

Parks GreenThumb Garden License

This License is issued by the City of New York (“City”) / acting through the City of New York Department of Parks & Recreation (“Parks”) to _____ (“Licensee”) for the operation of a GreenThumb Garden located at _____ (address) on Block _____ and Lot(s) _____ in the Borough of _____ (“the Garden” or “Site). This License shall be administered by Parks through the GreenThumb Program Office (“GreenThumb”), which is currently located at 100 Gold Street, Suite 3100 New York, NY 10038

1. Term

This License is issued to Licensee for a term (the “Term”) of four years beginning _____ and ending _____ unless earlier terminated. The License may be renewed by the Commissioner of Parks (“Commissioner”) at his discretion if Licensee successfully fulfills the obligations set forth in this License.

The Commissioner shall renew such license if the Licensee complies with all applicable laws and regulations including those at Chapter 6 of Title 56 of the Rules of the City of New York and complies with the registration criteria set forth by Parks in order to demonstrate eligibility for License in a writing acknowledged by GreenThumb (“Registration”).

2. Notices and Contact Person

All correspondence, including notices of non-compliance, shall be sent to the person designated by Licensee as its “Contact Person.” and to the person designated by Licensee as its “Alternate Contact Person”. The contact information for the current Contact Person and Alternate Contact Person for Licensee is listed as follows:

Contact Person

Contact Person Name:

Mailing Address:

Daytime Telephone Number:

Evening Telephone Number:

Weekend Telephone Number:

Cellphone Number:

Email Address:

Alternate Contact Person

Alternate Contact Person Name:

Mailing Address:

Daytime Telephone Number:

Evening Telephone Number:

Weekend Telephone Number:

Cellphone Number:

Email Address:

Licensee shall promptly notify Parks of any change in the Garden Contact Person or Alternate Contact Person or of the address or telephone number(s) provided above for those two individuals. Notice to the Garden contact Person and Alternate Contact Person listed in Parks records shall be deemed notice to the Licensee.

All Notices to the Parks Department shall be in writing and sent to the following address:

GreenThumb
City of New York Department of Parks and Recreation
100 Gold Street, Suite 3100
New York, NY 10038
Attention: William LoSasso, Director
Tel: 212.602.5330
Fax: 212.602.5334
Email: william.losasso@parks.nyc.gov

3. No Lease

It is expressly understood that the City has title to the Site and that no land, building, space, or equipment is leased to the Licensee, but that during the term of this License, the Licensee shall be allowed the use of the Site only as herein provided.

4. Garden Accepted As Is

Licensee accepts the Garden “as is,” in whatever condition it may be on the date this License is fully executed. Parks makes no representations or warranty of fitness for gardening purposes; it is the responsibility of Licensee to use best effort to make the Garden successful.

5. Obligations of Licensee/ Use of Premises

A. This License is specifically entered into for the purpose of Licensee’s designing and installing a plant garden and thereafter maintaining such garden and all plants and structures contained therein (including, but not limited to, all fences, raised plant beds, planters, tables, benches, and other ornamental items) in a safe and orderly condition.

B. Licensee agrees to perform the following activities to the reasonable satisfaction of GreenThumb:

- (i) Licensee shall yearly send a representative to at least one educational workshops offered by GreenThumb, and shall submit proof of such attendance to Parks.
- (ii) Licensee shall post a sign approved by GreenThumb at the Garden explaining that the Garden is part of GreenThumb and the City of New York/Parks & Recreation, indicating the name of the group, a contact name and number, and indicating the hours during which the Garden is open to the public.
- (iii) Licensee shall design and install a plant garden.
- (iv) Licensee shall nurture and develop the plants in the Garden, including watering, fertilizing, pruning, weeding, and harvesting as required.
- (v) Licensee shall open the Garden to the public, as required by Section 8.
- (vi) Licensee shall make gardening plots available to the public on a first come first serve basis, through the use of a waiting list to be posted at the Garden.
- (vii) Licensee shall host at least one event per year open to the public at no cost. Licensee shall inform GreenThumb of the nature and the time of this event as soon as practicable, as well as the ways in which Licensee shall publicize it. Notice to GreenThumb must be provided no later than when the public is informed of the event.

