



City of Gardner - *Executive Department*

Mayor Michael J. Nicholson

September 27, 2024

Hon. Elizabeth J. Kazinskas, Council President
And City Councilors
Gardner City Hall, Rm 121
95 Pleasant Street
Gardner, MA 01440

RE: A Measure Authorizing the Mayor to Enter into a Grant Agreement Lease with the Gardner Community Action Committee for a use of a portion of the space at the Waterford Community Center located at 62 Waterford Street

Dear Madam President and Councilors,

At the August 5, 2024 meeting of the City Council, the Council unanimously voted to declare the Waterford Community Center, located at 62 Waterford Street, as surplus for the purpose of leasing out the property to create a new non-profit community center.

The attached vote would authorize the City to enter into a grant agreement lease with the Gardner Community Action Committee (CAC) for the portion of the property covering the former Library and front office space of the building.

This type of lease that the CAC currently has with the City for the space they currently occupy in the Senior Center Building on Pleasant Street.

In this instance, the City provides the space of the building to the CAC as an in-kind grant, rather than a monetary grant.

There still is a lot of work that needs to be done in the location before full public access can be granted to the space, but this should start the process moving forward and keep progress happening at the site.

Respectfully Submitted,

Michael J. Nicholson
Mayor, City of Gardner

A MEASURE AUTHORIZING THE MAYOR TO ENTER INTO A GRANT LEASE AGREEMENT WITH THE GARDNER COMMUNITY ACTION COMMITTEE FOR A PORTION OF THE PROPERTY LOCATED AT 62 WATERFORD STREET, DESIGNATED AS THE WATERFORD COMMUNITY CENTER, IN ORDER TO PROVIDE SOCIAL SERVICES TO AREA RESIDENTS

WHEREAS, starting as a small food pantry in 1970, the Gardner CAC has grown to meet the needs of the broader community by developing new programs; and

WHEREAS, in addition to Gardner, the Gardner Community Action Committee provides services to the surrounding communities of Ashburnham, Hubbardston, Westminster, and Templeton in North Central Massachusetts; and

WHEREAS, the Gardner Community Action Committee provides the following services to the City's residents:

- Food Pantry – Provides shelf stable foods, fresh fruits and vegetables, frozen meats, eggs, dairy and bread to income eligible households once per month.
- Fellowship Table – Offers a free nutritious homemade meal each Thursday, serving as a drive-thru.
- Backpack Program – Provides brand new backpacks and school supplies to students enrolled in kindergarten through 12th grade.
- Dinners On Us - Offering a healthy means to prepare a home cooked meal
- Medical Transportation – Provides senior citizens, age 60+, transportation to and from medical appointments, follow-up care and pharmacies.
- Emergency Assistance – Assist individuals who have eviction notices, termination notice and/or are out of heating funds.
- Clothing Closet – Offers free gently used clothing and household goods to anyone in need.
- Help Connection – Guides individuals who are recently experiencing crisis to resources available to them, if we are unable to assist at our agency.

WHEREAS, in the past two years, the Gardner Community Action Committee food security programs have seen an unprecedented increase of 63% in demand for service. Today alone, the Gardner Community Action Committee provide 33 households/80 individuals with food; and

WHEREAS, during the period from July 1, 2023 through June 30, 2024, the Gardner Community Action Committee provided services to over 13,000 individuals and since July 1, 2024 has provided services to 2,785 individuals;

NOW THEREFORE, in recognition of the services that the Gardner Community Action Committee provides to the area's residents, The City Council of the City of Gardner hereby authorizes the Mayor to enter into a grant lease agreement with the Gardner Community Action Committee for space at the Waterford Community Center, located at 62 Waterford Street, pursuant to all requirements and provisions of the General Laws of the Commonwealth and the Code of the City of Gardner.

THE CITY OF GARDNER

NON-GOVERNMENT GRANT LEASE

WATERFORD STREET COMMUNITY CENTER

This lease entered into as of this ___ day of _____, 20___ by and between the CITY OF GARDNER, through its Mayor duly elected and authorized, having a mailing address at City of Gardner, 95 Pleasant Street, Gardner, Massachusetts 01440 (hereinafter called the “Lessor” or “City”, which expression shall include its successors and assigns where the context so admits), and the Gardner Community Action Committee, Inc., a Massachusetts not for profit corporation, having a mailing address at 294 Pleasant Street, Gardner, MA 01440(hereinafter called the “Lessee”, which expression shall include its successors and assigns where the context so admits).

