

MONROE TOWNSHIP, MIDDLESEX COUNTY

ORDINANCE NO.: _____

**ORDINANCE OF THE MONROE TOWNSHIP COUNCIL
ENTERING INTO A LEASE AGREEMENT BETWEEN THE
TOWNSHIP OF MONROE (LANDLORD) AND
FRIENDS OF THE MONROE TOWNSHIP COMMUNITY GARDEN, INC. (TENANT)
FOR PREMISES KNOWN AS THE MONROE COMMUNITY GARDEN
SITUATED ON A PORTION OF LAND SHOWN ON THE MONROE TOWNSHIP TAX MAP AS
BLOCK 4, LOTS 6.01 AND 6.02**

WHEREAS, the Township of Monroe has accepted the dedication of real property, with an address of 124 Applegarth Road Monroe, New Jersey 08831, known as Lots 6.01 and 6.02, in Block 4 (the "Subject Property"), as shown on the Tax Map of the Township of Monroe; and

WHEREAS, thirty-three thousand nine hundred and seventy two square feet (33,972 sq. ft.) of the Subject Property is to be used as a Community Garden for the citizens of Monroe; and

WHEREAS, the Friends of the Monroe Township Community Garden, Inc., a non-profit corporation, has agreed oversee the operation of the Community Garden and

WHEREAS, the Council has determined that it is in the public interest to lease the Community Garden to the Friends of the Monroe Township Community Garden, Inc. for twenty-five (25) years; and

WHEREAS, the Township Attorney has reviewed the proposed Lease and finds it to be legally sufficient.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the Township of Monroe, County of Middlesex, State of New Jersey as follows:

Section 1. The Township of Monroe hereby leases the Subject Property to the Friends of the Monroe Township Community Garden, Inc., a non-profit corporation, pursuant to the terms of the Lease attached hereto as Exhibit "A".

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 3. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

Section 4. This Ordinance shall take effect upon final passage and publication as provided by law.

SO ORDAINED, as aforesaid.

GERALD W. TAMBURRO, Council President

NOTICE

Notice is hereby given that the foregoing Ordinance was introduced and passed on first reading at a meeting of the Monroe Township Council held on April 6, 2015. Said Ordinance will again be read and considered for final passage at a meeting of the Monroe Township Council to be held on May 4, 2015 at 7:00 p.m. in the Municipal Complex, 1 Municipal Plaza, Monroe Twp., New Jersey 08831. At said time and place all persons having an interest in the foregoing Ordinance will be granted an opportunity to be heard concerning the same prior to its consideration for final passage by Council.

SHARON DOERFLER, Township Clerk

MAYORAL APPROVAL

By virtue of the Optional Municipal Charter Law of 1950 and Chapter 3, Section 19 of the Code of the Township of Monroe, my approval of this Ordinance is effected by the affixing of my signature hereto.

RICHARD PUCCI, Mayor

Date Signed: _____

**LEASE AGREEMENT
BETWEEN
THE TOWNSHIP OF MONROE,
LANDLORD**

and

**FRIENDS OF THE MONROE TOWNSHIP COMMUNITY GARDEN, INC.
TENANT**

THIS LEASE AGREEMENT (the "Lease"), made the _____ day of _____, 2015 (the "Effective Date"), by and between **The Township of Monroe, a body politic and Corporate**, whose address is 1 Municipal Plaza, Monroe Township, New Jersey 08831 (hereinafter referred to as "Landlord") and **Friends of the Monroe Township Community Garden, Inc., a non-profit corporation**, whose address is Friends of the Monroe Township Community Garden, Inc., c/o Joel Greenberg, 11 Steeple Road, Monroe Township, New Jersey 08831 (hereinafter referred to as "Tenant")

WITNESSETH:

In consideration of the mutual covenants set forth herein, Landlord and Tenant agree as follows:

1. **DEMISED PREMISES.** Landlord, for the term and subject to the provisions hereof, leases to Tenant, and Tenant accepts from Landlord, that certain premises known as **Monroe Community Garden, located on the Tax Maps of Monroe Township on portions of Block 4, Lot 6.02, Monroe Township, New Jersey 08831**, consisting of **approximately 33,972 square feet**, more particularly described on Schedule "A" attached hereto (hereinafter referred to as the "Garden"). Said square footage is an approximation and Landlord makes no representation as to the actual measured square footage of the Garden.

