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..Title
Grow Annapolis, Inc. Lease Agreement – For the purpose of approving the lease for certain City-owned property located at the corner of Jefferson Street and Brashears Street, Annapolis, Maryland 21403, between Grow Annapolis, Inc. and the City of Annapolis; and matters generally relating to said lease.

..Body

CITY COUNCIL OF THE
City of Annapolis

Ordinance 8-19

Introduced by: Mayor Buckley

Referred to

AN ORDINANCE concerning

Grow Annapolis, Inc. Lease Agreement

FOR the purpose of approving the lease for certain City-owned property located at the corner of Jefferson Street and Brashears Street, Annapolis, Maryland 21403, between Grow Annapolis, Inc. and the City of Annapolis; and matters generally relating to said lease.

WHEREAS, the City is the fee simple owner of a parcel of land located at the corner of Jefferson Street and Brashears Street in Annapolis, Maryland 21403, near the Eastport Fire Station at 914 Bay Ridge Avenue, Annapolis, Maryland 21403, and as more accurately described in a deed dated May 12, 2014 and recorded at Liber 27474, folio 060 among the Land Records of Anne Arundel County (collectively, the “Premises”), and as more particularly described in Attachment A attached hereto and incorporated herein; and

WHEREAS, Grow Annapolis, Inc., a Maryland 501(c)(3) corporation, wishes to lease the Premises for the purpose of maintaining and operating the “Eastport Firehouse Community Garden” on the Premises, which currently includes rental garden plots, church gardens, and giving gardens that provide donations to local food pantries and shelters; and

WHEREAS, Grow Annapolis, Inc.’s use of the Premises promotes improved nutrition, physical activity, community engagement, safety, educational opportunities, and economic vitality for a City neighborhood and its residents; and

1 **WHEREAS**, Grow Annapolis, Inc.'s use of the Premises further has environmental
2 benefits, including: reflecting radiation from the sun to reduce the heat
3 island effect in cities and cooling the climate in urban areas; promoting
4 eating locally produced foods to reduce fuel consumption, carbon dioxide
5 emissions, and a variety of other negative environmental consequences
6 associated with the transportation of foods; providing an absorbent
7 substance to reduce runoff from the rain and help minimize surface erosion;
8 reduce pollutants in the air by absorbing carbon dioxide; and providing
9 corridors for retaining native wildlife and supporting migratory species; and

10
11 **WHEREAS**, the City is willing to lease the space to Grow Annapolis, Inc. for the
12 purposes described and in accordance with the terms and conditions set
13 forth in the Lease Agreement attached hereto and incorporated herein; and

14
15 **WHEREAS**, Article III, Section 8 of the Charter of the City of Annapolis requires the
16 passage of an ordinance to authorize the lease.

17
18 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**
19 **CITY COUNCIL** that the Lease Agreement, a copy of which is attached hereto and made
20 a part hereof, between the Grow Annapolis, Inc. and the City of Annapolis for the lease of
21 certain municipal property, is hereby approved and authorized.

22
23 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
24 **ANNAPOLIS CITY COUNCIL** that in accordance with Article III, Section 8 of the
25 Charter of the City of Annapolis, the proposed lease of City-owned property will better
26 serve the public need for which the property was acquired.

27
28 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
29 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
30 passage.

31
32 **EXPLANATION**

33 ~~Strikethrough~~ indicates matter stricken from existing law.

34 Underlining indicates matter added to existing law.

35

1
2 b. Provided that the Tenant is not otherwise in default hereunder and continues
3 to occupy the Premises, the Tenant shall have the option to renew this Lease for ten
4 successive terms of one year upon the same terms and conditions herein except as may
5 otherwise be provided for in a written amendment to this Lease (each a “Renewal Term”
6 and collectively the “Renewal Terms”). Each Renewal Term shall commence and run with
7 the City fiscal year (July 1st – June 30th). The Tenant’s option to renew shall be considered
8 automatically exercised unless the Tenant gives the City at least sixty calendar days written
9 notice before the expiration of the Term, or any Renewal Term thereof, that it does not
10 want to renew.