LEASED PREMISES

In consideration of the consideration set forth herein , the sufficiency of which the Parties acknowledge and together with the covenants herein reserved and contained on the part of the Lessee to be paid, performed and observed, the Lessor does hereby demise and lease unto the Lessee, the land with the buildings and improvements thereon owned by the Lessor situated in the City of Gardner, Worcester County, Massachusetts, described as follows:

1. That portion of the building located at _____ Waterford Street, commonly known as the Waterford Street Community Center (the “Premises”), consisting of _____ square feet, being Unit _____ as shown on Exhibit “A” attached hereto and incorporated herein by reference (herein the “_____”) to be used as set forth in this Lease (hereinafter called the “Leased Premises”).

It is specifically acknowledged by the Parties that this is a lease by grant of the City to the Gardner CAC in exchange for the services that the CAC provides to the residents of the City of Gardner.

USE OF LEASED PREMISES

Except with the express written consent or permission of the Lessor, no addition or alteration to or upon the Leased Premises shall be made and no trade, occupation or activity other than the Lessee’s use be made of the Leased Premises by the Lessee. Lessee’s use shall be limited to the provision of community support services provided to economically disadvantaged individuals throughout the greater Gardner community, including but not limited to the operation of a food pantry, and heating fuel assistance program.

It is agreed and understood that only those activities which promote the Lessee and its activities or other community events may be undertaken on the Premises. No alcoholic beverages shall be permitted, stored, consumed or used on the Premises without the express written permission or consent of the Lessor which permission shall not be unreasonably withheld or delayed if the storage, consumption or use of alcohol is in connection with Lessee’s fundraising or other functions and activities, and in accordance with all legal requirements. Nothing contained herein shall however

imply that the Lessor will approve the use of alcohol on the Premises and any such approval shall not preclude the denial of approval thereafter. The Lessee shall operate the Leased Premises so as to not unreasonably disturb other businesses, governmental operations and residences in the property or the surrounding area. In carrying out its activities, the Lessee shall direct persons on the Premises to conduct themselves in a manner that does not unreasonably disturb the area reasonably proximate to the Premises or which constitutes a breach of the peace or otherwise violates the law.

In no event shall any trade, occupation, use or activity be conducted or permitted thereon by the Lessee which shall be unlawful or improper, inconsistent with or contrary to any law of the United States, the Commonwealth of Massachusetts, the Ordinances of the City of Gardner, or rules and regulations thereof, as the same may be in effect from time to time, or injurious to any person or property. The Lessee shall be responsible for ascertaining, obtaining and maintaining all required permits and authorizations for the conduct of any activity on the Premises.

TERM

The term of this Lease shall be for a period of five (5) years commencing on October 1, 2024 and ending on September 30, 2029 (the "Term") upon the terms and conditions contained in this lease. This grant of lease shall automatically renew for successive one year terms (each referred to as an "Extension Term") under the same terms and conditions as set forth herein unless either party provides the other with no less than ninety (90) days' notice prior to the end of the Term or an Extension Term.

The City may sell or otherwise convey some or all of the Premises with City Council approval and in compliance with all legal requirements, any sale or conveyance may affect the Lessee's rights under this Lease or law. However, nothing contained herein shall be construed as an obligation of the City to sell some or all of the Premises or offer some or all of the Premises for sale.

RENT & RENT COMMENCEMENT

The rent payable by the Lessee for each five-year term shall be in the initial amount of One Dollar (\$1.00) annually and shall be paid to the Lessor On or before October 1 of each year of the Term. It is expressly agreed that this is a grant lease to Lessor in exchange for the charitable services that the Lessor shall provide to economically disadvantaged residents of the greater Gardner communities. The rent for each term shall be as follows.

To the extent the Lessee is not approved by the City of Gardner Board of Assessors as a real estate tax exempt Lessee of public property, and to the extent otherwise applicable, the Lessee covenants and agrees to pay to the City of Gardner as the same become due in accordance with the General Laws of the Commonwealth of Massachusetts, all real estate taxes assessed to the Lessee under the provisions of Section 2b of Chapter 59 of the General Laws or any other acts or amendments thereto or in substitution thereof. In the event of the repeal of Section 2b of Chapter 59 of the General Laws or the non-applicability of Section 2b of Chapter 59 of the General Laws or the failure to enact similar Legislation in substitution thereof, the Lessee covenants and agrees to pay as rent to the Lessor within thirty (30) days of the time tax bills are issued, a sum equal to the amount of taxes that would have been due and payable in each fiscal tax year by that date for said property.

