

**LICENSE AGREEMENT BETWEEN  
PASCO COUNTY AND LAND O'LAKES LIGHTNING SWIM TEAM, INC.  
FOR THE LAND O'LAKES RECREATION COMPLEX POOL**

**THIS AGREEMENT** is made and entered into by and between PASCO COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter called the "COUNTY," whose business address is 37918 Meridian Avenue, Dade City, Florida 33523, and LAND O' LAKES LIGHTNING SWIM TEAM, INC. hereinafter called the "LICENSEE," a non profit corporation, whose mailing address is 3024 CHESSINGTON DR, LAND O LAKES FL 34638.

**NOW, THEREFORE,** it is agreed as follows:

1. THE PROPERTY.

The COUNTY hereby grants unto the LICENSEE and the LICENSEE hereby accepts from the COUNTY this license agreement for certain real property located in the County of Pasco, State of Florida, Land O' Lakes Pool and Pool Building, to be exclusive of the rest of the park and any other features or buildings, at 3032 Collier Parkway, Land O' Lakes, Florida 34639-4763 (hereinafter called the "PROPERTY"), subject to terms, conditions, restrictions and limitations set forth herein.

It is understood and it is a condition of the granting of this license agreement that LICENSEE'S interest in the PROPERTY is, and shall at all times during the period of this license agreement, be limited to the use of the PROPERTY for the sole purpose of operating the pool for the general public at times indicated herein and for the LICENSEE'S exclusive use after and not in conflict with the open time for the general public, for its swimming team program (hereinafter called the "PROGRAM"). The LICENSEE has not and shall not be considered as having any right in or to the PROPERTY or any other interest of any kind or nature therein.

2. TAX-EXEMPT STATUS.

The LICENSEE shall maintain recognition in the State of Florida and with the United States Department of Treasury, Internal Revenue Service, as a Tax-Exempt Organization throughout the term of this license agreement.

3. TERM.

The term of this license agreement shall be from October 1, 2011 to September 30, 2012 and shall automatically be renewable for two additional one (1) year terms, unless earlier terminated as provided herein.

4. LICENSE FEE.

The COUNTY does hereby agree to waive the license agreement fee for the first year of the LICENSEE'S operations. The LICENSEE'S fees for subsequent years will be negotiated and documented by an addendum. The LICENSEE shall pay, as and when due and payable, all taxes, assessments, and/or

other charges that shall be imposed by the State of Florida, or any agency thereof, with respect to this license agreement and the operation and conduct of the LICENSEE'S programs.

5. PRIOR APPROVAL OF THE COUNTY.

The LICENSEE shall not commence any construction of any facilities, buildings, or other improvements on or to the PROPERTY until such time as written approval of and consent to the final plans and specifications have been given by the COUNTY.

6. CONTRACTS AND PERFORMANCE AND PAYMENT BONDS REQUIRED.

Prior to the commencement of any construction or work on the PROPERTY, the COUNTY requires copies of all contracts for the construction of any buildings, structures, facilities, or improvements. The LICENSEE shall furnish or cause to be furnished bonds covering the faithful performance of all such contracts and the satisfaction of all obligations arising thereunder in such form and in such amounts as shall be approved by the COUNTY.

7. COMPLIANCE WITH APPLICABLE LAWS.

The LICENSEE hereby covenants and agrees to conform to all applicable laws, rules, regulations, codes, and ordinances, including, but not limited to, Chapter 64E-9, Florida Administrative Code. Venue for any claims, disputes, or other matters in question between the parties to this license agreement shall be in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida.

8. SEVERABILITY.

The invalidity or unenforceability of any provision of this license agreement shall not affect or impair any other provision. The captions and section numbers appearing in this license agreement are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of such sections of this license agreement.

9. ASSURANCES OF THE COUNTY.

The COUNTY covenants and agrees to cooperate with the LICENSEE in the efforts of the LICENSEE to obtain all approvals and other permits or licenses which are or shall be required in order to use the PROPERTY in accordance with the terms and limitations of this license agreement.

10. UTILITIES AND SERVICES.

The LICENSEE shall pay for the following utility services furnished to the PROPERTY. For purpose hereof, "utilities services" shall include, without limitation, water, sewer, trash, electricity, propane gas and security systems. However, the COUNTY agrees to pay no more than seven thousand five hundred dollars (\$7500) total towards the utility bills in aggregate as such bills are due starting from the effective date herein. Upon completion of payment of said amount towards the utility bills, both parties understand and agree the LICENSEE shall be solely responsible for any and all utilities.

