

## MEMORANDUM OF AGREEMENT

On this date, September 17, 2002, the State of New York by Eliot Spitzer, Attorney General of the State of New York (“State”), and the City of New York by Michael A. Cardozo, Corporation Counsel of the City of New York (“City”), agree to establish the following protocol for the preservation and development of City-owned GreenThumb community gardens:

### **1. THE GREENTHUMB PROGRAM SHALL CONTINUE**

The GreenThumb Program shall continue to be administered by the City to the extent that the United States Department of Housing and Urban Development (“HUD”), through its Community Development Block Grant program, continues to fund the City’s program. Should HUD discontinue such funding, the City will continue its administration of the program to the extent that other funds are appropriated for that purpose. In the event that no funds are appropriated for the GreenThumb program and the City decides to terminate the program, the City shall provide written notice of such decision to the State, to each not-for-profit-land trust organization to which GreenThumb gardens were transferred pursuant to section 5 of this Agreement, and to each individual registered with the GreenThumb program as responsible for a GreenThumb garden under the jurisdiction of the City (“Gardener of Record”). To the extent possible, the City shall provide such notice at least sixty (60) days prior to such termination. The City’s agreement to continue the GreenThumb program as provided herein does not constitute an obligation or agreement to accept into the GreenThumb program new parcels or gardens that are not part of the GreenThumb program as of the date of this Agreement, other than as provided in sections 6(B) and 8 below.

### **2. EXISTING GARDENS UNDER PARKS DEPARTMENT AND OTHER SPECIFIED CITY AGENCY JURISDICTIONS TO REMAIN IN GREENTHUMB**

**PROGRAM; GARDENS OPERATED BY THE NEW YORK CITY DEPARTMENT OF EDUCATION**

Approximately eighty six (86) existing GreenThumb gardens on two hundred twenty-five (225) lots are currently under the jurisdiction of the New York City Department of Parks and Recreation (“Parks”). These gardens are identified on the annexed exhibit as “Parks Open Space.” Seven (7) existing GreenThumb gardens on seven (7) lots are currently under the jurisdiction of another non-developing City agency, including the New York City Department of Environmental Protection, New York City Department of Transportation and New York City Police Department. These gardens are identified on the annexed Exhibit as “Subject to Development/ No Development Currently Planned.”

The aforementioned gardens shall remain in the GreenThumb program as community gardens or as open space, and will continue under the jurisdiction of the individual agencies mentioned above, until such time, if ever, that the City determines to sell or develop the garden lot, or until the garden no longer participates in the registration and licensing process administered by the GreenThumb Program Office. The City represents that it has no present intention of selling or developing any of these gardens, which are identified on the annexed Exhibit. However, in the event the City determines to sell or develop any of these garden lots, such sale or development shall be subject to the land use and garden review processes set forth in sections 4 and 6, as applicable.

No later than February 28, 2003, the City Parks Department, through its GreenThumb Program, will offer each GreenThumb garden identified above and not yet registered, an opportunity to register with the GreenThumb Program, and, once registered, to obtain a GreenThumb license. Alternate GreenThumb gardens as set forth in sections 6 and 8 below, and Development Gardens as set forth in section 6 below that are not planned for development or sale in the short term, will also be offered an opportunity to register with the GreenThumb program and, once registered, obtain a license. The terms of the licenses shall be determined by the City, but shall, at a minimum, include the following conditions: (a) a license term of not less than one year; (b) a provision stating that the City shall give not less than sixty (60) days written notice of cancellation of the license to the Gardener of Record; and (c) a provision stating that the City shall notify the Gardener of Record, pursuant to the requirements of Section 6 of this Agreement, of any proposal to develop the garden parcel.

Approximately one hundred (100) gardens existing on one hundred nine (109) lots are under the jurisdiction of the New York City Department of Education (“Department of Education”). These lots are periodically used as gardens by City schools and receive technical support from the GreenThumb Program Office. The Department of Education gardens are identified on the annexed Exhibit as “DOE Open Space.” The City understands that the Department of Education does not currently intend to use these lots for other than school-related purposes. The Department of Education gardens shall continue to be eligible for technical support from the GreenThumb Program Office.

