



# Ground Rules

A Legal Toolkit for Community Gardens

nplan

NATIONAL POLICY & LEGAL ANALYSIS NETWORK  
TO PREVENT CHILDHOOD OBESITY

phlp  
public health  
law & policy

## Acknowledgments

*This toolkit was produced in collaboration with the Organizations and Transactions Clinic, a part of the Mills Legal Clinic at Stanford Law School. Our deepest appreciation to students Mike Austin and Jennifer Bunn, and to Jay Mitchell, Associate Professor of Law and Clinic Director, for providing much of the text for this toolkit.*

*We also appreciate the feedback from our expert community garden panelists who reviewed this toolkit: Katherine Brown, Executive Director of the Southside Community Land Trust (Providence, Rhode Island); Betsy Johnson, Treasurer of the American Community Gardening Association and President of the South End/Lower Roxbury Open Space Land Trust (Boston, Massachusetts); and Debra Lippoldt, Executive Director of Growing Gardens (Portland, Oregon).*

*The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of Public Health Law & Policy (PHLP). PHLP is a nonprofit organization that provides legal information on matters relating to public health. The legal information provided in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.*

*Support provided by a grant from the Robert Wood Johnson Foundation.*

© 2011 Public Health Law & Policy

Published: February 2011

Cover photos by Tim Wagner for PartnershipPH.org, and Lydia Daniller.

## Table of Contents

- 4 Introduction
- 8 Model Community Garden Lease
- 22 Model Community Gardener's Agreement
- 26 Model Community Garden Rules
- 34 Checklists
  - 34 *Discussion Checklist for Prospective Gardeners*
  - 35 *Orientation for New Gardeners*

**C**ommunity gardens offer a place where residents can gather to cultivate plants, vegetables, and fruits. In addition to giving people the opportunity to grow fresh foods for their families, socialize with their neighbors, and get some exercise, these gardens also promote safety, resource conservation, and economic vitality for a neighborhood and its residents. Many cities have thriving community garden programs on public land, often with long waiting lists for gardening plots.

Communities may also have underutilized land – owned by individuals and other private entities, and by nonprofit entities such as faith-based organizations, local colleges, universities, hospitals, or school districts – that could be used for community gardens. Some communities also have vacant parcels and land that, although designated for future development, is currently unused due to lack of financing or other barriers.

Landowners may be reluctant to allow their property to be used for a community garden, fearing damage to their property or liability in the event of a gardener's injury. They also may worry that the garden will be poorly operated and maintained, attracting vandals, or creating friction with neighboring landowners. In the case of shorter-term gardens, landowners may worry that gardeners won't vacate the land at the end of the term. Because the landowner is likely to receive minimal, if any, economic return from a community garden, the perceived potential costs may cause a landowner to say no to a community garden. Similarly, nonprofit organizations may hesitate to operate community gardens because they too fear the costs of potential liability.

This toolkit was developed to provide legal resources for establishing community gardens on vacant or underutilized parcels of land.

## The toolkit consists of:

### 1. Model Community Garden Lease

In this lease between a landowner and a nonprofit organization, the landowner agrees to allow the use of the property as a community garden. The nonprofit organization agrees to be legally responsible for overseeing the operation of the garden, to abide by the conditions in the lease (including maintaining insurance coverage), and to give up any potential right to sue in the event of harm or property damage to the organization, board members, employees, volunteers, or gardeners.

### 2. Model Gardener's Agreement

In this agreement between the sponsoring nonprofit organization and an individual gardener, the sponsoring organization agrees to allow an individual gardener to participate in the garden, and the gardener agrees to abide by the rules and give up any right to sue if injured in the garden.

### 3. Model Community Garden Rules

These rules address the way a garden will operate, and outline the gardeners' privileges and responsibilities. The rules are designed to promote safety (for the participants and the property), prevent disputes, provide a fair dispute resolution process to keep disputes from escalating, and prevent disturbances to neighboring property owners and residents.

### 4. Two discussion checklists for the sponsor organization:

- a. A checklist addressing the garden's operating rules and the gardeners' responsibilities (for prospective gardeners)
- b. A garden orientation checklist to introduce new gardeners to garden operations

The toolkit describes the rights and responsibilities of the landowner, the sponsoring organization, and gardeners in an accessible way. It also provides options for tailoring the documents to meet the circumstances of different gardens.

## The Legal Framework

Trust and open communication are key to developing a successful community garden. When the participants honor their responsibilities and respect one another's involvement, gardens operate safely and successfully, fewer conflicts arise, and any disputes that do occur can be solved informally. The Lease, Gardener's Agreement, and Garden Rules in this toolkit promote trusting relationships by ensuring that all parties understand their responsibilities. Ultimately, the legal documents function as a backstop to resolve a problem or assign responsibility when the problem cannot be solved informally. These legal agreements, like most contracts, contain many terms that cover events that will likely never occur.

As explained more fully in the model documents, the legal documents were designed to help overcome the legal and practical barriers to establishing community gardens on non-municipally owned property and are especially oriented toward persuading landowners to allow their property to be used for a garden. Because landowners will receive little or no economic benefit from this arrangement, the documents contain terms favorable to them. For example, they minimize any potential costs to the landowner by placing operating expenses and responsibilities on the nonprofit sponsor and gardeners, and they relieve the landowner of any risk of liability in the (unlikely) event of property damage or injury.

Using these models, the landowner contracts with a legally recognized entity, the nonprofit organization (rather than a group of individual gardeners). The nonprofit organization is responsible for supervising the operation of the garden. The individual gardeners sign an agreement with the nonprofit to follow the rules and waive any right to sue. Because gardening is, generally, a low-risk activity, the gardener receives a valuable benefit – the opportunity to garden – in exchange for forgoing an opportunity to sue, which the gardener would likely never exercise.

## Using the Toolkit

Establishing a new community garden requires many kinds of resources. Gardeners need some type of organizational structure, adequate financial resources for start-up costs, access to land suitable for gardening, and a trusting relationship with the landowner. This toolkit's scope is limited to providing the *legal tools* for establishing a community garden. There are many excellent resources available to address other aspects of starting a garden, some of which are listed at the end of this introduction.



Tim Wagner for PartnershipPH.org.

The toolkit offers model templates, but they are not “one size fits all.” The models can be tailored to meet various needs, depending on the type of entity that owns the land and the relationships between the parties involved. The models feature comments in italics to explain provisions and to offer options for different situations. While these legal resources are designed particularly for private landowners (private or nonprofit), they could be modified for use with gardens on government property, although most government entities have their own required lease agreements. In some circumstances, the landowner may also be the sponsoring organization, such as a church that operates a community garden on its property. In this situation,

the nonprofit organization can use the Gardener's Agreement but may want to incorporate some terms from the Lease. Contact a local attorney for more assistance.

## Other Considerations

Before using the resources in this toolkit, be sure to consider some additional legal and practical issues.

### *Understanding contractual relationships*

Negotiating and signing contracts is the last step in establishing a community garden. The legal documents provide a vehicle for learning about each party's concerns, addressing those concerns, and ensuring that everyone understands and agrees to the terms of the relationship.

*Negotiating and signing contracts is the last step in establishing a community garden. The legal documents provide a vehicle for learning about each party's concerns, addressing those concerns, and ensuring that everyone understands and agrees to the terms of the relationship.*

Any type of contract, including a lease, is the product of negotiation. The parties negotiate the terms of the lease, sign their agreement to abide by the conditions, and then carry out the lease's terms. Once the contract is signed, if the parties disagree about the meaning of any of the provisions and can't resolve the matter themselves (or through mediation or other alternative dispute resolution), they could go to court to seek interpretation or enforcement of the lease. In that event, the court would ultimately determine the meaning of the provisions. There is always a (remote) possibility that a court would interpret a provision of the contract differently than the parties intended when they signed the lease. Straightforward drafting and a clear understanding between the parties of their rights and obligations under the lease minimizes the risk of a dispute.

### *Zoning codes*

Local governments regulate the use of private property through zoning codes. Generally, zoning codes divide cities into different districts, such as residential, commercial, or industrial, and allow property to be used in specific ways based on the district. A community garden must be a permitted use of the identified property under the local zoning code. For more information on land use policies relating to community gardens, see NPLAN's *Establishing Land Use Protections for Community Gardens* which is available at [www.nplan.org](http://www.nplan.org).

### *Suitability of property*

Whether the parcel of land is suitable for a community garden depends on factors such as access to water, sufficient sunlight, and soil appropriate for gardening. Guidance on assessing the suitability of a parcel of land for a garden is beyond the scope of this toolkit, but useful resources are included at the end of this introduction. One of the greatest concerns in establishing the garden is the safety of the soil. Unfortunately, the Environmental Protection Agency has not issued an approved testing protocol or soil content safety standard specifically for community gardens. Generally, when assessing the suitability of the site, the parties should consider the site history, how the site will be used and by whom (particularly children), and the results of soil testing. Mitigation measures may include soil removal, barriers, raised beds, or soil amendments. The lease can be amended to reflect the appropriate requirements.

