

CITY OF ST. ALBERT

BYLAW 9/2016

Being a bylaw to approve the Use of Lands Designated as Environmental Reserve for Community Gardening

WHEREAS

- i. the St. Albert Community Garden Association ("Association") is a non-profit organization incorporated pursuant to the Societies Act;
- ii. the Association seeks to provide St. Albert residents with a community garden and an opportunity to test, practice and promote affordable bio-intensive and organic gardening methods in an urban setting ("Community Gardening");
- iii. the City of St. Albert ("City") is the registered owner of lands legally described as:

Plan 002 4886, Lot 13 PUL
Excepting thereout all mines and minerals
("PUL")

and lands designated as environmental reserve, which lands are legally described as:

Plan 002 4886, Lot 15 ER
Excepting thereout all mines and minerals
("Environmental Reserve Lands");
- iv. the Association wants to use a portion of the PUL and the Environmental Reserve Lands for the purpose of Community Gardening;
- v. Section 676(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26, provides that City Council can approve, by bylaw, the use of environmental reserve for purposes that are not specified in section 671(1);

NOW THEREFORE City Council, duly assembled, having complied with the provisions of the *Municipal Government Act*, hereby ENACTS AS FOLLOWS:

1. The portion of the Environmental Reserve Lands shown highlighted on Schedule "A" (the "Garden Area") may be used for the purposes of Community Gardening.
2. That the City enter into a non-exclusive license agreement with the Association for the Garden Area and a portion of the PUL in substantially

the same form and having the same terms and conditions as are set out in Schedule "A" to this Bylaw.

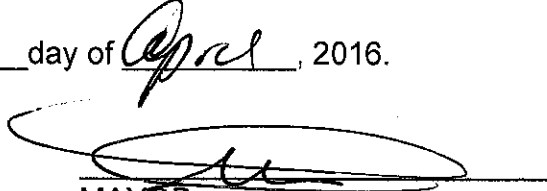
3. Bylaw 10/2011 and all amendments thereto, are hereby repealed.

READ a first time this 4th day of April, 2016.

READ a second time this 4th day of April, 2016.

READ a third time this 4th day of April, 2016.

SIGNED AND PASSED this 7 day of April, 2016.


MAYOR


CHIEF LEGISLATIVE OFFICER

SCHEDULE "A" – License Agreement and Site Plan

Schedule "A"

Community Garden License Agreement

Between:

The City of St. Albert

- and -

St. Albert Community Garden Association

Whereas:

- a. the City is registered owner of the Lands,
- b. the Association is a non-profit organization incorporated pursuant to the Societies Act that seeks to provide St. Albert residents with a community garden and an opportunity to test, practice and promote affordable bio-intensive and organic gardening methods in an urban setting,
- c. the Lands, located within the Sturgeon River Valley, are part of the City's Red Willow Park system and are partially designated as environmental reserve. The remainder is designated a Public Utility Lot,
- d. in accordance with section 676 of the Act, City Council passed a bylaw on or about April 4, 2011, authorizing the Association's use of the Garden Lands, and
- e. the Association wishes to continue using the Garden Area,

therefore pursuant to the Act, a license shall be granted to the Association for use of the Garden Area in accordance with the following terms and conditions:

1. Definitions

In this Agreement,

- i. "Act" means the *Municipal Government Act*, RSA 2000, c. M-26;
- ii. "Agreement" means this Community Garden License Agreement and any written amendments hereto;
- iii. "Approved Uses" are those permitted uses referenced under Subsection 4(a) (which permitted uses may be amended in accordance with Subsection 4[d]);
- iv. "Association" means the St. Albert Community Garden Association, and includes, where applicable, its directors, officers, employees, agents and contractors, members and invitees, volunteers and all others over whom it might reasonably be expected to exercise control;
- v. "City" means the City of St. Albert, and includes, where applicable, any and all of the City's directors, officers, employees, agents and contractors;
- vi. "City Council" means the City's municipal council;

