

 **DRAFT**

LEASE

TOWN OF GREENWICH

AND

GREENWICH COMMUNITY GARDENS, INC.

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LEASE

TOWN OF GREENWICH and GREENWICH COMMUNITY GARDENS, INC.

PARTIES

This Lease, dated December , 2013 is between the TOWN OF GREENWICH (the "TOWN" as Landlord), a municipal corporation organized and existing under the laws of the State of Connecticut, and GREENWICH COMMUNITY GARDENS, INC., ("GCGI" as Tenant), a non-profit corporation organized and existing under the laws of the State of Connecticut and described in Section 501 (c)(3) of the Internal Revenue code of 1986, as amended, acting by Patty Sechi, President.

RECITALS

The TOWN desires to lease a portion of the Montgomery Pinetum (the "Premises") located at 129 Bible Street for a public purpose to a non-profit entity, GCGI.

GCGI is committed to improve and maintain the Premises and build the TOWN and the residents a community garden at GCGI's cost and expense in exchange for a nominal lease fee and;

GCGI desires to develop and operate a community garden based on organic principles on the Premises and to enhance the quality of life in the community.

The TOWN desires to acquire a community garden as an asset. To accomplish this goal the TOWN enters into this Lease with GCGI for a ten (10) year lease term with the option to renew for an additional period of ten years.

In granting this Lease to GCGI, the TOWN is acting in accordance with the TOWN's stated policy in the Plan of Conservation and Development to continue to support organizations

that provide community facilities and services through public-private partnerships.

1. DESCRIPTION OF PREMISES

In consideration of the promises on the part of GCGI made in this Lease, the TOWN leases to GCGI approximately one (1) acre parcel of vacant land in the Pinetum Property with an address of 129 Bible Street, Cos Cob, Connecticut. The Premises are a small portion of the property given by Colonel Robert Montgomery to the TOWN shown on Map 3041 recorded in the Town of Greenwich and as referenced in a Certificate of Devise recorded in Volume 523 at Page 464 of the Town of Greenwich Land Records. The Premises are further described by the area demarcated by the Lease Line as shown on map titled Garden Plan prepared for Greenwich Community Gardens, attached as Exhibit A.

2. TERM

The term of the Lease shall be for ten (10) years commencing on September 15, 2013 or as approved by the Representative Town Meeting (the "commencement date") and expiring on the tenth anniversary of the commencement date subject to renewal described in paragraph 15 for one additional ten-year lease term.

3. RENT

GCGI shall pay the TOWN rent of One Dollar (\$1.00) per year and improve the Premises by building and maintaining a community garden based on organic principals as a TOWN asset.

4. USE

The use of the Premises will be restricted to the following purposes: GCGI shall operate a community garden on approximately the Premises. GCGI shall install approximately eighty eight (88) 4 foot x 8 foot garden plots. The plots shall be available to all TOWN residents equally without discrimination and subject to applicable law. The garden shall contain raised

beds, compost bins, storage sheds, all enclosed by a deer fence and up to nine (9) porous parking spaces all as shown on Exhibit A.

The garden shall be administered by the Steering Committee established by GCGI. Confirmed gardeners will pay a reasonable fee to GCGI for each plot they sign on to garden for the season. Garden plots shall be available on a first come first served basis. The Steering Committee shall administer the garden in a fair, transparent and clearly defined manner recognizing that TOWN property is a rare economic resource requiring fair access and shall be in accordance with the Municipal Improvement Approval granted by the Planning and Zoning Commission and the Plan of Conservation and Development. GCGI shall be permitted to conduct ancillary garden activities, including but not limited to, educational programs on the Premises.

GCGI shall keep fully informed and comply with all existing and future Federal, State and Town constitutions, charters, laws, statutes, rules and regulations. The use of the Premises shall be non-discriminatory as to race, color, national origin, disability, or sex.

Any other activity proposed for the Premises other than described in this section requires prior permission from the all appropriate TOWN agencies or Boards. Any failure by GCGI to use the Premises described in this section shall be a default under this Lease.

Nothing contained in this Lease is intended to establish or create, or shall be construed as creating or establishing a relationship constituting GCGI as the agent or representative of the TOWN for any purpose, or in any manner.

