

FIVE YEAR LICENSE AGREEMENT-COMMUNITY GARDEN

Date: _____, 20____

PARTIES:

This license is made by and between the following parties:

"Licensor": CITY OF ROCHESTER, a municipal corporation with offices at 30 Church Street, Rochester, New York 14614

"Licensee": _____, a not-for-profit or community organization with offices at _____,

"Responsible individual": _____, shall be the designated contact person for the non-profit/community group for any and all issues and/or communications that may be necessary between Licensor and Licensee regarding the "Premises".

WITNESSETH:

WHEREAS, the Licensee, desires to use the Premises for green space and to provide an area for community outdoor use; and

WHEREAS, Licensor, in the interest of providing an attractive, well maintained landscaped open space and garden area for use by the community, desires to grant the Licensee a license to make and maintain certain improvements which may include a pedestrian walkway, raised garden beds, landscaping, benches, lighting, an arbor, fencing, a kiosk and/or signage.

NOW, THEREFORE, in consideration of the premises and consideration set forth herein, the Licensor and the Licensee agree as follows:

**ARTICLE ONE
PREMISES AND TERM OF LICENSE**

PREMISES: The Licensor does hereby grant to the Licensee, and the Licensee hereby takes from the Licensor, the following "Premises":

Access to the property located at _____,
SBL# _____, See **Attachment A** for a tax map, for the purpose of installing and/or maintaining improvements such as a pedestrian walkway, raised garden beds, landscaping, benches, lighting, an arbor, fencing, a kiosk and signage, as well as structures that are temporary in nature (subject to the approval of

any required permits) as shown on **Attachment B** (Site Plan- to be completed by applicant and approved by the City and attached subsequent to the execution of this Agreement).

TERM: The term of this License shall be FIVE (5) Years from the execution of this license agreement by the City following City Council Approval.

ARTICLE TWO COMPENSATION

Licensee shall pay to City rent in the amount of One and no/100ths Dollars (\$1.00) Payment Waived.

ARTICLE THREE USE OF PREMISES

A. Licensee shall use and occupy the Premises to install and maintain the improvements set forth in **Attachment B** for the purpose of providing an attractive green space, containing gardens, a pedestrian walkway or other improvements.

B. Licensee shall not restrict access to the Premises to any member of the public, however, Licensor recognizes and agrees that certain special events may be held on the Premises that may require temporary restricted use of all or a portion of the Premises. Such events shall be limited to 2 times per year.

C. Licensee's use and occupancy shall comply with all applicable laws, statutes, ordinances, regulations, rules and requirements of every kind and nature, now or hereinafter in effect, of federal, state, city and county governmental authorities.

D. Licensee shall obtain all City permits and approvals required for its use of the Premises, including a special events permit, if applicable, and any zoning approvals for improvements to the Premises. The Licensor shall, at its discretion, sign any application or other documents regarding such permits and approvals which require the property owner's signature.

E. Licensee hereby acknowledges, as the licensee of the City owned property, that the execution of the license agreement by the City in no way implies approval of any plans, variance applications, Monroe County Health Department approvals, building plans, site plans, building permits or any other administrative processes necessary to carry out the plans/license/development. All necessary municipal approvals, reviews, permits etc are the sole responsibility of the aforementioned licensee. This license is not an approval.

F. Licensee shall not use the community garden to grow crops to be sold for profit without a permit or consent by Licensor. The community garden is not to be used for commercial agriculture.

G. Licensee shall submit to the Division of Real Estate, by January 1st of each year, a proposed calendar of events to be held at the Premises for the forthcoming year and shall notify the City of any changes to such calendar as soon as reasonably possible.

ARTICLE FOUR IMPROVEMENTS

Installation of permanently affixed structures such as gazebos, fences and garden sheds requires prior approval by the licensor.

All permanent fixtures installed by the Licensee at the Premises, upon expiration or earlier termination of this License, shall become the property of the Licensor, at no cost to Licensor, however, certain unique or specially designed fixtures may be retained by Licensee upon agreement of the parties, in writing, prior to installation of such fixtures. All improvements made to the Premises shall be subject to City approval, including but not limited to Zoning and permit approvals. Among other considerations, Licensee shall make improvements that are appropriate to the site, that require minimal maintenance and that are made with materials that are easily repaired or replaced. Signs installed on the premises cannot be used to advertise a business.

ARTICLE FIVE UTILITIES

Expense for installation of any and all utilities, including water service and subsequent usage is the responsibility of the Licensee. The Licensee shall pay for all utility charges used on the Premises and shall place any and all utility accounts in its name.