- vii. "Garden Area" means the portion of the Lands depicted by the shaded area on the Site Plan included in Schedule "A" to this Agreement;
- viii. "City Engineer" means the individual so designated by the City's Chief Administrative Officer;
- ix. "Hazardous Substance" includes, but is not limited to, petroleum products and by-products, any contaminants, pollutants, dangerous substances, industrial wastes, toxic substances, hazardous wastes, materials or substances as defined in or pursuant to any Federal or Provincial Law, Bylaw, Regulation or Order;
- x. "Lands" means the property legally described as follows:
 - Plan 002 4886, Lot 13 PUL and Lot 15 ER
 - Excepting thereout all mines and minerals;
- xi. "Parties" means the City and the Association;
- xii. "Party" means the City or the Association, as the context dictates;
- xiii. "PUL" means the portion of the Lands designated as a public utility lot, which public utility lot is noted on the site plan included in Schedule "A";
- xiv. "Section" and "Subsection" mean any section and subsection of this Agreement and any written amendment to this Agreement;
- xv. "Term" means the time period respecting which this Agreement is effective, which Term is described under Section 2, and
- xvi. "Upgrade" means any alteration or repair of the PUL for the sole purpose of improving access to the Garden Area.

2. Grant Of License/Term

Subject to earlier termination provisions herein, the City grants to the Association a non-exclusive license to use and access the Garden Area for the period commencing April 1, 2016, up to and including March 31, 2021.

3. Agreement Fee

- a. The Association shall pay the City an annual fee of one (\$1.00) dollar, plus any additional amounts as payable from time to time as hereinafter provided.
- b. The annual fee for each year shall be paid on or before the first day of April in each year of the Term.

4. Use Of Garden Area

- a. Subject to Subsection (b), the Association may only use the Garden Area for:
 - i. the cultivation and propagation of plants and landscaping using affordable bio-intensive and organic gardening methods;
 - ii. the operation of a compost site; and
 - iii. accessory uses to any use listed in subsections (i) or (ii), which include but are not limited to fencing, the installation of an irrigation system or erection of buildings or other structures.
- b. A use must be agreed to by the General Manager, in writing, prior to it constituting an accessory use under this Agreement.

- c. The following uses are prohibited on or at the Garden Area:
 - i. any commercial use;
 - ii. any camping use;
 - iii. any use that is detrimental to the environmental integrity of the Garden Area or the Sturgeon River Valley ecosystem;
 - iv. any use or activity that is contrary to federal, provincial and municipal laws, bylaws, rules and regulations affecting the Garden Area and the Sturgeon River Valley; and
 - v. any consumption or sale of alcoholic beverages.
- d. At any time, City Council may amend the list of uses identified in Subsections (a) and (c), in keeping with federal, provincial and municipal laws, bylaws, rules and regulations affecting the Garden Area, the adjacent Riel Industrial Park and the Sturgeon River Valley.
- e. The City shall consult with the Association prior to changing any use in accordance with subsection (d), and in the event that the Association does not agree with the change in use, the final decision shall be made by City Council, in its sole discretion.
- f. The Association shall:
 - i. obtain any and all requisite licenses, permits and approvals prior to commencing an Approved Use or installing any site enhancements;
 - ii. fully comply with all federal, provincial and municipal laws, bylaws, rules and regulations, including but not limited to the Alberta *Water Act* and *Public Lands Act*, affecting the use of the Garden Area and the Sturgeon River Valley;
 - iii. ensure that nothing is done, brought onto or stored on the Garden Area, by its members, that is or may be a nuisance or, that may cause environmental contamination or degradation, or that may cause damage or interference with the normal use of the Garden Area or any adjacent property;
 - iv. not store any Hazardous Substances on the Garden Area, except those that are ordinarily utilized in conjunction with the Approved Uses, and then only if:
 - A. the General Manager has agreed, in writing, to allow the use or storage of those Hazardous Substances on the Garden Area; and
 - B. those Hazardous Substances are handled and maintained in a safe manner and in accordance with all applicable laws and regulations, including without limitation laws dealing with environmental, fire, safety, and transportation.

