

FACILITY FUNDING AGREEMENT

THIS FACILITY FUNDING AGREEMENT ("Agreement") is made, entered into, and effective as of the ____ day of ____, 2008, by and between Walter Schroeder Aquatic Center LTD. ("WSAC") and Wisconsin Swimming, Inc. , ("WSI").

1. EFFECTIVE DATE AND TERM

- 1.1. This Agreement is effective _____, 2008, and will continue for a term of ten years, provided that this Agreement is expressly conditioned upon WSAC closing the purchase of the Walter Schroeder Aquatic Center facility. If the purchase does not close within 6 months of the execution of this Agreement, the Agreement shall be void. .

2. OBLIGATIONS OF WSI:

- 2.1. Provided WSAC is not in default under this Agreement, WSI shall pay to WSAC, ten annual payments of Twenty Five Thousand Dollars (\$25,000.00) for a total payment of Two Hundred Fifty Thousand Dollars (\$250,000.00). The first payment will be due 30 days after the close of the Purchase of the facility by WSAC. Subsequent yearly payments will be due March 31 each year.
- 2.2. It shall be an express condition of WSI's obligation to make any of the annual payments that WSAC continue as an operating facility for hosting USA swimming sanctioned competitive swim meets, with adequate locker room, deck and spectator facilities (The current facility meets these standards). If WSAC does not so continue, WSI shall have no obligation to make further annual payments.

3. OBLIGATIONS OF WSAC.

- 3.1. In consideration of the promise by WSI to make the above payments, WSAC agrees to the following:
- 3.2. Wisconsin Swimming, Inc. may appoint one representative to the board of Walter Schroeder Aquatic Center, Ltd. during the ten year term of this Agreement. WSI's board position will not have a vote except in the case listed in 3.4 regarding what meets will be hosted at the WSAC. The WSI appointee will be a person reasonably acceptable to the other board members. If the WSI appointee resigns or is removed, WSI may appoint a replacement under the same terms and conditions.
- 3.3. Wisconsin Swimming, Inc. may hold three championship meets per year, 2 long course in the summer, and one short course in the spring, during the weekends that have traditionally been used for those meets. The exact dates each year will be agreed to between WSI and WSAC.
- 3.4. WSAC will guarantee up to eight meets per year (there could be more), in a combination of up to five during the long course season and/or three during the short course season plus the three Isc championship meets per year. Meets can be one, two, or multiple

consecutive days in length- and are exclusively available for WSI member clubs to host events.. The available weekends for these meets will be set in advance of the dates when WSI sets its seasonal meet schedule by mutual agreement of WSAC and the host WSI team. Bids for these weekends can be submitted to the WSAC for review on a mutually agreed upon date and teams will be notified in writing, within a reasonable time who has received the opportunity to host meets on those designated weekends. The designated representative from WSI who is on the board will be able to give input on the meet bids and be able to vote on the meets that will be hosted at the WSAC.

- 3.5. WSAC will establish a schedule of standard meet rental charges, and will not discriminate against or among WSI member clubs with respect to rental charges for use of the facility. However, a team that uses the WSAC as its primary pool would not necessarily pay rent.
- 3.6. Funds provided by WSI are earmarked for the renovation, maintenance and operation of the center represented as “phase one” providing for among other things the repair or replacement of bulkheads, starting blocks and filters. WSAC and WSI both agree that after \$250,000 worth of renovations in Phase I have been completed that the Walter Schroeder Aquatic Center, LTD. has fulfilled its commitment to use the funds provided by WSI to renovate and maintain the center.

4. REPRESENTATIONS,

- 4.1. Each party represents and warrants to the other with respect to the rights and obligations contained herein:
 - 4.1.1. it has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement;
 - 4.1.2. this Agreement constitutes a legal, valid, binding obligation enforceable against such party in accordance with its terms;
 - 4.1.3. its execution of and performance under this Agreement shall not violate any applicable existing regulations, rules, statutes or court orders of any local, state or federal government agency, court or body.

5. LIABILITY WAIVER

- 5.1. Neither Party shall be liable for any indirect, incidental, special, punitive or consequential damages arising under this Agreement or from any breach or partial breach of the provisions of this Agreement or arising out of any act or omission of, its directors, officers, employees, servants, contractors and/or agents.

6. CONFIDENTIALITY

- 6.1. WSAC and WSI shall ensure that any and all information and documents obtained from the other party during the term of this Agreement, and identified as being confidential information will be held in strict confidence and will not disclosed or be used for any purpose other than a party’s performance required by this Agreement, and except for

disclosures to Affiliates, directors, officers, employees, advisors and agents with a bona fide need to know any such information solely for the purpose of analyzing, investigating, or evaluating issues arising under this Agreement. The term "Affiliate" shall mean any member club of WSI having a vote in the House of Delegates.