It shall be the responsibility of the Lessee, at its sole cost and expense, to seek, obtain and maintain any exemption from the obligation to pay real estate taxes or payments in lieu of real estate taxes. Lessee acknowledges that the Lessor has no control over any decision of the applicable body or entity which makes such determinations.

Notwithstanding and in addition to any of the remedies and rights of the City of Gardner for non-payment of real estate taxes as provided by law, should the Lessee fail or neglect to pay in full by the due date any real estate taxes or payment in lieu of real estate taxes assessed or charged by the City of Gardner to the Lessee for the Leased Premises, this lease may be terminated by the City by giving written notice of such termination to the Lessee. In such event, this lease will terminate in accordance with the notice, provided however, that the Lease will not be construed to have terminated if within fourteen (14) days following such notice, full payment of all such real estate taxes together with all charges and interest is made at the office of the tax collector of the City of Gardner.

During the term of this lease, or thereafter for any year included within the term hereof, the Lessee will not, and does hereby waive any rights under law, file an application for nor accept an abatement of taxes assessed to the Lessee for the Leased Premises and buildings owned by the City of Gardner more than once every three (3) years, unless except in a year during which the Leased Premises or any part thereof or building or part thereof or building or part thereof owned by the City of Gardner shall have been damaged by fire or other unavoidable casualty. Lessor shall be supplied by Lessee with copies of all notices or papers filed relative to any such abatement application when filed with the Board of Assessors.

Without waiving any other remedy available by law or under the terms of this lease for any breach thereof, including failure to pay the rent provided for, interest at the rate of 1.0% per month may be assessed by the Lessor to any delinquent payments.

QUIET ENJOYMENT

Lessee, upon paying the rent and other charges herein provided for and observing and keeping the covenants and agreements of this Lease on its part to be kept, shall quietly have and enjoy the use of the Leased Premises during the Term, without hindrance or molestation by the Lessor or anyone claiming by or through Lessor.

ASSIGNMENT

The Lessee covenants and agrees that it will not assign this lease nor sublet the whole or any part of the Leased Premises or otherwise encumber the Leased Premises without the express prior written permission of the City.

INSURANCE AND INDEMNIFICATION

The Lessee covenants and agrees to defend, indemnify, and save the Lessor its officials, agents, servants and employees harmless from and against any claims and demands for damages to persons or property suffered on account of the acts, action, fault or omission of the Lessee or arising from the violation by it of any law, ordinance, or statute or from the use of the Leased Premises by

the Lessee or those upon the Leased Premises. The indemnification, defense and hold harmless rights and obligations shall accrue immediately upon the utterance of a claim or complaint covered by this agreement, regardless of other claims simultaneously brought, and shall not be contingent upon the merits of such claim or questions of fact raised by the claim or complaint. This section will survive the expiration or termination of this Lease.

The Lessee covenants and agrees that at the commencement of the term hereof and for each successive term thereafter or during any period the Lessee holds over with the permission (implied or expressed) of the Lessor, it shall provide and send to the Lessor policies of insurance or evidence thereof, insuring both the Lessor and the Lessee for public liability. If such policies are accepted by the Lessor, they shall become a part of this lease.

All insurance shall be with companies authorized to do business in Massachusetts and reasonably acceptable to the Lessor and shall be in such form and contain such terms and conditions as are reasonably acceptable to the Lessor and shall include the Lessor as an additional insured.

The obligations of the Lessee hereunder shall extend to the Premises, including any walkways, buildings, ramps, open space, parking areas and common areas located thereon. As relates to events sponsored or permitted by the Lessee which extend outside of the demised premises, the Lessee shall ensure that said insurance or a rider to same will cover the area used outside of the demised premises.

The Lessor and the Lessee mutually covenant and agree that the Premises shall be protected and insured against loss by fire and other casualties initially as set forth below in such amounts, types and terms as may be reasonably designated from time to time by the Lessor and which shall be reasonably obtainable by the Lessee. Said insurance shall be obtained initially in the following amounts, types and terms and shall be subject to reasonable change in amounts, types and terms by the Lessor within thirty (30) days after written notice to Lessee, and shall extend in coverage to the Premises and the operations of the Lessee thereon:

General Liability:

\$1,000,000.00 Per Occurrence

\$2,000,000.00 Aggregate

Fire Legal Liability:

\$500,000.00 or such additional amount as the Lessor may reasonably require and which shall be reasonably obtainable to the Lessee. This insurance, or an alternative reasonably satisfactory to the Lessor, shall be obtained within 30 days after written notice to Lessee.

