



## **RESOLUTION**

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A LEASE AGREEMENT  
WITH GATE CITY COMMUNITY GARDENS, INC.**

### ***CITY OF NASHUA***

*In the Year Two Thousand and Thirteen*

***RESOLVED*** by the Board of Aldermen of the City of Nashua that the City is authorized to enter into a Lease Agreement with Gate City Community Gardens, Inc. at city-owned property on the north side of the paved portion of the Heritage Rail Trail from the west side of Everett Street to the west side of Stevens Street substantially similar to the attached.

**LEGISLATIVE YEAR 2013**

**RESOLUTION:** R-13-112

**PURPOSE:** Authorizing the City of Nashua to enter into a lease agreement with Gate City Community Gardens, Inc.

**ENDORSER(S):** Alderman-at-Large James W. Donchess  
Alderman-at-Large Lori Wilshire  
Alderman Diane Sheehan

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** The fiscal impact to the city is minimal. The lease calls for an annual payment from the lessee of \$1.00. The costs associated with any improvements or operations will be borne by the lessee.

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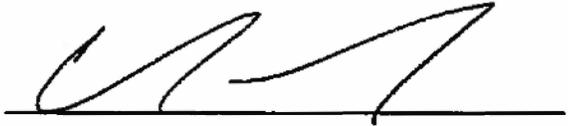
**ANALYSIS**

This resolution authorizes the City to enter into a Lease Agreement with Gate City Community Gardens, Inc. for city-owned property located on the north side of the paved portion of the Heritage Rail Trail from the west side of Everett Street to the west side of Stevens Street to be used for community gardens. The lease will be substantially similar to the attached. The term of this Lease Agreement is for three years and may be renewed for two (2) additional three (3) year terms upon mutual written agreement of the parties.

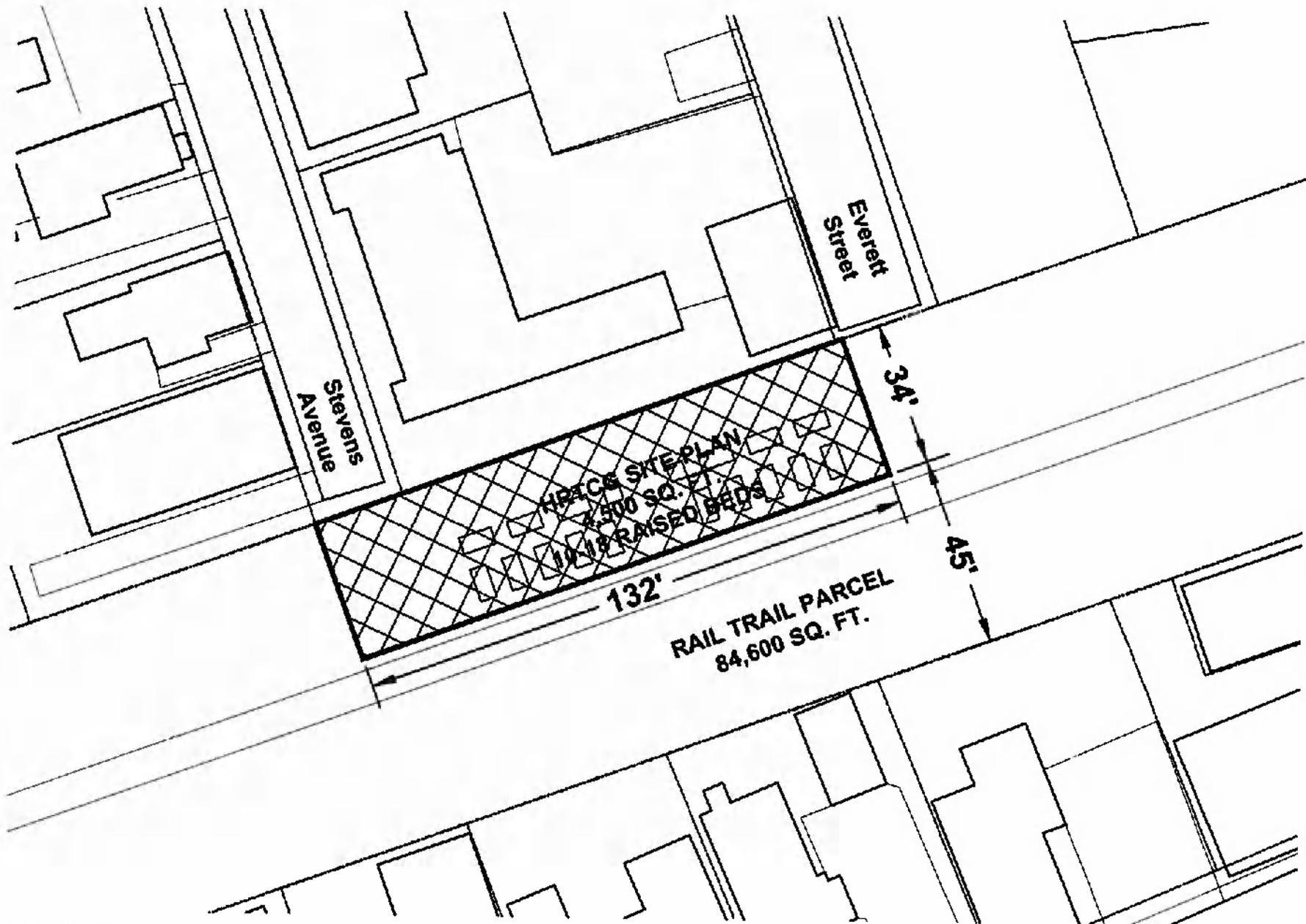
This legislation should be referred to the Board of Public Works.

