

**DATE:**

August 29, 2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve Contract with Silverlake Family Place, Five Seasons Sports Club, and Northern Kentucky University and Kenton County School District to rent pool lanes and diving wells from October 6 – October 31, 2023.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of Board

**HISTORY/BACKGROUND:**

Due to the KCSD Natatorium renovation at Scott High School, the Dixie Heights High School, Simon Kenton High School, and Scott High School swim and dive teams may need to practice at local venues to start the 2023-24 KHSAA season. Morel Construction has agreed to pay for lane and dive rentals should unforeseen construction delays cause the pool not to open by the scheduled date of October 6, 2023. Obtaining approval for these contracts should be viewed as a backup plan ensuring students have a practice facility until the KCSD Natatorium renovation is complete.

**FISCAL/BUDGETARY IMPACT:**

\$0. Morel Construction will pay for rental costs per the terms and conditions of the attached letter.

**RECOMMENDATION:**

Approval of contract with Silverlake Family Place, Five Seasons Sports Club, and Northern Kentucky University and Kenton County School District to rent pool lanes and diving wells from October 6 – October 31, 2023.

**CONTACT PERSON:**

Matt Wilhoite, Student Engagement Coordinator

\_\_\_\_\_  
Principal/Administrator

  
\_\_\_\_\_  
District Administrator

  
\_\_\_\_\_  
Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.



**MOREL CONSTRUCTION CO., LLC**

August 30, 2023

Mr. Matthew Rigg  
Kenton County School District  
1055 Eaton Drive  
Ft. Wright, KY 41017

**RE: *Scott High School – Aquatic Center***

Dear Mr. Rigg:

MOREL CONSTRUCTION CO., LLC is currently working hard to complete the Aquatic Center area by October 6<sup>th</sup>. We understand that the swim and dive programs need to have the opportunity to practice at a facility if we encounter unforeseen delays in the completion of the Aquatic Center by that date. If the Aquatic Center is not complete by October 6<sup>th</sup>, we are prepared to work with the district on a "Plan B". If acceptable to the district, the "Plan B" will involve the following:

- In lieu of liquidated damages, MOREL CONSTRUCTION CO., LLC agrees to pay the cost of swim and dive rentals for Kenton County School District's swim and dive teams who would be displaced by not having access to the Scott Aquatics Center after October 6, 2023. The district will invoice MOREL CONSTRUCTION CO., LLC directly and we will pay that invoice.
- It will be the responsibility of the Kenton County School District to secure swim and dive rental agreements with local facilities offering such services.
- Should the pool open on or after October 6, 2023, the Kenton County School District agrees to immediately cancel any and all contracts in place for swim and dive rentals and utilize the Scott Aquatics Center. MOREL CONSTRUCTION CO., LLC will pay the cancellation fee(s) associated with each swim and dive rental contract and any balances that may have accrued from partial use.

Please confirm acceptance of this plan.

Very truly yours,

MOREL CONSTRUCTION CO., LLC

  
Adolph F. Zell  
Vice President

AFZ/slh

627 WEST MAIN STREET  
LOUISVILLE, KENTUCKY 40202  
502-568-6200 FAX: 502-568-6234

2801 ALEXANDRIA WAY  
HIGHLAND HEIGHTS, KENTUCKY 41076  
859-442-7100 FAX: 859-442-8175

Northern Kentucky University  
Office of Conference Management  
Student Union 111  
20 Kenton Drive  
Highland Heights, KY 41099

July 26, 2023

Dear Ms. Arnold:

Please find enclosed the contract that will serve as the Agreement between Northern Kentucky University and Sandra Arnold on behalf of the Kenton County School District. If all details are agreeable, please sign a copy of the signature page (pg. 8) and return **one copy** of the **signature page** to me (keep a copy of the Agreement for your records).

Please take note of a few policies associated with using NKU's facilities:

- Northern Kentucky University is a tobacco-free campus. Please remind your guests of this policy
- The use, possession, or storage of hoverboards or similar devices is prohibited.
- Please tell your presenters/facilitators that we do not allow tape on painted surfaces.
- If your group places signs anywhere on campus, please remove them after your function.
- Visitor parking will be assigned, please see section 4A for specific parking instructions and fees. Tickets will be issued for parking violations.
- Please see <https://map.nku.edu/> for a map of Highland Heights' campus.

If you have additional questions, feel free to contact me at [KochL3@nku.edu](mailto:KochL3@nku.edu).

Sincerely,  
Leah



**Leah A. Koch**

*Assistant Director for Conference Management & Event Services*

Northern Kentucky University

Student Union 111 | Highland Heights, KY 41099

Phone: 859.572.5760 | Email: [KochL3@nku.edu](mailto:KochL3@nku.edu)

**NORTHERN KENTUCKY UNIVERSITY  
USE AGREEMENT FOR CAMPUS FACILITIES**

THIS AGREEMENT made and entered into on this day and year July 26, 2023, between Sandra Arnold on behalf of the Kenton County School District (User) and Northern Kentucky University (University). Both collectively referred to as the "Parties."

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

**1) DATE, TIME AND PURPOSE OF USE**

User hereby agrees to lease and utilize the facilities/equipment/services from University on the dates and times, and for the activity and purposes, for the rental and other payments determined, subject to terms and conditions incorporated herein.