5. CONDITION OF PREMISES

It is expressly agreed between the TOWN and GCGI that GCGI has examined the Premises and the land area depicted in Exhibit A and, GCGI accepts it in its present condition,

and that the Premises as leased from the TOWN, and the land area depicted in Exhibit A are accepted for the purposes specified in its condition "as is" and as it stands at the time the Lease is executed.

The TOWN has made no representations whatsoever as to the present or future condition of the Premises or the land area depicted in Exhibit A, including latent defects except the TOWN represents the Lease is in compliance with any legal limitations on the use of the property, including without limitation, any deed restrictions. GCGI shall comply with such limitations. The TOWN makes no representation that the Premises is currently in the condition legally required for the specific purposes described in paragraph 4 except as provided below.

GCGI expressly assumes the responsibility of examining the Premises and undertaking any and all work, at its sole cost and expense and raising the funding it requires, for the specified uses described in paragraph 4, with a goal to minimize operating costs of the TOWN.

6. IMPROVEMENTS AND ALTERATIONS

In addition to GCGI's obligations under this Lease and in order to provide the community garden for the TOWN, GCGI shall undertake the following improvements and alterations to the Premises:

- Install seasonal water line and spigots;
- Install water meter with the billing for water to be paid by GCGI;
- Build and maintain network of raised beds and garden elements, compost area, tool shed, kiosk, wheelbarrow corral, benches and shade structure;
- Install fencing, consisting of a buried woodchuck grill and a sufficiently high deer fencing around the perimeter;
- Provide portable seasonal restroom facility.

Any improvements that are fixtures on the Premises shall belong to the TOWN unless otherwise agreed to in writing. GCGI shall be provided a reasonable period of time for planning and implementing improvements and alterations recognizing it is GCGI that will be raising the money to build, operate and maintain the garden. GCGI is accountable for preserving the value of the premises through maintenance and improvements.

The TOWN agrees that it will:

- Make ready and remove any debris on the site;
- Perform tree maintenance and removals as approved by the tree warden;
- Replace existing gate structure;
- Provide clear roadway access to the site.

GCGI, during the term of this Lease, shall have the privilege of making additional improvements to the Premises provided that no such improvements shall be made without the prior written approval of the TOWN. Any consent shall not be unreasonably withheld, conditioned or delayed.

Any such improvements or alterations that become fixtures to the Premises shall be the property of the TOWN and shall remain upon and be surrendered with the Premises on the expiration or termination of the Lease without compensation to GCGI, except as the TOWN permits.

GCGI shall obtain for any improvement or alteration such building permits and other regulatory or administrative approvals, including review and approval by the Planning and Zoning Commission, as are normally incidental to the progress of any improvements and alterations and satisfactory conclusion of the same. The TOWN agrees to cooperate with GCGI in respect to signing documents as may be needed by GCGI for submitting applications for such

approvals. For all improvements or alterations that are independently contracted, GCGI shall promptly pay all contractors and material suppliers for work performed and materials supplied to the Premises. GCGI shall indemnify and save harmless the TOWN from any and all claims made against it by any such contractor, subcontractor or material supplier arising out of the above-described work. GCGI shall comply with the bonding requirements and other provisions of the Connecticut General Statutes §49-41 et. seq. where applicable.

7. MAINTENANCE OF THE PREMISES

Except as otherwise provided, GCGI at its sole cost and expense shall maintain the Premises in good repair and safe condition for the purposes provided in this Lease and shall surrender the Premises on the expiration or termination of the Lease in as good order and condition as it is now in, or as it may be placed by reason of any improvements and alterations subject to reasonable use and wear. GCGI agrees to commit no waste or injury to the Premises..

8. UTILITIES

GCGI shall be responsible for payment and provision of all necessary utilities for the garden's operation.