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**Approved as to form:** Office of Corporation Counsel

**By:** 

**Date:** April 18, 2013



**HERITAGE RAIL TRAIL COMMUNITY GARDEN**  
SITE PLAN DRAWING SCALE:  $\frac{1}{32}'' = 1'-0''$

**DRAFT**  
**LEASE**

This Lease, dated as of \_\_\_\_\_, 2013, is between the City of Nashua, a New Hampshire municipal corporation with a place of business at City Hall, 229 Main Street, Nashua, New Hampshire 03061-2019 (the "City" or "Lessor") and Gate City Community Gardens, Inc., a New Hampshire non-profit corporation with an address of 23 East Pearl Street, Nashua New Hampshire 03060 (the "Lessee").

In and for the mutual covenants set forth herein, and other good and valuable consideration paid, the parties agree as follows:

1. **Lease of Premises and Term.**

The City leases to the Lessee and the Lessee leases from the City a parcel of land located at the North side of the paved portion of the Heritage Rail Trail from the west side of Everett Street to the west side of Stevens Street, Nashua, Hillsborough County, New Hampshire, as shown on Exhibit A attached hereto (the "Premises"), subject to the terms and conditions of this Lease. The term of this lease (the "Term") shall start on the date first written above and shall continue for three (3) years from the start date, unless sooner terminated pursuant to the terms of this Lease. This lease may be renewed for two additional three (3) year terms upon mutual written agreement of the parties, and such agreement by the City shall not be unreasonably withheld.

In addition, Lessee may, upon written approval from the Mayor of the City which approval shall not be unreasonably withheld, expand the community gardens by up to 50% of the original Premises size on unpaved land adjacent to and to the west of the

Premises (the "Expansion Area"). Any use by Lessee of the Expansion Area shall be governed by this Lease in the same manner and to the same extent as the Premises.

1.1. Use of Premises. The City and Lessee acknowledge and agree that the Lessee intends to and will construct and operate a community garden to be known as the Heritage Rail Trail Community Garden on the Premises substantially as shown on Exhibit B, pursuant to the conditions and requirements found in this Lease. Lessee shall be responsible for obtaining and keeping in effect all required permits and licenses for operation of the community garden.

