

DATED 10 April 2019

LICENCE TO OCCUPY

Relating to the Swimming Pool

at Overton Church of England Primary School

Court Drive
Overton
Basingstoke
Hampshire
RG25 3ES

between

The Trustees of the Lordsfield Swimming Club

and

Hampshire County Council



PHILLIPS SOLICITORS

Town Gate
38 London Road
Basingstoke
Hampshire
RG21 7NY
Tel: 01256 460830

This licence is dated 10 April

2019

Parties

- (1) **TRUSTEES OF LORDSFIELD SWIMMING CLUB** Charity Number 1156811 of 15 Station Road, Overton, Basingstoke, Hampshire RG25 3DU
- (2) **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ (**Licensee**)

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this licence.

1.1 Definitions:

Building: the property demised to the Licensor in the Lease.

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Designated Hours: 15 hours per school summer term or an increased amount of time as may from time to time be agreed with the Licensor (the time and date of such hours to be approved by the Licensor and Licensee before the commencement of each school term PROVIDED THAT in the event the Licensee's hours shall exceed 15 hours per school summer term then the Licensee will be required to contribute towards the running of the Property in accordance with clause 3(t)) or such other hours as the Licensor in its reasonable discretion may determine on 4 weeks' notice to the Licensee so long as a minimum of 15 hours per school summer term is always available.

Lease: a lease dated the date of this Licence and made between the (1) Hampshire County Council and (2) the Trustees of Lordsfield Swimming Club.

Licence Fee: a peppercorn if demanded.

Licence Fee Commencement Date: the date of this Licence.

Licence Period: the period from and including the date of this Licence until the date on which this licence is determined in accordance with clause 4.

Necessary Consents: all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

Permitted Use: use of the swimming pool to provide swimming lessons or such other swimming based curriculum purposes as may be or become part of the national curriculum for schools to the current pupils

of Overton Church of England Primary School in accordance with statutory national curriculum requirements.

Plan: the plan attached to this licence marked "Plan".

Property: the Swimming Pool and Changing Rooms at Overton Church of England Primary School and situated in the building shown edged red on the Plan.

Service Media: all media for the supply or removal of heat, electricity, gas, water, sewage, energy, and all other services and utilities and all structures, machinery and equipment ancillary to those media.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedule forms part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.8 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.

1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.13 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

2. Licence to occupy

2.1 Subject to clause 3 and clause 4, the Licensors permits the Licensee to occupy the Property for the Permitted Use for the Licence Period during the Designated Hours in common with the Licensors and all others authorised by the Licensors (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use and so long as any other use complies with the Licensees Safeguarding Policies from time to time) together with the rights mentioned in the Schedule 1.

2.2 The Licensee acknowledges that:

- (a) the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licensors and the Licensee by this licence;
- (b) the Licensors retains control, possession and management of the Property and the Licensee has no right to exclude the Licensors from the Property; and
- (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights given in clause 2 may only be exercised by the Licensee and its employees.

3. Licensee's obligations

The Licensee agrees and undertakes:

- (a) to pay to the Licensors the Licence Fee payable without any deduction in advance on the first day of each month and proportionately for any period of less than a month the first such payment being for the period from and including the Licence Fee Commencement Date to the end of the month following such date to be made on the date of this Licence together with such VAT as may be chargeable on the Licence Fee;
- (b) to keep the Property clean, tidy and clear of rubbish and to clean the Property including the changing rooms after each use so long as this obligation does not include a liability to leave the property in any better condition than it was found each time it is used;
- (c) not to use the Property other than for the Permitted Use;
- (d) not to make any alteration or addition whatsoever to the Property;
- (e) not without the Licensors' previous consent to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property;
- (f) not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or statutory disturbance to the Licensors or to tenants or occupiers of neighbouring property;

- (g) not to cause or permit to be caused any damage to:**
 - (a) the Property, the Building, or any neighbouring property; or**
 - (b) any property of the owners or occupiers of the Property, or any neighbouring property;**
- (h) not to obstruct any common parts at the Building, make them dirty or untidy or leave any rubbish on them;**
- (i) not to apply for any planning permission in respect of the Property;**
- (j) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or the Building or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property and the Building from time to time;**
- (k) to comply with all laws and with any recommendations of the relevant suppliers relating to the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property;**
- (l) to observe any reasonable rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Property and the common parts in which the Property is situated;**
- (m) to leave the Property in a clean and tidy condition and to remove the Licensee's furniture equipment and goods from the Property at the end of the Licence Period;**
- (n) to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:**
 - (a) this licence;**
 - (b) any breach of the Licensee's undertakings contained in clause 3; and/or**
 - (c) the exercise of any rights given in clause 2;**
- (o) not to do anything on or in relation to the Property that would or might cause the Licensor to be in breach of the tenant's covenants and the conditions contained in the Lease and shall comply with all terms of the Lease save for the payments of rents; and**
- (p) to pay to the Licensor interest on the Licence Fee or other payments at the rate of 4 per cent per annum above the base rate of Barclays Bank Plc from time to time calculated on a daily basis from the due date until payment if the Licensee shall fail to pay the Licence Fee or any other payments due under this licence within 5 days of the due date (whether formally demanded or not).**
- (q) to indemnify the Licensor against all liability to, pupils, employees, invitees, staff and third parties for loss, injury or damage arising from the Licensee's or its invitees use of the Property.**
- (r) to ensure that the appropriate number of qualified life guards or pool rescuers as the relevant regulations may prescribe from time to time are present at all times during each swimming session.**

- (s) to maintain throughout the Licence Period all necessary risk assessments and health and safety records required for use of the Property for the Permitted Use and shall supply copies to the Licensor on request.
- (t) In the event that the Licensee's use of the Property shall exceed 15 hours per school summer term then the Licensee shall be required to contribute a fair and reasonable cost (according to use) of all costs and expenses in connection with the running of the Property including utilities, water testing, water testing personnel and chemicals.
- (u) To ensure that the school swimming instructor countersigns the record/daily log sheet in accordance with clause 4 of this licence.

