

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN SMART FARM OF BARRINGTON, INC.  
AND THE VILLAGE OF DEER PARK  
FOR USE OF A PORTION OF THE VEHE FARM AT  
23680 CUBA ROAD, DEER PARK, ILLINOIS**

THIS AGREEMENT (hereinafter, “this Agreement”), made and entered into this 20th day of April, 2009, pursuant to authority of the Constitution of the State of Illinois as well as the Illinois Compiled Statutes by and between Smart Farm of Barrington, Inc. an Illinois not-for-profit corporation (hereinafter referred to as “Smart Farm”) and the Village of Deer Park, an Illinois municipal corporation (hereinafter referred to as the “Village”):

**WITNESSETH:**

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970 provides, among other things, that a unit of local government and a not-for-profit corporation may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities, and the Intergovernmental Cooperation Act, 5 ILCS 220/1, et seq. further authorizes cooperation between one or more units of local government and not-for-profit corporations; and

WHEREAS, the Village is a unit of local government within the meaning of Article VII, Section 10 of the Constitution of the State of Illinois of 1970 and the Intergovernmental Cooperation Act, and Smart Farm is an Illinois not-for-profit corporation, and each has the authority to enter into this Agreement; and

WHEREAS, the Village is the owner of the Subject Property at 23680 Cuba Road, Deer Park, Illinois, commonly known as the “Vehe Farm” (hereinafter, the “Subject Property”); and

WHEREAS, Smart Farm desires to accept a license from the Village, and the Village desires to grant a license to Smart Farm to utilize a portion of the Subject Property for agricultural purposes, including but not limited to the planting and harvesting of crops; and

WHEREAS, it has been determined by the corporate authorities of both Smart Farm and the Village that the parties' execution of this Agreement is in the best interests of each of the parties hereto:

NOW THEREFORE, be it agreed as follows:

SECTION 1: RECITALS: The parties hereto find that the recitals set forth above are true, correct, and proper and hereby incorporate them into the body of this Agreement as fully set forth herein.

SECTION 2: OWNERSHIP. The Village is the owner of the Subject Property at 23680 Cuba Road, Deer Park, Illinois, commonly known as the "Vehe Farm", legally described on Exhibit A attached hereto and made a part hereof (hereinafter, the "Subject Property"). Smart Farm, its officers, directors, members, agents, volunteers, and invitees shall in no way have or assert any right, title or interest in or authority over any portion of the Premises or the Subject Property by reason of the license herein granted or by reason of the installation and/or maintenance of any improvements installed on or in the Premises as herein authorized or by reason of any use thereof, or otherwise, and this Agreement shall be deemed to grant a license only, terminable at will, to use and occupy the Premises for the Permitted Uses as stated herein and shall not confer any right, privilege, license or franchise to occupy or use any other portion of the Premises and/or the Subject Property or for any other purposes.

SECTION 3: GRANT OF LICENSE FOR USE AND OCCUPANCY OF THE PREMISES.

The Village agrees to and does hereby grant a license to Smart Farm, and Smart Farm agrees to and does hereby accept a license from the Village, subject to Smart Farm's continued compliance with

the terms, conditions, and/or restrictions set forth in this Agreement, to use and occupy that portion of the Subject Property shown on the aerial map attached hereto and made a part hereof as Exhibit A (“the Premises”) for Smart Farm’s use for agricultural purposes, including but not limited to for the purpose of the planting, establishment, maintenance and harvesting of crops (vegetable/fruit gardens) for the purpose of providing community education and fresh produce to local and regional food pantries (the “Permitted Uses”).

SECTION 4: TERM OF AGREEMENT; TERMINATION: The term of this Agreement shall be for five (5) years and shall commence on May 1, 2009 (hereinafter referred to as the “Commencement Date”) and shall end on April 30, 2014, inclusive (hereinafter, as the same may be adjusted as hereinafter provided, referred to as the “Expiration Date”), unless sooner terminated as provided herein. The Agreement may also be further extended upon terms and conditions as agreed by the parties at any time during the term of this Agreement. In addition, the Village shall have the right to terminate this Agreement at any time without cause upon ninety (90) days’ prior written notice to Smart Farm.

