

THIS IS A COMMUNITY GARDEN LEASE (the “Lease”), dated as of \_\_\_\_\_, 20\_\_\_\_\_, between \_\_\_\_\_ (“Landowner”), and the Tulare County Resource Conservation District (RCD), a Special District of the State of California (“Sponsor”).

## Background

Sponsor is a Special District operated under the provisions of the Public Resources Code, Section 9151 et seq. Its general powers include conserving natural resources within the districts by implementing projects on public and private lands and to educate landowners and the public about resource conservation. 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 \_\_\_\_\_-acre parcel located at \_\_\_\_\_.

(see Exhibit A – Map

**1.2 Use.** Sponsor will use the Parcel for the sole purpose of operating a community garden (the “Garden”) under the RCD’s People’s Gardens of Tulare County program.

**1.3 Term.** The term of this Lease is \_\_\_\_\_ years, starting on \_\_\_\_\_, and ending on \_\_\_\_\_. 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.

**1.4 Renewal.** This Lease will automatically renew for additional \_\_\_\_-year term 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.

## 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.

**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.

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

**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.

**2.5 Security.** This garden area is fenced with locked gates **or needs to be fenced.**

**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 irrigation systems, fences, raised beds, benches, 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.

**2.7 Equipment and Structures.**

**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 the garden. Any attempted transfer in contravention of this Section 2.8 is void and is a default under this 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.

**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.

**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.

### 3. EXPENSES

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

**3.2 Taxes.**

### 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.

**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.

**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 amounts owed under this Lease. If Sponsor does to 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.

**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 and all rights and remedies of a landlord under or any similar, successor, or related laws.

## **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 volunteer gardeners, employees, contractors, family members, guests, or any other person in a relationship with Sponsor or Sponsor’s volunteer 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.

## 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 Two million five hundred thousand dollars (\$2,500,000) 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.

## 7.0 GENERAL PROVISIONS

**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.

**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.

**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.

**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.

**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.

**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.

**7.7 Governing Law; Jurisdiction and Venue.** This Lease is governed by California law. Sponsor consents to the exclusive jurisdiction and venue of the state and federal courts of Tulare County, California.

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: \_\_\_\_\_

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

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

**EXHIBITS**

Exhibit A: Parcel Map

Exhibit B: Garden Rules & Regulations