

HANHAM COMMUNITY CENTRE

A Charitable Incorporated Organisation - Charity No. 1152575

Business Transfer **Agreement**

2nd Apr 2016

V1.1

Approved by Board of Trustees – 2nd Apr 2016
Revalidated: NA

Approved on behalf of Board of Trustees

Signed:

Signed:

AMMENDMENTS

Version	Date	Author	Comments
0.1	Feb 16	JD/KL	CM Solicitor draft
1.0	7 Mar 16	JD/KL	Final amendments and BOT approval
1.1	2 Apr 16	KL	Company number added

BUSINESS TRANSFER AGREEMENT

DATE: 2nd April 2016

PARTIES:

1. Hanham Community Centre Social Club of 118-125 High Street, Hanham, Bristol BS15 3EJ, acting by its management committee (“Transferor”); and
2. Hanham Community Centre (Bar and Trading Services) Ltd, a company incorporated in England and Wales with registration number 10098971 whose registered office is at 118-124 High Street Hanham Bristol BS15 3EJ (“Transferee”).

BACKGROUND

- (A) The Transferor has for many years carried on the undertaking of a social club.
- (B) By a resolution of the members of the management committee dated 1st February 2016 the management committee (in accordance with a resolution made at the AGM on 31st March 2014 to dissolve the social club (at a appropriate time) to enable a ‘trading fund’ to undertake the role) approved this Agreement and resolved to sign and exchange the same with the Transferee.
- (C) By a resolution of the Transferee dated 7th March 2016 the Transferee approved this Agreement and resolved to sign and exchange the same with the Transferor.

NOW IT IS AGREED as follows:-

1. Definitions

- 1.1 In this Agreement the following words and expressions shall have the following meanings unless the context otherwise dictates:
 - 1.1.1 “Assets” means all the undertaking and assets and rights of the Transferor;
 - 1.1.2 “Completion” means the performance by the parties hereto of their respective obligations under this Agreement;
 - 1.1.3 “Employees” means the persons engaged in the Undertaking at the Transfer Date;
 - 1.1.4 “management committee” means the management committee of the Transferor;
 - 1.1.5 “Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
 - 1.1.6 “Transfer Date” means 1st April 2016. ;
 - 1.1.7 “Undertaking” means the undertaking of the Transferor as described in (A) of Background.

- 1.2 References to any Statute, Regulation or other statutory provision includes a reference to:
 - 1.2.1 that statute, regulation or statutory provision as from time to time amended, extended or re-enacted or consolidated and
 - 1.2.2 all statutory instruments or orders made pursuant to it.
- 1.3 Words denoting the singular number only shall include the plural and vice versa. Words denoting any particular gender include all genders and words denoting persons shall include firms or corporations and vice versa
- 1.4 Unless the context otherwise requires references to any sub-clause or schedule is to a sub-clause or schedule (as the case may be) of or to this Agreement.
- 1.5 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

2. Transfer

With effect from the Transfer Date the Transferor agrees with full title guarantee to transfer the Assets to the Transferee to hold the same unto the Transferee absolutely.

3. Value Added Tax

- 3.1 The Transferor is registered for VAT but for the avoidance of doubt the parties hereto intend that Section 49 of the Value Added Tax Act, 1994 and Article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the transfer of the Assets and that the sale of the Assets is treated as neither a supply of goods or of services for the purposes of VAT and the Transferor and, if necessary, the Transferee shall agree a form of letter to be sent by the Transferor to HM Customs and Excise seeking confirmation that the transfer of the Undertaking is to be so treated.
- 3.2 The Transferee declares its intention to use the Assets in carrying on the Undertaking.
- 3.3 In the event that VAT is chargeable on the transfer of any of the Assets pursuant to this Agreement then, subject to the receipt by the Transferee of a valid VAT invoice or invoices relating to such Assets the Transferee shall pay to the Transferor (in addition to the consideration referred to in clause 2) an amount equal to the amount of any VAT payable in respect of the same together with any penalty or interest incurred for late payment of such tax.

4. Contractual commitments

- 4.1 The Transferor shall on completion and with effect from the Transfer Date transfer to the Transferee all its contractual commitments which are capable of transfer without the consent of the other parties hereto. The Transferee agrees with the Transferor with effect from the Transfer Date to assume the obligations of and become entitled to the benefits of the Transferor under the Contracts and the Transferee shall carry out perform and complete all the said contractual commitments and shall indemnify the

Transferor and keep the Transferor, its members and the management committee fully indemnified against all liabilities, losses, actions, proceedings, costs, claims, demands and expenses brought or made against or incurred by the Transferor in respect of the non-performance or negligent performance by the Transferee of the said contractual commitments.

5. Completion

Completion shall be contemporaneous with the execution hereof whereupon the Transferor shall deliver or cause to be delivered to the Transferee all of the Assets hereby agreed to be transferred which are capable of passing by delivery including, without limitation to the foregoing, the following:

- 5.1 all books of account, payroll accounts, income and expenditure records, stock records (if any), computer programs and information relating to the clients and suppliers of the Undertaking;
- 5.2 a list of all suppliers and clients of the Undertaking and copies of all current contracts with the same;
- 5.3 all National Insurance and PAYE records relating to the Employees duly completed and up to date;

6. Employees

- 6.1 The Employees' contracts of employment are at Completion automatically transferred to the Transferee under the Regulations.
- 6.2 The Transferee will be responsible for and undertakes to indemnify and keep the Transferor indemnified from and against all liabilities, obligations, costs, claims and demands arising from or in respect of any of the Employees except insofar as and to the extent that the same was caused by any act of omission by the Transferor prior to the date of completion.

7. Further Assurance

The Transferor undertakes with the Transferee to execute and deliver any other documents and to take any other steps as shall be reasonably required by the Transferee to vest the Assets in the Transferee.

8. Continuation of the Undertaking

The parties hereto expressly agree and declare that, in accordance with the terms of this Agreement, from the Transfer Date, the Transferee shall take over the Undertaking and shall assume full responsibility for the management and running of the Undertaking in respect of all its activities carried on as at the Transfer Date.

9. Miscellaneous

- 9.1 Completion shall not, in any way, prejudice or affect the operation of any of the provisions of this Agreement which contemplate or are capable of operation after Completion and, accordingly, all such provisions shall continue in full force and effect after Completion. Completion shall not constitute a waiver by the Transferee of any breach of this Agreement, whether or not known to the Transferee at the date of completion.
- 9.2 This Agreement shall constitute the entire agreement and understanding between the parties with respect to all matters which are referred to and shall superseded any previous agreements between the parties in relation to the matters referred to in this Agreement.
- 9.3 If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be effected.
- 9.4 No variations to this Agreement shall be effective unless in writing and signed on behalf of each party by a duly authorised agent thereof.
- 9.5 Neither party shall have the right to rescind this Agreement after completion. Any remedy or right conferred upon any Party for breach of this Agreement shall be in addition to and without prejudice to all other rights and remedies available to it and no exercise or pursuit or failure to exercise or pursue such a right or remedy shall constitute a waiver by a party of any other right or remedy.

In witness whereof the parties execute this Agreement as their Deed the day and year first above written.

For the Transferor, duly authorised by resolution of the management committee

Signed.....

Name (in capitals).....

For the Transferee, duly authorised by resolution of the Board of Directors

Signed..... Director

Signed..... Director/Secretary