2. **USE AND PURPOSE.** Tenant may use the Garden solely for the purpose of providing plots of ground, which will be made available to the citizens of Monroe, for the cultivation of vegetables, herbs, fruits, and/or flowers. Subject to the nondiscrimination provisions set forth below, Tenant may in its sole discretion establish terms, rules, and guidelines for the use of the Garden and may charge those persons using the Garden a nominal fee to be used for the upkeep of the Garden.

3. **LANDLORD'S OBLIGATIONS.** Landlord shall arrange for the initial grading of the Garden so that approximately 176 garden beds ("plots") can be constructed. Landlord shall also install and maintain a fence around the Garden sufficient to restrict large and small animals such as deer, rabbits, and groundhogs, install water main extensions, provide water service, and install gate locks. Landlord will also prepare and maintain a gravel parking area for tenant's use.

Landlord further agrees to provide information about the Garden on its website and maintain the area around the Garden outside the fence, including the parking areas, water mains, pathways and landscaping, so that Tenant and Monroe citizens using the plots have reasonable ingress and egress to and from the Garden.

4. **TERM.** The initial term of this Lease shall be a term of twenty-five (25) years commencing on the first day this Lease Agreement is fully executed by the parties ("Commencement Date").

5. **RENTAL AND OTHER SUMS PAYABLE.**

A. **Rent.** Rent for the term of the lease shall be **Twenty-Five (\$25.00) Dollars**. The Rent shall be paid in full on the Commencement Date in lawful money of the United States of America.

B. **Payment of Rent.** All rent shall be payable to Landlord and delivered c/o Township Clerk, 1 Municipal Plaza, Monroe Township, New Jersey 08831.

6. TENANT'S ALTERATIONS. Tenant shall create and maintain all plots and walkways within the Garden. Tenant shall make no other alterations, additions or improvements to the Garden without the written consent of Landlord. Any such alterations, additions or improvements shall become a part of the Garden when made and shall remain upon and be surrendered with the Garden at the end of the term; provided, however, if at the termination of this Lease, by lapse of time or otherwise, Landlord so directs by written notice to Tenant, the Tenant shall promptly remove the alterations, additions, improvements or installations which were placed in the Garden by Tenant and which are designated in said notice.

7. NONDISCRIMINATION. Tenant does not and shall not discriminate on the basis of race, color, religion, creed, gender, gender expression, age, national origin, ancestry, disability, marital status, sexual orientation, or military status, in any of its activities or operations. These activities include, but are not limited to, hiring and firing of staff, selection of volunteers and vendors, leasing of plots and provision of services.

8. MECHANICS' LIENS. If any mechanics' or other lien shall be filed against the Garden purporting to be for labor or material furnished or to be furnished at the request of Tenant, then Tenant shall at its expense cause such lien to be discharged of record by payment, bond or otherwise, within thirty (30) days after the filing thereof. If Tenant shall fail to cause such lien to be discharged of record within such period, Landlord may cause such lien to be discharged by payment, bond or otherwise, without investigation as to the validity thereof or as to any offsets or defenses thereto, and Tenant shall, upon demand, reimburse Landlord for all amounts paid and costs incurred, including attorneys' fees, in having such lien discharged of record. Such amounts shall be deemed "Additional Rent" due the Landlord within thirty (30) days of Landlord providing notice thereof to Tenant.

9. CONDITION OF GARDEN. Tenant acknowledges and agrees that, except as expressly set forth in this Lease, there have been no representations or warranties made by or on behalf of Landlord with respect to the Garden or with respect to the suitability of the Garden for the intended purposes of Tenant. The taking possession of the Garden by Tenant shall conclusively establish that the Garden was, at such time, in a condition satisfactory to Tenant.

10. ASSIGNMENT AND SUBLETTING. Except for the leasing of plots for a term not to exceed twelve (12) months, Tenant shall have no right to sublet or assign all or any part of the Garden without the consent of Landlord, which consent shall not be unreasonably withheld.

11. ACCESS TO GARDEN. Landlord, its employees and agents shall have the right to enter the Garden at all reasonable times for the purpose of examining or inspecting the same, conducting any environmental test, sampling or remediation, and making such alterations, repairs, improvements or additions to the Garden as Landlord may deem necessary or desirable. Except in case of emergency, any such entry shall be after reasonable notice to Tenant. Landlord shall use its best efforts not to interfere with Tenant's use and occupancy of Garden. If representatives of Tenant shall not be present to open and permit entry into the Garden at any time when such entry by Landlord is necessary or permitted hereunder, Landlord may enter by means of a master key (or forcibly in the event of an emergency) without liability to Tenant and without such entry constituting an eviction of Tenant or termination of this Lease.