9. INSURANCE AND PROPERTY LOSS

A. GCGI shall procure and maintain at its own expense, at all times during the term of this Lease, insurance of the types and amounts specified below insuring and protecting GCGI and the TOWN from any and all claims for bodily injury, including accidental death, and for property damage arising out of the use of the Premises by GCGI or its officers, agents, employees, members, licensees and invitees. All policies shall name the TOWN as an additional insured and shall contain appropriate "loss payee" provisions in favor of the TOWN. The insurance required shall be as follows:

(1) All risk commercial property insurance, including extended coverage, vandalism, malicious mischief, and, and flood, insuring for an amount not less than the current replacement cost for the value of the Premises including improvements, alterations, and additions made to the Premises by GCGI and insuring GCGI's own personal property. The TOWN will not carry insurance on personal property of GCGI or improvements to the Premises made by GCGI, and shall not be liable for any damage to such personal property and/or improvements to the Premises.

(2) Commercial general liability insurance, including bodily injury and property damage liability and "personal and advertising liability injury" on an occurrence basis with respect to GCGI's use and occupancy of the Premises and the land area depicted in Exhibit A for any occurrence, of not less than One Million (\$1,000,000) Dollars combined single limit for bodily injury and property damage; One Million (\$1,000,000) Dollars "personal injury and advertising injury," One Million (\$1,000,000) Dollars aggregate for products and completed operations and Two Million (\$2,000,000) Dollars general aggregate or such greater amount as the TOWN may reasonably require from time to time. Such insurance shall contain a provision including coverage for all liabilities assumed by GCGI under this Lease and shall name the TOWN and its employees, officers and agents, as an additional insured.

Such insurance shall also waive subrogation against the TOWN.

(3) Comprehensive Automobile Liability, with minimum coverages of One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage, including, where applicable, coverage for any vehicle, all owned vehicles, scheduled vehicles, hired vehicles, non-owned vehicles and garage liability; or evidence of hired and non-owned auto liability insurance as an endorsement to GCGI's policy.

(4) Insurance for the benefit of the TOWN against damage to the Premises and the land area described in Exhibit A by fire and other casualty, including coverage for vandalism and malicious mischief, with extended coverage endorsement, the amount of such policy is to be reasonably sufficient and not less than the replacement cost of the Premises. The TOWN shall be a named insured in such policy as loss payee as its interests may appear.

(5) Workers compensation insurance for all of GCGI's employees, temporary employees working in or around the Premises in an amount sufficient to meet statutory payments (unlimited), employer's liability insurance with minimum limits of One Million (\$1,000,000) Dollars per accident, One Million (\$1,000,000) Dollars per employee for disease and One Million (\$1,000,000) Dollars policy limit for disease.

(6) Umbrella liability, on an occurrence basis, in the amount of Two Million (\$2,000,000) Dollars for each occurrence, Two Million (\$2,000,000) Dollars aggregate supplementing all coverages described in Subparagraphs (2), (3) and (4) of this Paragraph 9A. Such umbrella insurance will be no more restrictive than the terms provided in Paragraph 9A, and will not contain a cross liability, employer's liability, or similar exclusion. The policy must be endorsed to recognize aggregate limits for coverage described in Subparagraphs (2), (3), (4) and (5) of Paragraph A. The policy shall be endorsed to waive subrogation against the TOWN.

The TOWN shall have the right to require GCGI to increase the above mentioned insurance coverages from time to time, as to the extent that the TOWN Comptroller may require, but no such increase shall be arbitrary or unreasonable. Insurance review of GCGI by the Risk Manager shall be as the TOWN requires.

GCGI shall furnish three (3) certificates to the TOWN of each insurance policy or policies upon the commencement of this Lease and within thirty (30) days prior to the expiration

of each such policy. All insurance shall be carried by a company or companies authorized to do business in the State of Connecticut and having a rating of no less than A-/X1 as graded by Best's Rating Service. The TOWN shall receive at least 60 days written notice of termination, nonrenewal, or any material alteration of each insurance policy referred to in this Lease. All such policies shall be written as primary policies which do not contribute to and are not to be merely excess coverage that the TOWN may carry. GCGI shall also furnish to the Town an agent endorsement letter, in the form attached as Exhibit D.

