

## LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made this 9th day of September 2013, by and between the Upper Bucks YMCA (“**Lessor**”) and the Southern Lehigh School District (“**Lessee**”).

**WHEREAS**, Lessor and Lessee, in consideration of the mutual covenants herein contained and other good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound hereby, agree as follows:

1. Lease and Premises.

(A) Lessor hereby leases to Lessee the non-exclusive right to use a portion of the building and improvements at the Upper Bucks YMCA facility located at 401 Fairview Avenue, Quakertown, Pennsylvania 18951. The use shall consist of the exclusive use of the 6-lane portion of the swimming pool at certain designated times as more fully set forth in Sections 3 and 4, the non-exclusive right, in common with other entitles to use the same, of both the men’s and women’s locker facilities and an exclusive storage area that will be designated by Lessor (the “**Premises**”).

(B) Together with the right to the non-exclusive use, in common with others entitled to use the same, of all such automobile parking areas, driveways, corridors and footways, and other such facilities attached hereto, subject, however to the terms and conditions set forth below.

2. Term.

(A) The term of the Lease shall commence on Tuesday, October 1, 2013, and automatically terminate on Saturday, March 31, 2018, unless otherwise agreed in writing by both parties.

3. Use of the Premises.

(A) Lessee shall have the right to the non-exclusive use of the Premises from October through March between 3:15 and 5:30, Monday through Friday. A detailed annual schedule will be prepared by Lessee every August during the term of this contract and submitted in writing to the Lessor for approval (“**Annual Schedule**”). Lessor and Lessee shall schedule an annual meeting every August to discuss and Finalize the Annual Schedule (“**Annual Meeting**”) Lessor shall have the sole right to approve or reject any portion of the Annual Schedule due to other scheduled activities at the YMCA facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Annual Schedule.

(B) Lessee shall have the right to submit a request, in writing, for additional practice times on Saturdays from October through March during the Annual Meeting (“**Additional Saturday Practice Time**”). Lessor shall have the sole right to approve or reject this request for Additional Saturday Practice Time due to other scheduled activities at the YMCA

facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Additional Saturday Practice Time.

(C) Lessee shall have the right to submit a request, in writing, for additional use of Premises during the Term of the Lease at least 30 days in advance of such intended use (“**Additional Practices**”). Lessor shall have the sole right to approve or reject any requests for Additional Practices due to other scheduled activities at the YMCA facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Additional Practices. The Additional Practices shall be invoiced to the Lessee on a monthly basis. The cost for the Additional Practices shall be \$100.00 per hour and considered Additional Rent (Defined Below).

(D) Lessee shall have the right to obtain additional access to the Premises during the competitive season as defined by PIAA (“**Additional Access for Competitive Season**”). Pre-Season starting in October until the start of the PIAA season the team may use the Premises at the cost of the swimmers. Lessor shall have the sole right to approve the Additional Access for Competitive Season based on the requested dates and times that may conflict with other scheduled activities at the YMCA facility. The Additional Access for Competitive Season shall be invoiced to the Lessee on a monthly basis. The cost for the Additional Access for Competitive Season shall be \$100.00 per hour and considered Additional Rent (Defined Below).

(E) Lessee shall share the men’s and women’s locker rooms with the general membership of the Lessor.

(F) Lessee shall submit, in writing, a schedule for swim meets to Lessor (“**Swim Meet Schedule**”). Lessor shall have the sole right to approve or reject any portion of the requested Swim Meet Schedule due to other scheduled activities at the YMCA facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Swim Meet Schedule. Swim Meets shall fall on either Wednesdays and/or Fridays between 3:15 p.m. and 6:30 p.m. In the event the Swim Meets extend past 6:30 p.m., Lessee agrees to pay for the additional time, at a cost of \$100.00 per hour. This extended time for Swim Meets shall be invoiced on a monthly basis and considered Additional Rent (Defined Below).

(G) Lessee shall be permitted to operate a concession stand during Swim Meets in order to fundraise for the swim team. The concession stand shall be located in the lobby. A list of merchandise to be sold at the concession stand shall be submitted to Lessor at least two (2) weeks prior to each Swim Meet. Lessor shall have the sole right to approve or reject any portion of the submitted list.

(H) Lessee shall have the right to use the Premises during the winter holiday break. The holiday schedule shall be submitted, in writing, to Lessor at the Annual Meeting (“**Holiday Schedule**”). Lessor shall have the sole right to approve or reject any portion of the Holiday Schedule due to other scheduled activities at the YMCA facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Holiday Schedule.