11
12 **2. Use of Premises.**

13
14 a. The Tenant may use and occupy the Premises during the Term of this Lease
15 for the purpose of maintaining and operating the “Eastport Firehouse Community Garden”
16 on the Premises (the “Garden”) including rental garden plots, church gardens, and giving
17 gardens that provide donations to local food pantries and shelters, and for only those other
18 activities reasonably related to a community garden. All activities and operations related
19 to the Garden must stay within the footprint of the Premises as specified in Attachment A.
20 All minors must be accompanied and supervised by an adult at the Premises and the
21 Garden, and the Tenant shall post a sign on the Premises to that effect in accordance with
22 Paragraph 8. The Tenant may maintain and have access to a mulch pile for use on the
23 Premises at the location shown on Attachment A. The Tenant may maintain and have
24 access to a rain barrel system located on the storage building adjacent to the Premises, and
25 as further shown on Attachment A. The Tenant may not install a playground or any similar
26 equipment or facilities on the Premises.

27
28 b. The Tenant accepts the Premises in “as is” condition. The City makes no
29 representation or warranty with respect to the condition or state of the land or the Premises,
30 or its fitness for any particular use, and the City shall not be liable for any latent or patent
31 defect thereon. Unless as otherwise expressly provided in this Lease, the City does not
32 make, and specifically disclaims, any representations, warranties or covenants of any kind
33 or character, express or implied, with respect to the nature, condition, economical,
34 functional, environmental or physical condition of the Premises.

35
36 c. The Tenant shall not use or occupy or permit the Premises, or any part
37 thereof, to be used or occupied, nor do or permit anything to be done in or on the Premises
38 in a manner which would in any way (1) violate any of the terms of this Lease; (2) make
39 it difficult for either the City or the Tenant to obtain fire or other insurance required by this
40 Lease at standard rates; (3) cause or create a public or private nuisance in or on the
41 Premises; or (4) tend to impair or interfere with the character, reputation or appearance of
42 the Premises.

43
44 **3. Rent.**

45

1 In lieu of monetary rental payments, the Tenant shall, at its sole cost and expense,
2 maintain and operate the Garden on the Premises, as specified in this Agreement and
3 depicted on Attachment A. If the Tenant fails to comply with this requirement, then the
4 remedies of Paragraph 21 shall fully apply.

5
6 **4. Quiet Enjoyment.**

7
8 The Tenant may peaceably and quietly have, hold and enjoy the Premises for the
9 Term of this Lease subject, however, to the terms of this Lease and compliance with these
10 terms.

11
12 **5. Utilities/Services.**

13
14 a. The Tenant may use water and have use of an exterior electrical receptacle
15 from the Eastport Fire Station in connection with the operation of the Premises and the
16 Garden for the Original Term and the first Renewal Term.

17
18 b. The Tenant must obtain the approval of the City Fire Chief no later than the
19 January 31st preceding any subsequent Renewal Term in order to continue using water and
20 the exterior electrical receptacle from the Eastport Fire Station in connection with the
21 operation of the Premises and the Garden for that Renewal Term. The City recognizes that
22 access to water and electricity is essential to Tenant's successful operation and
23 maintenance of the Garden and will not unreasonably withhold its approval.

24
25 c. The Tenant, at its sole cost and expense, shall arrange for all trash and
26 recycling to be removed from the Premises. Yard waste may be left at a location designated
27 by the Annapolis Fire Chief for collection in accordance with City yard waste guidelines.

28
29 d. The Tenant, at its sole cost and expense, shall arrange and pay for
30 reasonable grounds maintenance of the Premises, the Garden, the existing and any
31 replacement fence, and all other currently existing or future structures. This maintenance
32 shall include, but not be limited to, reasonable mowing of the grass on the Premises, and
33 reasonable maintenance of the rain barrel system located on the storage building adjacent
34 to the Premises. The Tenant shall not be responsible for maintenance or mowing of any
35 areas outside the Premises, as shown on Attachment A.

36
37 **6. Tenant Equipment, Furnishings, Personal Property.**

38
39 The Tenant shall retain ownership of all of its equipment, tools, and personal
40 property from time to time installed, used or located on the Premises, including any sheds,
41 building materials, gardening tools and equipment, outdoor furniture, produce, and the rain
42 barrel system. The Tenant may remove any such equipment, tools, or personal property at
43 any such time during the Term and shall remove all of it prior to the expiration of the Lease.
44 Any such property not removed at the expiration of the Term shall be deemed abandoned
45 and, at the election of the City, shall become the property of the City without payment of

1 any kind to the Tenant, without increasing the City's liability to the Tenant, and for any
2 disposition of it as the City decides to make.

