

THIS AGREEMENT is made the first. day of July 2009 BETWEEN:

- (1) **FYLDE BOROUGH COUNCIL** of the Town Hall, St Annes Road West, St Annes, Lancashire FY8 1LW ('the Council') and
- (2) **THE TRUSTEES OF THE LYTHAM ST ANNES AND FYLDE YOUNG MEN'S CHRISTIAN ASSOCIATION** of YMCA St Albans Road, St Annes, Lancashire ('YMCA')

NOW IT IS AGREED as follows:

## 1. PREAMBLE

- 1.1. The Council owns and operates the swimming facility known as Kirkham Baths, Kirkham, Lancashire.
- 1.2. YMCA is a registered charity which operates a portfolio of leisure facilities in the Fylde area and surrounding areas
- 1.3. The parties have agreed that continued provision of swimming facilities for the local community would be best achieved by the operation of Kirkham Baths by the YMCA.

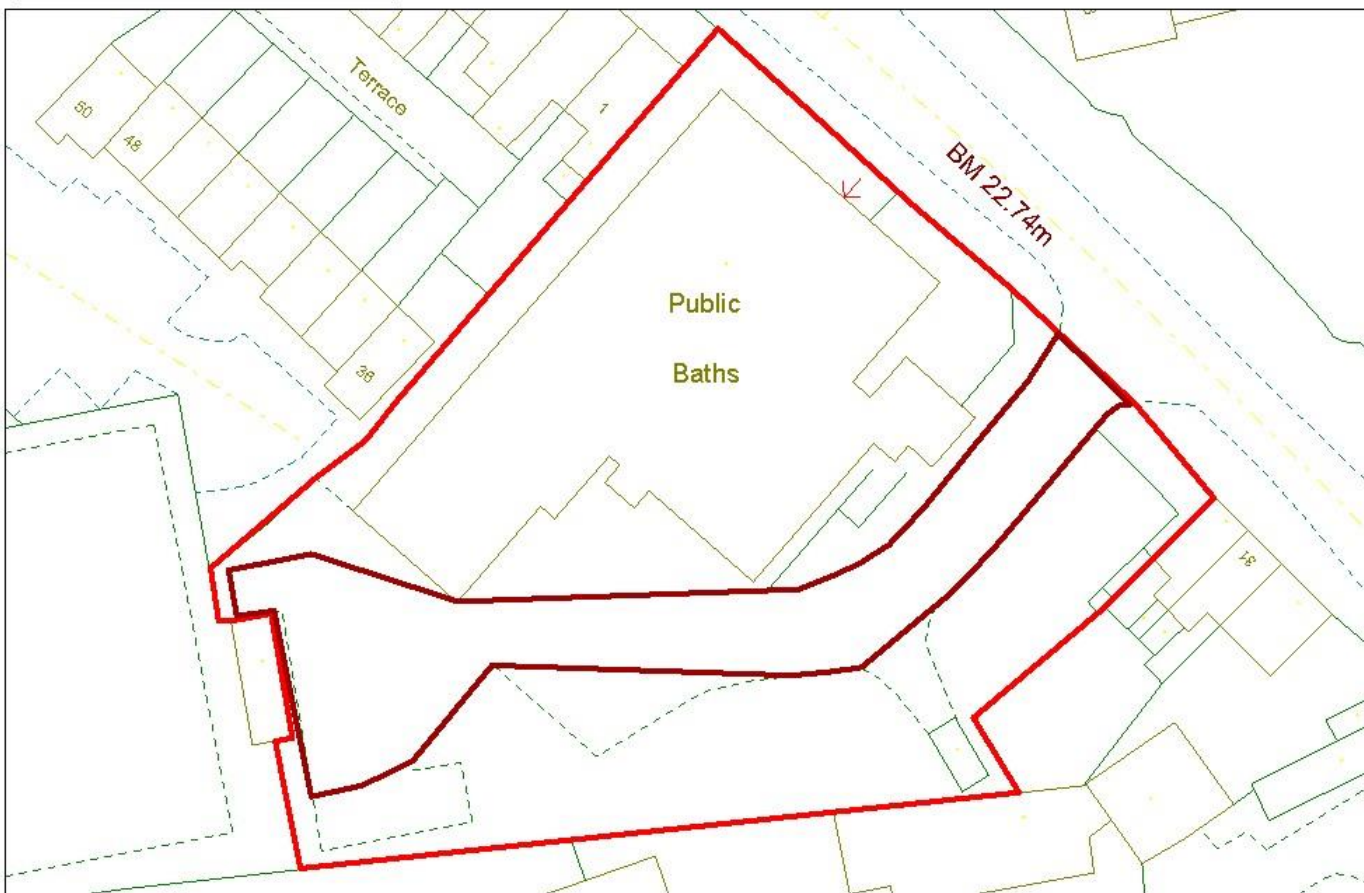
## 2. DEFINITIONS AND INTERPRETATION

- 2.1. For all purposes of this agreement the terms defined in this clause have the meanings specified.

Asset Value	Such value as has most recently been determined by the Council under sub-paragraph 2.1 of schedule 4 and notified to YMCA under sub-paragraph 2.3 of that schedule.
Capital Grants	Items 4, 5 and 6 in the table in paragraph 1 of schedule 4
Closure Event	Any of the events set out in schedule 5
Consumables	Such stocks of supplies, provisions and materials for use in the operation of the Premises as a public swimming pool as are on the Premises at the Lease Completion Date including spare parts (if any) for the Plant.
Council Grants	The sums required by paragraph 1 of schedule 4 to be paid by the Council to YMCA, together with any other sums that may be paid by the Council to YMCA to support the operation of the Premises for any of the purposes of this agreement.
the Council's Solicitors	Head of Legal Services, Fylde Borough Council
Disposal Plan	A written plan for disposing of the Premises, including the proposed method of disposal, anticipated proceeds of disposal and an

	indicative timescale for disposal.
the General Conditions	the Standard Conditions of Sale (4th Edn)
the Index	The Retail Prices Index as published from time to time by the Office of National Statistics or, if that index has ceased to be published, such comparable index as shall be nominated by the Council
the Lease Completion Date	1 July 2009
the Lease	(in clause 3 and schedule 1 ) a lease of the Premises for a term commencing on the Lease Completion Date and whose last day is 31 March 2011 reserving a nominal rent, in the form of the draft lease annexed to schedule 1 to this agreement and initialled by or on behalf of the parties; (in schedule 2) such lease as has been entered into by the parties pursuant to clause 3.1 (and for the purposes of the definition as applied in schedule 2, any lease of the Premises entered into by the parties will be deemed to have been entered into pursuant to clause 3.1)
Net Cumulative Surplus/Net Cumulative Deficit	The total cumulative operational surplus or deficit (as the case may be) generated or incurred by YMCA in operating the Premises since the Lease Commencement Date as evidenced by the financial records maintained by YMCA under paragraph 1 of schedule 3 and calculated by reference to annual surpluses or deficits
the Plan	the plan incorporated in this agreement
the Plant	Any mechanism, equipment, plant or machinery forming part of the Premises or used at the Premises for the purpose of operating a public swimming pool there.
Participating School	A Lancashire County Council primary school using the facilities for pupils' achievement of national curriculum standard in swimming.
the Premises	The land at Station Road, Kirkham, Lancashire shown edged red on the Plan
the Sale Completion Date	A day to be agreed or, in default of agreement, to be the thirteenth day after the expiry of the contractual term of the Lease
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006
Working Day	Any day which is not a Saturday, a Sunday, a bank holiday or a day falling between Boxing Day in one year and New Years' Day in the next year
YMCA's Solicitors	Dickson Haslam, 12-14 Station Road, Kirkham, Preston, Lancashire PR4 2AS

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- 2.2. Words importing one gender are to be construed as importing any other gender; words importing the singular are to be construed as importing the plural and vice versa.
- 2.3. The clause and schedule headings do not form part of this document and are not to be taken into account in its construction or interpretation. (amend if marginal notes are used instead of headings)
- 2.4. 'YMCA' does not include any successors in title of YMCA.
- 2.5. Any reference in this agreement to a clause or schedule without further designation is to be construed as a reference to the clause or schedule of this agreement so numbered.