(I) Lessor at its sole discretion may close the YMCA facility or any portion thereof, to the Lessee, or any individual associated to Lessee's use, for any reason that may endanger the health and safety of participants, spectators, etc. Such action may include, but not be limited to chemical treatment problems, filtration problems, power failure, pool turbidity, severe weather, etc. In case of an interruption, of use under this clause, of more than one week, the SLSD obligation to pay rent shall be suspended and, at the election of the School District, this Lease Agreement may be cancelled.

4. Rental Payments.

(A) Lessee shall pay Lessor Five Thousand Dollars (\$5000.00) per year or competitive season ("**Annual Rent**"). Payments for Annual Rent shall be made to Lessor's principal office located at 401 Fairview Ave, Quakertown PA 18951. Lessee has the option of paying the Annual Rent as follows: i) pay rent in one (1) payment of Five Thousand Dollars on or before December 1<sup>st</sup> of each year; or ii) pay rent in four (4) equal installment payments. The installment payments shall be in the amount of One Thousand, Two-Hundred and Fifty Dollars (\$1,250) and due on or before the 1<sup>st</sup> day of December, January, February and March of each year.

(B) The Annual Rent shall cover all basic usage of the Premises. The Annual Rent shall not include Additional Practice, Additional Access for Competitive Season and additional time needed for Swim Meets. All of these additional hours will be billed at \$100 per hour and billed on monthly basis as set forth below ("**Additional Rent**").

(C) Lessor will bill Lessee on a monthly basis. Terms of the invoice will be net 10.

(D) All Late payments for Annual Rent shall be subject to a finance charge of 1.5% per month. Annual Rent Payments shall be deemed late if received after the 10<sup>th</sup> of each month. All

5. Timing System.

(A) Lessee further agrees to donate to Lessor Five Thousand Dollars (\$5,000.00) for the sole purpose of the Lessor purchasing a timing system. Lessee shall have the right to use the timing system for their Swim Meets at the Premises. Lessor and Lessee acknowledge and agree that this payment shall be a donation to the purchase of the timing system. Lessor and Lessee further acknowledge and agree that the timing system shall be solely owned by Lessor. Lessor shall have the sole responsibility to maintain and repair the timing system and ensure that it is in good working order for Swim Meets.

6. Swim Meets.

(A) Lessee shall be responsible to provide all the coaches, workers and representatives needed to host Swim Meets at the Premises, including but not limited to game management of the facility.

(B) Lessee shall be responsible to control and supervise all activities of team members, coaches, workers, representatives, spectators and the concession stand during Swim Meets.

7. Liability Insurance.

(A) Lessee, at Lessee's sole cost and expense, shall provide and maintain in force during the term of this Lease liability insurance in the minimum amount of One Million Dollars (\$1,000,000.00) combined single limit coverage, covering Lessor. Lessee shall cause Lessor to be named as an additional insured on such policy. Lessee shall furnish Lessor with an authorized certificate that such liability insurance is in effect within one week of the commencement of the Term.

8. Covenants of Lessee.

(A) Lessee covenants and agrees that it will, without demand:

- i. Keep the Premises clean and free from all dirt and refuse matter, and to maintain the Premises in good order and repair.
- ii. To use every reasonable precaution against fire.
- iii. To not disturb, annoy or harass any member of the YMCA or its employees, administrators, representatives, workers..etc.
- iv. To comply with the rules and regulations of the Lessor, including but not limited to, the member code of conduct and all pool rules as set forth by Lessor. Lessor shall provide Lessee a copy of the code of conduct and a copy of the pool rules. Lessee acknowledge and agrees that Lessor may change or add to the code of conduct and/or pool rules at any time. No change or addition to the code of conduct and/or pool rules shall become effective until Lessee has been provided with a written copy of the changed or added rules to the code of conduct and/or pool rules. Lessee agrees that a violation of the code of conduct and/or a violation of the pool rules shall be a violation of this Lease. Violation of the code of conduct and/or pool rules by Lessee shall permit Lessor to exercise any and all remedies provided for in this Lease.
- v. To comply with the rules and regulations of the PIAA.
- vi. To provide an adequate qualified supervisor(s) whose prime responsibility(ies) will be the operation of Lessee's programs in Lessor's pool; supervision of the swimmers in the pool, locker rooms and all automobile parking areas, driveways, corridors and footways, and other such

facilities attached hereto; and who will be present at all times the pool is in use by Lessee.

(B) Lessee covenants and agrees that it will not do one of the following without the consent in writing of the Lessor first had and obtained:

- i. Occupy the Premises in any manner or for any other purpose than as a competitive swimming training and league competition facility.
- ii. Neither make nor suffer to be made any alterations, improvements, additions, or other structural changes to or on the Premises without the written consent of the Lessor first had and obtained.

