

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 163

Approved April 9, 2013

WHEREAS, The benefits of urban agriculture are numerous, ranging from reducing storm-water pollution, providing non-structural flood prevention and mitigation and providing green, open space to improving air quality, public health and local property values, and

WHEREAS, access to affordable healthy food is critically important in the promotion of healthy, active lifestyles, and

WHEREAS, Providence seeks to replicate the success of other urban areas in combating blighted properties and increasing the production, distribution, sale and consumption of locally grown food by creating additional opportunities for residents to engage in community gardening and small-scale urban farming, and

WHEREAS, Both this Council and his Honor, the Mayor, agree that it would be in the best interest of the City and its residents to lease city-owned, vacant lots to organizations well positioned to put them to productive use; and

WHEREAS, Pursuant to Article IV, Sec. 416 of the City's Home Rule Charter, the Council must approve the lease of city-owned real property.

NOW, THEREFORE, BE IT RESOLVED, That the City of Providence is hereby authorized by this Council to enter into a lease agreement with South Side Community Land Trust of 109 Somerset Street, for an initial period not to exceed five years, for six city-owned lots located at 774, 786, 790, 792, 794 and 802 Manton Avenue.

IN CITY COUNCIL


APR 04 2013

READ AND PASSED


PRES.


CLERK

I HEREBY APPROVE.


Mayor
Date: 4/9/13

LEASE AGREEMENT

THIS INDENTURE OF LEASE (the "LEASE") is made and entered into by and between THE CITY OF PROVIDENCE (hereinafter referred to as "LESSOR"), having an address of 25 Dorrance Street, Providence, RI 02903, and SOUTHSIDE COMMUNITY LAND TRUST, (hereinafter referred to as "LESSEE"), having an address of 109 Somerset Street, Providence, RI 02907 this _____ day of _____, 201__.

WITNESSETH

WHEREAS, LESSOR owns six parcels totaling 23,909 square feet in Providence, Rhode Island, described as:

Plat	Lot	Address	Square Footage
34	4	802 Manton Ave	3,915
34	304	774 Manton Ave	5,794
34	330	786 Manton Ave	4,793
34	331	790 Manton Ave	3,003
34	332	792 Manton Ave	2,698
34	333	794 Manton Ave	3,706

(hereinafter referred to as the "PARCEL"); and

WHEREAS, LESSEE is desirous of leasing from LESSOR the PARCEL in order to maintain a garden; and

WHEREAS, LESSOR is willing to lease the same to LESSEE;

NOW, THEREFORE, for and in consideration of the agreements hereinafter contained and for the additional consideration hereinafter set forth, the parties hereto agree as follows:

1. PARCEL, TERM AND RENT

1.1 Lease. LESSOR hereby leases the PARCEL to LESSEE subject to the terms of this LEASE, and LESSEE hereby accepts.

1.2 Use. LESSEE will use the PARCEL for the sole purpose of operating a garden (the "GARDEN")

1.3 Term. The term of this LEASE is 5 years, starting on [DATE] and ending on [DATE]. The LEASE will terminate upon the expiration of this term or the final renewal term, if any, or if either party terminates it as described in Section 4.

1.4 Renewal. This LEASE may renew for additional 5-year terms, at LESSOR's discretion. The LESSEE will provide written notice of intent to renew to the LESSOR's Director of City Property no later than two months prior to the end of the current term.

1.5 Rent. Annual rent for the initial term will be One Dollar (\$1.00), which LESSE will pay on the date the LEASE is signed. For any subsequent renewal term, LESSOR may, in its sole discretion, increase the amount of the annual rent payment by up to twenty percent (20%) by notifying LESSEE ninety (90) days prior to the end of the initial term of any subsequent renewal term. Rent for each subsequent year will be due on the first day of each subsequent year.