4. Licensor's Obligations

To ensure that an appropriately qualified person tests the water to ensure it is safe for swimming prior to both morning or afternoon swimming sessions, and records this in a simple log which must be viewed and signed by the school swimming coach prior to using the pool.

5. Termination

5.1 This licence shall end on the earliest of:

- (a) the expiry of the Lease; and
- (b) the expiry of any notice given by the Licensor to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 3; and
- (c) notice being given by the Licensor to the Licensee that the Property will be closed whether temporarily or permanently or that the Lease will be terminated.

5.2 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

6. Notices

6.1 Any notice given under this licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (a) to the Licensor at: 15 Station Road, Overton, Basingstoke, Hampshire RG25 3DU and marked for the attention of the Club Secretary; and
Hampshire County Council, The Castle, Winchester SO22 8UT FfO Julia Keitley and
 - (b) to the Licensee at: [ADDRESS] and marked for the attention of [NAME OR POSITION], Joanna Cook
- or as otherwise specified by the relevant party by notice in writing to each other party.

6.2 Any notice given in accordance with clause 6.1 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.

6.3 A notice given under this licence shall not be validly given if sent by e-mail.

6.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

7. No warranties for use or condition

7.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.

7.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in clause 2.

7.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensor before the date of this licence as to any of the matters mentioned in clause 7.1 or clause 7.2.

7.4 Nothing in this clause shall limit or exclude any liability for fraud.

8. Limitation of Licensor's liability

8.1 The Licensor is not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or
- (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2

9. Third party rights

A person who is not a party to this licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

10. Governing law

This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

11. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

12. Exclusion of Security of Tenure

12.1 The parties confirm that:

- (a) the Licensor served a notice on the Licensee, as required by section 38A(3)(a) of the Landlord and Tenant Act 1954; and
- (b) **Timothy SPender** who was duly authorised by the Licensee to do so made a statutory declaration dated **10 April** In accordance with the requirements of section 38A(3)(b) of the Landlord and Tenant Act 1954 (a certified copy of which is annexed to this licence).

This licence has been entered into on the date stated at the beginning of it.

Schedule 1 Rights granted to Licensee

- 1. The right for the Licensee to use during the Designated Hours:**
 - 1.1 Such parts of the common parts of the Building for the purpose of access to and egress from the Property as shall from time to time be designated by the Licensor for such purpose.**
 - 1.2 The Service Media serving the Property.**

Executed as Deed by _____ and _____

For and on behalf of
TRUSTEES OF LORDSFIELD SWIMMING CLUB
A Charitable Incorporated Association


in the presence of:-

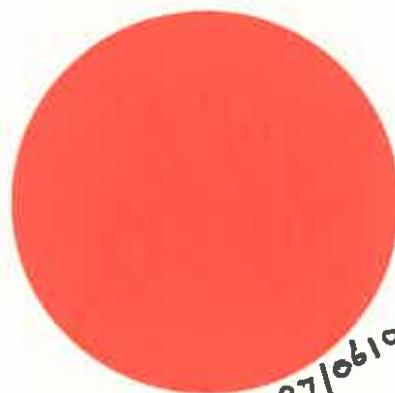
Charity Trustee

Charity Trustee

Executed as a Deed by affixing
THE COMMON SEAL of HAMPSHIRE
COUNTY COUNCIL
in the presence of:-

Authorised Signatory





27/06/19

Statutory Declaration

by tenant that sections 24-28 of the Landlord and Tenant Act 1954 are not to apply to a business tenancy

Schedule 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003

*Insert name
of and
address of
declarant*

I, *TIMOTHY ROSSELL SPENDER*

of *THE CASTLE, WINCHESTER, HAMPSHIRE SO23 8UJ*

do solemnly and sincerely declare that,

- 1. Hampshire County Council propose(s) to enter into a tenancy of premises at Swimming Pool at Overton Church of England Primary School, Court Drive, Overton, Hampshire , RG25 3ES for a term commencing on the date set out in the instrument creating the tenancy**
- 2. The Tenant propose(s) to enter into an agreement with The Trustees of Lordsfield Swimming Club and that the provision of section 24 to 28 of the Landlord and Tenant Act 1954 (security of tenure) shall be excluded in relation to this tenancy.**
- 3. The landlord has served on the tenant a notice in the form, or substantially in the form, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003. The form of notice set out in that Schedule is reproduced below.**
- 4. The tenant has read the notice referred to in paragraph 3 above and accept(s) the consequences of entering into the agreement referred to in paragraph 2 above.**
- 5. I am duly authority by the tenant to make this declaration**

To: Hampshire County Council

The Castle, Winchester, Hampshire SO23 8UJ

From: The Trustees of Lordsfield Swimming Club

15 Station Rad, Overton, Basingstoke, Hampshire RG25 3DU

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure - the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

- You will have no right to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice - from a qualified surveyor, lawyer or accountant - before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days' notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have 14 days to consider whether you wish to give up your statutory rights. If you then decide to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so would not need to make a separate visit to an independent solicitor.

AND I made this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declaration Act 1835

Declared at this 10th day of April 2019



Signed:



(Signature of person
before whom
declaration is made)

Commissioner for Oaths/ A solicitor empowered to administer oaths

LISA JANE WARBURTON

Shentons (Solicitors)
Star Lane House
Staple Gardens
Winchester SO23 9AD