9. Indemnification.

(A) Lessee shall indemnify Lessor and its administrators, agents, employees, their successors and assigns, officers and directors and save them harmless from suits, actions, damages, liability and expenses (including court costs and reasonable attorney's fees) in connection with loss of life, bodily or personal injury or property damage arising from or out of any occurrence in, upon or at the Premises or use by Lessee of said Premises, or occasioned wholly or in part by any act or omission of Lessee which is not the result of Lessor's intentional or negligent acts.

(B) Lessee shall store its property in a storage area designated by Lessor at its own risk and hereby releases Lessor and Lessor's administrators, agents, employees, their successors and assigns, officers and directors from all claims of every kind resulting in loss of life, personal or bodily injury or property damage which is not the result of Lessor's intentional or negligent acts. Lessor and its agents shall not be responsible or liable at any time for any loss or damage to either the person or property of Lessee that may be occasioned by or through the acts or omissions of the persons using the YMCA facilities. Lessor and its administrators, agents, employees, their successors and assigns, officers and directors shall not be responsible or liable for any defect, latent or otherwise in the Premises or any equipment, machinery, utilities, appliances or apparatus therein, except as herein before stated, including claims arising from the negligence of the Lessor, its administrators, agents, employees, their successors and assigns, officers and directors.

10. Assignment and Subletting.

(A) Notwithstanding any provision herein to the contrary or reference herein to concessionaires or subLessees or otherwise, Lessee agrees not to assign or in any way transfer this Lease or any estate or interest therein, and not to lease or sublet the Premises or any part or parts thereof or any right or privilege appurtenant thereto, and to allow anyone to conduct business at, upon or from the Premises (whether concessionaire, franchisee, licensee, permitted subLessee, department operator or otherwise), or to come in by, or through or under it, in all cases either by voluntary or involuntary act of Lessee or by operation of law or otherwise, without the prior written consent of Lessor.

11. Attornment and Subordination.

(A) In the event any proceedings are brought for the foreclosure of, or in the event of the conveyance by deed in lieu of foreclosure of, or in the event of exercise of the power of sale under, any mortgage made by Lessor covering the Premises, or in the event Lessor sells, conveys or otherwise transfers its interest in the Facility or any portion thereof containing the Premises, this Lease shall remain in full force and effect and Lessee hereby attorns to and covenants and agrees to execute an instrument in writing reasonable satisfactory to the new owner whereby Lessee attorns to such successor in interest and recognizes such successor as the Lessor under this Lease. Payment by or performance of this Lease by any person, firm or corporation claiming an interest in this Lease or the Premises by, through or under Lessee without Lessor's consent in writing shall not constitute an attornment or create any interest in this Lease or the Premises. The new owner (including any lender) may, at its option, accept or reject such attornment.

(B) Lessee agrees that this Lease shall, at the request of Lessor, be subordinate to any mortgages that may now be or hereafter are placed upon the YMCA Facility and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements and extensions thereof. Lessee also agrees that any mortgagee or beneficiary may elect to have this Lease constitute a prior lien to its mortgage, and in the event of such election, and upon notification by such mortgagee or beneficiary to Lessee to that effect, this Lease shall be deemed prior in time to such mortgage, whether this Lease is dated prior to or subsequent to the date of said mortgage. Lessee agrees that upon the request of Lessor, or any mortgagee or beneficiary, Lessee shall execute whatever instruments may be required to carry out the intent of this Section. Without limiting the foregoing, Lessee agrees to execute upon request a subordination agreement (recordable form). Notwithstanding anything to the contrary contained in such form, no such mortgagee or beneficiary shall be required to grant non-disturbance rights to Lessee as a condition of such subordination. In no event shall any lender, as holder of a mortgage or other security instrument on the YMCA Facility, or as successor Lessor, be liable to Lessee for any act or omission or any prior Lessor or for any liability or obligation of any prior Lessor or for any liability or obligation of any prior Lessor occurring prior to the date that such lender or any subsequent owner acquires title.

12. Failure to Pay Rent or Perform Other Obligation.

Lessee shall be in default of this Lease as follows:

(A) Whenever Lessee shall default in the payment of any installment of Annual Rent or Additional Rent, or any day upon which the same shall be due and payable, or

(B) Whenever Lessee shall default in the performance of any other obligation, covenant or agreement by it to be performed or observed under this Lease, and such default shall continue and shall not be remedied by Lessee within ten (10) days after Lessor shall have given to Lessee a notice specifying the same, or, in the case of a happening or default which cannot with due diligence be cured within a period of ten (10) days and the continuance of which for the period required for cure will not subject Lessor to the risk of criminal liability or termination of

any superior Lease or foreclosure of any superior mortgage, if Lessee shall not duly institute within such five (5) day period and promptly and diligently prosecute or completion all steps necessary to remedy the same.