SECTION 5: NO SUBLETTING OR ASSIGNMENT. Smart Farm shall neither sublet any portion the Premises nor assign this Agreement, nor permit by any act or default any transfer of Smart Farm’s interest by operation of law, nor offer the Premises, the Subject Property, or any part thereof, for lease or sublease, nor permit the use thereof for any purpose other than those Permitted Uses as stated herein, without the prior written consent of the Board of Trustees of the Village. Smart Farm shall not (a) assign, transfer, mortgage, pledge, hypothecate or encumber, or subject to or permit to exist upon or be subjected to any lien or charge, this Agreement or any interest under it; (b) allow to exist or occur any transfer of or lien upon this Agreement or Smart Farm’s interest herein by operation of law; (c) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for under this Agreement or by anyone other than Smart Farm and Smart Farm’s officers, directors,

members, employees, volunteers, agents, and invitees; or (d) encumber the Premises or the Subject Property with any covenants, conditions, restrictions or similar agreements. In no event shall this Agreement be assigned or assignable by voluntary or involuntary bankruptcy proceedings or otherwise, and in no event shall this Agreement or any rights or privileges hereunder be an asset of Smart Farm under any bankruptcy, insolvency or reorganization proceedings.

SECTION 6: REAL ESTATE TAXES. The real estate taxes on the Subject Property and the Premises, if any, shall be the sole responsibility of the Village.

SECTION 7: USE OF PREMISES AND SUBJECT PROPERTY.

A. Smart Farm shall use and occupy the Premises only for the Permitted Uses described in Section 3 hereof, and for no other use or purpose. Smart Farm covenants and agrees to use and occupy the Premises in conformity with all “Legal Requirements” (as such term is defined in Section (B) hereof) and the other terms and conditions of this Agreement.

B. Use and occupancy of the Premises shall be limited to only Smart Farm and its officers, directors, members, agents, volunteers, and invitees.

C. Smart Farm shall not use the Premises or the Subject Property in any manner which shall invalidate or be in conflict with any fire and casualty insurance coverage covering the Premises or the Subject Property.

SECTION 8: UTILITIES AND SERVICES.

A. Smart Farm shall be permitted to use potable water from the spigot at the Village Hall. Smart Farm shall pay the Village for water used by December 31<sup>st</sup> of each year during which this Agreement has been in effect.. Calculation of the cost of the water use shall be based on the amount of water used at Village Hall during the months of April through October of each year, in excess of the amount used during the months of April through October of 2008. Smart Farm

officers, employees, agents, volunteers and invitees shall be permitted to use restroom facilities in the Vehe Barn under conditions prescribed by the Village Administrator. The parties stipulate that neither party is a “farm operator” within the meaning of The Field Sanitation Act, 210 ILCS 105/1 et seq., and that such Act is inapplicable to any activity undertaken pursuant to this Agreement.

B. Smart Farm agrees to and shall cooperate fully at all times with the Village in complying with all applicable regulations and requirements which the Village may prescribe for the proper functioning and protection of all utilities and water service reasonably necessary for the operation and occupancy of the Premises.

**SECTION 9: CONDITION OF THE PREMISES AND THE SUBJECT PROPERTY; COMPLIANCE WITH LEGAL REQUIREMENTS; PARKING.**

A. Possession. Smart Farm’s continuing possession of the Premises shall be conclusive evidence against Smart Farm that the Premises were then in good order and satisfactory condition. No promises of the Village to alter, remodel, improve, repair, decorate or clean the Premises or the Subject Property, or any part thereof, have been made, and no representation respecting the condition of the Premises and/or the Subject Property has been made to Smart Farm by or on behalf of the Village.

B Compliance with Legal Requirements. Smart Farm shall at its sole cost and expense comply with the following (collectively, “Legal Requirements”): (i) all federal, state, county, municipal and other governmental and quasi-governmental statutes, laws, rules, orders, regulations and ordinances affecting the activities of Smart Farm and/or the Permitted Uses, the Premises and/or the Subject Property or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the

part of the governmental body enacting the same, and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Premises and/or the Subject Property. Smart Farm shall comply with the requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Premises and/or the Subject Property. The parties stipulate that neither party is a “farm operator” within the meaning of The Field Sanitation Act, 210 ILCS 105/1 et seq., and that such Act is inapplicable to any activity undertaken pursuant to this Agreement. The parties further stipulate that neither party is a Farm Labor Contractor, and that no person involved in any activities pursuant to this Agreement is a Farmworker within the meaning of the Illinois Farm Labor Contractor Certification Act, 225 ILCS 505/1 et seq. The parties further stipulate that Smart Farm is not a tenant within the meaning of 735 ILCS 5/9-206-206.1 and that the terms thereof are inapplicable to any activity undertaken pursuant to this Agreement.

