

FUNDING AGREEMENT

between

SOUTH LANARKSHIRE COUNCIL

and

SOUTH LANARKSHIRE LEISURE LIMITED

1 October 2010

South Lanarkshire Council
Council Offices
Almada Street
Hamilton
ML3 0AA

FAS:2089

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FUNDING AGREEMENT

between

SOUTH LANARKSHIRE COUNCIL, a local authority constituted in the terms of the Local Government etc. (Scotland) Act 1994 and having its principal office at Almada Street, Hamilton ML3 0AA (the "Council");

and

SOUTH LANARKSHIRE LEISURE LIMITED, a charitable company incorporated under the Companies Acts (Registered Number SC225702) having its Registered Office at Council Office, North Stand, Cadzow Avenue, Hamilton ML3 0LX (Charity Number SC032549) (the "Company");

WHEREAS:

- A. This Funding Agreement, the Service Specification and the Business Plan, Transfer Agreements, Operation and Management Agreement, Dual Use Agreement, Leases and Collections Agreement referred to hereafter form the basis of a contractual agreement between the Council and the Company based upon the requirements under (First) the Local Government & Planning (Scotland) Act 1982 whereby the Council is obliged to ensure that there is adequate provision of facilities for the inhabitants of their area for recreational, sporting, cultural and social activities in terms of Sections 14, 15 and 16 of that Act; and (Second) Section 163 of the Local Government (Scotland) Act 1973 which obliges the Council to secure the provision of adequate library facilities for all persons resident in that area.

- B. The contract hereby created is for the provision of (first) sports and leisure services including the maintenance and management of major sports and leisure facilities all as described in paragraph (a) of the definition of the term "Properties" in this Funding Agreement and (second) cultural and library services including the maintenance and management of museums, halls, country parks and library facilities owned, occupied or leased by the Council within South Lanarkshire Council all as described in Part 1B of the said Schedule to this Funding Agreement. The Company

is obliged to comply with the terms of the Transfer Agreements, the Leases, the Dual Use Agreement, the Operation and Management Agreements and the Collections Agreement entered into between the Company and the Council in respect of the Properties.

- C. The Council has agreed to enter into a contract with the Company for the provision of the Service and the funding of such Service for the period of the Leases is as detailed hereunder and subject to the terms and conditions of this Funding Agreement.
- D. With effect from the last date of execution hereof this Funding Agreement shall supercede the Funding Agreement entered into between the Council and the Company dated Twenty eighth March Two thousand and two in relation to the facilities described in Part 1A of the Schedule (“the Former Funding Agreement”) which shall then cease to have effect save insofar as (first) as regards the rights and liabilities of the Council and the Company thereunder until the date that the Former Funding Agreement shall cease to have effect and (second) the obligations of the Council and the Company in terms of Clause 7 thereof (Consumable Equipment) and in particular, but without prejudice to this generality, the obligation of the Company to repay the Agreed Value, being the sum of three hundred thousand pounds (£300,000) to the Council subject to the proviso that references in that clause to “this Funding Agreement” shall be read as if the same referred to this Funding Agreement. This Funding Agreement shall endure for a period of forty one years and six months from the Commencement Date.

NOW THEREFORE the Council and the Company have agreed and DO HEREBY AGREE AS FOLLOWS:

1. Definitions and Interpretations

- 1.1 The following words and expressions shall have the following meanings:-

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| “Agreed Form” | a form agreed between the Parties and signed for the purposes of identification by S&W and the Council; |
| “Agreed Value” | means the sum of ONE POUND (£1) if asked only; |
| “Annual Period of Funding” | means the 12 month period from 1 April in any one year and expiring on 31 March in the succeeding year save that the first such period will be deemed to begin on the 1 October 2010 and end on 31 March 2011, and the last such period will be deemed to begin on 1 April of the year in which this Funding Agreement expires or is terminated and shall end on the date on which this Agreement expires or is terminated; |
| “Business” | means the business of operating the Properties and providing leisure, sporting, recreational, cultural and library services in the South Lanarkshire area; |
| “Business Plan” | means an annual plan prepared by the Company to identify the expected income and expenditure for each Annual Period of Funding, the Funding Commitment and the projected income and expenditure for the two Annual Periods of Funding following the next Annual Period of Funding, together with an indication of the likely Funding Commitment for each of those two years and to provide sufficient detail of the |

specifications of services, facilities, proposed improvements or other information as is necessary to support the expected income and expenditure;

“Capital Equipment”

the equipment over the value of Ten Thousand (£10,000) and/or having a life expectancy of more than five (5) years and identified on the Equipment Inventory as such and any such additional or replacement equipment that the Council may provide from time to time;

“Commencement Date”

means that date from which the Company is obliged to provide the Service in accordance with the Transfer Agreement entered into by the Council and the Company on or around the date of this Funding Agreement;

“Collections Agreement”

means the agreement entered into between the Company and the Council relating to the use of the Collections (as therein defined);

“Consumable Equipment”

the equipment of the value of Ten Thousand Pounds (£10,000) and under and/or having a life expectancy of or of less than five (5) years which is required by the Company to supply the Service and which is not identified on the Equipment Inventory as Capital Equipment, and any such replacement equipment as the Company may acquire from time to time;

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| “Council Instructions” | shall have the meaning given in Clause 12.1.2; |
| “Dual Use Agreement” | means the agreement entered into between the Company and the Council dealing with the operation of the facilities to be used by the Council for educational purposes; |
| “Emergency Event” | means any civic emergency including but not limited to flood, fire, gas leak, chemical spillage or other event which constitutes a civil emergency; |
| “Employees” | shall have the meaning given in Part 8 of the Schedule to the Transfer Agreements; |
| “Equipment Inventory” | means the inventory of Plant and Equipment to be agreed between the Council and the Company pursuant to Clause 7A.1; |
| “Funding Agreement” | means this document and any amendments or alterations thereto; |
| “Funding Commitment” | means the level of funding identified in the Business Plan and approved by the Council as being required by the Company to deliver the Service in each Annual Period of Funding having regard to the terms of the Leases and the contractual commitments of the Company. Declaring that for the avoidance of doubt in any Annual Period |

of Funding the Funding Commitment may be nil;

