

RESOLUTION OF THE CITY COUNCIL

No. 317

Approved June 11, 2015

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 expand on the Lots of Hope initiative to combat blighted properties and increase 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 Council of the City of Providence does hereby authorize His Honor the Mayor to enter into a lease agreement with Groundwork Providence of 8 Third Street, Providence Rhode Island for an initial period not to exceed three years, for the City-owned lots located at 433 Prairie Avenue.

IN CITY COUNCIL

JUN 04 2015

READ AND PASSED

PRES.

CLERK

I HEREBY APPROVE

Mayor

Date:

6/11/15

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 GROUNDWORK PROVIDENCE, (hereinafter referred to as "LESSEE"), having an address of 8 3rd Street, Providence, RI 02906, this _____ day of _____, 2015.

WITNESSETH

WHEREAS, LESSOR owns one parcel totaling 3,211 square feet in Providence, Rhode Island, described as:

Plat	Lot	Address	Square Footage
48	662	433 Prairie Avenue	3,211

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

WHEREAS, LESSEE is desirous of leasing from LESSOR the PARCEL in order to maintain a garden to include a seasonal extension facility (combined passive solar greenhouse and low tunnel), potting shed with wash station, outdoor raised bed growing space, water connection, electric connection and compost infrastructure; 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 and greenhouse (hereinafter referred to as the "GARDEN"). LESSEE is permitted to conduct on-site sales of produce grown on-site, in compliance with City and State regulations.

1.3 Term. The term of this LEASE starts on [_____, 2015] and ends on December 31, 2017. 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 an additional 3 -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. On the date that this LEASE is signed, LESSEE will pay LESSOR \$1.00 annual rent for Year 1 [_____, 2015 to December 31, 2015]. Annual rent will remain at \$1.00 per year for

year 2 [January 1, 2016-December 31, 2016] and Year 3 [January 1, 2017-December 1, 2017]. Rent for each subsequent year will be due on the first day of each subsequent year. For any subsequent renewal term, LESSOR may, in its sole discretion, increase the amount of the annual rent payment by notifying LESSEE three (3) months prior to the start of such renewal term.

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 at the GARDEN, including, without limitation, obtaining any permits required. LESSEE has sole responsibility for practicing safe soil practices and any other practices as required by the City if it establishes Soil Safety Guidelines during the term of this lease. 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. LESSEE is obligated to inform the LESSOR of maintenance and repair issues that the LESSEE is unable to do.

2.3 Comply with Laws. LESSEE will use and operate the GARDEN in compliance with all applicable zoning, environmental, and other laws and regulations. LESSEE may not use the GARDEN to grow any plants considered illegal under state or federal law.

2.4 Maintenance. LESSEE will maintain the GARDEN 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 or 8pm, whichever is later. LESSEE shall promulgate garden “rules and regulations” which shall be visibly posted at the entrance of the garden.

2.6 Security. LESSEE will maintain a system, where practicable, to prevent entrance to the GARDEN outside of operating hours and/or when the PARCEL is unattended, such as a system of fences and locks.

2.7 No Alterations. LESSEE may not make or permit any 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 belong to LESSOR, except for 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 a reasonable effort 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 2.9 is void and is a default under this LEASE. LESSEE may sublet parts of the PARCEL to be used by others for the sole purpose of gardening ("TENANTS"). LESSEE may charge for the sublet of parts of the PARCEL. LESSEE agrees to sublease plots to TENANTS for no more than \$50 per plot, exact amount to be determined by the LESSEE based upon the size of the plot and ability to pay. Funds LESSEE receives from TENANTS will be used by LESSEE 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.

2.10 Right of Inspection. LESSOR may enter the PARCEL at all reasonable times to inspect the PARCEL and evaluate whether LESSEE is in compliance with the terms of this LEASE, and for the purposes of taking any other actions LESSOR believes are appropriate to protect LESSOR's interest in the PARCEL. *[LESSEE will provide a key to any gate to the PARCEL.]* This Section 2.10 does not impose any duty on LESSOR to inspect the PARCEL, report to LESSEE the results of any inspection or assume any liability of any kind arising from inspecting or not inspecting the PARCEL.

2.11 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 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.

2.12 No Fires. LESSEE may not 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. If LESSEE fails to cure the breach within ten (10) days after receipt of such notice, LESSOR may terminate this LEASE by providing written notice, with the termination date effective ten (10) days after delivery of such notice to LESSEE. LESSOR will, in its sole discretion, 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 with LESSOR prior to and after termination of this LEASE in

order to minimize impact on the community and LESSOR's use of the PARCEL. LESSOR shall remove all materials from the PARCEL not later than four (4) months after the termination or expiration of this LEASE.

4.4 Personal Property. If LESSEE or any gardener 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 account and 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 the period permitted by law, LESSOR may sell it in accordance with the law and apply the proceeds of the sale to any amounts LESSEE owes LESSOR under this LEASE, or retain LESSEE's property, granting LESSEE credit for the reasonable value of LESSEE's property against any amounts owed by LESSEE to LESSOR.

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 will be in addition to all rights, powers, and remedies given to LESSOR at law or in equity. 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 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 agents, contractors, family members, guests, or any other person in a relationship with LESSEE or LESSEE's agents or otherwise participating in or present on the PARCEL (LESSEE and such persons are referred to collectively as "LESSEE PARTIES"), which 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 5.1 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 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 belonging to LESSEE, 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. Subject to the prior provisions, LESSOR shall not be liable for any damage or damages of any nature whatsoever to LESSEE caused by explosion, fire, theft, crime, or negligent behavior, by sprinkler, drainage,

plumbing, or irrigation systems, by failure for any cause to supply adequate drainage, 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, by natural occurrence, riot, court order, requisition, or order of governmental body or authority, or for any damage or inconvenience which may arise through repair, maintenance, or alteration of any part of the PARCEL, or 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 made on an "occurrence" basis and not a "claims made" basis.

6.2 Evidence of Insurance. On or before LESSOR delivers possession of the PARCEL to LESSEE, LESSEE will provide LESSOR with a copy of the insurance policy 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 policy, 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 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 Third-Party Beneficiaries. Except as specifically provided in Section 5 of this LEASE, this LEASE is for the exclusive benefit of LESSOR and LESSEE, and not for the benefit of any third party including, without limitation, any gardener, employee, or volunteer of LESSEE. All LESSOR Parties are an express third party beneficiary of Section 5.

7.6 Notices. Notices and consents under this LEASE must be in writing and delivered by mail, or courier. These addresses may be changed by written notice to the other party. Notices given in the manner provided by this Section 7.6 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: Amelia Rose, Executive Director,
Groundwork Providence

_____ BY: _____

WITNESS: Alan Sepe, Acting Director of City Property

_____ BY: _____

Approved as to form and correctness:

Jeffrey Dana
City Solicitor