C. Signage. Smart Farm is prohibited from displaying any sign(s), advertisement(s), or notice(s) on the exterior of the Premises or on the Subject Property without first having received the prior written approval from the Village Administrator.

D. Locks and Keys. No additional locks shall be placed upon any doors of the Premises without the prior written consent of the Village Administrator, and the Smart Farm shall not permit any duplicate keys to be made. All necessary keys shall be furnished by the Village, and Smart Farm shall determine and advise the Village Administrator of the number of such keys as required from time to time, and upon the termination of this Agreement, Smart Farm shall surrender to the Village all keys for the Premises.

E. Use and Occupancy. The Premises shall be used only for the Permitted Uses as described in Section 3 hereof and shall be occupied only by the Smart Farm and its officers, directors, members, agents, volunteers, and invitees identified in Section 8(B) hereof. No business shall be conducted on the Premises.

F. Parking of Vehicles; Buses. Overnight parking of vehicles shall be prohibited, and parking of vehicles shall be limited to those areas on the Subject Property designated by the Village for Smart Farm parking and to those times during which activities are being conducted on the premises by Smart Farm. No vehicles shall be parked anywhere on the Subject Property that interferes with the Village's use the Subject Property. Smart Farm shall give written notice to the Village Administrator ten (10) days in advance of any proposed bus traffic to be brought onto the Premises. Such notice may be made by personal service, or as otherwise authorized by this Agreement.

SECTION 10. RETURN OF PREMISES TO VILLAGE.

A. Surrender of Possession. At the termination of this Agreement, by lapse of time or otherwise, Smart Farm shall surrender possession of the Premises to the Village and deliver all keys to the Premises to the Village, and shall, subject to the following paragraph, return the Premises to the Village in as good condition as when Smart Farm originally took possession thereof, only ordinary wear and tear, loss or damage by fire or other insured casualty, and damage resulting from the act of the Village or its employees and agents excepted, and shall plow under any remaining produce in the field plant grass..

B. Temporary Surrender of Possession; Non-Exclusive Possession of the Driveway. The Village may, upon seventy-two (72) hours notice to the Smart Farm, take temporary possession of the Premises and other portions of the Subject Property and utilize same for a Village-wide festival or other planned community event(s), and when so requested and notified of such an event, Smart

Farm shall provide control and possession of said portions of the Premises free of all possession, materials, personal Subject Property, equipment, and vehicle(s) of Smart Farm, and Smart Farm agrees to and shall cooperate with the Village in accommodating such event(s) and in no way interfere with or impede same. It is also recognized that the Smart Farm shall not have exclusive possession and control of the driveway and any parking area and Smart Farm shall not interfere with or impede access thereto, or otherwise disrupt, disturb, or damage any portion of the property or any improvements thereon

C. Installations and Additions. Smart Farm shall not be permitted to make or install any temporary or permanent improvements in, on, or upon the Premises or in, on or upon the Subject Property, unless such installation shall be approved in advance in writing by the Village Administrator, or his designee, including but not limited to any additions, partitions, plumbing, hardware, light fixtures, nontrade fixtures and improvements. Any such approved installation, including but not limited to the well, pump, and related equipment as described above, shall be and become the Village's property and shall remain upon the Premises, all without compensation, allowance or credit to Smart Farm; provided, however, that if prior to such termination of this Agreement or within ten (10) days thereafter, the Village so directs by notice, Smart Farm, at Smart Farm's sole cost and expense, shall promptly remove such of the installations, additions, partitions, plumbing, hardware, light fixtures, nontrade fixtures and improvements placed and/or installed in or on any portion of the Premises by Smart Farm as are designated in such notice and repair any damage to the Premises caused by such removal, failing which the Village may remove the same and/or repair the Premises, and Smart Farm shall pay the cost thereof to the Village on demand.

