

# SKYE GROVE ALLOTMENTS AGREEMENT

## DATE OF AGREEMENT

## PARTIES

- (1) Kevin Austin of Hawthorn Cottage 11 Thorn Terrace Liskeard PL14 4AT (the "LANDOWNER")
- (2) (the "GROWER")

## IT IS AGREED THAT:

### 1 DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings.

"**Agreement**" means this agreement together with all Schedules and all other documents referred to in this Agreement and in the Schedules.

"**Gardening Space**" means the gardening space which the Landowner has agreed to share with the Grower and which is known as **Skye Grove Allotments** as shown for identification purposes edged red on the plan attached to this Agreement as Schedule 2 (the "**Plan**") forming part of the Landowner's Property, together with or less such parts as the Landowner (acting reasonably) may propose from time to time.

"**Gardening Hours**" means **6am to 9pm**.

"**Hazardous Substances**" means any natural or artificial substance (in solid or liquid form or in the form of a gas or vapour) whether alone or in combination with any other substance capable of causing harm to man or any other living organism supported by the environment, or damaging the environment or public health or welfare including but not limited to any controlled, special, hazardous, toxic or dangerous waste.

"**Landowner's Property**" means **Skye Grove**.

"**Specific Requirements**" means those additional requirements of the Landowner which are attached to this Agreement and headed "Specific Requirements" and which are set out at Schedule 3 to this Agreement and signed by both parties.

### 2 INTERPRETATION

- 2.1 Words importing one gender shall be construed as importing any other gender and words importing the singular shall be construed as importing the plural and vice versa
- 2.2 A reference to a person includes companies and all other legal entities.

- 2.3 Where the Landowner or the Grower comprises more than one person, the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons.
- 2.4 The Clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation.
- 2.5 Reference to a Clause or Schedule is to a clause or schedule of this Agreement.

### **3 AGREEMENT**

- 3.1 The Landowner is the owner of the Gardening Space and has agreed to allow the Grower to share the Gardening Space with the Landowner for the purpose of growing fruit and vegetables in or on the Gardening Space from the date of execution of this Agreement.
- 3.2 The Grower shall pay the rent on the 1<sup>st</sup> of January of each year.
- 3.3 The rent for 2016 onwards until further notice shall be £40 per half plot and £80 per full plot.
- 3.4 The Grower shall have the following rights subject to the Grower complying with the conditions of use set out in this Agreement:
- (a) the right to use the Gardening Space for the production of vegetables and fruit for consumption by the Grower and his family only (and as set out in clause 3.1).
  - (b) a right of access during the Gardening Hours on foot for the Grower [and those of the Grower's assistants as are approved by the Landowner but there shall be no more than 6 people present at the Gardening Space at any time]:
    - (i) over the Gardening Space;
    - (ii) and
      - (A) between the Gardening Space and the nearest public highway; and
      - (B) between the Gardening Space and the Water Containers,

over any footpath or other parts of the Landowner's Property as designed for that purpose shown coloured brown on the Plan for all reasonable and proper purposes in connection with the Grower's use of the Gardening Space only.
  - (c) a right to use the Water Containers for all reasonable and proper purposes in connection with the Grower's use of the Gardening Space.
- 3.5 The Landowner shall have the following rights in relation to the Gardening Space:
- (a) the right to exclude the Grower from the Landowner's Property (including the Gardening Space) at reasonable times and on reasonable prior notice for short

periods of time (being no more than 3 consecutive days at any one time) subject to complying with the provisions of Clause 5.5 below; and

- (b) the right to have access to the Gardening Space at all times together with any persons authorised by the Landowner from time to time for all proper purposes connected with the Landowner's use and enjoyment of the Landowner's Property, provided that the Landowner shall take reasonable steps not to damage any plants or crops which the Grower has planted in the Gardening Space.

#### **4 GROWER'S OBLIGATIONS**

- (a) The Grower shall comply with the terms of this Agreement including Schedule 1 and the Specific Requirements.
- (b) Where requested by the Landowner, the Grower shall repair any damage to the Landowner's Property that is caused by the Grower or any person authorised by the Grower or under their control. In the event that the Grower fails to repair any such damage the Grower will, on receipt of a written demand by the Landowner, pay all reasonable expenses incurred by the Landowner in making good any such damage.
- (c) The Grower shall use the Gardening Space during the Gardening Hours as a space to grow fruit and vegetables for the Grower's (and their family's) consumption and it may not be used for any other purpose or any trade or business and the Grower shall not sell or trade any of the produce grown on or in the Gardening Space.
- (d) The Grower must at all times keep the Gardening Space properly cultivated, in good condition and fertility, clean, tidy and free from weeds and other noxious plants and shall ensure that the Gardening Space is in that state at the end of this Agreement.
- (e) The Grower shall not cause any nuisance or annoyance to any other Grower, nor obstruct the central path. The Landowner shall act as arbiter in any dispute and the decision of the Landowner is final.
- (f) The Grower must keep every hedge forming part of the Gardening Space properly trimmed and cut and all ditches maintained and clean and any fences or gates within the Growing Space in good repair and condition.
- (g) The Grower may not sub-let, assign, transfer or part with possession of the Gardening Space or any part of it.
- (h) The Grower shall not bring any Hazardous Substances on to the Gardening Space without the Landowner's written approval (which may be via email).
- (i) The Grower will comply with any applicable laws including any relating to bio diversity and/or protected species.
- (j) As Skye Grove is an Organic small holding the Grower will not use any insecticides or herbicides without the prior agreement of the Landowner.

