

DATED 2013

ROSSENDALE BOROUGH COUNCIL (1)

AND

FREE LANE COMMUNITY ALLOTMENT SOCIETY (2)

AGREEMENT AND LEASE

for letting and management of Free Lane Allotment Site
Helmshore Rossendale Lancashire

Stuart Sugarman,
Director of Business,
Rossendale Borough Council,
The Business Centre,
Futures Park,
Bacup,
Lancashire.
OL13 0BB

THIS AGREEMENT AND LEASE is made the day of Two thousand and thirteen BETWEEN ROSSENDALE BOROUGH COUNCIL of The Business Centre Futures Park Bacup Lancashire OL13 0BB (hereinafter called “the Council”) of the one part and FREE LANE COMMUNITY ALLOTMENT SOCIETY c/o acting by the Chairman and Secretary for the time being of the Society (hereinafter called “the Society”) of the other part

WHEREAS

(1) The Council has provided the land at Free Lane Helmshore Rossendale shown edged red on the attached plan (hereinafter called “the Allotment Area”) for use as an allotment

NOW THIS DEED WITNESSETH as follows:-

1. THE Council agrees to let and the Society agrees to take for a term of 25 years from the day of 20 (subject to hereinafter provided) all the Allotment Area at a yearly rent of (to be discussed) payable on (to be discussed)

2. THE Society agrees to act in accordance with the Constitution and Rules of the Free Lane Community Allotment Society and upon the following terms and conditions:-

2.1 To be responsible for the complete day to day running and general management and administration of the Allotment Area

2.2 To ensure that

- (i) the Allotment Area is used for allotment purposes within the meaning of the Allotment Acts 1908-1950 and for those purposes only and in particular shall not be used for any trade or business except the distribution of seeds fertilisers tools etc by the Society to its members

- (ii) Not to use any buildings on the Allotment Area (other than allotment holder's individual buildings) for purposes other than social functions, meetings, the sale of produce and materials connected with horticulture
 - (iii) Where an allotment plot is being used as a garden in conjunction with an adjoining property, on vacation of the property and the allotment plot, the Society shall use its best endeavours to ensure that the vacant plot is relet and used for allotment purposes
- 2.3 To encourage and promote a good standard of cultivation of the Allotment Area
- 2.4
- (i) Once every quarter year to inspect the Allotment Area and to identify any necessary repair maintenance or improvement of the same with particular regard to any fences trees ditches water supplies paths and structures and report to the Council on a regular basis
 - (ii) Not without the Council's prior written consent to cut down prune or injure any mature trees bushes or hedges or remove any mineral ground soil clay sand or other materials from the Allotment Area
 - (iv) To keep all watercourses on and adjoining the Allotment Area free from allotment site rubbish and not to pollute any such watercourses with any deleterious materials and/or substances
- 2.5 To be responsible for the letting of the Allotment Area for the cultivation of the same from its waiting list of potential allotment holders letting any allotment garden in list order under tenancy agreements in the Form prescribed in Schedule 1 PROVIDED ALWAYS that no tenancy shall be granted for a term which expires after the expiration of this Agreement and Lease or any extension thereof

- 2.6 To demand and receive from the tenants of the allotment gardens all rents and charges subscription fees due
- 2.7 To give lawful notice to quit to any tenant or occupier and to accept surrenders of tenancies according to the provisions of the Allotment Acts 1908-1950
- 2.8 To ensure that the use of the Allotment Area will not be or become a nuisance or cause annoyance to neighbours
- 2.9 To observe any conditions and fulfil any obligations which the Council is liable to observe and fulfil as owner or otherwise of the Allotment Area having notified the Society of the same but excluding any loan charges and rents payable for the Council in respect of the said Allotment Area
- 2.10 To observe and fully comply with all enactments statutory instruments local byelaws orders or regulations affecting the Allotment Area
- 2.11 Except as provided in Clause 2.5 above the Society must not sublet assign or part with possession of the Allotment Area or any of them or of any part of the any Allotment Area
- 2.12 Any Officer or agent of the Council may at any time having given prior notice by either telephone communication or email to the Chairman or Secretary of the Society except in cases of emergency enter and inspect the Allotment Area
- 2.13 To keep accounts for the Allotment Area for each year ending on the 31st March in any year such accounts to be kept separately from the other accounts of the Society and to be audited each year by auditors appointed in accordance with the Society's Constitution and Rules

