

DATED

2022

COPTHORNE GOLF CLUB

and

COPTHORNE GOLF CLUB LIMITED

and

COPTHORNE GOLF CLUB PROPERTIES LIMITED

BUSINESS & ASSET TRANSFER AGREEMENT

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PARTIES:

- (1) **COPTHORNE GOLF CLUB** an unincorporated association whose principal address is at Borers Arms Road, Copthorne, Crawley, West Sussex, RH10 3LL ("Transferor");
- (2) **COPTHORNE GOLF CLUB LIMITED** a private company incorporated and registered in England and Wales with company number 13806584 whose registered office is at Borers Arms Road, Copthorne, Crawley, West Sussex, RH10 3LL ("Transferee"); and
- (3) **[CGC PROPERTIES LIMITED]** a private company incorporated and registered in England and Wales with company number 13806564 whose registered office is at Copthorne Golf Club, Borers Arms Road, Copthorne, Crawley, West Sussex, RH10 3LL ("CGC Properties")

BACKGROUND:

- A. The Transferor has agreed to transfer to the Transferee and the Transferee has agreed to acquire the Business (comprising the Assets) as a going concern subject to and on the terms and conditions of this Agreement.
- B. The Transferor has agreed to procure the transfer of title to the Properties to CGC Properties.

AGREED TERMS:

1. **INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

"Assets"	the property, rights and assets of the Transferor to be transferred pursuant to clause 2.1;
"Assumed Liabilities"	all debts, liabilities and obligations of any nature of the Transferor relating to the Business, the Assets, or the Property, whether actual or contingent, which are due or outstanding on or have accrued at the Effective Time, including the Creditors;
"Book Debts"	all debts and amounts owing to the Transferor at the Effective Time in respect of the Business (whether or not due from any Members and whether or not invoiced);
"Business"	the business of operating and maintaining a golf club and course as carried on by the Transferor at the Effective Time;
"Business Claims"	all of the Transferor's rights, entitlements and claims against third parties arising directly or indirectly out of or in connection with the operation of the Business or relating to the Assets;
"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
"Business Information"	all information, know-how and techniques (whether or not confidential and in whatever form held) which relate to the Business;

“Member Prepayments”	any payments, prepayments or deposits made by any Member to the Transferor prior to the Effective Time in respect of any services or member entitlements to be provided or available to such member after the Effective Time.
"Periodical Outgoings"	all (if any) periodical charges and periodical outgoings of the Business or related to the Assets but excluding the Creditors;
"Periodical Receipts"	all (if any) licence fees, royalties and other periodical receipts of the Business or related to the Assets, excluding the Book Debts;
"Plant and Equipment"	plant, machinery, motor vehicles, office furniture, fixtures and fittings and equipment owned by the Transferor for use in the Business;
“Prepayments”	all prepayments and payments relating to the Business made by the Transferor prior to the Effective Time in respect of products or services to be provided after the Effective Time;
“Property”	the freehold property properties situate at and known as Copthorne Golf Club, part of Coomers Wood and Bashfords Wood, Copthorne and land at Coomers Wood Copthorne title to which is registered at the Land Registry with Tile Numbers WSX293468, WSX6698 and WSX194053 respectively;
"Records"	the books, accounts (including VAT records and returns), lists of Members and suppliers and all the other documents, papers and records relating to the Business or any of the Assets;
"Stock"	the stock-in-trade of the Business at the Effective Time;
"Tax"	all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings, or liabilities wherever chargeable; and any penalty, fine, surcharge, interest, charges, or costs relating thereto, and "taxation" means the same;
"Third Party Consent"	a consent, licence, approval, authorisation, or waiver required from a third party for the transfer, assignment or novation in favour of the Transferee of any of the Assets;
“Trustees”	the trustees of the Transferor being Andrew Chettle, John Pyne and Martin Sutton.
"VAT"	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;
"VATA 1994"	Value Added Tax Act 1994;

- 1.2 Clause and schedule headings do not affect the interpretation of this Agreement.
- 1.3 A reference to a clause or a schedule is a reference to a clause of, or schedule to, this Agreement. A reference to a paragraph is to a paragraph of the relevant schedule, and a reference to an appendix is to the relevant appendix to this Agreement.

