

LAND USE AGREEMENT

This LAND USE AGREEMENT ("Agreement") is entered into effective as of January 1, 2021, by and between Resurrection Cemetery Association, Inc., a Montana nonprofit corporation, P.O. Box 5029, Helena, Montana 59604-5029 ("RCA") and the City of Missoula, a Montana municipal corporation, 435 Ryman Street, Missoula, Montana 59802 ("City").

RCA and City agree as follows:

Section 1. License. RCA licenses to City a parcel ("Parcel") located on a tract of land owned by RCA in Block 1, North Half School Addition, Five Acre Tracts, Missoula County, Montana, as depicted on the attached Exhibit A.

Section 2. Use. City shall use the Parcel, as shown in Exhibit A, solely for the purpose of a public park. Total area available for park use is 3.57 acres of the total 4.11 acre site.

Section 3. Term. The initial term of this Agreement is for fifty (50) years, starting on January 1, 2021 and ending on December 31, 2070, unless extended pursuant to Section 3.1 or sooner terminated pursuant to the provisions herein. This Agreement shall terminate upon its expiration or upon termination pursuant to Section 16 or Section 17 of this Agreement.

Section 3.1 Renewal – This Agreement may be extended by up to two additional 20-year increments beyond the initial term subject to negotiation and mutual written agreement of the parties. The parties may negotiate and mutually agree in writing to any additional time periods.

Section 4. Payments. The City shall make an annual payment of \$500/acre or One Thousand, Seven Hundred Eighty-Five dollars and no cents (\$1785.00) for the estimated park use area of ~3.57 acres to RCA for the initial 50 year license term. Additionally, the City will pay the annual Lighting District and Water Quality District annual assessments (currently totaling \$1,977/year) assigned to the parcel. The initial annual payment shall be paid within 30 days of full execution of this Agreement. The value and payment for any future term extensions shall be negotiated in the event the parties wish to renew the term as provided for herein.

Section 5. Parcel As-Is. City acknowledges that RCA makes no representations, warranties, promises, or guarantees of any kind to City, including but not limited to any representations about the quality, condition, or suitability of the Parcel for use as a public park. In deciding to enter into this Agreement, City has made its own independent evaluation of the suitability of the Parcel for a public park.

Section 6. Assignment to City of Existing Community Garden License Agreement between RCA and Garden City Harvest, Inc. This Agreement is subject to an existing Community Garden License Agreement, effective as of November 1, 2017, by and between

RCA as "Landowner" and Garden City Harvest, Inc., a Montana nonprofit corporation, as "Licensee" for a community garden occupying a portion of the Parcel, a copy of which is attached hereto as Exhibit B. RCA assigns and City accepts assignment of all of RCA's rights under the said Community Garden License Agreement; and RCA delegates and City accepts delegation of all of RCA's obligations under the said Community Garden License Agreement.

Section 7. No RCA Responsibilities. With the exception of those responsibilities inherent in property ownership according to applicable laws, City has the sole responsibility for the planning, setup, management, and carrying out of operations on the Parcel. RCA has no obligation to make any alterations, improvements, repairs of any kind to the 3.57 acre park Parcel, or to provide any services or other support.

Section 8. Compliance with Laws. City and its park users and gardeners shall use and conduct operations on the Parcel in compliance with all applicable, zoning, public health and safety, environmental, non-discrimination, and other policies, laws and regulations.

Section 9. No Alterations or Improvements Absent RCA Consent. No alterations or improvements may be made to the Parcel without RCA's prior written consent. On the expiration or termination of this Agreement, all above-grade building improvements and alterations made to the Parcel by City or Garden City Harvest shall be removed by City.

RCA consents to the following alterations or improvements to the Parcel identified by City as of the effective date of this Agreement, as shown on the schematic depiction attached hereto as Exhibit C:

- A. Removal of existing ball field backstop, dugouts, field lighting, and related fencing
- B. Sports field improvements – grading, irrigation, and establishment of turf grasses
- C. Fencing, picnic area, and trail modifications per proposed park plan.
- D. Additional improvements, following a neighborhood design process, shall be reviewed and approved by RCA before implementation of the final neighborhood master plan for the parcel. RCA shall not unreasonably withhold approval of the neighborhood's plan.

