

FIRST READING: 10-9-17
SECOND READING: 10-23-17
THIRD READING: 11-13-17

AMENDED
ORDINANCE NO. 73-17

BY: DAVID W. FURRY

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A GREENHOUSE
LEASE AGREEMENT WITH RIVER SPROUTS INC.

WHEREAS, the City of Rocky River is the owner of real property located at the extreme northeast quadrant of its City Hall campus on Wagar Road, in the City of Rocky River, which is currently used exclusively as a community garden; and

WHEREAS, River Sprouts Inc. is an IRS Section 501(c)(3) non-profit corporation, State of Ohio Document Id. No. 201516220421, with an effective date of incorporation of 6/5/15, whose purpose is to do all things pertinent to constructing, installing, maintaining and managing a greenhouse to support those in need and for student use within the City of Rocky River; and

WHEREAS, both the City of Rocky River and River Sprouts Inc. are interested in maximizing the use of public property in a collaborative effort of providing a resource for the students of Rocky River for learning and maintaining the self-sufficiency of growing food stuffs for contribution to those individuals in need; and

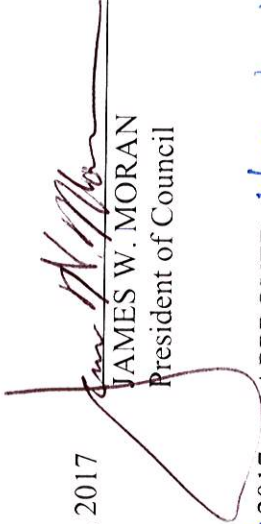
WHEREAS, pursuant to the Charter of the City of Rocky River a mandatory review of the proposed land use of public property is pending before the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY OF CUYAHOGA, STATE OF OHIO:

SECTION 1. The Mayor is hereby authorized to execute the Greenhouse Lease with River Sprouts Inc., which agreement is attached as Exhibit "A".

SECTION 2. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of public peace, health and safety, and for the further reason that in order to maximize the student accessibility in moving forward with planting and growing crops as soon as possible and, provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: November 13th, 2017


JAMES W. MORAN
President of Council

PRESENTED

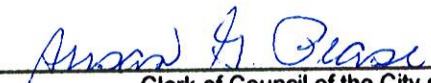
TO MAYOR: November 13th, 2017 APPROVED: November 13th, 2017

TEST:


SAN G. PEASE
Clerk of Council


PAMELA E. BOBST
Mayor

I, the undersigned clerk of council of the city of Rocky River, State of Ohio, do hereby certify that publication of the foregoing ordinance was duly made by posting a true copy thereof in the lobby of the Rocky River City Hall, in accordance with the charter of Rocky River, commencing on the 13th day of November, 20 17.


Clerk of Council of the City of Rocky River, Ohio

GREENHOUSE LEASE

This Lease is entered into this ____ day of _____, 2017 between the City of Rocky River ("Lessor") and River Sprouts Inc. ("Lessee").

WHEREAS, Lessor is the owner of real property located at the extreme northeast quadrant of its City Hall campus on Wagar Road, in the City of Rocky River, which is currently used exclusively as a community garden; and

WHEREAS, Lessee is an IRS Section 501(c)(3) non-profit corporation, State of Ohio Document Id. No. 201516220421, with an effective date of incorporation of 6/5/15, whose purpose is to do all things pertinent to constructing, installing, maintaining and managing a greenhouse to support those in need and for student use within the City of Rocky River; and

WHEREAS, both Lessor and Lessee are interested in maximizing the use of public property in a collaborative effort of providing a resource for the students of Rocky River for learning and maintaining the self-sufficiency of growing food stuffs for contribution to those individuals in need.

IN CONSIDERATION THEREOF, Lessor and Lessee agree as follows:

1. USE OF PREMISES. Lessee is granted authority to enter upon the property of Lessor identified herein above for the purposes of constructing, maintaining and managing a greenhouse with dimensions of approximately twenty-four (24) feet by twenty-one (21) feet, consisting of five hundred four (504) square feet, with a height elevation of approximately fifteen (15) feet, in accordance with the site plan and photographic rendition attached hereto as Exhibit A. Lessee shall at all times retain ownership of the materials and structure comprising the greenhouse, and control the use and occupancy of said greenhouse consistent with its purpose identified in its Articles of Incorporation. Lessee shall use said property at reasonable times of the day in a safe and proper manner so as not to negatively impact the use of the adjoining community garden or otherwise negatively affect the quiet and enjoyment of the surrounding property owners.

2. LEASE RENTS AND DURATION. Lessee shall pay to Lessor the sum of ten (10) dollars per annum for the lease and use of the property described herein above, with the term of said Lease to be twelve (12) months, beginning on the ____ day of _____, 2017 and ending on the ____ day of _____, 2018, which term shall automatically renew for additional terms of twelve (12) additional months, subject to the option of either party to terminate the Lease for any reason and without cause, by providing ninety (90) days written notice to the other party of its intent to terminate, and further subject to the provisions for termination set forth in Paragraph 7 below.

3. UTILITIES. Lessee is granted permission to tie into the water and electricity utility lines of Lessor for the purpose of adding metering devices onto said utility lines. Lessee shall pay Lessor the cost of all water and electricity use by Lessee at the cost which is recognized for those utility services applicable to Lessee's use. Lessor shall send Lessee an invoice on or near the first day of each month, for Lessee's share of the cost of water and electricity use. Upon receipt of said invoice, Lessee shall pay said invoice within thirty (30) days. Lessor shall make its records of its water and electricity purchases available to Lessee for inspection and copying at cost, at all reasonable times during normal reasonable business hours.

