

**Nottingham City Council Allotment Forum 14 August 2013**  
**PAPER 2**  
**Lease Review**

Following the last Allotment Forum we have looked again at the lease and Service Level Agreement, and revised versions are attached as appendix 1 and 2.

We can confirm that the current min level of insurance cover is £5 million pounds, although £10 million is available.

We are still investigating all the possible fees and charges, but the Q and A doc below clarifies some issues.

We have taken some things out of the Management Agreement that are sufficiently covered by the Lease.

Most references to the word Trustee have been changed to Signatory in the Management Agreement.

Please note that when reading the documents, where a clause is not relevant to a site, it would be removed in the site specific document.

**NCC / Association Lease Review Questions and Answers.**  
**Last updated 30 July 2013**

Question /Comment	Answer
Why review /amend the lease wording?	Lease is a legal document which must keep up to date with current laws and policies. It is important that it is continually reviewed. It has been tinkered with before, but we wish to consult and make fit for the current times
Why now?	Food Growing Framework action plan  We have reviewed Direct let service and been on a learning curve.
What is wrong with the current lease?	From the Councils point of view it lacks clarity over a number of points including: What is expected of Associations Who is responsible for what Who the lease is with and the relationship between NCC and the Association.  <b>This does not mean that the current lease is</b>

	<b>invalid – just not as clear and useful as it should be for today.</b>
What is the point of the consultation?	You all have experience of working within the current lease. When a lease ends and a new one created, there will be changes and this is an opportunity to have an input into creating an improved document
What happens at the end of the consultation?	<p>Whilst we are concentrating efforts at the moment, the process of consultation will be continuous as new ideas, issues or regulations come along. There are some sites that need a new lease now and others that have 40 or so years to run.</p> <p>We do hope that after this initial period some sites will agree that the new document is an improvement and wish to sign up to it before the end of the term of their current lease.</p>
What is the Management Agreement ?	<p>The main idea behind this is that 50% of the plots in the City are managed by Associations. Whilst most sites provide a good service to tenants the City Council can not give assurances that this will be the case and therefore cannot claim that these fully meet the provision demand.</p> <p>We are therefore looking for Associations to sign up to service standards in return for payment and extra support.</p>

#### Specific Issues/Comments regarding the Documents and Consultation

<b>Lease</b>	
The length and complexity of the lease documentation may deter potential Trustees from coming forward – especially for smaller sites.	<p>As these are legal documents dealing with the long term (over 7 years) conveyance of land and there are certain clauses (including all the Land Registry clauses) which a lease must contain. We want potential trustees to understand the lease fully and recommend those thinking of signing up to take legal advice.</p> <p>We will, however, look again at the clauses, especially relating to the Management Agreement, to see what can be condensed or removed.</p>

<p>The lease financially over-burdens allotment associations and passes a disproportionate level of risk to the associations</p>	<p>The lease is a long term business lease and the current draft reflects</p> <p>1: A standard way of letting out land (regardless of the use)</p> <p>2 Less liability and more security than any of the current lease version wordings.</p> <p>NCC will cover the cost of Land Registration the cost of financial checks, if needed, to take on a new format lease. Stamp Duty Land Tax should not need to be paid on these docs.</p> <p>The current and proposed leases allow the associations to make decisions about what is done on site and how the site is managed over a long period of time. Whilst this level of autonomy allows for improvement of the sites, the Council must ensure that it is protected from mistreatment of land in its ownership; hence the associations must indemnify the council against this damage.</p>
<p>A new lease will mean that rents will go more quickly.</p>	<p>If you are not due a rent review or at the end of your current lease and wish to keep rents at the same level, the lease could be adjusted so that the rents fall in line with the rent review time scale</p>
<p><b>Management Agreement</b></p>	
<p>The wording relating to the Management Agreement 'Trustees' is confusing.</p>	<p>We agree and will look at new wording such as 'signatory' There may only be certain legally correct terms we can use. <b>This has been amended in the current version but it must be remembered that the Management Agreement Signatories are still acting as a form of Trustee, because they are responsible for some assets of the Association.</b></p>
<p>The Management Agreement means that the Associations will have to do more.</p>	<p>Most Association run sites are already delivering most of what the Management Agreement requires.</p> <p>We are asking Associations to commit to standards so that the City Council will be able to provide assurances to potential tenants of the service that can be expected. This commitment can be seen as more responsibility and we therefore wish to reward this as far as our finances and capacity will allow. We are currently offering an increase in the annual rent rebate and a commitment of support with funding bids.</p>

There is a danger that in prescribing how each site should be run that you could destroy the benefit and uniqueness of the self-run sites	We wish to agree minimum standards of service and will take care not to over prescribe in the agreements. When a new Lease and Management Agreement are signed it will be tailored to the needs of the site.

**Appendix 1 current lease version**

3142/ Allotment Association Lease  
Should normally be used with the Allotment Association SLA



City of  
**NOTTINGHAM**

Dated \_\_\_\_\_ 2013

NOTTINGHAM CITY COUNCIL

-AND-

<sup>1</sup>

**LEASE**

of

The Allotment Gardens at <sup>2</sup>  
in the City of Nottingham.

Initial Rent: <sup>3</sup>£

Term: <sup>4</sup> 25 years

Use: Allotment Gardens

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<sup>1</sup> Insert name of Tenant. If the Association is incorporated, use full Company name; if in individual names, say "The Trustees of the XXXX Allotments Association".

<sup>2</sup> Insert brief Property address (no postcode)

<sup>3</sup> insert initial rent figure

<sup>4</sup> insert initial term of years

Print Date: August 1, 20135  
Letting No:  
Matter ref mx  
Docket No: GB  
Conveyancer: CONINTS  
Authority: 6  
Wp ref: U:\NEWTEMPS\3141.doc

Malcolm R Townroe  
Solicitor for the Council  
Nottingham City Council  
Loxley House, Station Street  
Nottingham NG2 3NG

1 Aug 2013 DRAFT Allot Forum

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<sup>5</sup> insert Property Records letting reference

<sup>6</sup> insert details of authority to complete Lease

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<sup>7</sup> Select whole table and update, using F9, when typing is complete.

## <sup>8</sup> **LAND REGISTRY PRESCRIBED CLAUSES**

### **LR1 Date of lease**

..... 2012

### **LR2 Title number(s)**

#### **LR2.1 Landlord's title number(s):**

9

#### **LR2.2 Other title numbers:**

10

### **LR3 Parties to this lease**

#### **Landlord:**

NOTTINGHAM CITY COUNCIL of Loxley House, Station Street,  
Nottingham NG2 3NG<sup>11</sup> (in its capacity as sole Trustee of the Bridge Estate  
Charity).

#### **Tenant:**

<sup>12</sup> \_\_\_\_\_ of whose registered office is at<sup>13</sup> \_\_\_\_\_ and  
of \_\_\_\_\_ of \_\_\_\_\_ together called "the Tenant" being the present  
Trustees of the Association..

#### <sup>14</sup> **Other parties:**

None

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<sup>8</sup> These clauses LR1 - 14 are prescribed by the Land Registry. They are not included in automatic numbering, as none should be deleted and the numbering should not be changed. Some notes are included on their use; for fuller details, see our S drive Note, [Prescribed Clauses Leases](#) and LR Practice Guide 64:

<http://www1.landregistry.gov.uk/assets/library/documents/lrpg064.pdf> . Their use is compulsory for registrable leases out of registered land. If our title is not registered, they are not compulsory, but they are still permissible; note that, if they are so used, the Registry will NOT take official notice of them, so someone must still make any necessary applications for notices, restrictions etc. to be registered (on AP1, AN1, UN1 etc.) See 3.30).