**3. PARKLAND STATUS**

The City is not designating any community garden as parkland, nor shall any provision of this Agreement affect the parkland status of any property. The GreenThumb gardens that have been previously mapped as parkland are identified on the annexed Exhibit as “Mapped Parkland.” If a GreenThumb garden not listed as mapped parkland on the annexed Exhibit is subsequently discovered to have been mapped as parkland, that property shall be subject to the restrictions applicable to mapped parkland.

**4. SEQRA AND LAND USE REVIEW TO BE COMPLIED WITH BY THE CITY**

(A) SEQRA

Any planned project for the disposition and/or development of a site containing a GreenThumb garden will undergo such environmental review as is required by law, pursuant to the New York State Environmental Quality Review Act (“SEQRA”), Environmental Conservation Law §8-0101 et seq.

(B) Land Use and Disposition Review

In addition, any such project will undergo, as required by law, review pursuant to Section 197-c of the New York City Charter (“ULURP”) and/or whichever of the following statutory procedures applies: Section 384(b)(4) of the New York City Charter, Article XI of the Private Housing Finance Law, Article 15 (“Urban Renewal Law”) or Article 16 (“UDAAP”) of the General Municipal Law, or any other law authorizing the disposition of City-owned land.

**5. GREENTHUMB GARDENS TO BE OFFERED TO PARKS DEPARTMENT OR LAND TRUSTS FOR PRESERVATION**

Approximately one hundred ninety-eight (198) existing GreenThumb community gardens on three hundred forty-eight (348) lots not proposed for sale or development, and all alternate gardens as set forth in sections 6 and 8, shall be offered either to (i) the Parks Department for preservation as community gardens or open space, or (ii) one or more not-for-profit land trust organizations, such offer to be conditioned on the agreement of the land trust to preserve such gardens as community gardens or open space. The existing gardens to be offered for preservation are identified on the annexed Exhibit as “Offer for Preservation.” Each offer of sale to a not-for-profit land trust organization shall be for a nominal purchase price. All offers of sale of existing GreenThumb gardens to a not-for-profit land trust organization shall be made by the City within three years from the date this Agreement is fully executed, and are subject to

approval through ULURP. Alternate gardens shall be offered for preservation within one year after they have registered with the GreenThumb Program Office or three years after execution of this Agreement, whichever is later. The City may, in its discretion, continue to provide GreenThumb support to any or all of these gardens subsequent to their transfer to a not-for-profit land trust organization.

In the event that a development project abuts a garden lot planned for preservation that must be temporarily closed and disturbed during the period of construction, upon completion of such construction, reasonable efforts will be made to return each such affected garden lot to the condition that existed prior to the commencement of any construction work thereon.

**6. GARDENS WHICH MAY BE SUBJECT TO DEVELOPMENT FOLLOWING THE GARDEN REVIEW PROCESS**

(A) Garden Lots Subject To The Garden Review Process

Approximately one hundred ten (110) gardens existing on two hundred seventeen (217) lots may be subject to sale and/or development by the City following certain public review processes. These gardens are identified on the annexed Exhibit as “Subject to Development.” Except as otherwise noted in section 6(E), such garden lots that have not yet completed local land use review and obtained all necessary approvals shall undergo the following garden review process.

(B) Alternate Garden Sites

When a City agency or the New York City Economic Development Corporation (“Developing Agency”) proposes the development or disposition of City-owned land containing an existing GreenThumb garden lot, the Developing Agency shall notify the Gardener of Record. The Developing Agency will provide the Gardener of Record with a list of available City-owned

vacant land, if any, within one-half mile of the existing GreenThumb garden (the “List”). The List will also identify the approximate size of each lot contained therein. If there is no available City-owned vacant land within one-half mile of the existing GreenThumb garden, the Developing Agency will so inform the Gardener of Record. The Gardener of Record may select a site from the List for use as an alternate GreenThumb garden site, and will inform the Developing Agency and the GreenThumb Program Office of its selection, in writing, within 45 calendar days after the Developing Agency mailed the List. The Gardener of Record’s failure to respond within 45 calendar days will be deemed to be a rejection of the offer. The Gardener of Record’s acceptance or rejection of an alternate garden site will be referenced in a Garden Review Statement (as hereinafter defined). The alternate garden will be offered “as is,” and the gardening group shall be responsible for performing all necessary work on the site. The gardening group may seek assistance from the GreenThumb Program Office in its relocation and gardening efforts at the alternate site; such assistance will be made available, contingent upon staff availability and resources. The City will offer the alternate GreenThumb garden an opportunity to register with the GreenThumb Program, and once registered, obtain a GreenThumb license, as described in Section 2.