4. SUBLETTING AND ASSIGNMENT. Lessee understands and acknowledges that it has no right to sublet or assign the Lease or any portion or portions of the Lease without the prior written consent of Lessor, which may be withheld for any or no reason. Lessor understands and acknowledges that it has no right to sublet or assign the Lease or any portion or portions of the leased property that may interfere with Lessee's exclusive access to the leased property without Lessee's express written consent which may be withheld for any or no reason.

5. HOLD HARMLESS. To the extent of insurance and the assets of Lessee, the Lessee agrees to indemnify, hold harmless, protect and defend the Lessor from any claim, loss, liability, cost or damage proximately caused by Lessee, its agents, employees, representatives, contractors, or licensees in connection with this Lease or the use of Lessor's property.

6. INSURANCE. Lessee shall obtain and maintain during the life of this Lease public liability insurance with minimum limits of \$1,000,000 for each occurrence and \$2,000,000 aggregate for bodily injury, and \$20,000 for property damage. Lessee will designate the Lessor as an Additional Insured on the aforementioned policies. The Lessor shall insure the property and improvements thereon in the replacement value against loss from fire and other perils included in the Special Causes of Loss insurance endorsement/form.

Such policies shall be written with an insurance company or companies with an A.M. Best Rating of A-VI or better and be authorized, admitted, and licensed to issue such policies in the State of Ohio. With respect to insurance policies hereunder, the Lessee shall furnish a certificate of liability insurance evidencing such required insurance to the Lessor at least thirty (30) days prior to the date of entering into a contract with Lessor and thereafter on an annual basis. Such policies shall provide for receipt of thirty (30) days notice to Lessor prior to any cancellation.

7. DEFAULT. If Lessee, at any time during the term of this Lease, shall fail to observe or perform any of Lessee's covenants, agreements or obligations hereunder, and if any such default shall not be cured within thirty (30) days after Lessor shall have given to Lessee written notice specifying such default, and if at the expiration of said number of days after the service of such notice the default or happening of the contingency upon

which said notice was based shall continue to exist, Lessor shall have the right at its election, then or at any time thereafter, and while such default shall continue, to give Lessee notice of Lessor's intention to terminate this Lease, on a date specified in such notice, which date shall not be less than thirty (30) days after the date of the giving of such notice.

If Lessor, at any time during the term of this Lease, shall fail to observe or perform any of Lessor's covenants, agreements or obligations hereunder, except as provided in paragraph 15 herein, and if any such default shall not be cured within thirty (30) days after Lessee shall have given to Lessor written notice specifying such default, and if at the expiration of said number of days after the service of such notice the default or happening of the contingency upon which said notice was based shall continue to exist, Lessee shall have the right at its election, then or at any time thereafter, and while such default shall continue, to give Lessor notice of Lessee's intention to terminate this Lease, on a date specified in such notice, which date shall not be less than thirty (30) days after the date of the receipt of such notice.

In the event that either party shall bring legal action against the other party for default and shall recover a judgment against such party herein, then the prevailing party shall be entitled to reimbursement from the other party for all expenses thus incurred, including reasonable attorney's fees and court costs, to the extent of insurance and the assets of the respective party.

Waiver by either party of any default in the performance by the other party of the covenants, agreements or obligations shall not be deemed a continuing waiver of that default or any subsequent default.

The remedies here in shall be cumulative, non-exclusive and in addition to any other remedies available to the non-defaulting party and provided by law.

8. NOTICES. Notices to the City of Rocky River shall be served upon:

City of Rocky River
Director of Finance
21012 Hilliard Boulevard
Rocky River, Ohio 44116.

All payments made shall be forwarded to:

City of Rocky River
Director of Finance
21012 Hilliard Boulevard
Rocky River, Ohio 44116

All notices to Lessee shall be served upon:

Richard D. Manoloff
River Sprouts Inc.
3928 Kings Mill Run
Rocky River, Ohio 44116

Such notices may be sent to such other addresses as either party may specify in writing from time to time.

9. COMPLIANCE WITH LAWS. Both parties agree to comply with all laws, ordinances, rules and regulations that may pertain or apply to the property and its use.
10. MODIFICATIONS. This Lease contains the entire agreement between the parties and any executory agreement hereafter made shall be made in writing and signed by all parties.
11. LIENS, ENCUMBRANCES AND INTERESTS IN THE PROPERTY. Both parties covenant and agree that they shall keep the property free from any liens, claims or other encumbrances by contractors, subcontractors, materialmen, suppliers or other laborers arising out of the use or improvement of the property, based upon any act or interest of the parties or anyone claiming through or against the parties.
12. COUNTERPARTS. This Lease Agreement may be executed in three (3) counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.
13. FORCE MAJEURE. Should the property by rendered unusable for the purposes of this Lease by fire, casualty or act of God for a period of at least thirty (30) days, this Lease may be immediately terminated by either party.

IN WITNESS WHEREOF, the Lessor and Lessee sign their names on the date first written above.

WITNESSES:

LESSOR: **CITY OF ROCKY RIVER**

By: _____

Pamela E. Bobst, Mayor

LESSEE: **RIVER SPROUTS INC.**

By: _____

Richard D. Manoloff, President

STATE OF OHIO)
)
) SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Pamela E. Bobst, Mayor on behalf of the City of Rocky River, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed same as her free and voluntary act and deed for the use and purpose therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2017.

Notary Public

STATE OF OHIO)
)
) SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Richard D. Manoloff, President for River Sprouts Inc., to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he/she executed same as his/her free and voluntary act and deed for the use and purpose therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this
 day of _____, 2017.

Notary Public

Approved as to legal form:

Andrew D. Berner, Law Director
City of Rocky River

Richard D. Manoloff, Attorney
River Sprouts Inc.