

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2019 by and between the CITY OF DELRAY BEACH, FLORIDA, a municipal corporation of the State of Florida (hereinafter referred to as "City") and COMMUNITY GREENING CORP., a Florida Not For Profit Corporation (hereinafter referred to as "Licensee").

W I T N E S S E T H:

WHEREAS, City owns and controls certain property located at 1500 Southwest 6th Street, Delray Beach, Florida 33444, upon which is located Catherine Strong Splash Park; and

WHEREAS, within Catherine Strong Splash Park, the City maintains several classroom facilities that are available for use by the City; and

WHEREAS, Licensee is not-for-profit corporation organized under the laws of the State of Florida whose focus is on environmental stability and building community through trees; and

WHEREAS, Licensee desires to use one of the City's classroom facilities at Catherine Strong Splash Park for the purpose of conducting its operations; and

WHEREAS, the City has determined that it is in the public interest to enter into an agreement with Licensee to provide for the use of classroom facilities at Catherine Strong Splash Park; and

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises and covenants hereinafter contained, it is hereby agreed by and between the Parties hereto as follows:

1. Licensee's Rights for Use of Site. Licensee shall have authority, subject to the provisions and limitations set forth in this agreement, to use classroom no. 4 ("Classroom No. 4" or "Premises") at Catherine Strong Splash Park for staff preparation in support of programs sponsored by Licensee. A depiction generally illustrating the location of Catherine Strong Splash Park and Classroom No. 4 is attached to this agreement as Exhibit A.
2. Term. The term of this Revocable License Agreement shall commence on the date of execution for a term of two (2) years, unless sooner terminated as per the terms of this Revocable License Agreement

3. License Fee. Licensee must pay to City an annual license fee of one dollar (\$1.00), payable at the time of execution of this Revocable License Agreement and at the time of any extension hereof, for its use of the Premises as authorized herein.

4. Agreements of the Parties. City and Licensee agree as follows in connection with Licensee's use of the Premises:

a. Venue and Schedule:

City shall provide to Licensee Classroom No. 4 for use as described herein according to the following schedule: Mondays through Fridays from 10:00 AM through 6:00 PM, and Saturdays from 10:00 AM through 4:00 PM. City agrees to provide Licensee with access to Catherine Strong Splash Park only on days that said park is open to the public. Licensee may not use the Premises on days or at times that Catherine Strong Splash Park is otherwise closed.

b. Maintenance of Classroom No. 4:

It shall be the responsibility of Licensee to keep the Licensed Premises clean, safe, sanitary, and free from trash and debris. The upkeep and maintenance of all areas herein used by Licensee shall be borne by Licensee, and Licensee agrees to maintain the Licensed Premises in accordance with the terms and conditions of this Revocable License Agreement and consistent with prudent and well-reasoned maintenance procedures and techniques.

c. Furnishings:

Licensee shall be responsible for providing all furnishings within the Premises. City retains the right to require Licensee to discontinue the use of any furnishing in the City's sole discretion.

d. Internet Access:

City agrees to provide high speed internet access to the Premises. Licensee shall be responsible for the payment of any directly related costs associated therewith, including service fees. Within 30 days of Licensee's receipt of invoice from City for such costs, Licensee shall remit payment in full to City.

e. Signage:

Licensee shall place a sign identifying Community Greening Corp. on the outside of the door to Classroom No. 4. Such signage shall be consistent in size and design, in City's sole discretion, with signage on other classroom doors within Catherine Strong Splash Park. All signage must be approved in advance by City. Upon the expiration of this Revocable

License Agreement, or at any other time in City's sole discretion, Licensee shall be responsible for the removal of any such signage and for any cost associated therewith to return the Premises to the condition in which it was received.

f. **Quarterly Reports:**

Licensee agrees to provide quarterly reports to City regarding Licensee's operations within the Premises. Each report must be provided to City within 10 days of the end of a calendar quarter, as that term is commonly understood.

g. **Other Facilities:**

All other facilities within Catherine Strong Splash Park shall be available to Licensee in the same manner and at the same times as those facilities are available to members of the general public.

5. **Termination.** This Revocable License Agreement is merely a right to use, and grants no estate in the Licensed Premises. This Revocable License Agreement may be canceled by City, acting through its City Manager or designee, with or without cause, at any time during the term hereof, upon thirty (30) days written notice to the Licensee of its desire to terminate this Revocable License Agreement. It is expressly understood by the parties that Licensee is receiving from City a revocable license, which may be terminated at any time by City for any or no cause whatsoever.