5. Access To Garden Area

- a. The Association shall allow members of the public general access to the Garden Area and such entry shall be deemed not to be an interference with this Agreement or the Association's use of the Garden Area.
- b. The members of the Association, City employees and members of the public shall be allowed general access to the Garden Area, in accordance with Subsection (a) from 5:00 a.m. to 11:00 p.m. daily.
- c. The Association agrees and acknowledges that:

- i. the City has the right to construct or install City improvements (including but not limited to utility services) on the Lands at any time;
- ii. if the City intends to construct City improvements on the Garden Area the City shall provide the Association three (3) months' notice of its intention to commence the work;
- iii. the Association shall not in any way impede, use, destroy, or modify any City improvements that may be constructed on the Lands;
- iv. the City shall be entitled to enter the Garden Area upon forty-eight (48) hours written or verbal notice to the Association in order to maintain or repair City improvements that may be constructed in the Garden Area. Such entry shall be deemed not to be an interference with this Agreement or the Association's use of the Garden Area. Notwithstanding the foregoing, in the event of an emergency the City may enter the Garden Area without notice to the Association; and
- v. if the construction, maintenance or repair of a City improvement disturbs, disrupts or in any way harms the Garden Area, the Approved Uses or the Association's use of the Garden Area, the City is not liable for such disturbance, disruption or harm and shall not be obligated to compensate the Association or any of its members for the loss of plants or landscaping. The City shall however, restore the Garden Area to a condition that would allow the Association to continue to use the Garden Area for the Approved Uses.

6. PUL

- a. The Association shall be granted access to the Garden Area over the PUL.
- b. The Association may make application, in writing to the General Manager, to Upgrade the PUL.
- c. An application for the Upgrade, must include a description of the contemplated work, plans, specifications and such other information as may be required by the General Manager, in the General Manager's sole discretion acting reasonably. The General Manager may require that this information be prepared by a professional engineer and conform to good engineering practice.
- d. If the General Manager approves the application in writing, the Upgrade must be constructed in a timely and workmanlike fashion, in accordance with any terms and conditions imposed by the General Manager, all at the sole responsibility and expense of the Association.
- e. Any Upgrade shall, upon installation, become the property of the City, unless the General Manager specifies otherwise in writing.
- f. The fact that the General Manager has approved any drawings, plans, specifications, information or documentation or has inspected any construction work as it progresses, shall not impose any obligation or responsibility on the City to maintain such Upgrades and shall not operate as a waiver of any rights of the City with respect to any matter.

7. Equipment

- a. The Association may bring onto the Garden Area any equipment that is reasonably necessary for the Approved Uses, provided all other provisions of this Agreement are complied with.
- b. The Association shall provide the General Manager with a list of all equipment brought onto the Garden Area in accordance with Subsection (a), and shall maintain the equipment in a clean, safe, and workmanlike condition. For the purposes of this provision, the term equipment shall include any motorized lawn or garden equipment such as

rototillers or lawn mowers but shall not include hand garden tools including but not limited to such items as rakes, spades and clippers.

- c. The Association shall be solely responsible for the safe keeping of all equipment.

8. Maintenance and Repair – Association Responsibilities

- a. The Association shall ensure the Garden Area is well-maintained, repaired and kept in a safe, clean and well-ordered condition.
- b. Any materials accumulating in contravention of Subsection (b) shall be removed by the Association within forty-eight (48) hours of its receipt of notice from the City to remove the same. If such materials are not removed within the allotted time, the City may remove the same at the Association's cost.
- c. The compost site on the Garden Area shall not be deemed to be a nuisance provided that the Association uses all reasonable efforts to minimize the odours that may emanate from the compost site.
- d. All expenses relating to the maintenance and repair of the Garden Area shall be the sole responsibility of the Association.

9. Water Supply System / Watering Practices

- a. The Association shall be responsible, at its own cost, for the maintenance and repair (from the building source to the yard hydrant) of the water supply system servicing the Garden Area.
- b. Without limiting the general nature of Subsection (a), the Association shall, to the City's satisfaction:
 - i. blow out the water lines prior to each fall season and prepare the water supply system for the oncoming winter months in order to prevent water line freezing;
 - ii. secure all supply valves with a locking mechanism; and
 - iii. at its own cost, arrange for the check valve to be serviced annually.
- c. The Association acknowledges that it shall be responsible for all consumption charges as levied by the City in accordance with periodic readings of the water meter servicing the Garden Area.