11. MAINTENANCE OF PROPERTY.

The LICENSEE shall keep each building, structure, and improvement used by the LICENSEE in the PROGRAM in a neat, orderly, clean, safe, and healthful condition in compliance with all codes and laws. The LICENSEE will also observe and comply with all requirements, regulations, and governmental directions with respect to the environmental protection of the PROPERTY. The COUNTY will be responsible for capital maintenance items which exceed Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00). The COUNTY'S responsibility for capital maintenance is subject to budgetary appropriation. If no funding is available, the license agreement may be unilaterally terminated by the COUNTY.

12. RISK OF LOSS.

The LICENSEE shall be solely responsible for keeping its personal property insured against loss or damage by fire, flood, or other casualty.

13. AFFECT OF PARTIAL OR TOTAL DESTRUCTION.

If the PROPERTY or any building or structure thereon is damaged by fire, flood, or other casualty, the COUNTY, in its sole discretion, may undertake and complete the repair or restoration of the PROPERTY or any building or structure thereon at its sole expense. The LICENSEE'S fire and casualty insurance on or relating to the LICENSEE'S property shall be solely for the benefit of the LICENSEE. In the event the COUNTY elects not to repair or reconstruct any buildings, structure, facilities, or improvements on the PROPERTY necessary for carrying out the LICENSEE'S PROGRAM, within such reasonable time as may be designated by the COUNTY, after any occurrence of loss or damage, the COUNTY may, at the COUNTY'S option, terminate this license agreement.

14. COVENANTS OF LICENSE.

As consideration for this license agreement, the LICENSEE covenants and agrees to implement and continue to operate and maintain the PROGRAM substantially in accordance with the PROGRAM and to abide by the LICENSEE'S charter and bylaws. The LICENSEE further agrees to comply with all such laws, rules, and regulations as may from time to time be imposed by any governmental authority regulating services of facilities similar to those provided for or contemplated under the PROGRAM and/or as shall from time to time be approved of or recommended by the Board of County Commissioners of Pasco County. The LICENSEE acknowledges that the PROGRAM is made possible by this licensing of the use of public property. The LICENSEE covenants and agrees that the LICENSEE shall:

a. Be responsible for all daily pool maintenance and housekeeping responsibilities for the proposed programs.

b. Make the pool available to Pasco County residents for at least forty (40) hours per week, and such hours shall be set by the COUNTY. This obligation shall be in effect from, and including, the Saturday before Memorial Day holiday to, and including, Labor Day holiday, during which time the COUNTY will staff the entry structure and charge an entry fee as granted by resolution. Any such fees collected by COUNTY shall not in any way be paid to or contribute to any costs incurred by LICENSEE in

performing this agreement. Such fees shall be solely for the COUNTY in its administration of the PROPERTY. The COUNTY reserves the right to use the pool periodically at no charge during hours not in conflict with the PROGRAM. Anytime not in conflict with the time the PROPERTY is open to Pasco County residents the LICENSEE shall have exclusive use of the PROPERTY for its PROGRAM.

c. Have adequate trained staff to perform all aspects of the PROGRAM undertaken by the LICENSEE, including at a minimum:

(1) One (1) person holding a Certificate as a Certified Pool/Spa Operator.

(2) One (1) lifeguard with a Lifeguarding First Aid/CPR – AED Certification per twenty-five (25) swimmers.

(3) One (1) swim instructor with Water Safety Instructor Certification per ten (10) students taking lessons.

15. TERMINATION.

The LICENSEE'S rights under this license agreement shall terminate:

a. If the LICENSEE fails to commence operation and conduct of the PROGRAM on or within sixty (60) days after the execution of the license agreement.

b. If the LICENSEE provides a written notice to the COUNTY of the LICENSEE'S election to terminate this license agreement within thirty (30) days.

c. If the COUNTY provides the LICENSEE with a written notice of termination ninety (90) days prior to the date of such termination upon a determination by the COUNTY, in its sole discretion, that the PROPERTY is necessary for other COUNTY purposes. Within sixty (60) days of receipt of such notice, the LICENSEE, at the LICENSEE'S option, may elect to remove and relocate the LICENSEE'S improvements.

d. The COUNTY may terminate this license agreement upon ten (10) days notice if capital maintenance is required of the facility and the COUNTY is unable or unwilling to fund the repair.

e. In the event of default by the LICENSEE, the COUNTY may immediately terminate this license agreement. The COUNTY shall not be required or be responsible for reimbursing the LICENSEE for any costs of or value associated with the facilities and improvements constructed or installed upon the PROPERTY.