6. **Compliance.** Licensee agrees to comply with all applicable federal, state, county, and local laws and regulations regarding non-discrimination and specifically agrees not to discriminate against any person on the basis of color, race, religion, age, creed, sex, national origin, or disability.

7. **City's Right to Control Premises.** City or its designee at all times reserves the right to eject or cause to be ejected from the premises any person or persons violating (or to keep persons from violating) any federal, state, county, or local law or regulation, and neither the City, its designee, nor of any its officers, agents or employees shall be liable in any manner to Licensee or its officers, agents, or employees for any damages which may be sustained by Licensee through the exercise of this right by City or its designee.

8. **Inspections.** City or its agents, or any authorized employee of said agent, may enter upon said Licensed Premises at all reasonable times and hours to examine same to determine if Licensee is properly maintaining the Licensed Premises according to the terms of this Revocable License Agreement.

9. **Repair and Damage of Site.** Licensee shall be fully responsible for damage of any kind or nature to the Premises caused by the use by Licensee or invitees of Licensee.

Licensee shall be fully responsible for any and all repairs or replacement deemed reasonably necessary by City to return the Premises to the condition existing at the commencement of this License Agreement, normal wear and tear excluded. Licensee shall give to City prompt written notice, in compliance with Section 19 below (Notice), of any occurrence, incident, or accident occurring on or at the Premises. In the event any damage should occur to the Premises, Licensee shall promptly notify the City.

10. Alterations and Improvements to Premises. Licensee may not make any alteration, adjustment, partition, addition or improvement to the Premises, or any part thereof, without obtaining prior written consent of City. All requests by Licensee shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions, or improvements shall, at City's sole discretion, remain the exclusive property of the City or be removed by Licensee upon City's request. In the event that City shall request removal, Licensee shall perform, at its sole cost, removal in a manner that shall return the Premises to the condition in which it was received. Any cost necessary to restore or prepare the Premises for return shall be the sole responsibility of the Licensee. All such alterations or improvements shall be made at the sole cost and expense of Licensee.

11. Personal Property. Licensee agrees that all personal property placed on or at the Premises shall remain the property of the Licensee and shall be so placed at the risk of Licensee.

12. Surrender Upon Termination. Licensee shall peaceably surrender and deliver the Premises to City immediately upon expiration of the term or upon termination of this Revocable License Agreement. Licensee further agrees that it will leave the Premises in the condition existing at the commencement of this License Agreement, normal wear and tear excepted, and subject to the provisions of Section 8 (Alterations and Improvements to Premises) and Section 10 (Repair and Damage of Site).

13. Assignment or Subletting. Licensee shall have no authority to assign all or any portion of the Licensed Premises during any term of this Revocable License Agreement, except to an affiliate of Licensee with prior written consent of City. Should Licensee attempt to assign this Revocable License Agreement other than to an affiliate of Licensee, then the Revocable License Agreement shall be terminated forthwith, automatically, by operation of this clause, without prior notice to Licensee.

14. Force Majeure. City shall not be responsible for its failure to make the premises available or to provide the facilities and services described herein, where such performance is rendered impossible and impractical due to strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restriction (other than City), enemy action, civil commotion, fire, unavoidable casualty, utility disruptions or blackouts, or similar causes or any other causes beyond the control of City.

15. Indemnification and Insurance.

- (a) Prior to any use of the Premises as authorized herein, Licensee shall provide to City certificates of insurance evidencing Licensee's commercial general liability coverage in the amount of not less than \$1,000,000 per occurrence with an annual aggregate of \$2,000,000 and naming City as additional insured. Licensee shall notify City immediately of any modification, cancellation, lapse, or termination in such insurance, which may affect City.
- (b) To the fullest extent permitted by law, Licensee agrees to indemnify, defend and hold City harmless from and against any and all expenses, damages, claims, suits, losses, actions, judgments, liabilities, and costs whatsoever (including attorney fees) arising out of or resulting from its use of the Premises and any negligence or willful misconduct of Licensee, or its employees, agents, or servants, in connection with this Agreement. Licensee assumes all risk and danger incidental to its use of the Premises. Nothing contained herein is intended nor shall be construed to waive City's rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time. The provisions of this Paragraph shall survive the termination of the Agreement.

