

*Jill Gardner*

## Denver Urban Gardens & Denver Public Schools Use Agreement

### LICENSE AGREEMENT

This License Agreement is made on this \_\_\_\_ day of \_\_\_\_ (month), between School District No 1, in the City and County of Denver, State of Colorado ("Licensor") 2800 West 7<sup>th</sup> Avenue, Denver, Colorado 80204, and DENVER URBAN GARDENS (hereinafter referred to as "Licensee"), a Colorado not-for-profit corporation whose address is 3377 Blake Street, Suite 113, Denver Colorado, 80205 # (303) 292-9900. In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

### GRANT OF LICENSE

Licensor grants to Licensee a license to occupy and use, subject to all of the terms and conditions of this Agreement, the following described property/properties or address(es) ("Premises") situated in the City and County of Denver, State of Colorado.

### PREMISES

\_\_\_\_ See Attachment A: List of All DUG School and Community Gardens \_\_\_\_\_

### LIMITATION TO DESCRIBED PURPOSE

A. The listed Premises may be occupied and used by Licensee solely as a community garden and the incidental purposes related to such use by the residents of the school community and neighborhood during the license period beginning March 1, 2009, and continuing until this Agreement is terminated as provided herein. (See Attachment B: Notice of Revocation)

B. It is specifically agreed between Licensor and Licensee that the license granted under and pursuant to this Agreement is limited to Licensee and shall not inure to the successors or assigns of Licensee.

C. Licensor gives to Licensee the privilege of entering on the above-described real property/properties, at reasonable times over a [thirty-six] month period from the effective date of this Agreement, and of carrying out such operations as may be necessary for the purposes of the Licensee. This Agreement shall continue with an automatic renewal annually unless termination class is invoked.

D. Licensor does not warrant or represent that the above-described property is safe, healthful, or suitable for the purposes for which it is permitted to be used under the terms of this Agreement.

E. Licensee agrees that Licensee does not and shall not claim at any time any interest or estate of any kind whatsoever in the above-described property/properties of Licensor, by virtue of the privileges granted under this license Agreement or Licensee's occupancy or use of the above-described property of Licensor under this Agreement.

### RESPONSIBILITIES & OBLIGATIONS OF LICENSEE

A. Licensee shall be the lead organization responsible for the initiation and development of new community gardens with other organizations, the school, and the school's community residents (collectively, "Community") and will report to Denver Public Schools ("DPS") Grounds Department. On behalf of the Licensee, Michael Buchenau represents and warrants that he is duly authorized to execute this license

Agreement in accordance with its terms and conditions, and will act as the liaison responsible for coordinating and reporting to DPS Grounds Department.

B. Licensee shall be responsible for designing, planning, and the construction of the community gardens:

1. Licensee shall meet with DPS Grounds, and Plumbing Departments, a Learning Landscape (“LL”) representative (when it is a LL school either built or has a Master Plan on record with DPS), the school’s facility manager, and school principal (collectively, “Licensor Team”) to assess existing conditions, determine site location, and submit the proposed master plan and design documents for approval by Licensor team. Licensor will develop a checklist to ensure avoidances of master plan conflicts, potential additions, impact on site access etc. Upon approval, Licensee shall submit, scaled-to size drawings with signature block for the grounds department and principal and an annotated DPS CAD site map indicating location and size of garden, and other documents to DPS Facility Planning. In addition to the delivery of approved design plans and related documents, Licensee shall also provide a construction schedule that shows the phases of the construction work, which identifies assigned tasks, and indicates the dates of substantial and final completion to the DPS Grounds Department. Licensee will also submit to DPS for each community garden constructed, a scaled-to-size ‘as-built’ drawing.
2. Licensee shall comply with DPS standards for gardens. Sites constructed prior to the signing of this Agreement will be updated to meet these standards as repair and replacement is required.
3. Licensee shall be permitted to modify the Licensor’s site to the extent it is necessary to install, use, and access a community garden. However, Licensee is responsible for removing all non-permanent and permanent modifications made to the property and restore the site to its original condition unless the Licensor agrees to retain certain permanent modifications to the property such as but not limited to, chain link fencing, irrigation system, metal arbors, masonry retaining walls, trees and shrubs or assigns the license to other organizations that elect to assume and operate the community garden program as expressly intended under this license Agreement. Before making any material revisions, changes, and adjustments to a community garden site, Licensee agrees to submit a written request of the proposed changes for the review and approval by DPS Facility Management. Licensee shall, from time to time and as requested, provide to Licensor an updated list of all existing, and newly approved community gardens.
4. In the event the design and planning of campus improvements affects a garden, modifications to the garden will be made with the least amount of seasonal hardship to the Licensee.

C. Licensee shall be responsible for community garden maintenance.

1. Licensee shall have oversight responsibilities, which includes coordinating with the school access to, and use of the school site premises for the community garden with any and all organizations and community residents requesting use of the Premises subject to the implementation of the following procedures and requirements:
  - i. Install approved signage with Licensee information that includes a main phone number and how to contact Licensee representative(s).
  - ii. Maintain, and keep its garden sites in accordance with state laws, regulations, municipal codes, or other applicable standards related to its activities. Provide assistance with maintenance during school vacations as necessary.
  - iii. As required by DPS Grounds Department and Principal, Licensee shall provide written notice of regularly scheduled garden clean up dates.
  - iv. Enforce DUG Community Garden Guidelines with all individuals authorized to use the Premises.
  - v. All non – school gardeners who may work with, or have contact with school students shall sign up and comply with DPS volunteer requirements. (See Attachment C: DPS Policy)

- vi. Appoint Garden Leader or Leader(s) to coordinate garden activities between Licensee and the school to assure that the community garden is available and accessible to the school, local residents, and neighborhood community.
- vii. Provide to schools, if so requested, a minimum of one-third (1/3) of the community garden space for school use.
- viii. Coordinate the use of the community garden with organizations that wish to participate in the garden program.
- ix. During periods of drought, sub meters may be required by DPS to meter and/or purchase water; Licensee may provide and install sub meters and elect to continue gardening by purchasing water. Licensee may collect garden plot fees and escrow the estimated water fee portion for maintenance use in sustaining the gardens, for garden improvements, or for school garden programming. Garden irrigation systems shall be constructed with provisions for future installation of a sub-meter.