3
4 **7. Repairs and Maintenance.**

5
6 a. The Tenant, at its own cost and expense, shall keep and maintain the
7 Premises in good order and condition, and cause no waste or damages thereto.

8
9 b. The Tenant shall not make or cause to be made any alterations, additions,
10 or improvements to the Premises after the date of this Lease, including but not limited to,
11 any plans for changing the use of the Premises and/or any new projects to add to the
12 existing Garden, without prior written notice to City Fire Chief and City Manager and all
13 applicable adjoining property owners. A new project shall be considered approved if
14 neither the City Fire Chief or City Manager, nor any adjoining property owner objects in
15 writing within thirty calendar days from the date of notice.

16
17 c. Except for routine repairs reasonably related to daily maintenance of the
18 Garden and simple landscaping on the Premises, the Tenant or its contractors shall not start
19 or undertake any such repairs, replacements or alterations without the prior written notice
20 required in Paragraph 7(b) above, and without any written objections, and without first
21 obtaining all necessary permits and governmental approvals. Such repairs, replacements or
22 alterations shall be made and rendered by professional contractors licensed in the State of
23 Maryland as required by law or other permitting requirements, be done in a good and
24 workmanlike manner, and shall comply in all respects with all applicable federal, state,
25 local and City laws, ordinances and regulations, including, but not limited to, zoning,
26 building and fire code requirements.

27
28 d. The City shall have no liability to the Tenant by reason of any
29 inconvenience, annoyance, interruption, or injury to business or other use or occupancy
30 arising from making any repairs or changes that the City is required or permitted to make
31 in or to any portion of the Premises or the common areas, by any other tenant's lease, or
32 by law. Provided, however, that the City shall not install fencing or plant any trees around
33 or near the Premises that would cast shade over the Gardens.

34
35 **8. Signs.**

36
37 a. The Tenant shall not place or maintain any sign, billboard, marquee, awning,
38 decoration, placard, lettering, advertising matter or other thing of any kind, whether
39 permanent or temporary, on the Premises without prior written notice to City Fire Chief
40 and City Manager. A sign shall be considered approved if the City Fire Chief or City
41 Manager does not object in writing within thirty calendar days from the date of notice. Any
42 such sign shall be installed in accordance with all applicable zoning or legal regulations.

43
44 b. The Tenant shall maintain any sign, billboard, marquee, awning, decoration,
45 placard, lettering or advertising matter or other thing of any kind, as may be approved by

1 the City Fire Chief and the City Manager, and shall repair and replace when necessary to
2 keep in good condition and repair at all time.

3
4 **9. Driveways, Footways and Parking Areas.**

5
6 a. The Tenant's employees, agents, contractors, clients, guests, and invitees
7 shall be entitled to access to the Premises and use of the footways within the Premises,
8 subject to any rules and regulations as the City requires. Vehicular access to the Premises
9 for the delivery of heavy materials, mulch, and similar, shall ordinarily be permitted via a
10 regular vehicular route to the Premises. Tenant shall be responsible for repair of damage to
11 grass or parking areas caused by such vehicles. The Tenant shall not be permitted to park
12 any vehicles for any extended period of time on the Eastport Fire Station property,
13 including any open grass areas. Any vehicles temporarily parked on or near the Premises
14 for the loading or unloading of supplies shall be loaded or unloaded in a timely manner,
15 and immediately removed upon completion.

16
17 b. The City shall at all times have full and exclusive control, management and
18 direction of all driveways, footways and parking areas. With reasonable notice to the
19 Tenant, the City may restrict access to, temporarily close, construct, adjust, reduce or
20 perform such other acts to all or any portion of the parking areas or the facilities as the City
21 determines to be necessary or appropriate.

22
23 c. The City shall have the right, but not the duty, to police all driveways,
24 footways and parking areas.

25
26 **10. Non-Discrimination.**

27
28 a. The Tenant shall not discriminate against any person with regard to
29 membership policies, employment practices, or in the provision of or access to services
30 based on race, color, religion, national origin, ancestry, sex, age, or disability.