16. Release. As part of the specific consideration for City to consent to this Revocable License Agreement, and for further consideration of the sum of ten dollars (\$10.00), the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that City, its designees, officers, agents, and employees assume no responsibility whatsoever for any property placed in the Premises; and City, its designees, officers, agents, and employees are expressly released and discharged from any and all liability for any loss, injury, damage, theft, vandalism, or other wrongful acts, or acts of any kind or nature resulting in damage or loss to persons or property which may be sustained due to Licensee's use of the Premises. Licensee further expressly waives any and all claims for compensation for any and all loss or damages sustained by reason of any defects, deficiencies, or impairment of the electrical equipment, water supply, equipment or wires furnished for the Premises or by reason of any loss or impairment of light, current, or water supply which may occur from time to time for any cause, or by reason of any loss or damage sustained by Licensee resulting from fire, water, hurricane, tornado, civil commotion, riot, theft, or other acts of God, and Licensee hereby expressly waives all right, claims, and demands and forever releases and discharges City, its designees, officers, agents, and employees from any and all demands, claims, actions and causes of actions arising from any of the causes aforesaid.

17. Entire Agreement. This Revocable License Agreement constitutes the entire agreement between City and Licensee and may not be altered, amended, or modified except by an instrument in writing signed by the parties to the Agreement with all the same formalities as this Agreement.

18. Inspector General. Licensee is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Revocable License Agreement, and may demand and obtain records and testimony from Licensee and its subcontractors and lower tier subcontractors. Licensee understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Licensee or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by City to be a material breach of this Revocable License Agreement justifying its termination.

19. Public Records. **IF LICENSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO LICENSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.**

Licensee shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, Licensee agrees to:

- a) Keep and maintain all records that ordinarily and necessarily would be required by City.
- b) Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
- d) Meet all requirements for retaining public records and transfer, at no cost, to City all records in possession of the Licensee at the termination of the Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to City in a format that is compatible with the information technology systems of City. All records

shall be transferred to the City prior to final payment being made to the Licensee.

- e) If Licensee does not comply with this section, City shall enforce the provisions in accordance with this Revocable License Agreement and may unilaterally cancel this agreement in accordance with state law.

20. Notice. Any notice or communication under this agreement shall be in writing and may be given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given other than by registered or certified mail, the notice or communication shall be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communication shall be given to the particular parties at the following addresses:

City: City Manager
City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444

Licensee: Mark Cassini
Community Greening Corp.
3384 Lakeview Blvd.
Delray Beach, FL 33445

21. Materiality and Waiver of Breach. City and Licensee agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Revocable License Agreement, and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Revocable License Agreement shall not be deemed a waiver of such provision or modification of this Revocable License Agreement. A waiver of any breach of a provision of this Revocable License Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Revocable License Agreement.

22. Independent Contractor. Licensee is an independent contractor under this Revocable License Agreement. Services provided by Licensee pursuant to this Revocable License Agreement shall be subject to the supervision of Licensee. In providing such services, neither Licensee nor its agents shall act as officers, employees, or agents of City. The parties expressly acknowledge that it is not their intent to create

any rights or obligations in any third person or entity under this Revocable License Agreement.

23. Contingency Fee. Licensee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Licensee, to solicit or secure this Revocable License Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Licensee, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Revocable License Agreement. For a breach or violation of this provision, City shall have the right to terminate this Revocable License Agreement without liability at its discretion, or to deduct from the Revocable License Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

24. Third Party Beneficiaries: Neither Licensee nor City intends to directly or substantially benefit a third party by this Revocable License Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Revocable License Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Revocable License Agreement.

25. Severance: In the event this Revocable License Agreement or a portion of this Revocable License Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or LICENSEE elects to terminate this Revocable License Agreement. The election to terminate this Revocable License Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

26. Joint Preparation: The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Revocable License Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

27. Priority of Provisions: If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Revocable License Agreement by reference, and a term, statement, requirement, or provision of this Revocable License Agreement, the term, statement, requirement, or provision contained in this Revocable License Agreement shall prevail and be given effect.

28. Jurisdiction, Venue, Waiver of Jury Trial: This Revocable License Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Revocable License Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Revocable License Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS REVOCABLE LICENSE AGREEMENT, LICENSEE AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS REVOCABLE LICENSE AGREEMENT.**

29. Prior Agreements: This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this License that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

30. Incorporation by Reference: The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibit "A" is incorporated into and made a part of this Agreement.

31. Representation of Authority: Each individual executing this Revocable License Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Revocable License Agreement, duly authorized by all necessary and appropriate action to execute this Revocable License Agreement on behalf of such party and does so with full legal authority.

[The Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officials on the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA


By: _____
City Clerk

By: _____
Shelly Petrolia, Mayor

Approved as to Form:

By: _____
City Attorney

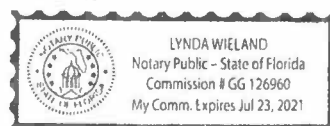
COMMUNITY GREENING CORP.