### *Duration of the garden*

The anticipated duration of the community garden is another important consideration. In some circumstances, particularly for nonprofit landowners, the community garden may be established for long-term use; in others, where the land is expected to be developed, a more temporary garden is intended. Giving the landowner flexibility in terms of the duration may be an important incentive for making the land available. Be sure to consider the duration of

the garden's existence when determining the amount of time and money to invest in the garden. Make sure the gardeners are also aware of the term of the garden so that they invest their time and money appropriately.

### *Community gardens versus urban farms*

These legal resources were developed to address community gardens – communal gardens where participants grow produce and other plants primarily for themselves or to share with neighbors. The toolkit is not designed to address urban farms, which are commercial or entrepreneurial enterprises. While the documents could be adapted for commercial farms, they do not address many additional legal issues that arise from commercial activity. Again, a local attorney can make the necessary changes.

Tim Wagner for PartnershipPH.org.



## Additional Helpful Resources

### Starting A Community Garden

#### American Community Garden Association

##### *Starting a Community Garden*

[www.communitygarden.org/learn/starting-a-community-garden.php#sample](http://www.communitygarden.org/learn/starting-a-community-garden.php#sample)

#### University of Missouri Extension

##### *Community Garden Toolkit (April 2009)*

<http://extension.missouri.edu/publications/DisplayPub.aspx?P=MP906-6#Resources>

### Suitability of Site and Soil Testing

#### American Community Garden Association

##### *How Do I Pick a Site? Site Considerations and Analysis*

[www.communitygarden.org/rebeltomato/roots/pick-a-site.php](http://www.communitygarden.org/rebeltomato/roots/pick-a-site.php)

#### American Planning Association

##### *Creating Community-Based Brownfields Redevelopment Strategies*

[www.planning.org/research/brownfields/](http://www.planning.org/research/brownfields/)

#### Cornell Waste Management Institute, Department of Crop and Soil Sciences in the College of Agriculture and Life Sciences at Cornell University.

##### *Sources and Impacts of Contaminants in Soils (April 2009)*

##### *Guide to Soil Testing and Interpreting Results (April 2009)*

##### *Soil Contaminants and Best Practices for Healthy Gardens (Updated October 2009)*

Each of these documents is available at: <http://cwmi.css.cornell.edu/soilquality.htm>

#### U.S. Environmental Protection Agency

##### *Steps to Create a Community Garden or Expand Urban Agriculture*

[www.epa.gov/brownfields/urbanag/steps.htm](http://www.epa.gov/brownfields/urbanag/steps.htm)

##### *How Does Your Garden Grow? Brownfields Redevelopment and Local Agriculture*

[www.epa.gov/brownfields/success/local\\_ag.pdf](http://www.epa.gov/brownfields/success/local_ag.pdf)

#### University of Louisville, Kentucky

##### *Urban Agriculture and Soil Contamination Practice Guide (2009)*

[http://cepm.louisville.edu/Pubs\\_WPapers/practiceguides/PG25.pdf](http://cepm.louisville.edu/Pubs_WPapers/practiceguides/PG25.pdf)

### Land Use Laws and Community Gardens

#### Public Health Law & Policy

##### *Establishing Land Use Protections for Community Gardens*

[www.nplan.org/nplan/products/establishing-land-use-protections-community-gardens](http://www.nplan.org/nplan/products/establishing-land-use-protections-community-gardens)

# Model Community Garden Lease

The Model Community Garden Lease is an agreement between a landowner and a nonprofit organization to allow the nonprofit to occupy and use a parcel of land as a community garden. The Model Gardener Agreement and Model Community Garden Rules are designed to be used with the Lease to ensure successful operation of the community garden. The Lease addresses both legal and operational issues relating to the community garden.

The provisions of the Lease are based on general contracting law and use the language of contract law. The comments sections explain the meaning of the provisions of the Lease. It is always possible, although unlikely, that a court could interpret a provision differently than intended. A court would only become involved if the parties disagree about the meaning of the provisions and are unable to resolve the matter themselves (or through mediation or alternative dispute resolution), and one party decides to sue to seek interpretation or enforcement of the Lease. In that event, the court would ultimately determine the meaning of the provisions.

The comments also offer options to customize the lease to address the needs of the particular community garden. The language in italics within the text of the Model Lease describes the information needed to insert in the blank spaces. Certain text is written in italics and placed between brackets to suggest a baseline standard. That text can be changed by the parties in their negotiations. For example, in section 1.4, where the Lease requires a certain amount of notice by a party before terminating it, the text “three months” is written in italics and brackets. Three months is suggested as a baseline, because less than three months would likely be too little time for the gardeners to reap their produce, but the parties could choose to require additional time. For more assistance in making changes to the Lease, contact a local attorney.

## Model Community Garden Lease

THIS IS A COMMUNITY GARDEN LEASE (the “Lease”), dated as of \_\_\_\_\_, 20 \_\_\_\_, between [ *Name of Landowner* ], (“Landowner”) and [ *Name of Sponsor* ], a nonprofit corporation (“Sponsor”).

### Background

Sponsor is a nonprofit organization whose mission is [ *describe mission briefly* ]. In line with its mission, Sponsor wishes to develop and operate a community garden. Landowner is willing to lease land to Sponsor for that purpose on the terms described in this Lease.

### Landowner and Sponsor Agree as Follows:

#### 1. PARCEL, TERM AND RENT

**1.1 Lease.** Landowner leases to Sponsor the [ \_\_\_\_ ]-square foot parcel located at \_\_\_\_\_ (the “Parcel”).  
[ *Either describe location of parcel or include as an exhibit.* ]

**1.2 Use.** Sponsor will use the Parcel for the sole purpose of operating a community garden (the “Garden”) with plots [ or joint cultivation areas ] to be assigned by Sponsor to community members.

**COMMENT:** Some community gardens provide joint cultivation areas. If so, the parties can use the text in brackets.

**1.3 Term.** The term of this Lease is [ \_\_\_\_ ] year(s), starting on [ \_\_\_\_\_, 20\_\_\_\_ ] and ending on [ \_\_\_\_\_, 20\_\_\_\_ ]. This Lease will terminate upon the expiration of this term or the final renewal term, if any, or if either party terminates it as described in Section 4.

**COMMENT:** The term is the duration of the lease.

**1.4 Renewal.** This Lease will automatically renew for additional \_\_\_\_-year terms unless either Landlord or Sponsor provides written notice to the other of nonrenewal no later than [ *three* ] months prior to the end of the current term.

**COMMENT:** This section provides that the term of the lease will automatically be extended unless either party decides to terminate the Lease by providing written notice to the other party within the time stated. Although we suggest three months' notice, the parties can agree to a different timeline. The section allows the Lease to be extended without having to sign a new Lease or amend the existing Lease. If the garden is designed to be an interim use of the land of short duration, the parties may want to omit the automatic renewal.

**1.5 Rent.** On the date that this Lease is signed and on each following anniversary, Sponsor will pay Landowner \$\_\_\_\_ in rent for the next year. For each renewal term, Landowner may, in its sole discretion, increase the amount of the annual rent payment by up to \_\_\_\_% by notifying Sponsor [ *three* ] months prior to the start of such renewal term.

**COMMENT:** In many circumstances, the Landowner, particularly government, nonprofit, or faith-based landowners, may wish to waive the rent or allow rental for nominal payment.

**1.6 Late Payment.** Sponsor's failure to pay rent within [ *seven* ] days of when the payment is due breaches this Lease. If that happens, Landowner will have all of the rights and remedies provided for in this Lease and under law in the case of non-payment of rent. In addition, Landowner may charge Sponsor interest on any unpaid rent at the rate of [ *1* ] % monthly, calculated from the [ *6* ] th day after payment became due and continuing until paid.

**COMMENT:** *Breach* is the term used when one party violates a contractual obligation. Under contract law, once a party believes, in good faith, that the other party has breached the contract, the parties may take certain actions specified in the contract. This section provides that the failure of the Sponsor to pay rent is a breach of the Lease and if that occurs, the Landowner may terminate the Lease if the Sponsor fails to pay the rent within seven days of the date due. In addition, the Landowner may collect interest on the late payment.

**1.7 Security Deposit.** On the day that Sponsor signs this Lease, Sponsor will pay Landowner \$\_\_\_\_ as a security deposit to secure performance of Sponsor's duties under this Lease. If Sponsor breaches this Lease, Landowner may apply all or any part of Sponsor's security deposit to any amount Landowner pays by reason of Sponsor's default and to any damages to which Landowner is entitled under this Lease, whether those damages accrue before or after eviction proceedings or other reentry by Landowner. If Sponsor has not defaulted under this Lease, Landowner will return Sponsor's security deposit to Sponsor when this Lease terminates.