31
32 b. This provision shall not be construed to prevent the Tenant from rendering
33 services pursuant to this Lease to categories of individuals with specific needs.

34
35 **11. Assignment.**

36
37 Except for assignment and/or rental of garden plots on the Premises, the Tenant
38 shall not assign or sublet this Lease for the Premises without the prior written approval of
39 the City.

40
41 **12. Security, Property Loss Damage.**

42
43 a. The Tenant assumes all risks associated with the security of the Premises
44 (other than space rented to other tenants) and the Property. The City shall have no
45 obligation or duty with regard to security. The Tenant shall police and maintain the

1 Premises (other than space rented to other tenants) and the Property in a clean, safe and
2 secure manner.

3
4 b. The Tenant shall not under any circumstances issue any no trespass notices,
5 whether oral or written, or exclude any individual from the Premises or the Property for
6 any reason, except to prevent a crime from being committed on the Premises or the
7 Property. If the Tenant desires to issue any no trespass notices or exclude any individual
8 from the Premises and/or the Property, the Tenant shall send a written request to the City
9 and the City shall make the ultimate decision how and if to act on this request. This
10 paragraph does not prevent the Tenant from fencing and/or locking the Premises; provided
11 that a copy of the key and/or the code to any lock is supplied to the City Fire Chief.

12
13 c. The City, its elected officials, appointees, directors, employees, agents, and
14 representatives (the "Indemnified Parties") shall not be liable for any damage to property
15 of the Tenant or of others located on the Premises or entrusted to its or their employees nor
16 for the loss of any property by theft or otherwise, nor for any injury or damage to persons
17 or property resulting from theft, casualty, acts of God, fire of every nature and type, the
18 accumulation of snow or ice, explosion, falling plaster, steam, gas, electricity, wind, water,
19 rain or snow which may overflow or leak or be discharged from any part of the Premises
20 or from the pipes, appliances or plumbing works of the same or from the street or
21 subsurface or from any other place, or from dampness, or from any other cause whatsoever;
22 nor shall the City be liable for any such damage caused by other persons in the Premises,
23 or for damage caused by operations in construction of any public or quasi-public works.
24 All property of the Tenant kept or stored on the Premises shall be so kept at the risk of the
25 Tenant only and the Tenant shall indemnify, defend and hold the Indemnified Parties
26 harmless from any claims arising out of damage to the same, including subrogation claims
27 by the Tenant's insurance carrier.

28
29 **13. Compliance with Laws.**

30
31 a. The Tenant, at its sole cost and expense, shall keep in force all licenses,
32 consents and permits necessary for the lawful use of the Premises for the purposes of this
33 Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all
34 things required by any notice served upon it or upon the City in relation to the Premises or
35 any part thereof, from any of the departments or agencies of the City, a county, the State
36 of Maryland, or the United States, if the same shall be caused by the Tenant's use of the
37 Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages
38 that may in any manner arise out of the failure of the Tenant to comply. Failure to comply
39 with this Paragraph shall constitute a breach of this Lease, and the City may terminate this
40 Lease for default in accordance with Paragraph 21.

41
42 b. The Tenant shall have a reasonable time not to exceed ten calendar days to
43 comply with any notice pursuant to Paragraph 14(a), unless such violation relates to public
44 safety, in which case the City may order a temporary suspension of the Tenant's business
45 and other operations pending compliance.

46

1 **14. Insurance.**

2
3 a. The Tenant, at its sole cost and expense, shall maintain in full force and
4 effect during the Term of this Lease, and any Renewal Term, the following insurance
5 coverages insuring against claims that may arise from or in connection with the Tenant's
6 operation and use of the Premises.

7
8 1. Commercial General Liability Insurance Policy, including
9 contractual liability and property liability insurance for the Premises, written on an
10 occurrence basis, in adequate quantity to protect against legal liability arising out of this
11 Lease, but no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the general
12 aggregate, using a Combined Single Limit for bodily injury and property damage.

13
14 2. Workers' Compensation only to the extent required by Maryland
15 law.

16
17 b. On all Commercial General Liability Insurance policies, the City, its elected
18 officials, appointees, directors, employees, agents, and representatives shall be named as
19 additional insureds, which shall be shown on insurance certificates furnished to the City.