<b>ORGANIZATION:</b>	Kenton County School District
<b>CONTACT NAME:</b>	Sandra Arnold
<b>EMAIL:</b>	sandra.arnold@kenton.kyschools.us
<b>DATE(S) OF FUNCTION:</b>	see section 4
<b>TIME(S) OF RESERVATION:</b>	see section 4
<b>FACILITY:</b>	Campus Recreation Diving Well
<b>PURPOSE OF RESERVATION:</b>	Diving practice
<b>AGREEMENT DUE DATE:</b>	<b>Friday, August 25, 2023</b>
<b>PARKING PASS ORDER DUE:</b>	<b>Friday, September 22, 2023</b>

**2) CONDITION OF FACILITIES**

User agrees that they have inspected the premises and facilities and accepts them in their present condition, will not alter or change the facilities without written approval of the University, and that the premises will be returned in the same condition as received by the User.

**3) UNIVERSITY BUSINESS**

User understands that other activities may be conducted on the University campus by the University or other users during the above time period. However, the University agrees that it shall use its best efforts to schedule such other activities so as not to unreasonably interfere with User's activities. User agrees that its activities will not unreasonably interfere with the primary purposes of University business. Should User's activities interfere with the primary purposes of University business, User may be asked to immediately vacate the premises and will forfeit reservation fees.

**4) COST OF FACILITIES**

Additional fees will apply for additional equipment, items, resources, or services ordered.

All applicable sales tax will be listed on the final invoice.

**A. CONFERENCE ADMINISTRATION FEE**

\$57.00 per group per contract

**B. AQUATICS SPACE:**

Diving Well - \$50 an hour

October 1, 2023 – October 31, 2023



Tuesdays: 7:00pm – 7:45pm  
Fridays: 7:00pm – 7:45pm  
Sundays: 12:00pm – 2:00pm

Staffing is charged at a rate of \$30.00 per hour (if practice is not during normal business hours)

Additional fees may apply for additional equipment, items, resources, or services ordered. The cost of a pull buoy and kickboard is \$5 per pair.

**C. PARKING FEES & ASSIGNMENT**

Kenton County Diving has requested to purchase six parking passes at **\$53.00 per vehicle** or park in the Kenton Parking Garage at the daily rate.

Charges for the passes will be added to the final invoice provided by Conference Management.

All visitors not parked in assigned visitor parking area will receive Parking Citations and all fines will be enforced.

If you need afterhours parking assistance: call 859-572-5505.

**5) DEPOSIT** *not necessary for this contract*

With the return of this signed agreement on or before the agreement due date (section 1), User shall ~~pay the University a non-refundable sum listed in section 1~~ to confirm the initial reservation. Balance will be invoiced after the date said User shall occupy the facilities unless other arrangements are made with the Office of Conference Management.

**6) CANCELLATION**

If the User cancels this agreement 60 days before the date of the function, as it appears on the front of this agreement, the User shall be liable for direct cost incurred by the University specifically in preparation to fulfill this agreement. This cost will be computed to be equal to or greater than the non-refundable deposit. No shows will be charged as contracted. Cancellation less than the 60 day limit may result in a charge for lost business opportunity computed to be fifty percent (50%) of total projected charges.

**7) PAYMENT**

Due to Northern Kentucky University's fiscal year, invoices will be sent at least twice a year. Invoice schedule will be as follows: Once in the Fall (December) and once in the Spring (following season end). If your practice schedule also overlaps in June & July, an additional invoice will need to be sent (May).

Unless otherwise provided herein, the User shall be billed the remaining balance for all facilities, equipment, and services after the completion of the facilities use, and all payments are due upon such billing. If payment is not received within thirty (30) days of billing, a five percent (5%) fee will be added to the total amount due. After 60 days, eight percent (8%) of outstanding amount will be charged. After 90 days, ten percent (10%) of outstanding amount will be charged monthly until paid. If payment is not made when due, any waived or reduced fees may be reinstated and charges will be added on the late fee invoice. Please submit payment as instructed in order to avoid late fees or additional processing fees. Other arrangements must be made with the Office of Conference Management prior to your arrival.

**8) COMPLIANCE WITH APPLICABLE LAWS AND UNIVERSITY POLICY**

User shall comply with all applicable local, state and federal laws, ordinances and regulations. User shall comply with all policies, procedures, regulations and guidelines prescribed by the University for the use of facilities/equipment/services. Failure to comply with these regulations may result in forfeiture of the privilege of using University facilities and services and termination of this agreement. Applicable University regulations include but are not limited to the following:

- A. Firearms, weapons, ammunition, fireworks, explosives and highly flammable materials are not allowed within the buildings or on the grounds.
- B. Ticket sales, admission charge, or any other forms of monetary exchange to obtain entrance into any part of, or all, of said event is prohibited on the University premises unless otherwise authorized by the Office of Conference Management. Gambling or solicitation in any form is not permitted.
- C. Tobacco-free Campus.

Tobacco products are prohibited in all interior/exterior building space, outside ground areas, walkways and parking structures, indoor/outdoor athletic facilities, and vehicles. Prohibited products include, but are not limited to, cigarettes, cigars, pipes, hookah-smoked products, and oral tobacco such as spit/spitless, smokeless, chew, and snuff products. Products that contain tobacco flavoring or simulate tobacco use, such as electronic cigarettes, are also prohibited.

- D. Use of University facilities will not be authorized for (a) activities charging admissions or otherwise raising money, including theatrical and other types of entertainment, (b) on going meetings for local service clubs, churches, lodges and other groups except for purposes of temporary emergency assistance. Variances from this policy will be granted at the discretion of the Office of Conference Management.

- E. Affirmative Action Policy

It is the policy of Northern Kentucky University not to discriminate in its educational policies and/or conference programming on the basis of race, color, age, religion, national origin, sex, sexual orientation, physical or mental disabilities, or status as a disabled veteran or veteran of the Vietnam Era. This policy is in compliance with state and federal guidelines and is enforced as a matter of philosophy of the University.