<sup>9</sup> Insert title number(s) of City's interest.

<sup>10</sup> Insert title numbers of any other land involved in this transaction (for example, land over which easements are granted).

<sup>11</sup> Delete this wording unless the Property is within the Bridge Estate (see your Proof of Title), or alter for other Charities.

<sup>12</sup> Allotment Associations are increasingly becoming incorporated. If this one is, insert full name and registered office, in the same way as for any company. If they are a registered charity, include the registration number. If unincorporated, set out full names and private addresses of each trustee (up to 4), and describe them together as "the Tenant, being the present Trustees of the Association".. There is provision here for two individual tenants – copy and paste, or delete, for more or less.

<sup>13</sup> insert full postal address for service, including postcode.

<sup>14</sup> Insert full names and addresses of any other parties, and specify capacity of each, for example "Management Company", "Guarantor", etc. Seldom used, but check with Valuer that no Guarantor is required. Fields for a guarantor can be copied from Template 3141 if needed.



**LR4. Property**

<sup>15</sup> Hectares of land and allotment gardens<sup>16</sup> shown edged red on the Plan whose postal address is <sup>17</sup>, Nottingham. The definition of the Property is qualified by Schedule 1 - Property Description .

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

<sup>18</sup>**LR5. Prescribed statements etc.**

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

None. The Landlord holds the Property in trust for the Bridge Estate Charity. The Charity is not an exempt charity and this Lease is not one falling within paragraph (a), (b) or (c) of section 36(9) of the Charities Act 1993 so the restrictions on disposition imposed by that Act apply to the Property.

<sup>19</sup>**LR5.2 This lease is made under, or by reference to, provisions of:**

Local Government Act 1972.

Allotments Acts 1908 – 1950

**LR6. Term for which the Property is leased**

<sup>20</sup> From and including:	2011
To and including:	2036

**LR7. Premium**

None. £ plus £ <sup>21</sup>.

<sup>22</sup>**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

<sup>15</sup> This can be completed or altered to suit the Property, but do make sure that there's no conflict between the description here and Schedule 1 – Property Description.

<sup>16</sup> Note that S.22(1) of the Allotments Act 1922 defines “allotment garden” as an “allotment not exceeding ¼ acre in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself and his family”. If the Holding is not comprised of such units, say just “gardens”, or similar, and be careful of the other references to allotment gardens, later.

<sup>17</sup> Insert full postal address if any - if not, give street address. Include postcode, if possible.

<sup>18</sup> The “charitable” statement here is the most common in our commercial leases, but others may be required, too, for example for lettings to a charity, or to enfranchising tenants (*not* under the LRA 1967) – see

<http://www1.landregistry.gov.uk/assets/library/documents/lrpg064.pdf> etc. Layout: leave the headings and subheadings in place, even if the only entries are “none”.

<sup>19</sup> Delete those Acts which do not apply to this lease. Add others where (rarely) appropriate.

<sup>20</sup> There are 3 different formats in which the Lease term may be entered; this is the commonest. See S drive Note, [Prescribed Clauses Leases](#), for the others.

<sup>21</sup> Insert VAT amount in figures.

<sup>22</sup> Delete/complete as necessary. Don't add any other details here.

<sup>23</sup> **LR9. Rights of acquisition etc.**

None.

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

None.

<sup>24</sup> **LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None.

<sup>25</sup> **LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

None. Contained in Schedule 1 - Property Description, clause <sup>26</sup>.

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

None. Contained in Schedule 1 - Property Description, clause <sup>27</sup>.

<sup>28</sup> **LR12. Estate rent charge burdening the Property**

None.

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<sup>23</sup> This is for provisions to renew, surrender, acquire more interests, contract out, etc. (does NOT refer to break clauses). If there are any such, replace "None" with detail; we usually just refer to the location of relevant provisions here, but you are permitted to insert the provisions themselves here, rather than in the body of the Lease.

<sup>24</sup> This is for the Landlord's covenants for use of common areas, adjoining land, etc. You can either insert the relevant provisions themselves here, or simply refer to their location (recommended). Note that only restrictive covenants need to go in; positive covenants (e.g. to maintain) should not.

<sup>25</sup> Don't put the easements themselves here; simply refer to the clause which contains the provisions.

<sup>26</sup> Insert number of clause containing easement.

<sup>27</sup> Insert number of clause containing reservation.

<sup>28</sup> This refers to "real" rentcharges (under S.1(2)(b) LPA 1925), rather than rents or service charges, so is not likely to be used. If needed, simply refer here to the clause number.

<sup>29</sup> **LR13. Application for standard form of restriction**

None.

**LR14. Declaration of trust where there is more than one person comprising the Tenant**

<sup>30</sup> Not applicable. The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.

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<sup>29</sup> A Restriction will prohibit the Registry from making an entry in respect of some specified disposition; they show that the proprietor's powers are limited, or that a prior condition must be met before a disposition can be registered. They are fairly rare in leases, and some will only be for the tenant's benefit (e.g. to protect partners' interests where a firm is the tenant), but there are occasions where the Landlord's interest should be protected (for example, where a clawback provision is to be protected by a prohibition on dealing until the cash is paid, or where the lease should not be assigned until a covenant of some kind has been discharged). If one is needed, it should be set out here, in full (standard forms and notes on use available from [L R Practice Guide 19](#)). Rarely, the standard forms will be unsuitable, but remember that if you use a non-standard form, you will need to lodge an RX1 to register it; the Registry will only deal with standard restrictions automatically.

<sup>30</sup> If the Tenant is a single person (eg an Association or single Trustee) put "Not applicable". Multiple Trustees will normally be tenants in common, but they may want to be joint tenants, so ask.

**THIS LEASE** is made on the date set out in clause LR1 above BETWEEN the Landlord (1) and the Tenant (2).

### ***The Demise***

1. The Landlord grants and the Tenant takes a Lease of the Property for the Term at the rent and on the covenants and conditions set out in this Lease.

### ***The Main Details***

2. Throughout this Lease:
  - 2.1. "the Association" means the <sup>31</sup>, an unincorporated association intending to use and manage the Property, whose members have appointed the Tenant to hold this Lease on their behalf;
  - 2.2. the expressions "the Landlord" and "the Tenant" mean the persons so called in clause LR3 above and includes (where appropriate) their successors in title and assigns, whether singular or plural, masculine or feminine. Where an expression includes two or more people their obligations are joint and several. The Landlord is acting in its capacity as the sole Trustee of the Bridge Estate Charity<sup>32</sup>;
  - 2.3. "the Property" means the property so described in clause LR4 above;
  - 2.4. <sup>33</sup>the Rent" means the sum of £ per year, as varied by Schedule 2– Rent Review and Abatement;
  - 2.5. "the Term" means the term of this Lease, which is set out in clause LR6 above, and includes any period during which the Term is extended by law or agreement, or where the Tenant holds over<sup>35</sup>;

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<sup>31</sup> Insert the Association's formal name. If the Tenant is incorporated, the Association might be the same name without the "Limited". It's possible that some incorporated associations may be set up so that all the allotment holders are members or shareholders of the Tenant Company, in which case there may be no need to refer to the Association separately, but I suspect that this will be rare.