ARTICLE SIX LICENSEE RESPONSIBILITIES

The Licensee shall, at all times and at its own cost and expense, keep and maintain the Premises in good order and condition, normal wear and tear excepted. The Licensee shall be responsible for ordinary maintenance and repairs and for security costs. Licensee shall maintain the entire lot, and any improvements which it installs, including all grass areas, landscaping and structures at its sole cost and expense and without cost to Licensor. When installing improvements, Licensee shall obtain a utility stakeout.

No vegetable or fruit gardening shall be done on the property except in raised planters or containers with soil from other sources. Soil testing is the responsibility of the Licensee.

Onsite composting is permitted as long as proper composting techniques are utilized. Composting of meat, human or pet waste is strictly prohibited. Containers such as water barrels and planters shall not hold standing water unless they are completely covered.

Licensee shall maintain grass height at no more than five (5) inches. Cultivated areas shall not exhibit excessive weed coverage.

Licensee shall not use pesticides, including Round-Up, without a current NYS Pesticide Applicators License and shall follow all New York State Department Environmental Conservation and Monroe County laws.

ARTICLE SEVEN INDEMNIFICATION BY LICENSEE

Licensee hereby agrees to defend, indemnify and save harmless the City against any and all liability, loss, damage, suit, charge, attorney's fees and expenses of whatever kind or nature which the City may directly or indirectly incur, or be required to pay by reason or in consequence of the intentionally wrongful or negligent act or omission of the Licensee, its agents, employees or contractors on the City Premises in connection with the Work described in this Agreement, unless the foregoing results from fraud, willful misconduct, or an intentional or negligent act or omission of the City.

Licensee further agrees to indemnify and hold harmless the City, its agents, representatives and employees, of any claims of whatsoever nature for: any and all liability for injury to persons or to property and any expense the City may incur, including but not limited to reasonable attorney fees and experts, which liability and expense result from the presence of Hazardous Substances in, on, or beneath the Premises, and/or removal or other remediation of any such Hazardous Substances, to the extent that the presence or release of Hazardous Substances results from or arises out of the Work or out of the activities of Licensee, its agents, employees, contractors, or invitees, and except to the extent the presence or release of Hazardous Substances results from or arises out of the activities of the City, its agents, employees, contractors, or invitees.

For purposes of this Agreement, the following terms shall have the indicated meanings:

"Environmental Laws" mean all federal, state and local environmental, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

"Hazardous Substance" means, without limitation, any flammable explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), Articles 15 and 27 of the New York State Environmental Conservation Law or any other currently applicable Environmental Law and the regulations promulgated thereunder.

**ARTICLE EIGHT
DEFAULT**

In the event of a default or breach of the agreement by Licensee, the Licensor shall deliver a notice upon Licensee identifying the item(s) of breach. The Licensee shall have five (5) to respond to both the Real Estate office and the local Neighborhood Service Center (NSC) with their plans and intentions to address the breach and fifteen (15) days from the date of contact to correct the noted issue(s). The licensee shall work closely with both offices on any issues that are identified.

If the Licensee fails to resolve the default item(s), Licensor may serve a written thirty (30) day notice of cancellation of this License Agreement and the term thereunder shall end and expire. In such case the Licensee shall quit and surrender the demised premises to the Licensor but the Licensee shall remain liable as herein provided. In the event of such default, Licensor may, in its sole discretion, require Licensee to remove Licensee's improvements and to restore the Premises to their original condition.

If the licensee is found to be in violation of Article 3(F) of this agreement under use of premises (growing of crops for commercial sale) it shall be considered grounds for termination of the license agreement.

**ARTICLE NINE
NOTICES**

Any notice, demand or request required or agreed to be given under the License by either party shall be sufficiently given or served if in writing and signed by the party giving it and mailed by certified mail, return receipt requested, addressed to the party to be notified as follows:

To Licensor: Director of Real Estate
 City Hall
 30 Church Street, Rm 125B
 Rochester, NY 14614

To Licensee: Organization: _____
 Address: _____

or to such other address as the Licensor or the Licensee may from time to time designate by giving notice thereof in writing. Service shall be complete upon such mailing except in case of a notice to change an address in which case service shall be complete when the notice is received by the addressee.

**ARTICLE TEN
COVENANT AGAINST ASSIGNMENT AND SUBLETTING**

The Licensee hereby covenants not to assign this license or its rights under this license without the written consent of the Licensor.

**ARTICLE ELEVEN
LICENSOR NOT LIABLE FOR DAMAGE**

The Licensor shall not in any event whatsoever be liable for any damage to any property on the Premises belonging to the Licensee, unless such damage was caused by the negligence or intentional act of the Licensor or the Licensor's failure to perform any of the Licensor's covenants or obligations under this License.

