

**LICENSE AGREEMENT**  
**FOR USE OF CITY PROPERTY IN THE COMMON GROUND PROGRAM:**  
**GARDEN**

THIS LICENSE AGREEMENT ("Agreement") is entered into this 14 day of May, 2017 ("Effective Date") by and between the City of Lawrence, a municipal corporation ("City"), and Denise Detomasso on behalf of the Pearl Clark Community Garden, ("Licensee").

**RECITALS:**

- A. The Pearl Clark Community Garden began participating in the Common Ground Program with a License Agreement dated May 15, 2013. Said agreement expired December 31, 2016.
- B. The Licensee hereby requests to participate in the Common Ground Program and agree to abide by all rules and procedures of the program and to enter into a new License Agreement with the City for a Three (3) year term.
- C. The City will provide a written evaluation of the Licensee's participation in the program at the end of each growing season and will meet on-site at the end of each season.
- D. The Licensee has requested the City to issue it a license for the purpose of maintaining a garden on City-owned land.
- E. The City reserves the right to terminate this License for failure of the Licensee to abide by the provisions of this License after each growing season, pursuant to the terms and written notice procedures of this License.

**AGREEMENT**

**NOW, THEREFORE**, and subject to the terms and conditions below, the above recitals are hereby incorporated as if fully set forth herein. The City hereby grants to Licensee the non-exclusive use of the City property described and defined below and, in consideration of the license granted to Licensee herein, Licensee agrees to the following:

**1. Licensed Property.** The licensed property consists of that property highlighted on the map attached as Exhibit A, and further known as Douglas County Plate Number U02301-01 and legally described as Lot 163 on Illinois Street and as shown on Exhibit A in that part of the City of Lawrence known as West Lawrence commonly located at 639 Illinois Street (the "Licensed Property"). The Licensee accepts the property "as is" and the City makes no warranty or guarantee as to the suitability of said property for the production of crops.

**2. Purposes.** Licensee may use the Licensed Property for the purposes herein and for no other purpose or use without the express prior written consent of the City. The purpose and use of the Licensed Property shall be for agricultural use and participation in the Common Ground Program pursuant to the Rules and Regulations of the program as set forth in Exhibit B attached hereto.



**3. Length of License.** This License shall begin on the date first set forth above and shall expire on December 31, 2019, unless earlier revoked by the City or Licensee pursuant to the terms of this Agreement.

**4. Annual Program Evaluation and Renewal Term.** The City shall annually provide a written review to the Licensee of their participation in the Common Ground Program and shall meet on site as part of the review with the Licensee. The term of this License shall automatically renew for an additional period of one year at the end of each calendar year and thereafter for a one year term unless either party gives written notice of termination of the license agreement to the other party at least 60 days prior to the end of the term.

**5. Operation Requirements.** Licensee agrees to the following:

- a. Licensee shall adhere to the Common Ground Program Rules and Procedures of the program which are attached as Exhibit B and to all the requirements of the Request for Applications.
- b. Licensee and its agents shall maintain the property in a reasonably clean condition, and, at the termination of the license, shall remove all equipment, refuse and any other materials brought onto the property by the Licensee. At the end of each growing season, the Licensee shall clean and clear the previous season's crops from the property and keep the property in a reasonably clean condition.
- c. Any equipment used on the licensed property shall produce noise levels no greater than the limits permitted by the City's noise ordinance.

**7. Qualifications of Licensees.** Licensee shall be qualified to perform all activities described in Section 2.

**8. Indemnification and Insurance.**

- a. Licensee shall defend, indemnify and hold harmless the City, its officers, agents, employees, successors and assigns from any and all claims, losses, costs, damages, expenses and liabilities, including reasonable attorneys' fees, for or from loss of life or damage or injury to any person or property of any person or entity, including, without limitation, the agents, officers, employees, invitees and Licensee of the City, arising out of, connected with or incidental to, either directly or indirectly, Licensee's use of, construction on, or maintenance of the Licensed Property during the term of this License by Licensee, its employees, agents, contractors and subcontractors, Licensee or invitees or the exercise by Licensee of any of its rights or the performance by Licensee of any of its obligations. shall not interfere with or damage existing utility facilities or City infrastructure, on, off, under, or near the Licensed Property, and shall indemnify and reimburse the City for any damages, costs, expenses or liabilities resulting from Licensee's damage or interference therewith. The indemnity obligation contained in this Section shall survive the expiration or earlier termination of this License. In no event, however, shall the foregoing agreement to defend, indemnify and hold harmless the City be deemed to extend to any liability for any environmental condition of the Licensed Property.



- b. Licensee shall, at its own expense, defend the City in all litigation, pay all reasonable attorneys' fees, damages, court costs and other expenses arising out of such litigation or claims incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the City, or any of its officers, agents or employees, arising out of such litigation.
- c. Licensee shall take out and maintain required insurance at its own expense during the term of this License, unless said insurance is provided by the City, Comprehensive General Liability insurance, wherein the City is named as an additional insured, as shall protect itself, the City, and any entity performing work covered by this License from claims for damage for personal injury, disease, illness or death, including accidental death, as well as from claims for property damages which may arise from operations under this License, whether such operations be by itself or by any entity or by anyone directly or indirectly employed by either of them. The Comprehensive General Liability insurance policy shall have limits of liability of not less than Five Hundred Thousand Dollars (\$500,000.00) applicable to the liability assumed by Licensees under this Agreement. Licensee shall provide to the City Attorney's Office a copy of its Certificate of Insurance at the time of execution of this License. All insurance required hereunder shall be effected under valid and enforceable policies issued by insurers of recognized responsibility authorized to do business in the State of Kansas, and shall contain a provision whereby the insurer agrees not to cancel the insurance without thirty (30) days prior written notice to the City Manager, 6 E. 6<sup>th</sup> Street, Lawrence, KS 66044.