C. Upon execution of the License, the Licensee agrees to the following:

(i) Licensee shall maintain the Garden in a safe condition and take care of all plants and structures contained therein, including all fences, raised beds, tables, benches, hoses, tools and ornamental items.

(ii) Licensee shall keep sidewalks, passageways, and curbs adjacent to and within the Garden clean and free from snow, ice, garbage, debris, and other obstructions.

(iii) Licensee shall comply with all applicable laws, rules and regulations of the United States, New York State, and the City of New York and Parks, and with such other rules, regulations, orders, terms, and conditions as may be set or required by Parks to the extent that they relate to the gardening activities under this License or are otherwise applicable to the license.

(iv) Licensee shall arrange for the provision of, and pay for, any utilities necessary for the performance of the activities described herein; provided however that Licensee shall neither cause nor permit the installation of any such utilities without the prior written approval of Parks.

(v) Licensee, at their own expense shall provide GreenThumb with copies of keys and locks used at the Garden, including entry ways and storage facilities. Failure to do so will result in GreenThumb removing any such locks

(vi) Licensee shall grow any vegetable or fruits that are available for human consumption in such a manner as to minimize the likelihood of contact with potentially contaminated soil. This shall be done by growing all such vegetables or fruits in raised beds and placing impermeable barriers between these areas and surrounding soil. Alternative methods for meeting this requirement are subject to prior approval bt GreenThumb. GreenThumb shall use reasonable efforts to assist Licensee in complying with this requirement

D. Licensee shall notify Greenthumb of any administrative or operational matters constituting any loss, injury, damage or violation within the garden within three days of such occurrence. Licensee shall also within three days after receipt of notice of any loss, injury, damage or violation within the garden, and in addition to the notice provisions mandated herein, notify the Parks Department in writing as set forth in Section 2 above

E. Emergencies: In case of emergency, Licensee shall first call 911 and, as soon theresfter as possible but in no event more than 24 hours after the emergency has occurred, contact Parks Central Communications at (646) 613-1200. The Licensee must also prepare a Parks Department Incident Report as set forth in Section 5(D) above

6. Restrictions on Licensee

Licensee agrees to the following restrictions on the use of the Garden:

A. No construction activities, including but not limited to excavation, paving, or erecting of any permanent or temporary structures, may take place without permission from GreenThumb and, where applicable, a valid Construction permit from Parks and, where applicable, the New York City Department of Buildings and where applicable, the posting of a payment bond in accordance with Section 5 of the Lien Law

B. No permanent structures or murals or other permanent works of art may be built in the Garden without permission from GreenThumb and, where applicable, the New York City Department of Buildings and/or the New York City Public Design Commission

- C. No automobiles, trucks, or other motorized vehicles may be stored, stopped or parked at any time in the Garden.
- D. No persons shall be allowed to reside in the Garden. Animals, other than dogs, are allowed to reside in the Garden when in accordance with all applicable rules and regulations, including those promulgated by the New York City Department of Health. Dogs may never reside in the Garden.
- E. No drugs or alcohol may be used, consumed, stored, sold, or distributed in the Garden.
- F. No items may be sold in the Garden, except pursuant to a permit issued by the Revenue Division of Parks, or in conformance with Paragraph L below.
- G. Licensee shall not cause nor permit accumulation of garbage or debris in the Garden. Licensee shall not commit or cause any waste of or to the Garden.
- H. Licensee shall not license the Garden or otherwise assign or impede this agreement.
- I. Licensee may not discriminate in any way against any person on grounds of race, creed, religion, color, sex, age, national origin, disability, marital status, or sexual orientation.
- J. Licensee may not cause or permit gambling or any activities related to gambling in the Garden, or the use of the Garden for any illegal purpose.
- K. Licensee shall not abandon the Garden. Abandoning of the Garden shall result in termination of License
- L. Licensee shall neither cause nor permit the use of the Garden for any commercial purpose (including, but not limited to, the sale or advertisement of any goods or services); provided, however, that (i) Parks may allow the sale of agricultural produce at the Garden solely for the purposes of supporting the operation of the garden and (ii) Licensee may allow the sale of other items pursuant to a permit issued by the Revenue Division of Parks, and in accordance with all other applicable laws, rules and regulations
- M. Licensee shall not permit any fire hazard on the Garden's premises, which includes, but is not limited to using or permitting the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.
- N. Licensee shall not create or permit creation of danger to the neighborhood, whether through inadequate sanitation (including accumulation of garbage) existence of a fire hazard, or any other condition that may cause harm to the Garden or other persons or property in its vicinity.
- O. Licensee shall (i) comply with GreenThumb's Registration requirements (ii) complete the Registration process as directed by GreenThumb, and (iii) comply with the terms of registration.
- P. Licensee shall not permit any conduct, activity, or condition occurring or immediately adjacent to the lot and caused by the Gardening Group or circumstances under its control that: (i) is contrary to law, (ii) constitutes a public nuisance, or (iii) affects, or poses a threat to, the health or safety of the community in which the Garden is located.