Umbrella/Excess Liability:

\$2,000,000.00

It is agreed that in the event that the Lessee neglects to provide or cannot reasonably secure the insurance on its part to be obtained as herein provided, or in the event the same or any part thereof is canceled or a policy or policies lapse for whatever reason, so that at any time during the term of this Lease there is in force less than the required types and amounts of insurance, the Lessor may, by giving notice in writing to the Lessee, terminate this Lease, and in such event, the Lease will terminate in accordance with the notice; provided however, that the Lease will not be construed to have been terminated if within fourteen (14) business days following such notice, the required insurance is obtained and evidence thereof delivered to the Purchasing Department.

Notwithstanding any other provision of this Lease, in the event that the Lessee does not have in full force and effect the required insurance, then in that event all operations and activities on the Premises shall immediately cease, and the Lessee shall take all necessary steps to secure the Leased Premises and prevent access to and use of the same, until such time as the required insurance is obtained or the Lease is terminated.

The Lessor shall not be responsible in any manner for the contents of the demised Premises. Any insurance for the contents shall be the sole cost and responsibility of the Lessee.

It is agreed that cost of any insurance shall not be a factor in determining whether insurance is reasonable or reasonably obtainable.

PARKING

Lessee shall have access to all parking areas located on the Premises, in common with all other tenants and occupants of the Premises, and shall not designate any parking spaces as exclusive or for Lessee's use only. Lessee shall also have, in common with all other tenants and occupants of the Premises all ingresses and egresses, all sidewalks, and the main front entrance of the Premises.

COMMON AREAS

All automobile parking areas, entrances and exits thereto, and other facilities furnished by Lessor from time to time on the Premises, including, without limitation, employee and customer parking areas, pedestrian sidewalks and ramps, landscaped areas, exterior and interior stairways, hallways, public bathrooms, display and exhibit areas and other areas and improvements provided by Lessor for general use, in common, of tenants of the Premises, their officers, agents, employees and customers shall at all times be subject to the exclusive control and management of Lessor or its designees and Lessor shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this paragraph. All of said facilities and areas and all utility systems not installed by or exclusively serving a single lessee of the Premises, (including, without limitation all storm and sanitary drainage systems, waste water treatment facilities or other utility systems) are hereinafter collectively called the "Common Areas". Lessor or its designees shall have the right: to construct, maintain and operate the lighting and parking facilities hereinafter referred to; to restrict parking by tenants, their officers, agents and employees to an employee parking area; to close all or any portion of said areas or facilities to such extent as may, in the opinion of the Lessor's counsel, be legally sufficient to prevent dedication

thereof or accrual of any rights therein to any person or the public; to close temporarily all or any portion of the parking areas or facilities; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of reasonable business judgment, the Lessor shall determine to be advisable; provided that no such changes shall deny or materially interfere with reasonable ingress to, or egress from the Premises. Lessor shall have the unfettered right to close down or restrict access to any part of the Common Areas on a temporary basis to make such alterations, modifications or repairs to the Premises as shall be advisable in Lessor's sole discretion. In such an event, Lessor shall have no liability to Lessee for any loss or damage that may accrue to Lessee's business by reason thereof. Lessor will use best efforts not to interfere with the Lessee's business.

MAINTENANCE AND REPAIR

The Lessee covenants and agrees that during the term hereof and for any period during which the Lessee holds over, the Lessee will at its own expense, keep the Leased Premises in good order, repair and condition, and in the same condition or better than it was at the commencement of this Lease, reasonable wear and tear and damage by fire or other unavoidable casualty only excepted, and it will keep the grounds in a clean and orderly condition. The Lessee further covenants and agrees that it will keep in good repair with glass of the same kind and quality as that which may be damaged or broken, all the glass now or hereafter on the Leased Premise. Lessee shall specifically see that no debris, rubbish or waste remains on the Premises.

Lessee will pay all the expenses of maintaining and cleaning the Leased Premises, improvements and fixtures of the Lessee constituting personal property, and those of all persons claiming under it, including the removal of snow and ice from all ingresses and egresses exclusive to the Lease Premises, and will peacefully yield up to the Lessor the said Leased Premises and all improvements and additions wrought into and forming a part of the real property of the Lessor in the same repair, order and condition in all respects as they were at the commencement of this Lease, or better condition, reasonable wear and tear excluded, damage by fire and other casualty excepted and will deliver the Premises in a broom clean and debris-free condition.