GCGI shall not do or permit any act or thing to be done in or to the Premises that is contrary to law or that will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of the TOWN with respect to the Premises, or that might subject the TOWN to any liability or responsibility to any person for property damage, nor shall GCGI keep anything in the Premises except as permitted by the Greenwich Fire Department, the Connecticut Board of Fire Underwriters and any other authority having jurisdiction over the Premises, and then only in such manner and such quantity so as not to increase the rate of fire insurance applicable to the Premises, nor use the Premises in a manner that shall increase the fire insurance rates for any building or any property located on the Premises because of any special risk over those in effect on the commencement date.

B. The TOWN and its employees, agents, and officers shall not be liable for:

(1) any damage to or loss of property of GCGI, GCGI's employees, agents, tenants, lessees, licensees, invitees, or trespassers whether by theft, casualty or otherwise, including without limitation damage to personal property of GCGI and improvements to the Premises made by GCGI; and

(2) any injury or damage to property or persons including without limitation GCGI's

employees, agents, tenants, lessees, licensees, invitees, or trespassers resulting from any cause whatsoever in connection with the use of the Premises and the land area depicted in Exhibit A, unless caused by or due to the negligence or affirmative or willful act of the TOWN, its employees, agents or officers.

(3) Any damage to the Premises by reason of the moving by GCGI equipment or furnishings, or the installation of equipment or furnishings of or by GCGI or on GCGI's behalf, shall be promptly repaired by GCGI to the reasonable satisfaction of the TOWN and at GCGI's sole cost and expense, unless caused by the TOWN.

10. INDEMNIFICATION

GCGI shall indemnify, defend and save the TOWN harmless from and against all liabilities, obligations, damages, penalties, claims, loss, costs and expenses, including reasonable attorneys' fees, paid, suffered or incurred as a result of (i) any breach by GCGI, its officers, agents, contractors, employees, tenants, lessees, licensees or invitees, of any covenant or condition of this Lease; (ii) any negligence or willful act of GCGI, its officers, agents, contractors, employees, tenants, residents, lessees, licensees or invitees, and (iii) the use and occupancy of the Premises and the land area depicted in Exhibit A by GCGI, its officers, agents, employees, tenants, lessees, licensees or invitees.

GCGI shall keep fully informed and comply with all existing and future federal, state and local laws, ordinances, rules and regulations affecting, controlling and governing the use of the Premises and shall indemnify and hold harmless the TOWN, its officers, employees and agents, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, penalties, losses, damages, costs and expenses, including reasonable attorneys' fees, arising from or based upon any violation or claimed violation of any such laws, ordinances, rules and

regulations, whether committed by GCGI or any of its officers, agents, employees, tenants, residents, lessees, licensees or invitees.

11. SUBLETTING AND ASSIGNMENT

GCGI shall not sublet the demised Premises, or any portion without express prior written consent of the TOWN, nor shall the Lease be assigned without the express prior written consent of the TOWN and all agencies and boards as appropriate. A sublease, if any, shall be limited to a non-profit group or agency. Any revenue from an approved sublet or assignment shall be appropriately allocated as approved by the Town. If at any time the Premises shall be abandoned, the TOWN may declare the Lease in default, and this Lease shall terminate.

12. INSPECTION AND EMERGENCY REPAIRS

The First Selectman of the TOWN, and its authorized agents, shall have the right to enter and inspect the Premises at all reasonable times. In the case of an emergency, the TOWN shall take all necessary steps to respond to the emergency and to stabilize the conditions of the Premises. As soon as practicable under such emergency condition, the First Selectman shall notify the Executive Director of the GCGI of the need to make emergency repairs. If the TOWN is unable to reach the Executive Director of the GCGI or if an emergency condition of the Premises requires a more immediate response, GCGI agrees that the TOWN may direct any repairperson or company to make any immediate repairs in the Premises at the sole cost and expense of the party responsible for the repairs.

13. TERMINATION

A. The TOWN may terminate this Lease prior to the expiration of the Lease term, as provided in this paragraph.

The TOWN shall have the right to terminate this Lease and require GCGI to quit and

surrender the Premises upon the following events of default by GCGI: (a) If GCGI does not procure and maintain insurance as required by this Lease; (b) If the Premises are abandoned; (c) If any lien, attachment or other encumbrance is lodged and GCGI fails to remove the same within sixty (60) days or fails to commence reasonable efforts to remove the same; (d) If GCGI fails to comply with any provision of this Lease and does not cure such default within sixty (60) days of the receipt of notice from the TOWN.