### 3. OBLIGATIONS

- 3.1. The Council will grant the Lease and YMCA will accept the Lease and execute a counterpart of it and Schedule 1 applies to the obligations in this sub-paragraph 3.1

- 3.2. When the Lease has been completed, the Council shall subsequently sell and YMCA shall buy the Property at the Purchase Price and Schedule 2 applies to the obligations in this sub-paragraph 3.2
- 3.3. So long as YMCA is in possession of the Premises, YMCA will comply with the obligations in schedule 3.
- 3.4. So long as YMCA is in possession of the Premises by virtue of having complied with sub-clause 3.1 or 3.2, and is complying with sub-clause 3.3, the Council will comply with the obligations in schedule 4.
- 3.5. If a Closure Event happens, schedule 6 will have effect

#### **4. NOTICES**

- 4.1. A notice under this agreement must be in writing and unless the receiving party or his authorised agent acknowledges receipt, is valid if, and only if--
  - 4.1.1. it is given by hand, or sent by registered post or recorded delivery and it is served--
    - 4.1.1.1. where the receiving party is a company incorporated within Great Britain, at the registered office, and
    - 4.1.1.2. where the receiving party is not such a company, at that party's address shown in this agreement or at any address specified in a notice given by that party to the other party; or
  - 4.1.2. It is transmitted by email to an email address which has been previously notified by the receiving party by a notice under 4.1.1 as an email address for the purposes of this sub-paragraph.
- 4.2. Unless it is returned through the Royal Mail undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received.
- 4.3. A notice transmitted by email is to be treated as served on the day upon which it is sent, or the next working day where the email is sent after 1600 hours or on a day that is not a Working Day, unless attempted delivery of the email containing the notice caused the generation of an automatic notification of non-delivery (however expressed) to the email address of the sending party.

#### **5. EXCLUSION OF THIRD PARTY RIGHTS**

- 5.1. Nothing in this agreement is intended to confer any benefit on any person who is not a party to it.

#### **6. COMPLETE AGREEMENT**

- 6.1. this Agreement contains the entire agreement between the parties

#### **7. INSURANCE**

- 7.1. The Council may insure the Premises up to the Lease Completion Date.

#### **8. STAFF**

8.1. YMCA acknowledges that:

8.1.1. this agreement effects the transfer of an undertaking operated by the Council and that the TUPE applies to such transfer.

8.1.2. the following persons presently employed by the Council for the purposes of the undertaking to be transferred will, by virtue of TUPE, be transferred to the employment of YMCA on the Lease Commencement Date:

Lee Appleton  
Lisa Fairhurst  
Shaun Machin  
Paul Duhig  
Lucy Richards  
Shirley Ackers  
Amber Chamberlain  
Carol Gittins  
M Biddulph  
Charla Innes  
Jordan Ledger  
Sarah Newton  
Stephany Chetter

**SCHEDULE 1**  
**AGREEMENT FOR LEASE**

**1. GRANT AND COMPLETION**

- 1.1. The Lease and the counterpart are to be prepared by the Council's solicitors and an engrossment of the counterpart must be delivered to the offices of YMCA's solicitors at least five working days before the Lease Completion Date.
- 1.2. The Lease must be completed before 1300 hours on the Lease Completion Date at the offices of the Council's solicitors or at any other place the Council's solicitors require.
- 1.3. At any time on or after the Lease Completion Date either the Council or YMCA, being ready, able and willing to complete the Lease and perform his other obligations under this agreement, may, but without prejudice to any other available right or remedy, by notice to the other ('a notice to complete'), invoke the provisions of clause 1.4 of this schedule.
- 1.4. The Lease must be completed within ten working days after service of a notice to complete and the parties must perform their other obligations under this agreement. Time is to be of the essence of this provision.

**2. DAMAGE TO THE PREMISES**

- 2.1. If after the date of this agreement but before the Lease Completion Date the Premises are destroyed or the Premises or any part of them or the means of access to them are damaged to the extent that in the opinion of either party they could no longer be used as a public swimming pool, neither party would be obliged to fulfil the obligation in clause 3.1 of this agreement.

**3. TITLE AND CONDITION**

- 3.1. The Premises are to be let subject to the matters contained or referred to in the draft lease set out in annex 1 to this Schedule and YMCA or its solicitors having been supplied with all information the Council has concerning such matters, YMCA has entered into this agreement with notice of them and may raise no objection, requisition or enquiry in respect of them.
- 3.2. YMCA has entered into this agreement with notice of the actual state and condition of the Premises and must take the Premises as they are.

**4. RESTRICTIONS**

- 4.1. In this clause, references to 'restrictions' are references to all matters affecting the Premises or their use registered or capable of registration as local land charges, and all notices, charges, orders, resolutions, demands, proposals, requirements, restrictions, agreements, directions or other matters affecting the Premises or their use, served or made by a local or other competent authority, or otherwise arising under a statute or a regulation or order made under a statute.
- 4.2. The Premises are to be let subject to any restrictions in existence at the date of this agreement or arising at any later date.

- 4.3. No representation is made or warranty given by the Council as to whether or not any restrictions exist, or as to the permitted use of the Premises for planning purposes, or as to whether in other respects the Premises comply with any restrictions.
- 4.4. YMCA acknowledges that his obligations under this agreement and the Lease are not to be affected or lessened in any way by the fact that any restrictions may now or subsequently exist, or by any non-compliance with any restrictions, and, to the extent that compliance with it would be YMCA's responsibility under the Lease, YMCA must indemnify the Council against any liability under a requirement of a local or other competent authority relating to the Premises, whether made before or after the date of this agreement.

**5. MISREPRESENTATIONS**

- 5.1. Except as provided in paragraph 5.2, of this schedule, no agent, adviser or other person acting for the Council has at any time been authorised by the Council to make to YMCA or to any agent, adviser or other person acting for YMCA any representation whatever, whether written, oral or implied, relating to the Premises or to any matter contained or referred to in this agreement.
- 5.2. Any written statement made by the Council's solicitors to YMCA's solicitors before the making of this agreement in reply to a written enquiry made by the YMCA's solicitors was made with the authority of the Council.
- 5.3. No immaterial error, omission or misstatement in this agreement or in any plan referred to in this agreement or in any statement made by any person before the making of this agreement is in any way to affect the obligations of the parties under this agreement or entitle any party to damages or compensation.

**6. ASSIGNMENT OF BENEFIT PROHIBITED**

- 6.1. YMCA must not assign, sublet, charge or otherwise deal with the benefit of this agreement in whole or in part, and the Council need not grant the Lease to any person other than YMCA.

**7. POSSESSION**

- 7.1. This agreement is an executory agreement only, and is not to operate or be deemed to operate as a demise of the Premises.
- 7.2. YMCA is not to be entitled to occupation or possession of the Premises until the Lease is completed.

**8. MERGER EXCLUDED**

- 8.1. To the extent that they remain to be observed and performed, all the provisions of this schedule are to continue in full force and effect notwithstanding completion of the Lease.

**9. REGISTRATION**

- 9.1. The agreement is to be of no effect if the Tenant fails to register it as a land charge under the Land Charges Act 1972 within 28 working days from the date of this document.

**10. EXCLUSION OF THE LANDLORD AND TENANT ACT 1954 SECTIONS 24-28**





tempest, earthquake, lightning, explosion, riot, civil commotion, malicious damage, impact by vehicles and by aircraft and articles dropped from aircraft—other than war risks—flood damage and bursting and overflowing of water pipes and tanks, and such other risks, whether or not in the nature of the foregoing, as the Landlord acting reasonably from time to time requires the Tenant to insure against.