1.2. Termination. The City or Lessee may terminate this Lease for any reason by written notice to the other party with a minimum of ninety (90) days notice. The Term of this Lease shall immediately terminate without further notice upon the occurrence of any of the following events ("Termination Events"):

1.2.1. The Lessee materially breaches any of its obligations under this Lease, , and fails to cure, or take reasonable steps to cure, such breach within thirty (30) days after the City delivers written notice of such breach to the Lessee, except in the case of the Lessee's failure to maintain insurance as required in Sections 5 and 10 hereof. In such a case, termination shall be immediate upon expiration of the insurance. However, if the City chooses to pay any unpaid or overdue insurance costs, the Lessee shall have ten (10) business days to repay those costs and reactivate this Lease.

1.2.2. The Lessee commences a voluntary case under the federal bankruptcy laws, or shall apply for, consent to or acquiesce in the appointment of, or taking possession by, a trustee, receiver, custodian or similar official or agent for itself or any substantial part of its property.

1.2.3. A trustee, receiver, custodian or similar official or agent shall be appointed by an outside party for the Lessee or any substantial part of its property.

1.2.4. The Lessee shall be the subject of an involuntary case brought pursuant to the federal bankruptcy laws, or a petition or action seeking Lessee's

reorganization, readjustment, arrangement, composition, dissolution, or other similar relief, whether under federal or state law, shall be brought against it and shall remain undismissed for a period of one hundred and twenty (120) days.

1.2.5. Any purported lien or attachment against the premises or Lessee's property therein, unless it is a lien or attachment against Lessee's property only agreed to by Lessee as a part of financing its operations or providing adequate security for its operations, is claimed, filed, recorded or asserted and the same is not fully released, bonded over, discharged or abated within a period of six (6) months.

1.2.6. Lessee attempts to assign or purportedly assigns this Lease.

Lessee hereby warrants that none of the foregoing termination events is occurring or has occurred as of the date of inception of this Lease.

1.2.7. Surrender of the property by Lessee to the City by written notice signed by the Lessee stating that the Lessee seeks to discontinue operation of a community garden.

1.3. Delivery of Premises At End of Term: At the end of the lease term, or if there is a termination of this Lease prior to the end of the term of the Lease, the Lessee shall vacate the Premises, leaving the Premises in a clean and orderly condition.

1.4. Transfer of Premises. The City shall have the right to sell, convey, transfer or encumber all or any portion of its interest in the Premises, subject to this Lease.

2. Rent: The rent shall be \$1 per year.

3. Real Property Taxes. The Lessee shall not be obligated to pay current or potential real or personal property taxes on the Premises, land or improvements, during the term of the Lease.

4. Utilities. The Lessee shall be responsible and timely pay for all utilities used or consumed at the Premises, including, without limitation, all gas, electricity, water, sewer and telecommunication (telephone, cable, etc.) costs. If the Lessee requires or desires any modifications or improvement to any utility system or the addition of a utility

service not presently servicing the Premises, the Lessee may, after obtaining the City's prior written consent, which consent shall not be unreasonably withheld or delayed, undertake such modification, improvement or addition at Lessee's cost.

City grants Lessee an easement over adjacent City land for the purpose of bringing necessary utilities to the Premises and maintaining the same. When installing and maintaining said utilities to the Premises, Lessee shall not disturb, damage or interfere with the paved portion of the Heritage Rail Trail and shall ensure that the easement area and any adjacent land is repaired and restored to the condition it was prior to installation and maintenance of any utilities.

5. Maintenance by Lessee. The Lessee shall, at its expense, maintain the grounds of the Premises in a clean and orderly condition. The Lessee shall be responsible for debris and trash removal. The Lessee shall, at its expense, maintain all portions of the Premises in good repair and condition as a community garden.

Private contractors engaged by the Lessee for trash removal are, or other persons performing trash removal for or on behalf of Lessee, subject to established City of Nashua qualification criteria.