7. Failure to Comply with Restrictions and Termination

- A. Failure to comply with the restrictions listed in Paragraph 6 or any other term or condition in this license constitutes a breach of this License, Default notice will be issued to Licensee. Parks shall allow Licensee six (6) months from date of Notice to rectify a Default.
- B. Should the licensee fail to comply with the restrictions listed in Paragraph 6(P) an Accelerated Default notice will be issued to the Licensee. Parks shall allow Licensee thirty (30) days from the date of the an Accelerated Default notice to be rectified to Park's satisfaction.
- C. Failure to remedy a breach as set forth above constitutes an uncured default that is grounds for termination of this License. Notice of termination will be effective three (3) days after the Notice of Termination is mailed.
- D. Notwithstanding the above, this License is terminable at will by the Commissioner in his or her discretion at any time, upon Sixty (60) days written notice, and Licensee shall have no recourse of any nature whatsoever by reason of such termination.

8. Access

- A. Gardens are required to keep their gates open for a minimum of 20 hours per week from the first day of April through and including the thirty-first day of October. This can be achieved through posted open hours, community events, workdays, workshops, and all activities that keep gardens open and accessible to the public. Gardens are required to post signage listing open hours, a schedule of planned activities, and information on how to join the garden, along with the name and telephone number of the Garden Contact Person and Alternate Contact Person and GreenThumb Outreach Coordinator. Upon request, GreenThumb may work with the Group to create appropriate signage, provide sandwich board to place on the sidewalk welcoming visitors and guest, and suggest links to neighborhood organizations, school and community groups to assist with these new open hour requirements. Parks may conduct spot checks to see that the required public access is maintained, and if the Garden is not open at the designated time and/or the minimum number of hours per week as set forth above, may terminate this License.
- B. The Commissioner, his representatives, the City Police and Fire Departments, and other City agency representatives shall have access to the Site at all times for any purpose.
- C. The Garden may be temporarily closed to Licensee and disturbed during the period of construction of any development project approved by the City that abuts the Garden. Prior to entering the Garden to perform work, the agency in charge of the construction project will provide no less than Thirty (30) days written notice to the Garden Contact Person. Upon completion of any such construction, all practicable efforts will be made to return the Garden to the condition that existed prior to the commencement of any construction work thereon, including the replacement of vegetation.

9. Return of GreenThumb Property and Surrender of the Garden

Upon termination of this License, Licensee shall surrender the Garden to Parks in a condition satisfactory to Parks. Licensee shall also return all tools and other unused items provided by GreenThumb to the GreenThumb warehouse within thirty days of receipt of a notice of termination. Licensee shall be responsible for any costs incurred by Parks in cleaning up the Garden or in removing

any items that Licensee failed to remove as required by this section of the License. Parks retains the right to keep for its own use any items left in the Garden after this License expires or is terminated.

10. Indemnification

Licensee shall forever defend, indemnify, and hold harmless the City, its agents, representatives, and employees from and against any and all 1) claims for damages by reason of injury to persons or damage to property, including property of the City, arising from work or activities of any nature performed by or on behalf of Licensee, whether pursuant to this License or otherwise, and 2) liens and encumbrances which may be placed, filed, or recorded against the Garden as a result of work or other activities of any nature performed by or on behalf of Licensee, whether pursuant to this License or otherwise and, when, as, and if any such lien or encumbrance is placed, filed, or recorded against the Garden, to immediately remove, satisfy, or otherwise discharge the same.