- F. Americans with Disabilities Act

Northern Kentucky University represents that it is in compliance with the applicable sections of the Americans with Disabilities Act as amended (hereafter "ADA"). The facilities and services will be appropriately accessible to persons with disabilities. Northern Kentucky University agrees to hold harmless the User, its officers, directors, employees and agents from and against any claims resulting from Northern Kentucky University's failure to comply with ADA standards for access to its premises and services. The User agrees to hold harmless Northern Kentucky University, its officers, directors, employees, and agents from and against any claims resulting from the Users failure to comply with ADA standards for access to its programs and services.

- 9) Facilities occupied by User shall, at all times, be under control of the University and designated personnel from the University shall have right to enter said facilities on official University matters at any time when deemed necessary by the University or its designated agents and employees.

- 10) If, prior to the use date(s) provided for herein, the facilities/equipment are destroyed or damaged by fire or other casualty or become unavailable or unusable because of a cause beyond reasonable control of the University, then the University may elect to terminate this Agreement and return User's deposit and have no further obligation whatsoever hereunder.

- 11) If any required deposit or sum, is not paid promptly when due, or in the event the User shall violate any of the terms of the Agreement, User shall be required to vacate the premises, and the University shall retain all sums received prior to such termination. Early termination of this agreement shall not relieve User of any and all liabilities prior to User vacating the premises.

**12) EMERGENCY ASSISTANCE**

If you require emergency assistance while on our campus, you can contact our Northern Kentucky University Police Department at 572-7777 or 7777 from any house phone. If by chance you arrive in the evening or on a weekend and your room is locked; please call 572-5500 and be prepared to present this signed contract to the University representative who arrives to unlock your room. Our Severe Weather Policy can be viewed at <https://inside.nku.edu/safety/emergencymanagement/guide/weather.htm>, and on Sunday call 859-572-5500.

**13) FOOD SERVICE**

User agrees to arrange for any food and beverage service on campus only through approved University Food Service vendor(s) who will issue separate contracts and invoices. Food and beverages may not be sold or distributed in campus facilities without prior written approval from the University. Arrangements for meals should be made directly with the campus Food Service Department or his/her appointee at the University at 859-572-7782 or email [Sara.Trauth@compass-usa.com](mailto:Sara.Trauth@compass-usa.com). Additional information is available at [Northern Class Catering](#). The Food Service Department has the first right of refusal of service before an alternate service may be considered.

**14) INSURANCE**

- A. User, at its own expense, shall maintain in full force and effect during the program dates specified herein, the following insurance policy(s), which shall be endorsed as needed to provide that the coverage afforded by the policy(s) is primary and that insurance and/or self-insurance that may be available to Northern Kentucky University is strictly excess and secondary and shall not contribute in any way with the user's insurance. The policy(s) must be written by a good and solvent insurance carrier(s) licensed to do business in the Commonwealth of Kentucky. Said policy(s) shall be endorsed to name Northern Kentucky University, its directors, officers, employees, agents, representatives, and volunteers as "additional insured".
- General Liability Insurance – A policy of General Liability Insurance insuring against claims of bodily injury, death, and/or property damage with a combined single limit of not less than One Million Dollars (\$1,000,000.00).
- B. A "Certificate of Insurance" (obtained from the user's insurance agent) shall be provided to Northern Kentucky University, with an original signature of an authorized insurance company representative, and shall provide for at least ten (10) days notice of change in coverage or cancellation. University representatives must receive the certificate thirty (30) days prior to the start of the use provided for herein.
- C. Failure of the user to obtain or maintain insurance coverage, or failure to submit the

certificate to Northern Kentucky University as outlined above will not relieve the user of the obligations specified in this agreement. In the event insurance coverage has not been obtained or maintained by the user, the responsibility for defense of and/or payment of any claims(s) for damages or expenses intended to be covered by the insurance shall become the responsibility of the user.

#### **15) INDEMNITY AND DAMAGES**

- A. User agrees that all participants and/or members of the audience are under the direct and complete control of the User. As such, the User is liable for all damages resulting from participant utilization of the facilities and services provided by the University. User will reimburse the University for All Damages to facilities and services of the University resulting from the use of said facilities and services.
- B. User shall indemnify and hold harmless the University, its officers and employees, against any and all claims for loss, injury or damage to persons or property arising out of activities conducted by the User or its guests on University premises. The University assumes no liability whatsoever for any property placed by the User in University buildings or on University properties.
- C. Northern Kentucky University requires that you provide insurance for all participants. As a state-supported educational institution, NKU is immune from liability for injury to individuals or damage to goods. Nevertheless, a limited state waiver of immunity exists under K.R.S. 44.070, which allows for filing of claims of negligence with the Kentucky Board of Claims in the event of negligence on the part of an agency of the state.

#### **16) ASSIGNMENT**

User may not assign or in any way transfer its rights under this Agreement to any other parties. Nothing in this Agreement shall imply any partnership, joint venture, or other association between the University and the User. The User shall have sole responsibility for the content and the conduct of its activities on the University campus. The University's name shall not be used to suggest co-sponsorship or endorsement of any activity without prior written approval of the University.

#### **17) FORCE MAJEURE**

Notwithstanding anything contained in this Agreement, neither Party shall be liable to the other for any failure to perform or any delay in the performance of any of its obligations herein, where such failure or delay is caused by war, rebellion, civil disturbance, earthquake, fire, flood, strike, pandemic, epidemic, public health emergency, labor unrest or strikes, acts of Government body, acts of public enemy, acts of God, or such other cause as is beyond the reasonable control of the defaulting or delaying Party (and which is not caused by the act or omission of the Party claiming force majeure) ("Force Majeure Events"), provided however that the defaulting or delaying Party shall give prompt notice of the Force Majeure Event to the other Party. Upon one Party providing such notice, the Parties shall discuss the situation and attempt to determine the likely impact on performance under this Agreement, including likely delay in performance of obligations. In the event a Force Majeure occurs that substantially impact or delays



performance, the parties agree that either party may terminate the agreement. In the event of such termination due to Force Majeure event, the parties agree that neither party shall be liable to the other for any further funds, claims, or obligations, and any deposits paid shall be returned.

