

DATED _____ 2013

(1) SURREY COUNTY COUNCIL

(2) SURREY HILLS ENTERPRISES C.I.C.

TRADE MARK LICENCE AGREEMENT

Stevens & Bolton LLP
Wey House
GUILDFORD
GU1 4YD

Ref: TEL.SU.1099.0001
SCC.draft 26.02.13

THIS TRADE MARK LICENCE is dated.....2013

PARTIES

- (1) **SURREY COUNTY COUNCIL** of County Hall, Penrhyn Road, Kingston-Upon-Thames, Surrey, KT1 2DN (the “**Licensor**”); and
- (2) **SURREY HILLS ENTERPRISES C.I.C.** incorporated and registered in England and Wales with company number 8114796 whose registered office is at Birtley House, Bramley, Guildford, Surrey, GU5 0LB (the “**Licensee**”),

each a “**Party**” and together the “**Parties**”.

BACKGROUND

- (A) The Licensee is a Community Interest Company whose objects include: the development of an image and an identity for the Surrey Hills Area of Outstanding Natural Beauty; and to develop and support initiatives to encourage economic activity and improve social or environmental well-being within the Surrey Hills community and its neighbouring counties.
- (B) The Licensor applied for and is the owner of the Mark (as defined below).
- (C) The Licensee wishes to use the Mark in the Territory (as defined below) for the Purpose (as defined below) and the Licensor is willing to grant to the Licensee a licence to use the Mark on the terms and conditions set out in this agreement (the “**Licence Agreement**”).

AGREED TERMS

1. INTERPRETATION

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

Effective Date: the date of this Licence Agreement.

Purpose: to use the Mark for activities (including those of a commercial purpose) which benefit the community and in particular to educate the public and raise awareness of natural beauty having regard to enhancing and conserving natural beauty and respecting individual landscape, character and habitats, to promote rural enterprise and regeneration, to develop an image and an identity for the Surrey Hills Area of Outstanding Natural Beauty, to develop and support initiatives, to encourage economic activity and to improve social and environmental well being within the Surrey Hills community and its neighbouring counties, each of which as may be qualified and/or limited by the Management Plan of the Surrey Hills Area of Outstanding Natural Beauty (2008-2014), as may be revised from time to time at the discretion of the Licensor.

Mark: the trade mark set out in Schedule 1.

Territory: the County of Surrey and such other areas as the Licensor agrees upon in writing from time to time.

2. GRANT

2.1 Subject to compliance by the Licensee of each of the terms of the Licence Agreement, the Licensor hereby grants to the Licensee a non-exclusive licence to use the Mark for the Purpose in the Territory and on an exclusive basis only to the extent the Purpose is for a commercial purpose.

2.2 Subject to the provisions of this clause 2, the Licensee shall have the right to sub-licence its rights under this Licence Agreement for such period which will not under any circumstance result in the sub-licence continuing beyond the expiry of this Licence Agreement. The right of the Licensee to sub-licence its rights contained herein shall be conditional upon the Licensee undertaking to deliver to the Licensor in writing on a calendar monthly basis (within 7 days of expiry of the previous calendar month) a comprehensive list of sub-licences which the Licensee has entered into during the previous calendar month, such list to include the full names and addresses of the sub-licensees and the total amount of fees due from each sub-licensee and the nature of business of each sub-licensee. The Licensor may at its discretion, acting reasonably where there is justifiable cause, require the Licensee to terminate any one or more of the sub-licences without penalty on the Licensor and in the event of failure to perform each of the above, the Licensee accepts it shall be in material breach of this Licence Agreement.

2.3 The Licensee undertakes to agree the text of the sub-licence with the Licensor prior to entering into any sub-licence and thereafter undertakes such text will be the same for every sub-licence entered into thereafter.

2.4 It is agreed between the Parties that the Licensor may at any time throughout the term of this Licence Agreement require payment of charges by the Licensee for the use of the Mark at the Licensor's exclusive discretion.

2.5 The Licensee accepts that to the extent the Mark is to be used for a Purpose which is not specifically for a commercial purpose, the Licensor may sub-licence the Mark to other parties (including itself) at its sole discretion.