“General Manager”

means the person nominated by the Company and notified in writing to the Council as being the Company’s representative for the purposes of this Funding Agreement;

“Leases”

means the document or documents covering the assets owned by the Council which have been leased to the Company;

“Liaison Officer”

means the officer appointed by the Council and notified in writing to the Company as being the Council’s representative for the purposes of this Funding Agreement;

“Losses”

means all claims, liabilities, damages, costs, losses (including loss of revenue), expenses, demands and proceedings;

“Office Premises”

those offices and storage facilities on the first floor at the North Stand of Hamilton Academicals Football Club’s Stadium occupied by the Council’s Leisure Services Department up until 31 March 2002.

“Operation and Management Agreements”

means the agreements entered into between the Company and the Council dealing with the operation and management of certain Properties;

“Plant and Equipment”

specifically excluding the Capital Equipment, all fixed or moveable fittings, equipment, plant, machinery, furniture, tools, computer equipment and software, stationery, implements and effects employed in or in connection with the Business and identified in the Equipment Inventory;

“Properties”

means:

- (a) the properties identified in Part 1A of the Schedule to this Funding Agreement, provided that in any question as to the interpretation of the term "Properties" for the purposes of this Funding Agreement, recognition shall be taken of any agreements in writing between the parties between 1 April 2002 and the Commencement Date with regard to this list of properties; and
- (b) the properties identified in Part 1B of the Schedule to this Funding Agreement;

“Required Action”

shall have the meaning given in Clause 12.4;

“Schedule”

means the Schedule in 2 Parts annexed hereto;

“Service”

means the supply of all aspects of managing and operating the Properties in compliance with the terms of the

Service Specification, the Dual Use Agreement, the Operation and Management Agreements, the Leases and the Collections Agreement;

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| “Service Specification” | means the specification and description of the facilities, services and management referred to in Part 2 of the Schedule to this Funding Agreement; |
| “South Lanarkshire” | means the geographical area of South Lanarkshire Council; |
| “Step-in-Notice” | shall have the meaning given in Clause 12.3; |
| “Terminating Employee” | shall have the meaning given in Clause 5.7; |
| “Transfer Agreements” | means the agreements entered into between the Company and the Council to transfer the Properties and the Business to the Company; and |
| “Value Added Tax” | shall have the meaning given in the Value Added Tax Act 1994 and shall include any similar tax whether in substitution thereof or in addition thereto. |

2. Interpretation

- 2.1 In this Funding Agreement unless the contrary intention appears words importing the masculine gender include the feminine and neuter, words in the singular include the plural and words in the plural include the singular.

- 2.2 Any reference to any Act of Parliament or any Order, Regulation, Statutory Instrument or the like shall be deemed to include a reference to any amendment or re-enactment of the same.
- 2.3 The Funding Agreement shall be governed by and construed in accordance with the Law of Scotland and the parties prorogate to the jurisdiction of the Scottish Courts.
- 2.4 The Company shall not without the written consent of the Council during the term of this Funding Agreement or any time thereafter make use of for its own purposes or disclose to any person any information contained therein or any material provided to the Company by the Council all of which said information shall be deemed to be confidential.
- 2.5 All sums quoted in this Funding Agreement are stated exclusive of Value Added Tax.

3. The Service

- 3.1 The Company shall during the term of this Funding Agreement supply the Service within the terms of this Funding Agreement in an efficient, effective and safe manner to the reasonable satisfaction of the Council and in such a manner as shall promote and enhance the image and reputation of the Council and South Lanarkshire in respect of cultural and library services and facilities.
- 3.2 The Company has established a system for dealing with any oral or written enquiry or complaint in a prompt, courteous and efficient manner and recording all such communications, which system will be maintained throughout the duration of this Funding Agreement.
- 3.3 The Company has established internal systems for monitoring quality assurance performance and outputs. Detailed arrangements for this shall be included in the Business Plan on an annual basis. Annual reports on performance shall be submitted to the Council.

- 3.4 The Council is committed to ensuring best value and compliance with Scottish Ministers' proposals on continuous improvement in local authorities including any subsequent legislative requirements. To ensure that the Company can demonstrate best value in delivery of the Services it shall include provisions within its Business Plan to demonstrate its intentions. The Company shall provide the Council with written monthly and quarterly performance reports containing such information as the Council shall reasonably require including but not limited to: -financial performance, health and safety, operational performance including admission figures, bookings and income and complaints.

4. **Business Plan and Funding Period**

- 4.1 As part of this Funding Agreement the Company is required to submit its proposed Business Plan to the Council showing resources which it intends to use in fulfilment of its requirement to perform the Service as outlined within the Service Specification. In preparing the Business Plan, the Company must confirm that it has identified the expected expenditure required to implement the Company's obligations under the Leases, the Operation and Management Agreements, the Dual Use Agreement, the Collections Agreement and this Funding Agreement for that Annual Period of Funding.
- 4.2 The Company shall submit to the Council a draft Business Plan for approval not less than four (4) months prior to the commencement of the Annual Period of Funding in each year.
- 4.3. The Council and the Company shall liaise to identify any issues within the draft Business Plan that require to be discussed and agreed and the Company shall make available to the Council such additional information as the Council, acting reasonably, may require to consider the draft Business Plan. The Company may, as a result of this process, adjust the draft Business Plan.
- 4.4. As soon as reasonably practicable the Council shall either:
- 4.4.1. approve the draft Business Plan; or

