

UNP-2193 Appendix B

Community Garden Lease Template adapted from ChangeLab Solutions, 2012:

THIS IS A COMMUNITY GARDEN LEASE dated as of _____, between _____ Name of Landowner and _____ Community Garden, a nonprofit organization (Sponsor).

Background (Sample)

Watts Community Garden is a nonprofit organization that works to address food insecurity in the Birmingham metro area. Along these lines, Watts Community Garden aspires to organize and operate a community garden program for those living in Bessemer, Alabama. Paul Smith is willing to lease land to Watts Community Garden for that purpose on the terms described herein.

Landowner and Sponsor Agree on the following:

A. PARCEL, TERM, AND RENT

A.1. Lease. Landowner leases to sponsoring garden group the 10,000 square foot parcel located at 1234 N. 17th Street Bessemer, AL 35223 ("Parcel"). The parcel is currently an unused brown space that is suitable for agricultural production applicable to a community garden program. There are no existing structures on the parcel.

A.2. Use. The sponsor can use the Parcel for the sole purpose of managing a community garden (Watts Community Garden) with plots to be allocated by the sponsor to neighborhood members.

A.3. Term. The term of this Lease is 10 years, starting on _____ and ending on _____. The Lease will terminate upon end of this term, or if either party terminates it as outlined in Section 4 or if renewal is established.

A.4. Renewal. This Lease will automatically renew for an additional _____ year term unless the Landlord or Sponsor provides written notice to the other of nonrenewal no later than _____ months prior to the current term or unless either party chooses to terminate as outlined in this section.

A.5. Rent. At the time of signing the Lease and on each subsequent anniversary, Sponsor will pay Landlord \$____ in rent for the next year. For each renewal term, Landowner may, increase the amount of the rent payment by up to ____% by notifying Sponsor _____ months before the start of the renewal term.

A.6. Late Payment. Sponsor's failure to pay rent within _____ months of when the payment is due will breach the terms of this Lease. In that case the landowner will have the rights and remedies provided for in this Lease agreement and under law in the case of non-payment of rent. Furthermore, the Landowner may charge the Sponsor interest on unpaid rent at the rate of ____% monthly, which will be calculated from the _____th day after payment was due and will continue until paid.

A.7. Security Deposit. At the time of signing the lease, the Sponsor will pay Landowner \$____ as a security deposit to ensure performance of the Sponsor's duties under this Lease. Should the Sponsor breach the terms of the lease, the Landowner may apply all or part of the security deposit to any amount the Landowner pays by reasons of Sponsor's default and to any damages the Landowner is entitled to under this Lease. If the Sponsor has not defaulted under this Lease, the Landowner will return Sponsor's security deposit when this Lease terminates.

B. OPERATION AND MAINTENANCE OF PARCEL

B.1. Parcel As-Is. The Sponsor acknowledges that the Landowner is not making any warranties, promises, or guarantees of any kind to the Sponsor including any representations about the quality, or suitability of the Parcel for use a community garden space. In deciding to enter into this Lease, the Sponsor has made its own independent evaluation of the suitability of the Parcel to be used as a community garden.

B.2. No Landowner Responsibilities. The Sponsor has the sole responsibility for the fundraising, planning, organizing, and management on the Parcel. This includes any required permits for operating a community garden program. The Landowner has no obligation to make any alterations, improvements, or repairs of any kind on the Parcel, nor to supply any services or support.

B.3. Law Compliance. The Sponsor will operate and use the Parcel in ways that follow all applicable zoning, environmental, and

any other applicable laws and regulations.

B.4. Garden Rules. Sponsor will manage the community garden with a set of rules in the attached form as Exhibit B. The sponsor will require all participants to whom it assigns plot space to enter into a garden agreement and each gardener will provide a waiver of liability in the form attached as Exhibit C.

B.5. Security. The sponsor will install and maintain a system to prevent entrance to the garden outside of operating hours and/or when the Parcel is unattended, such as security locks, and fences.

B.6. No Alterations. The sponsor may not permit any permanent alterations or updates to the Parcel without the written consent of the landowner. On the expiration or termination of this Lease, all improvements to the Parcel will belong to the Landowner, and Landowner will have no obligation to reimburse the Sponsor.

B.7. No Transfers. The Sponsor may not mortgage, encumber, or transfer this Lease, or sublet the Parcel to be used or occupied by others, except by persons maintaining a plot as outlined in the gardener agreement contemplated by Section B.4. Any attempted transfer is void and is a default under the Lease.