3. TITLE, GOODWILL AND REGISTRATION

3.1 The Licensee acknowledges that the Licensor is the owner of the Mark.

- 3.2 Any goodwill howsoever arising from the use of the Mark by the Licensee of the Mark shall accrue to the Licensor.
- 3.3 Neither Party shall do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Mark or the reputation or goodwill associated with the Mark, or that may invalidate or jeopardise any registration of the Mark.
- 3.4 The Licensor shall at its discretion and at the expense of the Licensee take all reasonable steps to maintain any existing registrations of the Mark and the Licensee shall provide, at the request of the Licensor, all necessary assistance in such maintenance. The Licensor shall provide to the Licensee on request copies of receipts of renewal fees.
- 3.5 The Mark is only to be used in accordance with the criteria contained in Schedule 2 or as otherwise stipulated by the Licensor (acting through the Joint Committee known as the Surrey Hills AONB Board). Breach of this undertaking by the Licensee shall be considered a material breach of this Licence Agreement.

4. RECORDAL OF LICENCE

- 4.1 The Licensee shall, at its own cost and as soon as reasonably practicable, record the licence granted to it in clause 2 in the relevant registries in the Territory against the Mark.
- 4.2 The Licensor shall provide reasonable assistance to enable the Licensee to comply with clause 4.1.

5. PROTECTION OF THE MARK

- 5.1 The Parties shall immediately notify each other in writing giving full particulars if any of the following matters come to their attention:
- (a) any actual, suspected or threatened infringement of the Mark;
 - (b) any actual or threatened claim that the Mark is invalid;
 - (c) any actual or threatened opposition to the Mark;
 - (d) any claim made or threatened that use of the Mark infringes the rights of any third party;
 - (e) any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under this Licence Agreement; or
 - (f) any other form of attack, charge or claim to which the Mark may be subject.

- 5.2 In respect of any of the matters listed in clause 5.1:
- (a) the Licensor shall, in its absolute discretion, decide what action if any to take;
 - (b) the Licensor shall have exclusive control over, and conduct of, all claims and proceedings;
 - (c) the Licensee shall not make any admissions other than to the Licensor and shall provide the Licensor with all assistance that it may reasonably require in the conduct of any claims or proceedings; and
 - (d) to the extent the Licensee not being responsible, either directly or indirectly, for any of the matters listed in clause 5.1 above happening, the Licensor shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for its own account.

6. LIABILITY

- 6.1 To the fullest extent permitted by law, the Licensor shall not be liable to the Licensee for any costs, expenses, loss or damage (whether direct, indirect or consequential, and whether economic or other) arising from the Licensee's exercise of the rights granted to it under this Licence Agreement.
- 6.2 The Licensee acknowledges and agrees that the exercise of the licence granted to the Licensee under this Licence Agreement is subject to all applicable laws, enactments, regulations and other similar instruments in the Territory, and the Licensee understands and agrees that it shall at all times be solely liable and responsible for such due observance and performance.

7. ASSIGNMENT AND OTHER DEALINGS

- 7.1 The Licensee shall not sell, transfer, mortgage or otherwise deal with any of its obligations under this Licence Agreement without the prior written consent of the Licensor.

8. DURATION AND TERMINATION

- 8.1 This Licence Agreement shall come into force on the Effective Date and shall remain in force for three years unless terminated in accordance with clause 8.2, or by agreement between the Parties in writing, and may be extended for such period as the Parties may agree in writing.
- 8.2 Without prejudice to any rights that have accrued under this Licence Agreement or any of its rights or remedies, the Licensor may terminate this Licence Agreement immediately by giving written notice to the Licensee if:

- (a) the Licensee suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (b) the Licensee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into, any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Licensee other than for the sole purpose of a scheme for a solvent amalgamation of the Licensee with one or more other companies or the solvent reconstruction of the Licensee;
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given, or if an administrator is appointed over the Licensee;
- (e) a floating charge holder over the assets of the Licensee has become entitled to appoint, or has appointed, an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Licensee or a receiver is appointed over the assets of the Licensee;
- (g) a creditor or encumbrancer of the Licensee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 28 days;
- (h) any event occurs, or proceeding is taken, with respect to the Licensee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(g) (inclusive);
- (i) the Licensee suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (j) the Licensee is in breach of this Licence Agreement.

9. EFFECT OF TERMINATION

9.1 On termination of this Licence Agreement for any reason, and subject to any express provisions set out elsewhere in this Licence Agreement:

- (a) all rights and licences granted pursuant to this Licence Agreement shall cease;
- (b) the Licensee shall cease all use of the Mark save as set out in this clause; and

- (c) the Licensee shall co-operate with the Licensor in the cancellation of any licences registered pursuant to this Licence Agreement and shall execute such documents and do all acts and things as may be necessary to effect such cancellation.

9.2 The termination of this Licence Agreement, for any reason, shall not affect any provision of this Licence Agreement which is expressed to survive or operate in the event of termination and shall be without prejudice to the provisions of this clause 9 and to any rights of either party which may have accrued by, at or up to the date of such termination.

10. FURTHER ASSURANCE

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Licence Agreement.

11. WAIVER

No failure or delay by a party to exercise any of its rights under this Licence Agreement (whether in whole or in part) shall constitute a waiver of that right, or preclude that party from exercising that right in the future.

12. ENTIRE AGREEMENT

12.1 This Licence Agreement and the documents referred to in it constitute the whole agreement between the parties, and supersede all previous agreements between the parties relating to its subject matter.

12.2 Each of the parties acknowledges and agrees that, in entering into this Licence Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether negligently or innocently made) other than as expressly set out in this Licence Agreement.

12.3 Nothing in this clause shall limit or exclude any liability for fraud.

13. VARIATION

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

14. SEVERANCE

14.1 If any court or competent authority finds that any provision of this Licence 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 Licence Agreement shall not be affected.

14.2 If any invalid, unenforceable or illegal provision of this Licence Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15. COUNTERPARTS

This Licence Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Licence Agreement, but all the counterparts shall together constitute the same agreement.

16. THIRD PARTY RIGHTS

No person other than a party to this Licence Agreement shall have any rights to enforce any term of this Licence Agreement.

17. NO PARTNERSHIP OR AGENCY

Nothing in this Licence Agreement is intended to, or shall be deemed to, establish any legal partnership between the parties, make either party the agent of another party, nor entitle either party to make or enter into any commitments for or on behalf of the other party.

18. FORCE MAJEURE

Neither party shall be in breach of this Licence Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Licence Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 12 months, the party not affected may terminate this Licence Agreement by giving 28 days' written notice to the other party.

19. NOTICES

19.1 Any notice required to be given under this Licence Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out below.

- (a) Licensor: the Director of Environment and Infrastructure of Surrey County Council at County Hall, Penrhyn Road, Kingston upon Thames KT1 2DN; and
- (b) Licensee: [NAME OF CONTACT] at [ADDRESS],

or as otherwise specified by the relevant party by notice in writing to each other party.

19.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

19.3 A notice required to be given under this Licence Agreement shall not be validly given if sent by e-mail.

19.4 The provisions of this clause 19 shall not apply to the service of any proceedings or other documents in any legal action.



20. GOVERNING LAW AND JURISDICTION

20.1 This Licence Agreement and any dispute or claim arising out of or in connection with it or 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.

20.2 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 Licence Agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed under hand and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 The Mark

Mark	Number	Territory	Filing Date	Classes
 Surrey Hills  Surrey Hills	2282096	UK	1/10/2001	03, 16, 18, 29, 30, 31, 32, 33, 39, 40, 41, 42, 43, 44

Schedule 2 Criteria for use of the Mark

EXECUTED as a LICENCE)
AGREEMENT by **SURREY COUNTY**)
COUNCIL acting as an authorised)
officer)

.....
.....
.....
.....
.....
.....
.....

EXECUTED as a LICENCE)
AGREEMENT by **SURREY HILLS**)
ENTERPRISES C.I.C. LIMITED)
acting as an authorised officer)

This page is intentionally left blank