- 1.4 A **person** includes a corporate or unincorporated body.
- 1.5 Words in the singular include the plural and, in the plural, include the singular.
- 1.6 A reference to one gender includes a reference to the other gender.
- 1.7 A reference to a statute, statutory provision or any subordinate legislation made under a statute is to such statute, provision or subordinate legislation as amended or re-enacted from time to time whether before or after the date of this Agreement and, in the case of a statute, includes any subordinate legislation made under that statute whether before or after the date of this Agreement.
- 1.8 Documents in **agreed form** are documents in the form agreed by the parties to this Agreement and initialled by them or on their behalf for identification.
- 1.9 Where the words **include(s), including** or **in particular** are used in this Agreement, they are deemed to have the words "without limitation" following them.
- 1.10 References to this Agreement include this Agreement as amended or varied in accordance with its terms.

2. **AGREEMENT TO TRANSFER**

- 2.1 The Transferor shall transfer free from all Encumbrances and the Transferee shall accept and acquire with effect from the Effective Time, the Business as a going concern comprising the assets listed below:
 - 2.1.1 the Goodwill;
 - 2.1.2 the Plant and Equipment;
 - 2.1.3 the benefit (subject to the burden) of the Contracts;
 - 2.1.4 [the Course Improvements;]
 - 2.1.5 the Stock;
 - 2.1.6 the Business Information;
 - 2.1.7 the IT System;
 - 2.1.8 the Book Debts;
 - 2.1.9 the Business Name;
 - 2.1.10 the Business Intellectual Property Rights;
 - 2.1.11 the Records;
 - 2.1.12 the Business Claims; and
 - 2.1.13 all other property, rights, and assets, other than the Property, owned by the Transferor and used, enjoyed or exercised or intended to be used, enjoyed or exercised in the Business at the Effective Time.
- 2.2 The Transferor shall transfer (or procure the transfer by the Trustees), free from all Encumbrances, and CGC Properties shall acquire the Properties.

3. **ASSUMED LIABILITIES**

- 3.1 The Transferee shall with effect from the Effective Time:
 - 3.1.1 assume responsibility for and pay, satisfy, or perform the Assumed Liabilities; and
 - 3.1.2 pay, satisfy, or discharge all debts, liabilities and obligations incurred by the Transferee in connection with the Business after the Effective Time.

3.2 The Transferee agrees to indemnify and keep indemnified the Transferor and each of its Trustees, officers, members and servants against each loss, liability and cost which the Transferor may incur or may have incurred and not discharged before the Effective Time:

3.2.1 in connection with the ownership or operation of the Business, the Assets, the Properties (and/or the occupation of them) or any of them whether before or after the Effective Time; or

3.2.2 as a result of the Transferee's failure to pay, satisfy or perform the Assumed Liabilities under clause 3.1.1,

including without limitation any losses, liabilities or costs incurred as a result of defending or settling a claim alleging such a liability.

4. **COMPLETION**

4.1 Completion shall take place on the Completion Date.

4.2 At Completion the Transferor shall:

4.2.1 Procure delivery or make available to the Transferee physical possession of all the Assets capable of passing by delivery, with the intent that title in such Assets shall pass by and upon such delivery;

4.2.2 Deliver to the Transferee such transfers, assignments and novation's together with the requisite notices, licences, documents of title and relevant Third Party Consents as may be necessary to vest in the Transferee title to all of those Assets which are not transferable by delivery and which will permit the Transferee to enter into and take possession of the Business and Assets, subject always to the provisions of clause 6.1 to clause 6.4 inclusive; and

4.2.3 Transfer to the Buyer any amount received in respect of Member Prepayments.

4.3 At or as soon as reasonably practicable after Completion the Transferor shall procure the delivery to Copthorne Golf Club Properties of transfers in such form as Copthorne Golf Club Properties may require in respect of the Properties each duly executed by the Trustees.

4.4 Upon or as soon as reasonably practicable after Completion the Transferee shall procure that each of the Members is admitted as a member of the Transferee in accordance with the articles of association of the Transferee and procure that the names of such Members respectively are entered into the register of members of the Transferee.

4.5 Upon or as soon as reasonably practicable after completion Copthorne Golf club Properties shall procure that each of the Members of the Transferor is admitted as a member of Copthorne Golf club Properties in accordance with the articles of association of Copthorne Golf club Properties and procure that the names of such Members respectively are entered into its register of members.

5. **WARRANTIES**

5.1 The Transferor warrants to the Transferee that:

5.1.1 the Transferor has good and marketable title to each Asset (whether tangible or intangible), and each Asset is legally and/or beneficially owned by the Transferor;

5.1.2 there are no Encumbrances over any of the Assets, and the Transferor has not agreed to create any Encumbrances over the Assets or any part of them; and

5.1.3 the Transferor has no employees other than the Employees.

6. **PASSING OF TITLE AND THIRD-PARTY CONSENTS**

- 6.1 If any Third Party Consent is required to transfer an Asset to the Transferee and such Third Party Consent has not been obtained prior to Completion, the Transferor shall use all reasonable endeavours after Completion to obtain such consent as soon as possible following Completion and to effect any transfer or assignment or novation of that Asset at the request of the Transferee after receipt of the Third Party Consent, and the Transferee shall cooperate with the Transferor so far as is reasonable for such purposes.
- 6.2 In so far as any Assets are not delivered or formally transferred, novated or assigned to the Transferee at Completion and until such time as they are formally transferred, novated or assigned to the Transferee:
- 6.2.1 the Transferor shall be deemed to hold all such Assets on trust for the Transferee; and
- 6.2.2 to the extent permissible under law or the terms of any relevant agreement:
- 6.2.2.1 the Transferor shall use all reasonable endeavours to procure at the Transferee's cost that the Transferee shall be entitled to the benefit, use and enjoyment of those Assets, to receive the income therefrom, and to have the right of enforcement of the Business Claims, if any, relating to those Assets; and
- 6.2.2.2 the Transferee shall perform all the obligations of the Transferor in respect of such Assets which are Contracts.
- 6.3 If in respect of any Asset a Third Party Consent is refused or not obtained within six months of the Completion Date the parties shall each use all reasonable endeavours to achieve an alternative solution pursuant to which the Transferee shall receive the full benefits of the relevant Asset and shall assume the associated obligations. If an alternative solution which is reasonably acceptable to the Transferor and the Transferee is not found within six months of the Completion Date the parties shall apply the following provisions in respect of such Asset ("Retained Asset"):
- 6.3.1 if the Retained Asset is the benefit of a Contract, the Transferee may require the Transferee to use its reasonable endeavours to terminate the Contract without either party incurring any further liability.;
- 6.3.2 in respect of a Retained Asset which is not a Contract, the Retained Asset shall be excluded from the transfer of the Business (comprising the Assets);
- 6.3.3 neither party shall have any further obligation to the other relating to the Retained Asset save to the extent resulting from any prior breach.
- 6.4 Where there is a material risk that the assignment or attempted assignment of the benefit of a Contract or a Business Claim would cause a third party to repudiate such Contract or Business Claim or would constitute a breach of such Contract, this Agreement does not constitute an assignment or an attempted assignment of that Contract or Business Claim.

7. **VALUE ADDED TAX**

- 7.1 The parties intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the sale and purchase of Assets under this Agreement and agree to use all reasonable endeavours to ensure that the sale is treated neither as a supply of goods nor a supply of services under that article

7.2 If, notwithstanding clause 7.1 VAT is chargeable in connection with the transfer of the Assets under this Agreement, the Transferee shall pay the Transferor the amount of that VAT immediately on receipt of the relevant VAT invoice together with a copy of confirmation from HM Revenue & Customs that VAT is payable.

8. **THE EMPLOYEES**

8.1 The parties acknowledge and agree that the transfer of the Assets pursuant to this Agreement will constitute a relevant transfer for the purposes of TUPE and, accordingly, the contracts of employment of the Employees shall be transferred to the Transferee pursuant to TUPE with effect from the Effective Time.

8.2 If any contract of employment of any Employee is found or alleged not to have transferred to the Transferee at the Effective Time the parties agree they shall take all necessary steps to ensure that such contracts of employment shall have effect from the Effective Time as if originally made with the Transferee.

8.3 The Transferee agrees it shall be responsible for and indemnify and keep indemnified the Transferor against all costs, expenses, liabilities, claims, rights of action, compensation, awards, damages, fines, penalties, costs, expenses, interests arising from or in connection with the employment of the Employees, whether arising before or after the Effective Time.

9. **POST COMPLETION OBLIGATIONS**

9.1 As soon as practicable after Completion, the Transferor shall issue:

9.1.1 a notice to each Member and supplier and other business contacts informing them of the transfer of the Business to the Transferee; and

9.1.2 a letter to each of the Employees explaining that his or her employment has been transferred to the Transferee pursuant to TUPE.

10. **DATA PROTECTION**

The Transferee shall comply with the Data Protection Act 1998 in relation to its application to the Business and Assets after the Completion Date.

11. **FURTHER ASSURANCE**

The Transferor shall, at the Transferee's expense, promptly execute and deliver or procure the execution and delivery of such documents, perform such acts and do such things as the Transferee may require from time to time for the purpose of giving full effect to this Agreement.

12. **ASSIGNMENT**

No party shall assign, transfer, mortgage, charge, declare a trust of, or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other parties.

13. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

14. **VARIATION AND WAIVER**

14.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.2 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right

or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under this Agreement is only effective if it is in writing.

15. **NOTICES**

- 15.1 A notice given to a party under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's registered or principal office address as set out at the commencement hereof.
- 15.2 A notice is deemed to have been received (provided that all other requirements in this clause 14 have been satisfied) if delivered by hand, at the time of delivery, or if sent by post on the second Business Day after posting, unless such deemed receipt is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), in which case deemed receipt will occur when business next starts in the place of receipt (and all references to time are to local time in the place of receipt).
- 15.3 The provisions of this clause 15 do not apply to the service of any proceedings or other documents in any legal action or proceedings.

16. **SEVERANCE**

- 16.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal, or unenforceable, that provision (or part-provision) shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement (and, as the case may be, the remainder of the relevant provision) shall not be affected.
- 16.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable, and legal if some part of it were deleted, the provision shall apply with the minimum deletion necessary to make it legal, valid and enforceable.

17. **THIRD PARTY RIGHTS**

No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement save that the Trustees shall be entitled to rely upon and benefit from the enforcement of the indemnity contained in clause 3.2, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

18. **GOVERNING LAW AND JURISDICTION**

- 18.1 This Agreement and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes and claims).

This agreement has been entered into on the date stated at the beginning of it.

SIGNED by:
(Name)

.....
(Position)

duly authorised for and on behalf of
COPTHORNE GOLF CLUB

.....
(Signature)

SIGNED by
(Name)

DIRECTOR, duly authorised for and on behalf of
COPTHORNE GOLF CLUB LIMITED

.....
(Signature)

SIGNED by
(Name)

DIRECTOR, duly authorised for and on behalf of
COPTHORNE GOLF CLUB PROPERTIES LIMITED

.....
(Signature)