

DATED

2016

(1) RED STAR PUB COMPANY (WR III) LIMITED

- and -

(2) [INSERT PUB OPERATOR]

**PUB OPERATOR
AGREEMENT**

CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
2.	APPOINTMENT AND SCOPE	6
3.	DURATION/TERM	6
4.	GENERAL UNDERTAKINGS OF PUB OWNER	6
5.	OTHER PROVISIONS.....	7
6.	OPERATOR'S GENERAL OBLIGATIONS	9
7.	RESTRICTIONS ON THE OPERATOR.....	15
8.	GUARANTOR OBLIGATIONS.....	16
9.	SERVICE OCCUPANCY	16
10.	FINANCIAL AND ACCOUNTING	17
11.	MANAGEMENT FEE.....	17
12.	TERMS OF PAYMENT.....	17
13.	INSURANCE.....	17
14.	DAMAGE.....	18
15.	FORCE MAJEURE AND EXCEPTIONAL CIRCUMSTANCES.....	18
16.	SUCCESSORS AND ASSIGNS	19
17.	TERMINATION.....	19
18.	DATA PROTECTION.....	20
19.	GENERAL.....	21
20.	EXCLUSION OF SECURITY OF TENURE	26
21.	DELIVERY	26
	SCHEDULE 1: [TRANSFERRING EMPLOYEES]	29
	SCHEDULE 2: GUARANTOR OBLIGATIONS.....	30

BETWEEN:

- (1) **RED STAR PUB COMPANY (WR III) LIMITED**, a company incorporated in England with registered number **04089947** and whose registered office is at Elsley Court 20-22 Great Titchfield Street, London, W1W 8BE ("**Pub Owner**"); and
- (2) [**INSERT PUB OPERATOR**], a company incorporated in [◆] with registered number [◆] and whose registered office is at [◆] ("**Operator**").
- (3) [**INSERT GUARANTOR**] [◆]

BACKGROUND

Pub Owner wishes to engage the Operator, and the Operator agrees, to operate the Pub on behalf of Pub Owner in accordance with the terms set out in this agreement.

[The Guarantor is a party to this agreement for the purposes of guaranteeing the obligations of the Operator as set out in clause 8 and schedule 2 of this agreement.]

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

In this agreement, the following terms have the following meanings:

"**Base Fee**" has the meaning given to it in clause 11.1.1;

"**Brand**" means the name "Eagles Corner" and associated logo;

"**Business Day**" means a day (other than a Saturday or Sunday) on which clearing banks are ordinarily open for business in the City of London;

"**Capital Expenditure**" means:

- (a) expenditure relating to the Pub which, in accordance with IFRS, is to be capitalised and amortised; and
- (b) lease payments for equipment and materials, the purchase of which would constitute capital expenditure in accordance with such generally accepted accounting practices;

"**Commencement Date**" means [◆]; *[Drafting Note: Note that when determining the appropriate date, the licence to occupy will start from this date.]*

"**Confidential Information**" has the meaning given to it in clause 19.12.1;

"**Damage Deposit**" has the meaning given to it in clause 5.4;

"**Employee Costs**" has the meaning given to it in clause 6.3.7;

"**Effective Date**" means the date on which this agreement is executed by the parties;

"FF&E" means all chattels, furniture and durable property used or stored for the Pub's operation, including, without limitation, office materials and furniture (including, without limitation, safes, cash-registers, cash boxes and communication equipment), public furniture, carpeting and other floor coverings, draperies, paintings, television sets, pianos, specific leisure equipment (including, without limitation, equipment required for the operation of any restaurant, bars and lounges), special lighting and other equipment, vehicles of any description, computers, sound systems, material handling equipment and engineering equipment and any other items of equipment required to operate the Pub, other than the Operating Implements, the Operating Supplies and any other fixtures attached to and forming an integral part of the Pub;

"Force Majeure" has the meaning given to it in clause 15.1;

"Gross Revenue" means all receipts of any kind produced by a payment in cash or by credit as a result of the Pub's operation and all of its subsidiary services, but excluding:

- (a) any capital grants or other subsidies awarded in respect of the Pub;
- (b) VAT and all sales, turnover and other Taxes and duties;
- (c) gratuities or service charges paid to the Pub Employees;
- (d) any receipt which is subsequently credited or refunded to customers or other users/occupiers of any part of the Pub;
- (e) any receipt which is subsequently deemed to be a bad debt;
- (f) proceeds of insurance, other than business interruption insurance;
- (g) loans and other indebtedness and any refinancing of the same;
- (h) rents or other sums received by Pub Owner or any other member of Pub Owner's Group in respect of any premises or areas within the Pub which are not managed by the Operator pursuant to this agreement (including, without limitation, any income derived from mobile phone masts); and
- (i) any income derived from gaming or entertainment machines located at the Pub;

"Group" means in respect of a party, that party and each body corporate which is from time to time its subsidiary or its holding company or a subsidiary of its holding company or ultimate holding company, and references to **"Pub Owner's Group"** and the **"Operator's Group"** shall be construed accordingly;

"IFRS" means International Financial Reporting Standards;

"Improvement Works" has the meaning given to it in clause 4.1.3.1;

"Incentive Fee" has the meaning given to it in clause 11.1.2;

"Insured Risks" has the meaning given to it in clause 13.1.1;

"Liability Period" has the meaning given to it in paragraph 1.2 of schedule 2;

"Management Fee" has the meaning given to it in clause 11.1;

"Named Individual" means [◆] or such other person as notified by the Operator in writing to Pub Owner and approved by Pub Owner from time to time;

"Net Operating Profit" means Gross Revenue and income derived from gaming and entertainment machines located at the Pub, before payment of interest, tax, the Base Fee and amortisation, less Operating Expenses and property related Taxes (other than any council tax payable in respect of a service occupancy granted pursuant to clause 9) payable in connection with the Pub or any part of it and the cost of buildings insurance in relation to the Pub, structural repairs, additions or improvements to the Pub as contemplated by clause 4.1.3, and all Capital Expenditure;

"Operating Expenses" means the proper and reasonable vouched costs and expenses incurred in relation to the operation, management and maintenance of the Pub including, without limitation, the following:

- (a) Employee Costs;
- (b) the cost of locally-generated advertising, marketing and business promotion incurred by the Pub;
- (c) the cost of utilities, including, without limitation, heat, light, power, air conditioning, water, and sewage treatment and disposal;
- (d) the cost of Operating Implements and Operating Supplies used and consumed in the operation of the Pub;
- (e) the costs as provided for in clause 5.3;
- (f) a reasonable reserve for uncollectible accounts receivable as determined by Pub Owner;
- (g) the costs and fees of independent professionals or other third parties who are retained to perform services relating to fire safety, water treatment testing and stocktaking or others as agreed in advance by Pub Owner;
- (h) any IT costs and expenses relevant to the operation of the Pub;
- (i) the costs of maintenance, repairs and minor alterations of and to the Pub, but excluding structural repairs or improvements to the Pub contemplated under clause 4.1.3;
- (j) the costs and expenses of the insurance which is required to be put in place by this agreement in connection with the Pub, but excluding the cost of buildings insurance in relation to the Pub;
- (k) the costs and expenses incurred in complying with applicable legal requirements pertaining to the operation of the Pub;
- (l) such other expenses incurred (either at the Pub or elsewhere) as are specifically provided for elsewhere in this agreement or, as agreed between the parties, are otherwise reasonably necessary for the proper and efficient operation of the Pub (including, without limitation, disbursements and travelling expenses incurred in connection with marketing and public relations services);

