



## Legislation Details (With Text)

<b>File #:</b>	O-8-19	<b>Version:</b>	1	<b>Name:</b>	
<b>Type:</b>	Ordinance	<b>Status:</b>		Adopted	
<b>File created:</b>	2/15/2019	<b>In control:</b>		City Council	
<b>On agenda:</b>	3/26/2019	<b>Final action:</b>		3/26/2019	
<b>Title:</b>	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.				
<b>Sponsors:</b>	Gavin Buckley, Sheila Finlayson, Rob Savidge, Ross Arnett				
<b>Indexes:</b>	Finance Committee				
<b>Code sections:</b>					
<b>Attachments:</b>	1. O-8-19 Grow Annapolis Lease Ordinance.pdf, 2. O-8-19 Exhibit A EastportCommGarden Diagram 2019-02-04.pdf, 3. O-8-19 Staff Report and Fiscal Impact.pdf, 4. O-8-19 SIGNED.pdf				

Date	Ver.	Action By	Action	Result
3/26/2019	1	City Council	adopt on second reader	Pass
3/20/2019	1	Finance Committee	recommend favorably	Pass
3/11/2019	1	City Council	declare the public hearing closed	
3/11/2019	1	City Council		
3/11/2019	1	City Council	refer	
2/25/2019	1	City Council	adopt on first reader	Pass

**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.

## CITY COUNCIL OF THE City of Annapolis

### Ordinance 8-19

**Introduced by: Mayor Buckley, Alderwoman Finlayson, Alderman Savidge,  
and Alderman Arnett**

**Referred to  
Finance Committee**

**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

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

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

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

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

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

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

#### **EXPLANATION**

~~Strikethrough~~ indicates matter stricken.

Underlining indicates matter added.

## CITY OF ANNAPOLIS LEASE AGREEMENT

**THIS LEASE AGREEMENT** (“Lease”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the “City”), and **Grow Annapolis, Inc.**, a Maryland 501(c)(3) corporation, its successors and assigns (collectively, the “Tenant”).

**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**, the Tenant 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**, the Tenant’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

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

**WHEREAS**, the parties desire to enter into this Lease that defines the rights, duties, and liabilities of the parties.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Tenant agree as follows:

### **1. Term.**

a. The City leases to the Tenant and the Tenant hereby leases from the City the Premises for a Term commencing on the date of City Council approval and terminating on June 30, 2019 (the “Original Term”), unless terminated earlier in accordance with the terms of this Lease.

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, the Tenant shall have the option to renew this Lease for ten successive terms of one year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a “Renewal Term” and collectively the “Renewal Terms”). Each Renewal Term shall commence and run with the City fiscal year (July 1<sup>st</sup> - June 30<sup>th</sup>). The Tenant’s option to renew shall be considered automatically exercised unless the Tenant gives the City at least sixty calendar days written notice before the

expiration of the Term, or any Renewal Term thereof, that it does not want to renew.

## **2. Use of Premises.**

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

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

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

## **3. Rent.**

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

## **4. Quiet Enjoyment.**

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

## **5. Utilities/Services.**

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

b. The Tenant must obtain the approval of the City Fire Chief no later than the January 31<sup>st</sup> preceding any subsequent Renewal Term in order to continue using water and the exterior electrical receptacle from the Eastport Fire Station in connection with the operation of the Premises and the Garden for that Renewal

Term. The City recognizes that access to water and electricity is essential to Tenant's successful operation and maintenance of the Garden and will not unreasonably withhold its approval.

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

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

## **6. Tenant Equipment, Furnishings, Personal Property.**

The Tenant shall retain ownership of all of its equipment, tools, and personal property from time to time installed, used or located on the Premises, including any sheds, building materials, gardening tools and equipment, outdoor furniture, produce, and the rain barrel system. The Tenant may remove any such equipment, tools, or personal property at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Any such property not removed at the expiration of the Term shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it as the City decides to make.

## **7. Repairs and Maintenance.**

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

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

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

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

near the Premises that would cast shade over the Gardens.

## **8. Signs.**

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

b. The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City Fire Chief and the City Manager, and shall repair and replace when necessary to keep in good condition and repair at all time.

## **9. Driveways, Footways and Parking Areas.**

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

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

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

## **10. Non-Discrimination.**

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

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

## **11. Assignment.**

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

## **12. Security, Property Loss Damage.**

a. The Tenant assumes all risks associated with the security of the Premises (other than space rented to other tenants) and the Property. The City shall have no obligation or duty with regard to security. The Tenant shall police and maintain the Premises (other than space rented to other tenants) and the Property in a clean, safe and secure manner.

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

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

### **13. Compliance with Laws.**

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

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

### **14. Insurance.**

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect

against legal liability arising out of this Lease, but no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the general aggregate, using a Combined Single Limit for bodily injury and property damage.

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

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

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

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

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

**15. Indemnification.**

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

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

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

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

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

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



any court, reasonable attorneys fees.

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

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

**17. Liens and Encumbrances.**

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

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

**18. Taxes and Assessments.**

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

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

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

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

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

## **20. Reservation of Governmental Authority.**

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

## **21. Defaults or Breach.**

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

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

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

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

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

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

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

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

2. Maintain the Tenant's right to possession, in which case this Lease shall continue in effect, whether or not the Tenant shall have abandoned the Premises. In such event, the City shall be entitled to

enforce all of the City's rights and remedies under this Lease.

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

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

## **22. Termination for Convenience.**

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

## **23. Surrender of Premises.**

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

## **24. Applying for Grants.**

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

## **25. Modification.**

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

## **26. Representations and Warranties.**

The Tenant represents and warrants to the City that:

a. The Tenant is a not-for-profit corporation organized under the laws of the State of Maryland,

qualified to do business and in good standing in the State of Maryland, and authorized to conduct the business in which it is engaged and as described in this Lease.

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

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

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

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

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

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

## **27. Access to Records.**

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

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

## **28. Miscellaneous.**

a. Remedies Cumulative and Concurrent. No remedy provided by this Lease or reserved to the City is intended to be exclusive of any other remedies provided for in this Lease, and each such remedy shall be cumulative, and shall be in addition to every other remedy given under this Lease, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the City shall be concurrent and may be pursued separately, successively or together against the Tenant, and every right, power and remedy given to the City may be exercised from time to time as often as may be deemed expedient by the City.

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

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

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

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

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

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

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

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

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

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

To the City:                   Annapolis Fire Chief  
                                      Annapolis Fire Headquarters  
                                      1790 Forest Drive  
                                      Annapolis, Maryland 21401

                                      City Manager  
                                      160 Duke of Gloucester Street  
                                      Annapolis, Maryland 21401

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

To the Tenant:             Grow Annapolis, Inc.  
                                      1332 Cape St. Claire Road, #742

Annapolis, Maryland 21409

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

WITNESS: GROW ANNAPOLIS, INC.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_ (Seal)  
Title: \_\_\_\_\_

ATTEST: CITY OF ANNAPOLIS

\_\_\_\_\_  
Regina C. Watkins-Eldridge, MMC,  
City Clerk  
By: \_\_\_\_\_  
Gavin Buckley, Mayor (Seal)

APPROVED FOR SUFFICIENT APPROPRIATIONS  
AND AVAILABILITY OF FUNDS:

\_\_\_\_\_  
Joanna D. Dickinson, Director  
Finance Department

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY