

This Members' Agreement is made the day of 2013

Between:

(1) Chase Meadow Community Centre Limited incorporated and registered in England and Wales with company number 07461177 whose registered office is at 9 Dey Croft, Warwick CV34 6NP ("**CMCC**")

(2) The Parochial Church Council of Budbrooke of St Michael's Church Centre, Church Lane, Warwick, CV34 ("**PCC**")

(3) Warwick District Council of Riverside House, Milverton Hill, Leamington Spa, CV32 5HZ ("**WDC**")

together the "**Members**"; and

(4) Chase Meadow Centre Partners C.I.C. incorporated and registered in England and Wales with company number 08717764 whose registered office is at Chase Meadow Community Centre, Narrow Hall Meadow, Chase Meadow, Warwick, CV34 6JY(the "**Company**")

all parties collectively being referred to in this Agreement as "the parties".

Background

- (A) Chase Meadow Community Centre serves the Chase Meadow residents and the wider Warwick community. The community centre building ("the Building") is a multi-functional space for community activities, sports facilities, meeting rooms and a communal area and café and in addition, in accordance with the planning consent, the Building also includes a Place of Worship;
- (B) CMCC was established in July 2010 to raise funds and manage the community centre activities that will be delivered from the Building. The requirement to develop a place of worship ("the Place of Worship") within the Building was a condition of the planning consent and the opportunity to do so was offered to all faiths and denominations. The PCC has agreed to develop the Place of Worship for the parish of St Michaels', Budbrooke, Warwick;
- (C) CMCC and the PCC have worked closely together in a spirit of good faith and mutual co-operation with the support of and for the benefit of the local community. The Members have procured and contributed financially to the construction of the Building and are continuing to invest their time and skills in developing a successful community facility;
- (D) The Members have entered into a development agreement and agreement for lease intended to confer property rights in respect of the Building the central principles of which are that:

- (i) WDC is the freehold owner of the site and will grant a lease to the operator of the Building;
 - (ii) The operator of the Building will grant sub-leases of parts of the Building to Coventry Diocesan Trustees (registered) on behalf of the PCC and to CMCC for exclusive use of their respective parts (PCC: Place of Worship; CMCC: Community/Sports Hall) together with rights of access to the shared areas in respect of the Building;
 - (iii) The Members would seek to establish a company to assume the responsibility of operator of the Building and enter into the lease referred to above.
- (E) The Members have duly established the Company as a community interest company in accordance with the object more particularly set out in the Company's Articles of Association ("the Object").
- (F) The Members wish to enter into this Agreement with each other to ensure, amongst other matters, that there is an agreed process:-
- (a) for the composition of the Board of the Company;
 - (b) for the membership of the Company;
 - (c) for arrangements as to the funding of the Company, and
 - (d) for the operation of the Building which includes the rights of use by CMCC and the PCC which supplement the provisions set out in the Leases.
- (G) The parties acknowledge that the Schedules to this Agreement may be varied, substituted or further developed from time to time with the consent of all parties.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this Agreement and in the Recitals and Schedules hereto the following definitions shall save as otherwise specifically provided apply:

Act means the Companies Act 2006 and all regulations made under or any amendments made to any of the foregoing from time to time in force.

Agreed Proportions means for CMCC: 94%, and for the PCC: 6%

the **Articles** means the Articles of Association of the Company as previously agreed by the Members or as they may subsequently be altered from time to time.

the **Board** means the board of directors of the Company or a duly appointed committee thereof.

Centre Management Principles means the principles set out in Schedule 1

CMCC Directors means the Directors appointed by CMCC from time to time

Directors means the directors for the time being of the Company.

Hiring Agreement means the agreement referred to in Schedule 1 to be used by CMCC to secure public hiring of parts of the Building

in writing includes any communication made by letter, facsimile transmission or electronic mail.

Leases means the leases to the Company and to CMCC and to Coventry Diocesan Trustees (registered) on behalf of the PCC as described in recital D above

Local Authority Director means the Director appointed by WDC from time to time

Members means the members for the time being of the Company

the **Memorandum** means the Memorandum of Association of the Company as previously agreed by the Members or as they may subsequently be altered from time to time.

PCC Director means the Director appointed by the PCC from time to time

person includes any individual, firm, company or other incorporated or unincorporated body.

Services means the Services described in the Leases to be provided by the Company to CMCC and to Coventry Diocesan Trustees (registered) on behalf of the PCC relating to the running of the Building (including in relation to maintenance, cleaning and utilities) and **Service Charge** means the charge for those Services

1.2 Interpretation

In this Agreement, unless otherwise specified:

- (a) references to statutes shall include any statute modifying, re-enacting, extending or made pursuant to the same or which is modified re-enacted or extended by the same or pursuant to which the same is made;
- (b) references in this Agreement to Clauses, Sub-Clauses, paragraphs and Schedules are references to those contained in this Agreement;

(c) clause headings are for ease of reference only and shall not be taken into account in construing this Agreement.

- 1.3 In the event of any conflict of interpretation between documents, the provisions shall be interpreted in accordance with prevailing law and in the following (descending) order of precedence: the Leases; this Agreement; the Memorandum; the Articles. The Members shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Agreement and shall further if necessary procure any required amendments as may be necessary to this Agreement or any other agreements or documents.

2. Commencement and Duration

- 2.1 This Agreement shall come into operation on the date set out above and shall continue in force until it is terminated in accordance with clause 10.
- 2.2 The parties agree to review the terms of this Agreement, and in particular Schedule 1, at least annually.

3. Good faith and ethical behaviour

- 3.1 In recognition of the aims for which the Company was established each of the Members agrees to act in good faith and in a spirit of co-operation in relation to each other, the operation of the Company, and this Agreement generally.
- 3.2 The Members acknowledge that WDC is subject to a number of specific accountability obligations arising from its legal status as a public authority. Each of the Members and the Company agrees to provide reasonable assistance to WDC in meeting these obligations (when so notified) in so far as they apply to the activities of the Company, including in relation to the Freedom of Information Act 2000.
- 3.3 The parties agree that a Member of the Company can be required forthwith to terminate its membership of the Company in the event that the Member or any of its Directors, staff or agents participates in a fraud or corrupt practice including as prohibited by the Prevention of Corruption Acts 1889 to 1916, the Bribery Act 2010 or the Local Government Act 1972.

4. Membership Provisions

- 4.1 The Members agree and undertake with each other that:-
- (a) They intend that the only Members of the Company shall be organisations which have a freehold or leasehold interest in the Building and the PCC shall be deemed to have an interest while the Coventry Diocesan Trustees (registered) has such an interest;
- (b) They will nominate and authorise representatives of their respective Members in sufficient number and capacity to attend and participate in meetings of the

Members and they will take all reasonable steps to ensure that those persons so appointed report back to their respective organisations on a regular basis in order to keep the Members fully informed of all relevant decisions and proposals in respect of the Company;

- (c) The voting rights of Members shall be as follows:
 - (i) CMCC: 2 votes
 - (ii) PCC: 1 vote
 - (iii) WDC: 1 vote
- (d) Each of the Members shall be entitled to remain a Member of the Company and, subject to compliance with the terms of this Agreement and the law, shall not be subject to removal by the other Members;

5. Directorship Provisions

5.1 The Members agree that:-

- (a) They shall procure that their appointed Directors and other representatives shall at all times when dealing with the Company conduct themselves so as to give effect to the provisions of this Agreement.
- (b) There shall be no Directors of the Company other than those appointed by the Members and each Member shall be entitled at all time to appoint the following number of Directors:
 - (i) CMCC: 2 Directors
 - (ii) PCC: 1 Director
 - (iii) WDC: 1 Director
- (c) Each Director shall have one vote and no Director of CMCC who is also, in any other capacity, a representative of the PCC shall be entitled to vote on behalf of CMCC at meetings of the Company;
- (d) The Chairman of the Board of Directors shall not be the Local Authority Director and shall be reappointed at least once every 12 months;
- (e) The Directors shall not receive any remuneration from the Company for their appointments as Directors;
- (f) The Directors shall report back regularly on their activities as a Director to their respective Member organisations;
- (g) The Directors may from time to time invite other persons to attend meetings of the Board of Directors or co-opt other persons onto the Board for the purpose of advising or contributing to the discussion of business of the Board, but for

the avoidance of doubt no such persons shall exercise voting rights on the Board;

- (h) If a Member ceases (for whatever reason) to be a Member, then any Director appointed by that Member shall cease to be a Director.
- (i) Each Director shall provide to the other Directors sufficient information about decisions that are taken, or are planned to be taken, at a meeting of the Company in order that each Director can fully inform themselves of the implications of those decisions, and participate in the decision-making where possible. A Director who is not able to participate in a meeting (having made all reasonable efforts to do so) shall be entitled within 5 calendar days of notice of the decision taken at the meeting to seek a review of a decision taken at that meeting by calling a further meeting of all Directors. A decision shall be capable of immediate implementation as soon as one of the following events has occurred:
 - The Director who is not able to participate in a meeting has waived (in writing including by electronic means) their right to seek a review of decision;
 - 5 calendar days have elapsed since the Directors were notified of the decision taken at a meeting and no request for a review has been received by the other Directors;
 - The meeting at which a decision was taken comprised all the Directors entitled to vote on the decision.

6. The Company's Financial Arrangements

- 6.1 The Members acknowledge that the Company's function as set out in its Object is to manage the Building and that the Leases establish the requirement that the Company will provide a number of Services to CMCC and the PCC in their capacity as tenants of the Building. Accordingly the Members shall ensure that their appointed Directors:
- (a) keep under regular review the level of funds required by the Company in order to meet its liabilities as they fall due;
 - (b) agree the level of the Service Charge and the frequency at which CMCC and PCC shall be invoiced in their respective Agreed Proportions for that Service Charge;
 - (c) agree the terms of any additional charges that should be levied against the CMCC and the PCC in their Agreed Proportions either to meet unforeseen Building-related liabilities or to create a reserve for meeting such liabilities;
 - (d) have the right to approve any expenditure by the Company (whether in respect of the matters set out at a to c above or otherwise) which,

taking account of the Agreed Proportions in which CMCC and the PCC have agreed to contribute, is likely to result in an invoice:

- (i) to the PCC in a sum exceeding £600 (and always having regard to the fact that the PCC shall not be obliged to meet from its Agreed Proportion a total sum for repairs exceeding £5000 in any 12 month period);
- (ii) CMCC in a sum exceeding £9400.

6.2 For the avoidance of doubt any decision taken by the Directors in accordance with clause 6.1 shall not be binding unless it is unanimous resolution of all those Directors entitled to vote.

6.3 No Member shall have any obligation to meet the financial liabilities of the Company except where to the extent expressly provided for in this Agreement.

6.4 For the avoidance of doubt the PCC shall not be liable to pay any share of costs (whether under the Service Charge or otherwise) or items which are not directly related to its usage, for example:

- (i) Administrative and all staff costs (except cleaners where their usage is shared);
- (ii) Public Liability & Contents Insurance (which PCC provides independently);
- (iii) Business Rates (as the Place of Worship will be exempt for the period it operates as a place of worship).

7. The Use of the Building

7.1 The Members have agreed the Centre Management Principles, governing the use of the facilities and spaces within the Building, which are set out at Schedule 1.

7.2 The Parties to this Agreement undertake and acknowledge that at all times they shall comply with the law, including the Equality Act 2010 and the Companies Act 2006.

8. Dispute Resolution

8.1 In the event of any disagreement or dispute arising between any of the parties in connection with this Agreement (a Dispute), the parties shall use all reasonable endeavours to resolve the matter on an amicable basis. Any of the parties may refer the Dispute which cannot be so resolved to the respective chief executive officers (or their nominees) of the parties.

- 8.2 The chief executive officers shall consult with the Directors and attempt to resolve the Dispute. If they are unable to resolve a Dispute within 20 working days of such Dispute being referred to them, then any party shall be entitled, giving notice to the other parties, to refer the Dispute to mediation as set out below, unless the parties unanimously agree to extend the period for attempting to resolve the Dispute between themselves.
- 8.3 In the event that any party decides to refer the Dispute to mediation in accordance with this clause the parties shall agree on the appointment of a mediator with appropriate knowledge expertise and the procedure that the mediation shall follow. Failing such agreement, the mediator shall be appointed by the Centre for Effective Dispute Resolution (CEDR) in England and Wales or any successor thereto and the procedure for mediation and the arrangements for apportioning the fees and expenses of the mediator shall be determined by the mediator.
- 8.4 The parties shall co-operate with each other and with the mediator in an attempt to resolve the Dispute amicably. If the parties accept the decision of the mediator then they shall execute all such documents and do and take all such action as may be necessary or reasonably desirable to give effect to and/or implement the said decision as promptly as reasonably practicable after the date of the same being so determined.
- 8.5 The provisions of this clause shall not prevent any party having recourse to legal proceedings in respect of any matter which is the subject of a Dispute or, in the case of a Member, from serving notice to exit in accordance with clause 9.

9. Changes of Membership

- 9.1 Notwithstanding any provisions in the Articles, the Members agree that any Member may exit the Company at any time on reasonable notice provided always that prior to any such exit being effected, the Members have agreed appropriate arrangements for releasing the exiting Member from the Leases.
- 9.2 Except where otherwise expressly agreed, a Member's exit from the Company for whatever reason shall not affect the enforceability of the Schedules to this Agreement.
- 9.3 The Members agree that entering into this Members Agreement shall be a condition of membership of the Company for any party who is approved as a new Member of the Company.

10. Termination and Survivorship

- 10.1 This Agreement shall terminate on the occurrence of any of the following events:
- (a) the passing of a special resolution by the Members of the Company for the time being; or

- (b) the winding up or dissolution of the Company or the making by it of any composition or arrangement with creditors.

10.2 In the event of Termination the parties agree that all provisions of this Agreement which are capable of survivorship (including but not limited to the following provisions) shall remain in full force and effect: clauses 6,7,10,11,12 and Schedules 1 and 2.

11. Indemnity of Directors and insurance

11.1 Each of the Members agrees and undertakes to indemnify, and keep indemnified, its appointed Director to the fullest extent permissible by law and to procure that adequate insurance arrangements are in place to meet the reasonably foreseeable liabilities arising in respect of that Member and its appointed Director under this clause and this Agreement in general provided always that in the event of a claim first recourse to any insurances or indemnity arrangements shall be to the company's arrangements to the extent provided for in Article 57.

11.2 The parties agree that they shall at all times comply with Article 57.

12. Miscellaneous

12.1 No waiver

No failure or delay by any of the parties hereto in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by any of the parties hereto of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

12.2 Rights and remedies

The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by law.

12.3 Amendments etc

No provision of this Agreement may be amended, modified, waived, discharged or terminated, otherwise than by the express agreement in writing of the parties hereto nor may any breach of any provision of this Agreement be waived or discharged except with the express written consent of the parties not in breach.

12.4 Third party rights

The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

12.5 No assignment

The provisions of this Agreement shall be binding on and ensure to the benefit of the successors of each party hereto provided that no party may agree to assign, transfer, charge or otherwise dispose of or subcontract any of its rights or obligations hereunder without the prior written consent of the other parties.

12.6 No partnership or agency

Nothing in this Agreement shall be deemed to constitute a partnership between the parties nor, save as expressly set out herein, constitute any party the agent of another party for any purpose.

12.7 Notices

(a) Manner of service

Any notice or other communication given or made under this Agreement shall be in writing and may be delivered to the relevant party or sent by first class prepaid letter or facsimile transmission to the address of that party specified in this Agreement or to that party's facsimile transmission number thereat or such other address or number in England as may be notified hereunder by that party from time to time for this purpose and shall be effectual notwithstanding any change of address not so notified.

(b) Validity of service

Unless the contrary shall be proved, each such notice or communication shall be deemed to have been given or made and delivered, if by letter, 48 hours after posting, if by delivery, when left at the relevant address and, if by facsimile transmission, when transmitted.

12.8 Governing law and jurisdiction

This Agreement shall be governed by and construed in all respects in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Agreement.

Schedule 1: Centre Management Principles

1. Terms of access and use as between the Parties

1.1 The Parties acknowledge that the Leases have established a number of legal interests in the Building. Without prejudice to the rights established under those Leases, the Parties have agreed as follows:

- (a) The Company's sole function is to support the operation of the Building to enable the PCC and CMCC to enjoy their Lease interests and the Company shall not grant a legal interest in any part of the Building which is in its possession (for example, the common parts) nor confer rights of access (except as reasonably required in its capacity as occupier of the Building) to any third party other than CMCC and the PCC;
- (b) The PCC shall, consistent with its legal interest, have first preference as to the times that it uses the Place of Worship provided always that it shall make available the Place of Worship to CMCC for up to 94% of the Building's normal operating hours and shall grant CMCC access to the Place of Worship at all reasonable times when it is not in use by the PCC;
- (c) The PCC shall give reasonable notice, of at least an academic term, where any change of its usage pattern might impact other regular users.
- (d) Subject always to compliance with the rest of the terms of this Agreement and with the law, CMCC is hereby authorised to offer for public use, under its Hiring Agreement, all parts of the Building and shall be absolutely entitled to the proceeds of any such hiring agreements;
- (e) In offering the Place of Worship for public hire as set out at 1.1(c) above the Parties acknowledge that CMCC is acting as agent for the PCC and that the PCC shall have the absolute discretion to determine whether the Place of Worship shall be hired on each occasion (as further prescribed in clause 2 below) and CMCC shall ensure that the Hiring Agreement contains suitable wording to this effect.

1.2 The PCC shall be entitled to use, at no charge, any part of the Building for up to 6% of the Building's normal operating hours, such use being calculated on the following basis:

"A nominal unit value per hour used, is attached to each of the three lettable areas of the Building, and then credit is given for the PCC's capital investment in the Building, as follows:

Place of Worship Main Hall & Meeting Rooms (incl use of communal area)= 1.5 units

Place of Worship Main Hall without Meeting Rooms (incl use of communal area)= 1.25 units

Meeting Room(s) without Place of Worship (incl use of communal area) = 0.75 units
Community/ Sports Hall (incl use of communal area) = 1.5 units
Half of the Community/ Sports Hall (incl use of communal area) = 1 unit
Use of the whole building = 3 units

The PCC is therefore entitled to 15 units per week at nil cost.”
Unit usage will be reconciled each quarter and any unused units cannot be carried forward into another quarter without written agreement of CMCC.

- 1.3 In addition to the nil cost entitlement set out at 1.2 above, the PCC shall be entitled to make bookings of parts of the Building under the normal terms of CMCC's public hiring agreement. As above, the CMCC shall exercise its discretion as to the extent that any nil cost entitlement accrued by the PCC under clause 1.2 can be carried forward and to extent to which the PCC shall be entitled to any discount on public hiring rates in view of its regular usage.
- 1.4 Fixtures, fittings and furniture shall remain the property and responsibility of the Party purchasing them but unless clearly identified and secured as not being for general use, any Party shall be entitled to use for all reasonable purposes connected with the authorised use of the Building.
- 1.5 All signage, promotional and publicity material used by either the PCC or CMCC shall be agreed between them.
- 1.6 Except where expressly documented in this Agreement, the PCC and CMCC shall agree between themselves on an ongoing basis the extent to which each of them shall be permitted to leave property, signage and other materials in the part of the Building which is the subject of the other's Lease.
- 1.7 For the avoidance of doubt the PCC shall be entitled to use the store room in the Place of Worship (as part of its interest under its Lease) but shall ensure that sufficient space is made available to access any audio control equipment that has to be located in the store.
- 1.8 The safe storage of all property and other assets remains the risk and responsibility of the Party which owns it.

2. Public hiring arrangements

- 2.1 In accordance with and subject to clause 1 above, CMCC shall have the exclusive right to operate the public hiring of all or parts of the Building, and to set the charges and derive the income therefrom.
- 2.2 CMCC shall be responsible absolutely for all hiring decisions except those that relate to the Place of Worship where the position is as follows:

- (a) The PCC authorises CMCC as its agent to enter into binding commitments for third parties to use the Place of Worship through the use of the Hiring Agreement provided always that any potential use of the Place of Worship which is in any way connected to religion or belief, spiritualism, the occult or the promotion of anti-religion or belief shall be referred to the PCC for decision;
 - (b) In considering any matter referred to it under clause 2.2(a) above, the PCC shall always have regard to the Equality Act 2010 and in particular Schedule 23 before making any decision to decline a hiring, as to whether a restriction on use on that occasion is necessary to comply with the purpose of the PCC/St Michaels/the Church of England or to avoid causing offence to members of the PCC/St Michaels/the Church of England.
 - (c) Provided that the CMCC acts within the scope of this Agreement and particularly the terms of its authority established under this Schedule 1, the PCC shall indemnify CMCC and all other Parties to this Agreement for any claims made in connection with a decision not to hire
 - (d) CMCC shall indemnify all other Parties to this Agreement for any claims costs or liabilities arising in connection with the hiring of all or any the Building which arise from its negligence or breach of this Agreement.
- 2.3 CMCC shall be entitled to enter into binding commitments to third parties through the Hiring Agreement on a “first come first served” basis or by any other lawful method it chooses provided always that, in accordance with clause 1, the PCC’s requirements for use of the Building on those dates have been sought by CMCC and are given preference.

3. Staffing of the Centre

- 3.1 CMCC shall be responsible for any staff that it chooses to appoint and all their related costs. CMCC shall ensure that any such staff adhere to the Centre Policies and generally shall take account of any representations made by the other Parties to this Agreement as to the suitability of any staff so appointed. Any PCC staff members (i.e. youth and/or community workers) can work from the Building with the agreement of CMCC in line with percentage apportionments of PCC time/units and accordance with the Centre Policies.

4. Centre Policies

- 4.1 CMCC shall maintain the following policies which the Members shall have the right to inspect, review and approve at any time:

Hiring Agreement (to include payment terms and unacceptable use)

Equality of access and non-discrimination policy

Health and safety

Fire safety

Child and vulnerable adult policy

Confidentiality

Environmental

Volunteering

Security

Kitchen

Equal Opportunities

The parties have agreed to enter into this Agreement on the date set out above.

Executed on behalf of)
Chase Meadow Community)
Centre Limited)

Authorised Signatory

Executed on behalf of)
The Parochial Church Council)
of Budbrooke)

Authorised Signatory

Executed on behalf of)
Warwick District Council)

Authorised Signatory

Executed on behalf of)
Chase Meadow Centre)
Partners C.I.C.)

Authorised Signatories