

LICENSE AGREEMENT

Signing the license online together with the plot number and date will constitute full execution of this contract.

This agreement is made as of the _____ day of _____ (month), 2021, by and between CENTER CITY RESIDENTS' ASSOCIATION ("Manager") as agent and manager for the CITY OF PHILADELPHIA acting through the Fairmount Park Commission ("City" or "Licensor"), and _____ ("Gardener" or Licensee");

The background of this Agreement is as follows:

- A. The City is the owner of a Community Garden containing approximately 70 garden plots in the section of Fairmount Park known as Schuylkill River Park, Philadelphia, Pennsylvania.
- B. The City wishes to keep all of Schuylkill River Park, including the Community Garden, available for the enjoyment and pleasure of the general public.
- C. The Garden Plot which Gardener wishes to use is designated as Plot # _____ (the "Garden Plot" or "licensed Garden Plot") on the Master Plan of Garden Plots (the Community Garden) which the City or its managing agent retains.
- D. Gardener desires to obtain a license from the City to use the Garden Plot for gardening purposes and the city desires to grant such a license.

Therefore, in consideration of the mutual covenants herein contained and intending to be legally bound hereby, the City and Gardener hereby agree as follows:

1) Grant of License.

- a) Subject to the terms and conditions set forth in this Agreement, the City grants to Gardener an exclusive, personal and non-assignable license, for the term of this Agreement, to use said Garden Plot for gardening purposes only. For purposes of this Agreement, "gardening purposes" shall be limited to the planting and tending of crops and plants. All crops and plants grown in the Garden Plot pursuant to this Agreement shall be the property of Gardener, provided that Gardener removes such crops and plants during the term of this Agreement. **Any crops and plants remaining in the Garden Plot at the expiration or earlier termination of the Agreement shall automatically become the property of the City.** Gardener hereby acknowledges that, during the gardening season, the Community Garden will be kept open during daylight hours, when at least one Gardener is present, for the enjoyment and pleasure of the general public. Neither City nor Manager shall be liable to Gardener for any losses to Gardener's property in the Garden Plot.
- b) The license granted to Gardener pursuant to this Agreement shall include the right of ingress and egress to and from the Community Garden, over the property of the City known as Schuylkill River Park, with materials and light equipment necessary for the planting and tending of crops and plants in the licensed Garden Plot. Such ingress and egress shall be limited, however, to ingress and egress to and from the Community Garden through the Garden Gates, described in section 6 of this Agreement. Gardener covenants, represents and warrants that Gardener shall not enter upon any other Garden or Garden Plot other than the licensed Garden Plot, without the permission of such other licensee, in exercising the license granted in this Agreement.
- c) The license granted to Gardener pursuant to this Agreement shall not include, and Gardener covenants, represents and warrants that, throughout the term of this Agreement, Gardener shall not do, any of the following acts:
 - i) planting any plant which in maturity will be higher than ten (10) feet or any woody stem plants, trees or shrubs;
 - ii) using chemical fertilizers, additives or other inorganic material in the Garden Plot;
 - iii) permitting pets or other animals (other than those animals indigenous to the area in which the licensed Garden Plot is located who enter the Garden Plot in the natural course of events, and with the exception of service dogs as described in the *Garden Guidelines and Rules*) to enter upon the Community Garden or Garden Plot;
 - iv) removing soil from the Garden Plot;
 - v) constructing or erecting any buildings, shed, structure or improvement (temporary or permanent) on or about the Garden Plot

- vi) occupying the Garden Plot for gardening or any other purpose after sunset, and
- vii) placing anything other than inorganic trash in the trash barrels located in Schuylkill River Park.

2) Term. For Gardeners returning the following season, this Agreement shall begin on the date above written and end automatically on December 31, 2021, unless sooner terminated as provided in this Agreement or revoked at any time by the City or Manager for any reason whatsoever. For Gardeners not returning the following season, this Agreement shall begin on the date above written and end automatically on October 31, 2021, unless sooner terminated as provided in this Agreement or revoked at any time by the City or Manager for any reason whatsoever.