- 2.14 To apply all monies received by way of rents charges subscription fees grants and loans to discharge the obligations duties and liabilities herein specified and the payment of any honorarium approved by the Council provided always that if the Society default in the repayment of any loan the Council will not be liable to repay the debt
- 2.15 Not to erect any new huts buildings or other structures larger than 3m x 2m without the prior written consent of the Council
- 2.16 To keep all tenancy agreements and records including a register of tenants details of rent income expenditure on the Allotment Area and a waiting list up to date and available for inspection by the Council at any time upon reasonable notice
- 2.17 To provide at the entrance to the Allotment Area signage showing clearly the name of the Allotment Area, the Society and contact details for the Society and will maintain such signs in good order with up to date information and be free of graffiti
3. The Council agrees that:-
- 3.1 The Council will remain responsible for liability and maintenance for the boundary walls and/or fences, access gate(s), the riverbank and/or river wall on the boundary of the Allotment Area with the exception of the boundary wall to the rear of 570 to 584 Free Lane which is the responsibility of the owners of those properties
- 3.2 The Council will remain responsible for all matures trees on the Allotment Area and where pruning or felling is required of the mature trees on the Allotment Area after a request by and in conjunction with the Society if requested under Clause 2.4(ii) to this Agreement and Lease (section to be

amended to clarify that it will be at the Council's discretion acting reasonably whether the Council agrees to allow the allotment society to cut trees down or for the Council to undertake the work)

4. The Council and the Society agree as follows:-
 - 4.1 The Society agrees to pay all existing and future outgoings in respect of the Allotment Area including all utility charges, taxes and all liabilities.
 - 4.2 Any structures which the Society has erected or may erect on the Allotment Area from funds other than those provided by this Agreement shall be deemed to be fixtures within the meaning of Section 10 of the Agricultural Holdings Act 1986
 - 4.3 In determining the scope of Clause 2.3 and 2.4 regard shall be had to the funds and resources available to the Society
 - 4.4 To work with the Council to develop a monitoring system to include an agreed programme of regular inspections
5. IF any dispute or difference arises under this Agreement and Lease either of the parties may refer it to adjudication in accordance with the provisions of this clause. In the first instance the matter shall be referred to the Council's Parks Manager by the party aggrieved convening a meeting with the Parks Manager both parties in dispute may make representations at such meeting. In the absence of agreement between the parties the matter shall then be referred to an independent adjudicator. The adjudicator to decide the difference or dispute shall be an individual agreed by the parties or in default of the agreement on the application of any party an individual to be nominated as the adjudicator by the President for the time being of the Chartered Institute of Arbitrators (whose decision shall be binding upon the parties)

6. THE Society must have a public liability indemnity insurance in place for the Allotment Area at all times with a reputable Insurance Company The Society must make all payments necessary for the above purposes within 7 days after they become payable and must produce to the Council or its agent on request a copy of the policy of such insurance
- 7.1 THE Society must not do or suffer to be done on the Allotment Area anything which may increase the risk of fire or any activity that may increase the risk of loss or injury to any user or visitor on the Allotment Area and in particular must not store petrol oil or similar fuel or lubricants on the Allotment Area except in the tanks of machines or with proper precautions and in such quantities as may be reasonably required for day to day use by members of the Society
- 7.2 The Council shall not be responsible for the loss of any equipment produce or personal possessions that any person may bring onto or store on the Allotment Area
8. The Society agrees to indemnify the Council against any claims which may arise out of their occupation of the Allotment Area and to effect a public liability insurance policy for at least five million pounds (£5m) to cover the Society's liability under this clause and to produce such insurance policy to the Council if requested so to do
9. IF:
 - 9.1 after having given reasonable notice and opportunity to remedy any covenant on the Society's part contained in this Agreement and Lease is not performed or observed; or

9.2 an instrument of dissolution of the Society is executed; or an order is made or a resolution passed for the winding up of the Society or the registration of the Society is cancelled or suspended otherwise than in connection with the amalgamation of the Society with or the transfer of the engagements of the Society to another society having as one of its objects the provision of allotments

then the Council may at any time subsequently re-enter the Allotment Area or any part of it in the name of the whole and upon such re-entry this demise shall absolutely determine but without prejudice to any claims of the Council or the Society under this Agreement and Lease and that any buildings tools or machinery being the property of the Society shall become the property of the Council and be disposed of as the Council decides

10. THIS agreement may be determined:

10.1 By either the Council or the Society giving to the other 12 months' notice in writing expiring on or before 6th April in any year

10.2 By re-entry by the Council at any time after giving three months' previous notice in writing to the Society on account of the land being required:

10.2.1 for any purpose (not being the use of the same for agriculture) for which they have been appropriated under any statutory provision or

10.2.2 for building mining or any other industrial purpose or for roads or sewers necessary in connection with any of these purposes and in accordance with the statutory or other entitlement of the Council

11. ANY notice required to be given by the Council to the Society may be given by sending by registered post or by the recorded delivery service a written notice by the Director of Business of the Council for the time being to the

Secretary of the Society at their last known address and any notice required to be given by the Society to the Council shall be sufficiently given if signed by the Secretary of the Society and sent by pre-paid post letter to the Director of Business at The Business Centre, Futures Park, Bacup, Lancashire OL13 0BB

IN WITNESS whereof the Council has sealed and the Society has signed this Agreement and Lease as a Deed the day and year first before written

SCHEDULE 1 – TENANCY AGREEMENT

THE COMMON SEAL of ROSSENDALE)
BOROUGH COUNCIL was hereunto affixed)
in the presence of:-)

SIGNED by the said)
Authorised Signatory for and on behalf of)
FREE LANE COMMUNITY ALLOTMENT SOCIETY)