#### **1.6 'Interest'**

References to 'interest' are references to interest payable during the period from the date on which the payment is due to the date of payment, both before and after any judgment, at the Interest Rate then prevailing or, should the base rate referred to in clause 1.7 '**The Interest Rate**' cease to exist, at another rate of interest closely comparable with the Interest Rate to be agreed between the parties or in default of agreement to be decided upon by the Landlord acting reasonably

#### **1.7 'The Interest Rate'**

'The Interest Rate' means the rate of 4% a year above the base lending rate of the HSBC Bank Plc or such other bank being a member of the British Bankers Association as the Landlord may from time to time nominate in writing.

#### **1.8 Interpretation of 'consent' and 'approved'**

References to 'consent of the Landlord' or words to similar effect are references to a prior written consent signed by or on behalf of the Landlord and references to the need for anything to be 'approved by the Landlord' or words to similar effect are references to the need for a prior written approval by or on behalf of the Landlord and for the avoidance of doubt such consent shall only be given by the Landlord in that capacity and no other.

#### **1.9 Interpretation of 'the Landlord'**

The expression 'the Landlord' includes the successors in title of the Landlord.

#### **1.10 Interpretation of 'the last year of the Term' and 'the end of the Term'**

References to 'the last year of the Term' are references to the actual last year of the Term howsoever it determines, and references to the 'end of the Term' are references to the end of the Term whensoever and howsoever it determines.

#### **1.11 Interpretation of 'the Tenant'**

'The Tenant' includes any person who is for the time being bound by the tenant covenants of this Lease.

#### **1.12 Interpretation of 'this Lease'**

Unless expressly stated to the contrary, the expression 'this Lease' includes any document supplemental to or collateral with this document or entered into in accordance with this document.

#### **1.13 Joint and several liability**

Where any party to this Lease for the time being comprises two or more persons, obligations expressed or implied to be made by or with that party are deemed to be made by or with the persons comprising that party jointly and severally.

#### **1.14 'Losses'**

References to 'losses' are references to liabilities, damages or losses, awards of damages or compensation, penalties, costs, disbursements and expenses arising from any claim, demand, action or proceedings.

#### **1.15 Obligation not to permit or suffer**

Any covenant by the Tenant not to do anything includes an obligation not to permit or suffer that thing to be done by another person.

#### **1.16 'The Permitted Use'**

'The Permitted Use' means the use of the Premises as a public swimming pool.

**1.17 'The Plan'**

'The Plan' means the plan annexed to this Lease.

**1.18 'The Planning Acts'**

'The Planning Acts' means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and all statutes, regulations and orders included by virtue of clause 1.22 **References to statutes.**

**1.19 'The Premises'**

- 'The Premises' means the land situate and known as Kirkham Baths, Station Road, Kirkham, Preston, Lancashire shown for the purposes of identification edged in red on the Plan together with the rights and subject to the reservations and matters referred to in the Schedule to this Lease.
- The expression 'The Premises' includes all buildings, erections, structures, Conduits, fixtures and fittings and appurtenances on the Premises from time to time and all additions, alterations and improvements carried out during the Term.

**1.20 References to clauses and schedules**

Any reference in this document to a clause, paragraph or schedule without further designation is to be construed as a reference to the clause, paragraph or schedule of this document so numbered.

**1.21 References to rights of access**

References to any right of the Landlord to have access to the Premises are to be construed as extending to all persons authorised in writing by the Landlord including its employees, agents, professional advisers, contractors, workmen and others.

**1.22 References to statutes**

Unless expressly stated to the contrary any reference to a specific statute includes any statutory extension or modification, amendment or re-enactment of that statute and any regulations or orders made under that statute, and any general reference to a statute includes any regulations or orders made under that statute.

**1.23 'The Rent'**

'The Rent' means the sum of one peppercorn.

**1.24 'The Surveyor'**

'The Surveyor' means any person or firm appointed by the Landlord in his place. The Surveyor may be an employee of the Landlord or a company that is a member of the same group as the Landlord within the meaning of the 1954 Act Section 42. The expression 'the Surveyor' includes the person or firm appointed by the Landlord to collect the Rent.

**1.25 'The Term'**

'The Term' means a term commencing on the date of this lease and whose last day is 31 March 2011.

**1.26 "The Trustees"**

'The Trustees' means the persons named in this Lease as the Tenant and includes all persons in whom for the time being the Term is vested as trustees of the Tenant and the Trustees are the present trustees of the Tenant and are duly au-

thorised in accordance with the rules of the Tenant to accept this Lease.

#### **1.27 'VAT'**

'VAT' means value added tax or any other tax of a similar nature and unless otherwise expressly stated all references to rents or other sums payable by the Tenant are exclusive of VAT.

### **2 DEMISE**

The Landlord lets the Premises to the Tenant with full title guarantee, to hold the Premises to the Tenant for the Term, yielding and paying to the Landlord the Rent payable (if demanded)

### **3 THE TENANT'S COVENANTS**

The Tenant covenants with the Landlord to observe and perform the requirements of this clause 3.

#### **3.1 Outgoings and VAT**

The Tenant must pay, and must indemnify the Landlord against –

- 3.1.1 all rates, taxes, assessments, duties, charges, impositions and outgoings that are now or may at any time during the Term be charged, assessed or imposed upon the Premises or on the owner or occupier of them
- 3.1.2 all VAT that may from time to time be charged on sums payable by the Tenant under this Lease, and
- 3.1.3 all VAT incurred in relation to any costs that the Tenant is obliged to pay or in respect of which he is required to indemnify the Landlord under the terms of this Lease, save where such VAT is recoverable or available for set-off by the Landlord as input tax.

#### **3.2 Repair, cleaning and decoration**

##### **3.2.1 Repair of the Premises**

The Tenant must repair the Premises and keep them in good repair and condition (including, for the avoidance of doubt, all locks, fasteners, doors, windows, roof, foundations, water, gas, electrical and heating apparatus and Conduits exclusively serving the Premises) and where the Conduits (or any part of them) are used jointly with the Landlord (and/or its tenants and occupiers for the time being), the Tenant must contribute a fair proportion of the cost of repairing, maintaining or replacing them as may be required from time to time.

##### **3.2.2 Replacement of landlord's fixtures**

The Tenant must replace from time to time any landlord's fixtures and fittings in the Premises that are beyond repair at any time during or at the end of the Term.

##### **3.2.3 Cleaning and tidying**

The Tenant must keep the Premises clean and tidy and clear of all rubbish.

##### **3.2.4 Care of abutting land**

The Tenant must not cause any land, roads or pavements abutting the Premises to be untidy or dirty and in particular, but without prejudice to the generality of the above, must not deposit refuse or other materials on them.

##### **3.2.5 Shared facilities**

Where the use of any of the Conduits or any boundary structures or other things is common to the Premises and other property, the Tenant must be responsible for, and indemnify the Landlord against, all sums due from the owner, tenant or occupier of the Premises in relation to those Conduits, boundary structures or other things, and must undertake all work in relation to them that is his responsibility.

### **3.2.6 Decoration**

Throughout the Term to keep the Premises painted to the entire satisfaction of and in such colour as shall have been previously approved by the Landlord.

### **3.2.7 The Open Land**

#### **3.2.7.1 Care of the Open Land**

The Tenant must keep any part of the Premises that is not built on ('the Open Land') adequately surfaced, in good condition and free from weeds and must keep all landscaped areas properly cultivated.

#### **3.2.7.2 Storage on the Open Land**

The Tenant must not store anything on the Open Land or bring anything onto it that is or might become untidy, unclean, unsightly or in any way detrimental to the Premises or the area generally.

#### **3.2.7.3 Rubbish on the Open Land**

The Tenant must not deposit any waste, rubbish or refuse on the Open Land, or place any receptacle for them, on it.

### **3.3 Waste and alterations**

#### **3.3.1 Waste, additions and alterations**

The Tenant must not commit any waste, or, without the consent of the Landlord (such consent not to be unreasonably withheld), make any addition to the Premises or build upon them or any part of them, unite the Premises with any adjoining premises, or make any alteration to the Premises.

#### **3.3.2 Connection to conduits**

The Tenant must not make any connection with the Conduits without the written consent of the Landlord and any relevant statutory undertaker where appropriate.