**18) ADDITIONS AND DELETIONS**

Any additional facilities and/or services not specified in this agreement are subject to additional charges and must be approved by both parties prior to incurring the additional charges. Any deletions from this agreement must be initialed and dated by both parties. All documents must be signed and initialed by the same.

**19) ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all other agreements, arrangements and understandings relating to the use of campus facilities.

**20) This Agreement shall be governed by the laws of the Commonwealth of Kentucky.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above referenced.

USER: Kenton County School District

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

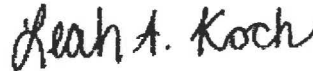
User has also received a copy of the following and agrees to terms stated within:  
Please initial.

Parking Order Form	_____ (Exhibit A)
CRC Pool & Dive Team Policies	_____ (Exhibit B)

UNIVERSITY:



Sarah Aikman  
Student Union Director  
Northern Kentucky University



Leah A. Koch  
Assistant Director for Conference Management  
Northern Kentucky University

Exhibit A



**PARKING APPLICATION**

**CONFERENCE MANAGEMENT AGREEMENT**

**CUSTOMER FULL NAME:** \_\_\_\_\_

**ORGANIZATION:** \_\_\_\_\_

**CONTACT INFORMATION:** **ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP CODE:** \_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

**VEHICLE INFORMATION:** **LICENSE PLATE #:** \_\_\_\_\_ **STATE:** \_\_\_\_\_

**MAKE:** \_\_\_\_\_ **MODEL:** \_\_\_\_\_ **COLOR:** \_\_\_\_\_

**Exhibit B**  
**NKU Campus Recreation Center Pool**  
**Rules and Policies for Dive Teams**

The listed NKU Campus Recreation Center Pool rules and policies will apply to all teams utilizing the lap pool for practices. NKU Campus Recreation Lifeguards, Lifeguard Supervisors, and Aquatics Staff will be the decision maker in enforcing all rules and policies.

**CRC Pool Rules:**

- Pool facility use is prohibited unless supervised by a NKU Campus Recreation Aquatics Lifeguard.
- The use of oils and body lotions is prohibited. Dispose of bandages on minor cuts before entering the pool area.
- Admission is refused to all persons having any contagious disease(s), open wounds, or any other infectious condition or illness, and those under the influence of alcohol and/or drugs, or exhibiting erratic behavior.
- Individuals who have had diarrhea in the last two weeks are asked not to use the pool.
- Appropriate swimsuits of acceptable material and design are required for all swimmers. Street clothes, street shoes, thongs, and see-through swimwear are prohibited. A clean, (not cotton) T-shirt and/or clean aqua socks may be worn into the pool.
- CRC Aquatics staff may require patrons to demonstrate swimming ability before using any pool area or pool equipment.
- Only swim and dive team rentals registered with the CRC aquatics program are permitted in the pool area.
- All bags and diving team items must be kept in the teams designated bin. No bags are permitted on the walkway of the deck.
- All group members and coaching staff must use the provided Electronic CRC tag when entering the facility.
  - Airdrop images at the CRC entrance to nearby people is prohibited.
- Items and activities **prohibited** in the pool area:
  - Running on the pool deck
  - Spitting, blowing the nose, urinating and otherwise contaminating the pool, whirlpool, pool deck, sauna or locker rooms
  - Diving in shallow water
  - Rough play, horseplay, and chicken fights
  - Dunking on basketball rims
  - Breath holding longer than 30 seconds as well as the practices of static apnea and hypoxic training
  - Large or loose jewelry. Lifeguards will determine the safety of any questionable jewelry.
  - Glass (including glass water bottles) of any kind or other material, which might cause hazardous conditions
  - Unattended strollers on the pool deck



- Inflatable floatation devices including rafts, tubes and water wings
- Food, beverages, gum, or any tobacco product
- Abuse, inappropriate behavior or any other inappropriate language
- The following policies/rules are in place for swimmers **17 years of age and younger**:
  - Swimmers under age 17 are permitted to have a parent/guardian view their child from outside the Aquatic Center during practice.
  - Parents, guardians, or swim and dive coaches are responsible for watching and attending to their children while using the aquatic center.
  - **Parents/guardians are not permitted to watch practice from the pool deck.**
  - The use of water toys is restricted to those furnished by the CRC Facility.
- To ensure proper supervision and safety, Campus Recreation reserves the right to limit the number of individuals in the pool and surrounding area.
- A long whistle blast may signal an emergency. Exit the pool immediately and look to the lifeguard for further instruction.
- Do not converse with or distract the lifeguards while they are actively engaged in their duties.
- CRC Aquatics Staff have the responsibility to enforce regulations and have the authority on all activities in the pool facility as well as authority to remove anyone for unsafe or inappropriate behavior.

#### **Diving Well Rules:**

- All CRC Pool rules and regulations apply to diving well use.
- Children age 6 or younger are not permitted to use the diving well, diving boards or climbing equipment unless registered in a CRC aquatics program.
- Swimmers 7-17 years of age may be required to take a swim test prior to using diving well.
- Swimming in the diving well is prohibited when the diving boards are in use.
- The 3 meter springboard is restricted to use by diving teams under supervision of a registered diving coach.
- The use of NKU Campus Recreation equipment has a fee attached to it - \$5.00 for the use of a pull buoy & kickboard.
- Diving, jumping or climbing deemed unsafe, in the judgment of the lifeguard, will be prohibited.
- When diving board (1M) is available for recreational use:
  - Use is restricted to competent, unassisted swimmers at least 7 years of age.
  - No equipment (goggles, earplugs, lifejackets, etc.) may be used when diving or jumping.
  - Only one person is permitted on the diving board or its ladder at a time.
  - Do not jump or dive until the diver before you reaches the ladder.
  - Dive or jump straight ahead.
  - After entry, swim directly to the nearest ladder and exit the pool immediately.