3) Consideration. As consideration for the license granted pursuant to the agreement, Gardener shall pay to Manager \$ _____ Dollars (*See last page for plot fees*). The Gardener acknowledges and agrees that the fee includes an estimate for the cost of providing water to the Garden Plot. Gardener agrees that if the water charge exceeds the Manager's estimate, the Manager may surcharge Gardener for such excess water charge on a pro rata basis. Gardener shall pay the aforesaid amount in full at the first address shown in Section 9 of this Agreement.

4) Manager of the Community Garden. Manager has agreed to manage the Community Garden for the City in accordance with a Management Agreement dated May, 1988. All notices, requests and other communications of Gardener with respect to the Garden and/or Garden Plot should be sent to Manager at the address specified in Section 9 of this Agreement.

5) Compliance with Laws and Regulations.

- a) Gardener shall not plant, cultivate or permit to grow in the Garden Plot any plant, crop or substance which it is unlawful to plant, cultivate, grow or ingest.
- b) Gardener shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations now in force or which may be in force in the future relating to planting, cultivation and harvesting of plants and crops in the Garden Plot.
- c) Gardener shall comply with the Park Regulations governing Fairmount Park, and all amendments to the Park regulations.
- d) Gardener shall comply with the *Garden Guidelines and Rules* attached to and made a part of this Agreement as Exhibit A and any future regulations governing the use of the Garden Plot.

6) Garden Gates. Gardener hereby acknowledges and consents to the locking by the City or Manager of the Garden gates which provides access to the Community Garden at sunset except for special events approved by Manager.

7) Termination.

- a) If Gardener breaches any term or condition of this Agreement, whether or not such term or condition is substantial, the City or Manager may, at its option, terminate this Agreement; City or Manager reserve the right to proceed against Gardener for any and all liabilities, actual or contingent, which may have arisen on or before the termination date, in connection with this Agreement. In such event and without limiting the other provisions of this Agreement, Gardener forfeits any right of reimbursement of the whole or a portion of the consideration set forth in Section 3 of this Agreement.
- b) **The City and Manager each reserve the right to terminate this Agreement if Gardener has not used the licensed Garden Plot for the planting of vegetation by May 1, 2021.** Upon such termination, Manager shall repay to Gardener the prorated portion of the consideration paid by Gardener in accordance with Section 3 of this Agreement representing the remaining portion of the original term of this Agreement.
- c) The City and Manager each reserve the right to terminate this Agreement at any time without breach by Gardener. Upon such termination, Manager shall repay to Gardener the prorated portion of the consideration paid by Gardener in accordance with Section 3 of this Agreement representing the remaining portion of the original term of this Agreement.

8) Indemnification. Gardener agrees to indemnify, defend and hold harmless the City and Manager, their respective directors, officers, employees, agents, departments, boards and commissions (collectively referred to as the "City and/or Manager" below in this Section 8), from and against, and to reimburse the City and/or Manager with respect to, any and all claims, demands, causes of action, losses, damages, liabilities, costs, and expenses (including, without limitation, attorneys' fees and court costs), including, without limitation, those in connection with loss of life, bodily or personal injury or damage to property, asserted against or incurred by the City and/or Manager with respect to this Agreement or the Community Garden (collectively referred to as the "claim") to the extent that Such claim is caused by the Gardener's act or omission.

9) Notices. Any notice or request pursuant to this Agreement shall be made in writing and delivered by United States first class mail, postage prepaid addressed as follows;

If intended for the Manager:

Center City Residents' Association
1900 Market St., 8th Floor
Philadelphia, PA 19103

If intended for Gardener:

Name _____

Address _____
or to such other address of which Gardener, Manager or the City shall have given notice as provided in this Section 9.

