

Appendix (a)**LEASE**

between

THE MORAY COUNCIL

and

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SCHEDULE

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1. PARTICULARS	LEASE
1.1 The Landlord	The Moray Council incorporated under the Local Government etc. (Scotland) Act 1994 and having its principal offices at High Street, Elgin.
1.2 The Tenant	<<names and addresses of office bearers and offices held representing allotment association>>
1.3 The Subjects	ALL and WHOLE the subjects extending to
1.4 The Estate	The subjects belonging to the Landlord's Estate more particularly described in
1.5 Additional rights	The parts and pertinents of the Subjects;
1.6 Period	years from and including the Date of Entry.
1.7 Date of Entry	
1.8 Rent commencement date	Date of Entry
1.9 Rent	
1.10 Rental Payment Date	
1.11 Rent Review dates	

1.12 Interest Paid on sums overdue the rate of 3% per annum above the base rate of the Governor and Company of the Bank of Scotland (or such other bank nominated from time to time by the Landlord).

1.13 Permitted use The Subjects shall be used by the Tenant as an allotment garden area for horticultural purposes.

Commercial and agricultural use is strictly prohibited and the Parties hereby acknowledge that this Lease does not constitute an agricultural lease in terms of the Agricultural Holdings (Scotland) Acts or via common law.

No development shall be permitted. No open storage shall be permitted unless with the express prior written consent of the Landlord with the exception of pallets, flowerpots, wheelbarrows, compost bins and waterbutts, and any such storage shall be kept in a neat and tidy manner.

1.14 Schedule None.

2. GRANT OF LEASE

The Landlord lets to the Tenant the Subjects together with (so far as the Landlord has title to grant same) the Additional Rights and that for the Period for which causes the Tenant undertakes to pay to the Landlord the sums detailed in Clause 3.1 below.

3. THE TENANT UNDERTAKES TO THE LANDLORD:

3.1 Payments to Landlord

To pay to the Landlord throughout the period of the Lease without deduction:

3.1.1 Rent

The Rent payable without deduction on the Rental Payment Date. If required by the Landlord, the Tenant shall make rental payment by Bankers Order, Direct Debit or Credit Transfer to any bank and account that the Landlord may from time to time nominate. The

Landlord shall be entitled to change the Rental Payment Date on providing reasonable notice.

3.1.2 Other Costs of Landlord

The Landlord's costs in connection with (i) any breach by the Tenant of the terms of this Lease, (ii) any application by the Tenant for consent required under the Lease and (iii) the Landlord's outlays in connection with the preparation (and any subsequent amendments or variation) of the Lease, the preparation of any Rent Review minute and registration dues thereon.

3.1.3 Interest on Payments in Arrears

If the Tenant shall fail to pay the rent or any other sum under this Lease, the Tenant shall pay the Landlord interest at the Interest Rate on the sum outstanding from when it was due to the date on which it is paid.

3.2 Other Financial Obligations

To meet the following costs throughout the Period of the Lease:

3.2.1 Rates and Other Charges

All rates, taxes, assessments, duties, charges, impositions and outgoings which are now or during the period shall be charged, assessed or imposed upon the Subjects or upon the owner or occupier of them in respect of the Subjects. The Tenant shall be solely responsible for any stamp duty land tax which may be due to HM Revenue & Customs under the terms of this Lease.

3.2.2 Electricity, Gas and Other Services

To pay the suppliers and to indemnify the Landlord against all charges for electricity, gas and other services consumed or used in relation to the Subjects where a separate supply is provided for the Subjects.

3.3 Repair

3.3.1 To accept the Subjects at the commencement of this Lease as in all respects in good and substantial and tenable repair and condition (except for any defects listed in any Schedule annexed) and in all respects fit for the purpose for which the Subjects are let.

3.3.2. To keep the Subjects in a like condition and if necessary renew, reinstate and rebuild the same irrespective of the cause of damage necessitating any repair, renewal, reinstatement or rebuilding (subject always to the provisions of Clause 6). To replace from time to time the Landlord's fixtures and fittings in the Subjects which may or become beyond repair at any time during or at the expiration of the period.