10. Maintenance and Repair – City Responsibilities

At its own cost, and in accordance with usual City policy and practice the City may, when resources permit:

- i. Provide access to the Association's contractor to complete the water supply system annual spring and fall maintenance;
- ii. Assist with pest control as needed within the Garden Area;
- iii. Provide and spread gravel and millings for the PUL access;
- iv. Provide wood chips, compost, and top soil or assist with trucking costs of these materials to site.

11. Association Improvements

- a. The Association shall not make any alterations or improvements whatsoever to the Garden Area, other than using the Garden Area for the Approved Uses, without first

obtaining the written consent of the General Manager, which consent may be withheld without reason.

- b. Any request to make alterations or improvements to the Garden Area must include a description of the contemplated work, plans, specifications and such other information as may be required by the General Manager, in the General Manager's sole discretion. The General Manager may require that this information be prepared by a professional engineer and conform to good engineering practice.
- c. If the General Manager approves the request in writing, the alteration or improvement must be constructed in a timely and workmanlike fashion, in accordance with any terms and conditions imposed by the General Manager, all at the sole responsibility and expense of the Association.
- d. Any repairs, alterations, improvements or replacements made by the Association shall, upon installation, become the property of the City, unless the General Manager specifies otherwise in writing.
- e. The fact that the General Manager has approved any drawings, plans, specifications, information or documentation or has inspected any construction work as it progresses, shall not impose any obligation or responsibility on the City and shall not operate as a waiver of any rights of the City with respect to any matter.
- f. In the event that the General Manager approves a request from the Association to construct improvements on the Lands, the Association shall, in both its own name and in the name of the City (as an additional insured) place and maintain a policy of construction insurance, on terms and with carriers satisfactory to the City.

12. Signage / Sponsorship

The Association shall not place or permit to be placed any permanent sign, awning or advertised matter anywhere on the Garden Area without first obtaining the City's written consent, which may be withheld at the City's sole option.

13. Commercial General Liability Insurance

- a. Pursuant to its activities and obligations under this Agreement, the Association shall, in both its own name and in the name of the City (as an additional insured) place and maintain a policy of commercial general liability insurance.
- b. The Association shall be solely responsible for determining that it has sufficient and effective insurance coverage as required by the City, and acceptance or rejection of the same by the City shall not in any way make the City liable to the Association or imply that the City acts as a representative of the Association further to determining the sufficiency or effectiveness of coverage.
- c. Notwithstanding Subsection (b), insurance coverage may be reviewed by the City from time to time and the requisite endorsements shall be amended as the City in its sole discretion deems necessary, and in any event (unless otherwise specified by the City), the required insurance coverage shall not be less than one million (\$1,000,000.00) dollars per accident or occurrence.
- d. In evidence of valid insurance coverage, the Association shall provide to the City a Certificate of Insurance in compliance with the requirements disclosed in Schedule "B" to this Agreement.
- e. Notwithstanding the requirements of this Section, the Association's obligation to obtain a policy of insurance covering activities relating to the subject matter of this Agreement applies only if the City, in its sole discretion, determines that the said activities are not fully covered under another policy of insurance held by the Association.

14. Indemnity

- a. The Association shall at all times indemnify and save harmless the City against:
 - i. any and all losses, damages, demands, claims, liabilities, costs and expenses of every kind and nature, including lawyer's fees (on a solicitor and own client basis) that are reasonably incurred in the prosecution, defense or appeal of any action in respect of; or
 - ii. any payment made in good faith in settlement of any claim arising out of, occasioned by, or in any way related to,

any acts or omissions of the Association in the purported performance or non-performance of this Agreement.
- b. If the City is required to take any action, incur any costs or expend any funds, howsoever arising because of the Licensee's purported performance or non-performance of this Agreement, the Licensee shall reimburse the City for all costs it so incurs, including legal fees on a solicitor and own client basis.