By: 
MARK CASSINI
(Name printed or typed)

STATE OF FLORIDA

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 1st day of March, 2019 by Mark Cassini (name and title of officer or agent) of Community Greening (name of corporation acknowledging), a FL (state or place of incorporation) corporation, on behalf of the corporation. He/She is personally known to me or has produced personally known (type of identification) as identification and did (did not) take an oath.




Signature of Notary Public - State
of Florida

EXHIBIT "A"





MARK CASSINI
CO-FOUNDER,
COMMUNITY GREENING

MATT SHIPLEY
CO-FOUNDER,
COMMUNITY GREENING

JAMES R. CHARD
FORMER CITY
COMMISSIONER,
CITY OF DELRAY BEACH

JENNIFER GOMEZ, ESQ.
TRUSTS & ESTATES
ATTORNEY

**EMANUEL DUPREE
JACKSON JR.**
FOUNDING DIRECTOR,
EMANUEL JACKSON SR.
(EJS) PROJECT, INC

JASON MCCOBB
OWNER,
FARMERJAYPUREORGANICS

JEFF NURGE
OWNER,
NATIVE CHOICE NURSERY
& FLORIDA NATIVE
GARDENING

**CAROLYN M.
PENDELTON-PARKER**
LANDSCAPE ARCHITECT

SGT. DANIELA QUINN
DELRAY BEACH POLICE

JOSEPH SCODOTTO
TD BANK STORE MGR III,
VICE PRESIDENT

ADRIENE TYNES
DIRECTOR OF
ACCREDITATION,
NONPROFITS FIRST

OFFICE
610 SW 15TH AVE
SUITE #4
DELRAY BEACH FL 33444

communitygreening.org



February 6, 2019

Delray Beach Parks & Recreation Department
50 NW 1st Ave,
Delray Beach, FL 33444

Dear Suzanne,

Community Greening, an urban forestry non-profit, was founded in 2016 and is based in Delray Beach. We envision an engaged community creating sustainable greenspaces and a vibrant tree canopy to equitably strengthen our environment, economy, society, and health. In 2018, we planted 700 trees at schools, parks and vacant lots with over 600 volunteers in the city. These trees will provide \$217,000 in ecosystem benefits to residents including cleaner air, stormwater captured and energy saved.

The incubator space at Catherine Strong Park has been invaluable to Community Greening's rapid growth and impactful programming. The office location in The Set is strategically located in the middle of the two areas with the lowest tree canopy in the city: the industrial area to the south and The Set to the north. An office at the park allows us to regularly maintain the fruit trees at the Community Grove and conduct community outreach offering free fruit and shade trees to residents of The Set. We are strengthening a working relationship with city staff to increase the city's tree canopy as we continue to engage youth, residents, schools, and companies in this mission. Our current programming includes public parks, greenspace transformation on vacant city lots, residential plantings and tree giveaways.

2018 highlights:

- Florida Forest Service nominated Community Greening for the Tree Advocacy Group of the Year for the State of Florida
- Enterprise Rent-A-Car Foundation's Urban Initiative awarded Community Greening \$35,000 to plant 150 trees at Village Academy School with families and Enterprise employees
- The Arbor Day Foundation Mentor Award to visit to Friends of the Urban Forest and Sacramento Tree Foundation to learn from leaders of urban forestry
- The President of the International Society for Arboriculture visited Delray Beach to conduct the organization's strategic plan and host a green infrastructure workshop at Parks and Recreation
- TD Bank awarded the organization two national grants to plant 200 trees in The Set
- The Community Foundation funded 40 fruit and shade trees to be planted by Community Greening at private residences of The Set



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communitygreening.org



- Community Greening hired a resident of The Set as a full-time Community Tree Steward
- Florida Forest Service funded Community Greening to promote the Green Infrastructure benefits of tree planting and care initiatives, urban orchards, tree canopy assessments and urban forest management plans
- Matt Shipley became a certified arborist and wins scholarship to attend the Municipal Forestry Institute in Oregon
- Community Greening and Parks and Recreation hosted city staff from Boca Raton, Boynton Beach, Lake Worth and West Palm Beach, on a green infrastructure tour of planting projects
- Mark Cassini and Matt Shipley were recognized at the Partners in Community Forestry Conference in Irvine, CA by the President of the National Arbor Day Foundation: "Community Greening is one of the emerging superstars of the Alliance for Community Trees. This new organization in Florida is turning heads, engaging tree planters and transforming the community forest in Delray"

Community Greening requests to renew our contract for use of the module at Catherine Strong Park to build on our early success and to continue to develop our successful partnership with the City of Delray Beach. We appreciate our relationship and look forward to building an urban forestry model in Delray Beach for other cities to follow in South Florida.

Thank you,

Mark Cassini
Co-Director

Matt Shipley
Co-Director