2. OPERATION AND MAINTENANCE OF PARCEL

2.1 Parcel As-Is. LESSEE acknowledges that LESSOR is not making any representations, warranties, promises, or guarantees of any kind to LESSEE, including, without limitation, any representations about the quality, condition, or suitability of the PARCEL for use as a garden. In deciding to enter this LEASE, LESSEE has made its own independent evaluation of the suitability of the PARCEL for a garden.

2.2 No LESSOR Responsibilities. LESSEE has sole responsibility for the planning, setup, management, and carrying out of operations on the PARCEL, including, without limitation, obtaining any permits required. LESSOR has no obligation to make any alterations, improvements, or repairs of any kind on the PARCEL, or to provide any services or other support.

2.3 Compliance with Laws. LESSEE will use and operate the PARCEL in compliance with all applicable zoning, environmental, civil and criminal federal, state and municipal laws and regulations.. Notwithstanding the provisions of Section 4 below, should LESSEE fail to comply with all such laws, rules and regulations, LESSOR may terminate this lease by providing LESSEE with five (5) days' notice, and may require that LESSEE immediately vacate the PARCEL.

2.4 Maintenance. LESSEE will maintain the PARCEL in a clean and neat fashion, promptly removing any weeds, overgrowth, trash, or other waste. LESSEE will promptly harvest edible plants.

2.5 Operation. Garden operating hours will be from sunrise to sunset. LESSEE shall promulgate garden "rules and regulations" concerning at least the hours of operation, and the guidelines for conduct which shall be prominently posted at the entrance of the garden.

2.6 Security. Unless LESSEE demonstrates to LESSOR that doing so would be impractical, LESSEE will install and maintain a system, , such as fences and locks to prevent entrance to the GARDEN outside of operating hours and/or when the PARCEL is unattended.

2.7 No Alterations. LESSEE may not make or permit any other person to make alterations or improvements to the PARCEL without LESSOR'S prior written consent, except for sheds

fences, raised beds, hoop houses, benches, bicycle racks, picnic tables, compost systems, rain barrel systems, and other features common to gardens. On the expiration or termination of this LEASE, all improvements and alterations to the PARCEL will become property of the LESSOR, except non-permanent improvements, and LESSOR will have no obligation to reimburse LESSEE.

2.8 Equipment and Structures. If LESSEE keeps equipment or tools on the PARCEL, LESSEE must install a toolbox or shed, and make all reasonable efforts to keep tools stored away when not in use for gardening.

2.9 No Transfers. LESSEE may not assign, mortgage, pledge, encumber, or otherwise transfer this LEASE. Any attempted transfer in contravention of this Section is void and will constitute a default under this LEASE.

2.10 Sublease. LESSEE may sublet parts of the PARCEL for use by others for the sole purpose of gardening ("TENANTS"). LESSEE may sublease plots to TENANTS for a charge of \$25.00-\$45.00 per plot, the exact amount to be determined by the LESSEE based upon the size of the plot and ability to pay. This charge is subject to amendment only upon approval of LESSOR. LESSEE shall use all funds LESSEE receives from TENANTS only for the management of the gardens and for the payment of utilities. LESSOR reserves the right to audit the use of all such sublease payments.

2.11 Right of Inspection. LESSOR may enter the PARCEL at all reasonable times to inspect the PARCEL and evaluate whether LESSEE complies with the terms of this LEASE, and to take any other actions LESSOR believes are appropriate to protect LESSOR's interest in the PARCEL. LESSEE shall provide LESSOR access to the PARCEL including keys to any gates to the PARCEL. This Section 2.11 does not impose any duty on LESSOR to inspect the PARCEL, report to LESSEE the results of any inspection, or to assume any liability of any nature or kind arising from LESSOR'S actual inspection or failure to inspect the PARCEL.

2.12 Liens. LESSEE will not incur, create, assume, or permit the creation of, any lien on any portion of the PARCEL (including any mechanic's or materialmen's liens). LESSEE will keep the PARCEL free and clear of any and all liens arising out of any work performed or materials furnished to LESSEE for or at the PARCEL, and any other obligations LESSEE incurs.