#### **RESPONSIBILITIES & OBLIGATIONS OF LICENSOR**

- A. Licensor shall help to identify available sites for community gardens and make every reasonable effort to furnish a supply of water to all approved sites.
- B. Licensor has an absolute right of entry, ingress and egress to and from, at any and all times, to all community garden sites, and will permit Licensee to lock any community garden sites with locks approved by or provided by Licensor.
- C. Licensor shall retain the right to restrict access to the garden area, remove hazardous materials or take any other action deemed necessary by the Licensor to reduce or eliminate any risks to persons or property without prior notice to Licensee.

#### **TERMINATION**

- A. This Agreement shall continue in force unless or until terminated by any of the parties to this Agreement by giving written termination notice to the other party. Either party may terminate this Agreement at any time by giving written notice to the other party. The terminating party shall attempt to give notice at least sixty (60) days prior to the requested date of termination. Every attempt will be made to consider seasonal constraints. This Agreement shall absolutely end on the termination date or as specified in the given notice.
- B. Should the above-described property, or any essential part of such property, be totally destroyed by fire or other casualty, this license Agreement shall immediately terminate; and, in the case of partial destruction, may be terminated by either party by giving written notice to the other, specifying the date of termination, such notice to be given within thirty (30) days following such partial destruction and not less than five (5) days prior to the termination date specified in such notice.
- C. If Licensee attempts to make an assignment for the benefit of the creditors, is placed in receivership, adjudicated bankrupt, or takes advantage of any insolvency or bankruptcy law, revocation of this license is effective immediately and no further notice to Licensor is required.
- D. On any termination of this Agreement, Licensee, shall quit the above-described property, and shall remove from such property all fixtures, assets, personal property installed in, on, or attached to the above-described property/properties or in accordance with "Responsibilities of the Licensee" section B, paragraph 3.
- E. Any termination of this Agreement, howsoever caused, shall be entirely without prejudice to the rights of Licensor that have accrued under this Agreement prior to the date of such termination.

#### **ASSIGNMENT OF RIGHTS**

The rights of Licensee under this Agreement are specific to the Licensee and may not be assigned or transferred to any other person, firm, corporation, or other entity granted under this Agreement, or any interest in such license, and no sublicense for any purpose shall be made or granted by Licensee without the

prior, express, and written consent of the Licensor.

#### **INDEMNIFICATION**

Licensee shall indemnify and hold Licensor harmless from and against any and all liability for personal injuries, property damage, or for loss of life or property resulting from, or in any way connected with, the condition or use of the premises covered by this license, or any means of ingress to or egress from such premises, which result from the negligent acts or omissions of the Licensee. Notwithstanding any other provision of this license Agreement to the contrary, no term or condition shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as now or hereafter amended.

#### **INSURANCE**

Licensee, at its sole cost and expense, shall have and keep, in full force and effect, a policy of public liability and property insurance that will name Licensor as an additional insured, with a combined single limit of \$1,000,000 covering bodily injury and property damage. Licensee shall provide Licensor a signed copy of such insurance, including annual renewals of such policy as evidence of coverage.

#### **GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of Colorado. Licensee shall comply with all applicable federal, state and local rules, zoning regulations and laws regarding the school site and activities conducted thereon, and shall not use or permit the site to be used in violation of any such rule, regulation or law or for any purpose tending to damage or harm the site premises thereon or adjacent thereto, or the image or attractiveness thereof, or for any improper, offensive or immoral use or purpose, or in any manner which shall constitute waste, nuisance or public annoyance.

#### **NOTICES**

Any notice provided for or concerning this license Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

#### **MODIFICATION OF AGREEMENT**

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by an authorized representative of each party.

#### **ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have agreed to and executed this Agreement between the Licensee, Denver Urban Gardens, a nonprofit organization and the Licensor, Denver Public Schools, effective this 2nd day of July, 2009.

**Denver Urban Gardens (Licensee)**

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Michael Buchenau  
Executive Director  
Denver Urban Gardens

**Denver Public Schools (Licensor)**

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Trena A. Deane  
Executive Director, Facility Management  
Denver Public Schools  
Attachment B

**NOTICE OF REVOCATION OF LICENSE**

To: Licensee Representative Michael Buchenau  
Denver Urban Gardens  
Address 3377 Blake Street, Suite 113  
Denver Colorado 80205

Please take notice that the license granted to you on \_\_\_\_\_ [date of grant of license], for the purpose of community garden on Licensor's property located at \_\_\_\_\_, is revoked effective [effective date of revocation or upon written notice], pursuant to the terms of the license Agreement.

In accordance with the terms of the above-mentioned license, you must remove your property from the premises on or before [date by which property must be removed]. You are further notified that, pursuant to the terms of the license Agreement, you [will/will not] be required to restore the premises to their original condition. The termination of this license does not release you from the obligation for any costs, claims, or charges incurred during the license period through the date of termination.

Dated:

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Denver Public Schools