B.8. Right of Inspection. The Landowner may enter the Parcel at all reasonable times to inspect it and to evaluate the Sponsor's compliance with the Lease terms, as well as for the purpose of taking any other actions that the Landowner believes are appropriate to protect the Landowner's interest in the Parcel. The Landowner must, however, report any changes, malfunctions or damage made to any plot that may result in additional costs or expenses for the gardening group. The sponsor will provide a key or combination to any gate or lock to the Parcel. In addition, the Landowner does not assume liability of any kind arising from the Parcel inspection unless his/her actions cause any malfunctions, damage, or loss.

B.9. Liens. The Sponsor will not incur, create, assume, or permit the creation of any lien on the Parcel. The Sponsor will keep the Parcel free of liens arising out of work performed on or materials provided to the Sponsor for the Parcel.

B.10. Commercial Enterprise Prohibited. The sponsor will not undertake any commercial enterprise, including but not limited to sales of produce, on the Parcel.

C. EXPENSES

C.1. Utilities. The Sponsor will have sole responsibility for obtaining and paying the water, electricity, heat, sewage, storm sewer, or any other utility service used on the Parcel during the Lease term.

C.2. Taxes. The Landowner will have the sole responsibility for property tax returns and payments relating to the Parcel required by federal, state, or local tax authority. The Sponsor will have the sole responsibility for all tax returns and payments required by any federal, state, or local tax authority in connection with Sponsor's operations. The Sponsor will have the sole responsibility for paying all personal property taxes or assessments levied on Sponsor's personal property on the Parcel as well as all income or sales taxes that result from the sponsor's operations on the Parcel. The Landowner agrees to cooperate with the Sponsor to receive any tax abatements, exceptions, or other exclusions for which the Sponsor may qualify.

D. TERMINATION

D.1 At Will. This lease may be terminated at any time by either party. The termination will be effective after delivery by the termination party to the other party of a written notice of termination under this Section D.1.

D.2. Breach by Sponsors. If the Sponsor breaches any of its obligations under this Lease, the Landowner may provide the Sponsor with written notice of the breach. If the Sponsor fails to resolve the breach within 30 days after receipts of such notice, the Landowner may terminate this Lease by providing written notice, with the termination date effective 15 days after delivery of such notice to the Sponsor. The Landowner will determine whether the breach has been resolved.

D.3. Yielding Possession. Upon termination of this Lease, the Sponsor will leave and surrender the Parcel to the Landowner in at least as good or if not in better condition than the date on which the Lease was signed.

D.4. Cooperate in Transition. Upon termination or expiration of this Lease, the rights of Sponsor under this Lease will immediately, and without consideration terminate and revert to Landowner. The Sponsor and Landowner will cooperate in good faith in reasonable transition activities prior to and after termination of this Lease to minimize the impact to the community and the Landowner's use of the Parcel.

D.5. Personal Property. If the Sponsor or a gardener leaves his/her personal property on the Parcel after the termination of this Lease, the Landowner may store it in a warehouse or any other location for Sponsor's account and at the Sponsor's risk. The

Landowner will release the property when the Sponsor pays all charges related to storage and all other amounts Sponsor owes under this lease. If the Sponsor does not reclaim its property within the allotted time permitted by law, the Landowner may sell it in accordance with the law or apply the proceeds of the sale to any amounts the Sponsor owes the Landowner under this Lease.

D.6. Holding Over. If the Landowner terminates this Lease, any holding over by the Sponsor after termination of this Lease without the Landowners express written consent is not a renewal or extension of the Lease. It will not give the Sponsor rights to the Parcel.

D.7. Cumulative Remedies. All the Landowner's rights, powers, and remedies under this Lease are cumulative and not alternative and will be in addition to all rights, powers, and remedies given to the Landowner at law or in equity. The exercise of any one or more of these rights or remedies will not impair the Landowner's right to exercise any other right or remedy including all rights and remedies of a landlord under or any similar, successor, or related laws.