10) No Assignment; Binding Agreement. This Agreement is personal to the Gardener and neither this Agreement nor any interest of Gardener in this Agreement may be assigned, sublicensed or otherwise transferred in any manner whatsoever, by operation of law or otherwise, without the prior written consent of the City, which consent may be granted or withheld in the sole discretion of the City. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the parties hereto and respective heirs, executors, personal representatives, **successors and assigns**.

11) Entire Agreement. This Agreement contains the entire understanding between the parties hereto, and supersedes all prior and contemporaneous agreements and understandings, except as contained in this Agreement. The express terms of this Agreement control and supersede any course of performance and/or usage of trade inconsistent with any of the terms of this Agreement. This Agreement may not be modified or amended other than by an agreement in writing.

12) Philadelphia Home Rule Charter. This Agreement is entered into under the terms of the Philadelphia Home Rule Charter, and in the exercise of the privileges granted in this Agreement, Gardener shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin or sex.

13) Philadelphia Code.

- a) In accordance with Chapter 17-400 of the Philadelphia Code, Gardener agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such Participation confers an employment advantage of constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes as substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law or equity.
- b) Gardener agrees to include the immediately preceding subparagraph (a), with appropriate adjustments for the identity of the parties, in any and all subcontracts which are entered into for work, if any, to be performed pursuant to this Agreement.
- c) Gardener agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law or equity.

14) Headings. The headings incorporated in this Agreement are for convenience of reference only. Such headings are not part of this Agreement and do not in any way limit or add to the terms of this Agreement.

15) Conditions of Garden Plot at Termination of Agreement. **At the expiration or earlier termination of this Agreement, Gardener shall surrender and deliver up the licensed Garden Plot to the possession of the City, clear of trash, garbage, vegetation and other debris and in a tillable condition.**

16) Removal of Trash. Throughout the term of this Agreement, Gardener shall keep the Garden Plot free from trash, garbage and other debris. Gardener shall place all inorganic trash in trash barrels located in and around the vicinity of

the Community Garden or shall remove them from the Park (See *Garden Guidelines and Rules*) . All other trash, garbage and other debris are to be removed from the Community Garden by Gardener, at Gardener's sole cost and **expense**.

17) **No Estate Granted**. Gardener agrees that Gardener does not and shall not claim at any time any interest or estate of any kind or extent whatsoever in the licensed Garden Plot or the Community Garden by virtue of this Agreement or Gardener's use of the licensed Garden Plot

18) **Gardener's Release**. Gardener does hereby remise, quitclaim, release and forever discharge, and by these presents does for Gardener's heirs, successors, personal representatives, executors, and assigns and guests and any person claiming under or through them (hereinafter in this Section collectively referred to as "Gardener"), hereby remise, quitclaim, release and forever discharge the City and Manager, their respective successors, assigns, agents, employees, officer, boards and commissions (acting officially or otherwise), from any and all, and all manner of, actions and causes of actions, suits, claims and demands whatsoever in law or in equity which Gardener, may have against the City and/or Manager, their respective successors, assigns, agents, employees, officer, boards or commissions, relating in any way whatsoever to this Agreement or the possession, use or occupation of the licensed Garden Plot by the Gardener, unless such actions and causes of actions, suits, claims and demands are caused by or result from the negligence of the City or Manager or their respective successors, assigns, agents, employees, **officers, boards or commissions**.

In witness whereof, and intending to be legally bound hereby, the parties hereto have caused this License Agreement to be duly executed, under seal, as of the day and year first written.

LICENSOR: THE CITY OF PHILADELPHIA
BY: CENTER CITY RESIDENTS' ASSOCIATION
By: _____
Authorized Signatory

LICENSEE: _____ DATE _____

LICENSEE: _____ DATE _____
(Signature of Gardener(s))

2021 PLOT FEES: 10' X 10'- \$65.00; 10' X 15'- \$85.00; 10' X 20'- \$105.00

Any Gardener financially unable to pay the plot fees should contact the steering committee (steering@srpcg.org) to make confidential arrangements for a reduced rate. No Gardener will be denied a plot because of financial inability to pay.