**ARTICLE TWELVE
INSURANCE**

The Licensee covenants that at all times during the term of this License it shall maintain, at its expense, general liability policy for the demised premises which shall afford protection to the limit of \$1,000,000 in the event of injury or death to a single person and to the limit of \$1,000,000 in the event of any one accident, and to the limit of \$1,000,000 for property damage. The policy shall be issued in the name of the Licensee with the City of Rochester listed as an additional insured. The insurance policy shall be placed with a financially sound and reputable insurer licensed to do business in New York State, and shall not contain any exclusions on the insurance coverage regarding property owned or leased by municipalities or corporate governmental agencies, or the personnel, employees, invitees, licensees or agents of municipalities or corporate governmental agencies. Each said policy shall contain a ten day cancellation or expiration, to notify the Licensor of such cancellation or expiration. A copy of all such policies or a bona fide certificate of insurance, evidencing the coverage provided in the policies, shall be delivered to the Licensor.

This Agreement shall be null and void unless the Licensor shall secure compensation for the benefit of, and keep insured during the life of this Agreement, any and all employees as are required to be insured under the provisions of the Workers' Compensation Law of the State of New York or the state of the Consultant's residence, whichever may apply. Licensor shall provide proof to the City, duly subscribed by an insurance carrier, that such Workers' Compensation and Disability Benefits coverage have been secured. In the alternative, Licensor shall provide proof of self-insurance or shall establish that Workers' Compensation and/or Disability Benefits coverage is not required by submitting the current and required New York State Workers' Compensation Board's form.

Licensee shall not use the premises or permit anything to be done on the Premises in any manner which shall make it impossible for Licensor or Licensee to obtain at standard rates any insurance required or desired or which will invalidate or increase the cost to Licensor of any existing insurance or which will cause structural injury to the premises or which would constitute a public or private nuisance and/or violate any present or future laws or ordinances applicable to the Premises.

**ARTICLE THIRTEEN
ALTERATIONS**

The Licensee shall not at any time during the term make any structural alteration, rebuilding, replacement, change, addition or improvement in or to the Premises without the prior consent in writing of the Licensor.

**ARTICLE FOURTEEN
NO REPRESENTATIONS BY LICENSOR**

At the commencement of the term, the Licensee shall accept the Premises and improvements and any equipment on or in the Premises in their existing condition and state of repair, and the Licensee covenants that no representation, statements or warranties, express or implied, have been made by or on behalf of the Licensor in respect thereof, in respect to their condition, or the use or occupation that may be made thereof, and that the Licensor shall in no event whatsoever be liable for any latent defects therein.

**ARTICLE FIFTEEN
END OF TERM**

Licensee shall, on the last day of the term, or upon the sooner termination of the term, agree to peaceably and quietly surrender and deliver the Property to City free of all personal property and equipment, unless City consents, in writing, to such personal property and equipment to remain after the term has expired. Licensee shall also restore the lot, which may be damaged due to the work after the term has expired but not later than one month after the end of the term unless the City consents, in writing, to such extension.

**ARTICLE SIXTEEN
EARLY TERMINATION**

Landlord may terminate this license at any time during the License term, as to all or a portion of the Premises, upon ninety (90) days written notice to the Licensee, if the City has need of the City owned site for development. (Licensee will be required to relinquish the site at the end of the prevailing growing season defined as December 15th of the notice year).

**ARTICLE SEVENTEEN
MISCELLANEOUS**

A. The captions of this License are for convenience of reference only and in no way define, limit or describe the scope or intent of this License or in any way affect this License.

B. This License cannot be changed or terminated orally, but only by an instrument in writing executed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

C. This License shall be governed by and construed in accordance with the laws of the State of New York.

D. The agreements, terms, covenants and conditions herein shall bind and inure to the benefit of Licensor and Licensee and their respective heirs, personal representatives, successors and (except as otherwise provided herein) assigns.

E. The use herein of the neuter pronoun in any reference to Licensor or Licensee shall be deemed to include any individual Licensor or Licensee, and the use herein of the words "Successors and assigns" or "successors or assigns" of Licensor and Licensee shall be deemed to include the heirs, legal representatives and assigns of any individual Licensor or Licensee.

F. If any provision of this License is held invalid by a court of law, the remainder of this License shall not be affected thereby, if such remainder would then continue to confirm to the laws of the State of New York.

**ARTICLE EIGHTEEN
NO ORAL AGREEMENTS**

This License contains the entire agreement between the parties and it may not be changed orally or by any agreement between the parties unless in writing, signed and acknowledged by the parties or their successors.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License as of the day and year first above written.

CITY OF ROCHESTER, LICENSOR

By: _____
Name: Timothy R. Curtin
Title: Corporate Counsel

LICENSEE

By: _____
Name:
Title:

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

On the ____ day of _____, 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared **Timothy R. Curtin**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
COUNTY OF _____) ss.:

On the ____ day of _____, 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Attachment A: Tax Map

Attachment B. Site Plan