<sup>32</sup> Delete this where title is not charitable, and alter for other charities.

<sup>33</sup> For a single rent, simply insert the figure here; there's really no need to use words. Where specific increases have been agreed, say "the sum of £x per year until [date], £y until [next date] and £z thereafter" (don't finish with a specific date, or there will be a question about any rent payable afterwards!) If rent is to be calculated on formula, or on the basis of future events, consider referring to a separate Rent Provisions Schedule. (Remember too that, for rents which will or might increase during the term, SDLT must be calculated on the basis of "reasonable estimates" of such increases.)

<sup>34</sup> If there is to be a "rent-free" period or allowance, see note on template 3141.

<sup>35</sup> Note that this definition is useful in most cases, but we now know that it makes the Lease not a fixed term, for the purposes of S.38 LTA. So, if contracting out ① either delete from "and includes any . . .", or use the "agreement for surrender" method – see template 3950; ② Consider adding something like: "The parties agree that any tenant's occupation of the Property during any period subsequent to the lawful termination of this Lease will be as bare

and the other definitions, and the construction and interpretation rules, set out in the Schedule 3 – Interpretation, shall apply.

### ***The Tenant's Obligations***

3. The Tenant COVENANTS with the Landlord that the Tenant will:

#### ***Rent***

- 3.1. pay the Rent in advance on the 1st October each year (whether or not the Landlord makes a formal demand), subject to the provisions for rent abatement and alteration set out in Schedule 2 – Rent Review and Abatement;

#### ***Other Payments***

- 3.2. pay, as additional rent, interest on unpaid rent (or tendered rent which the Landlord has refused because of an unremedied breach of covenant) for any period during which it is overdue at a rate of 12%<sup>36</sup> per year;
- 3.3. pay all rates and any other charges arising from the Tenant's use or occupation of the Property and any Value Added Tax arising on payments due to the Landlord;
- 3.4. <sup>37</sup>pay, within 28 days of receiving a demand, all charges for water supplied to the Property;

#### ***Repair and Maintenance***

- 3.5. ensure that each occupied allotment on the Property is cultivated in a good and tenable manner, and kept tidy, according to the custom of the district, and is not used for any purpose other than as an allotment garden in accordance with the provisions of the Small Holdings and Allotments Acts or any amending legislation;
- 3.6. ensure that unoccupied allotments are kept tidy, litter-free, and in a condition such that it is immediately re-lettable
- 3.7. maintain in good repair and condition:
- 3.7.1. all drains and watercourses;
  - 3.7.2. the water supply system within the Property and all associated equipment;
  - 3.7.3. those boundaries of the Property indicated by 'T' marks inwards on the Plan, including any gates or locks on such boundaries;
  - 3.7.4. all accessways within the Property;
  - 3.7.5. all trees within the Property;

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licensee or as tenant at will and that any payments will be in respect of such licence or tenancy at will".

<sup>36</sup> Agreeing rates other than 12% still causes trouble to Estate Rents, so avoid changes if possible. However, they can now accept other rates if necessary – but **fixed** rates only (avoid any sort of variable rate, such as the Law Society's rate). Remember to advise correct rate on completion notification.

<sup>37</sup> delete if this Site is not one to which water is supplied.

- 3.7.6. all buildings within the Property;
- 3.8. keep all hedges on the Property in good condition, and cut them, at least once each year (between October and February) to a height of no more than 1.5 meters, or 2 meters if they are on the boundaries of the Property<sup>38</sup> and marked with a "T" inwards;

### ***Inspection***

- 3.9. allow the Landlord and persons authorised by them to enter the Property at any reasonable time in order to view its state and condition, and will remedy any defects mentioned in any notice served by the Landlord under this clause within one month of receipt of the notice;

### ***Rent Abatement Monies***

- 3.10. use the monies representing any rent abatement in the administration, improvement and maintenance of the Property and will submit to the Landlord such details from the Association's annual accounts as may be necessary to show that the monies are being used only for that purpose;

### ***Insurance***

- 3.11. insure and keep insured the Tenant, the Association and its members against all third party and public liability risks in a reputable insurance company, in the sum of at least £5 million per single claim; and will produce the policy and current premium receipt to the Landlord on demand;
- 3.12. <sup>39</sup>insure any buildings on the Property against any damage caused by fire, flood, tempest, lightning, explosion and non-hostile aircraft (and anything dropped from non-hostile aircraft) to their full re-instatement value in a reputable insurance office in the joint names<sup>40</sup> of the Landlord and the Tenant;

### ***Indemnity***

- 3.13. indemnify the Landlord against any third party and public liability risks made against the Landlord in respect of the Property;

### ***<sup>41</sup> Alienation***

- 3.14. not underlet, assign or part with the possession of all or any part of the Property or of all or part of any allotment on the Property BUT it will not be a breach of this covenant if the Tenant allows any allotment on the Property to be occupied by one or more full members of the Association, using a form of tenancy agreement (or licence) first approved by the Landlord;

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<sup>38</sup> Delete these words if there are no "T" marks on the Plan.

<sup>39</sup> This clause should be deleted where there are no buildings on the Property (or where they are of such low importance that the Council would not care if they were destroyed), or where you are confident that the tenant will have the resources necessary to rebuild them.

<sup>40</sup> Some Tenants object to "joint names", especially where they have a large block policy. However, the Council normally does need the protection afforded by joint names insurance, and "noting" gives virtually no protection.

<sup>41</sup> These covenants are standard, but may be altered freely where circumstances require it.

### **Notices of Dealing**

- 3.15. give immediate notice to the Landlord of any transfer or devolution of the interests arising under this Lease (providing a copy of any document effecting that transfer or devolution) and pay a reasonable registration fee of not less than £35 for the notice;

### **User**

- 3.16. use the Property only for the provision of Allotment Gardens, or for occasional fund-raising events and sales in support of the Association's aim and objectives PROVIDED THAT the Allotments Officer may, at his entire discretion, prohibit any or all of such sales or events wholly or partly on the grounds that they are not within the Association's primary aim.<sup>42</sup>;

### **Prohibitions**

- 3.17. not permit any of the following on the Property
- 3.17.1. the accumulation of rubbish;
  - 3.17.2. the use of individual allotment gardens for any trade or business whatsoever;
  - 3.17.3. auction sales;
  - 3.17.4. anything which may result in or lead to the Property becoming contaminated (within the meaning of the Environmental Protection Act) or polluted;
  - 3.17.5. the sale or supply of petrol or oil;
  - 3.17.6. the removal or sale of any earth, clay, gravel or sand;
- 3.18. not permit any of the following on the Property without the Allotments Officer's written consent,<sup>43</sup> which may not be unreasonably withheld or delayed:
- 3.18.1. bonfires
  - 3.18.2. the cutting or pruning of timber or other trees BUT such consent shall not be needed in respect of edible crop-producing trees cultivated by allotment occupiers, or hedges;
  - 3.18.3. the erection of any buildings, hoardings or other structures, nor permit any advertisements, signs or placards be exhibited on the Property;
  - 3.18.4. the keeping of any kind of livestock, pigeons or animals (and then only as provided by the Allotments Act 1950 or any amending legislation);

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<sup>42</sup> Is this site "allotment gardens"? See note to LR4.