- 4.4.2. propose an alternative Funding Commitment and/or Service Specification for the relevant Annual Period of Funding.
- 4.5. Where the Council proposes an alternative Funding Commitment and/or Service Specification in accordance with Clause 4.4.2, the Company shall consider the proposal and prepare a revised draft Business Plan. Any revised draft Business Plan will be submitted to the Council for approval in terms of the process set out in Clauses 4.2 to 4.4.
- 4.6. The Council and the Company shall endeavour to approve a draft Business Plan as soon as possible and in any event by the date on which the Council sets its budget for the relevant Annual Period of Funding.
- 4.7. Not Used.
- 4.8. The Company shall at all times perform the Service in accordance with the Business Plan and the Service Specification. During the term of this Funding Agreement if it appears that the performance of the Service does not conform to the agreed Business Plan the Council shall, in its sole discretion, acting reasonably either:
- 4.8.1. require the Company to produce a revised Business Plan reflecting the actual operations of the Service as being performed by the Company;
or
- 4.8.2. require the Company to comply with the agreed Business Plan.
- 4.9. Where required by the Transfer Agreements, the Dual Use Agreement, the Leases, the Operation and Management Agreements, the Collections Agreement and this Funding Agreement or at the request of the Company, the Council shall complete a review of the Business Plan, Funding Commitment and Service in accordance with the provisions of Clause 4.10.
- 4.10. Where an additional liability not identified by the Business Plan for the relevant Annual Period of Funding or any other unforeseen costs arise the Company may request that the Council review the Business Plan for the relevant Annual Period of Funding to:

- 4.10.1. identify the extent of the additional liability or cost;
- 4.10.2. assess the impact of the additional liability or cost on the Business Plan, the Service, the Council's obligations under this Funding Agreement and the existing contractual obligations of the Company; and
- 4.10.3. identify any changes to the Funding Commitment or Service Specification required to allow the Company to properly account for and assume responsibility for that liability,

and the Company shall make available to the Council such financial, operational and other information as is required to complete this review.

- 4.11. The Council and the Company shall use all reasonable endeavours to ensure that the review of the Business Plan is completed as soon as possible and in any event within one month of the date of the Company's request pursuant to Clause 4.9.

- 4.12. Following the review of the Business Plan, the Council shall, at its sole option:

- 4.12.1. adjust the Funding Commitment; and/or
- 4.12.2. approve amendments to the Service as appropriate.

- 4.13. If the Council is unable or unwilling to fund or undertake the reinstatement or replacement of:

- 4.13.1. any part of the Properties in accordance with its obligations under the Leases; and/or
- 4.13.2. any item of fixed plant or any item of fixed equipment,

then the Council and the Company shall undertake a review of the Business Plan, Services Specification and their respective obligations under this Funding Agreement, the Operation and Management Agreement, the Dual Use Agreement, the Collections Agreement and the Leases to identify any changes to the Funding Commitment, the Services Specification and/or the Company's obligations to enable the Company to provide the service notwithstanding the Council's failure to reinstate or replace the relevant part of the Properties or item of fixed plant or fixed equipment.

4.14 The Parties acknowledge that the Properties are leased to the Company subject to the disclosures made by the Council in paragraph 1.(e) of Schedule Part 9 to the Transfer Agreement entered into by the Parties on or about the date of this Funding Agreement (the "Third Party Informal Arrangements"). If the Third Party Informal Arrangements (or the acts or omissions of the third parties covered by those Third Party Informal Arrangements) give rise to an act or omission on the part of the Company which would constitute a breach by the Company of its obligations under this Funding Agreement, the Operation and Management Agreement, the Dual Use Agreement, the Collections Agreement and/or the Leases then:

4.14.1 the relevant act or omission shall be deemed not to be a breach of the relevant obligation of the Company;

4.14.2 the Company shall be relieved from its obligations to carry out or provide such part of the Service as is affected by the Third Party Informal Arrangements; and

4.14.3 the Council will be required to instruct a Business Plan Review in respect of any additional liabilities or unforeseen costs arising as a result of the Third Party Informal Arrangements.

5. **Staffing**

5.1 The Company shall employ sufficient staff to ensure that the Service is provided at all times and in all respects according to the Service Specification.

5.2 The Company shall in so far as is reasonably possible in respect of all persons employed or seeking to be employed in respect of the provision of the Service comply with each and every provision of law which prohibits discrimination in relation to employment.

5.3 Other than in relation to the engagement of the Employees, the Company shall at all times act with all due diligence and care, in the manner of a prudent employer, in the engagement of any person in connection with the provision of the Services and in particular the Company shall not engage any such person unless it shall have obtained satisfactory references in respect of

any such person and subject to the provisions of the Data Protection Act 1998 and the Police Act 1997, has carried out such checks as the Company may lawfully undertake to establish that no such person has any unspent criminal convictions in terms of the Rehabilitation of Offenders Act 1974 that makes them unsuitable for employment in the provision of the Services.

