

**TEMPORARY NON-EXCLUSIVE LICENSE
AND HOLD HARMLESS AGREEMENT
FIRST YEAR LICENSE**

AGREEMENT made this ___ day of _____, 20XX, by and between the **CITY OF SPRINGFIELD**, a municipal corporation with its principal offices at 36 Court Street, Springfield, Massachusetts 01103 ("Licensor"), and _____, a _____ [Partnership / Corporation / or Individual], with a principal place of business [or if an Individual, a principle place of residence] at _____, Massachusetts _____ ("Licensee").

RECITALS

WHEREAS, the Licensor is the owner of a certain real property known as _____, Springfield, Massachusetts ("the Property"), that has been made available for public use pursuant to Springfield City Ordinance Title 7, Chapter 7.70; and

WHEREAS, the City of Springfield and the Springfield Redevelopment Authority promotes and encourages the responsible use of Community Gardens within its borders; and

WHEREAS, Garden Entities are groups of people operating a community gardens, or Micro Enterprises with the purpose of establishing and maintaining community gardens or residential gardens; and

WHEREAS, Licensee is a Garden Entity and wishes to conduct Community Gardening activity at the Property; and

WHEREAS, the Parties wish to memorialize in this Agreement the terms by which the Licensor allows Licensee permission to enter upon the Property to conduct Community Gardening activities in accordance with Springfield City Ordinance Title 7, Chapter 7.70; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. Generally

- A. Licensor grants Licensee, its agents, servants and/or employees, a temporary, non-exclusive, revocable License to enter upon the Property exclusively for the purposes described herein, subject to the terms and conditions hereinafter set forth.
- B. Licensee acknowledges that Licensor has not made and does not make any representation or warranty as to any matter affecting or relating to the Property, including but not limited to the physical condition or suitability thereof for the purposes, and Licensee acknowledges that no such representation or warranty has been made and Licensee agrees that this Agreement relates to the Properties in "as-is" condition as of the date of this Agreement.
- C. During the term of this Agreement, Licensee, at its sole expense, shall be allowed to enter upon the Property, and shall only be allowed to perform actions in accordance with Springfield City Ordinance Title 7, Chapter 7.70.
- D. Licensee shall at all times coordinate with the City of Springfield Departments of Housing, Parks and Recreation, and Planning and shall cooperate with all City Departments at all times.
- E. Licensor grants the Licensee approval to perform the following work at the Properties: Community Gardening activities in accordance with Springfield City Ordinance Title 7, Chapter 7.70 and all City Departments. Licensee shall only be allowed to perform the work listed in this section at the Property, and in the event that the Licensee performs work outside of the scope of this section, this agreement shall immediately be terminated and deemed void and the Licensee shall revert to the status of a trespasser on the Property, subject to the laws of the Commonwealth and the Ordinances of the City of Springfield.
- F. In the event that the Licensor determines that the Licensee, or any of its agents have exhibited behavior detrimental to the health, safety, and

welfare of the public and surrounding neighborhood while entering the Properties and performing work in accordance with the terms and conditions of this agreement, or in the event that the Licensee fails to coordinate or cooperate with City Departments as set forth in this Agreement, the Licensor shall be allowed to terminate this agreement immediately, and shall provide written notice of termination to the Licensee within seventy-two (72) hours.

- G. Licensee agrees that all work performed at the Properties in accordance with the terms of this agreement, shall be performed fully free of charge and provided at no expense to the Licensor. The Licensee shall faithfully and completely perform and observe all of the terms and conditions of this License. Licensee agrees to incur the full costs associated with all work performed at the Properties in accordance with this agreement and Springfield City Ordinance Title 7, Chapter 7.70.
- H. The Licensee shall return the Property to the same condition and degree of cleanliness or better that it was in prior to the commencement of the use promptly at the expiration or termination of this License (reasonable wear and tear excepted), and shall remove any item(s) of property left or placed in or on the Property by Licensee promptly at the expiration or termination of this License.

2. Access Rights

Subject to the terms and conditions of this Agreement and expressly contingent upon the execution and delivery of all documents called for herein, Licensor shall allow Licensee access to the Property for the purposes stated herein for a period of one (1) year from the date of this Agreement. The License shall not be valid for any other dates without a written amendment to this Agreement signed by all parties hereto.

3. Relationship of the Parties

It is understood and agreed that Licensee and Licensor shall in no event be construed or held to be partners, associates, affiliates, joint venturers or other related entities, or enterprises of Licensor in the conduct of Licensee's business, and that the relationship between the Parties is, and at all times shall remain, that of Licensor and Licensee.

4. Insurance

Licensee hereby agrees to provide at all times and maintain at its own expense public liability insurance in the form of a commercial or comprehensive general liability policy, or an acceptable substitute policy form as permitted by the City, with a minimum combined single limit of 100,000.00 individual and 300,000.00 aggregate for any one occurrence and suitable auto coverage and such other insurance as applicable (the coverages required herein shall be subject to review and approval and change from time to time by the City), with the City listed as an additional insured, with company authorized to do business in Massachusetts and having such terms and conditions as are approved by the City. The City reserves the right to waive the Insurance requirements.