LESSOR MAINTENANCE AND REPAIR: Lessor shall maintain all common areas including snow and ice removal from all parking areas, walkways, sidewalks, and common entrances. Lessor covenants and agrees to maintain or cause to be maintained only the foundations and roof of the Premises, and the structural soundness of the underground subgrade floors and exterior and demising walls in good order, repair and condition, exclusive of any work required because of damage caused by any act, omission or negligence of Lessee, any subtenant or their respective employees, agents, licensees or contractors. Lessor shall not be required to commence any such repair until fifteen (15) days after written notice from Lessee that the same is necessary, except in the event of an emergency in which event the Lessor shall commence such repair as soon as practically possible. The provisions of this Section shall not apply in the case of damage or destruction by fire or other casualty or a taking under the power of eminent domain, in which event the obligations of the Lessor shall be controlled by the Articles of this Lease dealing therewith.

If Lessor is required to make repairs to the Premises by reason of Lessee's acts, omissions or negligence, other than reasonable wear and tear, or if Lessee refuses or neglects to repair as required

hereunder to the reasonable satisfaction of Lessor, Lessor shall provide notice to Lessee of its intent to conduct such repairs seven (7) days prior to commencement of such work (except in the event of an emergency in which event the Lessor shall commence such repair as soon as practically possible), Lessor may make such repairs without liability to Lessee for any loss or damage that may accrue to Lessee's merchandise, fixtures, or other property or to Lessee's business by reason thereof. Upon completion thereof, Lessee shall reimburse Lessor's costs for making such repairs.

UTILITY CHARGES

The Lessee covenants and agrees that it shall be responsible for any and all utility charges and further covenants and agrees that it shall be responsible for and will pay any sewer use, hook-up and/or betterment charges which may be assessed against the Premises, or which may be required, and all expenses related to the installation, repair and maintenance of the same, except as otherwise provided for herein.

TAKING OF PROPERTY

If the Premises, or any substantial part thereof, or the whole or any substantial part of the building owned by the City of Gardner on the Premises shall be taken for any purpose by exercise of the power of eminent domain or condemnation after the execution thereof, then this Lease and said term shall terminate at the option of the Lessor and such option may be exercised in case of any such taking, notwithstanding the entire interest of the Lessor may have been divested by such taking. The Lessee hereby assigns to the Lessor any and all claims and demands for damage on account of any such taking or for compensation for anything lawfully done and pursuant to any public authority and covenants with the Lessor that the Lessee will from time to time execute and deliver to the Lessor such further instruments of assignment of any such claim and demands as the Lessor shall request.

DEFAULT AND TERMINATION

The occurrence of any one or more of the following events shall constitute a material default and breach of the Lease by Lessee:

(a) The permanent vacating, abandonment or cessation of operation of the Premises by Lessee or ceasing use and operation for more than thirty (30) days without the prior written consent of the Lessor

(b) The failure by Lessee to observe or perform any of the covenants, conditions or provisions to be observed or performed by Lessee or any requirement of law, where such failure shall continue for a period of thirty (30) days after written notice thereof from City to Lessee, unless otherwise excused or extended in writing by the City.

It is agreed and understood that this Lease is upon the condition, that if the Lessee shall neglect or fail to perform or observe any of the covenants contained in these presents on its part to be performed or observed or otherwise be in breach or default and such default is not cured within any grace periods provided for herein, the Lessor lawfully may, with 30 days prior written notice, or such lesser or greater notice as it determines reasonably necessary, enter into and upon the Premises or any part thereof in the name of the City, and upon doing so it shall be considered that the City has

repossessed the same as its former estate, and if it so desires expel the Lessee and those claiming through or under it and remove its effects (forcibly, if necessary) without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise accrue for any present or preceding breach of covenant, and upon entry as aforesaid and/or the posting of a notice on the Premises that the City is exercising its rights to terminate (even if there is no actual entry), this Lease shall terminate and the City shall be entitled to possession of the Premises except as stated in said notice; and the Lessee covenants that in case of such termination it will indemnify, defend and hold harmless the Lessor against all losses and claims which it may incur by reason of such termination. Any termination by the Lessor shall be without risk or liability to the Lessor, its agents, servants, officials, officers and employees.

