

DATED

2018

- (1) **HIGHCLIFFE SAILING CLUB**
(an unincorporated association)
- (2) **HIGHCLIFFE SAILING CLUB LIMITED**
(a company limited by guarantee)
- (3) **THE TRUSTEES OF HIGHCLIFFE
SAILING CLUB**

ASSET TRANSFER AGREEMENT

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Ref: GTR.HIG.61.1

THIS AGREEMENT is made on

2018

BETWEEN:-

- (1) **ASSOCIATION** : the unincorporated association known as Highcliffe Sailing Club governed by a constitution adopted on 39th November 2012 and amended on 25th November 2016 whose address is at "Sea Vixen", Mudeford Quay, Christchurch, Dorset BH23 4AB and acting by the Committee of Management¹
- (2) **COMPANY** : Highcliffe Sailing Club Limited, a company limited by guarantee registered with company number 11218056, whose registered office is also at "Sea Vixen", Mudeford Quay, Christchurch, Dorset BH23 4AB
- (3) **TRUSTEES** : Trevor Phillips, Peter Lawrence Emerson, Ian Jeffery Pike and Stephen Bryan John Waite all care of "Sea Vixen", Mudeford Quay, Christchurch, Dorset BH23 4AB

BACKGROUND

- 0.1 The Association is a club established as an unincorporated association which provides facilities for and promotes the sport of sailing.
- 0.2 The Committee of Management concluded that it would be in the best interests of the Association if its activities were carried on through a limited company.
- 0.3 At a general meeting of the Association held on *[date]* the members of the Association passed a resolution to transfer the whole of its assets and liabilities to a company limited by guarantee and on the conclusion of the transfer to wind up the Association.
- 0.4 The Company was incorporated on 21st February 2018 with power to acquire the whole of the assets and undertaking and to assume the liabilities of the Association.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the following words and expressions shall have the following meanings for all purposes:

Activities : the activities associated with running the Association for the benefit of its members as carried on by the Association at the Effective

¹ As defined in clause 1.1

Date.

- Assets** : the property, assets and rights of the Association as described in clause 2.
- Assumed Liabilities** : the liabilities of the Association properly incurred by the Association in connection with the Activities outstanding at the Effective Date.
- Book Debts** : any debts owed to the Association at the Effective Date.
- Cash** : any cash float and bank account credit balances held at the Effective Date by the Trustees on behalf of the Association.
- Committee of Management** : the committee of the Association elected by the members of the Association to manage the Association, in accordance with clause 9 of the Constitution together with any co-opted members of the committee.
- Completion** : completion of the transfer of the Assets as described in clause 3.
- Constitution** : the constitution of the Association adopted on 39th November 2012 and amended on 25th November 2016.
- Consumables** : all wet and dry stock, stationery, publications and other consumable items held by the Association.
- Contracts** : the contracts and engagements of the Association whether expressed to be in the name of the Association, member(s) of the Committee of Management or the Trustees at the Effective Date.
- Effective Date** : midnight on *[Date]*
- Employee Records** : all records that the Association is required by law to maintain in respect of any former employees including, but not limited to, payroll records.
- Fixtures, Fittings and Equipment** : all fixtures, fittings, equipment, boats, engines, vehicles and any other chattels used by the Association.
- Goodwill** : the goodwill, custom and connection of the Association, together with the exclusive right for the Company or its assignee to represent itself as carrying on the Activities in succession to the Association.

- Lease** : an underlease dated *[date]* and made between The Borough Council of Christchurch (1) and the Trustees(2).
- Property** : the leasehold property known as “Sea Vixen”, Mudeford Quay, Christchurch, Dorset BH23 4AB more particularly described in the lease.
- Records** : all records and documents howsoever recorded relating to the Association, including the Employee Records.
- Transfer** : the transfer of the Assets to the Company pursuant to this Agreement.

- 1.2 The Association means the Association acting by the Committee of Management in accordance with the Constitution. Any reference to a Contract is a contract, whether written or unwritten, entered into by the Committee of Management or any member of the Committee of Management with the approval of the Committee of Management.
- 1.3 References to statutes or statutory provisions shall be construed as references to those statutes or provisions and to any orders, regulations, instruments or subordinate legislation as amended, extended, consolidated or replaced from time to time (whether before or after the date of this Agreement).
- 1.4 Except where the context otherwise requires, the singular shall include the plural and vice versa; any gender include all genders; words denoting persons include bodies corporate and unincorporated associations and partnerships and vice versa.
- 1.5 A reference to a clause or schedule is a reference to a clause of, or a schedule to, this Agreement; and references to this Agreement include the schedules.
- 1.6 Clause headings are for ease of reference only and do not affect the construction of this Agreement.

2. TRANSFER OF ASSETS

- 2.1 In consideration for the assumption by the Company of the obligations in clause 4, the Association transfers with limited title guarantee and the Company shall accept, with effect from the Effective Date all the property, assets and rights of the Association including, without limitation:
- 2.1.1 the Goodwill;
- 2.1.2 the Fixtures, Fittings and Equipment;
- 2.1.3 the benefit (subject to the burden) of the Contracts;
- 2.1.4 the Property;

- 2.1.5 the Consumables;
- 2.1.6 the Cash;
- 2.1.7 the Records;
- 2.1.8 the Book Debts; and
- 2.1.9 all other property, rights and assets held by the Committee of Management or the Trustees for and on behalf of the Association or to be used, enjoyed or exercised or intended to be used, enjoyed or exercised in the Activities by the Association.

3. COMPLETION

- 3.1 The Transfer shall be completed immediately upon the Effective Date when all the matters set out in this clause 3 shall be effected:
 - 3.1.1 The Association shall be deemed to have delivered to the Company at the Property such of the Assets as are located at the Property which are capable of being transferred by delivery;
 - 3.1.2 The Trustees at the direction of the Association shall deliver to the Company a duly executed assignment of the Lease together with all documents of title to the Property in their possession or under their control; and
 - 3.1.3 The Association shall cause to be delivered or (if so requested by the Company) make available to the Company the Records and the Association's books of account, information relating to other contract parties, relevant computer programmes and other books and documents which relate to the Association.
- 3.2 The Company may in its absolute discretion waive any requirement contained in clause 3.1.
- 3.3 The Company shall continue the Activities from the Effective Date in succession to the Association.

4. CREDITORS AND LIABILITIES

- 4.1 The Company shall with effect from the Effective Date:
 - 4.1.1 assume responsibility for and pay, satisfy or perform the Assumed Liabilities; and
 - 4.1.2 pay, satisfy or discharge all debts, liabilities and obligations incurred by the Association, the Committee of Management and the Trustees in connection with the Activities after the Effective Time.

- 4.2 The Company shall indemnify the Association, the Committee of Management and the Trustees on demand against any liability for any claims (including reasonable costs and expenses) brought against any of the Association, the Committee of Management or the Trustees by third parties in consequence of any act, omission or breach by the Company of its obligations under this Agreement.

5. CONTRACTS AND OTHER OBLIGATIONS

- 5.1 Subject to the consent, where necessary, of the other contracting parties, the Company shall assume the obligations of and become entitled to the benefit of the Contracts with effect from the Effective Date.
- 5.2 Failing any required consent of the other contracting parties to the assignment or novation of any Contract, the Association shall remain liable under such Contract as a contracting party but the Company shall at its own cost and expense assume and perform the obligations under such Contract for and on behalf of the Association who shall account to the Company for all sums received from or in connection with the Contract.
- 5.3 The Association will, at the Company's request, give to the Company all assistance reasonably within its power to enable the Company to enjoy the benefits of and to enforce the Contracts against the other contracting party or parties.

6. BOOK DEBTS

- 6.1 The Association shall assign the Book Debts or any of them to the Company and shall give the Company all reasonable assistance to collect the Book Debts.
- 6.2 If the Association receives any payment in discharge of the Book Debts it shall account to the Company for the payment.

7. GENERAL

7.1 Assignment

This Agreement shall be binding upon and ensure for the benefit of the successors and personal representatives of the parties but shall not be assignable.

7.2 Whole Agreement

This Agreement constitutes the whole agreement between the parties relating to its subject matter and supersedes any prior agreements or understandings. No variations shall be effective unless made in writing signed by the parties and expressing an intention to vary this Agreement.

7.3 Agreement Survives Completion

All the provisions of this Agreement, in so far as the same shall not have been performed at Completion, shall remain in full force and effect notwithstanding Completion.

7.4 Further Assurance

At any time after the date of this Agreement, the Trustees shall, at the request of the Company, execute such documents and do such acts and things as the Company may reasonably require for the purpose of vesting the Assets in the Company or its nominees and giving to the Company the full benefit of all the provisions of this Agreement.

7.5 Notices

Any notice required to be given under this Agreement shall be in writing and shall be served by sending the same by pre-paid first class post or facsimile or by delivering the same by hand to the addressee at the address given in this Agreement (or such other address as may have been notified in accordance with this clause). Any notice sent by pre-paid first class post shall be deemed to have been served 48 hours after dispatch and any notice sent by facsimile shall be deemed to have been served at the time of dispatch and in proving the service of the same it will be sufficient to prove, in the case of a letter, that it was properly stamped, addressed and placed in the post and in the case of a facsimile, that it was duly dispatched to a current facsimile number of the addressee.

7.6 Invalidity

If any provision in whole or part of this Agreement shall be held to be void or unenforceable, the validity and enforceability of the remainder of this Agreement (and the remainder of the provision concerned) shall not be affected.

7.7 Choice of Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts for the purpose of enforcing any claim arising under this Agreement.

7.8 Rights of Third Parties

No person who is not a party to this Agreement shall have any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 provided that any member of the Committee of Management shall have the right to enforce clauses 4.2 and 7.2.

7.9 Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

7.10 Severance

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision

or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

SIGNED by or on behalf of the parties the day and year first before written