- (k) The Grower shall not dispose of any noxious plant or animal species on the Gardening Space or on the Landowner's property, including all compost heaps.

#### **4.2 Alterations**

The Grower may not erect any building or other structure of any kind (a shed for example) on the Gardening Space without the consent of the Landowner. On consent sheds (no bigger than 6ft x 4ft) are to be erected on the central tree line and must be removed prior to the end of this Agreement or earlier at the request of the Landowner.

#### **4.3 Landowner's Title**

Where the title to the Landowner's Property in which the Gardening Space forms part requires compliance with certain conditions and restrictions then the Grower shall observe and perform those conditions and/or restrictions as appropriate provided that such conditions and/or restrictions are previously notified in writing (which may be by email) to the Grower by the Landowner.

### **5 LANDOWNER'S RIGHTS, OBLIGATIONS AND DISCLAIMERS**

#### **5.1 Sharing**

- (a) The Grower acknowledges that it will not have exclusive rights over the Gardening Space. The Landowner shall remain free to use and enjoy the Gardening Space as part of its own garden and property but agrees to take reasonable steps not to damage any plants of the Grower in or on the Gardening Space in so doing.
- (b) The Grower accepts and acknowledges that the Gardening Space is shared with the Landowner at all times and the Grower is not permitted any exclusive rights of occupation or possession and that in the event of any conflict between the desires of the Landowner and the Grower in connection with the use and enjoyment of the Gardening Space, the desires of the Landowner shall take precedence.
- (c) If at any time the Landowner needs to undertake any work or action on the Landowner's Property (including without limitation the Gardening Space) which is necessary or appropriate for it in its role as landowner the Landowner is free to do so but shall where reasonably possible, give the Grower notice in advance of any such action and shall take reasonable steps to minimise the damage caused to any plants of the Grower in the Gardening Space.

#### **5.2 Light**

The Landowner shall be entitled at any time to alter the layout of the Landowner's Property and to erect, rebuild and alter as the Landowner may think fit any buildings within it even where the same may obstruct, affect or interfere with the Grower's use of the Gardening Space or the passage of light and air to the Gardening Space.

### **5.3 Damage or injury**

The Landowner shall not be responsible or liable for any injury or damage caused to the Grower, the Grower's assistants or their property by the state and condition of the Gardening Space or of any tools or materials left on the Gardening Space whether arising by accident, fire, theft or damage or by reason of any negligence or other act provided that this Agreement shall not affect any remedies that any person would have at common law.

### **5.4 Outgoings**

The Landowner will pay all rates and outgoings relating to the Gardening Space and Landowner's Property.

### **5.5 Exclusion of the Grower**

At any time when the Landowner has given notice to the Grower that it does not permit the Grower to access the Gardening Space as set out in Clause 3.3(a) above, the Landowner shall take reasonable steps to ensure that there is no damage to anything which is being grown by the Grower in the Gardening Space and shall take steps to make sure that any plants planted by the Grower in the Gardening Space are properly watered in accordance with the Grower's reasonable instructions during any time where the Grower is excluded from the Landowner's Property.

## **6 TERMINATION PROVISIONS**

### **6.1 Automatic**

This Agreement shall automatically renew each year if prior notice has not been served.

### **6.2 By default**

The Landowner may terminate this Agreement by one month's prior notice in writing to the Grower if any of the following circumstances apply:

- (a) if any sums properly payable by the Grower under the provisions of this Agreement remain unpaid for 40 working days (whether or not they have been demanded) from the 1<sup>st</sup> of January of each year;
- (b) if there has been a breach by the Grower of any of the conditions and obligations of this Agreement; or
- (c) if the Grower leaves the Gardening Space untended for more than 1 month at any time in any year between March and October, resulting in weed burdens that could adversely affect adjacent plots.

The tenancy of the Gardening Space shall terminate on the yearly Rent Day after the death of the Grower.