13. Remedies Upon Default by Lessee.

(A) Termination of Lease: Lessee agrees and it is hereby made a condition of this Lease, or any extension thereof, that if Lessee shall commit any of the breaches enumerated in Section 12 hereof, then Lessor, in the event of any such breach or breaches, at its sole option, may give Lessee a Notice of Intention to end the term of this Lease at the expiration of five (5) days from the service of such Notice of Intention, and upon the expiration of said five (5) day period this, Lease and the term and estate hereby granted (whether or not the term shall theretofore have commenced) as well as all of the right, title and interest of the Lessee hereunder shall wholly cease and expire and become void in the same manner and with the same force and effect (except as to Lessee's liability) as if the date fixed in such notice were the date herein originally specified for the expiration of the term herein demised; and Lessee shall then immediately quit and surrender to Lessor the demised premises, including, any and all buildings and improvements thereon, and Lessor may enter into and repossess the demised premises by summary proceedings, detainer, ejectment, or otherwise and remove all occupants thereof and at Lessor's option, any property thereon without being liable to indictment, prosecution of damage therefore.

(B) Acceleration of Rent: In the event of any default hereunder as set forth in Section 12, Lessee agrees that thereupon and in such event the whole Annual Rent reserved for the balance of the term and all other sums payable hereunder as rent for the balance of the term or any part thereof shall immediately become due and payable in advance, and Lessor may immediately proceed to court to distain, collect or bring action for the said whole Annual Rent or such part thereof provided for in case of rent in arrears, or may file a proof of claim in any bankruptcy or insolvency proceedings for such rent, or Landlord may institute any other proceedings, whether similar to the foregoing or not, to enforce payment thereof.

(C) Waiver of Notice. If Lessor shall commence to recover possession by legal process either at the end of the term or the sooner termination of this Lease, or for non-payment of rent or otherwise, Lessee expressly waives all rights to legal notice (by statute or common law) except as provided in Section 12. Without limitation of the foregoing, the Lessee hereby waives and all demands, notices of intention and notices of action or proceedings which may be required by law to be given or taken prior to any entry or re-entry by Lessor by summary proceedings, ejectment or otherwise, provided, however, that this shall not be construed as a waiver by Lessee of any notices to which this Lease expressly provides Lessee is entitled.

(D) Recovery of Legal Expenses. In case suit shall be brought for recovery of possession of the leased premises, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other amount due under the provisions of this lease, or because of the breach of any other covenant herein contained on the part of

Lessee to be kept or performed, and a breach shall be established, Lessee to be kept or performed, and a breach shall be established, Lessee shall pay to Lessor all expenses incurred therefore, including, all court costs and reasonable attorney's fees.

14. Miscellaneous.

(A) The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this Lease nor in any way affect this Lease.

(B) Lessee shall not record this Lease without prior written consent of Lessor.

(C) All terms and conditions of this Lease shall be kept strictly confidential to Lessor and Lessee.

(D) Payment by Lessee or receipt by Lessor of a lesser amount than Annual Rent, Additional Rent or other charges herein stipulated shall be deemed to be on account of the earliest stipulated Annual Rent, Additional Rent or other charges, and no endorsement or statement on any check or any letter accompanying any check payment as Annual Rent, Additional Rent or other charges shall be deemed an accord and satisfaction, and Lessor shall accept such check or payment without prejudice to Lessor's right to recover the balance of such Annual Rent, Additional Rent or other charges or pursue any other remedy in this Lease against Lessee.

(E) This Lease shall be construed in accordance with the laws of Pennsylvania. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(F) Time is of the essence of this Lease. Notwithstanding the fact that certain references elsewhere in this Lease to acts required to be performed by Lessee hereunder omit to state that such acts shall be performed at Lessee's sole cost and expense, unless the context clearly implies to the contrary each and every act to be performed or obligations to be fulfilled by Lessee pursuant to this Lease shall be performed or fulfilled at Lessee's sole cost and expense. Lessee shall be fully responsible and liable for the observance and compliance by concessionaires of and with all terms and conditions of this Lease, which terms and conditions shall be applicable to concessionaires as fully as if they were the Lessee hereunder; and failure by a concessionaire fully to observe and comply with the terms and conditions of this Lease shall constitute a default hereunder by Lessee. Nothing contained in the preceding sentence shall constitute a consent by Lessor to any concession, subletting or other arrangement proscribed by Section 10.



**IN WITNESS WHEREOF**, Lessor and Lessee have signed this Lease as of the day and year first above written.

**Lessor:**

**UPPER BUCKS YMCA**

By: \_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Aquatics Director

**Lessee:**

**SOUTHERN LEHIGH SCHOOL DISTRICT**

By: \_\_\_\_\_  
Superintendent

\_\_\_\_\_  
Coordinator or Athletic Services