6. Suitability for Use: No Warranty by City.

6.1. Lessee acknowledges that the Premises are in acceptable condition and are suitable for its use.

6.2. City makes no warranty about the Premises, whether express or implied.

7. Construction and Alterations. The City acknowledges that the Lessee intends to and will construct a community garden on the Premises, substantially as shown in Exhibit B, pursuant to the conditions and requirements found in this Lease.

The Lessee shall not make any structural alterations to the Premises not shown or described in Exhibit B without the City's prior written consent. In addition, the Lessee shall comply with the following:

7.1. The Lessee shall submit to the City written plans of the proposed construction or alterations;

7.2. The construction or alterations shall be approved by all appropriate government agencies and all applicable permits, approvals and authorizations shall be obtained before commencement of the construction or alterations;

7.3. The construction or alterations shall be completed with due diligence in compliance with such plans and all applicable laws, codes and ordinances; and

7.4. Any and all mechanic's liens claimed, filed, recorded, or asserted against the Premises resulting from construction or alterations done by or for the Lessee shall be fully released, bonded over, discharged or abated within a period of thirty (30) days.

8. Indemnity by Lessee. The Lessee shall indemnify and save harmless the City and its agents, employees, servants, officers, directors, constituent agencies, boards and commissions against and from all liabilities, claims, demands, loss, obligations and penalties (including, without limitation, reasonable attorneys' fees, investigative and discovery costs and court costs) of any person or entity, including, without limitation, employees, agents, licensees and invitees of the Lessee or City, whether for injuries to persons or loss of life, or damage to property, arising out of the use, occupancy or possession of the Premises by the Lessee or its agents and/or third parties, and whether caused by or arising out of negligence, fault, breach of warranty, products liability or strict liability, or any other cause, except if caused solely by negligence on the part of the City. In case any action or proceeding is brought against City by reason of any such claim, the Lessee shall, at the Lessee's expense, resist or defend such action or proceeding with counsel approved by the City's Corporation Counsel in writing, which approval shall

not be unreasonably withheld. This covenant of indemnification shall be deemed to be a separate and enforceable New Hampshire contract which shall survive the termination or expiration of this Lease and which shall not be modified or reduced by the presence or absence of insurance, whether required or not hereunder.

9. **Insurance.** **SUBJECT TO REVIEW BY RISK MANAGEMENT** The Lessee shall maintain the following insurance/liability coverage:

9.1. **Comprehensive General Liability: \$1,000,000 per occurrence / \$2,000,000 aggregate, including premises and operations and products and completed operations, participant coverage and employment practices. The City of Nashua must be named an additional insured.**

10. **Other Insurance Matters.** All the insurance required hereunder shall:

10.1. **Be issued by insurance companies authorized to do business in the State of New Hampshire;**

10.2. **Be issued as a primary policy; and**

10.3. **Contain an endorsement requiring thirty (30) days prior written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy.**

10.4. **Be maintained continuously throughout the term of the Lease.**

10.5. **The provision of certificates of insurance satisfactory to the Manager of the Risk Management Department and satisfying all insurance sections contained herein shall be submitted to the Risk Management Department prior to the Lessee occupying or using the Premises, whose approval of said insurance coverages / sections shall not be unreasonably withheld.**

10.6. **The City and the Lessee understand and acknowledge that insurance requirements may change over the course of this lease. To that end, the Lessee acknowledges that the City may request amendments to the insurance required under this**

Lease, and agreement by the Lessee to such amendments will not be unreasonably withheld.

11. **Prohibition against Assignment.** The Lessee shall not assign this Lease without first obtaining the City's written consent, by a resolution of the City of Nashua Board of Aldermen, which may or may not be given at the sole discretion of the City. Unauthorized assignment or purported assignment of this Lease shall constitute an event of termination under Section 1.2 hereof for which termination shall occur without further notice.