- 5.4 The Company shall recognise the freedom of its staff to be members of Trade Unions in accordance with the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 or any amendment or re-enactment thereof.
- 5.5 The Company shall ensure in so far as is reasonably possible that appropriate health and safety measures are detailed and carried out within each of the Properties.
- 5.6 Both the Council and the Company shall ensure that vacancies arising for posts in the normal course of business within the Council or the Company shall be open to and shall be notified to all employees of both Parties and shall be filled in accordance with existing Council policy and practice.
- 5.7 In the event that the Company requires to terminate the employment of any of the Employees or any other employee employed by the Company in the provision of the Service as a result of redundancy or following a reorganisation by the Company, the Company shall notify the Council as soon as reasonably practicable of such proposed termination. Following such notification, both the Company and the Council shall consider whether any suitable alternative employment is available for such individual whose employment may be terminated within either the Company or the Council (the **“Terminating Employee”**). For the avoidance of doubt but subject to the Company’s duty at law to consider suitable alternative employment within the Company for such Terminating Employee, neither the Council nor the Company shall be obliged to employ the Terminating Employee.
- 5.8 In recognition of the mutuality of obligation between the Council and the Company in respect of redeployment or redundancy the Company acknowledges that the Council operates a Redeployment Policy. If either party (“the first party”) has a vacancy for which the other party considers, (acting

reasonably) that a person on their redeployment list may be suitable because that person's experience, skills and qualifications match the experience, skills and qualifications required for the vacant post, then they shall notify the first party who shall, acting reasonably, be obliged to consider the suitability of the vacancy for that person.

6. Capital Equipment

- 6.1 In order to assist the Company in fulfilling its obligations under the Funding Agreement, the Transfer Agreements, the Operation and Management Agreements, the Dual Use Agreement, the Collections Agreement and the Leases the Council hereby agrees to make available for use, and hereby licences and permits the Company to use the Capital Equipment free of charge during the term of this Funding Agreement. For the avoidance of doubt, ownership of the Capital Equipment shall remain with the Council.
- 6.2 The Capital Equipment is licensed and made available to the Company to be used solely for the purpose of supplying the Service. The Company shall not use and shall not permit the Capital Equipment to be used in whole or in part for any other purpose than in supplying the Service.
- 6.3 The Company shall not use the Capital Equipment otherwise than in accordance with manufacturer's instructions or recommendations, nor for any purpose for which the Capital Equipment is not designed or use or permit the Capital Equipment to be used unlawfully or for any unlawful purpose nor in contravention of any statute or statutory regulation from time to time in force and the Company shall do all things which are necessary to comply with any relevant obligations imposed thereunder.
- 6.4 The Company shall not take any Capital Equipment or permit it to be taken outwith the boundaries of South Lanarkshire without the previous written consent of the Council.
- 6.5 In the event that any of the Capital Equipment shall require to be reinstated or replaced the Company shall advise the Council of the same and the Council and the Company shall thereafter enter into discussion as to whether either party is able and willing to fund such reinstatement or replacement.

- 6.6. No third party shall acquire rights or interests to the Capital Equipment, even if temporarily fixed to or sited on or within land or buildings. Where the Capital Equipment is so temporarily fixed, title to the assets shall remain vested in the Council and the Capital Equipment shall be subject to the rights of the Council to resume, position and remove the same from any place where it is so fixed with the intent that upon such removal it shall revert to its condition as moveable property, freed and discharged from any claims by any third party, and the Company shall ensure that any person who has an interest in the land or buildings from time to time gives the Council in writing, a waiver of any right to the asset and the grant for a right to enter the land or buildings and remove the Capital Equipment.
- 6.7 The Company shall ensure that (having due regard to the age and condition of the Capital Equipment) the Capital Equipment is maintained:
- (i) to a standard sufficient to allow the Company to supply the Service;
and
 - (ii) to a standard such that the Capital Equipment complies at all times with the legal requirements and with the Council's health and safety policies.
- 6.8 In the event that the Council exercises its rights under Clause 6.6 to remove any of the Capital Equipment, the Company shall be relieved from its obligations to supply that part of the Service which the Company is unable to supply due to the Council's actions.
- 6.9 The Company shall not, without the prior written consent of the Council, sell, assign, transfer, dispose of, mortgage, charge, sub-let, remove from its place of installation, or part with the possession or control of any Capital Equipment nor agree or purport to do any of the foregoing and shall not do or permit to be done anything which might permit a lien to arise on the Capital Equipment or which might jeopardise or prejudice the rights of the Council in the Capital Equipment.
- 6.10 The Company shall not make any alteration, modification, addition or substitution of any kind whatsoever to the Capital Equipment, otherwise than in accordance with their obligations under Clause 6.3 without first having

received the prior written consent of the Council. Any such consent may be granted subject to such conditions as the Council may in its absolute discretion consider appropriate. Any alterations or modifications agreed by the Council shall be at the cost of the Council and shall become the property of the Council on the termination of this Funding Agreement, unless previously agreed otherwise with the Council. In the event that an alteration or modification to the Capital Equipment is agreed by the Council under this Clause, the Company will be entitled to request a review of the Business Plan pursuant to Clause 4.10 of this Funding Agreement.

- 6.11 The Council shall be entitled at any reasonable time and on giving reasonable notice to enter on to any premises where the Capital Equipment is located and inspect the Capital Equipment to ensure that the Company is complying with the terms of this Funding Agreement.
- 6.12 The Company shall (i) take all steps as are required to protect the Capital Equipment against diligence or other legal process, (ii) take all practical steps to prevent such diligence being enforced upon its coming to the Company's attention and (iii) indemnify the Council against all losses, charges costs, damages and expenses suffered or incurred by reason or in respect thereof.
- 6.13 For the avoidance of doubt, at the termination of this Funding Agreement, the Company's rights under Clause 6.1 shall terminate and the Company shall return the Capital Equipment to the Council in a condition consistent with the diligent discharge of the Company's obligations under this Funding Agreement.

7. Consumable Equipment

- 7.1 In consideration of the Council transferring the Consumable Equipment to the Company in accordance with Clause 3.2 of the Transfer Agreements, the Company will assume a debt to the Council of an amount equal to the Agreed Value.
- 7A. Equipment Inventory

- 7A.1 Within three months of the Commencement Date, the Council and the Company shall make a joint inventory of the Plant and Equipment relating to the Business, which inventory once agreed by the Parties shall be deemed to be the Equipment Inventory for the purposes of this Funding Agreement and the Transfer Agreement entered into by the Parties on or about the date of this Funding Agreement.