20
21 c. The Tenant shall submit to the City, simultaneously with the execution of
22 this Lease, Certificates of Insurance evidencing the coverage required by this Lease before
23 commencing the Term of this Lease. Such certificates shall provide that the City be given
24 at least thirty calendar days prior written notice of any cancellation of, intention not to
25 renew, or material change in coverage.

26
27 d. The Tenant's insurance policy or policies shall not relieve the Tenant of any
28 of its responsibilities or obligations under this Lease or for which the Tenant may be liable
29 by law or otherwise.

30
31 e. The Tenant's insurance policy or policies shall be issued by an insurance
32 company(s) authorized to do business within the State of Maryland.

33
34 **15. Indemnification.**

35
36 a. The Tenant shall be solely responsible for any and all injuries and damages
37 to persons and property resulting from any breach or default of this Lease by the Tenant,
38 or any negligent or intentional act or omission by the Tenant in carrying out the terms of
39 this Lease or otherwise arising from this Lease.

40
41 b. The Tenant shall indemnify, defend and hold the Indemnified Parties
42 harmless from and against all liability for injuries to persons, including death, and damage
43 to the Premises arising from acts or omissions of the Tenant, its officers, agents, employees,
44 contractors, patrons, volunteers, guests or invitees resulting in connection with this Lease.

1 c. The Tenant's indemnifications include reasonable attorney fees and costs
2 incurred by the City in defending any claims, complaints, causes of action, lawsuits, or
3 other such actions.

4
5 d. The City, in its sole discretion, may participate in handling its own defense
6 or exclusively handle its own defense, and select its own attorneys, including the City
7 Attorney. The indemnification for attorney fees applies whether or not the City Attorney
8 or other attorney handles the defense.

9
10 e. Tenant indemnification does not limit any immunity which the Indemnified
11 Parties are entitled to assert, and includes all costs and expenses, including attorney's fees,
12 whether or not related to administrative or judicial proceedings.

13
14 f. The Tenant shall reimburse the City, within thirty calendar days after invoicing for
15 such reimbursement as Additional Rent, for any damage to the Premises caused by the
16 negligence or willful misconduct of the Tenant, its officers, agents, employees, contractors,
17 patrons, volunteers, guests or invitees. All payments shall be made payable to the "City of
18 Annapolis" and shall be sent or delivered to the Finance Director, Finance Department,
19 City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. In the event any
20 payment under this Lease, or any part thereof, shall remain unpaid for a period of fifteen
21 business days after the day on which it is due, then in addition to all other sums due by the
22 Tenant under this Lease, the Tenant shall pay the City: (1) late fees equal to five percent
23 (5%) of the unpaid amount, and (2) if an action of any type is filed in any court, reasonable
24 attorneys fees.

25
26 **16. Impairment of the City's Title.**

27
28 The Tenant shall not have the right, power, or permission to do any act or to make
29 any agreement that may create, give rise to, or be the foundation for, any right, title, interest,
30 lien, charge, or other encumbrance on the estate of the City in the Premises. The Tenant
31 shall not permit any part of the Premises to be used by any person or persons or by the
32 public at any time or times during the Term of this Lease, in such manner as might tend to
33 impair the City's title to or interest in the Premises, or in such manner as might make
34 possible a claim or claims of adverse use, adverse possession, prescription, dedication, or
35 other similar claims of, in, to, or with respect to the Premises.

36
37 **17. Liens and Encumbrances.**

38
39 a. The Tenant shall not permit any liens for labor or materials to attach to the
40 Premises as a result of the improvements made or constructed upon the Premises by the
41 Tenant and if such liens do attach, the Tenant shall immediately cause such liens to be
42 discharged of record or bonded for the full amount of the lien. Failure of the Tenant to
43 discharge or bond for the full amount of any lien with thirty (30) calendar days of receipt
44 of notice thereof shall be cause for the City, at its option, to immediately terminate this
45 Lease and sue the Tenant for damages.