### **3.4 Aerials, signs and advertisements**

#### **3.4.1 Masts and wires**

The Tenant must not, without the consent of the Landlord (such consent not to be unreasonably withheld) erect any pole or mast or install any cable or wire on the Premises, whether in connection with telecommunications or otherwise.

#### **3.4.2 Advertisements**

The Tenant must not, without the consent of the Landlord (such consent not to be unreasonably withheld) fix to or exhibit or display anywhere on the Premises, any placard, sign, notice, fascia board or advertisement.

### **3.5 Statutory obligations**

#### **3.5.1 General provision**

The Tenant must comply in all respects with the requirements of any statutes, and any other obligations so applicable imposed by law or by any byelaws, official guidance or otherwise applicable to the Premises or the trade or business for the time being carried on there.

#### **3.5.2 Particular obligations**

##### **3.5.2.1 Acts causing losses**

The Tenant must not do in or near the Premises anything by reason of which the Landlord may incur any losses under any statute.

##### **3.5.2.2 Works required by statute, department or authority**

Without prejudice to the generality of clause 3.5.1, the Tenant must execute all works and provide and maintain all arrangements on or in respect of the Premises or the use to which they are being put that are required in order to comply with the requirements of any statute already or in the future to be passed, or the requirements of any government department, local authority or other public or

competent authority or court of competent jurisdiction, regardless of whether the requirements are imposed on the owner, the occupier, or any other person.

#### **3.5.2.3 Construction (Design and Management) Regulations**

Without prejudice to the generality of clause 3.5.1, the Tenant must comply with the provisions of the Construction (Design and Management) Regulations 2007 ('the CDM Regulations'), be the only client as defined in the provisions of the CDM Regulations, fulfil, in relation to all and any works, all the obligations of the client as set out in or reasonably to be inferred from the CDM Regulations, and make a declaration to that effect to the Health and Safety Executive in accordance with the Approved Code of Practice published from time to time by the Health and Safety Executive in relation to the CDM Regulations.

#### **3.5.2.4 Delivery of health and safety files**

At the end of the Term, the Tenant must forthwith deliver to the Landlord any and all health and safety files relating to the Premises in accordance with the CDM Regulations.

#### **3.5.2.5 Health and safety generally**

The Tenant shall comply in all respects with the guidance contained within the 'Managing Health & Safety in Swimming Pools' (HSG 179) guidance issued by Sport England and the Health & Safety Commission and any other relevant guidance issued from time to time.

### **3.6 Use**

#### **3.6.1 Permitted Use**

The Tenant must only use the Premises for the Permitted Use and such additional uses as are agreed in writing by the Landlord (such agreement not to be unreasonably withheld in relation to other public leisure, sports, fitness and associated facilities).

#### **3.6.2 Nuisance**

The Tenant must not do anything on the Premises, or allow anything to remain on them, that may be or become or cause a nuisance, or annoyance, disturbance, inconvenience, injury or damage to the Landlord or his tenants or the owners or occupiers of adjacent or neighbouring premises.

#### **3.6.3 Auctions, trades and immoral purposes**

The Tenant must not use the Premises for any auction sale, any dangerous, noxious, noisy or offensive trade, business, manufacture or occupation, or for any illegal or immoral act or purpose.

#### **3.6.4 Residential use, sleeping and animals**

The Tenant must not use the Premises as sleeping accommodation or for residential purposes, or keep any animal, bird or reptile on them PROVIDED that the housing accommodation on the Premises (known as the Baths' house) may be used for residential purposes but only as shall be first approved of in writing by the Landlord.

#### **3.6.5 Opening hours and prices**

The Tenant must open and keep the Premises open for public use as required by paragraph 3.1 of schedule 3 to an agreement between the parties dated [date].

### **3.7 Entry to inspect and notice to repair**

#### **3.7.1 Entry and notice**

The Tenant must permit the Landlord on reasonable notice except in emergency –

3.7.1.1 to enter the Premises to ascertain whether or not the covenants and conditions of this Lease have been observed and performed,

3.7.1.2 to view the state of repair and condition of the Premises, and

3.7.1.3 to give to the Tenant, or, notwithstanding clause 7.7 **Notices** leave on

the Premises, a notice ('a notice to repair') specifying the works required to remedy any breach of the Tenant's obligations in this Lease as to the repair and condition of the Premises and Open Land.

### **3.7.2 Works to be carried out**

The Tenant must immediately carry out the works specified in a notice to repair.

### **3.7.3 Landlord's power in default**

If within 2 months of the service of a notice to repair the Tenant has not finished the work referred to in the notice, the Tenant must permit the Landlord to enter the Premises to execute the outstanding work and must within 14 days of a written demand pay to the Landlord the cost of so doing and all expenses incurred by the Landlord, including legal costs and surveyor's fees.

### **3.8 Alienation and sub-letting**

Not to assign sublet underlet charge or otherwise part with the possession of the Premises or permit another to occupy the Premises or any part thereof or share the occupation of the Premises or any part thereof or hold the Premises on trust for another except pursuant to the Tenant's charitable status.

### **3.9 Costs of applications, notices and recovery of arrears**

The Tenant must pay to the Landlord on an indemnity basis all costs, fees, charges, disbursements and expenses—including, without prejudice to the generality of the above, those payable to counsel, solicitors, surveyors and bailiffs incurred by the Landlord in relation to or incidental to –

- 3.9.1 every application made by the Tenant for a consent or licence required by the provisions of this Lease, whether it is granted, refused or offered subject to any lawful qualification or condition, or the application is withdrawn,
- 3.9.2 the contemplation, preparation and service of a notice under the Law of Property Act 1925 Section 146, or by reason or the contemplation of proceedings under Sections 146 or 147 of that Act, even if forfeiture is avoided otherwise than by relief granted by the court,
- 3.9.3 the recovery or attempted recovery of arrears of any sums due under this Lease, and
- 3.9.4 any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the end of the Term.

### **3.10 Planning**

#### **3.10.1 Compliance with the Planning Acts**

The Tenant must observe and comply with the provisions and requirements of the Planning Acts affecting the Premises and their use, and must indemnify the Landlord, and keep him indemnified, both during the Term and following the end of it, against all losses in respect of any contravention of those Acts.

#### **3.10.2 Planning applications prohibited**

The Tenant must not without the consent of the Landlord (such consent not to be unreasonably withheld) make any application for planning permission relating to the Premises.

### **3.11 Indemnities**

The Tenant must keep the Landlord fully indemnified against all losses arising directly or indirectly out of any act, omission or negligence of the Tenant, or any persons at the Premises expressly or impliedly with his authority, or any breach or non-observance by the Tenant of the covenants, conditions or other provisions of this Lease or any of the matters to which this demise is subject.

### **3.12 Encroachments**

The Tenant must take all reasonable steps to prevent the making of any encroachment or the acquisition of any easement in relation to the Premises and must notify the Landlord immediately if any such encroachment is made or easement acquired, or if any attempt is made to encroach or acquire an easement. At the request of the Landlord the Tenant must adopt such means as are reasonably required to prevent the construction of such a thing, the making of any encroachment or the acquisition of any easement.

### **3.13 Yielding up**

At the end of the Term the Tenant must yield up the Premises with vacant possession, decorated and repaired in accordance with and in the condition required by the provisions of this Lease, give up all keys of the Premises to the Landlord, remove tenant's fixtures and fittings if requested to do so by the Landlord and remove any signs erected by the Tenant or any of his predecessors in title in, on or near the Premises, immediately making good any damage caused by their removal.

### **3.14 Interest on arrears**

The Tenant must pay interest on any other sums due under this Lease that are not paid within 14 days of the date due, whether formally demanded or not, the interest to be recoverable as rent. Nothing in this clause entitles the Tenant to withhold or delay any payment of any sum due under this Lease or affects the rights of the Landlord in relation to any non-payment.

