

**PREMISES USE AGREEMENT
626 W. SOUTH STREET**

THIS PREMISES USE AGREEMENT is made and entered into this ____ day of _____, 2015, by and between CITY OF ORLANDO, FLORIDA a municipal corporation organized and existing under the laws of the State of Florida (“CITY”) and GROWING ORLANDO, INC., a Florida not for profit corporation (“GROWING ORLANDO”).

RECITALS

- A. CITY owns certain real property which is located at the southwest corner of West South Street and Hicks Avenue in the Parramore neighborhood, having the address 626 W. South Street, Orlando, Florida, as more particularly described herein; and
- B. GROWING ORLANDO is a non-profit urban garden initiative, addressing access to food in Orlando; and
- C. CITY and GROWING ORLANDO are entering in to this agreement with the intent to provide the public benefits of food access, community nutrition and education on a vacant CITY owned lot in the Holden/Parramore neighborhood; and
- D. At GROWING ORLANDO’s request, CITY has agreed to allow GROWING ORLANDO to use the property on a temporary basis as an amenity for the use and benefit of the general public and in particular the citizens of Orlando; and
- E. GROWING ORLANDO acknowledges that CITY’s property is designated as Residential Low Intensity on the City’s Future Land Use Map, and is zoned R-2B/T/PH and a Conditional Use Permit (CUP) is required in order to operate an urban garden on the property; and
- F. GROWING ORLANDO acknowledges that its use of CITY’s property is temporary and shall be subject to the terms and conditions of CUP2015-00009 which has been approved for the temporary use of the property for urban gardening.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and GROWING ORLANDO agree as follows:

- 1. Recitals. The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement, as if fully set forth herein.
- 2. Premises. CITY does hereby grant GROWING ORLANDO the right to use the property described in **Exhibit “A”** attached hereto and made a part hereof (“Premises”) on a temporary basis in an “AS IS WHERE IS” condition, and GROWING ORLANDO does hereby accept the benefits and obligations with regard to the Premises as set forth herein.
- 3. Term of Agreement. The term of the Agreement shall commence on September 21, 2015

("Commencement Date") and end approximately five (5) years thereafter on August 31, 2020, ("Expiration Date"), unless prior thereto the term is extended or terminated as provided herein. GROWING ORLANDO acknowledges CITY shall have no responsibility to perform any work to the Premises as a condition to turning over the Premises on the Commencement Date.

4. Renewal of Agreement. Provided that GROWING ORLANDO is not in breach or default of this Agreement, the term of this Agreement may be renewed for five (5) additional one (1) year terms, upon terms and provisions mutually agreeable to both parties.

5. Use of Premises.

A. Authorized Activities. GROWING ORLANDO shall confine all activities on the Premises generally to those related to the growing, cultivating and harvesting of crops. Other activities may include educational workshops, seminars and the like. The Premises shall be open to the public free of charge during normal operating hours. GROWING ORLANDO may deny access to members of the public that cause a nuisance or otherwise violate any CITY ordinances applicable to the Premises. GROWING ORLANDO may impose other rules of operation within the Premises so long as they are uniformly applied and do not otherwise violate any U.S. or Florida constitutionally protected rights of the public.

B. Prohibited Activities. Prohibited activities and those similar thereto, which shall not be allowed on the Premises are as follows:

1. Construction of permanent structures;
2. Commercial activities;
3. Garage sales or other sales activities;
4. Raising or housing farm animals
5. Storage of farm machinery, fertilizers or pesticides other than what is needed for the garden;
6. Storage of composted organic material other than what is needed for the garden; or
7. Parking

The foregoing is merely illustrative and not meant to be exclusive.

C. Public Benefit Use. The primary use of the Premises is provision of nutritional and educational public benefit to the community. The public benefit of the garden may include, but not be limited to, an educational "how-to, hands-on" component to teach local residents how to grow food for personal use. The long term plan of GROWING ORLANDO is to open a produce stand in the Parramore/Holden neighborhood that would accept SNAP/EBT and would include a worker-share program for consistent volunteers who could exchange their work time for produce credit.

