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SECOND ADDITIONAL CIRCULATION



To: Councillor John West, Convener; Councillor Jennifer Stewart, Vice-Convener; Councillors Allan, Blackman, Boulton, Collie, Cooney, Cormack, Greig, Laing, Leslie, MacGregor, May, McCaig, Reynolds, Townson, Wisely and Yuill; and Mrs M Abdullah, Mr G Bruce, Mr P Campbell, Mr S Duncan, Mr M Maclean, Mr A Nicoll and Mrs I Wischik.

Town House,
ABERDEEN, 27 March 2012

SPECIAL EDUCATION, CULTURE AND SPORT COMMITTEE

The undernoted items are circulated in connection with the meeting of the **SPECIAL EDUCATION, CULTURE AND SPORT COMMITTEE** to be held here in the Town House on **WEDNESDAY, 28 MARCH 2012 at 1.00 pm.**

JANE G. MACEACHRAN
HEAD OF LEGAL AND DEMOCRATIC SERVICES

BUSINESS

- 1 *Community Centres – Draft Lease (Appendix C) (Pages 1 - 14)

Please note that reports marked with an * have implications for agreed Priority Based Budget (PBB) options.

Website Address: www.aberdeencity.gov.uk

Should you require any further information about this agenda, please contact Vikki Cuthbert, tel. (52)2520 or e-mail vcuthbert@aberdeencity.gov.uk

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This represents the most recent draft of the lease and is subject to comments from the Community Centre's legal representative. Any proposed changes or points of dispute will be brought to the attention of the Committee during the meeting

LEASE

between

ABERDEEN CITY COUNCIL, incorporated by and acting under the Local Government etc (Scotland) Act 1994 (who and whose successors as owners of the premises aftermentioned are hereinafter referred to as "the Council") OF THE ONE PART

and

(Names & addresses of Office Bearers) and their successors in office as Chairperson etc respectively of the Management Committee of [.....]
Community Centre [Address:.....
.....]
.....]

(which Community Centre including the Management Committee is hereinafter referred to as "the Association") as Trustees ex officio for the said Association (hereinafter referred to as "the Tenants") OF THE OTHER PART

Comment [KMD1]: Martin – I've inserted Association in an attempt to try to reflect the desire of your Clients to encompass the whole community centre membership as opposed to just the Management Committee in relation to the Management Agreement.
Deleted: Management Committee

CONSIDERING that the Council have agreed to lease and the tenants have agreed to take on lease ALL and WHOLE [*insert description with reference to an annexed plan*] (hereinafter referred to as "the premises"); NOW THEREFORE the Council and the tenants HAVE AGREED and DO HEREBY AGREE as follows:-

(ONE) The Council hereby lease the premises to the tenants for the period from theday of Two Thousand

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and(which is hereby agreed to be the date of entry notwithstanding the date or dates hereof) until *[insert here a date () years and 1 day after the date of entry]*.

(TWO) The tenants bind and oblige themselves to pay punctually to the Council during the whole term of the lease in the name of rent the sum of ONE POUND (£1) STERLING per annum exclusive of rates and Value Added Tax and that yearly in advance on *[insert date]* in each year.

(THREE) The tenants bind and oblige themselves to pay punctually to the Council during the whole term of the lease all rates (if asked), taxes, assessments and any other charges which may be levied in respect of the occupation of the premises. In the event of the tenants being unable to pay for any of the charges for which they are responsible in terms of this clause then either party shall be entitled to bring this lease to an end by giving the other party no less than sixty days prior written notice.

(FOUR) The tenants will not assign this Lease nor formally sublet the whole or any part of the premises, without the prior written consent of the Council. Notwithstanding, the tenants shall be entitled to enter into short term bookings or lets of the premises, or part thereof, (where any individual let or booking does not exceed ## hours), in order to facilitate the operation of the premises in accordance with the Management Agreement to be entered into between the Council and the tenants of even date herewith and which sets out the

Comment [KMD2]: Martin – presumably your clients would wish to avoid this being a ground of termination for the Council in the same way as the Management Agreement? If so, please confirm so that it can be brought to the attention of the Committee. In the event that the Committee requires this provision to remain then I would suggest that it is amended to be consistent with the termination for non payment provisions within the Management Agreement e.g. 60 days

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terms and conditions on which the premises will be run and certain services provided (hereinafter referred to as "the Management Agreement").