46

1 b. During the Term of this Lease, the Tenant shall not mortgage or encumber
2 the Premises or the Property.
3

4 **18. Taxes and Assessments.**
5

6 a. The Tenant shall pay all impositions including all state, county and City
7 taxes (including sales and use taxes, but excluding any real estate or real property taxes),
8 and assessments of any kind and nature whatsoever, including all interest and penalties on
9 them, which shall or may accrue or be incurred during the Term of this Lease related to the
10 Garden and/or the use of the Premises. The Tenant shall pay all such taxes and assessments
11 before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish
12 to the City, on request, official receipts or other satisfactory proof evidencing such
13 payment. If any tax or assessment is payable in installments over a period of years, the
14 Tenant shall be liable only for payment of those installments falling due and payable during
15 the Term, with appropriate pro-ration in case of fractional years.
16

17 b. Taxes and assessments shall not be deemed to include any municipal, state
18 or federal income taxes assessed against the City, or any municipal, state or federal capital
19 levy, estate, succession, inheritance or transfer taxes of the City, or any franchise taxes
20 imposed on the City.
21

22 **19. The City's Right of Entry.**
23

24 a. The City and its employees, representatives, agents, and servants, including
25 any builder or contractor employed by the City, shall have the absolute unconditional right
26 at any and all reasonable times, after not less than twenty-four hours notice to the Tenant
27 (except in the case of an emergency where no such notice is required), to enter the Premises
28 or the Property for any of the following purposes: (a) to inspect the Premises and the
29 Property; (b) to make such repairs and/or changes in the Premises or the Property as the
30 City may deem necessary or proper; (c) to enforce and carry out any provision of this Lease;
31 (d) for any purpose relating to the safety, protection or preservation of the Premises or the
32 Property; or (e) for any other purpose related to the enforcement of this Lease.
33

34 b. The City shall use reasonable efforts to minimize interference to the
35 Tenant's business or use of the Premises or the Property when making inspections or
36 repairs, but the City shall not be required to perform the inspections or repairs at any time
37 other than during normal working hours.
38

39 **20. Reservation of Governmental Authority.**
40

41 The City reserves the right at all times to exercise full governmental control and
42 regulation with respect to all matters connected with this Lease not inconsistent with the
43 terms of this Lease.
44

45 **21. Defaults or Breach.**
46

1 a. The occurrence of any one of the following events shall constitute a Default
2 or Breach under the terms of this Lease:

3
4 1. Failure by the Tenant to make any payment required to be made by
5 the Tenant under this Lease and the Tenant fails to remedy such default within five business
6 days after any such payment is due and payable.

7
8 2. Failure by the Tenant to observe or perform any of the covenants,
9 conditions or provisions of this Lease.

10
11 3. The Tenant's any general assignment or general arrangement for the
12 benefit of creditors, the filing by or against the Tenant of a petition to have the Tenant
13 adjudged a bankrupt or a petition for reorganization or arrangement under any law relating
14 to bankruptcy (unless in the case of a petition filed against the Tenant, the same is dismissed
15 within sixty calendar days), the appointment of a trustee or receiver to take possession of
16 substantially all of the Tenant's property located in the Premises or the Tenant's interest in
17 this Lease where such seizure is not discharged or bonded within ten business days, the
18 attachment, execution or other judicial seizure of substantially all of the Tenant's interest
19 in this Lease, where such seizure is not discharged or bonded within ten business days.

20
21 4. Vacating or abandonment of the Premises by the Tenant.

22
23 5. Any material misrepresentation by the Tenant to the City in
24 connection with the negotiation or execution of this Lease.

25
26 b. Upon the occurrence of a Default or Breach, the City may, after giving the
27 Tenant thirty calendar days written notice, proceed in the following manner:

28
29 1. Terminate this Lease and the Tenant's right to possession of the
30 Premises and with or without legal process, re-enter and take possession of the Premises
31 and remove the Tenant, any occupant and any property therefrom, without being guilty of
32 trespass or being liable to any suit, action or prosecution therefore, which liability the
33 Tenant hereby expressly waives, and without relinquishing any rights of the City against
34 the Tenant. Notwithstanding such re-entry and termination of this Lease, the Tenant shall
35 remain liable to the City for any payments or damages, including, but not limited to,
36 attorneys' fees, due or sustained prior thereto; or

37
38 2. Maintain the Tenant's right to possession, in which case this Lease
39 shall continue in effect, whether or not the Tenant shall have abandoned the Premises. In
40 such event, the City shall be entitled to enforce all of the City's rights and remedies under
41 this Lease.