Without limiting the right of the Lessor to exercise any other legal remedy or recourse, should the Lessee fail to promptly remove all of its property or property on the Premises placed or permitted to have been placed there under the authority of the Lessee, or property thereon which is the responsibility of the Lessee, and to restore the Premises to a clean and safe site, properly graded and otherwise to leave same in a condition as required by this Lease, upon any termination or expiration of this Lease, the Lessor may arrange for the removal and or disposal (including treating such property as discarded and or rubbish and trash to be disposed of as same) of the same, with the cost for same being an obligation of the Lessee (and the Lessee hereby irrevocably authorizes the Lessor as its agent to do so) and if the Lessee shall fail to promptly pay for the same and the Lessor pays for or becomes obligated to pay for the same, then the Lessee shall promptly reimburse the Lessor for the reasonable costs related thereto, including any interest, reasonable attorney's fees (whether for inhouse and/or outside legal counsel) and expenses arising therefrom.

Excepted from any grace period shall be any failure or other actions which constitute a threat to public safety and welfare, in which event the City may take such actions as it reasonably deems necessary.

ALTERATIONS

The Lessee covenants and agrees that in the event it desires to make changes of the present Leased Premises (other than ordinary maintenance and repair of the Property), any proposed alterations shall require approval of the City of Gardner City Council. All permanent improvements and renovations to the Leased Premises shall remain with the Premises and shall inure to the benefit of the Lessor.

The Lessee shall indemnify the City from any claims for mechanic's liens that are asserted in connection with work done by Lessee or Lessee's contractors and shall not allow any mechanic's liens to be placed or exist against the Premises for a period of more than forty-five (45) days.

INSPECTION OF PROPERTY

The Lessee covenants and agrees that the City's Mayor, the Director of Public Health, and the Building Commissioner of the City or their subordinates and designees, or other such agent duly appointed by the City, may at reasonable times enter to view and inspect the Leased Premises and may show the Leased Premises to others, and that any time within six (6) months prior to the

expiration of the term hereof, may affix to any suitable part of the Premises a notice for letting or selling the same.

DAMAGE/DESTRUCTION OF PREMISES

It is agreed and understood that if the Premises or any substantial part thereof, or the whole or any substantial part of any building owned by the City of Gardner on the Premises, shall be destroyed or substantially damaged by casualty after the execution hereof and before the expiration of the term or any extension or renewal thereof, then this Lease and said term shall terminate at the option of the Lessor, and all rights of the Lessee therein shall at the option of the Lessor likewise terminate and the Lessor shall be under no obligation to restore the Premises to their former condition nor to supply the proceeds of any insurance to that purpose. Notwithstanding total or partial deprivation of use of the Leased Premises or building by the Lessee, the Lessee acknowledges that the matter of abatement of taxes assessed to the Lessee as such rests with the judgment and discretion of the Board of Assessors. Such restoration, if any, shall be conducted and carried out in full compliance of all applicable laws. Any changes in any structures or appurtenances thereto from what was previously there or used shall be subject to the prior written approval of the Lessor.

ANTI-DISCRIMINATION CLAUSE

The Lessee covenants and agrees that it shall not discriminate in any way against any person desiring to Participate in its programs, visit the Leased Premises and/or make use of its facilities and/or services or partake in any of its programs or in its employment practices.

NOTICES

Any notice from the Lessor to the Lessee relating to the Premises or the occupancy thereof shall be deemed to be delivered when posted or left at the Leased Premises addressed to the Lessee or if actually delivered in hand to an agent of the Lessee at the Lessee's address as set forth herein. Any change in address must include a valid street address to be effective.

Any notice from the Lessee to the Lessor relating to the Premises or the occupancy thereof shall be deemed to have been delivered if posted or left at the office of the Mayor, City Hall, 95 Pleasant Street, Gardner, MA 01440 or person performing said functions. Service of notices may also be made in the same manner as for civil process or if served by a Police Officer.

ENVIRONMENTAL PROVISIONS

A. Environmental Laws. Lessee agrees, at its own expense, to comply with all applicable laws, ordinances, regulations and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission or pollution of any type occurs caused by any act or omission of the Lessee (recognizing that the exterior of the Premises is accessible by the public) upon or from the Premises during the Lease Term or any holdover thereafter, Lessee agrees to immediately notify the City and shall, at Lessee's own expense, take measures to clean and restore the Premises, in compliance with applicable law, to its condition as of 1981 when the Lessee first took occupancy of the Leased Premises.