## 2. OPERATION AND MAINTENANCE OF PARCEL

**2.1 Parcel As-Is.** Sponsor acknowledges that Landowner is not making any representations, warranties, promises, or guarantees of any kind to Sponsor, including, without limitation, any representations about the quality, condition, or suitability of the Parcel for use as a community garden. In deciding to enter this Lease, Sponsor has made its own independent evaluation of the suitability of the Parcel for a community garden.

**COMMENT:** This section provides that the Landowner is not making any representations about the suitability of land for a community garden. The purpose of the section is to relieve the Landowner of legal responsibility in the event that the parcel is not suitable for a community garden for any reason, including poor soil conditions or heavy metal contamination. Before undertaking a new community garden, the Sponsor should review local laws to determine if there are specific requirements regarding community gardens and soil testing. In addition, the Sponsor should inquire about the historical use of the property and test the soil to determine how to most effectively utilize the property for a community garden. Depending on the historical use of the property or the outcome of soil testing, the parties may determine that gardeners will use raised beds, containers for gardening, or take other mitigating measures. The Lease can be amended to reflect those requirements. Please see the introduction to this toolkit for more information and resources on soil testing and preparing for a garden.

**2.2 No Landowner Responsibilities.** Sponsor has sole responsibility for the planning, setup, management, and carrying out of operations on the Parcel, including, without limitation, obtaining any permits required for operating a community garden. Landowner has no obligation to make any alterations, improvements, or repairs of any kind on the Parcel, or to provide any services or other support.

**COMMENT:** The purpose of this section is to relieve the Landowner of any legal responsibility for the operations of the garden. It gives sole legal responsibility for operation of the garden to the Sponsor. The section is also intended to make clear that the Sponsor is responsible for the work and out-of-pocket expenses related to garden set-up and maintenance (unless the parties agree otherwise).

**2.3 Comply with Laws.** Sponsor will use and operate the Parcel in compliance with all applicable zoning, environmental, and other laws and regulations.

**COMMENT:** This section provides a baseline requirement for the Sponsor. The Landowner may impose more rigorous requirements for use of the Parcel than required by law.

**2.4 Garden Rules.** Sponsor will operate the garden in accordance with a set of garden rules substantially in the form attached as [Exhibit B](#). Sponsor will require all persons to whom it licenses plots to enter into a gardener agreement and waiver of liability substantially in the form attached as [Exhibit C](#).

**2.5 Security.** Sponsor will install and maintain a system, where practicable, to prevent entrance to the garden outside of operating hours and/or when the Parcel is unattended, such as a system of fences and locks.

**COMMENT:** Both parties will want to ensure that the property is adequately maintained and secured. In some communities, fencing and locks will be unnecessary and contrary to the spirit of the garden. In some circumstances, the landowner may be willing to provide the fencing or other security system. The parties can adjust this section to reflect their own circumstances and agreement regarding security.

**2.6 No Alterations.** Sponsor may not make or permit any alterations or improvements to the Parcel without Landowner's prior written consent, except for the shed contemplated by Section 2.7 and fences, raised beds, [ *hoophouses,* ] benches, bicycle racks, picnic tables, rain barrel systems, and other features common to gardens. On the expiration or termination of this Lease, all improvements and alterations to the Parcel will belong to Landowner, except for sheds, fences, and other non-permanent improvements, and Landowner will have no obligation to reimburse Sponsor.

**COMMENT:** This section prohibits the Sponsor from altering or making *improvements* (beneficial changes to the Parcel made by or for the benefit of the Sponsor) to the Parcel, except for erecting a shed, fences, or the other listed features, without the Landowner's prior written consent. If any improvements are made, this section provides that the Landowner will own them when the Lease ends. The parties should discuss this provision and decide ownership of the various types of alterations and improvements that are planned or even anticipated and then tailor the Lease to reflect the parties' agreement. In addition, the Sponsor should make sure that any alterations or improvements are permitted under local law. In some cities, special permits may be required before installing hoop houses or sheds. If it would be helpful, the parties could attach the list of improvements and their ownership as an exhibit to the Lease and provide that the list can be amended upon written agreement of the parties. Particularly in longer-term gardens, needs may change over time and discussing ownership or alterations or improvements ahead of time can prevent disputes later.

[ **2.7 Equipment and Structures.** *If Sponsor keeps equipment or tools on the Parcel, Sponsor must install a [ toolbox, shed ] and make a reasonable effort to keep tools stored away when not in use for gardening. ]*

**COMMENT:** Some Landlords may be concerned that a shed may encourage a break-in. If so, the Lease could prohibit the storage of equipment and tools on the property, require a locked toolbox, or permit another arrangement. Before installing a shed, the Sponsor should obtain any necessary permit.

**2.8 No Transfers.** Sponsor may not assign, mortgage, pledge, encumber, or otherwise transfer this Lease, or sublet or allow the Parcel or any part of the Parcel to be used or occupied by others, except by persons maintaining a plot and who are party to the gardener agreement contemplated by Section 2.4. Any attempted transfer in contravention of this Section 2.8 is void and is a default under this Lease.

**COMMENT:** This section prohibits the Sponsor from transferring, subletting, or otherwise giving any rights to the Parcel or any part of the Parcel to another party or parties (except, of course, it allows use of the Parcel by the individual gardeners). It also provides that any attempt to do so is grounds for the Landowner to terminate the Lease.

**2.9 Right of Inspection.** Landowner may enter the Parcel at all reasonable times to inspect the Parcel and evaluate whether Sponsor is in compliance with the terms of this Lease, and for the purposes of taking any other actions Landowner believes are appropriate to protect Landowner's interest in the Parcel, or to offer the Parcel for sale. Sponsor will provide a key to any gate to the Parcel. This Section 2.9 does not impose any duty on Landowner to inspect the Parcel, report to Sponsor the results of any inspection or assume any liability of any kind arising from inspecting or not inspecting the Parcel.

**COMMENT:** This section allows the Landowner to enter the Parcel to inspect its conditions during "reasonable times." If necessary, the parties can determine more specific times for inspections to occur. The section also provides that even though the Landowner may inspect the property, the Landowner has no duty to do so and incurs no legal responsibilities or liability for either inspecting or not inspecting the Parcel.

**2.10 Liens.** Sponsor will not incur, create, assume, or permit the creation of, any lien on any portion of the Parcel (including any mechanic's or materialmen's liens). Sponsor will keep the Parcel clear of any and all liens arising out of any work performed or materials furnished to Sponsor for or at the Parcel, and any other obligations Sponsor incurs.

**COMMENT:** A lien is a legal right or interest (a right to a portion of the value of the property) that a creditor has in another's property. The lien lasts until the debt or duty that it secures is satisfied. A mechanic's or materialmen's lien is a lien that secures payment for labor or materials supplied in improving, repairing, or maintaining property. For example, if the Sponsor hires a contractor to erect a fence on the property, under the laws of most states, the contractor has a lien on the property until he is paid for his supplies and labor. The contractor has to take certain measures to *perfect* (enforce) the lien, but if he isn't paid, ultimately, the contractor could force the Landowner to sell the property to satisfy the debt. This provision prohibits the Sponsor from incurring any lien on the property.

**2.11 Commercial Enterprise Prohibited.** Sponsor will not undertake or allow the undertaking of any commercial enterprise, including but not limited to sales of produce, on the Parcel.

**COMMENT:** This section provides that the Sponsor will not allow the sales of produce on the Parcel. The Lease provides for use of the Parcel as a community garden – to allow gardeners to grow produce for their own use – as opposed to a commercial enterprise. The parties can alter this provision, provided that state and local laws allow for commercial enterprise on the particular Parcel.

### 3. EXPENSES

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

**COMMENT:** The Landowner could agree to pay for all or some utilities or their installation.

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

**COMMENT:** The parties could agree to allocate the tax obligations differently.

### 4. TERMINATION

**4.1 At Will.** This Lease may be terminated at any time by either Landowner or Sponsor. Such a termination will be effective [ *three months* ] after delivery by the terminating party to the other party of a written notice of termination under this Section 4.1.

**4.2 Breach by Sponsor.** If Sponsor breaches any of its duties or obligations under this Lease, Landowner may provide Sponsor with written notice of the breach. If Sponsor fails to cure the breach within [ 30 ] days after receipt of such notice, Landowner may terminate this Lease by providing written notice, with the termination date effective [ 15 days ] after delivery of such notice to Sponsor. Landowner will, in its sole discretion, determine whether the breach has been cured.