D. Survival. All obligations of Smart Farm under this Agreement shall survive the expiration of the Term or sooner termination of this Agreement.

SECTION 11. HOLDING OVER. Smart Farm shall pay the Village Five Hundred Dollars (\$500.00) for each day Smart Farm retains possession of the Premises, or any part of the Premises or the Subject Property, after termination of this Agreement, by lapse of time or otherwise, or of Smart Farm's right to possession of the Premises, for the period in which such holdover possession occurs, and Smart Farm shall also pay all damages, consequential as well as direct, sustained by the Village by reason of such retention. Acceptance by the Village of such payments after such termination shall not constitute a renewal of the Agreement. Nothing contained in this Section shall be construed or operate as a waiver of the Village's right of re-entry or any other right or remedy of the Village.

SECTION 12. MAINTENANCE.

A. Smart Farm shall keep, repair and maintain the Premises and the Subject Property, in good condition and repair, including but not limited to the maintenance of the grounds, landscaping, and mowing of grass on the Subject Property. As used herein, each and every obligation of Smart Farm to keep, maintain and repair shall include ordinary and extraordinary repairs and replacements. Smart Farm shall, to the extent possible, keep the Premises from falling temporarily out of repair or deteriorating. Smart Farm shall further keep, repair and maintain the improvements situated upon the Premises, safe secure, clean and sanitary (including snow and ice clearance), and in full compliance with all Legal Requirements.

B. Smart Farm, at its sole cost and expense, shall be responsible to keep any appliances and/or equipment owned by the Village on or in the Premises in proper operating condition, and shall be responsible to keep and maintain all systems serving the Premises, including but not limited to the well and related equipment, in proper operating condition during the term of this Agreement, or any extension(s) or renewal(s) thereof.

SECTION 13. WAIVER OF CERTAIN CLAIMS, INDEMNITY BY SMART FARM.

A. Waiver of Certain Claims; Indemnity by Smart Farm. To the extent not expressly prohibited by law, Smart Farm releases Village and its officers, employees, and agents from and waives all claims for damages to person or property sustained by Smart Farm, or by any other person, directly or indirectly arising out of and/or resulting from any activities of, omissions, and/or installations performed by Smart Farm and/or its officers, directors, members, agents, volunteers, and/or invitees on the Premises and/or the Subject Property, fire or other casualty, cause or any existing or future condition, defect, matter or thing in or about the Premises and/or the Subject Property, or from any equipment or appurtenance therein, or from any accident in or about the Premises and/or the Subject Property, or from any act or neglect of any other person. This Section shall apply especially, but not exclusively, to damage caused by water, snow, frost, steam, excessive heat or cold, sewerage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, broken glass, sprinkling or air conditioning devices or equipment, or flooding of basements, and shall apply without distinction as to the person or entity whose act or neglect was responsible for the damage and whether the damage was due to any of the acts specifically enumerated above or from any other thing or circumstance, whether of a like nature or of a wholly different nature.

B. Smart Farm Responsible for Personal Subject Property. All personal property belonging to Smart Farm, including but not limited to Smart Farm's officers, directors, members, agents, volunteers, and/or invitees, shall be on the Subject Property at the risk of Smart Farm, and the Village shall not be liable for damage thereto or theft or misappropriation thereof.

C. Indemnification.

1. Smart Farm shall defend, indemnify and hold harmless the Village, any invitees or licensees of the Village who utilize and/or occupy any portion of the Subject

Property, and their respective officers, agents, employees, and invitees (the “Indemnitees”) from all and any liability, losses, costs, damage or expense, or injury to person or property, including reasonable attorneys= fees, arising out of the execution of this Agreement, inability or failure of Indemnitees to perform any provisions of this Agreement, or the termination of this Agreement in accordance with its terms, with the exception of any liability, losses, costs, damage or expense, or injury to person or property arising out of or resulting (1) from the sole action, negligence, malfeasance, or misfeasance of Smart Farm, or its officers, directors, members, agents, volunteers, and invitees in the performance or non-performance of any act pursuant to this Agreement; or (2) from any claim by an employee, agent, or subcontractor of Smart Farm. Smart Farm’s obligation to indemnify Village hereunder shall include the duty to provide a defense against any claims asserted by reason of any such claims or liabilities and to pay any judgments, settlements, costs, fees and expenses, including attorneys’ fees of counsel selected by the Village, incurred in connection therewith.