### **6.3 By notice**

The Landowner or the Grower may terminate this Agreement at any time by giving three months' previous notice in writing to the other party.

## **6.4 Saving**

Termination of this Agreement shall be without prejudice to the rights and remedies of either party against the other in respect of any breach of the provisions of this Agreement during its term.

## **7 GENERAL PROVISIONS**

### **7.1 Personal Agreement**

This Agreement is personal to the Grower and is not assignable and the rights granted by this Agreement may only be exercised by the Grower or any other person approved in writing by the Landowner.

### **7.2 Environmental**

The parties agree and acknowledge that the Grower shall have no responsibility or liability whatsoever under this Agreement as a result of the presence or accumulation of any Hazardous Substances in the environment at in on or under or migrating from the Gardening Space at any time save (i) where the same arises as a result of the act or omission of the Grower or those for whom they are responsible and (ii) in respect of any Hazardous Substances that are brought onto the Landowner's Property by the Grower. The Landowner shall inform the Grower, at the time of entering this Agreement, of any Hazardous Substances on or in the Gardening Space that they are aware of or at any time during the term where they become aware of any such Hazardous Substances.

### **7.3 Notices**

Any notice served under or in connection with this Agreement shall be properly served if it is sent by registered post to the address of each party shown in this Agreement or such other address as a party notifies to the other in writing.

### **7.4 No warranties**

Notwithstanding any rule of law to the contrary the Landowner (i) shall be under no obligation to put the Gardening Space into a state of repair and condition at the commencement of this Agreement, and/or (ii) offers no warranty that the Gardening Space is fit for purpose.

### **7.5 Third Party Claims**

The Grower shall indemnify the Landowner in respect of all liability incurred by the Landowner to any tenant, occupier, adjoining owner, or any other person whatsoever or any competent authority by reason directly or indirectly of either the repair, state of repair or condition of the Gardening Space or any use of the Gardening Space by the Grower or any other person whatsoever.

### **7.6 Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Agreement is not intended to have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**SIGNED** by the **LANDOWNER** on this day

**SIGNED** by the **GROWER** on this day

## **SCHEDULE 1**

### **Conditions of Use**

#### **1 ANIMALS**

No animal may be kept or let loose on the Gardening Space without the Landowner's consent.

#### **2 TREES**

The Grower shall not cut or prune any existing trees on or hanging over the Gardening Space without the consent of the Landowner.

#### **3 NO NUISANCE OR ANNOYANCE**

The Gardening Space shall be used in a safe and orderly manner and so as not to cause any nuisance or annoyance to the Landowner or any adjoining owners/occupiers and not to obstruct or damage any other part of the Landowner's Property.

#### **4 NO EXCESSIVE NOISE**

Excessive noise shall not be permitted.

#### **5 NO DUMPING**

No petrol, oil, rubbish, lubricants or other inflammable liquids or refuse shall be deposited in the Gardening Space by the Grower.

#### **6 RULES AND REGULATIONS**

The Grower shall abide by all reasonable rules and requests made from time to time by the Landowner for the orderly management of the Gardening Space.

#### **7 STATUTORY REQUIREMENTS**

The Grower shall not do any act, matter or thing which would or might constitute a breach of a statutory requirement affecting the Gardening Space or which would or might violate in whole or in part any insurance effected in respect of the Landowner's Property (including the Gardening Space) from time to time where such insurance requirements were notified to the Grower by the Supplier or should have been reasonably known by the Grower.

#### **8 UNAUTHORISED PERSONS**

Only the Grower or a person authorised and previously approved to the Landowner and/or accompanied by the Grower is allowed on the Gardening Space.

## **9 NOTICEBOARDS AND ADVERTISEMENTS**

9.1 No notices or advertisements are allowed to be posted on any part of the Gardening Space.

## **10 OTHER RESTRICTIONS**

- (a) Bonfires are only permitted for the burning of diseased plant material and such bonfires will not be left unattended.
- (b) Growers must not bring or use asbestos or barbed wire on the Gardening Space.
- (c) Rubbish, refuse and decaying matter (except for a reasonable amount of manure or compost required for cultivation and which must be sufficiently covered until such time as it has been dug in to the Gardening Space) must not be deposited on the Gardening Space by the Grower.
- (d) Growers must not remove anything (eg minerals, gravels, sands, earth or clay) from the Gardening Space unless they have written permission to do so from the Landowner.

# SCHEDULE 2

## The Plan



**SCHEDULE 3**

**Specific Requirements**

The Landowner and the Grower agree that the following specific requirements shall apply to the Gardening Space described in this Agreement:

Water containers may be sited on the allotments.
In the event of having lockable gates, keep these locked at all times.

Signed by the Landowner .....

Signed by the Grower .....