12. CLEANING AND REPAIRS.

A. Tenant shall make, at its sole cost and expense, all repairs of damaged items caused by Tenant's use of the Garden and shall keep the Garden orderly, neat, safe, clean and free from all refuse matter, rodents, insects, vermin, noxious weeds, and other pests; at its own expense.

B. Landlord shall not be liable by reason of any injury to or interference with Tenant's use of the Garden arising from the making of any repairs, alterations, additions or improvements in or to the Garden or to any appurtenances or equipment therein.

13. SURRENDER OF GARDEN. At the end of the term of this Lease, Tenant shall surrender the Garden to Landlord, together with all alterations, additions and improvements thereto, in clean condition and in good order and repair except for ordinary

wear and tear and damage for which Tenant is not obligated to make repairs under this Lease. If Tenant is not then in default under any of the terms hereof, Tenant shall have the right at the end of the term hereof to remove any equipment, furniture, fixtures or other personal property placed in the Garden by Tenant, provided that Tenant promptly repairs any damage to the Garden caused by such removal. Tenant shall repair all damage to the Garden caused by such removal and upon Landlord's request, restore the Garden to the condition in which it was prior to the installation of the items so removed less reasonable wear and tear. Tenant shall surrender the Garden to Landlord at the end of the term hereof, without notice of any kind, and Tenant waives all right to any notice of termination as may be provided under any laws now or hereafter in effect in New Jersey. If Tenant shall fail to remove any of its equipment, furniture, fixtures or other personal property, Landlord may, after written notice and with ten (10) days to cure, remove and store the same at the expense of Tenant or sell the same on behalf of Tenant at public or private sale in such manner as is commercially reasonable with any proceeds thereof to be first applied to the costs and expenses, including attorney's fees, of the storage and sale, and the payment of any amounts owed hereunder by the Tenant.

14. INDEMNIFICATION AND INSURANCE.

A. Commencing upon the Commencement Date and throughout the term of this Lease, Tenant shall maintain general liability and property and casualty insurance for the benefit of Landlord with companies reasonably acceptable to Landlord qualified to do business in the State of New Jersey in an amount not less than One Million (\$1,000,000.00) Dollars, which shall name Landlord as the named insured on such insurance and Tenant shall provide Landlord with a copy of the insurance identifying Landlord and its successors and assigns as a named insured.

B. Tenant covenants and agrees that it shall, without notice or demand and at its own cost and expense, indemnify and save harmless Landlord against and from, and Landlord shall not be liable to Tenant for, any and all claims, by or on behalf of any person, arising in any manner whatsoever from, out of or in connection with (a) the use and occupancy of the Garden by Tenant, its agents, employees and invitees, (b) any failure by Tenant to perform any of the terms or conditions of this Lease required to be performed by Tenant, (c) any failure by Tenant to comply with any statutes, regulation, ordinances or orders of any governmental authority or (d) any accident, death, injury, or damage, loss or theft of property in or about or from the Garden (whether involving property belonging to Tenant or any other person) resulting from any cause whatsoever, and from and against all costs, attorney fees, expenses and liabilities incurred in or as a result of any such claim or action or proceeding brought against Landlord regardless as to whether such claim alleges Landlord is negligent in any way.

C. Tenant shall keep in force Comprehensive General Liability insurance with respect to the Garden, including contractual insurance with respect to the covenants and agreement above, with companies reasonably acceptable to Landlord qualified to do business in the State of New Jersey, and in form reasonably acceptable to Landlord to afford protection of not less than a combined limit of Two Million (\$2,000,000.00) Dollars with respect to personal injury or death and property damage, and naming as the insured Landlord, Tenant and the beneficiaries of any encumbrances now or in the future affecting the Garden and providing thirty (30) days' written notice of cancellation or reduction in scope or amount of coverage. Copies of such policies shall be delivered to Landlord.

D. Waiver of Subrogation. Tenant hereby waives any and all rights of recovery, claim, action or cause of action against Landlord for any loss or damage that may occur to the Garden or any improvements thereto, or any personal property of Tenant, arising from any cause that would be insured against under the terms of any property insurance required to be carried hereunder; Tenant agrees that all insurance policies which it shall carry to insure the Garden and the contents therein against casualty loss, and all liability policies which it shall carry pertaining to the use or occupancy of the Garden shall contain waivers of the right of subrogation against Landlord herein, employees, administrators, successors, and assigns.

