

Operator Agreement

(1) Penzance Town Council

and

(2) [INSERT NAME]



Coodes
SOLICITORS

Coodes
St Austell Business Park
St Austell
Cornwall
PL25 4FD

THIS AGREEMENT is made on

202[5]

BETWEEN:

1. **PENZANCE TOWN COUNCIL**, whose principal offices are situated at Penlee Centre, Penlee Park, Penzance, Cornwall, TR18 4HE (the "**Council**").
2. **[NAME OF OPERATOR]**, [a company registered in England and Wales under company registration number [number]], whose [registered office or address] is at [address] (the "**Operator**").

RECITALS:

1. The Council is the freehold owner of certain premises known as the café at the Coach House, Penlee House Gallery and Museum (the Premises) and has agreed to grant the Operator a licence to operate a cafe on the Premises, subject to the terms and conditions set out in this Agreement.
2. This Agreement has been contracted out of the security of tenure provisions under Part II of the Landlord and Tenant Act 1954 by virtue of a valid statutory notice served by the Council and [a statutory declaration] made by the Operator prior to the commencement date of this Agreement.

NOW IT IS AGREED AS FOLLOWS:

1. Interpretation

1.1 Definitions:

In this Agreement, the following expressions shall have the meanings assigned to them:

- 1.1.1 **Premises** means the cafe premises, including the building, terrace, and adjacent customer toilet facilities located at the Coach House, Penlee House Gallery and Museum, as is more particularly described in Schedule 1.
- 1.1.2 **Term** means the duration of this Agreement, commencing from [Commencement Date] ("**Commencement Date**") and continuing for a total term of [nine] years, subject to termination rights specified in clauses 3 and 7.
- 1.1.3 **Fee** means the agreed remuneration to be paid by the Operator to the Council as detailed in clause 5 below.
- 1.1.4 **Turnover** means the gross income generated from the operation of the cafe on a annual basis, excluding VAT.

1.1.5 **Council Equipment** means the equipment listed in Schedule 2 to be provided by the Council for use by the Operator.

1.1.6 **Permitted Hours** means the hours during which the Operator is authorised to open the café to the public and provide services, as specified in Schedule 3.

2. Grant of Licence

2.1 The Council grants the Operator a licence to use the Premises exclusively for the purpose of operating a cafe and hosting private events, subject to:

2.1.1 prior written consent by the Council for hosting private events; and

2.1.2 compliance with all applicable licenses, consents, and statutory requirements relating to such events.

2.2 The Operator acknowledges and agrees that this Agreement does not confer exclusive possession of the Premises and does not create a tenancy.

3. Term

3.1 The Agreement shall commence on [Commencement Date] and shall continue for [nine] years unless terminated earlier in accordance with this Agreement.

3.2 The Council may terminate this Agreement:

3.2.1 by giving the Operator written notice to terminate the Agreement at the first anniversary of the Commencement Date, provided that not less than [six] months written notice is served;

3.2.2 by giving the Operator written notice to terminate the Agreement at the third anniversary of the Commencement Date, provided that not less than [six] months written notice is served

3.2.3 by giving the Operator written notice to terminate the Agreement at the sixth anniversary of the Commencement Date, provided that not less than [six] months written notice is served; or

3.2.4 Immediately, in accordance with clause 7 below.

4. Specific Obligations of the Operator

4.1 The Operator shall:

- 4.1.1 throughout the Term keep the interior of the premises in a clean and tidy condition and in good and tenantable repair including carrying out any necessary repairs to the interior of the Premises and repairing or replace any items of damage;
- 4.1.2 undertake daily cleaning of all internal area and facilities within the premises and monthly deep clean;
- 4.1.3 ensure compliance with food hygiene standard maintain a minimum four-star rating;
- 4.1.4 comply with all laws and regulations relating to the occupation and use of the Property by the Tenant;
- 4.1.5 ensure all outgoings related to the use and occupation of the Premises (including but not limited to utility bills, business rates, and service charges) are paid promptly;
- 4.1.6 maintain the toilet facilities for customer use to the Councils satisfaction;
- 4.1.7 pay for and organise all waste and recycling collection associated with running the Concession.
- 4.1.8 ensure the Council Equipment listed in Schedule 2 is used and maintained appropriately, and any damage or loss is promptly repaired or replaced at the Operators sole cost;
- 4.1.9 ensure equipment is serviced and repaired in line with the manufacturer's operating instructions to ensure that any warranty will be upheld. Any repairs are the responsibility of the operator and should be carried out by a competent catering engineer, or, if specified by the manufacturers manual, a manufacturer approved engineer; and
- 4.1.10 ensure adequate first aid resources are available including ensuring there is always one member of staff with first aid trained working.

4.2 The Operator shall not:

- 4.2.1 make any alterations to the structure or exterior of the Premises;

- 4.2.2 make any non-structural alterations to the interior of the Premises without the prior written consent of the Council;
- 4.2.3 assign, sub-license, or share the use of the Premises with any third party; or
- 4.2.4 use the Premises for anything other than a café without the prior written approval of the Council.

5. Fee

- 5.1 The Operator shall pay the Council a Fee (exclusive of VAT) based on a stepped percentage of the Turnover on the following basis, subject to a minimum annual fee of £20,000.00 (twenty thousand pounds), payable quarterly in arrears and calculated on a quarterly basis:

- 5.1.1 [10% of the first £0-£100,000.00 of Turnover;

- 5.1.2 12.5% of the Turnover between £100,001.00 to £200,000;

- 5.1.3 15% of Turnover above £200,000.00.

Final figures to be agreed as per Operators bid price submission]

- 5.2 Within 30 days of the end of each quarter, the Operator shall provide the Council with accurate financial statements certified by an accountant detailing the Turnover for the relevant quarterly period and shall make payment of the Fee concurrently with such submission.
- 5.3 The Council reserves the right to conduct audits of the Operators financial records to verify the Turnover as indicated in the statements.

6. Use of Branding and Hours of Operation

- 6.1 The Operator shall use signage, branding, advertising, and logos only with the Councils prior written approval.
- 6.2 The Operator shall operate its cafe during the Permitted Hours specified in Schedule 3. Changes to the Permitted Hours are subject to the Councils written consent.

7. Termination of this Agreement

7.1 The Council may terminate this Agreement immediately, giving written notice to the Operator, in the event of:

7.1.1 the Operators bankruptcy, insolvency, or similar financial incapacity.

7.1.2 any material breach of this Agreement, provided the Council has served the Operator with written notice and a 30-day remediation period, which the Operator has failed to comply with. Material breach of terms would include non-payment of the Fee, breach of insurance obligations, failure to trade as per advertised hours without consultation with the Council pursuant to this Agreement.

8. Insurance

8.1 The Operator shall procure and maintain during the Term at its own expense appropriate insurance coverage, including but not limited to:

8.1.1 Public liability insurance (including product liability) with a minimum coverage of £5,000,000.00 (five million pounds);

8.1.2 Employer liability insurance with a minimum coverage of £5,000,000.00 (five million pounds); and

8.1.3 Any other policy as may be reasonably required by the Council.

8.2 The Operator shall provide the Council with copies of its insurance policies and evidence of renewal upon request and promptly notify the Council of any material changes to its insurance coverage within 30 days of such change.

9. Confidential information

9.1 Each party undertakes that it will keep any information that is confidential in nature concerning the other party and its Affiliates including, without limitation, any details of its business, affairs, customers, clients, suppliers, plans or strategy (**Confidential Information**) confidential and that it will not use or disclose the other party's Confidential Information to any person, except as permitted by clause 9.2.

9.2 A party may:

9.2.1 disclose any Confidential Information to any of its employees, officers, representatives or advisers (**Representatives**) who need to know the relevant Confidential Information for the purposes of the performance of any obligations under this Agreement, provided that such party must ensure that each of its

Representatives to whom Confidential Information is disclosed is aware of its confidential nature and agrees to comply with this clause 9 as if it were a party;

9.2.2 disclose any Confidential Information as may be required by law, any court, any governmental, regulatory or supervisory authority (including, without limitation, any securities exchange) or any other authority of competent jurisdiction to be disclosed; and

9.2.3 use Confidential Information only to perform any obligations under this Agreement.

9.3 Each party recognises that any breach or threatened breach of this clause 9 may cause irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages, the parties agree that the non-defaulting party may be entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

9.4 This clause 9 will bind the parties during the Term and for a period of five years following termination of this Agreement.

10 **Dispute resolution**

10.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 10.

10.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

10.3 The parties shall use all reasonable endeavours to reach a negotiated resolution within seven days of service of the notice and the parties shall meet to discuss the dispute and attempt to resolve it.

10.4 The specific format for the resolution of the dispute under clause 10.3 shall be left to the reasonable discretion of the parties, but may include the preparation and submission of statements of fact or of position.

10.5 If the dispute has not been resolved within 14 days of the first meeting, then the matter may be referred to mediation in accordance with the London Court of International Arbitration Mediation Rules.

- 10.6 Either party may issue formal legal proceedings or commence arbitration at any time, whether or not the steps referred to in clauses 10.3 and 10.5 have been completed.