16. DEFAULT BY THE LICENSEE.

Each of the following events shall be deemed to be an "event of default" by the LICENSEE under this license agreement:

a. The LICENSEE'S failure to comply with any term, provision, agreement, or covenant of this license agreement on its part to be complied with, performed, or observed, if such failure shall continue for more than ten (10) days after written notice thereof to the LICENSEE, or if such failure cannot be reasonably cured within said ten (10) days or shall not thereafter, with reasonable diligence and good faith,

proceed to cure such failure.

b. The LICENSEE'S failure to fulfill the PROGRAM within the time provided therein or at any time during the term of this license agreement. As used herein, the term "fulfill" means the LICENSEE'S using, operating, and keeping each and all buildings, structures, facilities, installations, and improvements in, to and on the PROPERTY in accordance with the PROGRAM.

c. The LICENSEE shall do, or permit to be done, anything which creates a lien upon the PROPERTY and such lien is not discharged or, within thirty (30) days after the LICENSEE received written notice of such lien being imposed against the PROPERTY, addressed by the LICENSEE substantially in a manner provided in Paragraph 16(a) hereof.

d. In the event that at the time of commencement of the term of this license agreement or at any time thereafter and until the termination thereof a petition in bankruptcy shall be filed or against the LICENSEE (unless a petition filed against the LICENSEE is vacated or dismissed within sixty (60) days of such filing), or the LICENSEE shall be declared bankrupt or insolvent, or a receiver or trustee shall be appointed to take charge of the LICENSEE'S affairs or property or the LICENSEE shall make an assignment for the benefit of creditors.

e. In the event an attachment at law against the goods, property, or chattels of the LICENSEE is issued and any such levy is not vacated or dissolved or the attached property restored to the LICENSEE by the giving or posting of a bond with surety within twenty (20) days after any such attachment.

f. The LICENSEE shall, at any time during the term of this license agreement fail to comply with, observe, and meet the terms and conditions required under any state or Federal law, rule, or regulation to maintain a not-for-profit tax exempt status or causes or permits any use or activity on the PROPERTY that serves as the basis for the imposition of ad valorem or intangible personal property taxes.

17. THE COUNTY'S REMEDIES.

Upon the occurrence of any event of default, the COUNTY shall have the right, at COUNTY'S election, to pursue, in addition to and cumulative of any other rights the COUNTY may have, at law or in equity, any one or more of the following remedies:

a. The COUNTY may cancel and terminate this license agreement and discontinue or terminate or cause to be discontinued or terminated the LICENSEE'S use of the PROPERTY and any building, structure, improvement, or facility thereon.

b. The COUNTY may enter the PROPERTY and do or cause to be done whatever the LICENSEE is obligated to do under the terms of this license and the LICENSEE shall reimburse the COUNTY on demand for any expenses which COUNTY may occur in effectuating compliance with or performance of the LICENSEE'S obligations under this license agreement, and the COUNTY shall not be liable for damages resulting to the LICENSEE from such action.

c. The COUNTY may grant a license to any entity to use the PROPERTY and the

facilities thereon for the purpose herein provided or use the PROPERTY and such facilities for such purposes as the COUNTY deems to be in the COUNTY'S best interest or may demolish and remove any buildings, structures, or improvements placed upon the PROPERTY by the LICENSEE and restore the PROPERTY to the condition existing prior to granting this license agreement and the LICENSEE shall reimburse the COUNTY on demand for any expenses which the COUNTY may incur in so restoring the PROPERTY.

18. LICENSEE'S ACCESS TO AND USE OF THE PROPERTY.

The COUNTY agrees that if the LICENSEE shall perform all of the covenants and agreements herein stipulated to be performed on the LICENSEE'S part, the LICENSEE shall, at all times during the term of this license agreement, be entitled to the use of the PROPERTY as herein provided, without any interference or hindrance from the COUNTY or any persons, and the LICENSEE shall have access to the PROPERTY at all times during the day and night. COUNTY further agrees that if the LICENSEE shall perform all of the covenants and agreements herein stipulated to be performed on the LICENSEE'S part COUNTY shall not contract with another swim team entity for the obligations, rights and privileges herein during the term of this Agreement.