42
43 c. No act or omission by the City shall be deemed to be an acceptance of a
44 surrender of the Premises or a termination of the Tenant's liabilities under this Lease,
45 unless the City shall execute a written release of the Tenant.

46

1 d. The City shall afford the Tenant a reasonable time to cure any default or
2 breach of this Lease before declaring a Default or Breach and terminating this Lease.

3
4 **22. Termination for Convenience.**

5
6 If the City, in its sole discretion, decides to sell the Premises, the City may terminate
7 this Lease by providing prior written notice to the Tenant no later than the January 31st
8 preceding any Renewal Term. Any such termination of this Lease by the City under this
9 paragraph shall not discharge the Tenant from any obligation it may have to the City by
10 reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise
11 (or the circumstances, events or basis of which shall occur or arise) prior to such
12 termination, whether the same be known or unknown at the time of such termination.

13
14 **23. Surrender of Premises.**

15
16 On the last day or earlier termination of this Lease, the Tenant shall vacate the
17 Premises and leave it in good condition and repair, normal wear and tear excepted. Any
18 holding over with the consent of the City after the termination of this Lease shall be
19 construed to be a tenancy from month-to-month upon the same terms and conditions as
20 provided in this Lease, to the extent applicable.

21
22 **24. Applying for Grants.**

23
24 The Tenant may not accept any grants from any federal, state, or local governmental agency
25 or department or any other source whether private or governmental to fund improvements to
26 the Premises, or that will place any restrictions on the Premises, or that will require the City
27 to incur any obligations or liabilities, without prior written approval from the City Office of
28 Law and the City Manager. Notwithstanding this provision, City recognizes that Tenant is a
29 non-profit organization that relies upon donations and grant funding in order to undertake its
30 mission to operate and maintain its gardens in several locations; therefore the City
31 acknowledges that the Tenant may accept, from any sources, grants and other funding that do
32 not specifically apply to the Premises, in order to fund operating expenses and general
33 maintenance and operation of the organization and its gardens, without seeking prior written
34 approval from the City.

35
36 **25. Modification.**

37
38 This Lease sets forth the entire agreement between the parties relative to the subject matter
39 of this Lease. No representation, promise or condition, whether oral or written, not
40 incorporated herein shall be binding upon either party to this Lease. This Lease shall not
41 be waived, amended or modified except in writing and signed by the authorized
42 representative(s) of both parties.

43
44 **26. Representations and Warranties.**

45
46 The Tenant represents and warrants to the City that:

1
2 a. The Tenant is a not-for-profit corporation organized under the laws of the
3 State of Maryland, qualified to do business and in good standing in the State of Maryland,
4 and authorized to conduct the business in which it is engaged and as described in this Lease.

5
6 b. The Tenant is authorized to execute, deliver and perform this Lease.

7
8 c. The Tenant shall not violate the order of any court or governmental
9 authority or breach any contract or other agreement by entering into this Lease.

10
11 d. There are no actions, suits, etc. pending or, to the best of its knowledge,
12 threatened against the Tenant or which might adversely affect the Tenant's right to enter
13 into or perform under this Lease.

14
15 e. The Tenant has been represented (or has had the opportunity to be
16 represented) in the execution of this Lease by independent legal counsel.

17
18 f. There exists no actual or potential conflict of interest between its
19 performance under this Lease and its engagement or involvement in any other agreement,
20 or personal or professional activities. In the event such conflict or potential conflict arises
21 during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise
22 the City in writing thereof.

23
24 g. The representations set forth in the Lease shall be true and valid throughout
25 the Term.

26
27 **27. Access to Records.**

28
29 a. At any time during normal business hours with reasonable prior notice from
30 the City, and as often as the City may deem necessary, the Tenant shall make available to
31 and allow inspection and copying by the City, its employees or agents, of all books, records,
32 accounts, reports, information and documentation of the Tenant related to the subject
33 matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and
34 financial audits.

35
36 b. The Tenant shall maintain all books, records, accounts, reports, information
37 and documentation required under this Lease for a period of at least three years after the
38 date of termination of this Lease including any renewals, except in the event of litigation
39 or settlement of claims arising from the performance of this Lease, in which case the Tenant
40 shall do so until three years after final adjudication of such litigation or settlement of
41 claims.