11 **Entire agreement**

- 11.1 The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral, in respect of its subject matter.
- 11.2 Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

12 **Notices**

- 12.1 Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement (or to the email address set out below). Notices may be given, and shall be deemed received:
- 12.1.1 by first-class post: two Business Days after posting by signed for post;
 - 12.1.2 by hand: on delivery;
 - 12.1.3 by email to [INSERT] in the case of the Council and [INSERT] in the case of the Operator: on receipt of a delivery return email.
- 12.2 This clause does not apply to notices given in legal proceedings or arbitration.

13 **Announcements**

No announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, the Operator without the prior written consent of the Council, except as required by law, any court, any governmental, regulatory or supervisory authority (including, without limitation, any recognised investment exchange) or any other authority of competent jurisdiction.

14 **Force majeure**

14.1 In this Agreement, **Force Majeure** means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement. Inability to pay is not a Force Majeure event.

14.2 A party shall not be liable if delayed in or prevented from performing its obligations under this Agreement due to Force Majeure, provided that it:

14.2.1 promptly notifies the other of the Force Majeure event and its expected duration;

14.2.2 uses reasonable endeavours to minimise the effects of that event.

14.3 If, due to Force Majeure, a party:

14.3.1 is or is likely to be unable to perform a material obligation; or

14.3.2 is or is likely to be delayed in or prevented from performing its obligations for a continuous period of more than 90 Business Days, the Council may terminate this Agreement on not less than four weeks' written notice.

15 **Further assurance**

Each party shall, at the request of the other and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

16 **Variation**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

17 **Assignment**

The Operator may not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without the Council's prior written consent.

18 **No partnership or agency**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties, nor make any party the agent of another party.

19 **Severance**

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

20 **Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

21 **Third party rights**

No one other than a party to this Agreement, their successors and permitted assignees shall have any right to enforce any of its provisions.

22 **Governing law**

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

23 **Jurisdiction**

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

Schedule 1: Premises

New Café/restaurant space

Kitchen and preparation area (6.6 metres by 2.8 metres) – a professional commercial kitchen has been installed by GS Catering Limited

The flooring to the kitchen area is an Altro vinyl floor

The Kitchen can be accessed via the adjoining servery space.

An external fenced area is accessible from the kitchen. This contains air source heat pump unit, and bin storage.

Servery space (4.7 metres by 2.8 metres) has a roller fire shutter. The servery can be accessed via a door to the outside of the premises and through the main seating / dining area.

Seating and Dining area (4.7 metres by 15.1 metres) which has seating for approximately 46 seated customers at table locations plus approximately a further 12 at edge stool seating. The seating is a mix of bench seating and movable chairs, as well as stools at counters.

The area has limited plug sockets in the public area that can be used for charging laptops/phones. A TV screen, shows 'What's On' and upcoming events at Penlee House and in Penlee Park

Toilet cubicles (5 number unisex cubicles (1.1 metres by 1.8 metres)). The toilets are equipped with toilet, sink, hand dryer

Accessible / Baby Changing Toilet (1 unisex cubicles 2.2 metres by 1.5 metres).The toilets are equipped with accessible toilet providing a toilet and baby change facility / grab rails, emergency call feature, sink, electric hand dryer

Schedule 2: Council Equipment

Bench seating, tables, seating and stools to seat 60 covers indoors. External furniture to seat 60 covers on a dedicated terrace

Refrigerated back bar cabinet

Undercounter refrigerator

L-shaped servery

L-shaped servery w. hot cupboard

Microwave over

Wall style ventilation canopy

Fire suppression system

Electric counter unit griddle

Electric single basket counter unit frier

Floor model induction range

Electric combi over

Wall bench

Wall shelf

Undercounter refrigerator

Slim bin

Hand wash basin

Fly killer

L-shaped wall bench

Wall shelf

Undercounter refrigerator

Wall shelf

Planetary mixer

Wire shelving unit

65l mobile ingredient bin

Upright reach in freezer

Upright reach in refrigerator

Wire shelving unit

Undercounter dishwasher

Dishwash table

Slim bin

Drain dosing system

Undercounter refrigerator

Infil bench

Espresso machine

Coffee grinder

Any other items are to be provided by the Operator.

Schedule 3: Operating Hours

Guideline operating hours are 8am-5pm between October – April and 8am-8pm from May to September. As a new operation, the operating hours will be reviewed with the Operator after a period of 6 months from the date of this Agreement to ensure suitability and may be varied with the consent of the Council.

Closure that impacts on operating hours that has been instigated by the Operator or the Council, such as for maintenance will need to be agreed in advance by both parties.

AGREED by the parties on the date set out at the beginning of this Agreement

Signed by For and on behalf of Penzance Town Council	
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Signed by [INSERT NAME]	
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