<sup>43</sup> This phrase may be deleted if the Council wants to retain close control. Alternatively, it could be added to some prohibitions, and omitted from others.

- 3.18.5. treasure hunting with metal detectors;
- 3.18.6. storage of unduly inflammable, explosive, toxic, radioactive or other dangerous materials;
- 3.18.7. any alterations, additions or damage to the structures on the Property;
- 3.18.8. betting, gaming or the sale or supply of intoxicating liquor;
- 3.18.9. anything which might be or become a nuisance, annoyance or danger to the Landlord or the owners or occupiers of the adjoining or neighbouring property;

#### ***Licences***

- 3.19. obtain and comply with all licences, consents and permissions necessary for the Tenant's and the Association's use and occupation of the Property;

#### ***Statutory Obligations***

- 3.20. comply (or, where appropriate, will take all necessary steps, including the payment of a fair contribution towards any cost incurred, in helping the Landlord to comply) with all Statutes, regulations or directions affecting the Property or their use made by a competent authority including (as illustrations but not as a limitation):
  - 3.20.1. regulations and orders made under the Town and Country Planning Acts;
  - 3.20.2. the Food Safety Act 1990 and the Food Hygiene Regulations;
  - 3.20.3. the Control of Asbestos at Work Regulations;
  - 3.20.4. the provisions of the Health and Safety at Work Act;
  - 3.20.5. any order under the Clean Air Acts;
  - 3.20.6. requirements made by the Police, the Local Fire Authority and the local Environmental Health Authority;

#### ***Regulations***

- 3.21. observe and comply with any Regulations for allotments made by the local Allotments Authority so far as they apply to lettings to bodies such as the Association;

#### ***Service Level Agreement***

- 3.22. carry out the Tenant's obligations and use all reasonable endeavours to procure the performance of the Association's obligations under the Service Level Agreement between the Landlord and the Tenant current from time to time;



### ***Reversionary Covenants***

- 3.23. <sup>44</sup>observe and perform the covenants referred to in Schedule 1 – Property Description and indemnify the Landlord against any losses, claims or damages arising from their breach;
- 3.23.1. the amount a prudent owner of the Property could be expected to spend, having regard to the expected reduction in outgoings to be achieved by the measures during the remainder of the Term; or
- 3.23.2. the amount the Landlord itself spends on such measures for the benefit of the Property;
- whichever is the greater);

### ***Encroachments***

- 3.24. not acquire nor seek to acquire any easements, rights or privileges over or against the Landlord's adjoining or neighbouring land;
- 3.25. inform the Landlord forthwith of any attempts to establish or acquire easements, rights or privileges against the Property, and will join in (at the Landlord's request and the Tenant's cost) any action which the Landlord takes against persons seeking to acquire such easements, rights or privileges;

### ***Applications to the Land Registry***

- 3.26. <sup>45</sup>apply to the Land Registry for registration of this Lease within two months, and ensure that the application includes:
- 3.26.1. a request for the Landlord's Solicitor to be informed of the completion of registration;
- 3.26.2. appropriate reference to all the matters in this Lease which are capable of registration, and will ensure that they are properly registered;
- and both parties consent to such registration;
- 3.27. apply to the Land Registry for closure of the leasehold title within one month of the end of this Lease (however it is determined) and take all necessary steps to ensure that the title is closed;

### ***Costs of S.146 Notices***

- 3.28. pay all the Landlord's reasonable and proper costs relating to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 requiring the Tenant to remedy any breach of its covenants (even if forfeiture is avoided);

---

<sup>44</sup> Delete heading and clause unless there are matters in our title for which the Tenant should be liable. If the Lease Term exceeds 7 years, the Valuer should provide proof of title, and the Conveyancer should list the incumbrances in the Schedule.

<sup>45</sup> Under the "prescribed clauses" regime, this clause is really only necessary for registrable Leases out of unregistered titles, where the LR will ignore the prescribed clauses. However, it may prove a useful reminder to the Tenant in all registrable Leases. Delete clause and heading for unregistrable ones (i.e. less than 7 years).

### **Cesser**

- 3.29. restore possession of the whole of the Property to the Landlord at the end of the term (however it ends) in good order and repair in accordance with the Tenant's covenants

### **<sup>46</sup>Additional Agreements relating to the Association**

#### **Tenant's Warranty**

4. The Tenant warrants that:
  - 4.1. the Association is a properly-constituted allotment association, with a Constitution and Rules approved and agreed by a majority of its members;
  - 4.2. the Association's Constitution contains at least provisions relating to:
    - 4.2.1. the holding of annual general meetings;
    - 4.2.2. the holding of extraordinary general meetings at the request of at least 12 <sup>47</sup>members;
    - 4.2.3. regular elections of the Association's officers;
    - 4.2.4. limits on officers' powers and their right to re-election;
    - 4.2.5. a dispute-resolution procedure which does not give undue power to officers;
    - 4.2.6. the eventual winding-up of the Association, and the distribution of its residual assets;
  - 4.3. the Association subscribes to the Nottingham City Council's Equality and Diversity Policy, and will not tolerate the less favourable treatment of members (or potential members) of the Association on grounds of their gender, age, race, colour, nationality, ethnic or national origin, disability, marital status, sexual orientation, responsibility for dependents, trade union or political activities, religious or other beliefs, or any other reason which cannot be shown to be justified;
  - 4.4. the persons constituting the Tenant have been validly appointed to be trustees of the Association, and to hold land and property on trust for its members, and that their duties and obligations towards the members (and the members' duties and obligations towards the Trustees) are set out in a Trust Deed or similar document.

#### **Tenant's Obligations**

5. The Tenant covenants with the Landlord that the Tenant will:
  - 5.1. hold the Property on trust for the Association's members, according to the Association's Rules and Constitution;

---

<sup>46</sup> These clauses "insulate" the Tenant against personal liability, and give the Council some reassurance that the Association will be conducted sensibly. If all the allotment holders are directors or shareholders of a company Tenant, the whole paragraph could be deleted.

<sup>47</sup> You can alter this figure to be sensible according to the size of the Association.

- 5.2. notify the Landlord forthwith of any resolution to wind up, dissolve, terminate or materially change the character of the Association or materially amend the Constitution or the trust instrument AND the parties agree that any such resolution, made without the Landlord's prior written consent, would be a fundamental breach of the terms of this Lease, entitling the Landlord forthwith to forfeit the Lease;
- 5.3. notify the Landlord of the death, retirement or bankruptcy of any of the persons constituting the Tenant (or of any other cessation of their status as trustees) within one month, and will nominate a replacement trustee within one further month AND the Landlord agrees that, if the nominated person is a fit and proper person to hold the Lease, the Landlord will consent to an assignment to the remaining trustees with the new trustee;
- 5.4. procure that the Association's books, records, minutes and accounts are properly and regularly kept, will produce them to the Landlord's Officers upon reasonable demand, and will answer fully, promptly and responsively any questions raised by the Landlord as to the finances of the Association or the conduct of the Association or its members;
- 5.5. use reasonable endeavours to procure that the Association's members observe and perform the Lessee's covenants and agreements contained in this Lease (so far as is reasonably practicable) as if the Association and its individual members had been parties to it.

#### ***Landlord's Agreement***

6. The Landlord agrees with the Tenant that the Tenant's covenants under this Lease are given as trustees for the Association, and that the Landlord will seek to enforce those covenants only so far as the assets of the Association will permit, without recourse to the Tenant's personal resources.