- 6.2. All documents, data, or information furnished by WSAC or WSI is the sole property of that party. Upon the expiration of this Agreement and any extensions thereof, those documents, data, or information shall be returned to its owner if readily available.
- 6.3. Neither WSAC nor WSI may make any news release, public announcement, denial or confirmation concerning all or any part of this Agreement or use the other's name in sales or advertising materials, or in any manner advertise or publish the fact that the companies have entered into this Agreement, or disclose any of the details of this Agreement to any third party, including the press, without the prior written consent of the other party, except such disclosures required by law, or the rules and regulations of the relevant government agencies.

7. DEFAULT

- 7.1. It shall be an event of default if WSAC fails to fulfill any obligation in Section 3 above, or if WSAC shall cease to operate as a facility for hosting competitive swim meets.
- 7.2. Notice and Cure. Neither party shall be in default under this Agreement unless and until the other party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after written receipt of such notice; provided, however, that where a default cannot be reasonably cured within the thirty (30) day period, if the defaulting party shall promptly proceed to cure the default with due diligence, the time for curing the default shall be extended for a period of up to ninety (90) days from the date of receipt of the default notice.
- 7.3. Failure to Cure. Upon the failure by the defaulting party to timely cure any default after notice thereof from the non-defaulting party, the non-defaulting party may terminate this Agreement or may take any action it determines, in its discretion, to be necessary to correct the default, and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach.
- 7.4. Equitable Relief. The parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that each party shall be entitled to injunctive or similar preliminary relief to prevent or cure breaches of the provisions of this Agreement by the other and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they may be entitled by law or equity.
- 7.5. Events of Default. An event of default shall also be deemed to have occurred if a party becomes insolvent, or institutes or has instituted against it bankruptcy proceedings which are not dismissed within ninety (90) days of filing, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a

receiver is appointed on account of its insolvency, and the non-defaulting party may immediately terminate this Agreement.

8. NOTICES

8.1. Notice Address. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed as follows:

If to WSAC:

If to WSI:

8.2. Manner of Giving Notice. Unless otherwise provided herein, notices shall be sent by certified U.S. Mail, return receipt requested, or by commercial overnight delivery service which provides acknowledgement of delivery and shall be deemed delivered: if sent by U.S. Mail, five (5) days after deposit, or if sent by commercial overnight delivery service, upon verification of receipt.

9. ASSIGNMENT, SUCCESSION

9.1. Agreement. Neither Party shall assign, sublet or otherwise transfer this Agreement or any rights hereunder to any other party without the prior written consent of the other Party which consent shall not be unreasonably held.

9.2. Subject to the provisions of this Article, each of the parties' respective rights and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective permitted successors and assigns.

10. GOVERNING LAW

10.1. This Agreement shall be interpreted and construed in accordance with the laws of the state of Wisconsin, without regard to its conflict of laws principles.

11. NOT A PARTNERSHIP

11.1. The parties agree that this Agreement does not create a partnership between, or a joint venture of WSAC and WSI.

12. DISPUTE RESOLUTION

- 12.1. Forum. It is the intent of WSI and WSAC that any disputes, which may arise between them, or between the employees of each of them, be resolved as quickly as possible. Quick resolution may, in certain circumstances, involve immediate decisions made by the parties' representatives. When such resolution is not possible, and depending upon the nature of the dispute, the parties hereto agree to resolve such disputes in accordance with the provisions of this Article. However, the informal dispute resolution process set forth herein shall not be binding upon any party with respect to requests for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual dispute.
- 12.2. Procedure. WSAC and WSI shall each designate, by separate letter, representatives as points of contact and decision making with respect to the obligations and rights of the parties, said letters to be furnished by each party to the other within thirty (30) days from the date of this Agreement. Any disputed issues arising during the Term of this Agreement shall in all instances be initially referred to the parties' designated representatives. The parties' designated representatives shall render a mutually agreeable resolution of the disputed issue, in writing, within ten (10) business days of such referral. Either party may modify the designated representative upon written notice to the other party.
- 12.3. Additional Remedies. In the event that any claims or disputes arising under the terms and provisions of this Agreement cannot be resolved within the ten business (10) day time period, the parties, subject to the limitations contained in this Agreement, may seek any remedy available at law or equity.

13. MISCELLANEOUS

- 13.1. Headings. The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the terms, provisions or conditions of this Agreement.
- 13.2. Construction. In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- 13.3. Severability. This Agreement is not severable. If any portion is held invalid, then the entire Agreement shall also be invalid.
- 13.4. Entire Agreement; Amendment. This Agreement, and any Exhibits referenced and attached hereto or to be attached hereto, constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, understandings and agreements with respect hereto, whether oral or written. This Agreement may be amended only by a written instrument executed by the party against whom enforcement of the modification is sought.

- 13.5. Non-Waiver. No failure to exercise and no delay in exercising, on the part of either party hereto, any right, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein. Any waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless and until agreed to in writing by both parties.
- 13.6. Performance. All actions, activities, consents, approvals and other undertakings of the parties in this Agreement shall be performed in a reasonable and timely manner.

Walter Schroeder Aquatic Center, LTD.

By: _____

Printed Name _____

Title: _____

Wisconsin Swimming, Inc.

By: _____

Printed Name _____

Title: _____