2.13 No Fires. LESSEE may not permit, start or maintain any open fires or burn weeds, on the PARCEL.

3. EXPENSES

3.1 Utilities. LESSEE will have sole responsibility for obtaining and paying for all water, electricity, heat, sewage, storm sewer, or any other utility service used on the PARCEL during the LEASE term.

4. TERMINATION

4.1 Breach by LESSEE. If LESSEE breaches any of its duties or obligations under this LEASE, LESSOR may provide LESSEE with written notice of the breach. Except as provided in section 2.3 above, LESSEE may cure the breach within ten (10) days after receipt of such notice. If LESSEE fails to cure the breach, LESSOR may terminate this LEASE by providing written notice, with the termination date effective five (5) after delivery of such notice to LESSEE. LESSOR, in its sole discretion, will determine whether the breach has been cured.

4.2 Yielding Possession. Upon termination of this LEASE, LESSEE will leave and surrender the PARCEL to LESSOR in at least as good order and condition as on the date that this LEASE is signed.

4.3 Cooperate in Transition. Upon termination or expiration of this LEASE, the rights of LESSEE under this LEASE will immediately, automatically, and without consideration terminate and revert to LESSOR. LESSEE and LESSOR will cooperate in good faith in reasonable transition activities prior to and after termination in order to minimize impact on the community and LESSOR'S use of the PARCEL. LESSEE shall remove all soil and other materials from the PARCEL not later than one (1) month after the termination or expiration of this LEASE.

4.4 Personal Property. If LESSEE or any TENANT leaves any personal property on the PARCEL after the termination of this LEASE, LESSOR may store it at a warehouse or any other location for LESSEE'S account and at LESSEE'S a risk. LESSOR will release the property only when LESSEE pays all charges relating to storage and all other amounts LESSEE owes under this LEASE. If LESSEE does not reclaim its property within one (1) year, LESSOR may keep said property.

4.5 Holding Over. If LESSOR terminates this LEASE, any holding over by LESSEE after termination of this LEASE without LESSOR's express written consent is not a renewal or extension of the LEASE and will not give LESSEE rights in or to the PARCEL.

4.6 Cumulative Remedies. All of LESSOR'S rights, powers and remedies under this LEASE are cumulative and not alternative and are in addition to all legal and equitable rights, powers, and remedies of LESSOR. The exercise of any one or more of these rights or remedies will not impair LESSOR'S right to exercise any other right or remedy including any all rights and remedies of a landlord under or any similar, successor, or related laws.

5. INDEMNITY AND WAIVER OF LIABILITY

5.1 Indemnification. LESSEE will defend, indemnify, and hold LESSOR and LESSOR's agents and employees harmless against all claims, liabilities, losses, damages, expenses, and attorneys' fees (together, "LOSSES"), including, without limitation, LOSSES arising from any death, property damage, or injury of any nature whatsoever that may be suffered or sustained by LESSEE or any of LESSEE's tenants, agents, contractors, family members, guests, or any other person in a relationship with LESSEE, or any other person present on the PARCEL (collectively "LESSEE PARTIES") which losses may arise directly or indirectly from (a) LESSEE PARTIES'

use or operation of or presence on the PARCEL, or (b) any breach by LESSEE of this LEASE, except to the extent the LOSS is caused by the gross negligence or willful misconduct of LESSOR. This Section will survive any termination of this LEASE.