E. Tenant agrees to be responsible for and hereby expressly relieves Landlord from any and all liability by reason of any injury, loss, damage to any person or property in or from the Garden, whether the same be due to fire, breakage, leakage, water flow, gas, use, misuse, or defects therein, or condition anywhere in the Garden, failure of water supply or light or power or electricity, wind, lightning, storm, or any other cause whatsoever, whether the loss, injury or damage be to the person or property of Tenant or any other persons.

15. DAMAGE AND DESTRUCTION.

Landlord will not be obligated to repair or maintain any improvements other than those installed by Landlord in connection with initial occupancy of the Garden by Tenant.

16. DEFAULT. The occurrence of any of the following shall constitute an Event of Default and a material default and breach of this Lease by Tenant:

A. Tenant uses or occupies the Garden other than as permitted hereunder:

B. Tenant assigns or sublets, or purports to assign or sublet, the Garden or any part thereof other than in the manner and upon the conditions set forth herein;

C. Tenant fails to perform its obligations hereunder.

17. REMEDIES. Upon the occurrence of any Event of Default:

A. Landlord may, but is not obligated to, care for the account of Tenant any such default of Tenant and immediately recover as Additional Rent any expenditures made and the amount of any obligations incurred in connection therewith, plus the prevailing prime interest rate per annum from the date of any such expenditure;

B. Landlord, at its option, may serve notice upon Tenant that this Lease and the then unexpired term hereof shall cease and expire and become absolutely void on the date specified in such notice, to be not less than five (5) days after the date of such notice without any right on the part of the Tenant to save the forfeiture by payment of any sum due or by the performance of any term or condition broken; and, thereupon and at the expiration of the time limit in such notice, this Lease and the term hereof, as well as the right, title and interest of the Tenant hereunder, shall wholly cease and expire and become void in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed in such notice were the date herein granted for expiration of the term of this Lease. Thereupon, Tenant shall immediately quit and surrender to Landlord the Garden, and Landlord may enter into and repossess the Garden by summary proceedings, detainer, ejectment or otherwise and remove all occupants thereof and, at Landlord's option, any property thereon without being liable to indictment, prosecution or damages therefor. No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, whether or not the Garden shall be relet;

C. Landlord may, at any time after the occurrence of any Event of Default that has not been cured within ten (10) days, re-enter and repossess the Garden and any part thereof and attempt in its own name, as agent for Tenant if this Lease has not been terminated or in its own behalf if this Lease is terminated, to relet all or any part of the Garden for and upon such terms and to such persons and for such period or periods as Landlord, in its sole discretion, shall determine, including the term beyond the termination of this Lease; and Landlord shall not be required to accept any tenant offered by Tenant or observe any instruction given by Tenant about such reletting.

D. Landlord may remove all persons and property from the Garden, and store such property in a public warehouse or elsewhere at the cost of and for the account of Tenant, without service of notice or resort to legal process (all of which Tenant expressly waives) and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby.

E. Landlord shall have the right of injunction, in the event of a breach or threatened breach by Tenant of any of the terms and conditions hereof, to restrain the same and the right to invoke any remedy allowed by law or in equity, whether or not other remedies, indemnity or reimbursements are herein provided. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies; and no one of them, whether or not exercised by Landlord, shall be deemed to exclude of any of the others.

18. ACTION FOR UNPAID RENT. Landlord, at Landlord's option, may, upon Tenant's failure to pay Additional Rent in accordance with the terms of this Lease, commence an action for the recovery from Tenant all Additional Rent, including all acceleration of rent permissible under the provisions of this Lease, hereunder, and/or for all then due charges reserved hereunder as rent, as well as for interest, costs, and reasonable attorney's fees.

19. WAIVER. The failure or delay on the part of either party to enforce or exercise at any time any of the terms and conditions of this Lease shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Lease or any part hereof, or the right of the party to thereafter enforce each and every term or condition. No waiver of any breach of this Lease shall be held to be a waiver of any other or subsequent breach. The receipt by Landlord of rent at a time when the rent is in default under this Lease shall not be construed as a waiver of such default. The receipt by Landlord of a lesser amount than the rent due shall not be construed to be other than a payment on account of the rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of the rent due or to pursue any other remedies provided in this Lease. No act or thing done by Landlord or Landlord's agents or employees during the term of this Lease shall be deemed an acceptance of a surrender of the Garden, and no agreement to accept such a surrender shall be valid unless in writing and signed by Landlord.