### ***The Landlord's Obligations***

#### ***Quiet Enjoyment***

7. The Landlord covenants with the Tenant that it will allow the Tenant quiet enjoyment of the Property during the term granted without interruption by the Landlord or by any person rightfully claiming under or in trust for it.

#### ***Other Agreements***

8. The parties also AGREE that:

<sup>48</sup> **Exclusion of LTA**

- 8.1. the provisions of sections 24 to 28 inclusive of the Landlord and Tenant Act 1954 (security of tenure) are excluded in relation to this Lease. The Landlord has served, and the Tenant has acknowledged, within the time limits set out in the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, an appropriate notice, substantially in the form set out in Schedule 1 to that Order, and a copy of the acknowledged notice is annexed to this Lease;

**Forfeiture on Re-entry**

- 8.2. if the Tenant:
- 8.2.1. <sup>49</sup>(or any of the persons constituting the Tenant) becomes bankrupt, insolvent or makes any arrangement or composition with creditors; or
  - 8.2.2. allows any distress or execution to be levied on the Tenant's goods; or
  - 8.2.3. (being a company) is wound up (except voluntarily for amalgamation or reconstruction); or
  - 8.2.4. fails to remedy any breach of the Tenant's obligations under this Lease after the Landlord has given him reasonable notice to do so; or
  - 8.2.5. does not pay rent within twenty one days of it becoming due;

or if the Association is dissolved, then the Landlord may (without prejudice to its other rights) re-enter the Property and take possession to end this Lease immediately;

**Variation in the Cultivable Area**

- 8.3. if during the Term the parties agree to a variation in the Cultivable Area, a memorandum of each such variation, signed on behalf of the Landlord and by the Tenants, shall be attached to this Lease and its counterpart and the parties shall bear their own costs of doing so;

---

<sup>48</sup> Most Leases on this form will be "business tenancies" under the landlord and Tenant Act 1954, and the tenants will therefore be entitled to security of tenure, i.e. the right to the continuation of the Lease after its "official" ending date, until one party serves the necessary notice to terminate it, and the right to apply to the Court for a renewal Lease. If this might be prejudicial (e.g. if there are specific plans for redevelopment soon) the Lease may need to be "contracted out" of the security provisions, and this clause should be used. Otherwise, delete it. See detailed procedure notes in notice / declaration template <S:\Conveync\CONTEMPS\3041>.

<sup>49</sup> The first three provisions are not appropriate for a premium lease, and should be deleted if the Lease is for a large sum "up front" with a small ground rent; the others should always be left in.

### ***Compensation under the Landlord and Tenant Act***

- 8.4. <sup>50</sup>no compensation under part II of the Landlord and Tenant Act 1954 shall be paid to the Tenant where it may be excluded under Section 38 of that Act;

### ***Notices***

- 8.5. notices and consents under this Lease shall be in writing, delivered by hand or recorded delivery post and addressed to the Tenant at the Property (or to the Association's last known address) or by attaching the notice in a clear manner on any one of the allotments on the Property or to the Allotments Officer at Loxley House, Station Street, Nottingham NG2 3NG (or such other address as the Landlord may specify), as appropriate;

### ***Service***

- 8.6. Court process must be served on the Landlord's Legal Services Manager at Loxley House, Station Street, Nottingham NG2 3NG (or such other address as he may specify);

### ***VAT***

- 8.7. <sup>51</sup>all rent, money or other consideration in respect of supplies for VAT purposes received or deemed to be received by the Tenant under or in connection with this Lease is exclusive of VAT, and the Tenant agrees to pay such VAT to the Landlord on production of a valid VAT invoice;
- 8.8. the Landlord has not opted to charge VAT in respect of the Property<sup>52</sup>;

### ***Set-off***

- 8.9. the Tenant may not withhold rent, or deduct any sums from the rent, on the grounds that the Landlord may owe money to the Tenant or be in breach of its covenants;

### ***Abandoned Property***

- 8.10. any chattels left on the Property at the end of this Lease may be dealt with by the Landlord as though the provisions of Section 41 of the Local Government (Miscellaneous Provisions) Act 1982 applied;

### ***No Implied Rights***

- 8.11. the Tenant is not and will not become entitled to any rights of light, air, way, user, support or shelter (save those expressly granted by this Lease) which might interfere with the Landlord's

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<sup>50</sup> Attempts to limit compensation in business tenancies for terms longer than five years are void, under S.38 LTA, so delete provision and heading for fixed term Leases longer than five years, or where the Lease is contracted out.

<sup>51</sup> This provision should be included in all cases, unless the VAT position is very unusual.

<sup>52</sup> The declaration in this clause is acceptable in all cases where the Council has not opted to tax. If the tenant requires it, and if City Finance's Taxation Adviser has EXPRESSLY confirmed, add the words "and agrees that it will not do so during the Term of this Lease". Be careful – the phrase has the potential to exceed the Council's Partial Exemption limit, and cost us more than £2m! If we have opted, simply delete the clause.

rights to use or develop its neighbouring land, or which might be implied by Section 62 of the Law of Property Act 1925;

<sup>53</sup> **Variation of Easements**

- 8.12. where this Lease grants rights over specific areas (shown by any colouring on the Plan) the Landlord may by not less than three months' notice nominate alternative areas over which the rights may be exercised and the Tenant may thereafter exercise the rights granted over those areas instead of those now specified PROVIDED THAT such alternative areas may not be substantially less convenient to the Tenant than those now granted;

<sup>54</sup> **Option to Break**

- 8.13. the Tenant may by at least twelve months' notice (expiring on 25 March or 29 September) determine this Lease;

**Arbitration**

- 8.14. disputes as to the interpretation of this Lease or any matters arising under it may be referred by either party to and be determined under the provisions of the Arbitration Act 1996 (as amended) by a single Arbitrator appointed (in default of agreement) by the President for the time being of the Royal Institution of Chartered Surveyors;

**Jurisdiction**

- 8.15. English Law shall govern this Lease, and the parties submit to the non-exclusive jurisdiction of the High Court of Justice in England;

**Rights of Third Parties**

- 8.16. unless expressly otherwise stated nothing in this Agreement will create any rights in favour of any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

<sup>55</sup> **Charity Land Certificate**

9. The Landlord as sole Trustee of the Bridge Estate Charity hereby certifies that it has power under the trusts of the Charity to effect this

---

<sup>53</sup> Omit where there are no easements. Otherwise, this right may be very valuable to the Council in the event of later development.

<sup>54</sup> Include this provision only if specifically negotiated, for example if the Association is likely to require further funding, which it may not get. Note that a "break" can easily be made personal, so that assignees may not exercise it – add "(in this sub-clause meaning [*Tenant's name*] only)" after "the Tenant". Consider making the break conditional upon there being no material breaches of covenant outstanding, although tenants will normally resist this as unreasonable. Note also that a Landlord's break will not normally provide possession; it will only accelerate the end of the Lease and start a continuation Tenancy under LTA 1954, unless the Lease is contracted out, or there is a definite "ground" to end the Tenancy.

<sup>55</sup> Delete heading and clause if the Council's title does not belong to the Bridge Estate (or amend, if it's some other charity). If the land is charitable, make sure the required statement in LR5 has also been included.

disposition and that it has complied with the provisions of Section 36 Charities Act 1993.