#### **Help Prevent R.W.I.'s (Recreational Water Illness):**

- Germs can spread in the water and make other people sick.

- Practice good hygiene. Take a shower (not until further notice- showers closed due to Covid-19) before swimming and wash your hands after using the toilet or changing diapers. Germs on your body end up in the water.
- Do not spit, blow your nose or urinate in the pool, on the pool deck, or anywhere on the locker rooms floor.
- Dispose of bandages on minor cuts before entering the pool area.
- Do not swim when you have diarrhea.
- Do not swallow pool water. Avoid getting water in your mouth.

## AGREEMENT

THIS AGREEMENT is made on this \_\_\_\_ day of \_\_\_\_\_, 2023-by and between Northern Kentucky Racquets Club, Inc. (hereinafter called "Owner") and \_\_\_\_\_ a, \_\_\_\_\_ d/b/a Kenton County Schools (hereinafter called "SWIM").

### RECITALS:

A. OWNER is the owner of the Northern Kentucky Racquets Clubs, Inc at 345 Thomas More Parkway, Crestview Hills, KY (hereinafter called "PREMISES").

B. SWIM desires to use a portion of the PREMISES to operate a swim programming at SWIM's sole cost and expense during the days and times set forth on attached Exhibit A and otherwise in accordance with this Agreement (the "Intended Use"). The portion of the PREMISES which SWIM is permitted to use solely for the Intended Use is described in section 1 of this Agreement (the "Usable Area") and is located within the PREMISES.

C. OWNER and SWIM agree to the following terms and conditions upon which SWIM will be permitted to operate for the Intended Use within the Usable Area at the PREMISES.

### AGREEMENTS:

#### 1. Usable Area.

(a) **"Usable Area" shall mean the outdoor swimming pool and the surrounding pool decks on the PREMISES and the public restrooms adjacent to the swimming pool.** Subject to the terms and conditions set forth below, OWNER hereby grants SWIM a revocable license for the non-exclusive use of the Usable Area for the Intended Use and for no other purpose whatsoever. No representation or warranty as to the condition, suitability and safety of the PREMISES or the Usable Area for SWIM's Intended Use is made by OWNER and the Usable Area is delivered in "as-is" condition. SWIM agrees to cooperate with OWNER related to any events held at the PREMISES for which the use of the Usable Area by OWNER or member(s) of the PREMISES will be needed and agrees to cooperate with requests from the club manager of the PREMISES related to such events. Except for ingress and egress through the PREMISES as necessary to access the Usable Area for the Intended Use, neither SWIM nor any SWIM Participants shall be permitted to use any other portion of the PREMISES or the facilities therein without purchasing a club membership from Owner. SWIM will not allow the Usable Area or any other portion of the PREMISES to be used by any SWIM Participants in any way that may, in OWNER's reasonable discretion, conflict with the terms of this Agreement.

2. Term Agreement

(a) **Term.** The term of this Agreement shall be for the time period from October 2, 2023 to October 31, 2023 unless sooner terminated in accordance with the provisions of this Agreement (the "Term"). Upon the expiration or termination of the Term, the license for the Usable Area and all rights and privileges granted herein shall terminate and be of no further force and effect, except those obligations of SWIM which expressly survive the expiration or termination of this Agreement. Upon the expiration or termination of this Agreement, SWIM will quit and surrender the Usable Area, broom clean, in good condition and repair, reasonable wear and tear and casualty excepted, together with all keys and combinations to locks. The foregoing obligations of SWIM shall survive the expiration or earlier termination of this Agreement.

(c) **Termination Right.** Notwithstanding anything to the contrary in this Agreement, OWNER or SWIM can terminate this Agreement, the license for the Usable Area and all rights and privileges granted herein without cause upon (10) days' prior written notice to the other party.

3. Fee; Manner of Payment.

(a) **Fee.** SWIM shall pay OWNER for the rights and privileges granted herein a sum equal to 22 days of rental at \$20 per lane x 8 lanes for a total of \$7040 ("OWNER Fee"). OWNER shall have the right upon reasonable notice to SWIM to audit all receipts, books and records of SWIM related to the SWIM programs at the PREMISES.

(b) **Manner of Payment.** The OWNER Fee shall be due in advance of use. Payments shall be made via check. If payment due under this Agreement is more than seven (7) days late, then SWIM shall pay Owner a late charge of 10% on all unpaid balances until paid in full.

4. Intended Use. All activities operated by SWIM shall be in accordance with the Intended Use (the "SWIM Programs"). SWIM shall be entitled to use the Usable Area during the days and times as set forth on attached Exhibit A.

5. SWIM's Operations.

(a) **General Operations.** SWIM shall (i) conduct its business at the Usable Area at SWIM's sole cost and expense and at all times in a safe manner consistent with all applicable legal requirements including a lifeguard paid by SWIM at the Usable Area.