20. QUIET ENJOYMENT. If and so long as Tenant pays the rent reserved hereunder and observes and performs all the terms and conditions on Tenant's part to be observed and performed hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Garden for the entire term hereof, subject to all of the provisions of this Lease.

21. FORCE MAJEURE. Time periods for Tenant's or Landlord's performance of Tenant's or Landlord's obligations under any of the terms of this Lease shall be extended for periods of time not to exceed ten (10) days during which the Tenant's or Landlord's performance is prevented due to circumstances beyond Tenant's or Landlord's control, including without limitation, strikes, embargoes, governmental regulations, acts of God, war or other strife.

22. SUCCESSORS. The respective rights and obligations provided in this Lease shall bind and shall inure to the benefit of the parties hereto, and their successors and assigns.

23. GOVERNING LAW. This Lease shall be governed by and construed in accordance with the laws of the New Jersey.

24. HOLDING OVER. If Tenant shall, with the consent of Landlord, hold over after the expiration of the Term hereof, such tenancy shall be deemed a month-to-month tenancy, which tenancy may be terminated as provided by applicable state law. During such tenancy, Tenant agrees to pay Landlord the fair market value for the Garden, as reasonably determined by Landlord, and to be bound by all the terms and conditions herein. If Landlord shall not give consent to such hold over by Tenant, such tenancy may be terminated as above provided, and until Tenant has vacated the Garden, it agrees to pay to Landlord rent at a daily rental of Two Hundred (\$200) Dollars and Additional Rent, charged to Tenant at the expiration of the Term.

25. NOTICES. All notices or other communications required or permitted under the terms and conditions of this Lease shall be in writing, and shall be (1) delivered in person, (2) sent by United States Registered or Certified Mail, postage prepaid, return receipt requested, or (3) sent by private courier guaranteeing next day delivery, addressed as follows or any other address Tenant may designate:

As to Tenant: c/o President of the Friends of the Monroe Township
Community Garden, Inc.
Leonard Baskin
119 Diamond Spring Drive
Monroe Township, NJ 08831

As to Landlord: Clerk of the Township of Monroe
1 Municipal Plaza
Monroe, New Jersey 08831

Either party may at any time, in the manner set forth for giving notices to the other, designate a different address to which notices to it shall be sent. Any period of time designated in a notice shall start from the date of receipt, except that such period shall start five (5) days from the date of mailing if delivery of the notice is not accepted by the party to whom it is addressed.

26. **AUTHORITY.** Tenant represents and warrants that it is duly formed and in good standing, and has full corporate power and authority to enter into this Lease and has taken all corporate action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms. Tenant shall provide Landlord with corporate resolution or other proof in a form acceptable to Landlord, authorizing the execution of this Lease at the time of such execution.

27. **LITIGATION.** In the event that Landlord shall be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless from and against any liability arising therefrom, and shall pay all of Landlord's reasonable costs, expenses and attorney's fees.

28. **CAPTIONS.** The titles to paragraphs of this Lease are for convenience of reference only, and are not to be construed as defining, limiting or modifying the scope or intent of any of the terms and conditions of this Lease.

29. **ENTIRE AGREEMENT.** This Lease contains all covenants and agreements between Landlord and Tenant relating in any manner to the rent, use and occupancy of the Garden and Tenant's use of the Garden and other matters set forth in this Lease. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect and the terms, covenants and conditions of this Lease shall not be altered, modified or added to except in writing signed by Landlord and Tenant.

30. **SEVERABLE TERMS.** Each term, remedy, provision, condition, obligation and/or waiver contained in this Lease, or any amendment or supplement hereto, is a separate and distinct covenant and, if any such term, remedy, provision, condition, obligation and/or waiver is declared unenforceable or unconstitutional, or invalid by any court of competent jurisdiction or by any act of Congress or by any other governmental authority, such decision, statute, ordinance or regulation will not affect in any manner the enforceability or validity of any other term, remedy, provision, condition, obligation and/or waiver contained herein, and they will remain in full force, virtue and effect.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed the day and year first above written.

TENANT

WITNESS:

Friends of the Monroe Township
Community Garden, Inc.

By: _____
Joel Greenberg

LANDLORD

WITNESS:

Township of Monroe

By: _____
Richard Pucci, Mayor