8. **Record Keeping and Reporting**

- 8.1 The Company shall provide to the Council a copy of each year's audited accounts within 6 months of the end of each Annual Period of Funding.
- 8.2 The Company shall assist the Council in discharging its statutory and other obligations to disclose information to any government department, the Scottish Government, the Scottish Ministers, regulatory or fiscal body or other body responsible for audit of the Council by providing copies of such information and records as is necessary and reasonable in the circumstances.

9. **Advertising and Sponsorship**

- 9.1 The Company shall use reasonable endeavours to ensure that no advertising shall be displayed which could reasonably be expected to cause offence or which has been prohibited by the Council. No advertising of a political nature, of alcohol or tobacco and no material which could be considered indecent, racist or obscene may be displayed.
- 9.2 The Company shall ensure that all advertising, publicity and promotional material relating to the service clearly indicates the Company's involvement with the Council.

10. **Funding Arrangement**

- 10.1 The Business Plan prepared by the Company for each Annual Period of Funding and approved by the Council shall identify the Funding Commitment.
- 10.2 The Council shall pay the Funding Commitment quarterly and in advance in four equal payments commencing on the first day of each Annual Period of Funding.

- 10.3 The Company shall be responsible for the payment of all tax liabilities which it incurs in the supply of the Service.
- 10.4 In the event that the Council has not approved a Business Plan pursuant to Clause 4 prior to commencement of a new Annual Period of Funding, the Council shall continue to pay the Funding Commitment based on the previous years Business Plan until such time as the Business Plan for the new Annual Period of Funding is approved. Following approval of the Business Plan there shall be an adjustment to the Funding Commitment to address any under or overpayment already made.
- 10.5 The Council shall grant to the Company and all others authorised by the Company access to and a right to occupy the Office Premises throughout the duration of this Funding Agreement.

11. **Limit on Borrowing**

- 11.1 The Company shall not, without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed) borrow more than ONE MILLION POUNDS (£1,000,000) STERLING in aggregate throughout the duration of this Funding Agreement which shall include, without prejudice to the foregoing generality the mortgaging or charging of the Company's property or undertaking, or any part thereof, as security for any debt, liability or obligations of the Company or of any third party.

12. **Council Step-In**

- 12.1 Notwithstanding any other provision of this Funding Agreement, but subject to the Council complying with Clause 12.3, if an Emergency Event occurs the Council may:
- 12.1.1 exercise a right to occupy any part of the Properties; and/or
- 12.1.2 during a period of thirty (30) Business Days thereafter issue instructions ("**Council Instructions**") to the Company in respect of any of the Properties,
- in order to discharge the Council's statutory obligation to prevent, eliminate, mitigate or accommodate the effects of the Emergency Event.

- 12.2 Without prejudice to Clause 12.1, the Council shall use reasonable endeavours to liaise with the Company in connection with the Emergency Event.
- 12.3 If Clause 12.1.1 applies and the Council wishes to take action as contemplated therein, the Council shall serve a notice (a “**Step-In Notice**”) to the Company in writing of the following:
- 12.3.1 the action it wishes to take;
 - 12.3.2 the reason for such action;
 - 12.3.3 the date it wishes to commence such action;
 - 12.3.4 the time period which it believes will be necessary for such action;
 - 12.3.5 the criteria for cessation of the Council action; and
 - 12.3.6 to the extent practicable, the effect on the Company and its obligation to provide the Service during the period such action is being taken, and the Company will be entitled to request from the Council such additional information as may be reasonably necessary to substantiate the Step In Notice but the provision of such additional information will not prejudice the right of the Council to commence any Required Action.
- 12.4 Following service of a Step-In Notice, the Council shall take such action as notified under Clause 12.3 and any consequential additional action as it reasonably believes is necessary (together, the “**Required Action**”) and the Company shall give all reasonable assistance to the Council while it is taking such Required Action.
- 12.5 For so long as and to the extent that the Required Action is taken and/or the Council Instructions are issued, and this prevents the Company from providing any part of the Service:
- 12.5.1 the Company shall be relieved from its obligations to carry out or provide such part of the Service as is affected by the Required Action and/or Council Instructions and the Company will not be in breach of its obligations under this Funding Agreement by not doing so; and
 - 12.5.2 in respect of the period in which the Council is taking the Required Action and/or issuing Council Instructions the Funding Commitment due from the Council to the Company shall equal the amount the Company would receive if it were satisfying all its obligations and

providing the Service affected by the Required Action or Council Instructions in full over that period together with any incremental costs incurred by the Company in complying with the Council's Instructions.

12.6 Liability of the Council on Step-In

In respect of the period in which the Council is taking Required Action, the Council shall indemnify the Company against Losses suffered by the Company as a result of the Council undertaking the Required Action on issuing the Council Instructions in terms of this Clause 12.6.

12.7 The Council shall as soon as reasonably practicable notify the Company that:

12.7.1 the Required Action has been completed; or

12.7.2 that the Company is required to commence delivery of the Service affected by the Required Action on the expiry of not less than five (5) days' notice or such shorter period as is agreed between the Parties and, for the avoidance of doubt the Council shall remain responsible for the provision of the Service affected by the Required Action up to the end of the notice period agreed between the Parties pursuant to this Clause 12.7.

13. Service Level Agreements

As soon as possible after the Commencement Date and in any event by 1 April 2011 the Company and the Council shall agree and enter into service level agreements in respect of all services to be provided by the Council to the Company including but not restricted to financial & IT services, grounds maintenance, building cleaning, certain catering services, personnel, media relations, advertising, design and print room services. The Company shall be required to continue to obtain such services from the Council for a period of three (3) years commencing on the Commencement Date.