(C) Garden Review Statement

The Developing Agency will prepare a written statement (“Garden Review Statement”) which will include the following: (i) a description of the proposed project; (ii) a description of the site and the existing GreenThumb garden located on such City-owned land; (iii) the List, if any; and (iv) a statement of whether the Gardener of Record has accepted any alternate garden sites from the List. A Garden Review Statement will also include the following, to the extent that such information exists and is contained within the GreenThumb Program files:

(i) the address (including block and lot) of each affected garden lot; (ii) the date that the garden lot was first leased or licensed by the GreenThumb Program; (iii) the name, address, and telephone number of the Gardener of Record; (iv) a copy of the most recent GreenThumb registration form prepared and submitted to the GreenThumb Program by the Gardener of Record; (v) copies of at least two photographs of the existing garden; and (vi) the two most recent GreenThumb site visit forms as prepared by a member of the GreenThumb Program staff.

(D) GreenThumb Garden Notice

The Developing Agency will provide a Garden Review Statement to the Community Board of the affected Community District and the Gardener of Record. Any (i) ULURP application proposing the disposition of City-owned land, (ii) request for approval from the City Council or Mayor to dispose of City-owned land pursuant to UDAAP, the Urban Renewal Law, or Article XI, or (iii) request for approval from a Borough Board to dispose of City-owned land pursuant to Section 384(b)(4) will be accompanied by a Garden Review Statement.

(E) Exemptions and Expedited Garden Review

(1) Because this Agreement already provides for their preservation, in whole or in part, or relocation to an alternate Site, the following gardens shall not undergo the Garden Review Process established by this section: Twelfth Street Community Garden (Brooklyn Block 1028, lot 7); Catano Garden (Manhattan Block 1638, lot 131); Oasis I Garden (Manhattan Block 1080, lot 25); Prophecy Garden Church of God (Brooklyn Block 4295, lots 54 and 69); and the gardens identified in section 8 of this Agreement.

(2) Because they are subject to development as part of proposed projects that have nearly completed the land use review process, the following four gardens shall be subject to

an expedited Garden Review Process as set forth below: Beare Avenue Garden (Brooklyn Block 4277, lots 27 and 28); New Hope Garden (Manhattan Block 1821, lots 55, 56, and 57); Group 88 Garden (Manhattan Block 1925, lots 7, 8, 54, 55, and 56); and Garden Beautiful (Manhattan Block 2039, lots 8 and 10). For the projects involving these four gardens, the Developing Agency will prepare a Garden Review Statement within one hundred twenty (120) days after this Agreement is fully executed. Such Garden Review Statement shall be part of the submission made to the Office of the Mayor as part of the disposition approval process and shall be mailed to the Gardener of Record no less than twenty-one (21) days prior to any such disposition approval in order to allow for submission of comments by the Gardener of Record.

(3) The Garden Review Process set forth in this section shall cease to apply to the development or disposition of any City-owned GreenThumb garden when a Developing Agency reaches an agreement with the Gardener of Record, in writing, to preserve a portion or all of an affected GreenThumb garden as a community garden and/or as open space as part of the project, or agrees to relocate the garden to an alternate site.

## **7. GARDENS WHICH MAY BE DEVELOPED WITHOUT FURTHER REVIEW**

Approximately twenty-eight (28) existing gardens on sixty-one (61) lots have completed review pursuant to SEQRA, and have received final approval under ULURP and/or Section 384(b)(4), Article XI, the Urban Renewal Law, UDAAP, or other law authorizing the disposition of City-owned land regarding a site containing a GreenThumb garden. These gardens are identified on the annexed Exhibit as “Immediate Development.” These lots may be sold or developed by the City without any further review. Pending development, the City may in its discretion offer these gardens an opportunity to register with the GreenThumb program and, once registered, obtain a GreenThumb license.

**8. ALTERNATE AND COMBINED SITES FOR CERTAIN BRONX GARDENS**

The City shall provide an alternate Garden Site for the CS 134 Garden (Block 2972, lots 52 and 55), 1306 Senior Citizen Group Garden (Block 2971, lots 46, 47, and 48) and the Freeman Street Block Association Garden (Block 2968, lot 56) in the Bronx. The alternate Site shall be located behind Public School 134, 1330 Bristow Street in the Bronx. The City shall prepare the alternate Site by removing garbage and other refuse from the site. The parties shall jointly seek to either (i) secure funding by April 30, 2003 to fund additional measures necessary to make the above alternate Site suitable for use as a GreenThumb garden, or (ii) identify another suitable alternate site for use as a GreenThumb garden. The GreenThumb Program shall provide assistance in relocating the CS 134, 1306 Senior Citizen Group and Freeman Street Block Association to the alternate Site.

The GreenThumb Program shall, if requested, provide assistance in relocating and combining the Cauldwell Avenue Garden (Block 2633, lot 7), Geneva McFadden Garden (Block 2615, lots 5 and 6), Union and Prospect Block Association Garden (Block 2681, lots 1 and 3) and Sunset Garden (Block 2681, lot 11) with the Jackson Forest Garden (Block 2651, lots 23 and 27) and the Debaron Sisters Civic Association Garden (Block 2633, lots 8 and 9), or another existing GreenThumb garden.

**9. DEDESIGNATED GARDEN LOTS**

A GreenThumb garden lot offered for preservation as set forth in section 5 and rejected for sale or transfer, or a GreenThumb garden lot planned for disposition or development as set forth in section 6 that is disapproved through the land use disposition review procedures set forth in section 4(B) may remain in the GreenThumb program subject to the following conditions: (1) the garden may apply to register with the GreenThumb program and, once



registered, obtain a GreenThumb license (unless the garden is already registered and licensed); (2) a garden planned for disposition or development as set forth in section 6 may be eligible for development subject to the Developing Agency complying with the provisions set forth in section 4, the garden review procedure set forth in section 6, and the terms of any license issued to the garden; and (3) the City may, in its discretion, offer the garden to either a not-for-profit land trust organization or the Parks Department for preservation as a community garden or open space.

**10. TERMINATION**

A garden lot shall remain subject to this Agreement until any of the following occurs: (1) the lot is sold or transferred to a not-for-profit land trust organization or the Parks Department, pursuant to section 5; (2) the lot is approved for disposition or development pursuant to sections 6 or 7; (3) the garden's Gardener of Record or, if no Gardener of Record, contact person is offered an opportunity to register and/or execute a license by the GreenThumb Program and refuses to do so for more than two years; or 4) eight (8) years have elapsed from the date the Agreement is fully executed by the Parties.

**11. NOTICES**

All notices to the parties required by this Agreement shall be delivered by hand or by first-class mail to:

For the State:

Peter Lehner, Esq.  
Chief, Environmental Protection Bureau  
New York State Department of Law  
120 Broadway, 26<sup>th</sup> Floor  
New York, New York 10271

For the City:

Susan Amron, Esq.  
Deputy Chief, Environmental Law Division  
New York City Law Department  
100 Church Street  
New York, New York 10007

**12. ENFORCEMENT**

This Agreement shall be enforceable by the State and the City in a court of competent jurisdiction. In addition, sections 1, 2, 5, 6, 8, and 9, and the future use of gardens as identified in the annexed Exhibit and subject to the provisions of this Agreement shall be enforceable by the Gardener of Record for the affected garden in a court of competent jurisdiction; provided, however, that the future use category to which a particular garden has been assigned on the annexed Exhibit shall not be subject to challenge.

**13. AMENDMENTS**

Any amendment to this Agreement shall be in writing and signed by the parties.

Dated: New York, New York  
September 17, 2002

ELIOT SPITZER  
Attorney General of the  
State of New York  
The Capitol  
Albany, NY 12224  
(518) 473 - 3105

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
100 Church Street  
New York, NY 10007  
(212) 788 - 0598

By: \_\_\_\_\_  
CHRISTOPHER A. AMATO  
Deputy Chief  
Environmental Protection Bureau

By: \_\_\_\_\_  
CHRIS REO  
Associate Counsel  
Environmental Law Division