(m) the costs of training required under clause 6.3.9,

but excluding property related Taxes payable in connection with the Pub or any part of it and all Capital Expenditure;

"Operating Implements" means all cooking utensils, dishware, glasses, cutlery, tableware, silverware, uniforms, linen, tools, kitchen utensils and other items of a similar nature required for the Pub's operation;

"Operating Supplies" means all immediately consumable items required for the operation of the Pub including, without limitation, beverages, food, hospitality products, cleaning products, stationery, brochures and other printed items used for the Pub's operation;

"Pub" means that part of Pub Owner's Property used for the purpose of running a pub, [operating under the name of "Eagles Crossing",] at the date of this agreement (including the residential part of Pub Owner's Property used for service occupancy but excluding the areas used for commercial properties or let under assured shorthold tenancies);

"Pub Employees" means those persons whom the Operator (acting reasonably) deems necessary to engage for the efficient and profitable operation of the Pub, such persons to be recruited and employed by the Operator from time to time exclusively for the operation of the Pub and whose jobs are located at the Pub including, without limitation, the Transferring Employees;

"Pub Owner's Property" means the property owned by Pub Owner and situated at [◆];

"Pub Sale" means the disposal or sale of the Pub by Pub Owner (whether by virtue of the sale of the majority of shares in Pub Owner or by way of asset disposal of all or part of Pub Owner Property);

"Regulations" means all laws, orders, decrees, rules, permits, licences, authorisations, directives and conditions required by the government or any administrative authorities, and all police and magistrates' measures that may apply to the Pub or its operation;

"Replacement Operator" means any third party appointed by Pub Owner to carry out the Services, or services which are substantially similar to the Services, following the termination of this agreement;

"Retail Standards Audit" means an audit carried out by or on behalf of Pub Owner relating to the operation of the Pub;

"Requisite Consents" means all permits, certificates, licences, government or other authorisations required from time to time for the use, operation and management, opening to the public and legal occupancy of the Pub by the Operator and other users/occupiers of any part of the Pub;

"Services" means the operation and management of the Pub as set out in, and in accordance with, the terms of this agreement;

"Staff Information" means Employee Liability Information as defined in Regulation 11 of TUPE together with pay slip data for the most recent month, cumulative pay for tax and pension purposes, cumulative tax paid, tax code, voluntary deductions from pay, and bank or building society account details in relation to the Pub Employees;

"Taxes" means all taxes of any kind and all rents or charges, fees for licences or permits, inspection fees and all other fees required for authorisations and expenses, applicable to the Pub or its operation, which may at any time be implemented, levied or decided;

"Term" means the term of this agreement as defined in clause 3;

"Transfer Time" has the meaning given to it in clause 6.3.2;

"Transferring Employees" means those individuals [set out in schedule 1 to this agreement] OR [those employees **of [◆]**] whose contract of employment will be transferred to the Operator pursuant to TUPE on the Commencement Date;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time; and

"VAT" means value added tax or any similar or replacement sales tax or duty.

- 1.1 For the purposes of this agreement, **"subsidiary"** and **"holding company"** shall have the meanings ascribed thereto in section 1159 of the Companies Act 2006, save that references to a **"company"** within that section shall include any company wheresoever incorporated or registered.
- 1.2 Unless the context otherwise requires, any reference in this agreement to:
 - 1.2.1 a **"person"** shall be construed as a reference to any individual, firm, company (including, without limitation, a limited liability company), corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;
 - 1.2.2 a **"company"** shall include a reference to any body corporate;
 - 1.2.3 a **"clause"** is (unless otherwise stated) to a clause of this agreement;
 - 1.2.4 any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to such statute or statutory provision (including, without limitation, all instruments, orders or regulations made thereunder or deriving validity therefrom) as in force at the date of this agreement and as subsequently re-enacted or consolidated except to the extent that any such re-enactment or consolidation made after the date of this agreement would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, each party under this agreement;
 - 1.2.5 any of the masculine, feminine and neuter genders shall include other genders;
 - 1.2.6 the singular shall include the plural and vice versa; and
 - 1.2.7 any time or date shall be construed as a reference to the time or date prevailing in England.
- 1.3 The clause headings in this agreement are for ease of reference only and shall not affect its interpretation.

2. APPOINTMENT AND SCOPE

2.1 Pub Owner appoints the Operator as the manager of the operation of the Pub to provide the Services to Pub Owner pursuant to the terms and conditions of this agreement.

2.2 Pub Owner grants the following to the Operator:

2.2.1 authority to manage the Pub; and

2.2.2 a licence (on a non-exclusive basis) to occupy the Pub subject to, and in accordance with, the terms and conditions of this agreement from the Commencement Date. The Operator's right to occupy the Pub shall be further subject to any rights and easements that Pub Owner may grant from time to time over certain parts of the Pub for the benefit of other units in Pub Owner's Property (including, but without prejudice to the generality of the foregoing, rights of access to and from such units across entrance ways, lobbies and staircases in the Pub and all rights, easements, privileges, restrictions, covenants, stipulations and matters of whatsoever nature affecting Pub Owner's Property).

3. DURATION/TERM

This agreement shall become effective on the Effective Date and shall continue until terminated by either Pub Owner on provision of three (3) months' notice to the Operator, or by the Operator on provision of four (4) weeks' notice to Pub Owner.

4. GENERAL UNDERTAKINGS OF PUB OWNER

4.1 Pub Owner undertakes as follows:

4.1.1 it shall allow the Operator to maintain normal and peaceful operation of the Pub, subject to and in accordance with the provisions of this agreement throughout the Term and shall take any appropriate action, judicial or otherwise, which may be reasonably appropriate to secure such normal and peaceful operation for the Operator;

4.1.2 subject to clauses 6.3.7.2 and 19.11, to pay all Taxes (excluding council tax and any other similar taxes payable in respect of any service occupancy entered into pursuant to clause 9, which for the avoidance of doubt, will be the responsibility of the Operator) and duties relating directly to the Pub's operation;

4.1.3 with such cooperation and assistance of the Operator as reasonably requested by Pub Owner:

4.1.3.1 carry out or implement all maintenance and small repair operations, additions, improvements and embellishing works (including, without limitation, all structural repairs, additions and improvements) and replace all FF&E required, to keep the Pub in a good state of repair and safety and to comply with the standards in place at the date of this agreement (including, without limitation, any Regulations or security requirements in force from time to time) ("**Improvement Works**"); and

4.1.3.2 rectify any defect in the Improvement Works and enforce any guarantees relating to the Improvement Works.

Where such Improvement Works or rectification of Improvement Works is required as a result of the act, omission, negligence or default of the Operator, Pub Owner shall be entitled to recover any expenses it has incurred as a result of, or in connection with such Improvement Works or rectification work from the Operator.

5. OTHER PROVISIONS

5.1 Name of the Pub

Throughout the Term, the name of the Pub shall be "Eagles Corner" or such other name as shall be proposed by Pub Owner from time to time in its sole and absolute discretion. For the avoidance of doubt, the Operator shall not be entitled to change the name of the Pub unless advised of a change of Pub name by Pub Owner in accordance with this clause 5.1.

5.2 Licences and Permits

Pub Owner shall, throughout the Term, maintain and secure the renewal of any existing Requisite Consents and obtain any further Requisite Consents, all insofar as required for the efficient and lawful operation and management of the Pub. Without prejudice to the foregoing where, as a matter of law, any Requisite Consent may only be applied for or held by Pub Owner for the time being, the Pub Owner shall apply for and hold such Requisite Consent for the benefit of the operation and management of the Pub by the Operator. For the avoidance of doubt, the premises licence for the Pub shall be in the name of Pub Owner with the Named Individual as the designated premises supervisor.

5.3 FF&E, Operating Implements and Operating Supplies

5.3.1 Pub Owner shall provide all FF&E, including, without limitation, hardware and software equipment, to the Operator for the operation of the Pub and shall install the same, and shall permit the Operator to use such FF&E for the sole purpose of the operation of the Pub. The Operator shall inform Pub Owner if any FF&E requires to be repaired, replaced or disposed of and such repair, replacement or disposal shall be arranged and paid for directly by Pub Owner, unless otherwise agreed between the parties.

5.3.2 Pub Owner shall, in accordance with good pub management, acting reasonably and in good faith, enter into all contracts required to operate the Pub (save for any contracts relating to the Pub Employees including those relating to a service occupancy), including, without limitation, contracts for purchasing FF&E, Operating Implements and Operating Supplies, energy and telecommunications subscription and supply contracts, cleaning contracts, pest control contracts, contracts for the maintenance of lifts, heating, air-conditioning systems and all other plant and equipment installed in the Pub from time to time, advertising and promotion contracts, and contracts relating to the use of rooms and all other services provided by the Pub.

5.3.3 The Operator shall be required to maintain such Operating Supplies as are necessary for the proper and efficient operation of the Pub. The Operator shall regularly determine and/or review estimates of Operating Supplies required for the operation of the Pub. The Operator shall have responsibility for replenishing and re-ordering any Operating Supplies from the relevant suppliers. The cost of such orders shall be borne by Pub Owner and Pub Owner grants the Operator authority to purchase such Operating Supplies on credit on Pub Owner's account

with the relevant supplier up to such pre-approved limit as provided by Pub Owner to the Operator from time to time. If, following an audit, it transpires that the Operator has ordered an excessive amount of Operating Supplies in a particular period which has resulted in Pub Owner suffering unrecoverable losses and expenses, the Operator shall be required to reimburse Pub Owner such losses and expenses out of the Management Fee.

- 5.3.4 Pub Owner shall provide all necessary details to the Operator to enable it to re-order Operating Supplies when required, on Pub Owner's behalf and at Pub Owner's cost.
- 5.3.5 Pub Owner shall decorate the Pub according to its own requirements.
- 5.3.6 All Operating Implements, Operating Supplies and FF&E at the Pub, whether acquired before or after the date of this agreement, shall be the property of Pub Owner.
- 5.3.7 All Operating Expenses shall be paid in accordance with the terms of clause 5.5.

5.4 **Damage to the Premises**

On the Effective Date, the Operator shall pay Pub Owner a deposit in the sum of two thousand pounds Sterling, (£2,000) ("**Damage Deposit**") which shall be used by Pub Owner to offset any repair or rectification costs (plus Taxes thereon). In the event of any damage to the property in excess of the Damage Deposit, Pub Owner shall invoice the Operator stating the costs of repairing or rectifying the damage to the Pub which shall be paid by the Operator within thirty (30) days of receipt of the invoice, together with any Taxes thereon. Within thirty (30) days after termination of this agreement, Pub Owner shall refund any remainder of the Damage Deposit to the Operator following deduction of repair or rectification costs.

5.5 **Operating Expenses**

- 5.5.1 The payment of Operating Expenses shall be governed by the terms of this clause 5.5:
 - 5.5.1.1 As further set out in clause 6.3.7, the Operator shall be responsible and liable for the payment of the Employee Costs.
 - 5.5.1.2 Regular recurring suppliers costs for pre-agreed suppliers shall be paid directly by Pub Owner (as an Operating Expense) on receipt of an invoice by Pub Owner. For the avoidance of doubt, the parties will arrange for all such invoices to be sent directly by the supplier to Pub Owner at the address set out in clause 19.10. However, if any invoices are erroneously sent to the Operator, the Operator shall provide such invoices to Pub Owner without delay, and in any event within two (2) Business Days;
 - 5.5.1.3 Pub Owner shall provide the Operator with a company credit card solely for the purpose of purchasing supplies required for the operation of the Pub on Pub Owner's behalf from those suppliers which are pre-approved and advised in writing by Pub Owner from time to time, subject to the maximum credit limit set by Pub Owner from time to time. The monthly credit card invoices shall be addressed to Pub Owner at the address set out in clause 19.10 and

shall be directly payable by Pub Owner. The Operator shall provide receipts for all purchases it has made on the company credit card in the preceding month to Pub Owner within two (2) Business Days of the end of each calendar month. To the extent that any credit card payments fall overdue by virtue of an act or omission, or delay on the part of the Operator, the Operator shall be liable for any late payment charges or fees. The Operator shall also be liable to pay any balance on the credit card in excess of the credit limit and any fees imposed by the credit card company for use of the credit card above the authorised limit. Pub Owner shall be entitled to cancel the Operator's company credit card in its absolute discretion, on provision of reasonable notice to the Operator.

5.5.1.4 The Operator is entitled to pay certain local suppliers who provide ancillary services or goods to the Operator (including, without limitation, suppliers of light bulbs, window cleaners and local entertainers) from the petty cash, subject to a maximum sum advised in writing in advance from time to time by Pub Owner. Such expenses shall be recorded as having been paid from petty cash in the supporting materials supplied to Pub Owner by the Operator pursuant to clause 10. The Operator shall be entitled to enter into contracts with such local suppliers up to a maximum contract value advised in writing in advance from time to time by Pub Owner.

6. OPERATOR'S GENERAL OBLIGATIONS

6.1 The Operator shall provide the Services in accordance with the terms set out in this agreement.

6.2 General

6.2.1 The Operator shall carry out all acts and things necessary for the efficient and proper operation of the Pub, including (without limitation):

6.2.1.1 using all reasonable endeavours to maximise patronage and profitability of the Pub and all facilities available within the Pub and to minimise variable and fixed expenditure;

6.2.1.2 causing all such other things to be done in and about the Pub as are necessary or desirable to comply with all Regulations and Requisite Consents relating to the use or manner of use, operation and management of the Pub;

6.2.1.3 performing all acts and, to the extent approved in advance by Pub Owner, entering into all agreements necessary in connection with the operation and management of the Pub in an efficient, profitable and proper manner;

6.2.1.4 complying with all covenants or other obligations affecting Pub Owner's Property from time to time (including, without limitation, all repair and maintenance obligations of Pub Owner in any lease under which the Pub is held as advised and directed by Pub Owner from time to time);

- 6.2.1.5 providing such cooperation and assistance as reasonably required by Pub Owner under clauses 4.1.3, 6.2.2 and 10.2;
 - 6.2.1.6 complying with such requirements of the insurers of the Pub as may be notified by Pub Owner to the Operator from time to time and not knowingly doing or omitting to do any act or thing which could make void or voidable any insurance policy taken out in respect of the Pub or otherwise reduce the sums which could be claimed under such policy or increase any premium payable in connection therewith; and
 - 6.2.1.7 notifying the Pub Owner immediately upon receipt of any complaints or other communication received by the Operator relating to the operation of the Pub from the police, or the fire, safety or licensing authorities.
- 6.2.2 The Operator acknowledges that the Pub may be regularly inspected by certified organisations to check its compliance with the requirements of any Requisite Consents, in particular with respect to the following:
- 6.2.2.1 fire safety;
 - 6.2.2.2 lifts;
 - 6.2.2.3 electrical system;
 - 6.2.2.4 gas system;
 - 6.2.2.5 pressure system; and
 - 6.2.2.6 health & safety.

To the extent that Pub Owner agrees to undertake any upgrading work recommended by such organisations, the Operator shall cooperate and assist Pub Owner as reasonably necessary in order for such work to be completed.

- 6.2.3 The Operator shall be responsible for the monitoring of all structural additions or improvements which are required pursuant to any Regulations or security requirements in force from time to time provided that actual works shall be paid for by Pub Owner.

6.3 **Staff**

- 6.3.1 The Operator shall be the employer of the Pub Employees. Pub Owner's contractual relationship will be with the Operator and not the employees of the Operator. Nothing in this agreement or these arrangements will make the Pub Employees or any other employee of the Operator an employee of Pub Owner.
- 6.3.2 The Operator acknowledges that, pursuant to TUPE, as at one minute past midnight on the Effective Date ("**Transfer Time**") it will become the employer of the Transferring Employees. All liabilities in relation to the Transferring Employees shall be the responsibility of the Operator with effect from the Transfer Time and the Operator acknowledges that Pub Owner has not at any point directly employed or engaged any of the Transferring Employees in the provision of the Services.

- 6.3.3 Subject to clause 7, the Operator shall:
- 6.3.3.1 use suitable, appropriately qualified, experienced and competent personnel in the provision of the Services;
 - 6.3.3.2 be fully responsible for the management of, and the acts and omissions of, all Pub Employees in the provision of the Services;
 - 6.3.3.3 select, employ, manage and supervise the Pub Employees, including without limitation supervising the recruitment, career management, work performance (including, without limitation, disciplinary and capability issues) and, when appropriate, the termination of employment of the Pub Employees;
 - 6.3.3.4 on request provide written details to Pub Owner of all the Pub Employees (including, without limitation, levels of experience, training record and other relevant information) who, at the time of such request, are wholly or mainly assigned to all or any of the Services;
 - 6.3.3.5 use all reasonable endeavours to ensure the continuity of the Pub Employees;
 - 6.3.3.6 comply with all applicable employment legislation (including, but not limited to, discrimination legislation) during the provision of the Services at all times, in relation to, without limitation, employment, promotion, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation, and selection for training;
 - 6.3.3.7 determine the employment policies such as personal incentives, the work force and, subject to clause 6.3.8, the required levels of qualification and the continuing training policy in accordance with that which is commonly applied in pubs of an equivalent status and standing as the Pub; and
 - 6.3.3.8 conduct negotiations with any trade union empowered to represent the Pub Employees or any of them.
- 6.3.4 Pub Owner may, on reasonable notice to the Operator, require the immediate removal from the Pub and/or the provision of the Services, of any member of the Pub Employees who, in the reasonable opinion of Pub Owner, represents a threat to Pub Owner's security or confidentiality or is otherwise disruptive to Pub Owner's business or reputation. The exercise of this right shall not relieve the Operator of its obligations under this agreement.
- 6.3.5 Any costs associated with the removal or replacement of any of the Pub Employees pursuant to clause 6.3.4 shall be borne by the Operator and the Operator shall indemnify Pub Owner, and their respective officers, employees and/or agents against all liabilities that may arise as a result of such removal or replacement.

- 6.3.6 In the event that the Operator removes any of the Pub Employees from the Services because of suspected or actual dishonesty or criminal behaviour, the Operator shall inform Pub Owner in writing of such concerns.
- 6.3.7 The Operator shall be responsible for administering and paying for the following items out of the Management Fee ("**Employee Costs**"):
- 6.3.7.1 remuneration and benefits of the Pub Employees, including, without limitation, employer's pension contributions;
 - 6.3.7.2 all of the national insurance, tax and related obligations (for example, monthly declaration of wages, declaration of national insurance payments, VAT declarations) relating to Pub Employees; and/or
 - 6.3.7.3 any other reasonable costs incurred in relation to the Pub Employees, including, without limitation, those costs or expenses (including, without limitation, legal costs and expenses), actions, proceedings, claims or demands (including, without limitation, sums paid in settlement of any of the same) or losses arising out of, or in connection with, a failure by the Operator to comply with its obligations under clause 6.3.9.
- 6.3.8 The Operator shall ensure that Pub Employees undertake and complete such compulsory training as is required by Pub Owner from time to time.
- 6.3.9 The Operator undertakes to Pub Owner to comply with all of its obligations in respect of its dealings with the Pub Employees, any former Pub Employees and any person applying for any role as a Pub Employee arising out of or in connection with:
- 6.3.9.1 their terms and conditions of employment and/or customs or practices related thereto;
 - 6.3.9.2 the termination of the employment of any such Pub Employees;
 - 6.3.9.3 any relevant requirement whether under UK or European legislation or otherwise including, without limitation, those relating to redundancy (whether pursuant to statutory requirements or otherwise), breach of contract, wrongful dismissal, unfair dismissal, discrimination by reason of sex, sexual orientation, race, religion, age or disability, TUPE and/or any duties to inform and consult employees and/or their representatives;
 - 6.3.9.4 any health and safety obligations; and
 - 6.3.9.5 any judgments, decisions, orders and awards made in relation to any of them.
- 6.3.10 The Operator undertakes to Pub Owner to maintain adequate, relevant and accurate records, and comply with all legal obligations of employers with respect to the maintenance of such records, relating to the Pub Employees, former Pub Employees and any person applying for any role as a Pub Employee (including, without limitation, records relating to data protection, working time legislation, national minimum wage, parental leave, maternity leave, paternity leave,

adoption leave, sickness absence and evidence of entitlement to work in the United Kingdom).

- 6.3.11 The Operator shall indemnify and keep indemnified Pub Owner, their respective officers, employees and/or agents against all costs and expenses (including, without limitation, legal costs and expenses), actions, proceedings, claims, awards or demands (including, without limitation, sums paid in settlement of any of the same) or losses, arising out of, or in connection with:
- 6.3.11.1 the acts and omissions of the Operator, any sub-contractor engaged by the Operator and/or any and all Pub Employees in the provision of the Services;
 - 6.3.11.2 the employment of the Pub Employees (including, without limitation, the Transferring Employees) or the termination of the same during the Term, and any payments owed to them or in relation to them (including without limitation all wages, bonuses, commissions, PAYE, National Insurance contributions, pension contributions and otherwise) which are payable up to the termination of this agreement;
 - 6.3.11.3 the employment or the termination of employment during the Term of any individual who claims to be a Transferring Employee or a Pub Employee;
 - 6.3.11.4 any failure by the Operator to comply with its obligations under clause 6.3.9;
 - 6.3.11.5 any act or omission of the Operator in relation to its employees, workers, agents or officers (including but not limited to any Pub Employee) at any time; and/or
 - 6.3.11.6 any breach of regulations 13 or 14 of TUPE, save to the extent that such losses arise as a result of a breach by Pub Owner and/or Replacement Operator of its or their obligations under Regulation 13(4) of TUPE.
- 6.3.12 If any contract of employment of any person employed by the Operator (including but not limited to the Pub Employees) or any person other than Pub Owner during the Term has effect as if originally made between Pub Owner (or any new owner of the Pub following a sale of Pub Owner itself or Pub Owner's Property ("**New Owner**")) or any Replacement Operator, and such person, as a result of the application of TUPE whether during or on the termination of this agreement, the Operator shall indemnify and keep indemnified Pub Owner and/or New Owner and/or the Replacement Operator, their respective officers, employees and/or agents against any costs or expenses (including, without limitation, legal costs and expenses), claims, awards or liabilities (including, without limitation, sums paid in settlement of any of the same) or losses incurred by Pub Owner and/or New Owner and/or Replacement Operator, its officers, employees and/or agents against any sums payable to or in relation to such person under, or in connection with, such contract in respect of the period up to the point of transfer to Pub Owner and/or New Owner and/or Replacement Operator.

6.4 **Marketing and Advertising Actions Specific to the Pub**

The Operator shall, on a local basis, and acting in accordance with Pub Owner's instructions and marketing budget, and the Operator's obligations under this agreement, implement such marketing and promotional activities as are determined by Pub Owner and advised to the Operator. The costs of such marketing, promotional and advertising actions shall be approved, and paid for directly, by Pub Owner.

6.5 **Litigation**

6.5.1 If the Operator becomes aware that any other person, firm or company has threatened or intends to bring a claim relating to the Pub, the Operator shall immediately provide Pub Owner with full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.

6.5.2 Subject to clauses 6.5.3 and 6.5.4, Pub Owner shall have the conduct of all proceedings relating to the Pub and shall, in its sole discretion, decide what action (if any) to take in respect of any claim brought or threatened in respect of the Pub. Pub Owner shall not be obliged to bring or defend any proceedings in relation to the Pub if it decides, in its sole discretion, not to do so. Any award of damages made pursuant to such action, claim or proceedings shall be retained by Pub Owner.

6.5.3 The Operator shall, at the request of Pub Owner, give full co-operation to Pub Owner in any action, claim or proceedings brought or threatened in respect of the Pub. At the request of Pub Owner and subject to agreement from the Operator, the Operator may conduct proceedings relating to the Pub and where so requested and approved, the cost of such conduct shall be paid for by Pub Owner and the Operator shall conduct such proceedings in the best interests of the Pub. Notwithstanding the foregoing, the Operator shall keep Pub Owner fully informed of the progress of such proceedings and take Pub Owner's views into account in the conduct of the proceedings.

6.5.4 The Operator may, with the prior written approval of Pub Owner, and in the name and for the account of Pub Owner, initiate any legal actions and proceedings relating to the operation of the Pub which seem reasonably necessary to collect charges, rents and other revenues of the Pub. In such circumstances, the Operator shall keep Pub Owner fully informed of the progress of any such actions and proceedings and shall take account of any views expressed by Pub Owner as to their conduct.

6.6 **Intellectual Property**

6.6.1 It is intended that the Pub will be operated under the Brand during the Term and therefore the Pub Owner hereby grants to the Operator a licence to use the trade marks, trade names and all intellectual property associated with the Brand during the Term solely in connection with the operation of the Pub.

6.6.2 The Operator shall indemnify Pub Owner, and their respective officers, employees and/or agents from and against all claims, demands, costs, expenses, liabilities and damages or losses (including without limitation consequential losses, loss of profit, business and/or reputation, and all interest, penalties and legal and other professional costs and expenses) incurred or suffered by Pub Owner and any damages awarded against Pub Owner arising directly or indirectly

as a result of or in connection with the use by the Operator of the intellectual property associated with the Brand in relation to the Pub during the Term other than as permitted by clause 6.6.1.

6.7 Management Meetings

Meetings between the Operator and Pub Owner or Pub Owner's appointed representative shall be held at the frequency determined by Pub Owner at the Pub or such alternative venue as the Operator and the Pub Owner may agree.

7. RESTRICTIONS ON THE OPERATOR

7.1 Notwithstanding any other provisions of this agreement, in performing its obligations hereunder, the Operator shall not do any of the following in relation to the operation of the Pub without the express prior written approval of Pub Owner:

- 7.1.1 transact, or permit to be conducted in the Pub, any activity or business otherwise than in the ordinary course of conduct of the business of the Pub, or reasonably incidental thereto;
- 7.1.2 request the borrowing of, or borrow, any money or obtain any advance or credit in the name of Pub Owner in any form (which shall include any transaction having the same commercial effect as the borrowing of any money or the obtaining of an advance or credit) from any person other than as expressly permitted under clauses 5.3.3 and 5.5.1.3;
- 7.1.3 make any change to the Pub name and/or Brand;
- 7.1.4 (other than as permitted by clause 9) sell, mortgage, encumber, charge, dispose of, or grant any leases, licences, concessions, occupation rights, easements or other occupation or security interests of whatsoever nature over any part or all of the Pub, the FF&E and/or the Operating Implements, other than (i) liens arising in the ordinary course of business of the Pub; or (ii) sales of any FF&E where such items are deemed by Pub Owner to be no longer necessary or desirable for the operation of the Pub or sold in the ordinary course of business of the Pub;
- 7.1.5 enter into any operating or finance lease, rental or hire purchase agreement in respect of the Pub or any of the capital assets used in the operation of the Pub;
- 7.1.6 enter into, modify or terminate any contract or other legally binding arrangement relating to the operation of the Pub (other contracts relating to Pub Employees and those contracts permitted under clause 5.5.1.4);
- 7.1.7 enter into any transaction, arrangement or agreement in relation to the Pub with, or for the benefit of, or make any payment or transfer to, any person connected with the Operator or any other member of the Operator's Group;
- 7.1.8 enter into any agreement or arrangement in relation to which the Operator or a member of the Operator's Group has a direct or indirect conflict of interest;
- 7.1.9 engage any professional advisors (other than an accountant and payroll provider) where their terms of engagement have not been previously approved by Pub Owner (in its sole discretion);

- 7.1.10 participate in any joint programmes relating to the Pub and any other pub or pubs for the purchasing, promotion, sales, advertising or provision of other services;
- 7.1.11 enter into any partnership, joint venture or any other profit sharing agreement with any other person where such agreement relates to the Pub;
- 7.1.12 pledge the credit of, or lend money (other in the ordinary course of business, including, without limitation, under clauses 5.3.3 and 5.5.1.3) in the name of, Pub Owner;
- 7.1.13 vary or amend any provision or term of any agreement between Pub Owner and any other party relating to the provision of debt or other finance facilities for the benefit of Pub Owner and/or the Pub;
- 7.1.14 give any guarantees or indemnities in the name of Pub Owner;
- 7.1.15 brand any of the Operating Implements and/or FF&E during any notice period prior to termination of this agreement;
- 7.1.16 make any alterations to the Pub or Pub Owner's Property (including, without limitation, structural repairs, additions, Improvement Works or other improvements or effect or incur any Capital Expenditure);
- 7.1.17 use the Pub or Pub Owner's Property for any illegal or immoral purposes;
- 7.1.18 enter into or vary the terms of any bank mandate of any bank account relating to the Pub;
- 7.1.19 acquire or make any investment in another company or business or incorporate or set up any subsidiary or branch in the name of Pub Owner;
- 7.1.20 save where required by law (and then only where the Operator has notified Pub Owner in writing of the same), change the accounting policies used to generate accounts relating to the Pub or change the financial year end; or
- 7.1.21 acquire, dispose of or license any intellectual property rights relating to the Pub.

8. GUARANTOR OBLIGATIONS

[The Guarantor agrees with the Pub Owner to meet all of its obligations set out in schedule 2.]

9. SERVICE OCCUPANCY

- 9.1 Notwithstanding the provisions of clause 7.1.4, the Operator may with the prior consent of Pub Owner, such consent not to be unreasonably withheld or delayed grant service occupancies in respect of any residential areas of the Pub to its Pub Employees provided that such service occupancies shall end immediately if:
 - 9.1.1 the Pub Employee's employment contract with the Operator ends;
 - 9.1.2 the Pub Employee ceases to reside at the Pub;
 - 9.1.3 the provisions in clause 6.3.4 apply; or

9.1.4 at the end or earlier termination of this agreement.

10. FINANCIAL AND ACCOUNTING

10.1 A book of accounts describing the Net Operating Profit of the Pub as required by applicable law shall be kept by Pub Owner.

10.2 Within twenty-eight (28) days after the end of each month, Pub Owner shall generate a profit and loss statement which shows the monthly and cumulative performance of the Pub and Net Operating Profit for the preceding month. The Operator shall provide Pub Owner with all assistance and information as reasonably required by Pub Owner to enable Pub Owner to complete an accurate profit and loss statement.

11. MANAGEMENT FEE

11.1 In consideration of the Operator performing its obligations under this agreement, Pub Owner shall pay the Operator:

11.1.1 twenty five per cent (25%) of the weekly Gross Revenue ("**Base Fee**"); and

11.1.2 an incentive fee, calculated on the basis of twenty per cent (20%) of the Net Operating Profit for each quarter ("**Incentive Fee**"),

(together the "**Management Fee**").

11.2 The Base Fee shall be deducted following the end of each week from the Gross Revenue and the Operator shall, following the end of each week, issue a valid VAT invoice clearly stating the Base Fees which have been deducted from the Gross Revenue for the specified week, subject to a final audit review at the end of each month following generation of the profit and loss accounts in accordance with clause 10.2 with any applicable positive or negative adjustment made at that time. The balance of all receipts of any kind produced by payment in cash or by credit as a result of the Pub's operation and all of its subsidiary services will be paid to Pub Owner within three (3) days of the end of each week.

11.3 The Incentive Fee shall be payable quarterly in arrears within thirty (30) days of the receipt of a valid VAT invoice from the Operator clearly stating the Incentive Fee payable for that quarter, subject to (i) the Pub Owner being satisfied with the Retail Standards Audit scores obtained in respect of the Pub; and (ii) a final audit review at the end of each quarter following generation of the profit and loss accounts in accordance with clause 10.2 with any applicable positive or negative adjustment made at that time.

12. TERMS OF PAYMENT

All payments relating to this agreement shall be made on or before their due dates in pounds sterling to each party's nominated bank account as notified to the other party.

13. INSURANCE

13.1 Pub Owner Insurances

13.1.1 Pub Owner shall ensure that an insurance policy is taken out and maintained in effect throughout the Term against the risks of fire, storm, explosion, electrical damage, flood, theft by breaking and entering, earthquake and hurricane which may damage the Pub and any equipment which is the subject of this agreement

("Insured Risks") all to the extent that cover for such risks is generally available in the commercial insurance market at commercially acceptable rates.

- 13.1.2 Pub Owner commits to provide upon the Operator's written request, but not more than once in any year, evidence of the then current insurance policies effected in accordance with this clause 13.1.

13.2 Operator Insurances

The Operator shall be required to obtain employers' liability insurance at the level required to satisfy the Operator's obligations and liabilities under this agreement. The Operator commits to provide upon Pub Owner's written request, a copy of the then current insurance policies effected in accordance with this clause 13.2, together with evidence of payment of the premiums for such insurance policies.

13.3 Pub Damage

If the Pub is damaged and/or any event occurs that may give rise to a claim under any insurance policy referred to in this clause 13, the Operator shall promptly inform Pub Owner of the same.

14. DAMAGE

Damage

In the event of damage to the Pub caused by fire or any other incident, Pub Owner, if it wishes to do so, shall use all of the sums collected from the insurance companies or paid by any third party for compensation of said damage, for the repair of the Pub or of the damaged part thereof, in order that the Pub or the part thereof involved shall be returned, insofar as possible, to the state it was in prior to the damage. This agreement and the respective obligations of the parties under it shall be suspended during any period of closure of the Pub necessary to effect such repairs.

15. FORCE MAJEURE AND EXCEPTIONAL CIRCUMSTANCES

- 15.1 For the purposes of this agreement, "**Force Majeure**" shall mean events of an extraordinary nature that could not have been foreseen by the parties or avoided by reasonable means and shall include, without limitation, the following events:- flood, fire, earthquake and other natural disasters, as well as war, civil war, military acts, terrorism, acts or actions of the Government, and other circumstances which are beyond the control of the parties such as strikes, social conflicts and riots.
- 15.2 The party which asserts that an event of Force Majeure has occurred shall immediately send a notice to the other parties to this agreement providing all of the details, including, without limitation, the cause or event which provoked said Force Majeure.
- 15.3 No party shall be considered to be in default, or responsible for any delay or failure in the performance of its contractual obligations by virtue of this agreement, when said performance was impeded by Force Majeure.
- 15.4 Such delay or failure shall not constitute an event of non-performance of this agreement and the times established therein for the performance of such obligations shall thus be extended by a period equal to that during which the event of Force Majeure existed and the performance was impeded thereby.

15.5 In the event of Force Majeure, the parties shall make every possible effort to reduce the effect of Force Majeure on the performance of this agreement.

16. SUCCESSORS AND ASSIGNS

16.1 Subject to clause 16.2, neither party shall be entitled to assign, novate or transfer any of its rights and/or obligations to any third party without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

16.2 This agreement may be transferred or assigned by Pub Owner to a third party who purchases the Pub pursuant to a Pub Sale.

17. TERMINATION

17.1 Rights of Termination

17.1.1 If either Pub Owner or the Operator is in a material breach of any of its obligations under this agreement and, if the breach is capable of remedy, has failed to remedy the same within fourteen (14) days of a written notice from the other party requiring it to remedy such material breach, this agreement may be terminated, legally and without judicial means, immediately upon demand of the non-defaulting party.

17.1.2 Pub Owner may, without prejudice to any other rights which it may have, forthwith upon giving notice in writing immediately terminate this agreement in any of the following events:

17.1.2.1 the Operator ceases or threatens to cease to carry on its business or a substantial part of such business or disposes or threatens to dispose of the whole or a substantial part of its undertaking, property or assets or stops or threatens to stop payment of its debts;

17.1.2.2 the Operator makes a proposal for a composition in satisfaction of its debts or a scheme of arrangement of its affairs or is unable to pay its debts as they fall due, or a petition is presented or a resolution is passed for the winding-up of the Operator (other than a voluntary winding-up for the purposes of reconstruction, the terms of which have previously been approved in writing by Pub Owner) or a petition is presented for an administration order to be made or an administration order is made in relation to the Operator or a receiver or administrative receiver or like person is appointed of the whole or any part of the assets or undertaking of the Operator;

17.1.2.3 in relation to the Operator, on the occurrence of any event in a jurisdiction outside England and Wales of any form of insolvency proceedings or the occurrence of any event similar or analogous to any of the events referred to in clauses 17.1.2.1 and 17.1.2.2.

17.1.2.4 [if the Guarantor is in breach of its obligations set out in this agreement or if the Guarantor suffers an event as specified in clauses 17.1.2.1 to 17.1.2.3.]

- 17.1.3 On termination of this agreement (however caused) the Operator shall:
- 17.1.3.1 vacate the Pub and the Pub Owner's Property leaving all Operating Implements, Operating Supplies and FF&E at the Pub;
 - 17.1.3.2 pass to Pub Owner all documents and records pertaining to the Pub including, without limitation, documents required for VAT purposes and, if applicable, transfers of accounts (including, without limitation, account contact details and reference numbers); and
 - 17.1.3.3 make all other reasonable steps required by Pub Owner to transfer the management of the Pub to Pub Owner or its nominee.

17.2 **Employees at Termination**

- 17.2.1 The Operator agrees that, subject to compliance with the Data Protection Act 1998, it will provide Pub Owner, or at Pub Owner's request provide the Replacement Operator, with the Staff Information on receipt of a written request from Pub Owner at any time, or
- 17.2.1.1 in circumstances where the Operator has provided notice of termination in accordance with clause 3 or 17.1, at the same time as the notice of termination is served on Pub Owner; and
 - 17.2.1.2 in circumstances where Pub Owner has provided notice of termination in accordance with clause 3 or 17.1 within five (5) Business Days of the notice of termination being served on the Operator.
- 17.2.2 Pub Owner may supply a copy of the Staff Information to any person who has been invited to tender for the provision of all or any part of the Services (or similar services), and to any Replacement Operator, subject to compliance with the Data Protection Act 1998.
- 17.2.3 Where notice has been given by either the Pub Owner or the Operator of the termination of this agreement, the Operator is under an on-going obligation to notify Pub Owner of any changes to the Staff Information up to and including the final day of the Term.
- 17.2.4 The Operator warrants to the Pub Owner and/or any Replacement Operator that to the best of its knowledge and belief all Staff Information shall be complete and accurate in all respects and shall be kept complete and accurate.
- 17.2.5 Where either the Pub Owner or the Operator has given notice of termination of this agreement, the Operator shall not, without the prior written consent of Pub Owner make any changes to the number of employees engaged in the provision of the Services and/or their terms and conditions.

18. **DATA PROTECTION**

- 18.1 To the extent that the Operator, in performing its obligations as manager of the operations of the Pub under this agreement, acts as a data processor of personal data of which Pub Owner is data controller, the Operator shall:

- 18.1.1 establish and implement practices and procedures to comply with its obligations imposed by the Data Protection Act 1998;
 - 18.1.2 comply with obligations equivalent to those imposed on Pub Owner by the Seventh Principle; and
 - 18.1.3 only process personal data on Pub Owner's behalf on instructions from Pub Owner.
- 18.2 In this clause 18, "**data controller**", "**personal data**", "**processing**" are as defined in the Data Protection Act 1998 and the reference to the "**Seventh Principle**" is to the Seventh Principle set out in that Act.

19. GENERAL

19.1 Waiver

Except where otherwise expressed in this agreement, no failure of any party to this agreement to exercise, and no delay by it in exercising, any right, power, or remedy in connection with this agreement ("**Right**") shall operate as a waiver thereof, nor shall any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver of any breach of this agreement shall not be deemed to be a waiver of any subsequent breach.

19.2 Entire Agreement

This agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this agreement and contains the whole agreement between the parties relating to the subject matter of this agreement to the exclusion of any terms implied by law which may be excluded by contract. Each of the parties acknowledges that:

- 19.2.1 it does not enter into this agreement on the basis of, and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a party to this agreement or not) except those expressly contained in this agreement; and
- 19.2.2 this clause 19.2 shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this agreement.

19.3 Variation

- 19.3.1 No variation of this agreement shall be effective unless in writing, signed by or on behalf of each of the parties and expressed to be such a variation.
- 19.3.2 The Contracts (Rights of Third Parties) Act 1999 does not apply in relation to this agreement or any agreement, arrangement, understanding, liability or obligation under, or in connection with, this agreement.

19.4 **Possession**

During any controversy, claim, disagreement or dispute between the parties, including, without limitation, a dispute as to the validity of this agreement, it is mutually agreed between the parties that the Operator shall continue to manage the Pub and Pub Owner, the Operator [and the Guarantor] shall continue to comply with the provisions of this agreement.

19.5 **Invalidity**

If any provision in this agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall, to that extent, be deemed not to form part of this agreement but the legality, validity and enforceability of the remainder of this agreement shall not in any way be impaired. This clause 19.5 shall have no effect if the severance alters the fundamental nature of this agreement or is contrary to public policy.

19.6 **Counterparts**

This agreement may be executed two counterparts, each of which taken together shall constitute one and the same instrument. Each party may enter into this agreement by signing at least one of such counterparts, but this agreement shall not be effective until the same has occurred.

19.7 **Costs**

Each party shall each pay their own costs, charges and expenses in relation to the negotiation, preparation, execution and implementation of this agreement, save as otherwise expressly provided in this agreement.

19.8 **No Partnership**

Nothing in this agreement (or any of the arrangements contemplated thereby) shall constitute or be deemed to constitute a partnership or joint venture or the relationship of landlord or tenant between the parties. The Operator shall be the bare licensee and not the tenant of Pub Owner. Such licence is personal to the Operator and the Operator shall not assign, mortgage, charge, share or part with occupation of the whole or any part of Pub Owner's Property (save in the ordinary course of operating the Pub and as expressly permitted under this agreement). Pub Owner shall at all times retain the legal possession and control of Pub Owner's Property and shall have the right of entry at all times and for all purposes, including, without limitation, the exercise of management and control.

19.9 **Notices**

Any notice, consent, request, demand, approval or other communication to be given or made under, or in connection with, this agreement (each a "**Notice**" for the purposes of this clause 19.9.4.2):

19.9.1 must be in English, in writing and signed by, or on behalf of, the person giving it;

19.9.2 must be left at the address of the addressee, or sent by prepaid ordinary post (or airmail post if posted to or from a place outside the United Kingdom) to the address of the addressee or sent by email to the email addressee which is specified in clause 19.10 or, if the addressee notifies another address in England and Wales or another email address, then to that address or email address;

19.9.3 shall take effect from the time it is received (or, if earlier, the time it is deemed to be received in accordance with clause 19.9.4) unless a later time is specified in it, and

19.9.4 is deemed to be received:

19.9.4.1 in the case of a posted letter, unless actually received earlier, on the third (seventh, if posted to or from a place outside the United Kingdom) day after posting; and

19.9.4.2 in the case of email, on the first Business Day after the day of sending.

19.10 **Addresses for Notices**

The address and email of each party is (unless another address or email is notified in writing by a party to the other parties):

Pub Owner:

Address: c/o Star Pubs and Bars Limited, 3-4 Broadway Park, South Gyle Broadway, Edinburgh, EH12 9JZ

FAO: Head of Business Support

Email: Stephen.Rooney@starpubs.co.uk

Operator:

Address: [◆]

FAO: [◆]

Email: [◆]

Guarantor:

Address: [◆]

Email: [◆]

19.11 **Taxes**

19.11.1 Each party shall be solely responsible for any taxes, levies or duties imposed with respect to any income or profits received or recognised within such party's financial records or accounts for its own benefit in connection with the transactions contemplated by this agreement and on which any such liability to tax is calculated.

19.11.2 Where appropriate, VAT at the applicable rate shall be added to amounts payable under this agreement, which shall be paid by the relevant party on the receipt of a valid VAT invoice.

19.12 Confidentiality and Disclosure

- 19.12.1 Subject to clause 19.12.3, each party shall treat as strictly confidential all information which is by its nature or is marked as being "**confidential**" which has been or may be received or obtained as a result of negotiating, entering into or performing this agreement which relates to:
- 19.12.1.1 the negotiations relating to this agreement or any document referred to in this agreement;
 - 19.12.1.2 this agreement or the provisions or subject matter of this agreement or of any document referred to in this agreement; and
 - 19.12.1.3 in the case of each party, the other parties and the other members of the other parties' Group and the business carried on by them,
- (collectively the "**Confidential Information**").
- 19.12.2 Subject to clause 19.12.3, each party shall:
- 19.12.2.1 not make use of or disclose to any person any Confidential Information; and
 - 19.12.2.2 take all reasonable steps to prevent the use or disclosure of the Confidential Information.
- 19.12.3 A party may disclose information which would otherwise be Confidential Information if and to the extent:
- 19.12.3.1 required by the law of any relevant jurisdiction or for the purposes of any judicial proceedings;
 - 19.12.3.2 required by any recognised securities exchange or by any regulatory or governmental body to which a party to this agreement is subject or submits;
 - 19.12.3.3 the information is disclosed on a strictly confidential basis to the disclosing party's professional advisers, auditors or bankers for the purpose of advising the disclosing party in connection with this agreement or for the purposes of any audit or valuation;
 - 19.12.3.4 the information is disclosed to the disclosing party's directors, officers or employees or members of that disclosing party's Group whose function requires that such information be disclosed to him;
 - 19.12.3.5 the information has come into the public domain otherwise than through a fault of the disclosing party;
 - 19.12.3.6 the non-disclosing party has given prior written consent to the disclosure;
 - 19.12.3.7 prior to disclosure by or on behalf of the disclosing party, such information was lawfully in the disclosing party's possession, as evidenced by its or its adviser's written records; or

19.12.3.8 the information is required to enable the disclosing party to enforce its rights or remedies under this agreement, provided that any information proposed to be disclosed by a party pursuant to clauses 19.12.3.1 or 19.12.3.2 shall only be disclosed:

- (a) after giving, where practicable, at least ten (10) Business Days' prior written notice to the relevant non-disclosing party of such proposed disclosure;
- (b) after consultation with the relevant non-disclosing party;
- (c) after the incorporation of such amendments as the relevant non-disclosing party may require to be made to the contents of such proposed disclosure; and
- (d) having agreed with the relevant non-disclosing party the form and content of the disclosure,

provided that at no time shall the relevant non-disclosing party have the right to request amendments under this clause or otherwise limit disclosure under this clause in a manner which would prevent the party required to disclose any information pursuant to clauses 19.12.3.1 or 19.12.3.2 from complying with such requirements.

19.12.4 For the avoidance of doubt, all financial and other operating information relating to the Pub shall belong to Pub Owner, and Pub Owner shall be free to disclose the same to any person as it sees fit.

19.12.5 Upon, or within ten (10) days of, the termination or expiry of this agreement:

19.12.5.1 each party shall return to the relevant non-disclosing party all originals and copies of any documents supplied by the relevant non-disclosing party which contain Confidential Information; and

19.12.5.2 the Operator shall supply to Pub Owner in a format compatible with Pub Owner's own system(s) a copy of all relevant data relating to the business of the Pub, including, without limitation, a database of all other users/occupiers of any part of the Pub during the Term.

19.12.6 The provisions of this clause 19.12 shall survive the termination or expiry of this agreement.

19.13 **Public Announcements**

Without prejudice to clause 19.12, neither party shall make or issue at any time any announcement, circular or other publicity relating to this agreement or any matter or document referred to in this agreement without the other party's prior written approval to the form and content of such announcement.

19.14 **Set Off**

19.14.1 All payments to be made by each party under this agreement shall be made gross, free of any rights of counterclaim or set off and without any deductions or withholdings of any nature save only as may be required by law.

19.14.2 Each party agrees to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this agreement and the intent hereof.

19.15 **Governing Law and Jurisdiction**

19.15.1 This agreement shall be governed by and construed in accordance with English law.

19.15.2 The parties hereby irrevocably agree that any dispute arising out of or in connection with this agreement, including, without limitation, any question as to its existence, validity or termination, shall be referred to and finally resolved by the courts of England and Wales.

20. **EXCLUSION OF SECURITY OF TENURE**

20.1 Notwithstanding the fact that the parties acknowledge that no tenancy is created by this agreement, pursuant to Section 38A(1) of the Landlord and Tenant Act 1954 ("**1954 Act**") the parties agree that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to any tenancy which may at any time be held to have been created by this agreement.

20.2 Before today:

20.2.1 the Pub Owner served the notice ("**1954 Notice**") referred to in section 38A(3)(a) of the 1954 Act on the Operator in relation to such tenancy; and

20.2.2 the Operator made the statutory declaration ("**Declaration**") referred to in paragraph 4 of schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 in relation to the 1954 Notice.

20.3 In all respects relevant to the agreement to exclude security of tenure the form of this agreement is the same as that which was in the parties contemplation at the time of service of the 1954 Notice.

21. **DELIVERY**

This agreement is executed as a deed and the parties intend that it is delivered today.

IN WITNESS whereof this deed has been duly executed on the date first stated above.

EXECUTED as a Deed by)
)
as Attorney for and on behalf of)
RED STAR PUB COMPANY (WR III) LIMITED)

Under a Power of Attorney in the presence of:

Signature:

Name:

Address:

Occupation:

Executed as a Deed by ♦
director in the presence of:

by a

Signature

Name (block capitals)

Witness signature -----

Witness name -----
(block capitals)

Witness address -----

Occupation -----

Signed as a Deed by ♦ in the presence of:

Signature

Name (block capitals)

Witness signature -----

Witness name
(block capitals) -----

Witness address -----

Occupation -----

SCHEDULE 1: [TRANSFERRING EMPLOYEES]

SCHEDULE 2: GUARANTOR OBLIGATIONS

The purpose of this schedule 2 is to set out the obligations of the Guarantor.

1. Background

- 1.1 The Guarantor's covenants with the Pub Owner in this agreement are given as sole or principal debtor or covenantor for the time being. They also extend to the Pub Owner's successors in title without the need for any express assignment.
- 1.2 The Guarantor's obligations under this agreement will last throughout the period during which the Operator is bound by the Operator's obligations in this agreement ("**Liability Period**").

2. Guarantor obligations

- 2.1 The Guarantor agrees with the Pub Owner that:
 - 2.1.1 The Operator will observe and perform the covenants, obligations and other terms of this agreement.
 - 2.1.2 If at any time during the Liability Period while the Operator is bound by the Operator's covenants and obligations of this agreement and the Operator defaults in observing or performing any of the covenants or other terms of this agreement then the Guarantor will pay the payments under this agreement and VAT charged on them and will observe and perform the covenants or terms in respect of which the Operator is in default.
- 2.2 The Guarantor will make good to the Pub Owner on demand and indemnify the Pub Owner against all losses resulting from the Operator's non-payment, non-performance or non-observance of the matters detailed in this agreement notwithstanding:
 - 2.2.1 that the terms of this agreement may have been varied by agreement between the Pub Owner and the Operator; or
 - 2.2.2 anything else by which, but for this paragraph 2, the Guarantor would be released.