Section 10. No Assignment of Agreement by City Except with RCA's Prior Written Consent. City may not assign, mortgage, pledge, encumber, or otherwise transfer this Agreement, nor sublet or allow any part of the Parcel to be used, except with RCA's prior written consent, which shall not be unreasonably withheld. Continued use as a community garden, under management of Garden City Harvest, shall resume as noted in Section 6 above.

Section 11. RCA's Right of Access. RCA may enter the Parcel at all reasonable times to inspect the Parcel and evaluate whether City is in compliance with this Agreement, and for purposes of taking any other actions RCA believes are appropriate to protect RCA's

interest in the Parcel. This Section 11 does not impose any duty on RCA to inspect the Parcel, report to City the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the Parcel.

Section 12. Liens. City shall not incur, create, assume, or permit the creation of any lien on any portion of the Parcel. City shall keep the Parcel clear of any and all liens arising out of any work performed or materials furnished to City for or at the Parcel, or any other obligations incurred by City. The City shall pay special improvements assessments placed on the 3.57 acres dedicated to park use.

Section 13. Commercial Enterprise Prohibited. City shall not undertake or allow the undertaking of any commercial enterprise on the Parcel.

Section 14. Utilities. City shall have sole responsibility for obtaining and paying for all water, electricity, heat, sewage, storm sewer, and any other utility service used on the Parcel during the term of this Agreement.

Section 15. Taxes. City shall have sole responsibility for payment of the parcel's annual assessments for Lighting District, Water Quality District; and, Curb and Sidewalk SID during the term of this agreement.

Section 16. Termination. In consideration of the City's current and future investment in public park improvements, this agreement may be terminated at end of each term of the license subject to mutual written agreement to not negotiate additional terms, or as provided in Section 17.

Section 17. Termination for Breach by City. If City breaches any of its duties or obligations under this Agreement, RCA may provide City with written notice of breach. If City fails to cure any such breach within sixty (60) days after City's receipt of notice of default, RCA may terminate this Agreement. Whether any such breach by City has been cured shall be determined by RCA in its sole discretion. RCA approval of cure shall not be unreasonably withheld.

Section 18. Surrendering Possession. Upon expiration or termination of this Agreement, City shall peacefully leave and surrender possession of the Parcel to RCA in order and condition at least as good as on the date of this Agreement.

Section 19. Cooperation in Surrendering Possession. Upon expiration or termination of this Agreement, City's rights under this Agreement shall immediately, automatically, and without consideration terminate and revert to RCA. City and RCA shall cooperate in good faith in reasonable transition activities prior to and after expiration or termination of this Agreement.

Section 20. Personal Property. The City will invest in improvements to the property for items such as irrigation systems, landscaping, lighting, restrooms, paved trails and park amenities including benches, picnic tables and garbage cans. The anticipated park improvements each have a useful life. In event of termination or expiration of this

agreement, the City will have 60 days to remove its personal property and to determine what, if any improvements are to be declared surplus and left in place due to the discontinuation of the City's legal use of the land. In the event the City seeks to install improvements that are determined to be "personal property" that cannot readily be moved in a timely fashion due to termination or expiration of the agreement the RCA and City shall negotiate a supplemental agreement for that feature addressing the nature of the improvement, its expected useful life, time-frame for removal with notice if desired, and any pro-rated agreement payments to RCA for affected lands until the feature is removed.

Section 21. Holding Over. Any holding over by City after expiration or termination of this Agreement shall not comprise any renewal or extension of this Agreement, and shall not give City any rights in or to the Parcel.

Section 22. Cumulative Remedies. All of RCA's rights, powers, and remedies under this Agreement are cumulative and not alternative and shall be in addition to all rights, powers, or remedies available to RCA at law or in equity. The exercise of any one or more of these rights or remedies shall not impair RCA's right to exercise any other available right or remedy.

