RESOLUTION 2015-009 PASSED: JANUARY 26, 2015

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS TO ENTER INTO AN AGREEMENT WITH THE DEKALB COUNTY COMMUNITY GARDENS, FOR THE ADMINISTRATION OF THE DRESSER ROAD GARDEN PLOTS.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the MAYOR of the City of DeKalb be authorized and directed to enter into an Agreement with the DeKalb County Community Gardens for the administration of the Dresser Road Garden Plots.

Section 2. That the City Clerk of the City of DeKalb be authorized and directed to attest the Mayor’s signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 26th day of January, 2015 and approved by me as Mayor on the same day. Passed on the Consent Agenda by Omnibus Roll Call Vote of 7-0-1. Aye: Jacobson, Finucane, Lash, Snow, Naylor, O’Leary, Rey. Absent: Baker.

ATTEST:

MARCIA E. SWEIGERT, City Clerk

JOHN A. REY, Mayor
Garden License Agreement

This License Agreement is entered into by and between the City of DeKalb ("the City") and DeKalb County Community Gardens, a not-for-profit corporation ("Licensee"), this 26th day of January, 2015.

The City and Licensee acknowledge and agree that the City is the owner of fields and related facilities located as depicted on the attached Exhibit A ("the Facilities"). Licensee seeks to utilize the Facilities, and the City seeks to permit Licensee to utilize the Facilities, and along with permitting public access and utilization of the Facilities. The City and Licensee agree that Licensee shall be permitted to use the Facilities as described below.

1. **Scheduling:** Licensee shall be responsible for scheduling its use of the Facilities by Licensee. Scheduling shall include allocation of individual plots to persons who seek to use plots. Scheduling shall be done on a uniform, non-discriminatory basis. Plots may be made available to current plot users to offer the ability to renew plot use; following such renewals, any remaining plots shall be made available to persons who are listed on the plot waiting list in random order.

2. **Public Use:** Subject to the ability of Licensee to enter into annual agreements for use of individual plots within the Facilities, the Facilities shall remain open to the public and otherwise available for public use. Licensee shall enforce the current Garden Plot Rental Program Rules and Regulations in their entirety. Any revisions to those Rules shall be subject to the review and approval of the City’s Director of Public Works. All use of the Facilities shall be for private, non-commercial use. Licensee shall be responsible for preliminary handling of all complaints and customer service inquiries relating to their use of the Facilities.

The City shall make available to Licensee a potable water supply at the facility to be utilized for non-commercial watering use consistent with the public garden function at the Facilities; no commercial use, water sales, or water storage shall be permitted on-site.

3. **Maintenance:** Licensee shall be responsible for performing, at its sole cost, the following maintenance for the Facilities:

   * Repair of any damage caused by Licensee or its attendees.
   * Annual grading and restoration of all garden areas.
   * Mowing and weeding of the Facilities.
   * Maintenance, mowing and weeding of any unused garden beds in the facilities.
Licensee shall assess an annual charge of $20.00 per year to each garden plot user, payable on or before May 1 of each year, and shall remit $10.00 of each annual charge collected to the City of DeKalb on or before June 1 of each year. Licensee shall perform all such maintenance in a good and workmanlike manner, and all such maintenance shall be subject to inspection and approval by the City. Licensee shall not engage in any permanent modification of any aspect of the Facilities, nor shall licensee engage in any work on any mechanical component, wiring or other similar portion of the buildings or structures located at the Facility, except with the express, written pre-approval of the City.

Licensee shall not store any hazardous waste, nor shall Licensee store any flammable substances on premises except in compliance with all applicable laws, rules and regulations.

Licensee shall not be eligible for any reimbursement or payment of any sort from the City under any circumstances.