6. Improvements.

A. Authorized Improvements. Improvements GROWING ORLANDO may choose to make include but are not limited the following:

1. Install irrigation
2. Construct planting beds, seed tables, and other such planting requirements
3. Plant additional canopy trees, accent trees, fruit trees and plantings.
4. Construct composting enclosures, bins, or barrels to create compost for use on the Premises.
5. Construct a tool-shed.
6. Install seating areas and internal walkways.
7. Other minor improvements as approved by the City.

All of the foregoing are generally herein referred to as the "Improvements". GROWING ORLANDO shall not construct any Improvements until they have been approved and permitted by CITY for meeting all applicable City Codes with regards to setbacks, size and height per the applicable R-2B/T/PH development standards. GROWING ORLANDO shall apply for and obtain all licenses, permits and approvals for the Improvements as required by CITY in its regulatory capacity and all other required permitting bodies.

B. Construction and Installation of Improvements. GROWING ORLANDO shall submit construction plans for Improvements by no later than November 21, 2015 and proceed with all deliberate speed without interruption to obtain all permits and licenses necessary to install the Improvements on the Premises. Unless otherwise agreed to in writing by CITY, GROWING ORLANDO shall commence construction and installation of the Improvements within ninety (90) days of the date all permits have been issued. GROWING ORLANDO shall complete all Improvements by no later than one hundred eighty (180) days after commencement thereof, subject to delays caused by force majeure events. Upon commencement of construction and installation, GROWING ORLANDO shall diligently and continuously proceed with the work until completed. Upon completion GROWING ORLANDO shall furnish CITY two (2) sets of As-Built Drawings of the Improvements, and thereafter GROWING ORLANDO may make minor modifications, alterations and changes to the Improvements without CITY's approval; provided however, the general character of the Improvements shall not be changed. Likewise, any other changes which may require regulatory approval may not be made without CITY's consent.

C. Ownership of Improvements. GROWING ORLANDO shall own all Improvements throughout the term of this Agreement, but shall not "name" or "dedicate" any of them or the Premises itself. Upon the expiration or earlier termination of this Agreement, title to the Improvements shall automatically vest in CITY free and clear of all liens and encumbrances. CITY shall not be required to compensate GROWING ORLANDO for any Improvements.

7. Use Fee. A fee ("Fee") for the initial and each renewal term of this Agreement shall be One Dollar (\$1.00) per year, payable in advance upon the execution of this Agreement and all renewals thereof. The Fee amount is determined by and contingent upon GROWING ORLANDO fulfilling and maintaining the primary usage of the garden as a public benefit use. All Fees shall be paid by check, cash, cashier's check, or money order to City of Orlando and mailed or hand-delivered to the Real Estate Division Manager, City of Orlando, 7th Floor, City Hall, 400 South Orange Avenue, Orlando, Florida 32801.

8. Maintenance and Repairs. Throughout the term of this Agreement, GROWING ORLANDO shall be solely responsible for the maintenance, upkeep and repair of the Premises and all present and future Improvements. GROWING ORLANDO shall maintain such items and the Premises in good, safe and sanitary first-class condition throughout the term of this Agreement.

CITY shall be permitted to inspect the Premises and Improvements as often as CITY reasonably deems necessary. CITY shall notify GROWING ORLANDO in writing of any items in a state of disrepair or otherwise not maintained to the standard of care required per this Agreement. GROWING ORLANDO shall have ten (10) days from its receipt of the notice to repair or clean up the items, unless the nature of such repair is that it cannot be accomplished within ten (10) days, in which case GROWING ORLANDO shall be allowed a reasonable period of time to make repairs or otherwise address the problem, provided GROWING ORLANDO promptly and diligently pursues same. The failure of GROWING ORLANDO to take such needed action within such time period shall be a breach of this Agreement. The failure of CITY to provide GROWING ORLANDO a list of repairs or other items to be addresses shall not relieve GROWING ORLANDO of its maintenance and repair obligations. In any instance where GROWING ORLANDO has failed to properly maintain the Premises after notice and demand by CITY, GROWING ORLANDO shall be responsible for all costs and expenses associated with CITY's having to repair, restore or clean up the Premises, as determined in the reasonable discretion of CITY, should CITY take steps to correct any such conditions.