Section 23. Indemnification. City shall defend, indemnify, and hold RCA and RCA's directors, officers, employees, agents, and assigns (collectively referred to as "RCA 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 City or any of City's employees, contractors, guests, or any other person present on the Parcel (collectively referred to as "City Parties"), which may arise directly or indirectly from (a) City Parties' use or operation of or presence on the Parcel, or (b) any breach by City of this Agreement, including, without limitation, City's failure to enforce rules and regulations, except to the extent the Loss is caused by negligence or willful misconduct of RCA. This Section 23 shall survive any termination of this Agreement.

Section 24. Waiver of Liability. City releases and waives all claims against RCA with respect to or arising out of (a) any death or any injury of any nature whatsoever that may be suffered or sustained by City from any causes whatsoever, except to the extent that such injury or death is caused by the negligence or willful misconduct of such RCA; (b) any loss or damage or injury to any property on or about the Parcel belonging to City, except to the extent such injury or damage is to property not covered by insurance carried (or required to be carried) by City and is caused by negligence or willful misconduct of RCA; or (c) the condition of the Parcel and suitability of the Parcel for use as a public park. Subject to the prior provisions, RCA shall not be liable for any damage or damages of any nature whatsoever to City 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 City Parties or any other person on the Parcel. In addition, RCA shall not be liable for any Losses for which City is required to insure. This Section 24 shall survive any termination of this Agreement.

Section 25. Coverage and Claim protection. The City shall, at its own cost and expense, maintain continuous protection through the Montana Municipal Interlocal Authority, which provides self-funded coverage for Worker's Compensation, Property, and Liability coverage.

Section 26. Entire Agreement. This Agreement is the entire agreement between RCA and City and supersedes all prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between RCA and City relating to the same subject matter.

Section 27. Modification. No modification of this Agreement shall be valid or binding unless such modification is in writing and signed by both RCA and City.

Section 28. Severability. If any provision in this Agreement is held by valid final court order to be invalid or unenforceable, the other provisions shall remain enforceable, and the invalid or unenforceable provision shall be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

Section 29. Waiver. Any waiver of any term of this Agreement must be in writing. Failure, neglect, or delay by a party at any time to enforce the provisions of this Agreement will not be considered a waiver of that party's rights under this Agreement. Any waiver shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

Section 30. Notices. Notices and consents under this Agreement must be in writing and delivered by mail, courier, or email to the addresses below. Notices given in the manner provided by this Section shall be considered to be delivered two (2) business days after deposit in the mail, or the first business day after delivery in person or by email.

For the RCA

For the City

Name: Treasurer

Name: Director

Title: Resurrection Cemetery Association

Title: Parks & Recreation

Address: PO Box 1729, Helena, MT 59624

Address: 600 Cregg Lane, Missoula, MT 59801

Telephone: 406-389-7065

Telephone: 406-552-6265

Email: jcarney@diocesehelena.org

Email: gauklerd@ci.missoula.mt.us

Section 31. No Third-Party Beneficiaries. Except as specifically provided in Section 22 and Section 23 of this Agreement, this Agreement is for the exclusive benefit of RCA and City, and not for the benefit of any third party excluding but not limited to any of Garden City Harvest's gardeners, employees or volunteers. All RCA Parties are express third party beneficiaries of Section 22 and Section 23 of this Agreement.

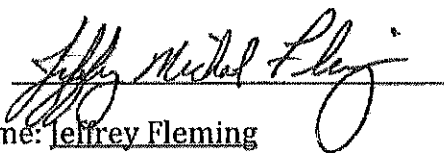
Section 32. No Recording of Agreement. City shall not record this Agreement with the Missoula County Clerk and Treasurer's office or in the public records of any other public office. Per City policy, regulations, and best practices, this Agreement will be reviewed and approved via typical public process and a record of those meetings appearing before Council or any of its' advisory boards, shall become part of the public record.

Section 33. Governing Law. This Agreement shall be governed by and construed pursuant to Montana law.