B. Hazardous Materials on Premises. During the term of this Lease and any holdover thereof, Lessee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises by Lessee, its agents, employees, contractors or invitees, except for those materials that are customarily used, stored or disposed of in connection with the Lessee's use. The use, storage or disposal of such Hazardous Materials shall be performed in compliance with applicable environmental and other laws, bylaws, codes, rules and regulations.

C. Environmental Indemnity. Lessee agrees to indemnify, hold harmless and defend City against all liability, cost and expense including, without limitation, any fines, penalties, diminution in value of the Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees (whether for inhouse and/or outside legal counsel) incurred by or levied against the City as a result of Lessee's breach of this section or as a result of any discharge, leakage, spillage, emission or pollution on or discharged from the Premises caused by the Lessee. Notwithstanding anything contained herein to the contrary, Lessee shall have no liability as to the foregoing for any Hazardous Material existing or events occurring or generated, at, in, on, under or in connection with the Premises or any part thereof prior to the occupancy of Lessee, or for asbestos or lead paint. Lessee shall not be obligated to protect, defend, indemnify and save the City harmless from and against any claims, liabilities or penalties that are asserted to the extent that they are a result of the fault, negligence, omission or conduct of the City or third parties not directly under the direction or control of the Lessee or its agents, contractors, servants, licensees, employees or invitees.

D. "Hazardous Material". For purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material or waste, including but not limited to those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR § 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto, or such substances, materials and wastes that are or become regulated under any applicable local, state or federal law, or is otherwise listed or determined by any federal, state or local authority to be hazardous, and including asbestos, and lead paint.

E. Remediation of Existing Hazardous Material. The Lessee covenants and agrees that if the Lessee undertakes any capital improvements or renovations to the Leased Premises during the term of this Lease, the Lessee will use commercially reasonable efforts to remediate any Hazardous Material that are reasonably connected to and or exposed by the relevant capital improvements or renovations; provided that, the Lessee is not obligated to remediate any Hazardous Material that were introduced to the Premises before the Lessee took occupancy, if the Lessee cannot obtain funding to perform such remediation. The parties agree that this provision does not apply to Hazardous Material introduced to the Property by the Lessee. Both parties agree that the City is not obligated by the terms of this Lease to remediate any Hazardous Materials, even if a competent environmental or health authority determines that the presence of such Hazardous Material means that the Premises cannot be safely occupied. If a competent environmental or health authority determines that the Property cannot be safely occupied due to the presence of Hazardous Material, the Lessee's sole recourse will be to terminate the Lease (per the paragraph below) and to receive from the City a pro-rata share of any rent already paid to the City. The Lessee hereby waives any claims against the City relating to lost revenue or capital improvements to the Property.

If a competent environmental or health authority determines that the Property cannot be safely occupied due to the presence of Hazardous Material, then the parties agree to work in good faith and cooperatively to address the issues provided that if the parties cannot mutually agree, then after two (2) years, then either or both parties may terminate the lease.

F. Environmental Testing. If there is reasonable cause to believe Lessee violated the above provisions of this Section, the City may request independent environmental testing of the Premises. Lessee agrees that it shall be solely responsible for all costs and expenses associated with the performance of environmental testing of the Premises, which may be reasonably required by the City upon reasonable belief that there has been a violation by the Lessee of applicable environmental laws, bylaws, codes, rules and regulations. Such environmental testing shall be conducted by an independent and qualified engineering or environmental consulting firm reasonably acceptable to City. In the event that the City receives environmental test results and/or reports and data, the City shall deliver to the Lessee within seven (7) business days from receipt of same, copies of such test results and/or reports and data.

MISCELLANEOUS

Lessor shall be included as an additional insured in the general liability and fire legal liability and umbrella/excess liability insurance policies, or in lieu thereof, may, if the Lessor so agrees in its discretion, if available and at the reasonable cost and expense to Lessee, shall be furnished an owner's contingent policy or owner's protective liability policy, all with the same amount of coverage and subject to the terms and conditions as stated under the specified insurance requirements of this Lease.

This is a lease of the Leased Premises only, and the Lessee shall be responsible for obtaining all necessary permits, licenses, and any and all other necessary authorizations or complying with legal requirements to operate its business at the Premises.