14. Failure to Perform

14.1 At any time during the term of this Funding Agreement an Authorised Officer of the Council may investigate each instance where it appears that the Company has failed to perform part or whole of the supply of the Service in accordance with the provisions of this Funding Agreement. Where an

Authorised Officer is satisfied that a failure has occurred he shall be entitled to instruct the Company to remedy the failure and to comply therewith within such period as he may determine acting reasonably and with full regard to the nature of the failure.

- 14.2 The Company shall not be unreasonably penalised for those Services which are delayed or programmes not achieved because of conditions outside the direct influence of the Company or resulting from the act or omission of the Council.

15. **Agency**

- 15.1 The Company is not and shall in no circumstances hold itself out as being a servant or agent of the Council.

- 15.2 The Company is not and shall in no circumstances hold itself out as being authorised to enter into any financial obligations or liabilities on behalf of the Council or in any way bind the Council to the performance, variation, release or discharge of any obligation.

16. **Indemnity to the Council**

- 16.1 The Company hereby agrees and undertakes fully and effectually to indemnify the Council in respect of any Losses arising from the acts or omissions of the Company or anyone for whom the Company is responsible at law resulting in:

16.1.1 death or personal injury to any person;

16.1.2 damage to the property of the Council of any kind; and

16.1.3 breach of any applicable law or legislation,

which arises out of or in consequence of the Company exercising its rights or performing its obligations under this Funding Agreement, the Transfer Agreements, the Leases, the Dual Use Agreement, the Operation and Management Agreements, the Collections Agreement or the presence of the Company and anyone for whom the Company is responsible at law on any of the Properties.

16.2 The Council hereby agrees and undertakes fully and effectually to indemnify and keep indemnified the Company in respect of any Losses arising from the acts or omission of the Council or anyone for whom the Council is responsible at law resulting in:

16.2.1 death or personal injury of any person;

16.2.2. damage to the property of the Company of any kind; and

16.2.3 breach of any applicable law or legislation,

which arises out of or in consequence of, the Council exercising its rights or performing its obligations under this Funding Agreement, the Transfer Agreements, the Leases, the Dual Use Agreement, the Operation and Management Agreements, the Collections Agreement or the presence of the Council and anyone for whom the Council is responsible at law on any of the Properties.

16.3 Except as expressly provided in this Funding Agreement, neither the Council nor the Company shall be liable to indemnify the other in respect of any consequential loss or loss of profit or any form of economic loss whatsoever.

17. **Company applications for grant funding**

17.1 The Parties acknowledge that the Council allocates funding to capital projects within its own organisation through its capital programme, which it sets on a four yearly basis.

17.2 The Council will discuss capital bids with the Company in line with the Council's timetable for the preparation and approval of the capital programme. The decision to forward proposals as part of the capital investment programme will be the final decision of the Council. The outcome of the approval process will be communicated to the Company.

17.3 The Company will provide estimates for any ongoing revenue costs associated with any capital bid as requested by the Council.

17.4 Any capital funding granted by the Council pursuant to the Clause 17 shall be in addition to and without prejudice to any Funding Commitment agreed between the Parties under Clause 4 of this Funding Agreement.

17.5 Any capital bids put forward by the Company pursuant to this Clause 17 may include bids in respect of funding for the replacement of Capital Equipment or for new items of Capital Equipment.

IN WITNESS WHEREOF this Funding Agreement typewritten on this and the preceding twenty three pages together with the Schedule in two parts has been executed by the parties hereto as follows:-

SEALED on behalf of the said SOUTH LANARKSHIRE COUNCIL and SUBSCRIBED BY Janet Hazel Lawson, Legal Services Manager and as such a Proper Officer of the Council authorised to sign deeds on the Council's behalf at Hamilton on the Thirtieth day of September Two thousand and ten.

.....
Authorised Signatory

SIGNED for and on behalf of the said SOUTH LANARKSHIRE LEISURE LIMITED by Alan McGowan one of their Directors and by George Clark their Company Secretary together at Hamilton on the Thirtieth day of September Two thousand and ten.

.....
Director

.....
Company Secretary

Part 1 of the Schedule to this Funding Agreement**Properties****Part 1A****LEISURE AND SPORT FACILITIES AS SET OUT IN THE FORMER
FUNDING AGREEMENT**

COMPOSITE LEASE 1 (PROPERTIES1-47)

- 1 Cambuslang – Peter Brownlie Pavilion
- 2 Carnwath – Football Facility
- 3 Carnwath – Bowling Club
- 4 Auchenheth – Football facility
- 5 Carluke – Glenafeoch Road Pavilion
- 6 Coalburn – Recreation Ground
- 7 Douglas – Crabtree Football Facility
- 8 Forth – Whitehouse Recreation Area
- 9 Lesmahagow- Glebe Park
- 10 Kirkfieldbank – Kilbank Football Facility
- 11 Lanark – Kildare Park Playing Fields
- 12 Lanark- Thistle, Castlegate
- 13 Law Village – Law Pavilion
- 14 Lesmahagow – McKirdie Park
- 15 Carstairs – Monteith Football Facility
- 16 Carluke – Moorepark Pavilion
- 17 Kirkmuirhill – Nethanvale Pavilion
- 18 East Kilbride – Lammermoor Play Centre
- 19 East Kilbride – Ballerup Recreation Area
- 20 East Kilbride – Brancumhall Recreation Area
- 21 East Kilbride – Dunedin Recreation Area
- 22 East Kilbride – Kirktonholme Recreation Area
- 23 Strathaven – Kirkland Park
- 24 East Kilbride – Murray Recreation Area
- 25 East Kilbride – Red Deer Bowling Green
- 26 Strathaven – Strathaven Park
- 27 East Kilbride – Westwoodhill Recreation Area