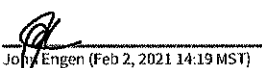
Section 34. Attorney Fees and Costs. In the event of any legal proceedings instituted either by RCA or City to enforce the terms of this Agreement, the prevailing party in such legal proceedings shall be entitled to recover reasonable attorney fees and recoverable legal costs from the non-prevailing party.

Section 35. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Transmission by fax or PDF by email of executed counterparts constitutes effective delivery.

RCA CITY
Resurrection Cemetery Association, Inc. City of Missoula

By: 
Name: Jeffrey Fleming

Title: Secretary

By: 
John Engen (Feb 2, 2021 14:19 MST)
Name: John Engen

Title: Mayor

Attest

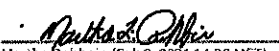

Martha Rehbein (Feb 2, 2021 14:28 MST)
Marty Rehbein, CMC, City Clerk

EXHIBIT A

Resurrection Cemetary Association Property located at 471 Turner St
Northside Park Annex Conceptual Master Plan

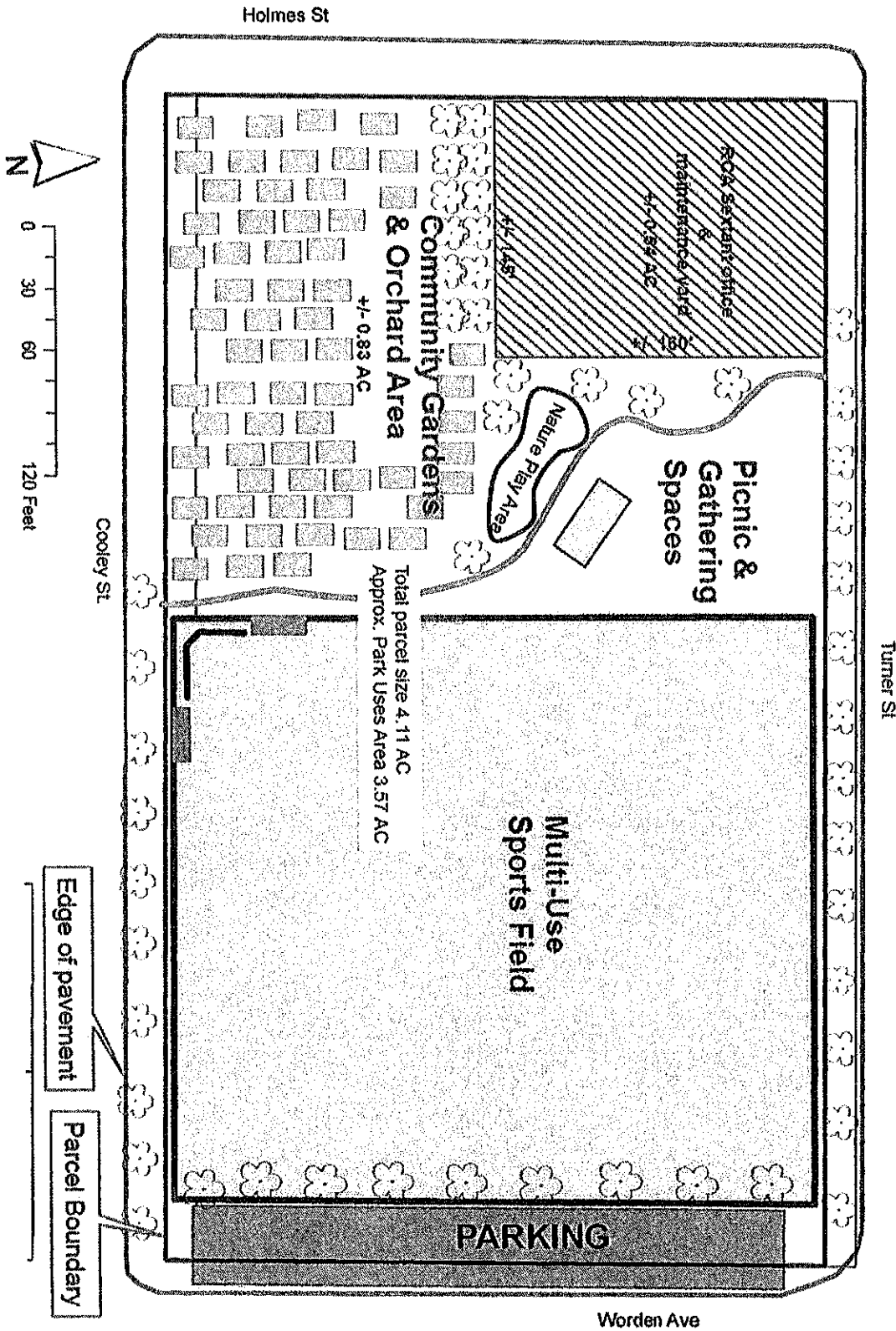


EXHIBIT B

GARDEN CITY HARVEST LICENSE

behind this page

COMMUNITY GARDEN LICENSE AGREEMENT

This COMMUNITY GARDEN LICENSE AGREEMENT ("Agreement"), entered into effective as of November 1, 2017, by and between Resurrection Cemetery Association, Inc., a Montana nonprofit corporation, P.O. Box 5029, Helena, Montana 59604-5029 ("Landowner") and Garden City Harvest, Inc., 103 Hickory Street, P.O. Box 205, Missoula, Montana 59806a Montana public benefit nonprofit corporation ("Licensee").

Licensee is a nonprofit organization whose mission is to build community through agriculture by growing food with and for people with low incomes, offering education and training in ecologically conscious agriculture, and using their sites for the personal restoration of youth and adults.

Landowner and Licensee agree as follows:

Section 1. License. Landowner licenses to Licensee a parcel ("Parcel") located on a tract of land owned by Landowner in Block 1, School Addition, Five Acre Tracts, Missoula County, Montana, as depicted on the attached Exhibit A.

Section 2. Use. Licensee shall use the Parcel for the sole purpose of operating a community garden (the "Garden") with plots to be assigned by Licensee to individual gardeners ("Gardeners") participating in Licensee's community garden program.