Comment [KMD3]: I have tried to distinguish the booking/letting process from any formal sublet arrangement. Happy to discuss. Jim/Gail – can you please give me your thoughts on this

(FIVE) The tenants will not create any security over or dispose of the tenants' interest in or part with the possession of the premises or any part thereof.

(SIX) The tenants shall use the premises as a community centre solely for the conduct of social, educational, religious, cultural, leisure and recreational activities for the benefit of the community and for no other use whatsoever.

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(SEVEN) The Council will insure the premises in their name and at their expense with an insurance company of repute in respect of the following risks:- fire, lightning, explosion, aircraft, riot and civil commotion, malicious damage, earthquake, storm, flood, escape of water, impact by road vehicles, theft, accidental damage, breakage of fixed glass and such other insurable risks as the Council may from time to time reasonably require. The terms and conditions of the policy of insurance (subject to such exclusions and limitations as are imposed by the Insurers) may be varied from time to time by the Council and/or the Insurers. The premises shall be insured as aforesaid in a sum which in the opinion of the Council represents the full reinstatement value thereof together with such allowance as they think fit for inflation during the period of insurance and the replanning and reinstatement period (including Architects' and Surveyors' fees on such full value at the current scales for the time being of the Royal Institute of British Architects and the

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Royal Institution of Chartered Surveyors and also Engineers' and other Consultants' fees).

Comment [KMD4]: I have deleted this as I understand that the Associations have already accepted the principle that there may be circumstances in which it would not be cost effective for the Council to rebuild or significantly repair a centre.

(EIGHT) The Council shall not be responsible for insuring the tenants' goods, equipment, stock and other contents in or on the premises.

Deleted: and following damage or destruction of the premises or any part by a peril against which the premises are insured pursuant to the provisions of this Clause, will repair, rebuild or reinstate the premises

(NINE) The tenants will accept the premises as being in the condition as stated in the Schedule of Condition annexed and signed as relative hereto as at the date of entry. The Council will be responsible for and carry out all internal and external repairs and maintenance in order to keep the premises in a wind and watertight condition. The tenants will be responsible for and carry out all other internal and external repairs and maintenance necessary in order to keep the premises in the same condition as stated in the said Schedule of Condition. In the event of either party being unable to pay for any of the repairs for which they are responsible in terms of this clause then either party shall be entitled to bring this lease to an end by giving the other party no less than six months prior written notice.

Comment [KMD5]: I have been advised that the Schedule of Condition will be prepared following on from a walk-through of the premises in conjunction with the relevant Association and will be supplemented by photographs.

(TEN) The tenants will not in any way alter or add to the premises without first having obtained the prior written consent of the Council. Any modifications, alterations, additions, fittings or fixtures which the tenants in accordance with these presents may make or instruct or install shall remain their property during the currency of the lease. On the expiry or sooner termination of the lease, unless otherwise required by the Council by notice

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sent in accordance with Clause (TWENTY-THREE) below, the tenants shall remove any unauthorised modifications, alterations, additions, fittings or fixtures and restore the premises to their condition prior to such modifications, alterations, additions or installation of any fitting or fixture. Failing such restoration, the Council may carry out any necessary work and recover the cost from the tenants. All damage caused by any removal shall be made good by the tenants at their expense to the Council's reasonable satisfaction. In the event of the Council agreeing to the retention of any modification, alteration, addition, fixture or fitting, no compensation of any kind shall be payable by the Council to the tenants.

(ELEVEN) The tenants will maintain the premises in a neat and tidy condition at their expense to the Council's reasonable satisfaction during the currency of the lease.

(TWELVE) The Council shall not be liable for any loss, damage or injury whatever, however sustained, attributable directly or indirectly to any buildings or other structures, fixtures, fittings or other property belonging to the tenants or to third parties in or upon the premises or to any activities carried on, in or upon it by the tenants or third parties.

(THIRTEEN) The Council shall not be responsible or liable to make reparation or in any way to compensate the tenants for any loss, injury, damage or temporary deprivation of occupancy of the premises which the

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tenants may sustain through the failure or insufficiency of services or utilities, nor in respect of any defect or insufficiency in any part of the premises, the tenants being held to have satisfied themselves as to the suitability of the premises and hereby renouncing all such claims and freeing and relieving the Council therefrom.