2. The Village shall defend, indemnify and hold harmless Smart Farm, and its officers, directors, members, agents, volunteers, and invitees, from all and any liability, losses, costs, damage or expense, or injury to person or property, including reasonable attorneys= fees, arising out of or resulting (1) from the sole action, negligence, malfeasance, misfeasance of the Village or its officers, agents or employees in the performance or non-performance of any act pursuant to this Agreement; or (2) from any claim by an employee, agent or subcontractor of the Village.
3. Smart Farm has or will furnish the Village with a current certificate of insurance

evidencing public liability, property damage and workmen=s compensation insurance coverages at the time of the signing of this Agreement. During the term of this Agreement, Smart Farm will maintain not less than the same level of insurance coverage.

SECTION 14. INSURANCE. Smart Farm agrees to and shall maintain the following insurance during the entire term of this Agreement, and/or any extension thereof:

- (a) Prior to Commencement of any Use or Occupancy of the Premises: Such insurance shall be obtained by Smart Farm and the required Certificates of Insurance provided to the Village prior to commencement of any use or occupancy of the Premises.
- (b) Duration: Such insurance shall be maintained and kept in full force and effect during the entire term of this Agreement, or any extensions thereof.
- (c) Certificates of Insurance Required: Smart Farm shall submit to the Village Certificate(s) of Insurance showing the following coverage, but none of the required insurance shall preclude any common law indemnity:
  - (i) Workers' Compensation (as required by State law) Statutory Limited Employees' Liability \$500,000 per accident;
  - (ii) Public liability bodily injury insurance of not less than one million dollars (\$1,000,000.00) for injuries, including death, to any one person, two million dollars (\$2,000,000.00) each occurrence, and two million dollars (\$2,000,000.00) aggregate limit.
  - (iii) Public liability property damage insurance of not less than one million dollars (\$1,000,000.00) on account of any one occurrence with an aggregate limit of not less than two million dollars (\$2,000,000.00);
  - (iv) Automobile public liability bodily injury insurance of not less than one million dollars (\$1,000,000.00) each person, two million dollars (\$2,000,000.00) each occurrence, with an aggregate limit of not less than two million dollars (\$2,000,000.00).
  - (v) Underground property damage and structural property damage insurance on single limit basis of not less than five hundred thousand dollars (\$500,000.00).
  - (vi) Contractual insurance of the same limits as required under Paragraph (ii) above.
  - (vii) Said required coverages shall not contain exclusions with respect to the removal, abatement, handling, and disposal of asbestos or other hazardous materials.
- (d) Form of Certificates: On Certificates of Insurance, under the description of operation, location, vehicles, restrictions, special items, the following wording is required:

“No endorsements or additional forms modify or limit the coverage provided to the additional insured. Coverage is afforded on a Primary Basis for

Additional Insured.”

The Certificate Holder shall be worded as follows:

“Additional Insured: Village of Deer Park, 23680 W. Cuba Road, Deer Park, Illinois, as an additional insured, together with its officers, trustees, employees, agents, and volunteers.”

- (e) Notice of Cancellation Required: Each insurance policy, or the Certificate of Insurance for same, required by this Paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Village.
- (f) Acceptability of Insurers: Insurance shall be placed with insurers with a Best’s rating of no less than B+:VII and licensed to do business in the State of Illinois.
- (g) Verification of Coverage: The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the Village and are to be received and approved by the Village before any Work commences.
- (h) Policies May Be Required: The Village reserves the right to request full-certified copies of the insurance policies and endorsements.
- (i) Subcontractors: Smart Farm shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- (j) Village Shall Not Waive Any Rights of Subrogation: Notwithstanding any other provision in any contract document, the Village has not and shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it, or its insurance carrier or any self-insured risk pool of which it is a member, may have against the Smart Farm or a subcontractor of any tier, for any property or other damage caused by Smart Farm or any subcontractor of any tier, or any of their employees, agents, consultants, officers and directors, volunteers, and/or invitees.
- (k) Village May Rely on Its Membership in a Self-Insured Risk Pool: Notwithstanding any other provision in this Agreement, the undersigned herein agree that the Village, at its own option, may satisfy its obligation to purchase any insurance required of the Village through its membership in a self-insured risk pool. The rights of the Village as a member of a governmental self-insurance pool are intended to and shall constitute full satisfaction for any of the insurance required of Smart Farm to be maintained by the Village.
- (l) Insurance Obtained Shall Be Primary Insurance: All insurance required of Smart Farm and all of its subcontractors shall state that the coverage afforded to the Additional Insureds shall be primary insurance of the Additional Insureds with respect to claims arising out of operations performed by or on their behalf. If the Additional Insureds have other insurance which is applicable to the loss, it shall be on an excess or contingent basis.
- (m) Insurance Requirements Cannot Be Waived by Village: Under no circumstances shall the Village be deemed to have waived any of the insurance requirements of this Agreement by any act or omission, including, but not limited to: (1) allowing Smart