15. Termination

- a. City Council may terminate this Agreement without cause upon providing one hundred and eighty (180) days' notice to the Association.
- b. The Association may terminate this Agreement without cause upon providing thirty (30) days' notice to the City.
- c. City Council may terminate this Agreement upon providing thirty (30) days' notice to the Association if the Association:
 - i. ceases to operate as a non-profit organization for any reason;
 - ii. allows a charge, lien, or encumbrance of any kind to be registered against the Garden Area, or the Lands;
 - iii. is wound up, struck, liquidated, placed into receivership, declares or is assigned into Bankruptcy, files a notice of its intent to make a proposal under the Bankruptcy and Insolvency Act, seeks protection under the Company Creditors Arrangement Act or any other debtor protection legislation, or any creditor takes execution remedy steps against the assets of the Association;
 - iv. is reorganized, amalgamated, restructured in any way or changes its purpose or objectives; or
 - v. breaches any provision of this Agreement and such breach is not cured by the Association within the time specified by the General Manager in any written notice of such breach to the Association.
- d. Upon the expiration of the Term or the earlier termination of this Agreement by the City or the Association, the Association shall restore the Garden Area to the satisfaction of the General Manager, acting reasonably. Restoration may include, at the discretion of the General Manager the removal of any alterations or improvements to the Garden Area.
- e. The General Manager may inspect the Garden Area at any time, but has no duty to do so and no obligation to discover or advise the Association of any item of non-compliance with this Agreement, or any applicable law or bylaw.
- f. The General Manager may, by written notice to the Association, require the Association to repair, replace, or correct any deficiency in the maintenance and repair of the Garden Area to a standard acceptable to the General Manager, acting reasonably. If the

Association fails to repair or correct any deficiency within the time specified in the notice provided by the City, then the General Manager may, on the instructions of City Council:

- i. terminate this Agreement forthwith, in writing;
 - ii. enter onto the Garden Area and rectify the deficiency; or
 - iii. both terminate and rectify the deficiency or restore the Garden Area to environmental reserve and PUL.
- g. Notwithstanding Subsection (f), the General Manager does not need to obtain the direction of City Council prior to entering onto the Garden Area and rectifying a deficiency in maintenance and repair if, in the opinion of the General Manager, the deficiency poses a risk to public health or safety.

16. **Waiver**

The acceptance by the City of any payment under any of the covenants in this Agreement after a default by the Association shall not operate as a waiver of any other default, or of the City's right to enforce any payment of other provision under this Agreement, or to declare a forfeiture of this Agreement. Failure by the City to enforce any covenant after its breach, or any provision or condition after default, shall not operate as a waiver by the City of its rights hereunder. Nothing but a written instrument signed by the City shall effect a waiver of the City's rights hereunder.

17. **Binding Agreement**

All of the covenants, terms, provisions, and undertakings in this Agreement shall extend to and be binding upon the legal representatives, and successors of the parties to it, as if they were in every case named and described. Wherever in this Agreement reference is made to either of the parties to it, it shall be held to include the legal representatives, and successors or assigns of such party.

18. **Notice**

- a. Unless this Agreement states otherwise, any notice required pursuant to this Agreement shall be in writing and may be given personally or by delivering or sending by prepaid registered mail to the addresses below:

St. Albert Community Garden Association
Saintalbertcommunitygarden@gmail.com
Phone number TBC
Address TBC
St. Albert, Alberta
Attention: President - Sandy Jamison

The City of St. Albert
5 St. Anne Street
St. Albert, Alberta T8N 3Z9
Attention: Director – Recreation & Parks

- b. If a notice is sent by prepaid registered mail it shall be deemed received ten (10) days after the date of the postmark except in the event of a postal service strike or disruption in which case it shall not be deemed to be received until ten (10) days following the end of the strike or disruption.
- c. Either party may change its address for service by providing notice to the other in accordance with this Section.

19. **Assignment**

The Association may not assign this Agreement in whole or in part.

20. **License**

This Agreement creates a License entitling the Association to the non-exclusive right to use the Garden Area in accordance with, and subject to, the terms of this Agreement. It is not to be construed nor interpreted to create any greater right or interest in the Garden Area and without

limitation, does not create a lease in favour of the Association. Further, nothing herein shall be construed or interpreted to be a disposition of an estate or interest in land or a disposition of the environmental reserve.

21. **Survival**

The obligations of the Association created by this Agreement shall survive the expiry or earlier termination of the Agreement.