(FOURTEEN) The tenants will comply in all respects with all statutory requirements (already in place or to be passed in the future) and all requirements of any government department, local authority or other public or competent authority relating to the tenants and to the occupation of the premises by the tenants. In addition, the tenants shall comply with the provisions of the Management Agreement. Without prejudice to the foregoing generality this will include compliance with all relevant equal opportunities and child and adult protection guidance and legislation.

Comment [KMD6]: Martin – I've added this in as the Management Agreement and lease need to be co-dependent i.e. if one is terminated then the other falls. This may require a minor revision to the Management Agreement.

(FIFTEEN) The tenants will permit the Council and their agents or representatives to obtain access to the premises or any part thereof during the currency of the lease upon receiving reasonable notice thereof (or forthwith in the case of emergency). Furthermore and without prejudice to Condition 1.16 of the Management Agreement the tenants will permit the Council and the emergency services to use the premises without notice being given in the event of the premises being required as a result of a civil emergency. Further, the Council shall be entitled to use the premises for the purposes of a polling station.

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Comment [KMD7]: I have been asked to remove the requirement that any use in relation to a civil emergency take precedence over pre-existing bookings of the premises.
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(SIXTEEN) The tenants will not store or permit to be stored dangerous or noxious substances or materials on the premises nor will the tenants allow to pass into the sewers or drains serving the premises any noxious or deleterious effluent or any other substance which might cause any obstruction in or injury to such sewers or drains.

(SEVENTEEN) The Council will keep the premises sufficiently supplied and equipped with security and fire-fighting and extinguishing apparatus and appliances and related emergency signage which shall include all fire alarms, intruder alarms, all detectors, smoke detection systems, emergency lighting (including a central battery) and all controls. The tenants will immediately notify the Council of any defects in or damage to any of the said apparatus and appliances for which the Council will retain responsibility for maintenance.

(EIGHTEEN) The tenants will not erect any sign, poster, notice, advertisement or display on the exterior of the premises without the prior written consent of the Council, which consent will not be unreasonably withheld or delayed.

(NINETEEN) The Council reserves the right to install on the premises at any time during the term of the lease a communications aerial as part of the Council's wide area network (WAN) for the benefit of the Council. The Council will be responsible for all maintenance, repair and, where necessary,

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replacement of the said aerial. In addition to the foregoing, the Council reserves the right to install on the premises at any time during the term of the Lease photo-voltaic panels or other sustainable, energy saving devices or equipment as part of the Council's renewable energy strategy. The Council or its appointed contractor will be responsible for all maintenance, repair and, where necessary, replacement of the said photo-voltaic panels or other sustainable, energy saving devices.

Comment [KMD8]: I have been asked to further amend this clause in order to take account of other potential energy saving/sustainable energy initiatives which are or may be considered by the Council in future.

(TWENTY) (i) if the tenants allow the premises to go unused and/or unoccupied for a period of more than 1 month, (except in any case where the premises are either beyond economical repair or are rendered unsafe and/or unfit for beneficial occupation and/or use by any cause) or the tenants are at any time in breach of any of the non-monetary obligations undertaken by them under this lease then and in either of such events the Council at their option may, subject to Clause (TWENTY) (ii) by notice served on the tenants bring this Lease to an end forthwith and treat this Lease and all transmissions thereof with all that has followed or can competently follow thereon as void and null and that without the necessity of any declarator, process of removal, or other procedure at law and the premises shall thereupon revert to the Council and it shall be lawful for the Council or any person or persons duly authorised by the Council to enter upon possession of the premises and thereafter use, possess and enjoy the same free of all claims by the tenants as if this Lease had never been granted, but without prejudice to any other right of action or remedy available to the Council arising out of or in

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connection with any antecedent failure to pay any sum due by the tenants or any antecedent breach of any non-monetary obligation of the tenants under this Lease.

(ii) In the case of a failure or contravention by the tenants which is capable of being remedied, albeit late, the Council shall not exercise the foregoing option of irritancy unless and until they shall first have given written notice to the tenants requiring the same to be remedied and the tenants shall have failed to remedy the same within such reasonable period, having due regard to the nature and extent of the failure or contravention complained of as shall be prescribed in the notice which in the case of non-payment of any monetary amounts will be 60 days only.

(iii) Notwithstanding the provisions outlined at (i) and (ii) above, in the event of the expiry or earlier termination of the Management Agreement then the Lease shall automatically terminate as at the same date without the need for any further or separate Notice or intimation or any formal process or procedure at law.

(TWENTY-ONE) All moveable equipment belonging to the tenants will be removed by the tenants within two days of the expiry of the lease or earlier termination thereof subject to restoration by the tenants at their expense to the Council's reasonable satisfaction of any damage caused by them to the premises, otherwise any moveable equipment remaining after the expiry of the two days shall be disposed of in accordance with the provisions of Clause 3.9 a of the Management Agreement.

Comment [KMD9]: I have amended this to ensure consistency with the Management Agreement

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Comment [KMD10]: See earlier comments – the Management Agreement will need to have a similar provision inserted

Comment [KMD11]: I have amended this to be consistent with the terminology used in the Management Agreement.

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Comment [KMD12]: I have amended to reflect the terms of the Management Agreement

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(TWENTY-TWO) The tenants will flit and remove from the premises at the expiry of the lease or earlier termination thereof without any process of removal, and shall repair at their expense all damage done by the removal of any unauthorised modifications, alterations, additions, fixtures or fittings belonging to them. Failing such repair the Council may carry out any necessary works themselves and shall recover the expense thereof from the tenants.

(TWENTY-THREE) Any notice, request, demand, consent or approval under the Lease shall be in writing. In respect of the tenants then any such Notice shall be sent to the chairperson/ secretary [to be deleted as appropriate] of the Association. Any notice to the Council shall be sent to the Corporate Director – Corporate Governance or his equivalent for the time being at Town House, Aberdeen, all as the case may be. Notices or communications will be sent by recorded or special delivery to the premises or any other address which a party to the Lease may nominate in writing from time to time in accordance with this Clause. Any notice or communication shall be treated as having been received by the person to whom it is addressed two Working Days following the date of dispatch of the notice by post. However, where in any case these rules would result in a notice or communication being treated as having been received on a day that is not a Working Day (Monday to Friday), it shall be treated as having been received on the next Working Day

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afterwards. To prove the giving of the notice it shall be sufficient to show it was properly dispatched.

Comment [KMD13]: I have amended this to reflect the terms of the Management Agreement

Deleted: Any notice, request, demand, consent or approval under the Lease shall be in writing and shall be deemed to be sufficiently served at the expiry of forty-eight hours after posting if sent by Recorded Delivery post. Any notice to the tenants shall be sent to the premises. Any notice to the Council shall be sent to the Corporate Director – Corporate Governance or his equivalent for the time being at Town House, Aberdeen, all as the case may be. In proving service it shall be sufficient to prove that the envelope containing the notice was duly addressed and posted in accordance with the provisions of this Clause

(TWENTY-FOUR) In the event of any question arising as to the interpretation of the provisions of the Lease, then the same will be determined by an expert to be agreed between the Parties. Failing agreement on an expert, either Party may apply to the Sheriff Principal of Grampian, Highlands and Islands for the appointment of such an expert. Notwithstanding the method of appointment of the expert, it shall be an express condition of appointment that any decisions will be issued within fourteen days of a joint statement by both Parties, such Parties being obliged to act reasonably and expeditiously in the preparation of such statement. Any decision issued by such an expert shall be binding on both Parties except in the event of a manifest error in fact or in law. The appointed expert shall determine the party liable for the costs of the appointment (including how those costs may be apportioned).

Comment [KMD14]: I have amended this to bring it in line with the dispute resolution provisions within the Management Agreement

Deleted: In the event of any question arising as to the interpretation of the provisions of the lease, the same shall be referred to an arbiter to be mutually chosen by the parties or in the event of failure to agree, by an arbiter to be appointed by the Sheriff Principal of Grampian Highland and Islands. Any fee chargeable for the appointment of an arbiter shall be deemed to be an expense of the arbitration.

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(TWENTY-FIVE) (i) The tenants will be bound by the terms of the Property Maintenance Schedule annexed and executed as relative hereto throughout the period of this Lease. The Council will be entitled to amend or vary the said Property Maintenance Schedule in a reasonable manner at any time, but only after full consultation with the tenants.

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(ii) In the event of any conflict between the provisions of the Lease and the terms and conditions of the Management Agreement, then the terms and conditions of the Management Agreement shall prevail.

(TWENTY-SIX) The Council and the tenants consent to the registration of this lease for preservation and execution: IN WITNESS WHEREOF

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between

ABERDEEN CITY COUNCIL

and

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2012
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Subjects: *

Head of Legal and Democratic Services
Town House
ABERDEEN

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