPPING
- Upon exiting from the slide, move out of splash down area immediately
- All normal pool regulations apply
- No horseplay, running on stairs, landings or waterslide

**7. INFANTS THROUGH PRESCHOOL:**

- Children, age six (6) and under must be directly attended (within five [5] feet ) of a swimming adult during Public Swim – includes restrooms
- Flotation devices are not recommended, unless they are properly fitted and USCG approved
- Diaper changes shall only occur in the restrooms
- Pool patrons wearing diapers **MUST** wear swimmers diapers

**8. ITEMS PROHIBITED:**

- Bandages
- Oil based body lotions
- Chewing Gum
- Pets
- Glass Objects
- Skateboards, skates, bikes
- Loud Music Players
- Weapons of any type
- Tobacco

- Refreshment coolers (except for private parties)
- Carry-in food or drinks (except for private parties)

**9. GENERAL RULES:**

- Pool Managers may eject persons from the pool area for just cause. In serious cases of misconduct, the Police Department will be called.
- No person, patron or non-patron, may interfere with an emergency rescue, the administration of emergency first aid or resuscitation, or other emergency procedures. It shall also be prohibited for anyone to falsely summon emergency assistance or use any emergency rescue or first aid for any purpose other than an actual emergency (training excluded).
- There will be unannounced random safety drills occurring during pool sessions for the continued training of all pool personnel and the safety of our pool patrons.