Farm to commence any use, occupancy, and/or work on the Premises before the Village's receipt of Certificates of Insurance; (2) failing to review any Certificates of Insurance received; or (3) failing to advise Smart Farm or any subcontractor that any Certificate of Insurance fails to contain all the required insurance provisions, or is otherwise deficient in any manner. Smart Farm agrees that the obligation to provide the insurance required by this Agreement is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Village. Smart Farm shall also protect the Village by specifically incorporating this Paragraph into every subcontract entered into relative to any work on the Premises contemplated herein and also requiring that every subcontractor incorporate this Paragraph into every sub-subcontract it enters into relative to any work contemplated herein.

- (n) Liability of Smart Farm and Subcontractor is Not Limited by Purchase of Insurance: Nothing contained in the insurance requirements of this Agreement is to be construed as limiting the liability of Smart Farm or the liability of any subcontractor, or either of their respective insurance carriers. The Village does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Village, Smart Farm, or any subcontractor's interest or liabilities, but are merely required minimums. The obligation of Smart Farm and every subcontractor to purchase insurance shall not, in any way, limit their obligations to the Village in the event that the Village should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the insurance of Smart Farm or any subcontractor's insurance.
- (o) Notice of Personal Injury or Property Damage: Smart Farm shall notify the Village, in writing, of any actual or possible claim for personal injury or property damage relating to the activities of Smart Farm and/or any installation(s) performed on the Premises by or on behalf of Smart Farm, or of any occurrence which might give rise to such claim, promptly upon obtaining first knowledge of same.
- (p) Updated Proof Required: Smart Farm agrees that at any time upon the demand of the Village, updated proof of such insurance coverage will be submitted to the Village. There shall be no charge to the Village for said insurance.

To the extent other insurance requirements related to the activities of Smart Farm or its use of the Premises contradict this paragraph, the more expansive and higher standard, in terms of type and amount of coverage, shall govern.

#### SECTION 15. HAZARDOUS MATERIALS.

A. "Claim" shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement, (ii) the

costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions, and (iii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

B. “Environmental Laws” shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental quality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. § 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; the Noise Control Act, 42 U.S.C. § 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2601 et seq.; the Atomic Energy Act, 42 U.S.C. § 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq.; and the Environmental Protection Act of Illinois (“IEPA”), 415 ILCS 5/1 et seq., and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate

Hazardous Materials (as hereinafter defined).

C. “Hazardous Materials” shall mean and include the following, including mixtures thereof: any flammable or explosive material, toxic substances, environmentally hazardous materials, or other articles deemed hazardous to persons or property, any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 et seq.; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law, and mold, except that gasoline in such quantity as for use in lawn or snow removal equipment shall be permitted to be properly stored on the Property for such use.

D. “Manage” or “Management” means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

E. “Release” or “Released” shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as “environment” is defined in CERCLA.

F. “Response” or “Respond” shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous

Material.