## **THE SCHEDULES**

### ***Schedule 1 – Property Description***

1. In this Lease, "the Property" means the land shown edged red on the Plan annexed, whose postal address is given in clause LR4, and:

1.1. INCLUDES the following:

1.1.1. all buildings and other structures which are now (or may during the Term be) on that land subject as mentioned below<sup>56</sup>;

1.1.2. the right (which is hereby granted) for the Tenant and the members of the Association to:

1.1.2.1. enter adjoining Landlord-owned Property (on giving reasonable notice and (if necessary) obtaining the occupier's consent) to inspect, maintain, clean or decorate any part of the Property which cannot reasonably be reached without such entry (but the persons exercising those rights may not cause unnecessary disturbance and must make good forthwith any damage caused);

1.1.2.2. <sup>57</sup>have access over the common areas shown coloured brown on the Plan (but not the right to park or store anything on those areas or cause any obstruction to other users);

1.1.2.3. <sup>58</sup>use the Service Equipment serving the Property in common with neighbouring properties, paying therefore a fair proportion of the costs of inspecting, maintaining, repairing and replacing it;

1.2. BUT EXCLUDES the following:

1.2.1. <sup>59</sup>any Service Equipment used by or in common with other property;

1.2.2. the following rights (which are hereby reserved to the Landlord and its successors and licensees):

---

<sup>56</sup> Delete these words if there are no "exclusions" mentioned below.

<sup>57</sup> Delete unless Tenant needs access between Property (i.e. red edging) and highway. Access rights are normally shown coloured brown on the Plan.

<sup>58</sup> Delete if all Service Equipment used jointly, or if there is none.

<sup>59</sup> You can delete this if you are SURE that there is no non-exclusive Service Equipment crossing the site.

- 1.2.2.1. the right to enter the Property (on giving reasonable notice) to:
- 1.2.2.1.1. inspect its condition;
- 1.2.2.1.2. carry out any works required to remedy breaches of the Tenant's obligations (if the Landlord has given proper notice of the breaches and the Tenant has not remedied them within a reasonable time). No such entry shall constitute a forfeiture or evidence of intention to accept a surrender;<sup>60</sup>
- 1.2.2.1.3. inspect, maintain, clean, decorate, renew or rebuild Service Equipment and neighbouring properties which cannot reasonably be reached without such entry (but the Landlord may not cause unnecessary disturbance and must make good forthwith any damage caused);
- 1.2.3. <sup>61</sup>the right to use the area shown coloured blue on the Plan for access to adjoining property;
- 1.2.4. <sup>62</sup>the right to connect into and use any <sup>63</sup> now or within the Term laid in, over or under the Property;
- 1.3. <sup>64</sup>AND IS SUBJECT TO the covenants, exceptions, reservations, agreements and declarations contained in a Conveyance dated

<sup>60</sup> Some tenants may seek protection in respect of the Landlord's power to do works – provisions about checking the cost and quality of the works, provision of warranties, and even compensation for loss of business may be appropriate, but should not be offered in the first draft.

<sup>61</sup> Does the Council need to reserve access? Is it even remotely possible that we might need access over the demised area during this Term or any extension of it?

<sup>62</sup> Do we need rights over services which the Tenant may lay in future? It won't happen often, but may if the Tenant intends to redevelop the Property, and we have land adjoining which may benefit. The reservation may fail unless it vests in interest within a valid perpetuity period, so, if the Term exceeds 80 years, define the period.

<sup>63</sup> Insert description of service media.



made between (1) and the Landlord (2) and set out below: a copy of which has been supplied to the Tenant.

<sup>65</sup> **Schedule 2 – Rent Review and Abatement**

1. The Rent shall, on the seventh anniversary of the commencement of this Lease and on every subsequent fifth anniversary, be changed to an amount equal to the Cultivable Area multiplied by the rent per unit area then fixed by Nottingham City Council (as Allotment Authority) as the rent for allotments directly let by the Council.
2. The Landlord shall, at the end of each complete year, repay the following sums to the Tenant (as a deduction from the Rent payable during the following year, except in the last year of the Term):
  - 2.1. An amount equal to the Rent, divided by the Cultivable Area, multiplied by the area of those allotments which are not occupied by tenants as at the 1st June during that year;
  - 2.2. One half of the Rent (after deduction of the amount paid under the preceding subclause), if the Landlord (acting reasonably) is of the opinion that the Tenant has properly observed and performed all its obligations under this Lease.

<sup>66</sup> **Schedule 3 – Interpretation**

3. In this Lease:
  - 3.1. "the Property" means the land shown edged red on the Plan;
  - 3.2. "the Plan" means the plans annexed to this Lease and numbered ;
  - 3.3. "Service Equipment" includes: any apparatus, fittings or equipment inside or outside the Property now or during the Term connected with the supply or metering of sanitary, heating, ventilation, air-conditioning, plumbing, gas, electrical, drainage, fire alarm and prevention, telephone, data or other services to the Property (excluding any belonging to a statutory service provider);
  - 3.4. "the Allotments Officer" means the Landlord's Head of Parks and Open Spaces (or any other officer of the Landlord who takes over his responsibilities during the Term) or any of his deputies;
  - 3.5. "the Tenant" includes the person(s) so called in this Lease and their successors, whether singular or plural, masculine or feminine, as appropriate. Where the expression includes two or more people their obligations are joint and several;

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<sup>64</sup> If the Council's interest is subject to obligations which the occupier should carry out (such as fencing or other maintenance, or restrictions which might not be covered by the Tenant's covenants), recite them here. (Amend the wording as necessary.) If the text is fairly short, insert it; if it's lengthy, refer to it (and supply a copy).

<sup>65</sup> If there's no rent review, delete the whole Schedule and renumber the remaining ones.

<sup>66</sup> Delete any definitions from the Schedule if the term doesn't actually appear in the document.

- 3.6. “the Cultivable Area” means the area of the Property which is actually occupied by allotment plots (i.e. excluding areas of accessway, communal areas and other areas not intended to be sublet to tenants) and has been determined as            square meters at the commencement of this Lease;
- 3.7. headings in bold type are for assistance only and do not form part of this Lease for construction purposes;
- 3.8. reference to Statutes, Acts, orders, directions and regulations includes (where appropriate) reference to their amendments and replacements.

<sup>67</sup>This Deed is given under the Common Seal of NOTTINGHAM CITY COUNCIL:

}

Authorised Signatory

Executed as a Deed by [.....] in the presence of:

}

Witness Name (Print) . . . . .  
 Witness Signature . . . . .  
 Witness Address . . . . .  
 . . . . .  
 . . . . .  
 Witness Occupation . . . . .

---

<sup>67</sup> Attestation blocks: the Council’s one is standard, and seldom needs amendment, but the remaining ones may. Below are versions for an individual or company (which can be copied and pasted where there’s more than one tenant) and two, more traditional, versions for companies only (with and without seal). For more information on attestations, see the [LR Practice Guide 8](#).

The Common Seal of the Association was hereunto affixed in the presence of: }

Director

Director / Secretary

Executed as a deed by affixing the Common Seal of the Tenant in the presence of: }

Director

Director / Secretary

Executed as a deed by the Tenant acting by a director and its secretary / two directors }

Director

Director / Secretary

1 Aug 2013 DRAFT Allot Forum

Nottingham City Council

And

the Signatories of the<sup>68</sup>

MANAGEMENT AGREEMENT

For the Operation of  
<sup>69</sup>

---

<sup>68</sup> Insert name of the Allotment or Gardenholders' Association  
<sup>69</sup> Insert name of Allotment site.