9. Security. GROWING ORLANDO, if desired, shall secure the Premises at its expense.

10. Utilities. Throughout the term of this Agreement, GROWING ORLANDO shall be responsible for arranging and paying for all utilities utilized in the operation and maintenance of the Premises, including, but not limited to water, irrigation, electric and refuse collection service.

11. Signage. GROWING ORLANDO shall install signage listing normal hours of operation and phone number of GROWING ORLANDO's offices and providing notification that the Premises are open to the general public. All signage is subject to the Conditional Use Permit ("CUP") for the Premises, which is attached hereto, as **Exhibit "B"** and CITY's sign regulations, including but not limited to a prohibition against political campaign signs per Section 64.252 of the City Code.

12. Default.

A. GROWING ORLANDO's failure to correct a deficiency or otherwise fulfill an obligation under this Agreement, within thirty (30) calendar days after receipt of written demand by CITY, shall constitute an event of default under this Agreement. CITY's failure to correct a deficiency or otherwise fulfill an obligation, within thirty (30) calendar days after receipt of written demand by GROWING ORLANDO, shall constitute an event of default under this Agreement.

B. Conditions for Default. Conditions for default of this Agreement include all outlined in the Agreement, including but not limited to:

1. Failure to fulfill the Public Benefit Use conditions
2. Failure to maintain the Premises
3. Abandonment

4. Gardening discontinued for more than four (4) consecutive months

C. Upon the occurrence of an event of default by either party, the other shall have the option to pursue either of the following remedies, without further notice or demand:

1. Terminate this Agreement; or
2. File an action for specific performance of this Agreement.

No other remedies shall be available to either party, all others being specifically waived hereby. Notwithstanding the foregoing should a court elect to award damages for a default, neither party will be responsible to the other for any indirect, special, incidental, exemplary, punitive or consequential loss or damage whatsoever (including lost profits, loss of use and opportunity costs) arising out of this Agreement or anything done in connection herewith, whether based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

13. Termination for Convenience. This Agreement may be terminated:

A. By GROWING ORLANDO for its convenience at any time, by giving CITY at least one hundred twenty (120) days' prior written notice of termination. "Termination Date" whenever used in this Agreement in reference to a notice of termination for convenience shall mean the final date by which GROWING ORLANDO must vacate the Premises, after a notice of termination for convenience is sent to a party.

B. By CITY, for its convenience at any time, by giving GROWING ORLANDO at least one hundred twenty (120) days' prior written notice of termination.

14. Insurance and Indemnification.

Insurance:

A. GROWING ORLANDO, at its own expense, shall keep in force and at all times maintain during the term of this Agreement the following types and amounts of insurance:

1. Commercial General Liability Insurance. Commercial General Liability, with contractual liability coverage, with limits of not less than One (1) Million Dollars (\$1,000,000.00) per occurrence, Two (2) Million Dollars (\$2,000,000.00) annual aggregate, for Bodily Injury (BI) and Property Damage (PD).

2. Property Damage Casualty Insurance. At the present time property damage casualty insurance will not be required in that no improvements are in need of coverage, but should future improvements be installed after consent of CITY, CITY may require that such insurance be provided.

B. CITY, its elected and appointed officials, officers, agents, employees, successors and

assigns, shall be named as additional insureds on all insurance policies with the exception of workers' compensation, with the broadest form of such coverage from time to time available in the area in which the Premises are located, for, including but not limited to, all matters arising out of the ownership, use, occupancy or maintenance of the Premises.