11. Risk Upon Licensee

The expenditures for gardening activities to be undertaken at the Garden are to be made solely and exclusively at the risk and sole cost and expense of Licensee, and no part thereof is, or shall be, reimbursable by Licensor for any reason whatsoever. The gardening activities to be performed pursuant to this License were not and are not directed by Parks or GreenThumb, and Parks and GreenThumb assume no obligation or responsibility nor shall have any liability, for any expenditure made hereunder.

12. Merger and Use

A. This License is the only agreement between Licensee and Parks with respect to the Garden, and all prior oral or written agreements or understandings between Licensee and Park with respect to the Garden are hereby expressly revoked. In consideration of this agreement, Licensee hereby surrenders any other right or interest in the Garden (including, but not limited to possessory interest) which Licensee has or may have had.

B. This License does not, and shall not be deemed to, indicate any intention to dedicate the Garden for park use or any other use.

13. Conflict of Interest

Licensee warrants that no officer, agent, employee, or representative of the City of New York has received any payment or other consideration for the making of this License and that no officer, agent, employee, or representative of Parks (including GreenThumb) has any interest, directly or indirectly, in this License.

14. Choice of Law, Consent to Jurisdiction, and Venue

This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the City arising under this license or related thereto shall be heard and determined either in the federal courts of the United States

located in the City of New York or in the courts of the State of New York located in the City of New York.

15. Waiver of Trial by Jury

Licensee expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by City against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License or the use and occupation of the Site or any matter whatsoever in any way connected with this License, including but not limited to, the relationship between the City or Licensee. The provision relating to waiver of jury trial shall survive the expiration or termination of this License or any renewals thereof.

16. Investigations

A. Cooperation

The parties to this License shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (“State”) or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. Refusal to Testify

- (i) If any person who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation with the City, or any public benefit corporation organized under the laws of the State of New York, or;
- (ii) If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest and is seeking testimony concerning the award of or performance under any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any political subdivision thereof or any local development corporation within the City, then;

C. Hearings and Adjournments

- (i) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
- (ii) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final

determination pursuant to paragraph (e) below without the City incurring any penalty or damages for delay or otherwise.

D. Penalties

The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

- (i) The disqualification for a period not to exceed five years from the date of an adverse determination for any person or entity of which such person was a member at the time the testimony was sought from submitting bids for, transacting business with or entering into or obtaining any contract, lease, permit or license with or from the City; and/or;
- (ii) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. Factors

The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

- (i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit including, but not limited to, the discipline, discharge or disassociation of any person failing to testify, the production of accurate and complete books and records and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (iii) The nexus of the testimony sought to subject entity and its contracts, leases, permits or licenses with the City.
- (iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (d) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (c)(i) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

- (i) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

- (ii) The term “person” as used herein shall be defined as a natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
- (iv) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this License, the Commissioner or agency head may in his or her sole discretion terminate this License upon not less than three days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License by the Licensee, or affecting the performance of this license.

17. Modification

This License may not be modified or extended except in writing and when signed by both Licensee and Parks.

18. No Waiver of Rights

No waiver by Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

19. No Assignment

Licensee shall not sell, assign, mortgage or otherwise transfer, or sublicense any interest or right provided for herein, nor shall this License be transferred by operation of law, it being the purpose and spirit of this agreement to grant this License and privilege solely to the Licensee named herein.

20. Employees

All experts, consultants, volunteers or employees of Licensee who are employed by or volunteer their services to Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers’ compensation, disability benefits and social security.

21. No Claim Against Officers, Agents, or Employees

No claim whatsoever shall be made by Licensee against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this agreement.

22. All Legal Provisions Deemed Included

It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

23. Severability

If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have cause this to be signed and sealed.

William LoSasso
Greenthumb Director
Date: _____

Licensee (group or garden name)

By: _____
Contact person
Date: _____