3.3.3 To permit the Landlord to serve notice on the Tenant (or leave such notice upon the Subjects) specifying any repairs, cleaning, maintenance and painting required to be done and to request the Tenant forthwith to execute the same.

3.3.4 Forthwith to repair, cleanse, maintain and paint the Subjects as required by such notice.

- 3.3.5 If within one month of the service of such a notice the Tenant shall not have commenced and be proceeding diligently with the execution of the work referred to in the notice, or shall fail to complete the work within two months to permit the Landlord to enter the Subjects to execute such work as may be necessary to comply with the notice and to pay the Landlord the cost of doing so and all expenses incurred by the Landlord (including legal costs and surveyors' fees) within fourteen days of a written demand.
- 3.4 Alterations / Additions**
- 3.4.1 Not to:
- (a) Make any alterations, additions or improvements to the Subjects; and
 - (b) Build, erect, construct or place any new or additional building or structure on the Subjects, including any hut, shed, garage, store, caravan or temporary moveable building or structure; Without having first obtained the prior written consent of the Landlord which consent shall be at the sole discretion of the Landlord;
- 3.4.2 To remove any additional buildings, additions, alterations or improvements made to the Subjects at the expiration of the period if so requested by the Landlord and to make good any part or parts of the Subjects which may be damaged by such removal declaring that, whether or not such a request is made, the Tenant shall not be entitled to payment of any compensation in respect of any such additional buildings, additions, alterations or improvements.
- 3.5 Access of Landlord**
- 3.5.1 To permit the Landlord:
- (a) to enter upon the Subjects (upon giving reasonable notice) for the purpose of ascertaining that the terms and conditions of this Lease have been observed and performed;
 - (b) to enter upon the Subjects at any time in case of emergency;
- 3.6 Access**
- 3.6.1 To construct a suitable access pathway to the Subjects along the line shown in blue on the said plan.
- 3.6.2 To ensure that access to the Subjects is along said pathway.
- 3.7 Use**
- 3.7.1 Not to use the Subjects for any purpose other than the Permitted Use.
- 3.7.2 Subject to 3.7.1 above not to use the subjects for any agricultural or commercial purpose whatsoever.
- 3.7.3 Not to leave the Subjects unoccupied for more than one month.
- 3.8 Management**
- 3.8.1 To maintain a Register containing current information relating to the tenancy acreage and rent of each individual allotment plot together with details of any unlet allotment plots.
- 3.8.2 To send a copy of said Register to the Landlord within fourteen days of it being updated.

3.8 Indemnity

To be responsible for, and to keep the Landlord fully indemnified against all damage, damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the Landlord arising directly or indirectly out of:

- (a) any act, omissions or negligence of the Tenant or any persons at the Subjects expressly or impliedly with the Tenant's authority or;
- (b) any breach or non-observance by the Tenant of the obligations, conditions or other provisions of this Lease.

3.9 Contamination

To accept the Subjects as being fit for the Tenant's purposes and to accept all liability for the Subjects in terms of Contaminated Land legislation for any contamination that may be caused during the currency of this Lease. To indemnify the Council against all claims in respect of such.

3.10 Alienation

3.10.1 Not to assign nor grant securities over the whole or part of the Subjects without the Landlord's prior consent in writing.

3.10.2 Only to sublet plots for individual allotments in terms of the draft Sub-lease annexed and signed as relative hereto

3.11 Removal

3.11.1 At the expiration of the Period or earlier termination thereof, to remove from the Subjects and to hand back vacant possession thereof (including all buildings and structures) to the Landlord in good and substantial repair and condition and in accordance with the terms of this Lease, to give up all keys to the Subjects to the Landlord, and to remove all letting and signs erected by the Tenant in, upon or near the Subjects and forthwith to make good any damage caused by such removal.