12. **City's Right of Entry.** The City and the City's authorized representatives shall have the right to enter the Premises at all times for any of the following purposes:

12.1. To determine whether the Premises are in good condition and whether the Lessee is complying with its obligations under this Agreement; or

12.2. In the event of an emergency or to do any necessary emergency maintenance or to make any restoration to the Premises.

12.3. The City is authorized to close the park with notice for use for certain events such as but not limited to, 1) any maintenance, testing, or concerns associated with the community garden or areas adjacent to it.

12.4. The City will be given ten (10) copies of any keys needed to access the community garden and any locked storage containers and will be given an updated set if key changes are needed.

The City shall endeavor to give reasonable notice of its intent to enter the Premises pursuant to this section in non-emergency situations and shall endeavor to prevent unnecessary interruption of events being conducted at the Premises.

13. **Peaceful Enjoyment.** The parties agree that if the Lessee discharges its obligations hereunder then it shall have and enjoy during the Term, and any renewal term, the quiet, peaceful and undisturbed possession of the Premises and all related rights hereunder granted.

14. **Subtenants; Related Uses.** The Lessee may not sublease the Premises or portions of the Premises without written approval of the City. Any and all subtenants are required to meet the same insurance requirements as the Lessee.

15. **Notice.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, return receipt requested:

15.1. If to the City at 229 Main Street, Nashua, New Hampshire 03061-2019, Attn: Mayor.

15.2. If to the Lessee at 23 East Pearl Street, Nashua, New Hampshire, 03060, Attn: President.

Either party may change its address by notifying the other party of the change of address in writing.

16. **Successors.** This Agreement shall be binding upon the parties hereto; their successors and assigns, if any are permitted.

17. **Entire Agreement; Modification.** This Agreement contains all the agreements of the parties with respect to the subject matter hereof, and any amendment or modification hereto shall be effective only if in writing and signed by both parties. It is the intention of the parties that this agreement be a fully integrated document, interpreted solely in accordance with its express terms and without reference to correspondence between the parties, conversations or understanding between their representatives or officials, or their prior relationship, of whatever nature.

18. **Severability.** The unenforceability, invalidity or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

19. **Applicable Law.** This Lease shall be construed in accordance with the laws of the State of New Hampshire.

20. **Waiver.** No delay or omission in the exercise of any right or remedy of the City shall impair such a right or remedy or be construed as a waiver. The City's consent

to or approval of any act or omission by the Lessee requiring the City's consent or approval shall not be deemed to waive or render unnecessary the City's consent to or approval of any subsequent act or omission by the Lessee. Any waiver by the City must be in writing and shall not be a waiver of any other matter concerning the same or any other provisions of this Lease

21. References to Gender and Number. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

22. Captions. The captions or headings of the sections of this Lease are inserted for convenience and shall not be determinative in construing the provisions hereof.

23. Subleases, Grants, Performances, etc.; Consistency with Lease Terms. Lessee shall not grant any sublease, or facility use arrangement, or enter into or accept any grant, or take or suffer any event or action to occur on the Premises that is inconsistent with or repugnant to the terms and intent of this Lease.

24. Independent Entities. City and Lessee are and at all times shall be construed to be independent entities and independent contractors and shall not be deemed to be joint venturers, partners, master and servant or in any way related, but through the relationship of landlord and tenant wherein the landlord has no responsibility or liability for the actions of the tenant, which shall at all times be deemed to be independent.

25. Conformance with the Law. In all actions permitted hereby the Lessee shall conform to all pertinent federal, state and local laws, whether statutory or decisional. It shall not violate any law, building or fire code, act without a requisite permit or suffer or allow a violation of law to occur on the Premises.

**GATE CITY COMMUNITY GARDENS,  
INC., LESSEE**

\_\_\_\_\_  
Witness

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

Print name: \_\_\_\_\_

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

Duly Authorized

**CITY OF NASHUA, LESSOR**

\_\_\_\_\_  
Witness

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

Donnalee Lozeau, Mayor

**EXHIBIT A**  
**Parcel Description**

**EXHIBIT B**

**Community Garden Specifications**