5.2 Waiver of Liability. LESSEE releases and waives all claims against LESSOR with respect to or arising out of (a) any death or any injury of any nature whatsoever that may be suffered or sustained by LESSEE'S PARTIES from any causes whatsoever, except to the extent that such injury or death is caused by the gross negligence or willful misconduct of LESSOR; (b) any loss or damage or injury to any property on or about the PARCEL, except to the extent such injury or damage is to property not covered by insurance carried (or required to be carried) by LESSEE and is caused by gross negligence or willful misconduct of LESSOR; or (c) the condition of the PARCEL and suitability of the PARCEL for use as a garden. LESSOR shall not be liable to LESSEE for (i) any damage or damages of any nature whatsoever caused by explosion, fire, theft, crime, or negligent behavior, or (ii) by sprinkler, drainage, plumbing, or irrigation systems, or (iii) by failure (due to any cause) to supply adequate drainage, including by the interruption of any public utility or service, by steam, gas, water, rain, or other substances leaking, issuing, or flowing into any part of the PARCEL; or (iv) by natural occurrence, riot, court order, requisition, or order of governmental body or authority, or (v) for any damage or inconvenience which may arise through repair, maintenance, or alteration of any part of the PARCEL, or (vi) by anything done or omitted to be done by LESSEE PARTIES or any other person on the PARCEL. In addition, LESSOR shall not be liable for any Losses for which LESSEE is required to insure. This Section 5.2 will survive any termination of this LEASE.

6. INSURANCE

6.1 Insurance. LESSEE will, at its own cost, take out and maintain without interruption during the term of this LEASE comprehensive general liability insurance naming LESSOR as an additional insured, affording coverage for bodily and personal injury liability, including liability for death, and property damage, or a combination thereof, in an amount not less than \$500,000.00. Coverage shall be provided on an "occurrence" basis and not a "claims made" basis.

6.2 Evidence of Insurance. On or before the date LESSOR delivers possession of the PARCEL to LESSEE, LESSEE will provide LESSOR with a copy of the insurance policies required by Section 6.1. LESSEE will deliver to LESSOR evidence of each renewal or replacement of any required insurance policy at least 10 days prior to the expiration of such policy. In lieu of the actual policies, LESSEE may deliver to LESSOR a certificate of insurance evidencing LESSEE'S insurance policies, provided that LESSOR also receives a copy of the endorsement naming LESSOR as an additional insured.

7. GENERAL PROVISIONS

7.1 Entire Agreement. This LEASE is the entire agreement between LESSOR and LESSEE and supersedes all prior or contemporaneous written and oral agreements, negotiations, correspondence, course of dealing and communications between LESSOR and LESSEE relating to the same subject matter.

7.2 Modification and Severability. This LEASE may be modified only as stated in a writing signed by both LESSOR and LESSEE which specifically states that it is an amendment to this LEASE. If any provision in this LEASE is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

7.3 Waiver. Any waiver of any term of this LEASE must be in writing. Failure, neglect, or delay by a party at any time to enforce the provisions of this LEASE will not be considered a waiver of that party's rights under this LEASE. Any waiver shall not be considered a waiver of any later breach or of the right to enforce any provision of this LEASE.

7.4 Counterparts. This LEASE may be executed in one or more counterparts, each of which shall be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts constitutes effective delivery.

7.5 Notices. Notices and consents under this LEASE must be in writing and delivered by mail, courier to the parties at:

[NAME OF RESPONSIBLE CITY OFFICIAL]
Providence City Hall
25 Dorrance St.
Providence, RI 02903

[NAME AND ADDRESS OF RESPONSIBLE PARTY FROM SOUTHSIDE]
Margaret DeVos
Executive Director
Southside Community Land Trust
109 Somerset
Providence, RI 02906

These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section will be considered given two business days after deposit in the mail, or the first business day after delivery to a courier.

7.7 Governing Law; Jurisdiction and Venue. This LEASE is governed by Rhode Island law. LESSEE consents to the exclusive jurisdiction and venue of the state and federal courts of Providence, Rhode Island.

IN WITNESS WHEREOF, the LESSOR and LESSEE have executed this instrument dated as of the first above written.

THE CITY OF PROVIDENCE

WITNESS: SOUTHSIDE COMMUNITY LAND TRUST

_____ BY: _____

WITNESS: ALAN SEPE, Acting Director of City Property

_____ BY: _____

Approved as to form and correctness:

Jeffrey M. Padwa
City Solicitor