G. Smart Farm's Obligations with Respect to Environmental Matters During the Term of this Agreement: (i) Smart Farm shall comply at its sole cost and expense with all Environmental Laws; (ii) Smart Farm shall not Manage, authorize the Management of, or expressly or impliedly permit any invitee of Smart Farm to Manage, any Hazardous Materials on the Premises and/or the Subject Property, including installation of any underground storage tanks; (iii) Smart Farm shall not take any action that would subject the Premises and/or the Subject Property to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) Smart Farm shall not dispose of Hazardous Materials on the Premises and/or the Subject Property; (v) Smart Farm shall not discharge Hazardous Materials into drains or sewers serving the Premises and/or the Subject Property; (vi) Smart Farm shall not cause or allow the Release of any Hazardous Materials on, to or from the Premises and/or the Subject Property or surrounding land and (vii) Smart Farm shall arrange at its sole cost and expense for the lawful transportation and off-site disposal at permitted landfills or other permitted disposal facilities and otherwise in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates.

H. Copies of Notices. During the term of this Agreement, Smart Farm shall provide the Village promptly with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Illinois Environmental Protection Agency, or other federal, state, or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or

from the Premises and/or the Subject Property; (ii) the imposition of any lien on the Premises and/or the Subject Property; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability, or ultrahazardous activity.

I. Indemnity and Hold Harmless Smart Farm agrees to indemnify, defend and hold harmless Village and its officers, employees, and agents from and against any and all debts, liens, claims, causes of action, administrative orders and notices, costs (including, without limitation, response and/or remedial costs), personal injuries, losses, damages, liabilities, demands, interest, fines, penalties and expenses, including reasonable attorneys' fees and expenses, consultants' fees and expenses, court costs and all other out-of-pocket expenses, suffered or incurred by the Village and its officers, employees, and agents as a result of any matter or condition involving Environmental Laws or Hazardous Materials which exists or has existed on the Premises or the Subject Property, whether or not Smart Farm had knowledge thereof as of the Commencement Date.

SECTION 16. VENUE AND CHOICE OF LAW: The parties herein agree that the venue for any and all disputes shall solely be in the Circuit Court of Lake County, Illinois. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

SECTION 17. AMENDMENTS. No agreement or understanding to modify this Agreement shall be binding upon the Village unless in writing and signed by the Village's authorized agent. All specifications, drawings, and data submitted to Smart Farm are hereby incorporated and made part thereof.

SECTION 18. NOTICES. All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery

service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or at such other address as the parties may designate by Notice in the above manner:

To Deer Park:  
Village of Deer Park  
Attn: Village Administrator  
23680 W. Cuba Road  
Deer Park, IL 60010

To Smart Farm of Barrington:  
Smart Farm of Deer Park, Inc.  
Attn: Ms. Katherine Gabelman  
26400 W. Falkirk Circle  
Barrington, IL 60010

Notices may also be given by fax, provided the Notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery.

SECTION 19. MISCELLANEOUS:

- A. Paragraph titles are descriptive only and do not define or in any other way limit the contents of each paragraph. Words of the masculine gender shall be read to include the feminine and neuter genders, and the singular shall include the plural.
- B. If any provision of this Agreement shall be declared invalid for any reason, such invalidation shall not affect any other provisions of this Agreement which can be given effect without the invalid provision and to that extent, the provisions of this Agreement are severable.
- C. This Agreement shall be governed by the applicable laws of the State of Illinois.
- D. This Agreement contains the entire agreement of the parties and shall be binding on all parties and may not be modified or amended orally, but only in writing signed by all parties hereto.
- E. The parties agree to reasonably cooperate in a good faith effort to implement this Agreement. The Village Administrator, Village President, or his designee, and the President of Smart Farm's Board of Directors, shall serve on a committee to consider and resolve where possible, or otherwise make recommendation to both parties to this Agreement upon all questions of policy, procedure, and complaints arising hereunder.
- F. This Agreement may be executed in one or more identical counterparts, which counterparts when affixed together, shall constitute one and the same document.

IN WITNESS WHEREOF, the undersigned state that they are duly authorized to execute this

Agreement on behalf of the parties as set forth, and on their behalf, the undersigned hereby accept and agree to the provisions of this Agreement on the day and date first above written by:

VILLAGE OF DEER PARK

SMART FARM OF DEER PARK, INC.

By: \_\_\_\_\_  
Village President

By: \_\_\_\_\_  
[Print Name] \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Village Clerk

ATTEST: \_\_\_\_\_

EXHIBIT A

AERIAL MAP OF THE PREMISES