**9. Events of Default.** Each of the following, without limitation, shall constitute an event of default by Licensee:

- a. Licensee fails to keep, perform and observe any promise or agreement contained in this License; or
- b. Any lien is filed against the Licensed Premises because of any act or omission of Licensee.

**10. Remedies to Default.** Upon the occurrence of any of items (a) through (b) of Article 9, the City may, at its option, exercise any one or more of the following rights and remedies:

- a. deny access to the Licensed Property; or
- b. terminate this License Agreement; or
- c. Exercise any and all additional rights and remedies that the City may have at law or in equity.
- d. The City shall provide the Licensee written Notice of any action or remedy exercised pursuant to this License. Said Notice may provide the Licensee a period to cure or remedy in order to become compliant with the terms of this License.



**11. Waiver.** No waiver by the City at any time of any of the terms or conditions of this License Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other terms or condition herein or of the strict and prompt performance thereof. No delay, failure or omission of the City to take or to exercise any right, power, privilege or option arising from any default, or subsequent acceptance of any fee then or thereafter accrued shall impair or be construed to impair any such right, power, privilege or option to waive any such default or relinquish thereof, or acquiescence therein and no notice by the City shall be required to restore or revive any option, right, power, remedy or privilege after waiver by the City of default in one or more instances. No waiver shall be valid against the City unless reduced to writing and signed by an officer of the City duly empowered to execute same.

**12. Failure to Perform.** Except as otherwise provided herein, neither the City nor Licensee shall be deemed to be in default or breach of this License Agreement by reason of failure to perform any one or more of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, acts of God, acts of the public enemy, acts of government authority, floods, riots, rebellion, sabotage or any other circumstances for which it is not responsible and which are not within its control; provided that Licensee's obligation to pay fees, additional fees, charges or other money payments required by this License Agreement which have been incurred prior to the force majeure event or following its cessation shall continue.

**13. Compliance with Laws.** Licensee shall comply with local, state, and federal laws, regulations, ordinances and orders governing the Licensed Property and the activities authorized hereunder, and shall obtain all necessary permits from the City prior to commencement of the activities authorized hereunder. Licensee shall be in compliance with their approved site plan.

**14. Safety Measures.** Licensee shall fence, barricade or take such other measures as the City deems necessary or appropriate to protect the general public from any danger posed by Licensees activities or Licensee's property under this License. Licensee shall also take measures to protect existing City infrastructure on the property, including but not limited to sidewalks, water and sewer lines, water meters and other utilities.

**15. Taxes and Other Charges.** Licensee agrees to timely pay all taxes, if applicable, and any other charges or expenses attributable to Licensee's activities.

**16. Other Charges Utilities.** Licensee agrees to pay for any and all utility charges that may apply to the licensed property including, but not limited to water utilities, waste water and stormwater charges, sanitation, electric and gas and to place any such utilities accounts in its name.

**17. Surrender of Premises and Title to Improvements.** Licensee shall yield and deliver peaceably to the City possession of the Licensed Property on the date of cessation of this License, whether such cessation be by revocation, termination, expiration or otherwise, promptly and in good condition. Prior to such surrender of the Licensed Property, Licensee shall restore and repair any and all damage to the Licensed Property caused by, related to or resulting from Licensee's operations thereon, normal wear and tear excepted. If requested by the City, Licensee shall remove all improvements and restore the Licensed Property to its original condition. Otherwise, title to all improvements constructed or installed by Licensee on the Licensed Property shall vest in the City upon completion of the Project or upon termination of this License prior to completion of the Project. Any crops not removed from the Licensed Property shall



become the property of the City.

**18. Entire Agreement.** This License constitutes the entire agreement between the parties as of the date hereof. Any provisions of prior licenses, agreements or documents which conflict in any manner with the provisions of this License are hereby specifically declared void and of no effect.

**19. City's Right of Entry.** The City of Lawrence, its officers and employees, shall be entitled to enter the Licensed Property at any time for all reasonable purposes, including, without limitation, inspection of the Licensee's activities hereunder.

**20. Right to Assign or Sublet.** This license may not be assigned to any person or group, without prior written consent from the City. The property may be sublet for the purposes of sharing garden space with members of the community.

**21. Amendments & Notices.** Amendments and Notices pursuant to this license shall be in writing and to the below addresses via first class U.S. Mail.

**To the City of Lawrence**

City Manager  
P.O. Box 708  
Lawrence, KS 66044  
[\(785\) 834-3400](tel:(785)834-3400)

**To the Licensee**

Name: Denise Detomasso

Address: 839 Missouri Street, Lawrence, KS 66044

Cell Phone: (785)

Email: [Denise.detomasso@yahoo.com](mailto:Denise.detomasso@yahoo.com)

IN WITNESS WHEREOF, the parties hereto have caused this License to be executed as of the date first set forth above.

The undersigned hereby agrees and consents to the terms and conditions of this License, and further states that s/he has authority to sign on behalf of the Licensee.

Signatures: 

Denise Detomasso

**CITY OF LAWRENCE**

By: \_\_\_\_\_  
Thomas M. Markus, City Manager

Exhibit A

Lot 163, on Illinois Street, in the City of Lawrence, Douglas  
County, Kansas.



**Exhibit B**

**Common Ground Agriculture Program: Rules and Procedures**

*The following rules and procedures of the Common Ground program are meant to ensure safe and responsible operation of city-owned properties for urban agriculture and community gardens. Upon signing a License with the City of Lawrence, Licensee also agrees to accept the following policies and procedures:*

- A. Water Service:** The City of Lawrence provides water service to all City residents. A water meter is currently (or can be) installed on the property. The selected grower for a licensed property will be expected to set up an account with