### **3.15 Statutory notices**

The Tenant must give full particulars to the Landlord of any notice, direction, order or proposal relating to the Premises made, given or issued to the Tenant by any government department or local, public, regulatory or other authority or court within 7 days of receipt, and if so requested by the Landlord must produce it to the Landlord. The Tenant must without delay take all necessary steps to comply with the notice, direction or order. At the request of the Landlord, but at his own cost, the Tenant must make or join with the Landlord in making any objection or representation the Landlord deems expedient against or in respect of any notice, direction, order or proposal.

### **3.16 Viewing on sale of reversion**

The Tenant must, at any time during the Term, permit prospective purchasers of the Landlord's reversion or any other interest superior to the Term, or agents instructed in connection with the sale of the reversion or such an interest, to view the Premises without interruption provided they have the prior written authority of the Landlord or his agents.

### **3.17 Defective premises**

The Tenant must give notice to the Landlord of any defect in the Premises that might give rise to an obligation on the Landlord to do or refrain from doing anything in order to comply with the provisions of this Lease or the duty of care imposed on the Landlord, whether pursuant to the Defective Premises Act 1972 or otherwise, and must at all times display and maintain any notices the Landlord from time to time requires him to display at the Premises.

### **3.18 Exercise of the Landlord's rights**

The Tenant must permit the Landlord to exercise any of the rights granted to him by virtue of the provisions of this Lease at all times during the Term without interruption or interference.

### **3.19 Consent to the Landlord's release**

The Tenant must not unreasonably withhold consent to a request made by the Land-

lord under the Landlord and Tenant (Covenants) Act 1995 Section 8 for a release from all or any of the landlord covenants of this Lease.

#### **4 QUIET ENJOYMENT**

The Landlord covenants with the Tenant to permit the Tenant peaceably and quietly to hold and enjoy the Premises without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him.

#### **5 INSURANCE**

##### **5.1 Liability insurance**

The Tenant covenants with the Landlord to effect and maintain such insurance, in the sum of £10 million or such other amount as the Landlord from time to time by notice to the Tenant requires, in respect of the Tenant's liability to indemnify the Landlord against losses arising from the Tenant's acts, omissions or negligence and all liability of the Landlord to third parties arising out of or in connection with any matter involving or relating to the Premises.

##### **5.2 Insurance of Premises**

The Tenant covenants with the Landlord to insure the Premises unless the insurance is vitiated by any act of the Landlord or by anyone at the Premises expressly or by implication with his authority.

###### **5.2.1 Details of the insurance**

###### **5.2.1.1 Office, underwriters and agency**

Insurance is to be effected in such substantial and reputable insurance office, or with such underwriters, and through such agency as the Landlord may consent to from time to time.

###### **5.2.1.2 Insurance cover**

Insurance must be effected for the following amounts --

5.2.1.2.1 the sum that the Tenant is from time to time advised by the Surveyor is the full cost of rebuilding and reinstating the Premises, including VAT, architects', surveyors', engineers', solicitors' and all other professional persons' fees, the fees payable on any applications for planning permission or other permits or consents that may be required in relation to rebuilding or reinstating the Premises, the cost of preparation of the site including shoring-up, debris removal, demolition, site clearance and any works that may be required by statute, and incidental expenses.

###### **5.2.1.3 Risks insured**

Insurance must be affected against damage or destruction by any of the Insured Risks to the extent that such insurance may ordinarily be arranged with a substantial and reputable insurer, for properties such as the Premises subject to such excesses, exclusions or limitations as the insurer requires.

###### **5.2.2 Reinstatement and termination**

###### **5.2.2.1 Obligation to obtain permissions**

If and whenever the Premises or any part of them are damaged or destroyed by one or more of the Insured Risks and payment of the insurance money is not wholly or partly refused because of any act or default of the Landlord or anyone at the Premises expressly or by implication with his authority, the Tenant must use his best endeavours to obtain all the planning permissions or other permits and consents ('permissions') that are required under the Planning Acts or otherwise to enable him to rebuild and reinstate the Premises.

###### **5.2.2.2 Obligation to reinstate**



Subject to the provisions of clause 5.2.2.3 RELIEF FROM THE OBLIGATION TO REINSTATE, and, if any permissions are required, after they have been obtained, the Tenant must as soon as reasonably practicable apply all money received in respect of the insurance effected by the Tenant pursuant to this Lease, except sums in respect of loss of the Rent, in rebuilding or reinstating the Premises.

**5.2.2.3 Relief from the obligation to reinstate**

The Tenant need not rebuild or reinstate the Premises if and for so long as rebuilding or reinstatement is prevented because --

5.2.2.3.1 the Tenant, despite using his best endeavours, cannot obtain any necessary permission,

5.2.2.3.2 any permission is granted subject to a lawful condition with which it is impossible or in all the circumstances it is unreasonable to expect the Tenant to comply,

5.2.2.3.3 there is some defect or deficiency in the site on which the rebuilding or reinstatement is to take place that renders it impossible or means it can only be undertaken at a cost that is unreasonable in all the circumstances,

5.2.2.3.4 the Tenant is unable to obtain access to the site to rebuild or reinstate,

5.2.2.3.5 the rebuilding or reinstating is prevented by war, act of God or government action.

5.2.2.3.6 the landlord agrees that reinstatement is not required

**5.2.3 Notice to terminate**

If during the Term due to such damage or destruction the Premises are not fit for the Tenant's occupation and use, either the Landlord or the Tenant may by notice served at any time ('a notice to terminate following failure to reinstate') implement the provisions of clause 5.2.4 TERMINATION FOLLOWING FAILURE TO REINSTATE.

**5.2.4 Termination following failure to reinstate**

On service of a notice to terminate following failure to reinstate, the Term is to cease absolutely--but without prejudice to any rights or remedies that may have accrued--and all money received in respect of the insurance effected by the Tenant pursuant to this Lease shall be applied according to clause 5.2.7 of schedule 6 to the agreement between the parties under which this lease was granted as if the money received had been the proceeds of disposal of the Premises following a Closure event as defined in that agreement.

**5.3 Tenant's further insurance covenants**

The Tenant covenants with the Landlord to observe and perform the requirements contained in this clause 5.3.

**5.3.3 Requirements of insurers**

The Tenant must comply with all the requirements and recommendations of the insurers.

**5.3.4 Policy avoidance and additional premiums**

The Tenant must not do or omit anything that could cause any insurance policy on or in relation to the Premises to become wholly or partly void or voidable.

**5.3.5 Fire-fighting equipment**

The Tenant must keep the Premises supplied with such fire fighting equipment as the insurers and the fire authority require and must maintain the equipment to their satisfaction inspected by a competent person.

**5.3.6 Combustible materials**

The Tenant must not store on the Premises or bring onto them anything of a specially combustible, inflammable or explosive nature, and must comply with the requirements and recommendations of the fire authority and any reasonable requirements of the Landlord as to fire precautions relating to the Premises.

**5.3.7 Fire escapes, equipment and doors**

The Tenant must not obstruct the access to any fire equipment or the means of escape from the Premises, or lock any fire door while the Premises are occupied.

**5.3.8 Copy policy**

The Tenant must produce to the Landlord on demand a copy of the policy and the last premium renewal receipt.

**5.3.9 Noting of the Landlord's interest**

The Tenant must ensure that the interest of the Landlord is noted or endorsed on the policy.

**5.3.10 Change of risks**

The Tenant must notify the Landlord of any change in the risks covered by the policy from time to time.

**5.3.11 Waiver of subrogation**

The Tenant must produce to the Landlord on demand written confirmation from the insurers that they have agreed to waive all rights of subrogation against the Landlord.

**5.3.12 Landlord's right to insure**

If the Tenant at any time fails to keep the Premises insured in accordance with his obligations under this Lease the Landlord may effect and maintain the insurance. Any money the Landlord expends for that purpose must be repaid by the Tenant on demand and may be recovered by action.

**6 FORFEITURE**

If and whenever during the Term –

- 6.1 the Tenant (being a charitable association) is dissolved, or
- 6.2 the Tenant materially breaches any covenant or other term of this Lease, or
- 6.3 the Tenant, being an individual, becomes subject to a bankruptcy order or has an interim receiver appointed to his property, or
- 6.4 the Tenant, being a company, enters into liquidation whether compulsory or voluntary—but not if the liquidation is for amalgamation or reconstruction of a solvent company—or enters into administration or has a receiver appointed over all or any part of its assets, or
- 6.5 the Tenant enters into or makes a proposal to enter into any voluntary arrangement pursuant to the Insolvency Act 1986 or any other arrangement or composition for the benefit of his creditors, or
- 6.6 the Tenant has any distress, sequestration or execution levied on his goods, and, where the Tenant is more than one person, if and whenever any of the events referred to in this clause happens to any one or more of them, the Landlord may at any time re-enter the Premises or any part of them in the name of the whole—even if any previous right of re-entry has been waived—and thereupon the Term is to cease absolutely but without prejudice to any rights or remedies that may have accrued to the Landlord against the Tenant in respect of any breach of covenant or other term of this Lease, including the breach in respect of which the re-entry is made.

**7 MISCELLANEOUS**

### **7.1 Exclusion of warranty as to use**

Nothing in this Lease or in any consent granted by the Landlord under this Lease is to imply or warrants that the Premises may lawfully be used under the Planning Acts for the use permitted by this Lease.

### **7.2 Exclusion of third party rights**

Nothing in this Lease is intended to confer any benefit on any person who is not a party to it.

### **7.3 Representations**

The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement or representation made by or on behalf of the Landlord, except any such statement or representation expressly set out in this Lease or made by the Landlord's solicitors in any written response to enquiries raised by the Tenant's solicitors in connection with the grant of this Lease.

### **7.4 Documents under hand**

While the Landlord is a limited company or other corporation, any licence, consent, approval or notice required to be given by the Landlord is to be sufficiently given if given under the hand of a director, the secretary or other duly authorised officer of the Landlord or by the Surveyor on behalf of the Landlord.

### **7.5 Tenant's property**

If, after the Tenant has vacated the Premises at the end of the Term, any property of his remains in or on the Premises and he fails to remove it within 7 days after a written request from the Landlord to do so, or, if the Landlord is unable to make such a request to the Tenant, within 14 days from the first attempt to make it, then the Landlord may, as the agent of the Tenant, sell that property. The Tenant must indemnify the Landlord against any liability incurred by the Landlord to any third party whose property is sold by him in the mistaken belief held in good faith—which is to be presumed unless the contrary is proved—that the property belonged to the Tenant. If, having made reasonable efforts to do so, the Landlord is unable to locate the Tenant, then the Landlord may retain the proceeds of sale absolutely unless the Tenant claims them within 3 months of the date on which he vacated the Premises. The Tenant must indemnify the Landlord against any damage occasioned to the Premises and any losses caused by or related to the presence of the property in or on the Premises.

### **7.6 Compensation on vacating excluded**

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Premises is excluded to the extent that the law allows.

### **7.7 Notices**

#### **7.7.1 Form and service of notices**

A notice under this Lease must be in writing and, unless the receiving party or his authorised agent acknowledges receipt, is valid if, and only if –

7.7.1.1 it is given by hand, sent by registered post or recorded delivery, or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day, and

7.7.1.2 it is served –

(b) where the receiving party is the Tenant, at the Tenant's address held at the Charity Commission, or otherwise at the Premises,

(c) where the receiving party is the Landlord at the Landlord's address shown in this Lease or at any address specified in a notice given by the Landlord to the Tenant.

#### **7.7.2 Deemed delivery**

##### **7.7.2.1 By registered post or recorded delivery**

Unless it is returned through the Royal Mail undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the third working day after posting whenever and whether or not it is received.

#### **7.7.2.3 'A working day'**

References to 'a working day' are references to any day which is not a Saturday, a Sunday, a bank holiday or a day falling between Boxing Day in one year and New Years' Day in the next year.

#### **7.7.3 Joint recipients**

If the receiving party consists of more than one person a notice to one of them is notice to all.

### **7.8 Exclusion of the 1954 Act Sections 24-28**

#### **7.8.1 Notice and declaration**

On [ 2009] the Landlord served notice on the Tenant pursuant to the provisions of the Landlord and Tenant Act 1954 Section 38A(3) as inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and on [ 2009] the Tenant made a [simple (or as appropriate) statutory] declaration pursuant to schedule 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

#### **7.8.2 Agreement to exclude**

Pursuant to the provisions of the 1954 Act Section 38A(1) as inserted by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, the parties agree that the provisions of the 1954 Act Sections 24-28 inclusive are to be excluded in relation to the tenancy created by this Lease.

#### **7.9 Determination**

In the event that a Closure Event takes place as defined in an Agreement dated [ 2009] and made between the Landlord and the Tenant, this Lease shall determine in accordance with the provisions of that Agreement.

**IN WITNESS** whereof the parties have hereunto executed this Lease as their deed the day and year first before written

## **THE SCHEDULE : THE RIGHTS GRANTED AND RESERVED**

### **THE RIGHTS GRANTED**

#### **1-1 Conduits**

The right to the free and uninterrupted passage and running of all services though the appropriate Conduits and through any structures of a similar use or nature that may at any time be constructed in, on, over or under the Landlord's adjoining land subject to the payment thereof of the proportionate part (in accordance with user) of the cost of maintaining, repairing, renewing or replacing the same.

### **THE RIGHTS RESERVED**

#### **2-1 Passage and running through the Conduits**

The right to the free and uninterrupted passage and running of all services though the appropriate Conduits and through any structures of a similar use or

nature that may at any time be constructed in, on, over or under the Premises.

## **2-2 Right to construct conduits**

The right to construct and to maintain pipes sewers drains mains ducts conduits gutters watercourses wires cables and other necessary conducting media ('the Conduits') for the provision of services or supplies to any adjoining property of the Landlord, making good all damage caused in the exercise of this right.

## **2-3 Access**

2.3.1 The right to enter the Premises at reasonable times and on reasonable notice, except in the case of emergency:

2.3.1.1 to inspect the condition and state of repair of the Premises

2.3.1.2 to inspect, clean, connect to, remove, replace with others, alter or execute any works whatsoever to or in connection with the conduits, easements, services or supplies referred to in 2-1 and 2-2

2.3.1.3 to carry out works of any kind to any adjoining property of the landlord or any other buildings or land that cannot be carried out without access to the Premises

2.3.2 In favour of the Landlord, its Lessees, occupiers and all others authorised by it (in common with the Tenant) The right to pass and repass on foot and with or without vehicles and machinery over and along the route shown coloured brown on the Plan, together with the right to park any vehicles on the land shown marked for that purpose on the Plan, for all purposes connected with the Council's adjoining land but so as to cause as little nuisance or inconvenience as reasonably possible.

## **2.4 Right to erect new buildings**

Full right and liberty at any time to alter, raise in height or rebuild any building and erect any new building of any height on any adjoining property of the Landlord in such manner as the landlord thinks fit even if doing so may obstruct affect or interfere with the amenity of or access to the Premises or the passage of light and air to the Premises provided they do not materially affect the Premises or the use and enjoyment of the Premises.

The Common Seal of  
**FYLDE BOROUGH COUNCIL**  
was hereunto affixed  
in the presence of:

Head of Legal Services

Attestation details of the YMCA

**SCHEDULE 2**  
**AGREEMENT FOR SALE**

**1. COMPLETION**

1.1. Completion of the sale and purchase and payment of the Purchase Price shall take place on the Sale Completion Date at the offices of the Council's Solicitors or where they may reasonably direct

**2. TITLE GUARANTEE**

2.1. The Council sells with full title guarantee

**3. TITLE**

3.1. Title shall commence with

- As to part of the Premises:

A Conveyance dated 25<sup>th</sup> June 1941 and made between (1) The Official Trustee of Charity Lands (2) William Alfred Cross, Henry Marquis, Thomas William Sutton Hodgson, The Reverend Cresswell Strange and Norman Hatton Townson and (3) The Urban District Council of Kirkham

- As to the remainder of the Premises:

The freehold land shown edged red on the plans to registered title numbers LA427464, LA432857 and LA440560

3.2. YMCA having been supplied with an epitome of the title and official copies (as the case may be) prior to the date of this Agreement YMCA shall be deemed to purchase with full knowledge of the title in all respects and shall not raise any requisitions or make any objection in relation to the title

**4. INCUMBRANCES**

4.1. The Premises are sold subject to and with the benefit of the Lease and the matters contained or referred to in the Documents listed in the annex to this schedule.