**COMMENT:** The Lease sets forth three ways it may end: 1) At the expiration of the term or renewal of the term (sections 1.3, 1.4, above); 2) *At will*, that is, by either party for any reason upon three months written notice; or 3) by the Landowner if the Sponsor breaches any of its duties under the Lease. (Three months notice is suggested, but should be adjusted to accommodate the typical growing season or other factors.) Before the Landowner can terminate the Lease for breach, he or she must provide the Sponsor with written notice of the breach and give the Sponsor the agreed upon time to *cure* or fix the breach. If the Landowner determines that the Sponsor did not fix the breach, the Landowner may terminate the lease upon written notice of 15 days, or whatever time period agreed upon by the parties.

**4.3 Yielding Possession.** Upon termination of this Lease, Sponsor will leave and surrender the Parcel to Landowner in at least as good order and condition as on the date that this Lease is signed. [ *Add more specific language here, if necessary. (See comment below.)* ]

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

**4.5 Personal Property.** If Sponsor or any gardener leaves any of its personal property on the Parcel after the termination of this Lease, Landowner may store it at a warehouse or any other location for Sponsor's account and at Sponsor's account and risk. Landowner will release the property only when Sponsor pays all charges relating to storage and all other amounts Sponsor owes under this Lease. If Sponsor does not reclaim its property within the period permitted by law, Landowner may sell it in accordance with the law and apply the proceeds of the sale to any amounts Sponsor owes Landowner under this Lease, or retain Sponsor's property, granting Sponsor credit for the reasonable value of Sponsor's property against any amounts owed by Sponsor to Landowner.

**4.6 Holding Over.** If Landowner terminates this Lease, any holding over by Sponsor after termination of this Lease without Landowner's express written consent is not a renewal or extension of the Lease and will not give Sponsor rights in or to the Parcel.

**COMMENT:** Sections 4.3, 4.4, 4.5, and 4.6 set forth the rights and duties of the parties at the end of the Lease. Section 4.3 requires the Sponsor to leave the property when the Lease is terminated and requires the Sponsor to leave the property in at least as good a condition as the property was when the Lease was signed. If there are particular measures the Landowner wants the Sponsor to take, such as removing garden beds, tilling soil, etc., the parties should, after negotiating the responsibilities for those measures, add language to the section to reflect the agreement.

Section 4.4 makes clear that the Sponsor has no rights to the property once the Lease is terminated and that both parties will cooperate in transitioning the property back to the Landowner.

Section 4.5 describes the responsibilities of the parties if the Sponsor or any gardener leaves their own personal property, such as produce, equipment, or tools on the parcel of land after the Lease is terminated. It provides that the Landowner may store the personal property, but has no obligation to do so. It also provides that if the Landowner does store the property, the Landowner has no legal obligation to protect the property from theft, damage, or other harm. The Landowner is only obligated to return the property if the Sponsor pays any amounts owed under the Lease and storage charges, if any. If the Sponsor does not reclaim the property within the time allowed by state law, the Landowner may retain the property or sell it to pay any outstanding amounts the Sponsor may owe.

Finally, Section 4.6 makes explicit that even if the Sponsor continues to occupy the property after the Lease is terminated, unless the Landlord gives express written authorization, the Sponsor has no rights or interests in the property and the Lease is not renewed for another term or extended for a longer period.

- 4.7 Cumulative Remedies.** All of 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 Landowner at law or in equity. The exercise of any one or more of these rights or remedies will not impair Landowner’s right to exercise any other right or remedy including any all rights and remedies of a landlord under or any similar, successor, or related laws.

**COMMENT:** This section makes explicit that the Landlord has all of the rights established under the Lease, as well as any other rights established by law. It is included to make sure that the Lease is not interpreted as limiting the Landowner’s rights to only those provided in the Lease; instead, the Landowner retains any other rights provided in state law and that the exercise of one right does not prevent the Landowner’s ability to employ any other legal right.

## 5. INDEMNITY AND WAIVER OF LIABILITY

- 5.1 Indemnification.** Sponsor will defend, indemnify, and hold Landowner and Landowner’s directors, officers, employees, agents, and assigns (Landowner and such persons are referred to collectively as “Landowner Parties”), harmless against all claims, liabilities, losses, damages, expenses, and attorneys’ fees (together, “Losses”), including, without limitation, Losses arising from any death, property damage, or injury of any nature whatsoever that may be suffered or sustained by Sponsor or any of Sponsor’s licensed gardeners, employees, contractors, family members, guests, or any other person in a relationship with Sponsor or Sponsor’s licensed gardeners or otherwise participating in or present in the Garden (Sponsor and such persons are referred to collectively as “Sponsor Parties”), which may arise directly or indirectly from (a) Sponsor 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 garden rules and regulations, except to the extent the Loss is caused by the gross negligence or willful misconduct of Landowner. This Section 5.1 will survive any termination of this Lease.
- 5.2 Waiver of Liability.** 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 Sponsor from any causes whatsoever, except to the extent that such injury or death is caused by the gross negligence or willful misconduct of such Landowner; (b) any loss or damage or injury to any property on or about the Parcel belonging to Sponsor, except to the extent such injury or damage is to property not covered by insurance carried (or required to be carried) by Sponsor and 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, Landowner shall not be liable for any damage or damages of any nature whatsoever to 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, issuing, 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, Landowner shall not be liable for any Losses for which Sponsor is required to insure. This Section 5.2 will survive any termination of this Lease.

**COMMENT:** Sections 5.1 and 5.2 are protections for the Landowner. A *waiver* is the voluntary relinquishment of a legal right. Section 5.2 provides that the Sponsor agrees to *waive* (forego or give up) any claims of liability (assertions that the Landowner is legally responsible) against the Landowner in the event that the Sponsor, individual gardeners, or other person(s) are injured, killed, or suffer damage to their property. The exception to this waiver is if the harm is caused by either the *willful misconduct* (conduct committed with an intentional or reckless disregard for the safety of others) or *gross negligence* (a conscious or voluntary act or failure to act in reckless disregard of the consequences to another party) of the Landowner. In other words, unless any injury or damage that the Sponsor or gardener suffers is caused by the intentional or reckless acts of the Landowner, the Sponsor agrees not to sue the Landowner to recover money as compensation for any harm suffered.

*Indemnification* is a legal term that means to reimburse another for a loss suffered because of a third party's or one's own action or lack of action. Section 5.1 provides that if the Landowner is sued by anyone for any property damage or injuries to or death of anyone that arise either directly or indirectly from the Lease, the Sponsor will *defend* (be responsible for fighting the lawsuit on behalf of the Landowner) or pay for the defense of the lawsuit. The Sponsor will also *indemnify and hold harmless* – pay for all costs incurred by the Landlord as a result of the lawsuit, including any monetary damages awarded by the court. The exception to the duty to indemnify is if the harm is caused by either the willful misconduct or gross negligence of the Landowner. In that case, there is no duty to indemnify the Landowner. These sections of the Lease provide that they *survive* any termination of the Lease; that is, they will continue to protect the Landowner if he/she is sued after the Lease has ended.

The Lease is written to protect the Landowner from potential costs that could arise from allowing the property to be used as a community garden. Most Landowners allowing their property to be used for community gardens will receive little, if any, financial benefit in return. The waiver of liability and indemnity provisions are bargaining tools that Sponsors can use to convince Landowners to allow use of the Parcel as a community garden. These provisions do create exposure to potential liability for the Sponsor, but that potential exposure is manageable (through insurance, proper management of the garden, and through the individual gardeners' agreements to waive claims against the Sponsor). It is likely to be required by the Landowner as a condition for use of the property as a community garden.

## 6. INSURANCE

**6.1 Insurance.** 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 [ *One Million Dollars (\$1,000,000)*. ] Coverage shall be made on an “occurrence” basis and not a “claims made” basis.

**6.2 Evidence of Insurance.** On or before Landowner delivers possession of the Parcel to Sponsor, Sponsor will provide Landowner with a copy of the insurance policies required by Section 6.1. Sponsor will deliver to

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, Sponsor may deliver to Landowner a certificate of insurance evidencing Sponsor's insurance policies, provided that Landowner also receives a copy of the endorsement naming Landowner as an additional insured.

**COMMENT:** Section 6.1 establishes the type of insurance that the Sponsor must carry during the term of the Lease. Comprehensive general liability insurance broadly covers an insured's liability exposure. An occurrence-based liability policy provides that each instance of injury or damage triggers the insured's entitlement to benefits. A "claims-made" policy provides coverage for claims made during the specific period, regardless of when the incidents that give rise to the claims occurred. Section 6.2 requires the Sponsor to give a copy to the Landlord of the policies or the endorsement naming the Landowner as an additional insured under the policies. The parties can adjust the amount and types of insurance to reflect their agreement. If the Sponsor is new to garden sponsorship, it should confirm that its current insurance coverage is sufficient to cover its sponsorship.

## 7. GENERAL PROVISIONS

**COMMENT:** Section 7 provides *boilerplate*, or standard, language found in most contracts.

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

**COMMENT:** This section provides that the Lease constitutes the sole rights and obligations of the parties. It expresses the intent of the parties that any oral or written agreements or communications, such as "handshake deals," before or during the existence of the Lease are not valid or enforceable. It is important that the parties ensure that the Lease accurately reflects their understanding of their agreement, because in the case of a dispute, the Lease will be the final determinant of the agreement.