Section 3. Term. The term of this Agreement is for five (5) years, starting on November 1, 2017 and ending on October 31, 2022; and Licensee may renew this Agreement for one (1) additional five-year (5-year) term by notification in writing delivered to Landowner not less than thirty (30) days prior to expiration of the term of this Agreement in existence at the time notification by Licensee is provided. This Agreement shall terminate upon its expiration or if either party terminates it pursuant to Section 14 or Section 15 of this Agreement.

Section 4. Parcel As-Is. Licensee acknowledges that Landowner makes no representations, warranties, promises, or guarantees of any kind to Licensee, including but not limited to any representations about the quality, condition, or suitability of the Parcel for use as a community garden. In deciding to enter into this Agreement, Licensee has made its own independent evaluation of the suitability of the Parcel for a community garden.

Section 5. No Landowner Responsibilities. Licensee has the sole responsibility for the planning, setup, management, and carrying out of operations on the Parcel, including but not limited to obtaining any permits for operating a community garden. Landowner has no obligation to make any alterations, improvements, repairs of any kind to the Parcel, or to provide any services or other support.

Section 6. Compliance with Laws. Licensee and its Gardeners shall use and conduct operations on the Parcel in compliance with all applicable, zoning, public health or safety, environmental and other laws and regulations.

Section 7. No Alterations Absent Landowner Consent. Neither Licensee nor its Gardeners may make or permit any alterations or improvements to the Parcel without Landowner's prior written consent. On the expiration or termination of this Agreement, all improvements and alterations made to the Parcel by Licensee or its Gardeners shall be removed by Licensee.

Section 8. No Assignment of Agreement. Licensee may not assign, mortgage, pledge, encumber, or otherwise transfer this Agreement, nor sublet or allow any part of the Parcel to be used or occupied by others except Gardeners participating Licensee's community garden program. Any attempted transfer in contravention of this Section 8 is void and is a default under this Agreement.