4.2. YMCA or YMCA's Solicitors having been supplied with copies of the Documents prior to the date of this Agreement, YMCA shall be deemed to purchase with full notice and knowledge of the same and shall not raise any requisition or make any objection in relation to them

4.3. The transfer of the Premises shall contain a covenant by YMCA that YMCA will observe and perform the covenants and conditions contained or referred to in the Documents and will indemnify and keep the Council indemnified against all actions proceedings damages costs claims and expenses which may be suffered or incurred by the Council in respect of any future breach or non-observance or non-performance of those covenants and conditions.

4.4. There shall be reserved out of the transfer of the Premises in favour of the Council, its lessees, occupiers and all other authorised by it (in common with YMCA) a right of way on foot or with vehicles over and along that part of the Premises shown edged brown on the Plan.

- 4.5. YMCA will covenant that so long as it occupies the Premises (but not so as to bind any successor in title following a Closure Event) it will use its best endeavors to allow such parking at the Premises as is in its opinion reasonable in all the circumstances to meet the needs of users of the adjacent bowling green
- 4.6. The transfer shall be engrossed by the Council's Solicitors and the engrossment shall be executed by YMCA before the Sale Completion Date

**5. MATTERS AFFECTING THE PROPERTY**

- 5.1. The Premises are sold subject to the following matters:
  - 5.1.1. all local land charges whether registered or not before the date of this Agreement and all matters capable of registration as local land charges whether or not actually so registered
  - 5.1.2. all notices served and orders demands proposals or requirements made by any local public or other competent authority whether before or after the date of this Agreement
  - 5.1.3. all actual or proposed charges notices orders restrictions agreements conditions contraventions or other matters arising under the enactments relating to town and country planning and environmental law
  - 5.1.4. all easements quasi-easements rights exceptions or other similar matters whether or not apparent on inspection or disclosed in any of the documents referred to in this Agreement

**6. DISCLAIMER**

- 6.1. YMCA admits that:
  - 6.1.1. it has inspected the Premises and purchases them with full knowledge of their actual state and condition and shall take the Premises as they stand.
  - 6.1.2. it enters into this Agreement solely as a result of its own inspection and on the basis of the terms of this Agreement and not in reliance upon any representation or warranty either written or oral or implied made by or on behalf of the Council (save for any representation or warranty contained in written replies given by the Council's Solicitors to any written preliminary inquiries raised by YMCA's Solicitors)
  - 6.1.3. The Plan reasonably delineates the Premises

**7. INCORPORATION OF CONDITIONS OF SALE**

- 7.1. The General Conditions shall apply to this Agreement and are incorporated in it in so far as they are applicable to a sale by private treaty and are not varied by or inconsistent with the terms of this Agreement and shall be amended as follows: Conditions 4.4.2, 7.1 and 7.2 shall apply.

**8. RESTRICTION ON ASSIGNMENT**

- 8.1. This Agreement is personal to YMCA and is not capable of being assigned charged or mortgaged.
- 8.2. The Seller shall not be required to transfer the Property:
  - 8.2.1. to anyone other than the Buyer named in this Agreement;
  - 8.2.2. at a price greater than the Purchase Price; or
  - 8.2.3. except by one transfer of the Premises as a whole
- 9. MERGER ON COMPLETION**
  - 9.1. The provisions of this schedule shall not merge on completion of the transfer of the Premises so far as they remain to be performed
- 10. FIXTURES**
  - 10.1. The sale includes all fixtures in the Premises.
- 11. COVENANTS UNDER THE LEASE**
  - 11.1. YMCA shall remain liable on the lessee's covenants contained in the Lease until actual completion
- 12. COUNTERPART LEASE**
  - 12.1. The Seller shall deliver the counterpart of the Lease to the Buyer on actual completion

## ANNEX 1: THE DOCUMENTS

1. The Conveyance
2. Registered titles numbered LA438458 and LA440560
3. A Deed of Grant dated 29<sup>th</sup> July 1994 and made between (1) Fylde Borough Council and (2) Norweb Plc



**SCHEDULE 3**  
**YMCA'S OBLIGATIONS**

**1. FINANCIAL RECORDS**

- 1.1. YMCA will maintain appropriate accounts and financial records covering its operation and use of the Premises and its expenditure, including Council Grants. Accounts and records will be considered "appropriate" if they:
- 1.1.1. comply with recommended accounting practices for YMCA;
  - 1.1.2. allow expenditure and income relating to the Premises to be disaggregated from other financial records of YMCA;
  - 1.1.3. allow the Council to form an accurate view on the surplus or deficit generated or incurred by YMCA in respect of its operation and use of the Premises in each financial year; and
  - 1.1.4. contain separate records detailing Capital Grants received and how they have been expended
- 1.2. YMCA will allow the Council, on request, to inspect the financial records and accounts that it is required to maintain by paragraph 1.1 of this Schedule, provided that the Council will not so request more than twice in any financial year.

**2. MANAGEMENT BOARD**

- 2.1. During the period of ten years commencing on the Lease Commencement Date, so long as YMCA operates the Premises as a public swimming pool, YMCA will maintain a management board or similar body, whose remit will be to act as an interface between YMCA and the local community..
- 2.2. The body formed for the purposes of paragraph 2.1 will include such representatives of local people as YMCA considers appropriate, but must always contain one person nominated to the body by the Council during the whole of any calendar year when Council Grants have been or are to be paid to YMCA.

**3. OPERATION OF POOL**

- 3.1. Unless a Closure Event occurs, YMCA will operate the Premises as a public swimming pool in accordance with the requirements set out in sub-paragraph 3.2:
- 3.2. The requirements mentioned in sub-paragraph 3.1 are:
- 3.2.1. The Premises will be open for at least one hour each Working Day and each Saturday (other than Christmas Day, Boxing Day, or New Years Day) to the members of the public without pre-booking

- 3.2.2. The Premises will be made exclusively available for the use of Participating Schools for at least half an hour per week in respect of each Participating School during the term time of that school.
- 3.2.3. The Premises will be made exclusively available for at least ten hours in each week for the provision of swimming instructions.
- 3.2.4. The Premises will be made exclusively available for the use of swimming clubs for at least four hours in each week.
- 3.2.5. The operation of the pool must comply with any requirement, condition or guidance issued by the Department for Culture, Media and Sport in connection with eligibility for payment of the grants mentioned respectively at items 4 ,5 and 6 of the table in schedule 4.

**4. USE OF CAPITAL GRANTS**

- 4.1. YMCA will not spend any part of any Capital Grant except to enhance the useful life or value of the Premises or the Plant.
- 4.2. YMCA will not spend any part of any Capital Grant to support the ongoing day to day running costs of the Premises as a public swimming pool.