**7.2 Modification and Severability.** This Lease may be modified only as stated in a writing signed by both Landowner and Sponsor which states that 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.

**COMMENT:** This section provides that any changes to the Lease must be in writing and signed by both parties in order to be valid and enforceable. It also expresses the intent of the parties that if a court finds that any section of the Lease is invalid or unenforceable, the other portions of the Lease will remain enforceable.

**7.3 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.

**COMMENT:** A *waiver* is the voluntary relinquishment of a legal right. This section provides that if any party wants to give up any right given under the Lease, the party has to do so in writing. It also provides that the rights and obligations of the Lease continue even if a party fails to enforce or delays in enforcing the lease.

**7.4 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.

**COMMENT:** This section provides that the parties can sign their agreement separately and on separate copies of the lease *counterparts* and each copy will be considered an original document – meaning that the Lease will be considered signed and enforceable. This section also allows the parties to send the signed copies to each other by fax or email of a PDF and have that delivery considered effective.

**7.5 Third-Party Beneficiaries.** Except as specifically provided in Section 5 of this Lease, this Lease is for the exclusive benefit of Landowner and 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 party beneficiary of Section 5.

**COMMENT:** A *third-party beneficiary* is a person or persons who, though not a party to a contract or lease, may benefit from the agreement. Here, the gardeners, although not a party to the Lease, will receive some benefit from the existence of the Lease – the ability to garden. Sometimes, third-party beneficiaries are found to have enforceable rights under an agreement, allowing them to go to court to enforce those rights. This provision makes clear the intentions of the parties that the gardeners (or any other person or entity) have no legally enforceable rights under the Lease even though they receive some benefit from it. The provision is included to protect the Landowner from lawsuits from gardeners or anyone else that may claim they have enforceable rights under the Lease. This section does allow one exception where a third party may have an enforceable right. The exception is that all of the “Landowner Parties” listed in section 5 are beneficiaries of the waiver and indemnity provisions of section 5. Therefore, the Landowner Parties have a right to sue to enforce the waiver and indemnity provision in section 5.

**7.6 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 7.4 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.

**COMMENT:** This section is a standard provision in contracts. The Lease sets forth certain provisions that require one party to give notice to the other before exercising a right. For example, in section 4.1, a party may terminate the Lease by giving the other party notice of the termination. It is important to establish the particular addresses where the parties must send these types of notices or consents (agreement to a particular condition or even in a contract) so that the parties receive these important communications. The section also includes standard contract language for when those notices are considered effective.

**7.7 Governing Law; Jurisdiction and Venue.** This Lease is governed by [ *insert state name here* ] law. Sponsor consents to the exclusive jurisdiction and venue of the state and federal courts of [ *city or county, state* ]

**COMMENT:** The section is a standard provision in contracts. This provision sets forth the state law that will govern the interpretation of the Lease and establishes that any lawsuits must be filed in the specific county and state listed.

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

**LANDOWNER**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

**SPONSOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

**EXHIBITS**

Exhibit A: Parcel Map

Exhibit B: Form of Garden Rules and Regulations

Exhibit C: Form of Gardener Agreement and Waiver of Liability

## **Exhibit A: Parcel Map**

## **Exhibit B: Form of Garden Rules and Regulations**

## **Exhibit C: Form of Gardener Agreement and Waiver of Liability**

# Model Gardener's Agreement

The Model Gardener's Agreement is a binding agreement between an individual gardener and the nonprofit organization ("Sponsor") managing the community garden. It sets forth the terms under which the gardener can use a plot in the garden and is designed for use with the Model Community Garden Rules and Model Community Garden Lease.

The most important factor for a successful community garden is a trusting relationship between the parties. Ensuring that gardeners not only understand the Garden Rules and the responsibilities required for garden participation but also have an open line of communication with the Sponsor is the best way to prevent problems from occurring. The Gardener's Agreement acts primarily as a backstop to resolve a problem when informal dispute resolution is unsuccessful.

The Gardener's Agreement gives the gardener a temporary right to garden during the time period provided in the Agreement. In exchange, it requires the gardener to agree to comply with all of the Garden Rules and provides that failure to abide by the Rules may result in the gardener losing the right to participate in the Garden. The Agreement also requires the gardener to waive any claims against (that is, give up any right to sue) the landowner and sponsoring organization in the unlikely event of property damage, injury, or death. A gardener's waiver is given in exchange for the benefit of having a plot of land to garden. Because gardening is, generally, a low-risk activity, the gardener receives a valuable benefit – the opportunity to garden – in exchange for forgoing an opportunity to sue, which the gardener likely would never exercise. Once the Agreement is signed and the gardener has had an orientation, the Agreement becomes effective and the parties carry out their duties as described in the Agreement.

The comments sections explain the provisions of the Agreement. The language in italics within the text of the Agreement describes the information needed to insert in the blank spaces.

## Model Gardener's Agreement

### Garden Use, Waiver of Liability, Release and Indemnification Agreement

Gardener Name: \_\_\_\_\_

Address: \_\_\_\_\_

City and State: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Emergency Contact: \_\_\_\_\_

Welcome to \_\_\_\_\_ Community Garden (the “Garden”). [*Name of organization managing the Garden*], called “Sponsor” or “we” in this document, is a nonprofit organization that sponsors and manages the Garden as part of carrying out its mission. This document is a legal contract between you and the Sponsor.

## 1. TEMPORARY RIGHT TO GARDEN

**1.1 Plot.** You have the temporary right to garden in plot \_\_\_\_ (the “Plot”) in the Garden, [*as identified in the Garden map attached to this agreement.*] (*In legal terms, you have a “license” to garden.*) Your immediate family members may garden with you as your guests. You may use the Plot from [*day, month, year*] to [*day, month, year*] (*duration of Gardener's use of the plot*).

**COMMENT:** Some community gardens provide joint cultivation areas rather than individual plots. If so, the language can be changed to refer to the cultivation area rather than an individual plot.

The Agreement allows the gardener to temporarily use the property to garden during the indicated time period. We recommend having gardeners sign the Agreement annually, perhaps at the annual meeting.

**1.2 No Refund.** You understand that you will not get a refund or reimbursement for your expenses, or any other payment if you decide not to garden or if the Sponsor terminates your right to garden, even if you spend a lot of time and money on the garden. You understand that only you and no one else, including your family, has any rights under this Agreement.

**1.3 Fee.** When you sign this document, you will pay a fee of \$\_\_\_\_\_ to use the Plot. Thereafter, you will pay an annual fee, no later than [*annual date of payment*]. You understand that we may increase the fee in future years.

**COMMENT:** The Sponsor may choose not to require payment or to require only a nominal payment.

**1.4 No Transfers.** You cannot let anyone other than your immediate family garden here unless we give our agreement in writing.

## 2. LIABILITY WAIVER, RELEASE, INDEMNIFICATION AND ACKNOWLEDGEMENTS

**2.1 Awareness of Risk.** You understand that participating in the Garden has a risk of death or injury to yourself or your guests and damage to your personal property. The risks could be caused by you, other gardeners, the Sponsor, or the owner of the property on which the Garden is located (referred to as “Landowner.”) The risks could also come from the condition of the land where the Garden is located, or the equipment and tools available at the Garden, or the weather or other environmental or local conditions. You also understand that hazardous conditions may exist at the Garden and that other gardeners may be unskilled.

**2.2 Assumption of Risk and Waiver and Release of Claims.** In exchange for your right to participate in the Garden, you agree to take on the risk of harm even if the potential harm is caused by someone else. (In legal terms, you agree to “assume the risk.”) You also agree to give up (“waive”) any right you may have to sue or

otherwise attempt to collect money from the Landowner, Sponsor, their board members, employees, volunteers, or anyone acting on their behalf (referred to altogether as “Released Parties”) for any losses or damages resulting from death, injury, or property damage to you, anyone else, or any property, that occurs while you or your guests are in the Garden. (In legal terms, you “waive and release all claims” against the Released Parties.) You understand that the Sponsor would not permit you to participate in the Garden without your agreeing to these waivers and releases.

- 2.3 Medical Care Waiver.** You give up any right to sue or otherwise attempt to collect money from (“waive and release any claim from”) the Released Parties arising out of any first aid, treatment, or medical service, including the lack of such or timing of such, given in connection with your participation in the Garden. You understand that you are not covered by or eligible for any insurance, health care, workers’ compensation, or any other benefits maintained by Sponsor.
- 2.4 Indemnification.** You are responsible for any damages or losses suffered by the Sponsor that are caused by your or your guests’ actions. (In legal terms, you agree to indemnify and hold the Released Parties harmless.)
- 2.5 Publicity.** You agree to allow us or the Landowner to use any photographs, interviews, videotapes, film, other visual or auditory recordings, or any other medium, including the internet, of you or your guests that we or others may create in connection with your or your guest’s participation in the Garden. You agree that you do not have to inspect or approve the finished project and you are not entitled to any compensation for the finished product.