(b) **SWIM Employees**-agrees to provide owner with any and all necessary documentation related to the proper certification prior to the start of this agreement. Subject to all laws and applicable rules and regulations, SWIM shall be the employer for all employees and staff needed to operate the SWIM programs and SWIM shall determine its own labor policies. SWIM shall be responsible for, without limitation, the recruiting,



hiring, training, compensation, supervision and discharge of all such employees and staff. All employees and staff shall be hired and retained in the name of SWIM, it being understood that SWIM, and not OWNER, shall be the employer of all employees and staff involved in carrying out the Intended Use. SWIM shall ensure that its employees and staff as set forth in this Agreement comply with all standards and employee policies provided by OWNER that relate to all employees and staff at the PREMISES. If a SWIM employee violates any of OWNER's policies applicable to the PREMISES, SWIM agrees that, upon OWNER's request, any such employee shall be relocated by SWIM.

(c) **WATER TEMPERATURE**

Owner shall maintain the pool temperature for the pool in a manner commensurate with the Owner's then current standards for its members' use during the time of use of the pool by SWIM; provided, however, Owner shall not be responsible for any failure to maintain the pool temperature when the failure is beyond the commercially reasonable control of Owner

7. Covenants of Licensee.

(a) **Waiver from Participants.** SWIM agrees to obtain from each participant in the SWIM programs a signed, standard waiver of liability (in a form approved in advance by OWNER) prohibiting such participants from bringing any claims or actions against OWNER or the PREMISES. Each such waiver of liability shall make it clear that neither SWIM nor any of its employees or agents is an employee or agent of the OWNER or the PREMISES and that SWIM is an independent contractor.

(b) **Rules and Regulations.** SWIM shall comply with and observe all rules, regulations and policies (collectively, the "policies") established by OWNER from time to time for the PREMISES, including the Rules and Regulations of the pool.

8. Marketing. SWIM will not use OWNER's or the PREMISES' name in any advertisement about the business to be operated at the Usable Area except as approved in each case by OWNER in writing in advance in its sole and absolute discretion.

9. Indemnity by SWIM. OWNER assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted by SWIM. OWNER shall not be liable for any accident, loss, damage or injury to any person or persons or property in or about the Usable Area or the PREMISES which arises out of the conduct and operation of said business, or by virtue of equipment or property of SWIM. SWIM shall and hereby does agree to defend, indemnify and save harmless OWNER, and its parents, subsidiaries, affiliates, officers, directors, agents, and employees (collectively, "Indemnified Parties") from and against all liability (statutory or otherwise), claims, suits, causes of action, demands, judgments, costs, interest and expenses (including also counsel fees and disbursements incurred in the defense thereof) to which any Indemnified Parties may (except insofar as such costs arise out of the gross negligence of such Indemnified Parties) be subject to or suffer, whether by reason of any claim for, any injury to, or death of, any person or persons or damage to or loss of property (including also any loss of use thereof) or otherwise, and arising from or in connection with the use by SWIM (or any SWIM

Participant) of, or from any work or anything whatsoever done by SWIM (or any SWIM Participant) in any part of the PREMISES, or arising from any condition of the PREMISES due to or resulting from any default by SWIM in keeping, observing or performing any covenant or agreement contained in this Agreement or from any fault or neglect of SWIM or any SWIM Participant. The foregoing obligations of SWIM shall survive the expiration or earlier termination of this Agreement.

10. Loss or Damage to SWIM's Property and Business. All personal property belonging to any SWIM Participant located in or about the PREMISES shall be present at the sole risk of SWIM. Neither OWNER nor any of the Indemnified Parties shall be liable for the theft or misappropriation thereof, nor for any loss, damage or injury thereto, nor for damage or injury to SWIM or any SWIM Participant or to other persons or to any property caused by fire, explosion, water, gas, electricity, leaks from the roof or other portions of the PREMISES, the bursting or leaking of pipes, plumbing, electrical wiring and equipment and fixtures of any kind, or by any act or neglect or other tenants or occupants of the PREMISES, or due to any other cause whatsoever. SWIM shall give immediate verbal and written notice to OWNER in case of fire or accident in the Usable Area or of any defects, damages or injury therein. In no event shall OWNER be liable for interruption to SWIM's business or for damage to or replacement or repair to SWIM's personal property.

11. Defense of Claims. Without limitation of the provisions of Section 9 above, in case OWNER or any Indemnified Party shall be made a party to any litigation commenced against SWIM, SWIM shall protect and hold OWNER and any such Indemnified Party harmless and shall pay all costs, expenses and attorneys' fees related to the defense of such claim. SWIM shall also pay all costs, expenses and attorneys' fees that may be incurred or paid by OWNER in enforcing the terms of this Agreement. The foregoing obligations of SWIM shall survive the expiration or earlier termination of this Agreement.

12. Insurance. SWIM shall obtain and keep in effect throughout the term of this Agreement: (a) commercial general liability insurance covering the Intended Use with minimum limits of \$2,000,000 per occurrence, (b) property insurance covering all improvements, inventory, furniture, fixtures and equipment and personal property located in or serving the Usable Area, in an amount not less than one hundred (100%) percent of their full replacement cost of the property as determined from time to time during the Term, (c) automobile liability insurance and property insurance with a single combined liability and property damage limit of \$1,000,000, and (d) such other insurance that OWNER may reasonably require that SWIM maintain during the Term. SWIM's insurance shall include coverage for independent contractors, subcontractors and the indemnity obligations of SWIM as set forth in this Agreement. All insurance maintained by SWIM shall contain a full waiver of subrogation, as applicable, and shall name OWNER, as an additional insured/loss payee, as appropriate. SWIM's insurance shall be primary. A certificate of insurance and a copy of the applicable additional insured/loss payee endorsement naming OWNER shall be delivered to OWNER prior to the commencement of the Term.

13. No Assignment. SWIM shall not assign this Agreement or the license granted hereunder without the prior written consent of OWNER which OWNER may withhold in its sole and absolute discretion. The consent by OWNER to any assignment shall not constitute a waiver

of the necessity for such consent to any subsequent assignment. The prohibition against assignment shall be construed to include a prohibition against any assignment by operation of law or by transfer of a controlling interest of the ownership interests in SWIM to any party other than the holders of such controlling ownership interests on the date of this Agreement. Notwithstanding any assignment, SWIM shall remain fully liable and shall not be released from performing any of the terms of this Agreement.

14. Immediate Termination. If SWIM should fail to perform any covenant, undertaking or obligation arising hereunder, at OWNER's option, all rights and privileges granted herein to SWIM shall immediately terminate with written notice from OWNER to SWIM, and this Agreement shall be of no further force or effect except for liability previously accrued or any provisions or agreements that expressly survive termination of this Agreement.

15. Not a Lease. It is hereby declared by and between the parties that it is not the intention of either OWNER or SWIM to create between them through this Agreement a lease, the relationship of landlord and tenant or to confer any rights upon SWIM as would amount in law to a landlord-tenant relationship. Rather, this Agreement is intended solely to create a bare privilege on the part of the SWIM, personal to SWIM, to operate its business for the Intended Use in the Usable Area and in the manner described in this Agreement.

16. Notices from Sandy Arnold and Morel Construction- Written notice to OWNER shall be mailed to:

Attention: Club Manager-Shawn Barone  
345 Thomas More Parkway  
Crestview Hills, Kentucky 41017

Written notice to SWIM shall be mailed to the address set forth below SWIM's signature to this Agreement. Written notice to either party shall be deemed to have been given upon being mailed to the proper address provided above, by overnight carrier, registered or certified first class mail, return receipt requested with proper postage prepaid. Either party may, by like written notice, designate a new address to which such notices shall be directed at least ten (10) days before the date such change becomes effective. Thereafter, any written notices shall be directed to such substitute address.

17. OWNER's Self-Help. In the event SWIM fails to perform any of its obligations under this Agreement in a manner reasonably satisfactory to OWNER, or in the event SWIM fails to pay for anything which, under the terms of this Agreement SWIM is required to pay for, OWNER shall have the right, but not the obligation, upon giving SWIM at least three (3) days prior written notice of its election to do so (in the event of any emergency no prior notice shall be required) to perform such obligation on behalf of and for the account of SWIM and to take all such action to perform such obligations, or to pay for SWIM's obligations. In such event, OWNER's costs and expenses incurred in connection with performing or paying for any obligation of SWIM shall be paid by SWIM as an additional payment upon written demand by OWNER, with interest from the date OWNER incurs such expenses at the highest lawful rate. The payment by OWNER

of any obligation of SWIM shall not constitute a release or waiver of SWIM there from and the obligation to make such payment shall survive the expiration or earlier termination of this Agreement.

18. Miscellaneous.

(a) **Authority.** SWIM represents and warrants to OWNER that the person signing this Agreement on its behalf has the requisite authority and power to execute this Agreement and to thereby bind the party on whose behalf it is being signed.

(b) **Counterparts.** This Agreement may be executed in two or more counterparts, and if so executed each counterpart shall be deemed an original but all counterparts together shall constitute one instrument.

(c) **Severability.** In the event any part of this Agreement is held to be unenforceable or invalid for any reason, the balance of this Agreement shall not be affected and shall remain in full force and effect.

(d) **No Offer.** The submission of this Agreement by OWNER to SWIM shall not constitute an offer by OWNER to SWIM and OWNER shall not be bound in any way unless and until this Agreement is executed and delivered by both parties.

(e) **Entirety.** This Agreement contains the final and entire agreement between the parties relative to the subject matter hereof, and they shall not be bound by any terms, statements, conditions or representations relative to the subject matter hereof, oral or written, express or implied, not herein contained.

(f) **Binding Effect.** All provisions herein shall be binding and inure to the benefit of the parties hereto, their successors and those assigns to whom assignment of rights hereunder is permitted. Each provision to be performed by SWIM shall be construed to be both a covenant and a condition, and if there shall be more than one party performing SWIM's duties or obligations, they shall all be bound, jointly and severally, by these provisions.

(g) **Time of the Essence.** Time is of the essence with respect to each of SWIM's obligations under this Agreement.

(h) **Entire Agreement; Amendments.** This Agreement and the exhibits, riders and/or addendum attached if any, set forth the entire agreement between the parties hereto. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Agreement shall be binding upon OWNER or SWIM unless in writing and signed by both parties hereto.

(i) **Governing Law.** This Agreement shall be governed by the laws of the State of Kentucky.

[Signatures follow]



IN WITNESS WHEREOF, OWNER has caused this Agreement to be signed by its duly authorized representative, and SWIM has caused this Agreement to be signed by its duly authorized representative; all done on the date first above written.

OWNER:

Northern Kentucky Racquet Clubs, Inc,  
Five Seasons Sports Countr Clubs, LLC

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

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

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

SWIM:

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

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

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

Address for notices:

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

**EXHIBIT A**

**HOURS OF USE**

Day	Hours	Function Type	Setup		Location
M thru F	4pm to 6 pm	Swim Team	Existing-all 8 lap lanes		Outdoor Pool
Beginning	October 2 thru 31	2023			



www.silverlakefamily.com

## FACILITY LEASE AGREEMENT Lessee

Attn: Morel Construction  
on behalf of the Kenton  
County School District  
2801 Alexandria Way  
Highland Heights, Ky  
41076

LESSOR: Kenton Lands LLC dba Silverlake "The Family Place"