5. Indemnification and Liability

A. Licensee, its agents, successors, assigns, and transferees agree to indemnify, provide the defense of, reimburse and hold harmless Licensor, its officers, officials, employees, servants, agents, and contractors from and against all costs, claims, actions, liabilities, damages, expenses, medical expenses, causes of actions, suits, or judgments by or on behalf of any person or persons, firm or firms, corporation or corporations, or any other business entity, or any governmental authority arising from any loss, injury or damage of any kind, to persons or property, from whatever cause, arising out of Licensee's use of the Property, or any act or omission of Licensee, its successors, assigns, or transferees arising out of or relating to the use of the Property by

the Licensee, or any other person or organization, arising from, incident to or connected in any way with the use of the Property for the purposes under this Agreement.

- B. Prior to being allowed to enter upon the Properties, the Licensee and all of its agents who are entering the Properties shall sign a Release (attached to this agreement as Exhibit A) waiving any and all rights and claims against the Licensor for any injury suffered at the Properties. Copies of all signed releases and a list of names of the individuals entering upon the Properties shall be provided by the Licensee to the Licensor prior to the Licensee performing any work at the Property. Failure to comply with this section shall have the effect of immediately terminating this agreement.

6. No Interest in Real Estate

This Agreement does not grant Licensee, its successors, assigns, or transferees any interest, legal or equitable, in the Property, and this Agreement shall become null and void and without legal effect if it is recorded in any registry of deeds, any land registration office for any registry district or in any municipal clerk's office.

7. Successors and assigns

The Agreement hereunder is personal to Licensee and any attempted assignment or sublease by Licensee, without the prior written consent of Licensor, shall immediately and automatically terminate this Agreement. Licensee shall not assign any interest in this Agreement or transfer any interest in the same, whether by assignment or novation without the prior written consent of Licensor, which consent Licensor may withhold in its absolute discretion.

8. Compliance with Laws

Licensee, its successors, assigns, transferees, and its subcontractors, agents, consultants, partners, associates, successors, assigns, legal representatives and employees shall comply with all applicable laws,

regulations, rules, ordinances, and regulations, as amended, promulgated by all federal, state and local legislatures, boards, bureaus and agencies and obtain all necessary permits and or licenses required by law for the purposes of this Agreement.

9. Applicable Laws and Exclusive Forum

A. The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction, enforcement and performance of this Agreement without regard to conflict of laws principles.

B. The Parties hereto expressly agree that the sole and exclusive place, situs and forum of this Agreement shall be Springfield, Massachusetts. All claims, actions and legal proceedings which in any way arise under or relate to this Agreement shall be solely and exclusively brought, heard, conducted, prosecuted, tried and determined within Springfield, Massachusetts. It is the express intention of the Parties that the exclusive venue of all claims, actions and legal proceedings of any nature whatsoever which in any way arise under or relate to this Agreement shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Springfield, Massachusetts or the United States District Court for the District of Massachusetts sitting in Springfield, Massachusetts.

10. Headings

The captions to the several parts of this Agreement are for convenience only and are not to be considered in construing this Agreement.

11. Extent of Agreement

This Agreement constitutes the entire understanding between Licensee and Licensor and any prior and contemporaneous agreements and representations are hereby superseded.

{signature page to follow}

IN WITNESS WHEREOF, the Parties have hereunto caused this Agreement to be executed the day and year above first written.

Licensor, **CITY OF SPRINGFIELD**

By: Domenic J. Sarno, Mayor
Date:

Approved as to form:

Name:
Title: Associate City Solicitor

Licensee, _____

Name:
Title:
Date:

Witness

Name:
Date:

EXHIBIT A

RELEASE OF ALL CLAIMS

1. My name is _____ and my address and usual _____ place _____ of _____ service _____ is _____, Massachusetts. I am an agent of _____, (**"Garden Entity"**). I acknowledge that I am not and have not been an employee or agent of the City of Springfield, Massachusetts.

2. In consideration for being allowed permission to enter upon the property known as _____, Springfield, Massachusetts ("the Property"), the receipt whereof is hereby acknowledged, I hereby remise, release and forever discharge the **CITY OF SPRINGFIELD** from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in LAW and in EQUITY, against the said **CITY OF SPRINGFIELD** or its heirs and assigns, which I now have or ever had from the beginning of the world to this date, and more especially I agree to indemnify and hold harmless the **CITY OF SPRINGFIELD** from any and all claims arising from my entry onto the Property and the work I perform thereon in accordance with the License Agreement between the **CITY OF SPRINGFIELD** and the Garden Entity.

3. It is expressly understood that this release is in no way an admission of any liability on behalf of the **CITY OF SPRINGFIELD**.

4. I acknowledge that I am { **over / under** }18 years of age, that I have read this Release, that I have understood it, and that I have full authority to execute this agreement on my own behalf.

Witness my hand and seal on this ____ day of _____, 2012.

Signed in the presence of:

Witness