### 3. TERMINATION

- 3.1 Failure to Comply with Agreement or Garden Rules.** You confirm that you have read a copy of the Garden Rules attached to this Agreement and you will comply with them. If you fail to obey the Agreement or the Garden Rules, we can terminate your right to garden.
- 3.2 Termination of Lease.** If the Landowner terminates our Lease for the land where the garden is located, your right to garden will end. The Landowner can terminate our Lease at any time. We will notify you if the Landowner terminates the Lease.

### 4. OTHER PROVISIONS

- 4.1 Entire Agreement, Severability and Modification.** If any part of this Agreement is ineffective, the remaining portions of the Agreement remain in effect. Any changes to this Agreement have to be in writing and signed by you and the Sponsor.
- 4.2 Third-Party Beneficiaries.** You understand that this Agreement gives the Landowner a right to enforce certain parts of this Agreement against you by going to court. (In legal terms, the Landowner is an “express third party beneficiary.”) The Landowner can enforce Sections 2 and 3.2 of this Agreement.

**GARDENER**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**SPONSOR**

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTACHMENT:** Garden Rules

# Model Community Garden Rules

The Model Community Garden Rules set forth the operating rules for a community garden. They are designed to be used with the attached Model Lease and Gardener's Agreement. There are many different types of community gardens, with different governing structures and operating models. The Garden Rules are intended as a starting framework that can be tailored based on the needs of the specific garden, the parties, and the gardening community. Because the Sponsor is ultimately legally responsible to the Landowner for operation of the garden, the Garden Rules give final authority for many decisions to the Sponsor. Even so, the Sponsor could choose to delegate some of those decisions to the gardening leadership team.

From a legal perspective, Garden Rules are a tool to:

- Maintain the safety of all participants
- Maintain the property safely
- Prevent disputes
- Provide a fair method for resolving disputes to prevent them from escalating
- Prevent disturbances to neighboring property owners and residents

In addition, having and following carefully thought-out Garden Rules can demonstrate to the Landowner that the proposed garden will be operated safely and responsibly, helping convince the Landowner to allow use of the property as a community garden.

To address communities' varying needs, we offer comments explaining the provisions or options. The comments and options are written in italics. Text in brackets is suggested, but should be altered to meet local conditions. When modifying these Rules, consider how changes may affect the factors listed above.

---

## Community Garden Rules

This document sets out the rules that govern the \_\_\_\_\_ Community Garden (the "Garden"). These Rules are intended to help all our Gardeners grow fresh, healthy food in a thriving garden, to help create a sense of community among our gardeners, and to help the Garden to be a good neighbor.

\_\_\_\_\_ (the "Sponsor") is a nonprofit organization that leases the land for the Garden, sponsors the Garden, and administers these Rules. Every person who has a plot in the Garden (called "Gardeners") must sign a legal agreement with Sponsor in which the Gardener agrees to comply with these Rules.

## A. ACCESS TO THE GARDEN

<b>Season:</b>	The Garden is open and accessible [ <i>all year. Alternative: from ____ to ____</i> ].
<b>Hours:</b>	Gardeners may be in the Garden between [ 6 ] am and [ 8 ] pm. [ <i>Alternative: dawn to dusk.</i> ]
<b>Keys and Security:</b>	<p>Sponsor will give each Gardener one key to the Garden [ <i>or the combination or code to open the lock</i> ]. [ <i>Gardeners will pay a \$ ____ deposit in exchange for receiving the key. The deposit will be returned when Gardener returns the key upon vacating his or her plot.</i> ] Gardeners may not make any copies of the key. On leaving the Garden, Gardeners are responsible for locking the gate if there are no other individuals in the Garden. Gardeners will follow any additional security guidelines that may be announced by Sponsor.</p> <p><b>Comment:</b> <i>Some gardens may not have gates secured by locks. If so, consider whether there are other security measures or a “closing” protocol gardeners should follow and change the text accordingly. Locked gates may lower the risk of vandalism, theft, and liability.</i></p>

## B. GARDEN PLOTS

<b>Use of Own Plot:</b>	<p>Gardeners may use only the plots assigned to them by the Sponsor [ <i>leadership team</i> ]. Gardeners will maintain their plants within their plots and will trim any plants that extend into neighboring plots or into common areas. Gardeners may not alter the dimensions of their plot.</p> <p><b>Comment:</b> <i>Some gardens use joint cultivation areas. If so, change the text in these Rules to address the Gardeners’ responsibilities when gardening in the joint cultivation areas.</i></p>
<b>Plantings:</b>	<p>Gardeners may plant vegetables, fruits, and flowers. Gardeners may not grow any plants above [ 4 ] feet in height.</p> <p>[ <i>Alternative language: Gardeners may plant vegetables, fruits, and flowers. Gardeners may not maintain plantings or plant-supporting structures that impede the security of the garden or impede adjacent gardeners’ access to sunlight by the nature of their height, material or density.</i> ]</p> <p><b>Comment:</b> <i>Landowners may want to impose a height limit on plants for safety reasons or out of deference to neighbors. Some communities have zoning or other restrictions regarding landscaping that blocks views or shades adjacent property. It is important to check local laws before increasing height restrictions. For gardens with a shorter lifespan, the Sponsor may recommend that Gardeners not grow plants that take multiple years to produce food. In addition, the Sponsor may wish to maintain a list of plants prohibited in the Garden, such as highly invasive vines or stinging nettles.</i></p>
<b>Supplies:</b>	Gardeners are solely responsible for the planning and management of their own plots, including providing their own seeds, plants, fertilizer, and any tools not provided by Sponsor or Gardeners collectively.

<b>Organic Methods:</b>	Gardeners will garden organically. Gardeners will check with the Sponsor before applying any fertilizers, pesticides, herbicides, or rodenticides, even if labeled “organic.” Use of compost, organic mulch, and weeding is always acceptable.
<b>Water:</b>	Each Gardener is responsible for watering his or her own plot [ <i>using the hose provided by Sponsor or Gardeners collectively.</i> ] Gardeners will not overwater their plants or leave a hose unattended. [ <i>The cost of water is included in the cost of plot rental, so any excessive water usage may cause the cost of plot rental to increase the following year.</i> ]
<b>Tools:</b>	Gardeners may bring their own tools into the Garden to use in their plots, but they cannot store any tools in the Garden. Gardeners are responsible for any damage caused by tools they bring into the Garden and so should use them with care. Gardeners may not use any power tools, such as those that require gasoline, batteries, or electricity.
<b>Plot Maintenance and Trash:</b>	<p>Gardeners will maintain their plots and adjacent paths in a clean and neat fashion, promptly removing any weeds, overgrowth, or other waste from their plot. Gardeners will promptly harvest edible plants. Gardeners are responsible for hauling and disposing of their own trash, such as weeds, boxes, trays, bags, packets, and similar items.</p> <p>[ <i>Summer gardening begins in early spring. Plots should be weeded and planted by [ May 1 ]. Winter gardening begins in early fall. Your plot should be replanted with a winter or cover crop, amended with compost or covered by mulch by [ November 1 ].</i> ]</p> <p><b>Comment:</b> <i>This Rule should be changed to reflect local growing seasons and what gardening, if any, occurs in the fall and winter months. Giving specific dates ensures that Gardeners understand their responsibilities at the end of the growing season(s). Depending on the local climate, the Rules should include responsibilities for leaf and snow removal. Finally, it may be helpful to provide a chart that designates all of the maintenance chores and the responsibilities for them.</i></p>
<b>Yearly Clean-up:</b>	Gardeners will perform a yearly clean-up on their plots on [ <i>date to be determined by Sponsor.</i> ]
<b>[ Compost: ]</b>	<p>[ <i>Gardeners will place any organic waste such as weeds, dead plants, or rotten produce, in the compost pile designated by Sponsor.</i> ]</p> <p><b>Comment:</b> <i>Compost feasibility varies from site to site, but should be encouraged. Some communities have local laws requiring composting. It is important to check local requirements and to adjust the Rules accordingly. The Sponsor may also wish to have weeds composted separately and exclude unchopped thick stems and diseased plant materials from compost piles.</i></p>
<b>Absence:</b>	Gardeners may not abandon their plots. Abandonment means failing to maintain a plot for [ <i>2 weeks</i> ]. If a Gardener expects to be away from the Garden for more than [ <i>2 weeks</i> ], but less than [ <i>3 months</i> ], he or she must inform Sponsor. The Gardener and the Sponsor will then determine an alternative, such as a temporary substitute, acceptable to both. Gardeners who are away for more than [ <i>3 months</i> ] will lose their plots.
<b>No Personal Property:</b>	Gardeners may not keep any personal property on their plots or in the Garden when they are not in the Garden. If Gardeners leave personal property on their plots after the termination of their participation in the Garden, Sponsor can keep and sell the abandoned property.