In the event of a default under this subparagraph 13A, the TOWN shall serve upon GCGI a written notice specifying the nature of the default and upon the expiration of thirty (30) days and GCGI shall have failed to remedy such default, or if such default or omission complained of is of a nature that the same cannot be completely cured or remedied within such thirty (30) day period, and the TOWN determines GCGI shall not have diligently commenced curing such default within such thirty (30) day period and with diligence and in good faith to proceed to remedy or cure such default, then this Lease shall at the TOWN's option and upon notice to GCGI terminate and expire, and GCGI shall quit and surrender the Premises to the TOWN, but GCGI shall remain liable to the TOWN as provided.

In the event of a default by GCGI under this Lease, the TOWN shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary process and other remedies were not required. The recitation in this Lease of any particular right or remedy shall not preclude the TOWN from any other remedy available at law or in equity. GCGI acknowledges that this Lease constitutes a commercial transaction within the meaning of section 52-278a of the Connecticut General Statutes. Pursuant to section 52-278f of the Connecticut General Statutes, GCGI waives and relinquishes all rights to notice and hearing as provided in section 52-278a through section 52-278g of the Connecticut General Statutes prior to

the TOWN obtaining any prejudgment remedy against GCGI in connection with the enforcement by the TOWN of any of its rights or remedies under this Lease.

Upon termination as provided by law, the TOWN may without further notice re-enter the Premises and dispossess GCGI by summary process or otherwise and remove GCGI's effects and hold the Premises as if this Lease had not been made.

i. Effect of Termination or Expiration on Lease Obligations

If this Lease is terminated prior to the full Lease term, neither party shall have any obligations whatsoever to the other, except as provided in this Lease, and GCGI shall be obliged to pay for any obligations or liabilities under this Lease that have accrued prior to the date of such termination or expiration.

ii. Effect of Termination or Expiration on Return of the Premises

Upon termination of the Lease, the TOWN may require GCGI at its sole cost and expense to return the Premises in as good order and condition as it is now in, or as it may be placed by reason of any such alteration made subject to reasonable use and wear.

iii. TOWN's Performance Upon Default by GCGI

If GCGI defaults under this Lease, the TOWN may at its option but without obligation or at any time without notice, immediately remedy the same at the sole cost and expense of GCGI in lieu of enforcing its other rights described.

If the TOWN makes any expenditures or incurs any obligations for the payment of money in connection with, including but not limited to, costs, fines, penalties, interest, damages and reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred shall be paid immediately by GCGI to the TOWN upon the rendition of any bill or statement to GCGI therefore, together with interest at a rate equal to

twelve (12%) percent per annum.

Nothing described shall be construed as to require the TOWN to incur any expenses or obligations on behalf of GCGI.

iv. No Waiver

The failure of the TOWN to seek redress for any violation of or to insist upon the strict performance of, any of the terms of this Lease or of any of the rules and regulations described or adopted by the TOWN, shall not waive the effect of or excuse such violation or performance or any subsequent violation or performance.

B. The First Selectman of the Town, with the prior approval of the Representative Town Meeting, shall have the right to terminate this Lease at any time by giving one hundred twenty (120) days advance written notice to GCGI when it is in the best interest of the Town.

GCGI shall have the right to terminate this Lease at any time by giving one hundred twenty (120) days advance written notice to the Town when termination is in the best interest of GCGI.

14. HOLDING OVER

In the event that GCGI shall remain in the demised Premises after the expiration of the term of this Lease without having executed a new written lease with the TOWN, such holding over shall not constitute a renewal or extension of this Lease. The TOWN may, at its option, elect to treat GCGI as one who has not removed at the end of its term, and subsequently be entitled to all the remedies against GCGI provided by law in that situation, or the TOWN may elect, at its option, to construe such holding over as a tenancy from month to month, subject to all the terms and conditions of this Lease, except as to such duration and in that event GCGI shall pay rent in advance at the rate provided as effective during the last period of the Lease

term.

