

## LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made this \_\_\_\_ day of Sept 2016, by and between the Muhlenberg College (“**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 Memorial Hall located on the Lessor’s campus with an address of 2400 Chew Street, Allentown, PA 18104. 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 (the “**Premises**”).

(B) Together with the right to the non-exclusive use, in common with others entitled to use the same, 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 4, 2016, and automatically terminate on Saturday, April 1, 2017, 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 p.m. and 5:00 p.m., Monday through Friday and 8:00 a.m. and 11:00 a.m. Saturday. Lessor and Lessee shall schedule an annual meeting to discuss and finalize the Schedule; both parties shall have the sole right to approve or reject any portion of the Schedule due to other scheduled activities at the Memorial Hall facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Schedule. If both parties cannot agree on a Schedule, the lessee may terminate the lease with thirty (30) days notice.

(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. Lessor shall have the sole right to approve or reject any requests for Additional Practices due to other scheduled activities at the Memorial Hall facility. However, Lessor shall not withhold, condition or delay its consent and approve to the additional Practices. 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). If both parties cannot agree the lessee may terminate the lease with thirty (30) days notice.

(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 Memorial Hall 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). If both parties cannot agree the lessee may terminate the lease with thirty (30) days notice.

(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 Memorial Hall facility. However, Lessor shall not withhold, condition or delay its consent and approve to the Swim Meet Schedule. Swim Meets shall fall during the week between 3:00 p.m. and 6:30 p.m and/or on Saturday after 1:00 p.m. and/or other times that would need agreed upon. In the event the Swim Meets extend past the agreed upon times, 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 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 Memorial Hall facility. However, Lessor shall not unreasonably withhold, condition or delay its consent and approve to the Holiday Schedule.

(H) Lessor at its sole discretion may close the Memorial Hall 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 Lessee obligation to pay rent shall be suspended and, at the election of the college, this Lease Agreement may be cancelled.

#### 4. Rental Payments.

(A) Lessee shall pay Lessor a sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) per year as rent for the pre and competitive seasons (“**Annual Rent**”). Payments for Annual Rent shall be made to Lessor’s Athletic Department Office at 2400 Chew Street, Allentown, PA 18104. Lessee has the option of paying the Annual Rent as follows: i) pay rent in one (1) payment of Twelve Thousand Five Hundred Dollars on or before January 15<sup>th</sup> of each year; or ii) pay rent in four (4) equal installment payments. The installment payments shall be in the amount of Three Thousand One Hundred Twenty-Five Dollars (\$3,125) and due on or before the 1<sup>st</sup> day of November, December, January and February 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 or a yearly basis with payments due by January 15<sup>th</sup> of the competitive season.

(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 30<sup>th</sup> of each month.

#### 5. Timing System and Starting Blocks.

(A) Lessee shall be responsible for providing its’ own timing system and starting blocks for meets. Lessee shall have the sole responsibility to maintain and ensure safe operation of starting blocks and timing system.

#### 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 harass any member of the Lessor's community including students, employees, administrators, representatives, workers..etc.
- iv. To comply with the rules and regulations of the PIAA.
- v. 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) Lessor shall indemnify Lessee and its administrators, agents, employees, their successors and assigns, officers and directors and save them harmless from suits, actions, damages, liability and expenses 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) Lessor shall indemnify, hold harmless and defend the Lessee its, officers, agents, servants and employees harmless from the and against any and all liability, less, suits, judgments, and expenses, counsel fees, and liabilities with respect to injury to, or death of any person or persons, or damage to property of any kind, arising out of, or caused, or claimed to have been caused, in whole or part, by the acts of omissions of the Lessor, its officers, agents, servants and employees.

(C) 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 Memorial Hall 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 sub-Lessees 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 of Lessee thereto, and to allow anyone to conduct business at, upon or from the Premises (whether concessionaire, franchisee, licensee, permitted sub-Lessee, 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.

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/Lessor.

(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) Should the lessor breach this agreement the Lessee may at its sole option give the Lessor Notice of Intention to end the Lease at the expiration of five (5) days from service of such Notice and upon expiration of the 5 day period the lease shall be deemed to be null and void.

(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.

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.

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

**Lessor:**

**MUHLENBERG COLLEGE**

By: Assistant Treasurer

\_\_\_\_\_  
Athletic Director

**Lessee:**

**SOUTHERN LEHIGH SCHOOL DISTRICT**

By: Superintendent

\_\_\_\_\_  
Coordinator of Athletic Services