- No animals shall be raised, kept or stored at the Facilities.
- No noxious or harmful chemicals shall be utilized at the Facilities, except with the permission of the Director of Public Works.
- No mechanized equipment or power tools shall be utilized at the Facilities, except with the permission of the Director of Public Works or designee. Tillers, mowers and weed-eaters shall be permitted to be utilized, provided that such equipment is manually operated and not tractor-mounted.
- No digging or excavation to a depth of more than twelve (12) inches shall be completed at the Garden.
- The City takes no responsibility for the safety or security of the Facilities. The Licensee is responsible for the security of the Facilities, and should not leave equipment at the Garden when not in use.
- The Licensee shall be permitted to utilize a reasonable quantity of water for planting, irrigation and similar matters, but shall exercise care to not unreasonably waste water.
- All activities at the Facilities shall be performed in compliance with applicable laws, and at reasonable times of the day.
- The Licensee shall not make any permanent alterations or improvements at the Facilities; any proposed temporary improvements (e.g. fencing) shall be subject to review and approval by the Director of Public Works or designee. Upon the termination of this License for any reason, any permanent improvements and/or real or personal property installed or remaining upon the Facilities shall become the property of the City, without requirement of any compensation, for use, disposal or demolition as the City shall determine.

4. **Facility Access:** Licensee shall have access to the facilities at the approved times based upon the schedule.
5. **Compliance with Laws:** Licensee shall be responsible for identifying all applicable rules, laws and regulations applicable to its operation, and for complying with the same at its sole expense. Licensee shall comply with the applicable provisions of the Illinois Prevailing Wage Act for any work that is covered by such Act and shall, upon request of the City, provide the City with certified payroll records evidencing the same. Any application of pesticides, fertilizers or other compounds shall be done solely in compliance with all applicable regulations by persons with the required licensure to perform the same. Licensee shall comply with the Americans with Disabilities Act and shall not engage in any unlawful or discriminatory conduct of any form.

6. **Insurance and Indemnification:** Licensee shall indemnify, defend and hold harmless the City from any and all claims of any kind, whether based on intentional or negligent conduct, personal injury or property damage, death or dismemberment, violation of laws (including the Prevailing Wage Act) or any other claim whatsoever arising out of or relating to Licensee’s use or maintenance of the Facilities, to the fullest extent of the law. Additionally, Licensee shall provide the City with a policy of comprehensive general liability and premises liability insurance with minimum coverage limits of $1,000,000 per person/per occurrence, from an insurer licensed to do business in the State of Illinois, naming the City as additional primary insured without right of subrogation, and shall provide a certificate of insurance evidencing such coverage prior to initiating any operations on the Facilities. The failure of the City to require a certificate shall not waive this requirement.

7. **License:** This Agreement shall be construed as a limited license to utilize a portion of the Facilities for a limited purpose, and shall not under any circumstances be construed as a lease, nor shall it be construed as endowing Licensee with any right, interest or claim in the real property comprising the Facilities. This license shall permit only the non-profit use of the Facilities for recreational purposes as a component of a youth baseball league. The City reserves the right to require an accounting of Licensee’s funding and revenues and reserves the right to require Licensee to prove its non-profit status at any time.

8. **Termination:** Either party may terminate this License upon not less than thirty (30) days written notice to the other party. In addition, the City reserves the right to terminate this Agreement upon provision of verbal notice, to be followed with written notice as soon as practicable thereafter, in the event that Licensee engages in any conduct that presents a substantial breach of this Agreement, causes any damage to the Facilities or presents an unreasonable or unjustified threat of harm or damage to the Facilities or to the public. In the absence of either party’s termination of this Agreement, the Agreement shall have a term of five years, from January 1, 2015 until December 31, 2019.

9. **Supplemental Terms of License:** The Licensee acknowledges that this License is very limited in scope, and may be supplemented by verbal direction provided by any Department Head from the City. Such verbal direction shall be
followed with a written notice to Licensee which notice shall then be deemed a binding component of this License. Licensee shall have the option of either accepting such supplemental terms (by continuing to utilize the Facilities or by accepting the terms in writing), or of rejecting the terms and cancelling this License by issuing the City a written notice of the same.

10. **Management of Licensee’s Use:** Licensee shall be solely responsible for the management of its operations and for the safe and responsible conduct of the same. The City shall have no obligations to supervise or manage Licensee’s operations.

Entered into and Agreed as of the date set forth above.

City of DeKalb

[Signature]

John A. Rey, Mayor

Licensee

[Signature]