3.11.2 If at the expiration of the Period, or earlier termination thereof, the Subjects are not in a state of repair and decoration in which they should be having regard to the Tenant's obligations and conditions contained in this Lease, the Tenant shall (if so required by the Landlord) pay to the Landlord on demand by way of liquidate and ascertained damages:

- (a) the cost of putting the Subjects into the state of repair and decoration in which they should have been had the Tenant complied with the terms of this Lease, and
- (b) the rent at the rate prevailing at the expiration of the Period that would have been payable under this Lease if the Period had been extended for such Period as is necessary to put the Subjects into the state of repair and decoration in which they should have been, and
- (c) the Landlord's reasonable costs in preparation and service of a schedule of dilapidations.

3.12 Operational Obligations**3.12.1 Consents/Compliance with applicable law**

To obtain at their expense all necessary statutory permissions and approvals relating to their occupation and use of the Subjects in addition to any Landlord's consent required under this Lease. To

comply with all statutes, orders and byelaws relevant to their occupation of the Subjects

3.12.2 Keep Tidy / Decoration

To cut down all weeds at least twice a year during the term of this Lease, once before they come into flower and again in August or otherwise to treat weeds in an approved manner and to destroy bracken when required. To keep any internal roadways, paths and ditches free from weeds, refuse and debris and to clean the same as often as is necessary;

To maintain the Subjects in a neat and tidy condition and not to keep (or allow to be kept) on any land within the Subjects any materials, equipment, plant, bins, crates, boxes or rubbish which is or might become untidy, unclean, unsightly or in any way detrimental to the amenity of the area in the vicinity of the Premises generally. To keep the Premises in a good state of decorative order.

3.12.3 Fencing

To maintain, repair and renew at their expense the existing boundary and internal fences and gates around the Subjects. To meet the cost of erecting, maintaining, repairing and renewing of any new fencing on the Subjects.

3.12.4 Dangerous substances

Not to store or permit to be stored dangerous or noxious substances or materials on the Subjects without the written consent of the Landlord, which consent will be at the Landlord's sole discretion and may be subject to conditions.

Not to allow to pass into the sewers or drains serving the Subjects or any watercourse, any noxious or deleterious effluent or any other substance which might cause any obstruction in or injury to such sewers, drains or watercourse.

3.12.5 Access Road / Unloading

To keep any access road leading to the Subjects clear of vehicles at all times.

3.12.6 Aerials, signs and advertisements

Not to erect any pole masts or wires on the Subjects without the consent of the Landlord.

Not to affix or exhibit on the Subjects any placard, sign, notice, fascia board or advertisement without the prior written consent of the Landlord.

3.12.7 Roof and Floor Weighting

Not without the consent in writing of the Landlord to:-

- (a) suspend any weight from the portal frames, stanchions or roof of any buildings on the Subjects or use the same for the storage of goods or place any weight on them or;
- (b) have in any building on the Subjectst any safes, machinery, goods or other articles which may strain or damage the building.

- 3.12.8 Nuisance etc
Not to do or permit or suffer upon the Subjects which may be or become a nuisance, annoyance, disturbance, inconvenience, injury or damage to the Landlord or its tenants or the occupiers of adjacent or neighbouring premises.
- Not to use the Subjects for a sale by auction or for any dangerous, noxious, noisy or offensive trade or business, nor for any illegal or immoral act or purpose.
- 3.12.9 Access Maintenance
To maintain, repair and renew where necessary the said access pathway.
- 3.12.10 Ditches and Drains
To accept responsibility for clearing and maintaining all ditches and drains within the Subjects.
- 3.12.11 Flooding
To accept responsibility for any damage caused by flooding of the Subjects.
- 3.12.12 Pest Control
Not to hunt or shoot game on the Subjects, but to carry out necessary pest control in a safe and humane manner to be approved by the Landlord. The use of firearms is strictly prohibited.
- 3.12.13 Cutting/Pruning
Not to cut or prune any timber or other trees or to take, sell or carry away any mineral, gravel, earth or clay without the prior consent of the Landlord.
- 3.12.14 Composting
To deposit any refuse or decaying matter, including compost and manure, in such locations and in such a manner as is approved by the Landlord, which approval shall not be unreasonably withheld or delayed. The Landlord hereby consents to the use of covered compost bins stored in a neat and tidy manner.
- 3.12.15 Livestock
Not to keep any livestock of any kind or construct any shed or pen for livestock, but the Landlord hereby consents to allowing the Tenant to keep a maximum of five bee hives and thirty chickens on the Subjects. The Landlord reserves the right to request the removal of these should they cause a nuisance, annoyance, disturbance, inconvenience, injury or damage to the Landlord or its tenants or the occupiers of adjacent or neighbouring premises.
- 3.12.16 Hedges
To cut or prune any hedges on the Subjects no less than once every two years.
- 3.12.17 Water Supply
To be responsible for water and sewerage services, including a supply of water, to the Subjects and for any costs associated therewith.