C. GROWING ORLANDO shall provide CITY with Certificate(s) of Insurance on all policies of insurance and renewals thereof on an annual basis in a form(s) reasonably acceptable to CITY.

D. CITY reserves the right to modify any aspect of the insurance requirements, including the addition of new types of coverage, as the result of reasonable and prudent risk management review of the activities upon or associated with the Premises.

E. GROWING ORLANDO notify CITY in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) calendar days prior to the effective date of said action.

F. All insurance policies shall be primary and issued by companies with a Financial Rating of "A-" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports, licensed and authorized to do business under the laws of the State of Florida.

G. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of GROWING ORLANDO or CITY beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, Florida Statutes or other statute. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or other operation of law.

Indemnification:

GROWING ORLANDO shall indemnify, defend, save and hold harmless CITY, its elected and appointed officials, officers, agents, councils, departments, boards, employees, successors and assigns (herein referred to as "Indemnified Parties") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (herein referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of GROWING ORLANDO or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to GROWING ORLANDO's occupancy and use of the Premises. It is the specific intention of the parties that the Indemnified Parties shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnified Parties, be indemnified by GROWING ORLANDO from and against any and all claims.

15. Compliance with Laws. GROWING ORLANDO shall obtain all certificates, permits, and other approvals that may be required by any federal, state, or local authority for the operation of the Premises and the construction of the Improvements on the Premises. GROWING ORLANDO shall

comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations relating to the Premises and the construction and installation of the Improvements, including, but not limited to, all environmental and hazardous substance laws, rules and regulations, the Florida Building Code (FBC), and the Americans With Disabilities Act (ADA). The payment of any penalties or fines arising out of or in any way connected with the violation of, or non-compliance with, the foregoing shall be GROWING ORLANDO's responsibility.

16. Taxes. The payment of all applicable real estate and personal property taxes relating to the Premises, including any stormwater utility fees and taxes on the Improvements, if any, shall be the sole responsibility of GROWING ORLANDO, subject to any exemptions from the payment of such taxes under federal, state or local law or ordinance.

17. Damage or Destruction of Improvements to Premises. If the Improvements or any portion thereof are destroyed or damaged, GROWING ORLANDO shall restore the Improvements to the condition in which they existed prior to the loss. GROWING ORLANDO shall repair, reconstruct or replace such Improvements at its sole cost and expense diligently pursued to completion within thirty (30) from the date of the loss, subject to delays caused by force majeure events.

Since GROWING ORLANDO will repair or reconstruct such Improvements, it shall retain all insurance proceeds payable as a result of such damage or destruction under policies required by **Section 14** of this Agreement. To the extent GROWING ORLANDO's insurance proceeds are paid, they shall first be used for the restoration. All insurance proceeds shall be held in trust for the benefit of CITY and GROWING ORLANDO, to be used solely for reconstruction, repair or restoration of the Premises, as applicable. Any excess proceeds shall become the sole property of GROWING ORLANDO only after payment of all charges for the work to be completed as required in this Section of this Agreement.

18. Condemnation. Should an eminent domain proceeding result in a taking of the entire Premises (or such portion thereof as renders the remainder of the Premises unusable for the uses described herein in the reasonable opinion of both parties), this Agreement shall automatically terminate as of the date title to the Premises vests in the condemning authority. In that event GROWING ORLANDO shall not be entitled to any of the award for the taking of the Improvements or otherwise, and CITY shall receive the full amount of such award. GROWING ORLANDO hereby expressly waives any right or claim to any portion of the award and all damages, whether awarded as compensation for diminution in value of the Improvements or Premises. CITY will inform GROWING ORLANDO of the commencement of any eminent domain proceedings by any governmental authority.

19. Advertising and Promotion. GROWING ORLANDO shall not use CITY's name or logo in advertising or promoting the Premises without CITY's prior, written consent.