42
43 **28. Miscellaneous.**

44
45 a. Remedies Cumulative and Concurrent. No remedy provided by this Lease
46 or reserved to the City is intended to be exclusive of any other remedies provided for in

1 this Lease, and each such remedy shall be cumulative, and shall be in addition to every
2 other remedy given under this Lease, or now or hereafter existing at law or in equity or by
3 statute. Every right, power and remedy given to the City shall be concurrent and may be
4 pursued separately, successively or together against the Tenant, and every right, power and
5 remedy given to the City may be exercised from time to time as often as may be deemed
6 expedient by the City.

7
8 b. Waiver of Remedies for Breach or Default. No failure or delay by the City
9 to insist upon the strict performance of any term, condition or covenant of this Lease, or to
10 exercise any right, power or remedy consequent upon a breach or default thereof, shall
11 constitute a waiver of any such term, condition or covenant or of any such breach or default,
12 or preclude the City from exercising any such right, power or remedy at any later time or
13 times.

14
15 c. Independent Contractor Status. Nothing contained in this Lease shall be
16 construed to constitute the Tenant as an agent, representative or employee of the City, or
17 to create any relationship between the parties other than landlord and tenant.

18
19 d. Binding Effect. The terms of this Lease shall be binding on and enforceable
20 against the parties and their respective successors and assigns.

21
22 e. Governing Law; Disputes. In all actions arising from this Lease, the laws
23 of the State of Maryland shall govern, and the venue for all actions initiated pursuant to
24 this Lease shall be exclusively the Courts of Anne Arundel County, Maryland. The parties
25 waive jury trial in all actions initiated pursuant to this Lease. The parties agree to make
26 reasonable, good faith efforts to resolve all disputes under this Lease prior to pursuing legal
27 action through a meeting or meetings between City and Tenant representatives.

28
29 f. Recitals. The Recitals of this Lease are incorporated into this Lease.

30
31 g. Severability. If any of the provisions of this Lease are declared by a court
32 or other lawful authority to be unenforceable or invalid for any reason, the remaining
33 provisions hereof shall not be affected thereby and shall remain enforceable to the full
34 extent permitted by law.

35
36 h. Survival. Those paragraphs in this Lease which by their nature are intended
37 to survive shall survive the termination of this Lease.

38
39 i. Authorization. This Lease is authorized by the City Council pursuant to O-
40 8-19.

41
42 j. Counterparts. This Lease may be executed in any number of counterparts
43 and by the parties hereto in separate counterparts, each of which when so executed and
44 delivered shall be deemed to be an original and all of which taken together shall constitute
45 but one and the same instrument.

46

1 k. Notice. Any notice required to be delivered shall be deemed to have been
2 received when the notice has been sent by certified mail, return receipt, overnight carrier,
3 or hand delivered with signed receipt to the following address and individual or such other
4 address and/or such other individual as a party may identify in writing to the other party:
5

6 To the City: Annapolis Fire Chief
7 Annapolis Fire Headquarters
8 1790 Forest Drive
9 Annapolis, Maryland 21401

10
11 City Manager
12 160 Duke of Gloucester Street
13 Annapolis, Maryland 21401

14
15 With a Copy to: City Attorney
16 160 Duke of Gloucester Street
17 Annapolis, Maryland 21401

18
19 To the Tenant: Grow Annapolis, Inc.
20 1332 Cape St. Claire Road, #742
21 Annapolis, Maryland 21409
22

23
24 **IN WITNESS WHEREOF**, it is the intent of the parties that the Tenant has signed
25 this Lease under seal and, further, that the parties have executed this Lease the day and
26 year first written above.
27

28 WITNESS: GROW ANNAPOLIS, INC.
29

30
31 _____ By: _____
32 Name: (Seal)
33 Title:
34

35
36 ATTEST: CITY OF ANNAPOLIS
37

38
39 _____ By: _____
40 Regina C. Watkins-Eldridge, MMC, Gavin Buckley, Mayor (Seal)
41 City Clerk
42

43
44 APPROVED FOR SUFFICIENT APPROPRIATIONS
45 AND AVAILABILITY OF FUNDS:
46

1
2
3
4
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6
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12
13
14
15
16

Joanna D. Dickinson, Director
Finance Department

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY