

## FAIRVIEW CAMPUS/NATATORIUM GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "Lease") is made and entered into as of the \_\_\_ day of \_\_\_\_\_ 2019 (the "Effective Date") by and between THE APPOQUINIMINK SCHOOL DISTRICT ("Landlord") and \_\_\_\_\_ ("Tenant").

### RECITALS:

WHEREAS, Landlord is the owner of approximately \_\_\_ acres as shown on the attached Exhibit A (the "Property") which Property is part of a larger campus of school buildings and facilities located in Townsend, New Castle County, Delaware (the "Fairview Campus"); and,

WHEREAS, Tenant desires to lease the Property from Landlord for the uses set forth herein and in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the covenants and agreements contained in this Lease and other good and valuable consideration, and intending to be legally bound, Landlord and Tenant agree as follows:

### **1. Agreement to Lease.**

1.1 Lease. Commencing on the Effective Date, and subject to the terms and conditions of this Lease, Landlord leases to Tenant, and Tenant leases from Landlord, the Property.

1.2 Easement to entrance to Fairview Campus. In addition to the Lease of the Property granted by this Lease, Tenant is hereby granted a non-exclusive easement across that portion of the Fairview Campus as shown on the attached Exhibit A for the limited purposes of vehicular and pedestrian ingress and egress from Old State Road to the Property (the "Access Easement"). Landlord shall be responsible for maintaining the access road(s) located within the Access Easement, provided, however, that Tenant shall be responsible for all damage caused by Tenant, its employees and patrons beyond normal wear and tear.

### **2. Term, Use and Surrender.**

2.1 Term. Tenant will have and hold the Property for a term (the "Lease Term") of ninety-nine (99) years, commencing as of Effective Date and ending on the day ninety-nine (99) years following the Effective Date (the "Termination Date") unless sooner terminated in accordance with the terms hereof.

#### 2.2 Use.

(a) Tenant shall construct and operate an indoor swimming facility together with associated parking and landscaping on the Property as shown on the attached Exhibit B and described in the attached Exhibit C (collectively, the "Facilities"). Tenant shall make the

Facilities available to Landlord for Landlord's use as described in Exhibit D ("Landlord's Use"). Tenant's construction and operation of the Facilities is the sole and exclusive permitted use of the Property by Tenant (the "Permitted Use"). Tenant shall operate the Facilities in strict compliance with all applicable laws and regulations. No alcoholic beverages shall be permitted on the Property without Landlord's prior written approval.

(b) Landlord and Tenant acknowledge that Tenant shall be required to obtain certain land use approvals from New Castle County (and other governmental authorities as may be required) prior to construction of the Facilities (collectively, the "Approvals"). Landlord shall have a right of approval over the Approvals, it being understood that the Approvals shall be in general conformance with Exhibits B and C. Landlord shall reasonably cooperate with Tenant in obtaining the Approvals at no cost or expense to Landlord. Tenant shall diligently pursue obtaining all Approvals; however, in the event that all Approvals are not obtained within 36 months from the Effective Date for any reason whatsoever, or in the event that Tenant has obtained the Approvals but has not commenced construction within the foregoing 36 month period, Landlord may, upon sixty (60) days' written notice, terminate this Lease, and upon expiration of the foregoing sixty (60) day period, this Lease shall terminate and neither party shall have any further liability to the other hereunder, except as may be expressly set forth herein; provided, further, that the Security Deposit shall be retained by District as part of any such termination.

2.3 Maintenance. Tenant is solely responsible for and shall maintain the Facilities and the Property in a first class manner at all times and shall be responsible for all maintenance, repairs and replacements of any kind or nature whatsoever thereto. Tenant will promptly make all repairs, replacements and renewals to the Facilities, whether interior or exterior, structural or non-structural, ordinary or extraordinary, foreseen or unforeseen.

2.4 Surrender of Property. Tenant shall not commit any waste or damage to be committed on the Property, and shall at termination of this Lease by its own terms or by lapse of time or otherwise, peaceably deliver said Property to Landlord in as good condition as at the Effective Date, together with the Facilities ordinary wear and tear excepted, and upon termination of the Lease, Landlord shall have the right to reenter and resume possession of the Property including the Facilities. Tenant shall promptly deliver to Landlord all keys and passes for the Property and any structures thereon. Tenant shall have the right, but not the obligation, to remove any personal property or equipment which it installed in connection with the Facilities.

### **3. Rent.**

3.1 Rent. During the Lease Term, Tenant shall pay rent of \$1 per year to Landlord for the Property ("Rent").

3.2 Security Deposit. At the time of signing this Lease, Tenant shall deposit the sum of \$100,000 (the "Security Deposit") to be held by Landlord in a non-interest bearing account. The Security Deposit shall be returned to Tenant upon the issuance of a permanent certificate of occupancy for all Facilities to be constructed by Tenant. Prior to the commencement of construction of the Facilities, Tenant shall also provide Landlord a

completion bond or other security acceptable to Landlord to ensure completion of the Facilities once construction commences.

3.2 Net Lease. Except as otherwise expressly set forth in this Lease, this Lease is what is commonly called a “net lease”, meaning Tenant shall be responsible for the payment of any and all impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership, operation, maintenance, repair, occupancy, and use of the Property. Except as otherwise expressly set forth in this Lease, Landlord (in its capacity as Landlord) shall not be responsible for any costs, expenses, or charges of any kind or nature respecting the Facilities, the Property or the improvements constructed, or to be constructed, on the Property (if any), and Landlord (in its capacity as Landlord) shall not be required to render any services of any kind to Tenant or to the Property or the Facilities. Tenant shall submit to Landlord prior to the end of each calendar year, or at such other times upon Landlord’s written request, paid receipts or other proof reasonably satisfactory to Landlord that all taxes, assessments, water and sewer rents, and other governmental charges with respect to the Property and the Facilities have been paid to date or proof reasonably satisfactory to Landlord that Tenant is exempt therefrom.

#### **4. Possession and Condition of Property.**

4.1 “As Is” Condition. Except as may have been provided or represented elsewhere in this Lease, possession of the Property shall be delivered to Tenant on the Effective Date vacant and free of all leases and occupancies. Tenant accepts the Property in an “as is” condition in all respects, including, without limitation, environmental conditions, and without any representations or warranties by Landlord of any nature except for the matters expressly set forth in this Lease; provided, however, that Landlord shall be solely responsible for any pre-existing Environmental Conditions.

#### **5. Obligations, Representations and Warranties of Landlord.**

Landlord, to induce Tenant to enter into this Lease, represents and warrants to Tenant as follows:

5.1 Condemnation Proceedings. There is not now pending, and to the best of Landlord’s knowledge, there is not now threatened, any condemnation proceeding or other litigation relating to or otherwise affecting any or all of the Property or any interest therein.

5.2 Regulatory Compliance. There is not now pending, and to Landlord’s actual knowledge, there is not now threatened from any federal, state or local authority, any notice, suit or judgment relating to the Property for any violation of law. The Property, its condition and current and contemplated use, are in compliance with all applicable laws.

5.3 Litigation. There is no litigation or proceeding pending or to the best of Landlord’s knowledge threatened which Tenant is not already aware of which could adversely affect the validity or enforceability of this Lease, or which could result in a lien, charge or encumbrance against all or any part of or any interest in the Property.

5.4 Leases and Agreements. There are no leases, contracts of sale or other unrecorded agreements affecting the Property or any part thereof.

5.5 Authority. Landlord is the sole owner of the Property. Landlord is a school district duly formed and validly existing under the laws of the State of Delaware, and has full power and authority to enter into this Lease and to perform its obligations hereunder. The execution of this Lease and performance of its obligations hereunder have been approved by all requisite actions and consents.

5.6 Encumbrances. To the best of Landlord's knowledge, there are no unrecorded water, mineral or oil rights, or unrecorded easements or claims of easement or boundary line disputes, gaps, encroachments, or overlaps with respect to the Property.

## **6. Representations and Warranties of Tenant.**

Tenant, to induce Landlord to enter into this Lease, represents and warrants to Landlord as follows:

6.1 Authority. Tenant is a limited liability company duly formed and validly existing under the laws of Delaware, and has full power and authority to enter into this Lease and to perform its obligations hereunder. The execution of this Lease and performance of its obligations hereunder have been approved by all requisite company actions and consents.

6.2 Consents. Tenant has the requisite power, authority and legal right and financial wherewithal to execute, deliver and perform this Lease. The execution, delivery and performance of this Lease, and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action on the part of Tenant.

6.3 Conflicts; Other Agreements. Neither the execution and delivery of this Lease nor the consummation of the transactions contemplated hereby or thereby in the manner herein or therein provided, nor the fulfillment of or compliance with the terms and conditions hereof shall violate, be in conflict with, constitute a default under, cause the acceleration of any payments pursuant to, or otherwise impair the good standing, validity, or effectiveness of any agreement, contract, indenture, lease or mortgage, or subject any properties or assets of Tenant to any indenture, mortgage, contract, commitment, or agreement, other than this Lease, to which Tenant is a party or by which Tenant or the Property is bound or subject the Property to any lien, claim, charge or encumbrance.

## **7. Assignment and Subletting / Leasehold Mortgage.**

7.1 Assignment / Subletting. Tenant shall not transfer or assign Tenant's interest in and to this Lease (in whole or in part or parts) or sublease all or any part of the Property (or permit its subtenant or subtenants to sublease in whole or in part or parts) or enter into a license or concession agreement for the Property or the Facilities or any part thereof (collectively referred to as a "Transfer"), without first obtaining in each and every instance Landlord's consent therefore, which consent may be withheld in Landlord's sole discretion.

7.2 Leasehold Mortgage. Tenant shall have the right to grant a leasehold mortgage encumbering Tenant's interest in this Lease and in the Facilities provided such leasehold mortgage does not extend beyond the expiration date of this Lease. Such leasehold mortgage shall encumber the leasehold interest created by this Lease. Tenant shall not have the right to encumber Landlord's fee interest in the Property or Landlord's reversionary interests in the Facilities. Landlord agrees to execute a commercially reasonable Subordination and Non-Disturbance Agreement or similar agreement with Tenant's lender.

## **8. Repairs and Alterations.**

8.1 Maintenance and Repair. Tenant shall, at its own expense, keep the Facilities in good repair and tenantable condition, normal wear and tear excepted, during the Term of this Lease, and, except as may otherwise be provided herein, shall promptly repair all damage to, or restore, the Facilities. Tenant shall use all reasonable precaution to prevent waste, damage or injury. Tenant and Landlord shall comply with legal requirements and Insurance Requirements (as hereinafter defined). "Insurance Requirements" are the requirements of the insurance companies with which the property insurance policies are carried in accordance with this Lease. If any improvements erected on the Property for which Tenant is responsible for repair are destroyed by fire or other catastrophe, Tenant shall repair or replace the damage. All repairs and/or replacement shall be commenced within a reasonable time after the damage occurs and shall be prosecuted diligently. The parties' obligation to repair, replace and comply with legal requirements pursuant to this Section extends to extraordinary, unforeseen and structural repairs and replacements as well as to ordinary, foreseen and nonstructural repairs and replacements. "Repairs" means repair with new materials of like kind and quality. "Replace" means replace with new materials of like kind and quality.

8.2 Failure to Maintain. If Tenant unreasonably fails, refers or neglects to mitigate action or diligently pursue action to maintain, repair or restore the Facilities as required to be maintained, repaired or restored under this Lease within thirty (30) days after receiving written notice from Landlord advising that such maintenance or repairs are required, the Landlord may, in addition to whatever other remedies it may have hereunder or at law or in equity, make such reasonable repairs without liability to the Tenant for any loss or damage that may accrue to any merchandise, fixture or other property of the Tenant by reason thereof, and upon completion thereof, the Tenant shall pay the Landlord's costs for such repairs plus five percent (5%) for overhead, profit and supervision, within thirty (30) days after receipt of an invoice therefore from the Landlord.

8.3 Alterations. Tenant shall not make any alterations, changes, replacements, and additions in under and to the Property ("Alterations") which would impair the safety of any improvement or structure located on the Property or which violates legal requirements. Any Alterations made by Tenant shall be at Tenant's own cost and expense. Alterations shall be made in a good and workmanlike manner, in compliance with applicable legal requirements. No Alterations shall be made unless Landlord consents thereto in writing prior to any Alterations being made, it being understood that Landlord may withhold consent for any reason in its sole discretion.

## 9. Insurance.

9.1 Obligation to Carry Property Insurance. Tenant shall at Tenant's sole cost and expense carry an "All Risk" insurance policy or a fire insurance policy with respect to improvements on the Property. An "All Risk" policy is an insurance policy that insures against "all direct risks" except for specified exclusions. If Tenant elects to carry a fire insurance policy, Tenant shall also carry the types of coverage and endorsements customarily procured by Tenant with respect to Tenant's conduct of similar activities and insuring like facilities owned and/or leased by Tenant pursuant to endorsements or separate policies: "Extended Coverage", "Vandalism and Malicious Mischief", and "Difference in Conditions." Tenant shall also carry any other kind of property insurance with respect to the Facilities that becomes customary for comparable facilities in the future as determined in Landlord's sole discretion. The coverage limits shall not be less than an estimate of the cost of replacing the Facilities. The cost of replacing the improvements shall be estimated annually by an insurance appraisal organization that is selected by Tenant and that is satisfactory to the insurer and to the Landlord.

9.2 Obligation to Carry Liability Insurance. Tenant shall at Tenant's sole cost and expense maintain public liability insurance with respect to the Property, the Facilities and any improvements located on the Property. The insurance policy that provides the coverage shall include contractual liability, severability of interest and cross liability endorsements. The coverage limits shall be at least Three Million Dollars (\$3,000,000.00) for each occurrence with respect to bodily injury and wrongful death coverage and at least Five Hundred Thousand Dollars (\$500,000.00) for each occurrence with respect to property damage coverage, and Five Million Dollars (\$5,000,000.00) in the aggregate. Landlord may require that the coverage limits be reviewed after intervals of three years to determine whether the limits are less than customary coverage limits for property of similar size, use, and location, as determined by Landlord or Landlord's insurance advisors. If the coverage limits are less than the then prevailing customary limits, as determined by Landlord, the coverage limits shall be adjusted by Tenant at Tenant's expense to the customary limits upon thirty (30) days prior written notice to Tenant.

9.3 General Provisions as to Insurance Coverage. Each insurance policy shall be issued by an insurance company that is licensed to do business in the State of Delaware and is reasonably satisfactory to Landlord and Tenant. An insurance company shall be deemed to be satisfactory to a party if A. M. Best Company of Oldwick, New Jersey, or a similar or successor company acceptable to Landlord, rates it as having a policyholder's rating of A or better. If A. M. Best Company changes its rating system, comparable ratings shall be substituted to the extent feasible each insurance policy shall be reasonably satisfactory to Landlord and Tenant in form and substance. Insurance carried pursuant to Section 9.1 shall be carried in favor of Tenant, Landlord, any Leasehold Mortgagee, and any designee of Tenant as their interests may appear. Landlord shall be named as an additional insured with respect to insurance carried by Tenant pursuant to Section 9.2. Insurance required to be carried by Tenant may be included in general coverage under policies which also include the coverage of other property in which Tenant or affiliates of Tenant have an insurable interest. A certificate or certificates of insurance in form acceptable to Landlord with respect to each insurance policy required to be carried by Tenant shall be delivered to Landlord at or prior to the Effective Date and as otherwise requested by

Landlord from time to time. In addition to the foregoing certificates of insurance, copies of the insurance policies required to be carried by Tenant shall be delivered to Landlord upon the written request thereof by Landlord. Each insurance policy and certificate shall provide, in effect, that the policy may not be cancelled, reduced in amount, or modified by the insurer until at least thirty (30) days after the insurer shall have notified Landlord, Tenant, and any Leasehold Mortgagee in writing. Each insurance policy and certificate shall provide, in effect, that the policy will be renewed and further renewed unless the insurer shall give Landlord, any Leasehold Mortgagee, Tenant, and any designee of Tenant at least thirty (30) days' notice in writing of the insurer's unwillingness to renew. Each insurance policy carried pursuant to this Article 9 shall contain provisions to the effect that losses shall be payable despite the negligence of any person having an insurable interest in the premises. Landlord reserves the right from time to time to require Tenant to obtain and maintain, at Tenant's sole cost and expense, such additional types of insurance coverage as may then be customary for property of similar size, use, and location, as determined by Landlord or Landlord's insurance advisors. If additional insurance coverage is required by Landlord in accordance with the then prevailing custom, as determined by Landlord, Tenant shall obtain such additional insurance upon thirty (30) days prior written notice to Tenant.

9.4 Mutual Waiver of Subrogation Rights. Whenever any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease in connection with the Property, and such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then the party so insured hereby releases the other party from any liability it may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance. Landlord and Tenant agree to obtain endorsements from each of their respective insurance carriers waiving any rights of subrogation which might otherwise exist. Provided, however, that such waiver of the right of subrogation shall not be required in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereupon keeping such release and waiver in full force and effect).

## **10. Ownership of Improvements.**

10.1 During Lease Term. During the Lease Term, title to any improvements situate or erected on the Property and the equipment and other items installed thereon and any alteration, change or addition thereto shall remain solely in Tenant, except that Tenant shall not have the right without the consent of Landlord to raze the improvements, including the Facilities.

10.2 End of Lease Term. On the last day of the Lease Term, Tenant shall quit and surrender the Property, the Facilities and permanent improvements then thereon, broom clean (if applicable), free of all claims, liens and encumbrances, and in its then "as-is" condition. At the end of the Lease Term, the Facilities and all improvements and all equipment left by Tenant shall become the property of Landlord without further compensation and without further act or deed of the parties. Tenant shall execute such bills of sale or other documents evidencing

Landlord's ownership of the Facilities, improvements and equipment, free and clear of all claims, liens and encumbrances, as Landlord may require.

**11. Covenants Against Liens.**

If, because of any act of or omission of Tenant, any mechanic's lien or other similar lien, charge or order for the payment of money shall be filed against Landlord or any portion of the Property or the Fairview Campus, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded in an amount acceptable to Landlord within thirty (30) days after written notice from Landlord to Tenant of the filing thereof (subject to Tenant's right to contest such lien after discharge or bonding); and Tenant shall indemnify and save harmless Landlord against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Nothing herein shall be deemed to be a consent on the part of Landlord to the imposition of such liens.

**12. Access to Property.**

Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the Property at all reasonable times and (except in the case of an emergency) after providing at least twenty-four (24) hours' written notice to Tenant describing the reason for the examination, to examine same.

**13. Requirements of Public Authority.**

13.1 During the Lease Term, Tenant shall, at its own costs and expense, promptly observe and comply with all present and future laws, ordinances, requirements, order, directives, rules and regulations of the Federal, State, and local governments and all other governmental authorities affecting the Property or appurtenances thereto or any part thereof whether the same are in force at the Effective Date or may in the future be passed, enacted or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants of this Section 13.

13.2 Tenant shall have the right to contest by appropriate legal proceedings, diligently conducted in good faith in the name of the Tenant, or Landlord (if legally required), or both (if legally required), without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in Section 13.1 and, if by the terms of any such law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 13.1, compliance therewith may legally be delayed pending the prosecution or any such proceeding, Tenant may delay such compliance therewith until the final unappealable determination of such proceeding.

**14. Eminent Domain.**

14.1 If any lawful authority shall condemn and acquire title to substantially the whole of the Property, or so much of the Property as Tenant shall reasonably determine would



make Tenant unable to make use of the Property in substantially the same manner as before the taking, in or by condemnation proceedings pursuant to any law, general, specific or otherwise, this Lease shall terminate subject to the rights of Landlord, Tenant and any Leasehold Mortgagee to make claims against such lawful authority. In such event, the award or awards for the Property and improvements located on the Property (the "Award") shall be distributed as follows: (i) to Leasehold Mortgagee - the lesser of the outstanding balance of the obligation secured by the Leasehold Mortgage or the amount of the condemnation award; (ii) to Tenant – the unamortized cost, as of the date of termination, of the Facilities and the other tenant improvements, if any, on the Property constructed at Tenant's cost and expense, excluding Tenant's moveable trade fixtures and equipment, the cost of each such improvement being amortized in accordance with Tenant's generally accepted accounting procedures, and such other amounts as Tenant shall be permitted by law provided such other amounts do not reduce the amount of the award or compensation otherwise allocable to Landlord, less any amounts paid to Leasehold Mortgagee; (iii) to Landlord – all remaining monies received. Tenant shall provide supporting documentation as to the unamortized cost of the Facilities.

14.2 In the event the Property, the Facilities, or any portion thereof, is taken, but this Lease is not terminated, this Lease shall terminate as to the part taken, and the condemnation proceeds shall be used to reconfigure the Property or the Facilities, as the case may be, as reasonably agreed by the parties. All remaining proceeds, if any, shall be paid to Landlord to the extent the taking involves the land and to the Tenant to the extent the taking involves any improvements made by Tenant to the Property, including the Facilities. Any additional funds required for reconstruction of the Facilities or any improvements shall be the responsibility of Tenant.

## **15. Personal Property.**

15.1 Landlord shall have no responsibility for loss or damage to Tenant's or any other person's or entity's personal property and no responsibility to insure the personal property of Tenant of whatever nature and wherever located on the Property against any loss or damage thereto however occasioned, it being understood and agreed that Tenant will so insure such personal property.

15.2 Tenant shall have no responsibility for loss or damage to Landlord's personal property and no responsibility to insure the personal property of Landlord of whatever nature and however occasioned, it being understood and agreed that Landlord will so insure such personal property.

## **16. Mutual Indemnification.**

16.1 Tenant agrees to indemnify and hold harmless Landlord against and from any and all claims, actions, damages, liability and expenses (including but not limited to reasonable attorneys' fees, costs and disbursements) arising from or in connection with the loss of life, personal injury or damage to property or business arising from, related to or in connection with Tenant's or any other persons use or occupancy of Property from whatever cause and hold harmless Landlord against and from any and all claims arising from any breach or default in the

performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of Tenant, or any officer, agent, employee, guest, or invitee of Tenant incurred in or about the Property, and, if any case, action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant's duty hereunder shall not apply or extend to any claim, action, damage, liability or expense arising under the willful act or gross negligence of Landlord.

16.2 Landlord agrees to indemnify and hold harmless Tenant against and from any and all claims, actions, damages, liability and expenses (including but not limited to reasonable attorneys' fees, costs and disbursements) arising from or in connection with the loss of life, personal injury or damage to property or business arising from, related to or in connection with Landlord's or Landlord's guest or invitee's use or occupancy of Property from whatever cause and hold harmless Tenant against and from any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any gross negligence of Landlord, or any officer, agent, employee, guest, or invitee of Landlord incurred in or about the Property, and, if any case, action or proceeding be brought against Tenant by reason of any such claim, Landlord upon notice from Tenant shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant. Landlord's duty hereunder shall not apply or extend to any claim, action, damage, liability or expense arising under the willful act or negligence of Tenant. The foregoing indemnification shall not apply to the extent that Tenant has (or should have had pursuant to the requirements of this Lease) insurance in place to cover any such loss.

## **17. Tenant Default.**

17.1 Tenant Default and Landlord's Remedies. The occurrence of any one or more of the following events ("Event of Default") shall constitute a default under this Lease:

(a) Tenant's failure to pay any sums due Landlord hereunder and such sums remain unpaid for a period of ten (10) days thereafter; or

(b) except as provided in subsections (c) through (f) below, Tenant's failure to perform any of the covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by Tenant of notice in writing from Landlord specifying the nature of such failure and the action to be taken by Tenant to cure the default, or such longer period as may be required in order to effect such cure, provided Tenant commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion:

(c) Tenant's failure to maintain the insurance required under Article 9 of this Lease;

(d) Tenant shall (i) file a petition commencing a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law; (ii) make a general assignment for the benefit of its creditors; (iii) file an application for, or consent to, the

appointment of any receiver or a permanent or interim trustee of Tenant or of all or a substantial portion of its property; (iv) file a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, insolvency or similar law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; (v) take any action for the purpose of effecting any of the foregoing; or (vi) be the subject of a decree or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under any applicable federal or state bankruptcy, insolvency or similar law;

(e) if any proceedings brought against Tenant seeking any of the relief mentioned in subsection (d) above shall not have been dismissed, or if any execution or attachment shall be issued against Tenant or any of Tenant's property and shall not be discharged or vacated within sixty (60) days;

(f) if Tenant shall effect a Transfer in violation of this Lease; or

(g) if Landlord is unable to use the Facilities for Landlord's Use because of any act, omission or failure to act on the part of Tenant. .

(h) COMMENT: MAY WANT TO CONSIDER ADDING A CONTINUOUS OPERATION COVENANT, SO IF TENANT GOES DARK, THAN CONSIDERED AN EVENT OF DEFAULT TRIGGERING LANDLORD'S TERMINATION RIGHT.

IN THE ALTERNATIVE, CONSIDER ADDING A PROVISION GIVING TENANT RIGHT TO GO DARK, BUT IF GOES DARK DURING PERIODS OF TIME AFFECTING LANDLORD'S USE, OR FOR MORE THAN 30 CONSECUTIVE DAYS, LANDLORD HAS THE RIGHT TO RECAPTURE THE PREMISE.

17.2 Tenant's Right to Cure. In the event that notice is given by or on behalf of Landlord of a default referred to in Section 17.1(b) and said default is of such a nature that it cannot be cured within such thirty (30) day period then such default shall not be deemed to continue so long as Tenant, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No non-monetary default shall be deemed to continue if and so long as Tenant shall be so proceeding to cure the same in good faith or be delayed in or prevented from curing the same. Notwithstanding anything to the contrary contained in this Section 17.2, in the event that any default(s) of Tenant shall be cured any manner hereinabove provided, such default(s) shall be deemed never to have occurred and Tenant's right hereunder shall continue unaffected by such default(s).

### 17.3 Landlord's Remedies.

(a) Upon or after the occurrence of one or more such Events of Default, Landlord may, in addition to any other remedies available to Landlord at law or in equity, provide Tenant with written notice of election to end the term of this Lease upon a date specified in such written notice, which date shall be not less than sixty (60) days after the date of receipt by Tenant of such written notice from Landlord, and upon the date specified in said notice, and

provided such Event of Default has not been cured as permitted under the terms of this Lease, the term and estate hereby vested in Tenant shall cease and any all other right, title and interest of Tenant hereunder and in the Facilities shall likewise cease without further notice or lapse of time as fully and with like effect as if the entire term of this Lease had elapsed.

(b) Upon or after any one or more Events of Default or, if the notice provided for above in Section 17.3(a) hereof shall have been given and this Lease shall be terminated, then, in all or any of such events, in addition to, and not in lieu of, all other remedies of Landlord, Landlord may with notice terminate all services and/or re-enter the Property, and/or by summary proceeding or otherwise in accordance with applicable law dispossess Tenant and any other occupant of the Property, and remove their effects and repossess and enjoy the Property, together with all alterations, additions and improvements, all without being liable to prosecution or damages therefore

17.4 Landlord's Right of Self-Help. If Tenant fails to perform any of its covenants under this Lease, Landlord may elect to perform such covenant on behalf of Tenant after giving Tenant the notice and opportunity to cure provided under Section 17.1 or Section 17.2, as the case may be (provided however, that if an emergency situation exists, Landlord shall give such lesser notice and opportunity to cure, or no notice, as may be reasonable under the circumstances as determined by Landlord). Tenant shall reimburse Landlord for any reasonable sums paid or reasonable costs incurred by Landlord in performing Tenant's obligations, together with interest at the prime rate from the respective dates of Landlord's making the payments and incurring such costs, within thirty (30) days after Tenant receives a bill therefor.

## **18. Landlord Default.**

18.1 Landlord's Right to Cure. Landlord will not be in default under this Lease unless Landlord fails to observe or perform any covenant of Landlord under this Lease and such failure continues for more than thirty (30) days after written notice given by or on behalf of Tenant to Landlord, provided that if such failure is susceptible of cure but is not capable of being cured within such thirty-day period, such additional time as may be reasonably necessary to cure such failure if Landlord commences to cure such failure within such thirty (30) day period and diligently thereafter prosecutes such cure to completion.

## **19. Estoppel Certificates.**

Either party shall, without charge, at any time and from time to time hereafter, within twenty (20) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (e) as to the commencement and expiration dates of the term of this Lease; and (f) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party

requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

**20. Short Form/Memorandum of Lease.**

The parties shall at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of lease, setting forth a description of the Property, the Lease Term and any other portions thereof, as either party may request, in form reasonably acceptable to both Landlord and Tenant. Upon the expiration or earlier termination of this Lease in accordance with its terms, Landlord shall have the unilateral right to terminate the Short Form/Memorandum of Lease by filing a termination notice or such other notice as may be then required with the Recorder of Deeds for New Castle County, Delaware or such other office as may be then charged with recording and keeping such records.

**21. Miscellaneous.**

21.1 Governing Law. The interpretation, enforcement and construction of this Lease, and all matters relating hereto, will be governed by the laws of the State of Delaware applicable to agreements executed and to be performed solely within such State, without reference to the choice of law provisions thereof.

21.2 Waiver. A party's failure to enforce, at any time or for any period of time, any provision of this Lease, or to exercise any right or remedy, does not constitute a waiver of such provision, right or remedy, or prevent such party thereafter from enforcing any or all provisions and exercising any or all other rights and remedies. The exercise of any right or remedy does not constitute an election or prevent the exercise of any or all rights or remedies, all rights and remedies being cumulative.

21.3 Notices. All notices, requests, reports, statements and other communications to either party (each a "Notice") shall be in writing, shall refer specifically to this Lease and shall be hand delivered or sent by express courier service, costs prepaid, or by facsimile to the respective addresses specified below (or to such other address as may be specified by Notice to the other party):

If to Tenant, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Landlord, to:

Appoquinimink School District  
313 S. Fifth Street  
P.O.Box 4010

Odessa, DE 19730  
Attn: Superintendent

With a required copy to:

Appoquinimink School District  
118 S. Sixth Street  
Odessa, DE 19730  
Attn: Director of Facilities

Any Notice delivered by facsimile will be confirmed by a hard copy sent by express courier service no later than the next business day. The effective date of any Notice will be: (a) the date of the addressee's receipt, if delivered by hand or express courier; or (b) the date of receipt if received by 5:00 p.m. local time on a business day or, if not, the first business day after receipt, if sent by facsimile. It is understood and agreed that this Section 21.3 is not intended to govern the day-to-day business communications necessary between the parties in performing their duties, in due course, under the terms of this Lease. Any notice required to be given hereunder may be given on behalf of Landlord or Tenant by their respective legal counsel.

21.4 Quiet Enjoyment. Landlord hereby covenants that Tenant, upon observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Property during the Lease Term without hindrance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

21.5 Force Majeure. In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, unforeseeable inability to procure materials, failure of power, restrictive governmental laws or regulations not currently in effect, riots, insurrection, the act, failure to act or default of the other party, war or other reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

21.6 Entire Agreement. This Lease, including the Recitals and all Exhibits attached hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the parties with respect to such subject matter are superseded hereby in their entireties. Each party confirms that it is not relying on any representations or warranties of the other party except as specifically set forth herein. No amendment or modification hereof will be binding upon the parties unless in writing and duly executed by authorized representatives of both parties.

21.7 Counterparts. This Lease may be executed in two counterpart copies, each of which will be deemed an original and all of which taken together will be deemed to constitute one and the same instrument. It will not be necessary in making proof of this Lease or any counterpart hereof to produce or account for any of the other counterparts.

21.8 Severability. If any provision hereof should be invalid, illegal or unenforceable in any respect, then, to the fullest extent permitted by applicable law, (a) all other provisions hereof will remain in full force and effect and will be liberally construed in order to carry out the intent of the parties as nearly as may be possible, and (b) the parties agree to use their best efforts to negotiate a provision, in replacement of the provision held invalid, illegal or unenforceable, that is consistent with applicable law and accomplishes, as nearly as possible, the original intention of the parties with respect thereto. To the fullest extent permitted by applicable law, each party hereby waives any provision of law that would render any provision hereof prohibited or unenforceable in any respect.

21.9 Expenses. Each of the parties shall pay the fees and expenses of its respective counsel and other experts and all other expenses, except as otherwise expressly set forth herein, incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Lease.

21.10 Further Assurances. Each party shall duly execute and deliver, or cause to be duly executed and delivered, such further instruments and do and cause to be done such further acts and things, including, without limitation, the filing of such assignments, agreements, documents and instruments, as may be necessary or as the other party may reasonably request in connection with this Lease or to carry out more effectively the provisions and purposes hereof, or to better assure and confirm unto such other party its rights and remedies under this Lease.

21.11 Construction. Except where the context otherwise requires, wherever used the singular will include the plural, the plural the singular, the use of any gender will be applicable to all genders and the word "or" is used in the inclusive sense. The headings and captions of this Lease are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Lease or the intent of any provision contained in this Lease. The language of this Lease will be deemed to be the language mutually chosen by the parties and no rule of strict construction will be applied against either party hereto.

21.12 No Joint Venture. Nothing contained in this Lease will be construed as making the parties joint venturers or, except as otherwise provided herein, as granting to either party the authority to bind or contract any obligation in the name of or on the account of the other party, or to make any guarantees or warranties on behalf of the other party.

21.13 Binding Effect. This Lease will be binding upon, and inure to the benefit of, the parties to this Lease and their respective successors and assigns.

21.14 Automatic Extension. In the event that the date for performance of any duty or obligation, exercise of any right or option or giving of any notice occurs upon a Saturday, Sunday or legal holiday, the due date for such performance, exercise or giving of notice will be automatically extended to the next succeeding business day.

21.15 Time of Essence. Time is of the essence of each and every provision of this Lease of which time is an element.

21.16 Signage. Tenant shall not construct any exterior signage without Landlord's prior written consent, which Landlord may withhold in Landlord's sole discretion.



IN WITNESS WHEREOF, intending to be legally bound hereby, Tenant and Landlord have executed this Lease as an instrument under seal as of the date first above written.

LANDLORD:

APPOQUINIMINK SCHOOL DISTRICT

By: \_\_\_\_\_ [SEAL]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

TENANT:

[NAME OF TENANT]

By: \_\_\_\_\_ [SEAL]

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A – sketch/drawing showing property to be leased; and showing access to the premises**

**EXHIBIT B – sketch/drawing showing proposed building, parking, etc., that tenant intends to construct on the site**

**EXHIBIT C – sketch/drawing/description of floorplan/layout of the building**

## **EXHIBIT D – Landlord’s permitted uses of the Facilities**

Landlord shall be entitled to use the Facilities at no charge for Landlord’s school swim teams’ practices and meets during the high school swim season, including post-season playoff, tournament and championship meets. Such use shall also include parking at the Facilities during Landlord’s use of the Facilities. Any ticket or “gate” money charged by the Landlord for entrance to meets shall be the property of the District. To the extent the Facilities include concession stands or sale of food or beverage, any proceeds from such sales shall be the property of Tenant.

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