**SCHEDULE 4**  
**COUNCIL'S OBLIGATIONS**

**1. PAYMENT OF GRANT**

1.1. The Council will pay grants to YMCA at the times and in the amounts and with the other particulars set out in the following table to support the provision of public swimming at the Premises

Reference	Date and breakdown (£)of payment	Amount £	Particulars
1	The Lease Commencement Date	40,000	To be reduced by the cost of redundancy payments (including any pension strain arising as a result) incurred by the council in respect of any person employed at the Premises who, before the Lease Commencement Date, elects to take voluntary redundancy
2	8,545 on 1 April 2009 8,545 on 1 July 2009 8545 on 1 October 2009 8545 on 1 January 2010	34,180	Council grant
3	8,750 on 1 April in each of the years 8,750 on 1 July in each of the years 8,750 on 1 October in each of the years 8,750 on 1 January in each of the years	35,000 in each of the financial years 2010/11-2013/14	To be increased or decreased by a sum proportionate to the rise or fall in the Index since the Lease Commencement Date
4	The Lease Commencement Date or (if later) within 28 days of receipt by the Council	31,160 (subject to receipt by the Council)	DCMS grant for two years from 1 April 2009 to support free swimming for people aged 60 or over
5	The Lease Commencement Date or (if later) within 28 days of receipt by the Council	38,269 (subject to receipt by the Council)	DCMS grant for two years from 1 April 2009 to support free swimming for people aged 16 or under
6	The Lease Commencement Date or (if later) within 28 days of receipt by the Council	22,927	DCMS capital grant to support modernisation of facilities or development of a capital project for modernisation of facilities

7	The Lease Commencement Date	60,000	Capital grant
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- 1.2. Items 4, 5 and 6 in the table above represent grants that the Council anticipates receiving from the Department for Culture, Media and Sport. Those payments will not be made by the Council to YMCA unless the Council has received the respective grants from the Department for Culture, Media and Sport.
- 1.3. Items 2, 3, 4 and 5 will be reduced by one twelfth for each calendar month commencing with April 2009 where the majority of the month falls before the Lease Commencement Date.
- 1.4.

## **2. DETERMINATION OF ASSET VALUE**

- 2.1. The Council must determine, no more than once in each financial year, the value of the Premises if sold on the open market by a willing vendor.
- 2.2. The determination under sub-paragraph 2.1 will be made by the Council using principles and assumptions that it reasonably considers appropriate.
- 2.3. The Council must notify the YMCA in writing of its determination under sub-paragraph 2.1 within 14 days of determining it.
- 2.4. The Council's determination under this paragraph 2 will be final unless YMCA invokes the dispute mechanism.
- 2.5. YMCA may invoke the dispute mechanism by serving written notice on the Council no later than the tenth Working Day after the Council has notified YMCA under paragraph 2.3.
- 2.6. If the dispute mechanism is invoked, the value of the premises as determined under the dispute mechanism will be final.
- 2.7. Under the dispute mechanism, an independent valuer will consider the determination made by the Council and, if he considers that the principles and assumptions used by the Council were not appropriate or were not appropriately applied, will substitute his own determination for that of the Council.
- 2.8. The independent valuer will be appointed by agreement between the council and YMCA or, if such agreement cannot be reached within twenty working days of the dispute mechanism being invoked, by the application of one of them to the President for the time being of the Royal Institute of Chartered Surveyors.
- 2.9. The independent valuer will allow each party to make written representations to him and may order the costs of the dispute mechanism to be paid by any party who he considers should bear them.

## **3. ENERGY PROCUREMENT**

- 3.1. If and so long as requested by YMCA, following the Lease Commencement Date, to procure supplies of gas and electricity for the Premises on behalf of YMCA subject to YMCA paying the full cost of such supplies when invoiced by the Council.

## **4. TRANSFER OF CONSUMABLES**

4.1. Title in Consumables will transfer to YMCA on the Lease Completion Date.

4.2. The Council does not warrant the fitness for purpose of any Consumables.

**5. DOCUMENTS, PLANS AND POLICIES**

5.1. On the Lease Completion Date, the Council will provide YMCA with copies of all documents, plans, policies and procedures that it holds relevant to the operation of the Premises as a public swimming pool or the Plant.

5.2. The Council does not warrant that compliance with any document plan, policy or procedure provided to YMCA under paragraph 5.1 will be sufficient to ensure the correct, safe or legal operation of the Premises or the Plant.

**6. PENSION FUND**

6.1. The Council will support an application by YMCA to join the Lancashire County Pension Fund as an admission body, and will, if requested by YMCA, act as guarantor for YMCA's admission to the scheme in relation to such persons who transfer to the employment of YMCA as a result of TUPE or of clause 8.1.2 and who were, before such transfer, members of that fund.

6.2. The Council shall retain any pension liabilities it may have for the transferred employees (identified at paragraph 8.1.2) and those pensioners previously employed at Kirkham Baths up to the transfer date, under the Lancashire Local Government Pensions Scheme.

SCHEDULE 5  
CLOSURE EVENTS

**1. CLOSURE EVENTS**

Either of the following is a Closure Event:

- 1.1. The Net Cumulative Deficit exceeds 50% of the Asset Value; or
- 1.2. The Council and YMCA mutually agree that the Premises should permanently cease to operate

**SCHEDULE 6**  
**EFFECT OF CLOSURE EVENT**

**1. CLOSURE**

- 1.1. YMCA will close the pool to the public and to school parties.
- 1.2. Paragraph 3 of schedule 3 will cease to apply
- 1.3. YMCA will take such steps as a reasonable and prudent owner of the Premises would take to preserve and safeguard the Premises and the Plant.

**2. CESSATION OF GRANTS**

- 2.1. The Council will no longer be under any obligation to pay any Council Grants to YMCA.

**3. UNSPENT CAPITAL**

- 3.1. YMCA will within 28 days repay to the Council any Council Grants falling within items 6 or 7 in the table in schedule 4 which has not been expended on the Premises.

**4. DOCUMENTS, PLANS AND POLICIES**

- 4.1. YMCA will within 28 days provide the Council with copies of all documents, plans, policies and procedures that it holds relevant to the operation of the Premises as a public swimming pool and the correct and safe operation of any plant forming part of or operated within them.

**5. ASSET DESTINATION**

- 5.1. Following compliance by the YMCA with the applicable provisions of this Schedule, any subsisting Lease and agreement for sale shall forthwith determine subject to any subsisting breach or antecedent rights of the parties in respect thereof.
- 5.2. If YMCA is the freehold owner of the Premises, it will comply with this sub-paragraph 5.2.
  - 5.2.1. Within three calendar months of the Closure Event YMCA will draw up a Disposal Plan and submit it to the Council.
  - 5.2.2. Within 28 days of YMCA submitting the Disposal Plan to the Council, the Council will notify YMCA whether it approves the Disposal Plan and, if it does not approve, identify the elements of the Disposal Plan with which it is dissatisfied.
  - 5.2.3. Subject to sub-paragraph 5.2.5, if the Council does not notify YMCA whether it approves the Disposal Plan within the time set out in sub-paragraph 5.2.2, it will be deemed to have approved it.
  - 5.2.4. The Council must act reasonably in deciding whether to approve the Disposal Plan.
  - 5.2.5. If the anticipated proceeds of disposal set out in the Disposal Plan are equal to or less than the Net Cumulative Deficit to the date of the submission of the Disposal Plan to the Council:
    - 5.2.5.1. the Disposal Plan will not be deemed to be approved under sub-paragraph 5.2.3; and

5.2.5.2. the Council will be deemed to have acted reasonably if, for that reason, it does not approve the Disposal Plan.

5.2.6. YMCA will dispose of the Premises in accordance with the approved Disposal Plan.

5.2.7. The proceeds of the disposal of the Premises will be applied by YMCA in the following order:

5.2.7.1. To offset net losses accrued by YMCA in operating the premises in accordance with this agreement since the Lease Commencement Date

5.2.7.2. To pay to the Council to such sum as will cover the costs that the Council have properly incurred in connection with the transfer of the Premises to YMCA or the operation of the Premises by YMCA in accordance with this agreement since the Lease Commencement Date.

5.2.7.3. To fund schemes or projects to be which help to deliver the YMCA's community and social objectives within the rural Fylde, and which have been approved in writing by the Council for the purposes of this agreement which said approval will not be unreasonably withheld, such schemes or projects to be for the benefit of swimming sport or recreation.

The Common Seal of

**FYLDE BOROUGH COUNCIL**

was hereunto affixed

in the presence of:

Head of Legal Services



Signed as a deed on behalf  
of the trustees of the  
Lytham St Annes and Fylde  
Young Men's Christian Association

by \_\_\_\_\_ and \_\_\_\_\_,

two of their number, under an authority  
conferred pursuant to section 82 of the  
Charities Act 1993,

Authorised signatories

in the presence of