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1 Aug 2013 Draft for Allot Forum

**THIS MANAGEMENT AGREEMENT** is made the .....day  
of.....2013 between the Council (1) and the Signatories (2)

### ***The Intention***

4. The parties intend that the Signatories shall operate, develop and conserve the Council's Allotment Site at <sup>70</sup> , in accordance with the arrangements set out in this Agreement and in the Lease.

### ***The Main Details***

5. Throughout this Agreement:
  - 5.1. "the Allotment Site" means the <sup>71</sup> ;
  - 5.2. "the Association" means <sup>72</sup> ;
  - 5.3. "the Council" means the Nottingham City Council of The Guildhall, Nottingham NG1 4BT;
  - 5.4. "the Lease" means the Lease of the Allotment Site dated ;
  - 5.5. "the Signatories" are <sup>73</sup> , acting in their capacity as officers of the Association and Trustees for this agreement; and the expression includes the persons so called in this document and their successors, whether singular or plural, masculine or feminine, as appropriate. Where the expression includes two or more people their obligation are joint and several;
  - 5.6. headings in bold type are for assistance only and do not form part of the document for construction purposes.

### ***The Signatories' Obligations***

6. The Signatories COVENANT with the Council that they will use reasonable endeavours, at all times while the Lease is in force, to:

#### ***Maintenance of the Allotment Site***

- 6.1. maintain the Allotment Site and achieve the annual output and service targets set out and agreed in Schedule One of this agreement;

---

<sup>70</sup> Insert short title of Allotment site.

<sup>71</sup> Insert description of the allotment site: include name of site, overall area, all bordering streets, Town and postcode (if any). Should match the description in the Lease.

<sup>72</sup> Insert formal name of Association.

<sup>73</sup> Insert names and full private addresses of each signatory.

### ***Administration, Management and Letting of Allotment Plots***

- 6.2. introduce prospective allotment gardeners as tenants of individual plots, and manage the legal and administrative aspects of their tenancies, including (but not limited to) issuing tenancy agreements and notices to cultivate, remedying breaches or terminating tenancies;
- 6.3. issue timely invoices to and collect rents from the tenants;
- 6.4. ensure that the Association's books, records, minutes and accounts are properly and regularly kept and audited annually, will produce them to the Council's Officers upon reasonable demand, and will answer fully, promptly and responsively any questions raised by the Council as to the finances of the Association or the conduct of the Association or its members;
- 6.5. ensure that all income generated from the Allotment Site is expended on or invested for the maintenance, administration or improvement of the Allotment Site and / or individual allotment plots (and for the avoidance of doubt, this purpose shall include making rebates to individual tenants where this is permitted by the Association's rules and constitution and has been approved by the Council);
- 6.6. implement and operate a fair and transparent waiting list procedure and agree it with the Council;
- 6.7. implement and operate an effective procedure for resolving individual tenant's complaints, and agree it with the Council;

### ***Data Protection***

- 6.8. observe and perform the requirements of Data Protection legislation, and make clear on every tenancy agreement that, for the purpose of allotment administration only, names and addresses of tenants will be passed to the Council's Allotments Service from time to time;

### ***Conservation and Environmental Management***

- 6.9. <sup>74</sup>produce, maintain and implement an Environmental and Sustainability Policy;
- 6.10. maintain regular contact with the Nature Conservation Advisor at Nottingham City Council and produce such written reports in relation to conservation practices at the Allotment Site as the Council shall reasonably require;
- 6.11. consider the effects on Biodiversity<sup>75</sup>, and the status of the site as a Site of Importance for Nature Conservation (SINC), on all management policies, and ensure adequate mitigation procedures are in place for (but not limited to):
  - 6.11.1. clearance of vegetation;
  - 6.11.2. works to buildings;
  - 6.11.3. works to trees and hedges;
  - 6.11.4. <sup>76</sup>drainage;

### ***Crime and Security***

- 6.12. notify the Police and the Council (through channels nominated by the Council from time to time) of any problems with antisocial or criminal behaviour occurring on or near the Allotment Site;
- 6.13. co-operate with the Police and the Council over matters of crime and security and where reasonably practicable implement their suggested procedures or design changes in order to improve security;

### ***Health, Safety and Hygiene***

- 6.14. maintain the Allotment Site and all buildings, plant, vehicles, machinery, equipment, furniture and fittings associated with it (excluding the property and possessions of individual tenants and groups) in good order and repair, using trained and competent personnel and good materials, so as to ensure that they are safe and comply with all relevant legislation and good industry practice;

---

<sup>74</sup> This clause may be deleted if not appropriate for the site.

<sup>75</sup> Delete these words if the site isn't covered by a SINC.

<sup>76</sup> Delete "drainage" if not appropriate.



- 6.15. ensure that the Allotment Site and all working practices there conform to the Health and Safety at Work Act 1974, the Food Act 1984, the Food Safety Act 1990, the Food Hygiene (General) Regulations 1970, relevant licensing laws, and any other relevant regulations or legislation that may from time to time be in force.

### ***Equality and Diversity***

- 6.16. operate the Allotment Site without discrimination against current or prospective allotment tenants on the grounds of age, gender, race, ethnicity, religious belief, sexuality, or social/economic status, and will, in particular<sup>77</sup>:
- 6.16.1. respect the rights, dignity and worth of every person;
  - 6.16.2. comply with all equality and anti-discrimination regulations or legislation that may from time to time be in force;
  - 6.16.3. actively oppose discriminatory behaviour and promote equality of opportunity;
  - 6.16.4. consider the prevention of discriminatory behaviour in the way all policies, rules or guidelines are made and implemented;
  - 6.16.5. not permit threats, intimidation, harassment and abuse on the Allotment Site, and report to the Council any allegation of hate crime immediately;
  - 6.16.6. obtain agreement in writing from any relevant partner organisation, either providing services or operating on the Allotment Site, that they will support and enforce the Signatories' Equality and Diversity obligations, and will provide evidence of such agreement to the Council upon request;

### ***Fees and Charges***

- 6.17. maintain a structure of fees and charges which:

---

<sup>77</sup> The following requirements are taken from the Council's Equality and Diversity policy; however, this is frequently updated, and you should check the latest position before each review of this Agreement.

- 6.17.1. is comparable with fees and charges for similar Allotment Sites operated by the Council;
- 6.17.2. does not disadvantage established allotment users; and will notify the Council of any decision about changes at least one month before bringing them into force;

### ***Indemnity and Insurance***

- 6.18. indemnify the Council against all claims or damages arising from any breach of the Council's statutory obligation to provide allotments at reasonable charges;
- 6.19. maintain third party and public liability insurance with a minimum level of indemnity of £5 million per single claim, and will produce the policy and current premium receipt to the Council upon request;

### ***Liaison with the Council and Review of this Agreement***

- 6.20. consult with the Council's nominated representatives as to the operation of the Allotment Site:
  - 6.20.1. informally throughout the year
  - 6.20.2. formally at least once in each year, at which this Agreement may be reviewed and updated;

### ***Rights of Way***

- 6.21. ensure that any rights of way across the Allotment Site are maintained and will not permit them to be blocked, obstructed or their use discouraged without following appropriate planning procedures;

### ***Monitoring and Information***

- 6.22. provide the following information on an annual basis, or at any time upon written request if reasonably required by the Council:
  - 6.22.1. a copy of the latest audited accounts;
  - 6.22.2. a report on the development and management of the Allotment Site that has taken place;
  - 6.22.3. a report on the proposed investment programme for the following year;
  - 6.22.4. details of key staff and personnel employed by the Signatories in the current and preceding years;

- 6.22.5. copies of Press and Marketing materials produced in respect of the Allotment Site;
- 6.22.6. the numbers of individual allotment plots which are currently let, unlet or unfit to be let;
- 6.22.7. a breakdown by age, gender and ethnicity of allotment tenants;
- 6.22.8. visitor figures in relation to educational or open/event days held;
- 6.22.9. the numbers of complaints and appeals received from allotment tenants and details of decisions and resolutions made by the Association.