- 28 Hamilton – Bent Recreation Ground
- 29 Larkhall – Birkenshaw Park
- 30 Hamilton – Bothwell Road Public Park Pavilion
- 31 Hamilton – Eddlewood Park Pavilion
- 32 Hamilton – Fairhill Park Pavilion
- 33 Hamilton – Ferniegair Park
- 34 Blantyre – Hunthill Pitch
- 35 Bothwell – Kirklands Park
- 36 Hamilton - Meikle Earnock Park
- 37 Blantyre - Priors Parks
- 38 Larkhall – Raploch Park
- 39 Larkhall – Robert Smillie Memorial Parks
- 40 Blantyre – Stonefield Park
- 41 Bothwell – Wooddean Park
- 42 Carstairs Junction – Carstairs Bowling Club
- 43 Lesmahagow – Craighead Football Stadium
- 44 Stonehouse – Alexander Hamilton Memorial Park
- 45 Ashgill – Ashgill Park
- 46 Carlisle – Lochpark Stadium
- 47 Forth – Forth & Wilsontown Bowling Club
- 48 Lanark- Winston Square Club- North Venners
- 49 Hamilton – Jock Stein Football Pitch
- 50 Stonehouse – Tileworks Park

2. Composite Lease 2 – Sports Barns/Small Sports Centres

- 1. Hamilton – Eddlewood Sports Barn
- 2. Larkhall – Harleeshill Sports Barn
- 3. Hamilton – Jock Stein Sports Barn
- 4. Hamilton – Whitehill Sports Barn
- 5. Glasgow – Burnhill Recreation Centre
- 6. Cambuslang – Halfway Recreation Centre
- 7. East Kilbride – Greenhills Sports Centre
- 8. East Kilbride – Stuartfield Community Centre
- 9. Forth – Forth Sports/Community Centre
- 10. Kirkmuirhill – Leisure Dome

3. Composite Lease 3 (Golf Clubs)

1. Lesmahagow – Hollandbush Club House
2. Larkhall – Larkhall Golf Club
3. East Kilbride – Langlands Golf Club
4. Strathaven – Torrance Golf Club

4. Large Self Contained Facilities (Separate Leases)

Rutherglen Swimming Pool

Hamilton Water Palace

East Kilbride – Dollan Aquacentre

East Kilbride – James Hamilton Heritage Park

East Kilbride – John Wright Sports Centre

Lanark Swimming Pool

Blantyre Sports Centre

Larkhall Leisure Centre

Coalburn Leisure Complex

South Lanarkshire Lifestyle Eastfield

5. Dual Use Properties (Separate Leases)

East Kilbride – St Andrews Leisure Centre

Carluke Leisure Centre

Strathaven Leisure Centre

Rutherglen – Stonelaw Community Sports Centre

East Kilbride – Duncanrigg Sports Centre

Biggar – Biggar Sports Centre

Part 1 of the Schedule to this Funding Agreement**Properties****Part 1B****CULTURAL AND LIBRARY PROPERTIES**

Halls Composite Lease

1. Abington Village Hall
2. Alison Lea Community Centre
3. Auchenheath Hall
4. Ballerup Hall
5. Ballgreen Hall
6. Biggar Hall
7. Bothwell Community Hall (otherwise senior Citizens Centre)
8. Braehead Village Hall
9. Braidwood Hall
10. Brocketsbrae Village Hall
11. Calderwood Community Hall
12. Cameronian Hall, Larkhall
13. Carmichael Hall
14. Carnwath Town Hall
15. Carstairs Community Centre
16. Carstairs Junction Hall
17. Chapelton Hall
18. Coatshill (TACT) Community Hall, Blantyre
19. Crawford Hall
20. Crossford Village Hall
21. David Milne Centre, Uddingston
22. Dolphinton Hall
23. Eastfield Community Centre, Cambuslang
24. Eddlewood Public Hall
25. Elsrickle Hall
26. Fernhill Pavilion
27. Forth Shelter
28. Glassford Community Hall
29. Greenhills Community Centre
30. Hawthorn Walk Community Hall, Cambuslang
31. High Blantyre Hall
32. Jubilee Hall, Lesmahagow
33. Kilncadzow Village Hall
34. Not Used
35. Kirktonholme Hall
36. Laighstonehall Hall
37. Lamington Hall
38. Larkfield Hall
39. Larkhall Community Centre
40. Low Waters Hall, Hamilton

41. Murray, Owen Centre, East Kilbride
42. Nemphlar Village Hall
43. Netherburn Hall
44. Newbigging Village Hall
45. North Halfway Community Hall
46. Pettinain Village Hall
47. Priestfield Pavilion, High Blantyre
48. Not Used
49. Robertson Village Hall
50. Rosebank Hall
51. Rowans Community Hall
52. Spittal community Centre
53. Springhall Community Centre, Rutherglen
54. Stonehouse Public Hall
55. Stonehouse Senior Citizens Centre
56. Symington Hall
57. Thankerton Hall
58. Toll Pitch Community Hall, Cambuslang
59. Tom Craig Centre, Law (aka Miners' Welfare Institute)
60. Uddingston Public Hall
61. Westburn Community Hall, Cambuslang
62. Westwood Hall, East Kilbride

School Community Wings – confirmation is being sought that these are to form part of a separate composite lease. However, if they do not I shall simply insert “A” at the end of each and place in the relevant composite lease.