4. RENT REVIEW

4.1 On each of the Rent Review Dates the Rent shall be reviewed to an amount equal to the Rent previously payable under this Lease or such revised rent as may be ascertained in accordance with this clause, whichever is greater.

4.2 Agreement/Arbitration

Such revised rent may be agreed between the parties at any time. Failing agreement the revised rent shall be determined by an arbiter appointed by the parties in accordance with para.9 below.

4.3 Revised Rent

4.4 Revised Rent Backdated

If the revised rent payable on and from any review date has not been ascertained by that review date Rent shall continue to be payable at the rate previously payable. Upon the revised rent being ascertained (either by agreement or the date of the arbiter's award) the Tenant shall pay to the Landlord any shortfall between what would have been paid on the review date, and on any subsequent Rent days, had the revised rent been determined. Interest shall be payable on these sums from the date on which they fell due until the date of payment at the Interest Rate.

4.5 Landlord Not Personally Barred

Acceptance by the Landlord at any time after any review date of (or demanded by the Landlord at any such time for) rent at the rate payable immediately before such review date shall not be regarded as acceptance by the Landlord that such rent represents the revised rent as from such review date or as personally barring the Landlord from setting in motion at any time after the relevant review date the machinery for review of rent or from collecting the rent payable as and from such review date ascertained as aforesaid.

5. LEASE TO CONTINUE

5.1 Save as herein before otherwise provided, this Lease shall not terminate as a result of damage to or destruction of the Subjects.

6. INSURANCE

6.1 Tenant to Insure

The Tenant will insure the Subjects in their name (with the interest of the Landlord noted on the policy) against loss or damage by fire, storm, lightning, explosion, flood, theft vandalism malicious damage, vehicle impact and damage by objects falling from the air for a sum which, in the opinion of the Landlord, represents the full reinstatement value thereof with such allowance as they think fit for inflation during the period of insurance and the re-planning and reinstatement period (including architect and surveyor fees on such full value at the current scales for the time being of the Royal Institute of British Architects and Royal Institution of Chartered Surveyors and also engineers and other consultant fees) and following damage or destruction of the Subjects or any part by a peril against which the Subjects are insured pursuant to the provisions of this clause will repair, rebuild or reinstate the Subjects. The tenant shall exhibit the insurance policy to the Landlord on demand.

6.2 Public Liability

The Tenant will, at their expense, insure the Subjects against public liability arising from their occupation or use of the Subjects for a minimum amount and with a company to be approved by the Landlord.

6.3 Production of Policy

On demand of the landlord the Tenant shall exhibit the policy and annual receipts for renewal.

7. IRRITANCY

7.1 In the event that

7.1.1 the Tenant at any time allows any rent due or other sum payable in terms of this Lease to remain unpaid for a period of four weeks following its becoming due; or

7.1.2 if the Tenant is a company, appointing a receiver or going into liquidation whether voluntary or otherwise (other than a voluntary liquidation for the purposes of reconstruction or amalgamation); or

7.1.3 if the Tenant is an individual or a partnership, he, she or they becoming apparently insolvent or signing a trust deed for behoof of creditors or having an award of sequestration pronounced with reference to his, her or their estates; or

7.1.4 in the event that the Tenant acts or refrains from acting in a manner which constitutes a material breach of this Lease, then an irritancy of the Lease shall be constituted and the Landlord may at its discretion and without prejudice to any other remedies competent to them under this Lease or otherwise terminate the Lease and resume possession without any process of removal or payment of compensation.

7.2 Provided that in the case of material breach of this Lease by the Tenant, the Landlord will not exercise its right of irritancy hereunder unless and until it first will have given at least three months' written notice to the Tenant requiring the same to be remedied and the Tenant has failed to remedy the same by the expiration of that notice.

8. TERMINATION

8.1 The lease may be terminated by the Landlord giving twelve months' notice in accordance with clause 9 below, expiring on or before 1 May or on or after 1 November in any year.

9. NOTICES

Any written notice or intimation between the parties regarding or relating to the Subjects in any way whether in pursuance of a provision of this lease or not, will be validly given, if given by a letter signed by an appropriate officer of the Landlord or by the Tenants or their agents and sent to the tenants at their Registered Office or to their agents or to the Head of Estates or the Chief Legal Officer or their equivalent for the time being at Council Office, High Street, Elgin.

9. DISPUTE RESOLUTION

In the event of any dispute arising under the terms of this Agreement, the Parties shall seek to negotiate matters to achieve a resolution. In the event that negotiation is unsuccessful, either party may refer the matter to formal mediation with an organisation such as CEDR or CORE. In the event that mediation is unsuccessful, any dispute may then be referred at the request of either Party for decision to a single Arbitrator to be appointed by the agreement of the Parties hereto, or, in the absence of such agreement, by the Chairman for the time being of the Royal Institution of Chartered Surveyors in Scotland or the President of the Law Society of Scotland (depending on the nature of the dispute), whose decision shall be final and binding on the Parties except in the case of manifest or demonstrable error and who shall have power to award expenses to or against either Party.

10. STAMP DUTY LAND TAX

The Tenant shall be obliged to produce to the Landlord within 14 days of the date of entry hereof a Submission Receipt from HM Revenue & Customs confirming that payment of the stamp duty land tax payable for this Lease has been made should this be applicable, unless the terms of this Lease (as currently framed or as may hereinafter be varied or amended) are such that no notification requires to be made in relation to Stamp Duty Land Tax.

11. CONSENT TO REGISTRATION

The Landlord and the Tenant consent to the registration hereof for preservation and execution. IN WITNESS WHEREOF

Location	Public Transport within 400m	Provision of Secure Storage	Minimum Car Parking Provision	Minimum Secure Cycle Parking Provision
Town Centre	yes	yes	1 space per 10 allotments	5 spaces per 10 allotments
		no	2 spaces per 10 allotments	5 spaces per 10 allotments
	no	yes	2 spaces per 10 allotments	5 spaces per 10 allotments
		no	3 spaces per 10 allotments	5 spaces per 10 allotments
Edge of Town Centre	yes	yes	1 space per 10 allotments	5 spaces per 10 allotments
		no	2 spaces per 10 allotments	5 spaces per 10 allotments
	no	yes	2 spaces per 10 allotments	5 spaces per 10 allotments
		no	3 spaces per 10 allotments	5 spaces per 10 allotments
Suburban Area	yes	yes	2 spaces per 10 allotments	5 spaces per 10 allotments
		no	3 spaces per 10 allotments	5 spaces per 10 allotments
	no	yes	3 spaces per 10 allotments	5 spaces per 10 allotments
		no	5 spaces per 10 allotments	5 spaces per 10 allotments
Edge of Town	yes	yes	3 spaces per 10 allotments	5 spaces per 10 allotments
		no	5 spaces per 10 allotments	5 spaces per 10 allotments
	no	yes	3 spaces per 10 allotments	5 spaces per 10 allotments
		no	5 spaces per 10 allotments	5 spaces per 10 allotments
Rural	yes	yes	5 spaces per 10 allotments	3 spaces per 10 allotments
		no	8 spaces per 10 allotments	3 spaces per 10 allotments
	no	yes	5 spaces per 10 allotments	3 spaces per 10 allotments
		no	8 spaces per 10 allotments	3 spaces per 10 allotments