Section 9. Landowner's Right of Access. Landowner may enter the Parcel at all reasonable times to inspect the Parcel and evaluate whether Licensee and its Gardeners are in compliance with this Agreement, and for purposes of taking any other actions Landowner believes are appropriate to protect Landowner's interest in the Parcel. This Section 9 does not impose any duty on Landowner to inspect the Parcel, report to Licensee the results of any inspection, or assume any liability of any kind arising from inspecting or not inspecting the Parcel.

Section 10. Liens. Licensee shall not incur, create, assume, or permit the creation of any lien on any portion of the Parcel. Licensee shall keep the Parcel clear of any and all liens arising out of any work performed or materials furnished to Licensee for or at the Parcel, or any other obligations incurred by Licensee.

Section 11. Commercial Enterprise Prohibited. Licensee shall not undertake or allow the undertaking of any commercial enterprise on the Parcel, including but not limited to any sales of produce.

Section 12. Utilities. Licensee shall 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 term of this Agreement.

Section 13. Taxes. Landowner shall have sole responsibility for any and all property taxes or assessments imposed on the Parcel, **EXCEPT** that Licensee shall have sole responsibility for any and all property taxes or assessments imposed on the Parcel arising out of Licensee's use of the Parcel and for any income or sales taxes resulting from Licensee's operations on the Parcel.

Section 14. Termination at Will. This Agreement may be terminated by either Landowner or Licensee effective no sooner than November 1 and no later than December 31 of any year, with any such termination to become effective one (1) month after delivery of the terminating party to the nonterminating party of a written notice of termination under this Section 14.

Section 15. Termination for Breach by Licensee. If Licensee breaches any of its duties or obligations under this Agreement, Landowner may provide Licensee with written notice of breach. If Licensee fails to cure any such breach within sixty (60) days after Licensee's receipt of notice of default, Landowner may terminate this Agreement. Whether any such breach by Licensee has been cured shall be determined by Landowner in its sole discretion.

Section 16. Surrendering Possession. Upon expiration or termination of this Agreement, Licensee shall peacefully leave and surrender possession of the Parcel to Landowners in order and condition at least as good as on the date of this Agreement.

Section 17. Cooperation in Surrendering Possession. Upon expiration or termination of this Agreement, Licensee's rights under this Agreement shall immediately, automatically, and without consideration terminate and revert to Landowner. Licensee and Landowner shall cooperate in good faith in reasonable transition activities prior to and after expiration or termination of this Agreement.

Section 18. Personal Property. If Licensee or any of its Gardeners leaves any personal property on the Parcel after the expiration or termination of this Agreement, Landowner may store it at a warehouse or other location for Licensee's account and at Licensee's expense and risk. Landowner shall be obligated to release any such personal property only after Licensee first pays all charges relating to storage. If Licensee does not reclaim such personal property within the period permitted by law, Landowner shall be free to dispose of any such personal property and apply the proceeds as permitted by law.

Section 19. Holding Over. Any holding over by Licensee after expiration or termination of this Agreement shall not comprise any renewal or extension of this Agreement, and shall not give Licensee any rights in or to the Parcel.

Section 20. Cumulative Remedies. All of Landowner's rights, powers, and remedies under this Agreement are cumulative and not alternative and shall be in addition to all rights, powers, or remedies available to Landowner at law or in equity. The exercise of any one or more of these rights or remedies shall not impair Landowner's right to exercise any other available right or remedy.

Section 21. Indemnification. Licensee shall defend, indemnify, and hold Landowner and Landowner's directors, officers, employees, agents, and assigns (collectively referred to 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 Licensee or any of Licensee's licensed gardeners, employees, contractors, family members, guests, or any other person in a relationship with Licensee or Licensee's licensed gardeners or otherwise participating in or present in the Garden (collectively referred to as "Licensee Parties"), which may arise directly or indirectly from (a) Licensee Parties' use or operation of or presence on the Parcel, or (b) any breach by Licensee of this Agreement, including, without limitation, Licensee's failure to enforce garden rules and regulations, except to the extent the Loss is caused by the negligence or willful misconduct of Landowner. This Section 21 shall survive any termination of this Agreement.