19. SURRENDER OF THE PROPERTY.

The LICENSEE agrees to deliver up, cease, and surrender to the COUNTY the PROPERTY upon the expiration or earlier termination of this license agreement in a condition as close as reasonably possible to the condition existing at the time of entering into this license agreement. Any buildings, structures, and improvements provided by the LICENSEE and remaining thereon shall be removed and demolished by the LICENSEE unless the COUNTY agrees to accept any specific building, structure, improvement.

20. HOLDING OVER.

If the LICENSEE shall continue to use or remain on the PROPERTY or any part thereof after the expiration of the term or after earlier termination of this license agreement as provided herein, then the LICENSEE shall be deemed liable for all damages for or resulting from such use of the PROPERTY or any part thereof. The COUNTY shall have the right to invoke, take, or institute any and all steps or actions as may evidence termination of the LICENSEE'S use of the PROPERTY as granted by virtue of this license agreement and COUNTY shall have the right to take any and all steps or actions to remove the LICENSEE and any of the LICENSEE'S employees from the PROPERTY.

21. ATTORNEY FEES.

In the event of litigation regarding this license agreement or the parties respective obligations hereunder, the prevailing party will be entitled to such collection and court costs incurred by it and attorney fees as the court shall deem just and equitable, including such reasonable fees incurred in the enforcement of the terms of the defense or interpretation of this license agreement, whether such fees and costs be incurred at trial, on appeal, or in any bankruptcy proceedings.

22. INDEMNIFICATION.

The LICENSEE shall indemnify, keep and save harmless the COUNTY, its agents, officials, and employees against all claims, suits, actions, or proceedings for injuries, deaths, losses, damages, patent claims, liabilities, judgments, costs, and expenses which may accrue or be asserted against the COUNTY arising out of the LICENSEE'S performance of or its failure to perform the PROGRAM referenced in this license agreement, whether or not contemplated under the terms of this license agreement, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the LICENSEE or its employees, or of the subcontractors or its employees, if any, or the agents of the LICENSEE. The LICENSEE shall pay all attorney's fees and all costs and other expenses incurred in connection therewith, and if any judgment shall be rendered against the COUNTY in any such action, the LICENSEE shall, at its own expense, satisfy and discharge the same. The LICENSEE expressly understands and agrees that any performance bond or insurance protection required by this license agreement or otherwise provided by or on behalf of the LICENSEE shall in no way limit the LICENSEE'S responsibility to indemnify, keep and save harmless, and defend the COUNTY as provided herein.

The LICENSEE'S agreement and obligation to indemnify, keep, and save harmless the COUNTY, its agents, officials, and employees against all claims, suits, liabilities, judgment, costs, and expenses shall also extend to, cover, and relate to any claim, suit, or action arising from or predicated upon the COUNTY'S ownership of the PROPERTY. The LICENSEE'S obligation and agreement to indemnify, save, and hold harmless the COUNTY and those operating under its explicit direction does not include any intentional act of the COUNTY or any of its officials, agents, or employees as aforesaid.

The indemnity hereunder shall continue until such time as any and all claims arising out the LICENSEE'S performance or failure to perform under the terms of this license agreement and use of the PROPERTY have been finally settled, regardless of when any such claims may be made. In the event that any action, suit, or proceeding is brought against the COUNTY upon any liability arising out of this license agreement, the COUNTY shall give notice thereof in writing at once to the LICENSEE by certified mail addressed to the LICENSEE at the address contained herein. Upon receipt of notice, the LICENSEE, at its own expense, may defend against such action and take all steps as may be necessary or proper to prevent a judgment against the COUNTY. If the LICENSEE fails to timely defend after proper notice, the COUNTY may provide its own defense and recover from the LICENSEE attorney fees and expenses associated with such representation.

23. INSURANCE.

The LICENSEE shall procure and maintain insurance in amounts as may from time to time be required by COUNTY in order to secure the indemnification of the COUNTY to be furnished herein. Requirements for insurance coverage may also be established in a manner consistent with policies adopted by the Board of County Commissioners of Pasco County applicable to similarly situated agencies in amounts

deemed necessary to afford reasonable protection to the public.