20. Estoppel Certificate. Either party shall at any time and from time to time upon not less than fifteen (15) days prior request by the other party deliver to the requesting party a statement in writing certifying whether (a) this Agreement is in full force or has been modified (if there have been modifications, that this Agreement is in full force as modified and identifying the modifications); (b) the date to which Fees and other charges have been paid; (c) whether the party requesting the Estoppel Certificate is in default of this Agreement; and (d) such other matters as the

party may reasonably request.

21. Notices. All notices, requests, demands, and other communications required or given hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, to the following addresses:

If to CITY to:

Real Estate Division Manager
City Hall 7th Floor
400 S. Orange Avenue
Orlando, FL 32801
Phone No. 407.246.2655
Fax No. 407.246.3129

With a copy to:

Sustainability Director
City Hall, 3rd Floor
400 S. Orange Avenue,
Orlando, FL 32801
Phone No. 407.246-3641

If to GROWING ORLANDO to:

Executive Director
Address: _____

Phone No. _____
Fax No. _____

22. Attorney's Fees. In any legal action or proceeding brought by either party for default or breach of this Agreement or to enforce any provision hereof, each party shall pay its own attorney's fees at both trial and on appeal.

23. Assignment/Subletting. GROWING ORLANDO shall not assign this Agreement or any part thereof without the prior written consent of CITY, which may be withheld for any or no reason.

24. Liens. GROWING ORLANDO shall insure that no liens or claims of liens are recorded against the Premises by any party, and the recording of any such lien, unless removed within thirty (30) days of filing, shall be a default by GROWING ORLANDO of this Agreement.

25. Unlawful Discrimination. GROWING ORLANDO covenants and agrees that no person shall be unlawfully discriminated against in the design, construction, use and operation of the Premises pursuant to this Agreement.

26. No Partnership or Joint Venture. Nothing contained in this Agreement shall constitute or be

construed to be or create a partnership or joint venture between CITY and GROWING ORLANDO.

27. CITY Maintenance Support. CITY will not provide maintenance support to GROWING ORLANDO for clearing, cleaning, constructing or maintaining the Premises.

28. Miscellaneous.

A. The Premises will be taken on an as-is bases, with no guarantee to soil quality or suitability of the site for planting or growing food. Any and all soil testing or other such due diligence will be completed at the sole cost of GROWING ORLANDO

B. CITY and GROWING ORLANDO represent that each, respectively, has full right, power, and authority to execute and enter into this Agreement.

C. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind relating to the Premises not set forth or specifically identified herein.

D. This Agreement shall be construed in accordance with the laws of the State of Florida. The location for the settlement of any disputes arising out of this Agreement shall be Orange County, Florida.

E. If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.

F. Neither this Agreement nor a memorandum may be recorded in the Public Records of Orange County, Florida.

This Agreement has been executed by the parties to become effective as of the date first set forth above.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES OF PARTIES
APPEAR ON FOLLOWING PAGES.)

CITY OF ORLANDO, FLORIDA

By: _____

Print Name: _____

Mayor/Pro Tem

Signed on: _____, 2015

ATTEST:

Celeste T. Brown, City Clerk

APPROVED AS TO FORM AND
LEGALITY for the use and reliance
of the City of Orlando, Florida, only.

Dated: _____, 2015

By: _____

Print Name: _____

Title: Assistant City Attorney

GROWING ORLANDO INC., a
Florida not for Profit Corporation

By: _____

Print Name: _____

Title: _____

Signed on: _____, 2015

Witnesses:

(1) Sign: _____

Print Name: _____

(2) Sign: _____

Print Name: _____

EXHIBIT "A"
(Legal Description of Premises)

The East 84.7feet of Lot 1, Block 1, Less the South 58.7 feet, Patrick's Second Addition to Orlando, according to the Plat thereof, as recorded in Plat Book A, Page 134 of the Public Records of Orange County Florida.

EXHIBIT "B"
(Conditional Use Permit)