15. LEASE RENEWAL

GCGI shall have the right, privilege and option to renew this Lease for an additional term of ten (10) years, upon its expiration, provided that GCGI shall give written notice to the Board of Selectmen of the TOWN of its intention to so renew at least six (6) months prior to the expiration date of this Lease, and provided further that such term shall be subject to such conditions as the TOWN may then deem necessary or appropriate.

Any Lease to be renewed shall be subject to change of terms at renewals, or for any exigent purpose.

16. DAMAGE BY FIRE

If the improvements to be constructed under the Lease by GCGI with TOWN approval are destroyed or damaged by fire or other cause to the extent which in the opinion of the TOWN and GCGI renders the repair and reconstruction thereof imprudent or impractical, taking into consideration the aforesaid fire insurance, then and in such case the Lease and term hereby created shall, at the option of the TOWN cease and become null and void, and GCGI shall immediately surrender the Premises and all GCGI's interest therein to the TOWN and the TOWN may reenter and repossess the Premises thus discharged from this Lease.

Allocation between the parties of any insurance proceeds paid or payable to the TOWN and GCGI in the event of any such damage by fire or other cause shall be determined by agreement between the TOWN and GCGI.

17. QUIET ENJOYMENT

Subject to the foregoing, GCGI shall peaceably and quietly have, hold and enjoy the Premises for the term described in this Lease, conditioned upon GCGI's performance of its

promises made in this Lease.

18. RECORDS

GCGI shall maintain accurate financial records in connection with the operation and management of the Premises. The TOWN shall have the right to inspect GCGI's records from time to time upon reasonable notice.

GCGI, upon reasonable notice, shall provide to the TOWN annual financial statements, including an income statement and balance sheet.

GCGI shall maintain a current list of gardeners using the Premises that shall be open for inspection by the TOWN.

GCGI's by-laws are attached as Exhibit C.

19. NOTICES

Any written notice required to be sent under the provisions of this Lease shall be sent by postage prepaid, certified mail to the respective parties at the following addresses:

(a) To the TOWN:
First Selectman
Town of Greenwich
Town Hall,
101 Field Point Road
Greenwich, Connecticut 06830

And

Law Department
Town of Greenwich
Town Hall
101 Field Point Road
Greenwich, Connecticut 06830

To GCGI:
President
Greenwich Community Garden, Inc.
PO Box 4743
Greenwich CT 06831

And

Richard J. Margenot
Attorney at Law
Suite 100, 537 Steamboat Road
Greenwich, Connecticut 06830

20. ENTIRE AGREEMENT

This Lease is complete and embodies all understandings and agreements between the parties. No representation, warranty, agreement or undertaking of any kind or nature has been made to either party to induce the making of this Lease, except as is expressly set forth in this Lease. The parties acknowledge that there is no other agreement, oral or written, existing between them. No oral statement or prior written matter outside of this Lease shall have any force or effect.

21. MODIFICATIONS IN WRITING

No modification or waiver of any of the terms of this lease shall be valid unless in writing and duly executed by the parties with the same formality as this Lease.

22. HEADINGS

The Paragraph headings of this Lease are for purposes of reference and are not intended to limit in any way the provisions of this Lease.

The TOWN and GCGI have executed this Lease on December , 2013 in Greenwich, Connecticut.

Signed, Sealed and Delivered

In the Presence of:

TOWN OF GREENWICH

GREENWICH COMMUNITY GARDENS, INC.

By: _____
Peter J. Tesei,
Its First Selectman

By: _____
Patty Sechi
President

STATE OF CONNECTICUT) ss: Greenwich
COUNTY OF FAIRFIELD)

On this day of December 2013 personally appeared Peter J. Tesei, First Selectman of the TOWN of Greenwich, signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, and the free act and deed of said TOWN OF GREENWICH, before me.

Notary Public
My Commission Expires:

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss: Greenwich

On this day of December 2013 personally appeared Patty Sechi, President of GREENWICH COMMUNITY GARDENS, INC., signer and sealer of the foregoing instrument, and acknowledged the same to be her free act and deed, and the free act and deed of said GREENWICH COMMUNITY GARDENS INC., before me.

Notary Public