### ***The Council's Obligations***

7. The Council will:

#### ***Make Payments***

- 7.1. make payments to the Signatories for carrying out the management, maintenance and administration of the Allotment Site in accordance with the payment schedule set out in Schedule Two of this agreement, and in accordance with the following:
  - 7.1.1. the amount of such payments shall be agreed in March for the following financial year (1st April to 31st March);
  - 7.1.2. payments for periods of less than a year shall be apportioned on a daily basis;
  - 7.1.3. the due date for payment of any invoice from the Signatories shall be the date upon which the invoice is received by the Council and the final date for payment of any such invoice shall be 30 days following the date upon which the invoice is so received, provided the amount or amounts within such invoices are correct and that it is submitted in accordance with this Agreement;

- 7.1.4. the Council shall pay interest to the Signatories for late payments for any period during which they are overdue at the rate prevailing at the date of actual payment as determined in accordance with the Late Payment of Commercial Debts (Interest) Act 1998<sup>78</sup>;

### ***Training and Support***

- 7.2. nominate an officer to liaise with and support the Signatories in providing an effective allotment service;

### ***Match Funding***

- 7.3. seek (but will not be obliged) to provide at least one fifth of the total cost of any project by the Signatories to improve the Allotment Site where the total capital cost of the project exceeds three times the annual turnover of the Allotment Site Provided that the Signatories raise the remaining costs and give sufficient prior notification to allow consultation and agreement of the terms between the Signatories and the Council.

### ***Other Agreements***

8. The parties also agree as follows:

#### ***Relationship of the Parties with the Association***

- 8.1. they acknowledge that the Signatories are acting on behalf of the Association, rather than in their personal capacity, and:
- 8.2. the Signatories will:
- 8.2.1. notify the Council forthwith of any resolution to wind up, dissolve, terminate or materially change the character of the Association or materially amend its Constitution;
- 8.2.2. notify the Council of the death, retirement or bankruptcy of any of the persons constituting the Signatories (or of any other cessation of their status as Signatories) within one month, and will nominate a replacement trustee within one further month;

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<sup>78</sup> Normally the Bank of England Base Rate on the day the payment becomes overdue plus 8% .

- 8.2.3. use reasonable endeavours to procure that the Association's members observe and perform the Signatories' agreements contained in this document (so far as is reasonably practicable) as if the Association and its individual members had been parties to it;
- 8.2.4. the Council acknowledges that the Signatories' agreements are given as trustees for the Association, and that the Landlord will seek to enforce those agreements only so far as the assets of the Association will permit, without recourse to the Signatories' personal resources;

### ***Assignments***

- 8.3. the Signatories may not assign, novate, or otherwise transfer their rights and obligations under this agreement. No such consent will be required where an assignment arises by operation of the law;

### ***Bribery and Corruption***

- 8.4. the Council shall be entitled to cancel this agreement immediately and to recover from the Signatories the amounts of any loss resulting from such a cancellation if the Signatories (or any person employed by the Signatories or acting on the Signatories' behalf) shall have:

- 8.4.1. offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing, any action in relation to the obtaining or execution of this Agreement, or any other agreement with the Council<sup>79</sup>; or

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<sup>79</sup> Note that any sort of inducement (even a cup of tea!) offered to a Council Officer can count as bribery.

- 8.4.2. committed any offence under the Prevention of Corruption Acts 1889 and 1916, or any amendment of them; or
- 8.4.3. given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972;

### ***Resolution of Disputes***

- 8.5. to resolve any dispute or difference between them in connection with or arising out of this Agreement or the performance of any obligation contained herein, whether during the progress of this agreement or after its completion and whether before or after its cancellation, termination, expiration abandonment or breach, in the following manner:
  - 8.5.1. to arrange a meeting between representatives of both parties;
  - 8.5.2. if the dispute or difference remains unresolved, to arrange a further meeting between senior representatives of both parties;
  - 8.5.3. if the dispute or difference still cannot be satisfactorily resolved, it shall be referred to the Chief Executive of the Council and the Managing Director/Chief Executive of the Signatories for resolution;

### ***Variations***

- 8.6. that any variations or additions in the terms of this Management Agreement must be evidenced in writing and signed by the authorised signatories of the Council and the Signatories;

### ***Force Majeure***

- 8.7. that both parties shall be relieved from their respective obligations in the event of a national emergency, war, prohibitive government regulation, or of any other cause beyond the reasonable control of the parties (including, without limitation, any protracted, extensive or unreasonable delay caused by any act or omission of the other party).

<sup>80</sup> **Schedule One –Annual Outputs and Service Targets 2012 – 13**

<b>Service Target</b>	<b>Minimum Annual Output</b>	<b>Measure</b>
Renovate Overgrown and Damaged Plots		
Renovate Allotment Hedgerows		
Conserve Historic Structures		
Delivery of a High Quality Management & Administration Service	<ul style="list-style-type: none"> <li>i) Collated monitoring information</li> <li>ii) Annual review of progress on Management &amp; maintenance plan</li> </ul>	<ul style="list-style-type: none"> <li>i) Quarterly reports detailing monitoring information</li> <li>ii) Yearly report on progress</li> </ul>
Delivery of High Quality of Site Maintenance	<ul style="list-style-type: none"> <li>i) Regular site inspections of key facilities combined with yearly inspection of whole site</li> <li>ii) Necessary annual maintenance work (including hedges)</li> <li>iii) Undertake emergency repairs as required</li> <li>iv) Monitoring and planning for cyclical maintenance (eg roads, external boundaries)</li> </ul>	Annual inspection
Increase take up of vacant plots	Monitoring of plot vacancies, with programme of promotion and publicity to advertise available plots	Yearly reports on vacant plots,
Increase involvement of gardeners in Management of allotments		
Improve Marketing of Allotments		
Annual Investment Programme		

<sup>80</sup> These must be carefully updated on initial draft and on each review.

## ***Schedule Two – Annual Management, Maintenance and Administrative Payments***

The Council will pay, at the end of each year:

1. A sum equivalent to the amounts actually allowed by the Association during the preceding year, to allotment holders who are in receipt of benefits, as discounts for their rents (up to a maximum of the 25% discount described in the Council's discount policy);.
2. A sum equivalent to 25% of the Association's income from rents and payments during the preceding year for the use of the allotments, provided that the Council (acting reasonably) is satisfied that Association has properly carried out the management, maintenance and administration of the allotments and its other obligations under this Agreement;.
3. Further sums (to be agreed between the parties) in respect of any additional projects and developments undertaken by the Association for the benefit of the Allotment Site.

1 Aug 2013 Draft for Allotment Forum