**C. COMMON AREAS AND RESPONSIBILITIES**

<p>[ <i>Common Tools:</i> ]</p>	<p>[ <i>Sponsor or Gardeners collectively will provide a set of tools in a storage shed in the Garden for use by all Gardeners (the “Common Tools.”) Gardeners will return the Common Tools to the storage shed as soon as they are finished using them. If a Common Tool appears dangerous or in disrepair, Gardener will not use the Common Tool and inform Sponsor immediately. ]</i></p>
<p><b>Common Responsibilities:</b></p>	<p>Gardeners will keep clean and neat any common areas, such as pathways and storage sheds. Gardeners will promptly report any concerns about the safety of the Garden to the Sponsor. If there is vandalism, storm damage, or other damage to the Garden, all Gardeners are expected to help in cleaning up and restoring the Garden to its prior condition, but the Sponsor will bear the cost of the repairs.</p>
<p>[ <i>Garden Work Days:</i> ]</p>	<p>[ <i>All Gardeners must participate in [ 4 ] Garden Work Days per year, where they participate in cleaning and maintaining the Garden. ]</i></p>

**D. COMMUNICATION**

	<p><b>Comment to section D:</b> <i>As noted previously, community gardens use various governance structures, including having one garden manager, a leadership team, or governance council. In certain gardens, the Sponsor may wish to make management decisions. In that case the Sponsor should designate two Garden Coordinators responsible for communication between the Sponsor and Gardeners. In other gardens, the Sponsor may wish to allow the Gardeners, through a garden council or leadership team, to provide more management functions. Regardless of the governance structure, it is important to ensure there is a specific method of communication between the Sponsor and Gardeners so that Gardeners have input into the management and operation of the Garden and are aware of the Rules and any changes to the Rules or operations of the Garden required by the Sponsor.</i></p> <p>[ <i>Insert text here briefly describing the management structure ]</i></p>
<p><b>Garden Management:</b></p>	<p>The [ <i>insert name of Garden leadership</i> ] has complete authority to interpret the Rules and make decisions.</p>
<p><b>Communication:</b></p>	<p>The [ <i>Sponsor, Governance Council, leadership team, other entity _____</i> ] will designate [ <i>two</i> ] members as “Garden Coordinators” to be the official point of contact for the Sponsor [ <i>and leadership team</i> ] and Gardeners.</p>
<p><b>Contact Information:</b></p>	<p>The Sponsor will provide a bulletin/announcement board in the garden. The Coordinators [ <i>and other members of the Leadership team</i> ] will post contact numbers on the board in the Garden. Gardeners must tell the Coordinators of any change in their contact e-mail addresses or phone numbers.</p> <p><b>Comment:</b> <i>Some gardens assign oversight of different functions to different members. If so, the Rule should require that the names, duties, and contact information for each of the leaders be posted.</i></p>

<b>Gardener Input:</b>	Gardeners are encouraged to provide suggestions about Garden operations to the Coordinators. Gardeners should contact the Coordinators directly at the number provided by the Coordinator, not the Sponsor's office, with any questions relating to day-to-day operational matters.
<b>Gardener Orientation:</b>	New Gardeners must attend a Sponsor [ <i>and leadership team</i> ]-led orientation to become familiar with how the Garden functions and their responsibilities as a Gardener.
<b>Annual Meeting:</b>	<p>Once a year, the Sponsor will invite all Gardeners to an annual meeting to notify Gardeners of any changes made in how the Garden operates, these Rules, in assignments of plots, to discuss any issues or concerns, [ <i>and to elect a new leadership team</i> ]. Sponsor will give written notice of the annual meeting, sent by email or first-class mail, no fewer than 14 days in advance.</p> <p><i>Comment: Many gardens distribute leadership duties by designating positions for membership, treasurer, common area maintenance, communications, and other functions. Distributing responsibilities for garden management and oversight prevents overburdening a few members. Leaders can be elected at the annual meeting.</i></p>
<b>Confidentiality:</b>	Sponsor and other Gardeners will not use any personally identifiable information, including Gardener's name, email address, telephone number, or street address, for purposes other than the operation of the Garden.

## E. CONDUCT

<b>General Conduct:</b>	Gardeners are expected to be civil, honest, and cooperative in dealing with the Landowner, Sponsor, Garden neighbors, other Gardeners, and guests of other Gardeners.
<b>Guests:</b>	<p>Gardeners may bring guests, including children, into the Garden, provided that the guests comply with the Rules. Gardeners will supervise any child under the age of sixteen. Gardeners will be responsible for the conduct of children and their guests including making sure they do not damage or interfere with activities on other plots or otherwise engage in inappropriate conduct. Guest violations of these Rules are treated as violations by the Gardener.</p> <p><i>Comment: Many gardens encourage Gardeners to hold internal garden community-building events such as potluck dinners, gardening workshops, music in the garden, etc. Other gardens may limit the number of guests a Gardener can bring in at any time and require explicit permission before bringing in a large group (for example, a school class for a visit or special event) or holding an "open house" for the community. The Rules should reflect what activities are permitted, how frequently, any restrictions on guests, and what activities require special permission.</i></p>

<p><b>Pets:</b></p>	<p>Gardeners may not bring any pets or animals into the Garden, including for burial.</p> <p><i>[ Alternative: Gardeners may bring their pets into the Garden only if Gardeners keep them on a leash or other restraint for the entire time the pets are in the Garden. Gardeners are responsible for cleaning up after their pets and ensuring that their pets stay on their plots and do not interfere with activities or damage plants on other plots. If other Gardeners complain about the pet, Gardener will remove it from the Garden. ]</i></p> <p><b>Comment:</b> <i>Pets can be points of controversy for community gardens. Many community gardens simply ban all pets.</i></p>
<p><b>Respect Others' Property:</b></p>	<p>Gardeners may not enter other plots, use another Gardener's tools or supplies, or harvest another Gardener's produce, without the explicit permission of the other Gardener. Gardeners may not enter property next to the Garden without the owner's permission.</p>
<p><b>No Illegal Plants:</b></p>	<p>Gardeners may not grow any plants considered illegal under state or federal law. For example, Gardeners may not grow Cannabis sativa (marijuana), whether or not the use of marijuana may be lawful for medical purposes under state law.</p>
<p><b>Compliance:</b></p>	<p>Gardeners must comply with all applicable local, state, and federal laws.</p>
<p><b>No Firearms:</b></p>	<p>Gardeners may not carry, use, or store firearms in the Garden.</p>
<p><b>No Smoking:</b></p>	<p>Gardeners may not smoke in the Garden.</p>
<p><b>No Alcohol/Drug Use:</b></p>	<p>Gardeners may not consume or use alcohol or illegal drugs while on the Garden premises. Gardeners may not bring alcohol or illegal drugs onto the Garden premises. Gardeners may not come into the Garden while under the influence of alcohol or illegal drugs.</p>
<p><b>No Sexual Relations:</b></p>	<p>Gardeners may not engage in sexual relations in the Garden.</p>
<p><b>No Fires or Cooking:</b></p>	<p>Gardeners may not start or maintain a campfire, burn weeds, <i>[ use a barbecue grill, or cook ]</i> in the Garden.</p> <p><b>Comment:</b> <i>Many community gardens encourage using a barbecue grill for garden-wide events. If so, change the Rule to reflect when, and under what circumstances, barbecue use is permitted.</i></p>
<p><b>No Loud Music:</b></p>	<p>Gardeners may not play music or the radio loud enough to be a nuisance to other Gardeners or to the Garden's neighbors.</p>
<p><b>No Sales:</b></p>	<p>The Garden is for personal, noncommercial use only; Gardeners may not sell any produce or flowers grown in the Garden.</p> <p><b>Comment:</b> <i>Some landowners may permit limited on-site sales during specific times. Before permitting sales, the Sponsor should check state and local law to determine whether a permit or license is required for sales and ensure that Gardeners comply with all laws.</i></p>