1. Blacklaw Primary School Community Wing, East Kilbride
2. Carluke Primary School Community Wing
3. Cathkin Primary School Community Wing, Rutherglen
4. Craigbank Primary School Community Wing, Larkhall
5. Hareleeshill Primary School Community Wing, Larkhall
6. St Elizabeth's Primary School Community Wing, Hamilton
7. Kirkfieldbank Hall
8. Rigside Hall

Composite Library Leases

1. Biggar Library
2. Bothwell Library
3. Calderwood Library
4. Cathkin Library
5. Forth Library
6. Greenhills Library
7. Halfway Library
8. Larkhall Library
9. Lesmahagow Library
10. Stonehouse Library
11. Strathaven Library

Country Park Composite Lease

1. Calderglen Country Park
2. Chatelherault Country Park

Museum Premises Composite Lease

1. Hunter House Museum, East Kilbride
2. John Hastie Museum, Strathaven
3. Museum Storage Facility, Colinhill Road, Strathaven

Operation and Management Agreement

1. Blackwood Hall
2. Burnbank Burgh Hall
3. Burnbank Library
4. Cambuslang Institute
5. Coulter Hall
6. Ferniegair Hall
7. Lanark Library
8. Leadhills Village Hall
9. Springwells Hall
10. St Leonards Library
11. Stewart Street, Carluke
12. Stonehouse Institute
13. Uddingston Community Centre
14. Westwood Library

Separate Standalone Library Leases

1. Blantyre Library
2. Cambuslang Library
3. East Kilbride Central Library
4. Uddingston Library - save for area to be leased to local medical practice.

Standalone Longer Leases

1. Carluke ICF
2. Carluke Library
3. East Kilbride Arts Centre
4. Fairhill Community Centre – please speak to me re this plan
5. Fairhill Library – please speak to me re this plan
6. Hamilton Mausoleum
7. Hamilton Townhouse (possible reserved right re are used by issue of Registrars and Licensing - to be confirmed)
8. Hamilton Townhouse Library
9. Hillhouse & Earnock Community Centre
10. Hillhouse Library
11. Keeper's Cottage
12. Low Parks Museum

13. Rutherglen Library
14. Rutherglen Town Hall (possible reserved right re are used by issue of Registrars and Licensing - to be confirmed)
15. The Village Theatre, East Kilbride
16. Whitehill Library
17. Whitehill Neighbourhood Centre

Part 2 of the Schedule to this Funding Agreement

Service Specifications

1. Introduction

1.1 The Company is established as a non-profit distributing organisation in the form of a Company Limited by Guarantee for the purpose of providing *inter alia* cultural and library recreational service to the South Lanarkshire area.

1.2 The objects of the Company are to provide or assist in the provision of facilities for recreation or other leisure time occupation for the general public in or in connection with the South Lanarkshire area and its neighbourhood consistent with the Council's Objectives and Improvement Themes as set out in the Council's "Connect" Policy. Facilities provided shall be available to the public at large save that special facilities may be provided for persons who by reason of their youth, age, infirmity or disability, poverty or social or economic circumstances may have need of special facilities. While the persons for whom the facilities are primarily intended are the community of South Lanarkshire the use of such facilities may be extended to other members of the public who desire to and can conveniently make use of them.

1.3 The purpose of this framework and any subsequent agreement is to set out the mutual understanding of the Council and the Company as to the nature and extent of the service provided to the community of South Lanarkshire. This will enable both parties to be confident that the service is consistent with the plans and policies of the Council and provide value for money.

2. Provision of Service

2.1 The purpose of the Service will be to provide opportunities for the community, individuals, groups, organisations and visitors to the area to participate in leisure, sporting, cultural, recreational and library activities.

- 2.2 The Company will provide for and manage the following categories of service:-
- Leisure Centres
 - Visitor Attractions
 - Golf Courses
 - Outdoor Sports Facilities
 - Seasonal Facilities
 - Sports Development
 - Entertainments
 - Community Halls
 - Country Parks
 - Museums
 - Libraries
 - Community Wings annexed to Primary Schools
- 2.3 Properties will be leased from the Council to the Company on conditions identified within the lease documents or in accordance with other appropriate contractual arrangements.
- 2.4 The Company will be required to operate a positive policy towards customer services and ensure that customers' needs, including special circumstances, are met.
- 2.5 The Company will be responsible for the setting of charges for the use of services and will retain all income. The Council will be advised of the Company's proposed changes on an annual basis through the Business Plan.
- 2.6 The Company will be required to operate and manage a balanced leisure, sporting, cultural, recreational and library programme which reflects the Council's Connect Plan and partnership with "Stronger Together" and which meets the needs of the community.
- 2.7 The Company will actively promote the development of leisure, sporting, cultural, recreational and library facilities in South Lanarkshire

to increase participation, develop performance and support competition.

- 2.8 The Company will be required to maintain the existing level of service, any significant variations of which shall be agreed with the Council prior to implementation.
- 2.9 The Company is encouraged to identify opportunities to expand the service provided in accordance with the policies of the Council.
- 2.10 The Company will notify to the Council details of the Company's senior officer (the General Manager) who will liaise with the Council.
- 2.11 The Council will notify the Company details of the Council's senior officer (the Liaison Officer) who will liaise with the Company.
- 2.12 The Company will be responsible for the employment of sufficient employees to deliver the service and will provide quarterly reports to the Council's Executive Directors of Community and Education Resources on staffing levels.
- 2.13 The Company will be responsible for obtaining all relevant licences, approvals and authorisations for the delivery of the service. In doing so the Company will comply with all relevant legislation, regulations and guidelines.
- 2.14 The Company will not undertake any major modifications or extensions to any facility without the agreement of the Council as landlord.

3. Performance and Review

- 3.1 The Company will provide to the Council an annual report of its operations and will also provide a four weekly Business Plan monitoring report to the Council's Executive Directors of Finance and Information Technology Resources, Community and Education Resources.

- 3.2 The Company will maintain accurate records of its operations and provide reasonable reports on these to the Council as may be required from time to time.