E. INDEMNITY AND WAIVER OF LIABILITY

E.1. Indemnification. The Sponsor will defend, indemnify, and hold the Landowner and the Landowner's directors, officers, employees, agents, and assigns harmless against all claims, losses, damages, expenses, and attorneys' fees including, without limitation, Losses arising from any death, property damage, or injury of any nature whatsoever that may be suffered or sustained by the Sponsor or any of the Sponsor's licensed gardeners, employees, contractors, family members, guests, or any other person in relationship with the Sponsor or Sponsor's licensed gardeners or otherwise participating in or present in the Garden, which may arise directly or indirectly from (a) Sponsor's Parties' use or operation of or presence on the Parcel, or (b) any breach by Sponsor of this Lease, including without limitation, Sponsor's failure to enforce the garden rules and regulations, except to the extent the Loss is caused by the gross negligence or willful misconduct of Landowner. This Section E.1 will survive the termination of this Lease.

E.2. Waiver of Liability. The sponsor releases and waives all claims against any Landowner with respect to or arising out of (a) any death or any injury of any nature whatsoever that may be suffered or sustained by the Sponsor from any causes whatsoever, except to the extent that such injury or death is caused the gross negligence or willful misconduct of such Landowners; (b) any loss or damage or injury to any property on or about the Parcel belonging to the Sponsor, except to the extent such injury or damage is caused by gross negligence or willful misconduct of such Landowner; or (c) the condition of the Parcel and suitability of the Parcel for use as a community garden. Subject to the prior provisions, the Landowner shall not be liable for any damage whatsoever to the Sponsor caused by explosion, fire, theft, crime, or negligent behavior, by sprinkler, drainage, plumbing, or irrigation systems, by failure for any cause to supply adequate drainage, by the interruption of any public utility or service, by steam, gas, water, rain, or other substances leaking or flowing into any part of the Parcel, by natural occurrence, riot, court order, requisition, or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance, or alteration of any part of the Parcel, or by anything done or omitted to be done by Sponsor parties or any other person on the parcel. In addition, the Landowner shall not be liable for any Losses for which the Sponsor is required to insure if such loss or damage is not caused by gross negligence or willful misconduct of such Landowner. This Section E.2 will survive any termination of this Lease.

F. INSURANCE

F.1. Insurance. The Sponsor will, at its own cost, take out and maintain without interruption during the term of this Lease comprehensive general liability insurance naming Landowner as an additional insured, affording coverage for bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than (\$1,000,000). Coverage shall be made on an "occurrence" basis and not a "claims made" basis.

F.2. Evidence of Insurance. On or before the Landowner delivers possession of the Parcel to the Sponsor, the Sponsor will provide the Landowner with a copy of the insurance policies required by Section 6.1. The Sponsor will deliver to the Landowner evidence of each renewal or replacement of any required insurance policy at least 10 days prior to the expiration of such policy. In lieu of the actual policies, the Sponsor may deliver to Landowner a certificate of insurance evidencing Sponsor's insurance policies, provided that the Landowner also receives a copy of the endorsement naming the Landowner as an additional insured.

G. General Provisions

G.1. Entire Agreement. This lease is the entire agreement between the Landowner and Sponsor and supersedes all prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between the Landowner and the Sponsor relating to the same subject matter.

G.2. Modification and Severability. This Lease may be modified only as stated in writing and signed by both the Landowner and

the Sponsor that states it is an amendment to this Lease. If any provision in this Lease is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

G.3. Waiver. Any waiver of any term of this Lease must be in writing. Failure, neglect, or delay by a party at any time to enforce the provisions of this Lease will not be considered a waiver of that party's rights under this Lease. Any waiver shall not be considered a waiver of any later breach or of the right to enforce any provision of this Lease.

G.4. Counterparts. This lease may be executed in one or more counterparts, each of which shall be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

G.5. Third-Party Beneficiaries. Except as specifically provided in Section E. of this Lease, this Lease is for the exclusive benefit of the Landowner and the Sponsor, and not for the benefit of any third party including, without limitation, any gardener, employee, or volunteer of Sponsor. All Landowner Parties are an express third part beneficiary of Section E.

G.6. Notices. Notices and consents under this lease must be in writing and delivered by mail, courier, or fax to the addresses set out on the signature page of this Lease. These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section G.4. will be considered given two business days after deposit in the mail, or the first business day after delivery to a courier or delivery by fax.

G.7. Governing Law; jurisdiction and Venue. This lease is governed by Alabama law. Sponsor consents to the exclusive jurisdiction and venue of the state and federal courts of Jefferson County.

This Lease is signed by Landowner and Sponsor as of the date first written above.

LANDOWNER

SPONSOR

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____



This document was adopted and appended from the original University of California Cooperative Extension, Los Angeles County publication (Community Garden Start-Up Guide by Rachel Surls) for the Alabama Cooperative Extension System.

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