Section 22. Waiver of Liability. Licensee 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 Licensee from any causes whatsoever, except to the extent that such injury or death is caused by the negligence or willful misconduct of such Landowner; (b) any loss or damage or injury to any property on or about the Parcel belonging to Licensee, except to the extent such injury or damage is to property not covered by insurance carried (or required to be carried) by Licensee and is caused by 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 Licensee 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 Licensee Parties or any other person on the Parcel. In addition, Landowner shall not be liable for any Losses for which Licensee is required to insure. This Section 22 shall survive any termination of this Agreement.

Section 23. Insurance. Licensee shall, at its own cost, take out and maintain without interruption during the term of this Agreement 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).

Section 24. Evidence of Insurance. On or before Landowner delivers possession of the Parcel to Licensee, Licensee shall provide Landowner with a copy of the insurance policies required by Section 23. Licensee shall 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, Licensee may deliver to Landowner a certificate of insurance evidencing Licensee's insurance policies, provided that Landowner also receives a copy of the endorsement naming Landowner as an additional insured.

Section 25. Entire Agreement. This Agreement is the entire agreement between Landowner and Licensee and supersedes all prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between Landowner and Licensee relating to the same subject matter.

Section 26. Modification. No modification of this Agreement shall be valid or binding unless such modification is in writing and signed by both Landowner and Licensee.

Section 27. Severability. If any provision in this Agreement is held by valid court order to be invalid or unenforceable, the other provisions shall remain enforceable, and the invalid or unenforceable provision shall be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

Section 28. Waiver. Any waiver of any term of this Agreement must be in writing. Failure, neglect, or delay by a party at any time to enforce the provisions of this Agreement will not be considered a waiver of that party's rights under this Agreement. Any waiver shall not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

Section 29. No Third-Party Beneficiaries. Except as specifically provided in Section 21 and Section 22 of this Agreement, this Agreement is for the exclusive benefit of Landowner and Licensee, and not for the benefit of any third party including but not limited to any of Licensee's Gardeners, employees or volunteers. All Landowner Parties are express third party beneficiaries of Section 21 and Section 22 of this Agreement.

Section 30. Notices. Notices and consents under this Agreement must be in writing and delivered by mail, courier, or fax to the addresses set out on the signature page of this Agreement. Notices given in the manner provided by this Section 30 shall be considered to be delivered two (2) business days after deposit in the mail, or the first business day after delivery in person, by fax, or by email.

Section 31. Recording of Agreement. Licensee shall not record this Agreement with the Missoula County Clerk and Treasurer's office or in the public records of any other public office. If Licensee does record this Agreement with the Missoula County Clerk and Treasurer's office or in the public records of any other public office, this Agreement shall be subject to termination by Landowner pursuant to Section 15 of this Agreement; and Landowner shall be free to exercise all rights, powers, or remedies available to Landowner at law or in equity

Section 32. Governing Law. This Agreement shall be governed by and construed pursuant to Montana law.

Section 33. Attorney Fees and Costs. In the event of any legal proceedings instituted either by Landowner or Licensee to enforce the terms of this Agreement, the prevailing party in such legal proceedings shall be entitled to recover reasonable attorney fees and recoverable legal costs from the non-prevailing party.

Section 34. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument. Transmission by fax or PDF by email of executed counterparts constitutes effective delivery.

LANDOWNER

Resurrection Cemetery Association, Inc.

By: James M. Carney

Name: James M. Carney

Title: Treasurer

Address: PO Box 1729

Helena, MT 59624

Telephone: 406-442-5820

Fax: 406-442-5191

Email: jcarney@diocesehelena.org

LICENSEE

Garden City Harvest, Inc.

By: J. Zosel

Name: Jean Zosel

Title: Executive Director

Address: PO Box 205

Missoula, MT 59802

Telephone: 406-523-3103

Fax: n/a

Email: jean@gardencityharvest.org