LESSEE: Dixie Heights HS Swim

CONTACT: Sandy Arnold

ADDRESS: 5400 Pride Parkway

CITY, STATE Taylor Mill, KY PHONE: 859-468-4573

FACILITY ADDRESS: 301 Kenton Lands Rd. Erlanger, KY 41018

ROOMS:	Party Room:	Exclusive	Non-Exclusive	Excluded
	Small Pool:	Exclusive	Non-Exclusive	Excluded
	Large Pool:	Exclusive	Non-Exclusive	Excluded
	Bumper Boats:	Exclusive	Non-Exclusive	Excluded
	Hydrophobia Wall:	Exclusive	Non-Exclusive	Excluded
	Kid's Quest:	Exclusive	Non-Exclusive	Excluded
	Kid's Club:	Exclusive	Non-Exclusive	Excluded
	Kid's Zone:	Exclusive	Non-Exclusive	Excluded
	FunNastics:	Exclusive	Non-Exclusive	Excluded
	Basketball Gym:	Exclusive	Non-Exclusive	Excluded
	Steam/Sauna:	Exclusive	Non-Exclusive	Excluded
	Fitness Area:	Exclusive	Non-Exclusive	Excluded
	Aerobics Room:	Exclusive	Non-Exclusive	Excluded
	Lap Swimming:	Exclusive	Non-Exclusive	<input checked="" type="checkbox"/> Excluded

Number of Lap Lanes \_\_\_\_\_

LEASE AMOUNT: Based on number of practices

LEASE DEPOSIT: \$500.00

EVENT DATE: 10/1 - 10/31/23

TIME:

From: M-T-Th To: 8-9:30p  
Wed 7:45-9:15p

COMMENTS: Contract should address the "Attn" statement  
but all contact and mailing should be directed to Sandy Arnold,  
KCSD Aquatics Coordinator

Lessor leases to Lessee that part of the Facility set out above on the date and time set out above for the lease amount set out above.

The Lease Deposit shall be paid upon execution of the Facility Lease and shall be non-refundable but shall be a credit against the Lease Amount.

The balance of the Lease Amount shall be paid prior to the start of the Facility Lease.

Lessee shall not allow alcoholic beverages to be brought into the Facility nor shall Lessee permit smoking within the Facility. Breach of this provision may be grounds for termination of the Facility Lease and expulsion of Lessee and his/her/their invitees.

Lessor shall provide supervision of the Facility in accordance with its normal policy. Lessee understands that the Facility includes swimming pools, climbing areas and gymnastic equipment the improper use of which may cause the participant to suffer personal injury. Lessee agrees that Lessee and his/her/their invitees will comply with the rules and regulations of the Facility and the direction of the Lessor's staff as to the use of the Facility. Breach of this provision may be grounds for termination of the Facility Lease and expulsion of Lessee and his/her/their invitees.

Lessee agrees to indemnify and hold Lessor harmless from any claim, action, cause of action or suit, including reasonable attorney fees and costs of investigation and litigation arising from personal injury or property damage caused, in whole or in part, by the failure of Lessee or his/her/ their invitees to comply with the rules and regulations of the Facility or the direction of Lessor's Staff.

Lessee agrees that at the end of the Facility Lease that it will return to Lessor that part of the Facility, set out above as exclusive to Lessee, in the same condition as it existed at the start of the Facility Lease.

This Facility Lease represents the entire understanding between Lessor and Lessee and shall not be altered amended or modified except in writing and executed by Lessor and Lessee. No verbal statement or agreement shall be effective unless reduced to writing and executed by Lessor and Lessee.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

**LESSOR:**

**BY:** \_\_\_\_\_ Megan Bowersox  
(Silverlake Representative)

**LESSEE:**

**BY:** \_\_\_\_\_



## Aquatic Department Lane Rental Agreement

Swim Team: Dixie

Head Swim Coach: Chris Schoettker

Email: Christopher.schoettker@gmail.com Phone: 859-630-1895

Athletic Director: Derek Bosse

Email: derek.bosse@kenton.kyschools.us Phone: 859-341-7650

Practice Start Date: 10/02/2023

Practice End Date: 10/31/23

Day: Monday Time: 8PM - 9:30PM Number of Lanes: 5

Day: Tuesday Time: 8PM - 9:30PM Number of Lanes: 5

Day: Wednesday Time: 7:45PM - 9:15PM Number of Lanes: 5

Day: Thursday Time: 8PM - 9:30PM Number of Lanes: 5

☒ Please check box if the above day(s) and times(s) are correct.

### Policies:

**Initial Deposit: \$500.00 (Must be sent in with this form)**

Balance will be Due: March 1, 2024

Additional billing will occur following the conclusion of the season.

Cost: \$22 or 24 per hour, per lane

(\$24 per hour, per lane for practices between 3:00 pm-6:00 pm or anytime on weekends)

**Facility will not be available for practice on the following days:**

Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Eve, New Year's Day,  
**Clipper Swim Meets will limit weekend practices on the following days: Dates TBD**

1. Rental is to be paid for the days and times that have been set aside for you regardless of use. Days that the facility is closed will not be charged to your team.
2. Silverlake will need a roster of your team prior to the first day of practice.
3. Each swimmer will need to complete the attached form and return it to the coach prior to the first day of practice.
4. Each swimmer will be issued a card to gain entry to the facility and must scan it at the front desk.
5. The same lane(s) each week will be provided.
6. Starting blocks are available and if used during practice, must be returned to original spot after practice.
7. Each Coach must read the Facility Rules and Policy form and ensure that all swimmers follow the facility rules.
8. Swimmers will not be permitted to use any portion of the facility except the locker rooms and the specific lanes assigned to the team. Please see team & large group locker room rules.
9. Swimmers may enter the facility 20 minutes prior to practice time.
10. Any additional practices or day/time adjustments, such as holiday practices, must be approved by the Aquatic Director in advance.

Approved By \_\_\_\_\_

Date \_\_\_\_\_