**F. PROBLEMS**

<p><b>Dispute Resolution:</b></p>	<p>Gardeners will raise with the Coordinators any disputes about the Garden or with fellow Gardeners. The Coordinators [ <i>Leadership team</i> ] will have the power to hear these disputes and will resolve them in the best interest of the Garden.</p>
<p><b>Rules Violations:</b></p>	<p>Gardeners may lose their rights to participate in the Garden if they fail to comply with any of these Rules. If a Gardener:</p> <ul style="list-style-type: none"> <li>• endangers other Gardeners, Sponsor, neighbors, or other individuals;</li> <li>• takes or uses another Gardener’s tools, supplies, or produce without permission;</li> <li>• encroaches on Garden neighbors’ property;</li> <li>• grows illegal plants;</li> <li>• carries, uses or stores firearms in the Garden;</li> <li>• uses alcohol or illegal drugs in the Garden; or</li> <li>• has sexual relations in the Garden</li> </ul> <p>The Sponsor may, at its discretion, terminate immediately the Gardener’s right to participate in the Garden. If that occurs, the Gardener must leave the Garden by the end of Garden hours on the termination day and may not reenter without Sponsor’s permission.</p> <p>If a Gardener violates any other of these Rules, Sponsor will inform Gardener of the violation by [ <i>sending an email to Gardener or putting a red flag on Gardener’s plot.</i> ] Gardener will have [ <i>one week</i> ] to correct the violation. If the violation is not corrected within [ <i>one week,</i> ] as determined by the Sponsor in its discretion, the Sponsor may, at its discretion, terminate the Gardener’s Agreement. After termination, Gardener will have [ <i>two weeks</i> ] to harvest and clean up the plot.</p> <p>Upon termination for any reason, a Gardener will promptly return to the Sponsor the key to the Garden and any other Sponsor property. Terminated Gardeners are not entitled to any refunds or other payments from the Sponsor.</p>
<p><b>No Limit on Sponsor Rights:</b></p>	<p>The process described in this Section G does not (i) limit the Sponsor’s ability to enforce its rights under these Rules; (ii) limit or qualify a Gardener’s obligation to comply with applicable law or the Rules; or (iii) limit the Sponsor’s right to notify and/or involve government authorities as it may determine.</p>
<p><b>No Refund or Other Claims:</b></p>	<p>Gardeners under no circumstances will be entitled, directly or indirectly, to any refunds, any direct, incidental, consequential, punitive, or other damages, any other forms of compensation from the Sponsor or the owner of the Garden’s land, or to obtain an injunction, specific performance, or other equitable remedy, as a consequence of termination from participation in the Garden.</p>

## G. OTHER PROVISIONS

<b>Changes in the Rules:</b>	Sponsor may amend these Rules in its discretion without advance notice. Sponsor will provide all Gardeners with a copy of the current Rules, will post a copy of the current Rules at the Garden, and will summarize any changes in the next annual meeting. The Gardeners, through the [ <i>Garden Coordinators/leadership team</i> ], may propose Rules for the Sponsor's consideration.
<b>Master Lease:</b>	The Gardener's Agreements with individual Gardeners are subject to the master Lease between the landlord who owns the Garden's land and Sponsor. As a result, if the landlord terminates the lease, the Garden will close, and the Gardener's Agreement will terminate. At that time the Gardeners will no longer have access to the Garden.
<b>Garden Agreement Controls:</b>	Nothing in these Rules limits, qualifies, or otherwise affects the Garden Agreements between the Sponsor and each Gardener. Should there be any ambiguity or conflict between a Gardener Agreement and these Rules, the Gardener Agreement will control.
<b>Waiver:</b>	Any waiver by the Sponsor of these Rules must be in writing and signed by the Sponsor. Failure, neglect, or delay by the Sponsor at any time to enforce the provision of these Rules will not be considered a waiver of the Sponsor's rights under these Rules. Waiver of any breach or provision of these Rules or failure to enforce any breach or provision of these Rules will not be considered a waiver of any later breach or the right to enforce any provision of these Rules.
<b>No Discrimination:</b>	Sponsor will not discriminate on the basis of race, color, national origin, religion, sex, disability, age, medical condition, ancestry, marital status, citizenship, sexual orientation, gender identity, or status as a veteran [ <i>except the Sponsor will keep available [ 25% ] of the plots for certain groups of individuals</i> ].
<b>Translations Not Binding:</b>	Sponsor may provide Gardeners with a translation of these Rules and related summaries or other explanatory materials. Sponsor does so as a convenience. Should there be any ambiguity or conflict between the English and the translated versions of these documents, the English language versions will control. They, not the translations, are the official, legally binding documents.
<b>Other Rules:</b>	<b>Comment:</b> <i>Depending on the anticipated tenure of the garden and local circumstances, the Sponsor may wish to include Rules addressing some additional issues, such as allocation of plots when there is a waiting list to join the garden, the allocation of costs when infrastructure repairs are needed, and other topics.</i>

# Model Community Garden Discussion Checklist for Prospective Gardeners

The community garden sponsor should discuss with prospective participants how the garden operates, the responsibilities of gardeners, and the possibility of the garden lease being terminated. This discussion should occur before the Gardener's Agreement is signed so that the gardener can decide whether to participate.

From a legal perspective, the objectives of the orientation are (1) to demonstrate reasonable care in the sponsorship of the garden, (2) to reduce the risk of misunderstandings and conflicts, and (3) to ensure that gardeners are well informed about the risks and responsibilities of participating in the garden.

## TOPICS:

- Garden Operations**
- Plot and Common Area Upkeep:** Advise gardener of responsibilities of maintaining garden.
- Supplies:** Advise that s/he will be responsible for his/her own seeds, plants, supplies, and tools, other than those tools provided by sponsor.
- Organic Methods Only:** Advise that the garden must be gardened using organic methods.
- Term:** Reinforce that once a gardener signs the Gardener's Agreement, s/he is responsible for his/her own plot until the end of the term.
- Season and Hours:** Advise that the garden is accessible [ *year round* ] and is open from [ *6 a.m. to 8 p.m.* ]
- Garden Rules:** Provide the gardener with the rules and regulations, and explain that they must be obeyed by all gardeners, highlighting any serious offenses.

## LEGAL RESPONSIBILITIES

- Compliance with Garden Rules:** Emphasize that gardener must comply with the rules or lose the privilege of gardening.
- No Transfers:** Emphasize that a gardener cannot transfer use of the plot without the garden coordinator/ leadership team's approval.
- Lease:** Emphasize that the garden exists because of the generosity of the landowner, who can terminate the lease and close down the garden with [ *3 months* ] notice.
- Liability Waiver:** Remind the prospective gardener that risks come from participating in the garden and that by signing the Gardener's Agreement, the gardener waives any claims against the sponsor and the landowner for injury, wrongful death, property damage, or any other claim; therefore, the gardener cannot sue the landowner or sponsor in the event of any injury or damage.

# Model Community Garden Orientation for New Gardeners

The community garden sponsor or a designee should hold an orientation session on site with new gardeners after the new gardeners have signed the Gardener's Agreement. The sponsor may also require that all new gardeners attend such an orientation.

From a legal perspective, the objectives of the orientation are to (1) demonstrate reasonable care in the sponsorship of the garden, (2) reduce the risk of misunderstandings and conflicts, and (3) reduce risk of non-compliance with the lease for the land. To that end, the sponsor or designee should familiarize gardeners with the garden layout, explain how the garden operates, and highlight key expectations and requirements.

Many of the items listed in this outline are covered in the Model Community Garden Rules. Where possible, the coordinator should physically point out or demonstrate items discussed in the rules that may not be obvious to gardeners.

## TOPICS:

### I. Introduction of the Coordinators

- a. Review mission of the garden
- b. Explain the role of the coordinators
- c. Provide contact information
- d. Show where notices and rules are posted

### II. Tour of Physical Site: Highlight any rules that apply to specific features of the garden

- a. Gate and garden access (including operating hours)
- b. Water source and use
- c. Waste disposal (if located on site)
- d. Common areas
- e. [ *Compost pile* ]
- f. [ *Tool shed* ]
- g. [ *Any other site-specific features* ]

### III. Plot Maintenance

- a. Show example of a model plot (types of plants, weeding, etc.)
- b. Review policy regarding pesticides / herbicides
- c. Suggest locations where garden supplies can be purchased

### IV. Safety

- a. Demonstrate or highlight common safety concerns that should be reported (overgrowth, unsafe common areas, unusual features of any communal tools, etc.)
- b. Show location of first-aid kit, if any

### V. Policies

- a. Review conduct, guest, and pets policies
- b. Reminder about duties such as workdays and annual meeting
- c. Consequences for offenses

### VI. Getting Started

- a. Direct gardeners to their assigned plots
- b. Assign gate key to gardeners [ *upon receipt of deposit* ]
- c. [ *Provide free seeds to get started* ]

- <sup>1</sup> Twiss J, Dickinson J, Duma S, et al. "Community Gardens: Lessons Learned from California Healthy Cities and Communities." *American Journal of Public Health*, 93(9): 1435-1438, 2003; Local Government Commission. *Cultivating Community Gardens: The Role of Local Governments in Creating Healthy, Livable Neighborhoods*. Available at: [www.lgc.org/freepub/docs/community\\_design/fact\\_sheets/community\\_gardens\\_cs.pdf](http://www.lgc.org/freepub/docs/community_design/fact_sheets/community_gardens_cs.pdf).

Photos by Lydia Daniller and Tim Wagner for PartnershipPH.org.