Initially, the amounts and types of insurance shall conform to the following minimum requirements:

a. Workers' Compensation: Coverage to apply to and be for all employees for statutory limits in compliance with the applicable state and federal laws.

b. Commercial General Liability: The LICENSEE'S insurance shall cover the LICENSEE for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage with a minimum coverage of \$1,000,000 per occurrence.

c. Certificates of Insurance and Copies of Policies: Certificates of Insurance naming Pasco County as an additional insured and evidencing the insurance coverage specified in the previous Paragraphs a and b shall be filed with the COUNTY before the LICENSEE shall enter upon or use the PROPERTY. The required Certificates of Insurance not only shall name the types of policies provided, but shall also refer specifically to this license agreement and section and the above paragraphs of this license agreement. If the initial insurance expires prior to the expiration of this license agreement, renewal Certificates of Insurance and required copies of policies shall be furnished to the COUNTY thirty (30) days prior to the respective dates of their expiration.

The parties acknowledge and agree that insurance requirements of this license agreement are based upon sound business principles and the LICENSEE may elect to carry greater amounts of insurance. All of the insurance required hereunder shall be for the benefit of the LICENSEE. The naming of the COUNTY as an additional insured shall in no event be deemed or construed as a waiver of or limitation of the COUNTY'S rights of sovereign immunity.

#### 24. NOTICES AND AGENTS.

Every notice, demand, payment, request, or other communication hereunder shall be deemed to have been given or served at the time that the same shall be deposited in the United States mail, postage prepaid or by overnight carrier, addressed to the LICENSEE or the COUNTY, signed by their recognized agents respectively and addressed as provided below until either party provides written notice of a different agent or address. Notwithstanding any other notice requirement, any notice of default or termination shall be sent by certified mail, return receipt requested, or by overnight carrier with proof of delivery to the other party at the address given below:

If to the COUNTY: Frederick J. Buckman, CPRP  
Parks and Recreation Director  
Pasco County Parks and Recreation Department  
4111 Land O' Lakes Boulevard, Suite 202  
Land O' Lakes, FL 34639  
Telephone (813) 929-2760

With a copy to: Pasco County Attorney's Office  
7530 Little Road, Suite 340  
New Port Richey, FL 34654  
Telephone (727) 847-8120



If to the LICENSEE: Brett Ewald  
LOL Lightning Swim Team, Inc.  
3024 Chessington Dr.  
Land O Lakes, FL 34638

25. NO IMPLIED WAIVER

The failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in this license agreement shall not be construed as a waiver of the relinquishment thereof for the future.

26. ENTIRE LICENSE AGREEMENT AND PROVISIONS BINDING.

This license agreement and any attached or incorporated items or exhibits set forth all of the covenants, promises, agreements, conditions, and understandings between the parties concerning this license agreement, and there are no covenants, promises, agreements, or understandings, either oral or written, between them other than as herein set forth. No subsequent alterations, amendments, changes, or additions to this license agreement shall be binding upon the parties unless reduced to writing and signed by both parties. Except as herein otherwise expressly provided, the terms and provisions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties. Each agreement, term, and provision of this license agreement to be performed by the parties shall be construed to be both a covenant and a condition. This provision does not constitute a consent to the assignment of this license agreement by the LICENSEE, but as reference only to those instances in which the COUNTY may have given written consent to a particular assignment, and the LICENSEE shall have no right to assign, transfer, or encumber this license agreement except as specifically provided for in this license agreement.

27. ASSIGNMENT AND SEVERABILITY .

No assignment, delegation, or transfer of this Agreement or any part hereof shall be made unless approved in writing and signed by all parties hereto. All parties hereto agree that if any part, term, provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state or local law or regulation, such part, term or provision shall be severable, with the remainder of this Agreement remaining valid and enforceable.

28. MODIFICATIONS.

No modifications, addendums or amendments of any kind whatsoever may be made to this Agreement unless in writing and signed by all parties hereto.

29. GOVERNING LAW.

This Agreement shall be governed by the laws of the state of Florida and nothing herein shall be interpreted in any way to waive the sovereign immunity of the COUNTY as granted by law.

30. EFFECTIVE DATE.

This Agreement shall be effective the last date all parties hereto have signed.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing agreement on this \_\_\_\_\_

day of \_\_\_\_\_, \_\_\_\_\_.

(SEAL)

BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

ATTEST:

\_\_\_\_\_  
PAULA S. O'NEIL, Ph.D., CLERK AND COMPTROLLER

\_\_\_\_\_  
ANN HILDEBRAND, CHAIRMAN

WITNESSES:

LICENSEE

\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
*Jacques M. Carleton*

BY: *[Signature]*  
\_\_\_\_\_  
BRETT EWALD  
Its PRESIDENT