No garbage, junk or refuse, shall be kept on or placed in or upon the Premises other than that generated by the normal operation of the Leased Premises, which garbage, junk or refuse shall be kept in proper and appropriate containers, which containers shall not be left in public view nor on Premises other than that which is herein leased to the Lessee, other than property of the Lessee. All such containers shall be properly secured in appropriately screened areas or such other areas not generally accessible to public access or view.

No permanent exterior banners, signs, neon signs or lighted signs visible from the exterior shall be displayed unless approved in advance by the Lessor, which consent shall not be unreasonably withheld or delayed. The Lessor is not inclined to approve of any lighted banners or neon signs. Temporary banners displayed for no more than 30 days are exempt.

In addition to any other language in this lease, upon any termination of this Lease or expiration of said Lease, whichever occurs first, Lessee covenants, agrees, warrants and represents that any structures or equipment, material or other such items placed thereon which are not owned by the City of Gardner, shall be promptly removed and the Premises shall be left in a safe condition in accordance with the reasonable instructions of the City of Gardner. Such work shall be at the sole

cost and expense and obligation of the Lessee.

Forbearance on the part of the Lessor to any default, right, or remedy shall not preclude an action at a later time by the Lessor nor shall the same be viewed as a waiver.

The Lessee shall be obligated to reimburse the Lessor for any costs or expenses (including reasonable attorney's fees based on the actual costs or a sum equal to time expended by the Lessor's counsel times the customary rates of a comparable private attorney) for collecting sums due under this lease and for enforcing the provisions of this lease or in any litigation or claim relating to this lease or the activities thereon.

After the initial term of this Lease, at the option of the Lessor while a renewal or extension of this Lease or new solicitation of a lease is being considered and undertaken, this Lease shall continue on a month to month basis, under the terms set forth herein, subject to the right of the Lessor to terminate and discontinue same following a sixty (60) day notice to the Lessee. In all other respects the Lessee shall be bound by the terms of this agreement including those pertaining to termination.

All section headings and captions used in this Lease are solely for convenience and shall not affect the interpretation of this Lease nor shall the same limit the covenants and obligations of this Lease.

The Lessor and Lessee agree to execute any documents reasonably requested by the Lessor or Lessee concerning the Lease and the Leased Premises, as long as the same does not in any way alter, impair, diminish, or affect any of the rights, benefits, covenants, obligations, and duties of the Lessor and Lessee under this Lease.

It is agreed that time is of the essence.

The Lessee shall maintain a legal existence in the Commonwealth of Massachusetts during the term of this Lease and any extended term or holdover, and on request of the Lessor shall provide a Certificate of Legal Existence from the Office of the Massachusetts Secretary of State.

Following any expiration or termination of this Lease, and should the Lessee holdover, without the Lessor's permission, the Lessee shall be bound by all the provisions of this Lease except as to the term and subject to the right of the Lessor to assess use and occupancy charges. All rights and remedies of the Lessor are expressly reserved and not waived. Such hold over shall not establish any new tenancy.

Lessor and Lessee agree that they will execute and record at the expense of the Lessee a Notice of this Lease with the Worcester South District Registry of Deeds.

Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating a relationship of principal and agent or of partnership or of joint venture between the parties hereof. Neither this Lease, nor any of the terms and provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee. The Lessee shall ensure that in its activities it does not imply otherwise or that it is an agency or department of the City or that the City is involved in its

operations.

The invalidity of any provision of the Lease as determined by a court of final and competent jurisdiction shall in no way affect the validity of any other provisions hereof.

Each provision performable by Lessee hereunder shall be deemed both a covenant and a condition. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. The Lease may be modified in writing only, signed by the parties in interest at the time of modification.

This Lease shall bind the parties, their personal representatives, successors and assigns. The Lease shall be governed by the laws of the Commonwealth of Massachusetts and venue for any legal action shall be and remain in Worcester County.

The Effective Date of the Lease shall the date first written above.

The Lessee acknowledges that the Lessor makes no warranties or representations as to the condition of the Leased Premises or its suitability for any use the Lessee may make. Except as may otherwise be set forth herein, the Lessor shall be under no obligation to make any repairs, undertake any maintenance or improve the Leased Premises.

Nothing contained herein shall constitute or be construed to be explicit and specific assurances of safety or assistance.

WITNESS the execution hereof under seal as of the date first set forth above.

LESSOR:

THE CITY OF GARDNER

By: Michael J. Nicholson
 Its: Mayor (Attach certificate of vote of authorization)

LESSEE:

The Gardner Community Action Committee

By: Julie Mechan
 Its: Executive Director (duly authorized)