22. **Interest**

The Association agrees to pay all monies payable hereunder when due, or if no date is specified upon demand. Any monies not paid when due shall, without limiting any other remedies available to the City, accrue interest from the date due until paid, both before and after judgement, at the current rate charged by the City on overdue accounts.

23. **No Caveat**

The Association shall not register any caveat in respect of this Agreement.

24. **Schedules**

All of the Schedules attached hereto are incorporated into and form part of this Agreement.

25. **Entire Agreement**

This Agreement shall be deemed to constitute the entire agreement between the City and the Association with respect to the subject matter hereof and shall supersede all previous negotiations, representations and documents in relation hereto made by any party to this Agreement.

IN WITNESS WHEREOF the Parties cause this Agreement to be executed by their respective authorized representatives on or about the date first written above, and the Parties acknowledge that by such execution they are bound to the terms of this Agreement.

The City of St. Albert

Per: 

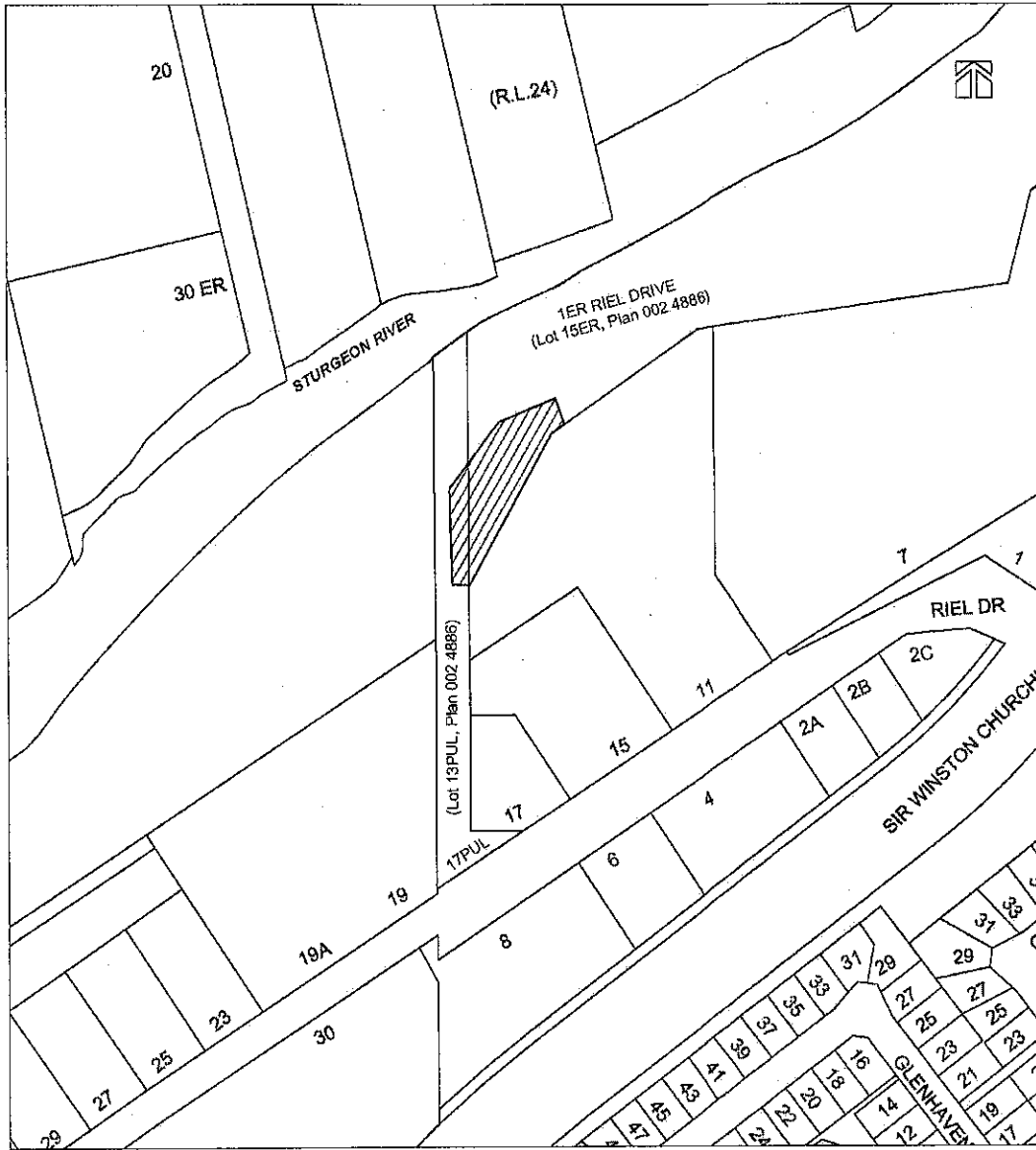
Date: April 7/16

St. Albert Community Garden Association

Per: 

Date: April 23/16

Schedule "A" – Site Plan of PUL & Garden Area



St. Albert Community Gardens
0.30 ha +/-



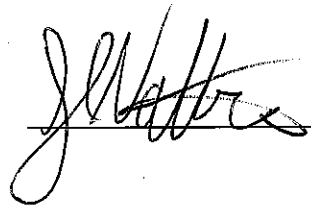
AFFIDAVIT OF EXECUTION

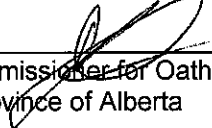
CANADA)
PROVINCE OF ALBERTA)
TO WIT:)

I, Cameron Nattress
of the City of St. Albert
in the Province of Alberta,
make oath and say:

1. THAT I was personally present and did see Sandy Jamison known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
2. THAT the same was executed in the City of St. Albert in the Province of Alberta, and that I am the subscribing witness thereto.
3. THAT I know the said person and he/she is in my belief of the full age of eighteen years.

SWORN before me in the)
City of St. Albert in the)
Province of Alberta, this 22nd)
day of April A.D., 2016.)



 Mark Edwards
A Commissioner for Oaths in and for
the Province of Alberta

IN THE MATTER OF the Lease Agreement (the "Agreement")

Effective the 1st day of August, 2014,

Effective April 1st 2016.

8/12/14 JW

BETWEEN:

The City of St. Albert
(the "City")

- and -

St Albert Community garden Association
~~1498816 Alberta Ltd.~~
(the "Licensee")

JW

AFFIDAVIT OF CORPORATE SIGNING AUTHORITY

I, P. Jander Jamison, of the City of St. Albert, in the Province of Alberta, MAKE OATH AND SAY THAT:

1. I am an officer for the Licensee, and as such, I have personal knowledge of the matters to which I hereinafter depose.
2. As a duly authorized signing authority of the Licensee, I have executed the Agreement on behalf of the Licensee and I confirm that the City is entitled to rely on my execution of the Agreement.

SWORN before me in the)
City of St Albert in the)
Province of Alberta, this 22nd)
day of April A.D., 2016.)

[Signature]

[Signature]
Marie Edwards
A Commissioner for Oaths in and for
the Province of Alberta

Schedule "B" – Certificate of Insurance Requirements

Unless specified in writing, the coverage referenced below applies to all agreements with the City of St. Albert. The Certificate of Insurance is to include evidence of the following (as a minimum):

1. Commercial General Liability, minimum of \$1,000,000 per occurrence, including:
 - Occurrence Property Damage
 - Non-Owned Automobile
 - Employees as additional insured
 - Products and Completed Operations
 - Broad Form Property Damage
 - Severability of Interests Clause
 - Personal Injury
 - Cross Liability Clause
 - Waiver of Subrogation
 - Participant Coverage included
 - Blanket Contractual Liability
 - The Commercial General Liability policy(ies) above shall apply as the primary insurance and not excess to any other insurance available to the Landlord
 - Tenant's Legal Liability
 - 30 days written notice of cancellation or material change
 - City of St. Albert named as "Additional Insured"

2. Property Insurance, as a minimum to include:
 - Replacement Cost coverage
 - Sewer Backup endorsement
 - Business Interruption Insurance

Notice of matters relating to the above shall be sent to:

The City of St. Albert
5 St. Anne Street
St. Albert, AB T8N 3Z9
Attention: Risk & Insurance Manager