

LICENSE AGREEMENT

This License Agreement ("Agreement"), is made as of this 1st day of April, 2011 (the "Effective Date") by and between the CITY OF MILWAUKEE ("CITY"), as licensor, and GROWING POWER, INC., a Wisconsin corporation ("GP"), as licensee.

RECITALS

- A. CITY owns certain real estate located at 1313 W. Reservoir Avenue, Milwaukee, Wisconsin (the "Property").
- B. The Milwaukee Fire Department ("MFD") operates its Engine Company No. 5 at the Property.
- C. GP has requested license (the "License") to install four (4) hoop houses for urban gardening purposes (the "Hoop Houses") on that portion of the Property identified and depicted on Exhibit A attached hereto (the "Premises").
- D. Pursuant to the terms of a Memorandum of Understanding by and between MFD and GP, MFD has consented to GP's use of the Premises for operation of the Hoop Houses.
- E. CITY is authorized to enter into this Agreement pursuant to CITY Resolution File No. _____, passed _____, 2010.

AGREEMENT

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

- 1. **Recitals Incorporated.** The recitals above are hereby acknowledged, agreed to, and incorporated herein by reference.
- 2. **Grant of License to GP.** CITY hereby grants to GP a personal and qualified license to enter onto the Premises and to install, use, and maintain the Hoop Houses on the Premises on the terms and conditions contained herein.
- 3. **No Real Property Interest.** This is a license and personal privilege. It is not a lease or other conveyance of any interest or estate in real property. GP is not a tenant. GP has no rights under Wis. Stat. Ch. 704. GP is not an easement holder.
- 4. **Ownership.** GP is and shall remain owner of the Hoop Houses, unless the parties agree to the contrary.
- 5. **Term.** This License shall commence on the date noted above and shall continue in effect unless terminated as provided for herein.

6. **AS-IS, WHERE-IS.** CITY makes no warranty or representation whatsoever to GP, express or implied, regarding the Property or the Premises. GP acknowledges that the Premises are being licensed to GP on an AS-IS, WHERE-IS BASIS, with all faults known or unknown, and whether or not suitable for GP's intended use.
7. **License Fee.** In consideration of CITY's grant to GP of the License, GP has paid CITY One and no/100ths Dollars (\$1.00) and other good and valuable consideration, receipt of which CITY acknowledges.
8. **Use.** GP, its employees, agents, or servants, shall have the right to enter, use and occupy the Premises, as a licensee and as a personal privilege, solely for the installation, use, and maintenance of the Hoop Houses for urban gardening purposes (collectively, the "Use"), and to carry out GP's duties hereunder. No other use is permitted unless agreed to by CITY in writing.
9. **Compliance with Laws and Regulations.** GP shall, at its sole cost and expense, comply with, and cause its employees, agents or servants to comply with, any and all laws, statutes, ordinances and regulations, federal, state, county, and municipal, now or hereafter applicable when carrying out the Use, including, but not limited to, any applicable environmental law, rule or regulation of the Wisconsin D.N.R. or the U.S. E.P.A.
10. **No Hazardous Substances.** GP shall not (and it shall prohibit its employees, agents or servants to) store, use, discharge or dispose of any Hazardous Substances on the Property or the Premises. The term "Hazardous Substances" shall include all substances identified as hazardous by Federal, State, County or Municipal Law, Statute, Ordinance, Order or Regulation related to the protection of the environment (including, without limitation, any regulations promulgated by the Federal Environmental Protection Agency or the Wisconsin Department of Natural Resources).
11. **Responsibility for Damage to Property.** GP shall be responsible (i) for remediating any Hazardous Substances on the Property or the Premises traced to, caused by, or attributable, directly or indirectly, to the Use, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Property or Premises (and to any improvement at the Property) caused by, or attributable, directly or indirectly to the Use; provided, however, GP shall have no liability under (i) or (ii) to the extent the Hazardous Substances or damage are present or caused by a third party unrelated to GP. In furtherance of the foregoing, CITY acknowledges that GP is not responsible for remediating environmental pollution or Hazardous Substances, or for repairing any damage at the Property or the Premises that existed thereat prior to the commencement of the Term, or that was caused by persons other than GP (or its employees, agents or servants). GP shall promptly provide written notice to CITY of any damage to the Property or Premises, and of any Hazardous Substance on the Property or Premises for

which GP is aware of. GP shall also provide prior written notice of, and obtain CITY's prior written approval before conducting, any remediation or repair work required under (i) or (ii) that it intends to conduct at the Premises or the Property; provided, however, such notice and consent shall not be required in the case of an emergency.

12. **Installation of Hoop Houses by GP; Plans and Specs.** Prior to installation or subsequent modification of the Hoop Houses, GP shall first obtain all required permits and other approvals from CITY, including approval of the Department of City Development.
13. **Hoop Houses Maintenance.** GP, at its sole cost and expense, will monitor and maintain the Hoop Houses in good repair and in accordance with all applicable laws and regulations.
14. **Removal of Hoop Houses.** Upon termination of this Agreement, unless CITY agrees otherwise in writing, GP will, remove the Hoop Houses and restore and repair the Premises to the condition they were in prior to installation of the Hoop Houses. GP must repair any damage to the Premises or Property caused by its removal of the Hoop Houses.
15. **No Liens Are Permitted.** GP does not have any estate or interest in the Property or Premises, and it has no right to mortgage, pledge as collateral, or to hypothecate, any interest in the Property or Premises. GP shall not permit any lien, including, but not limited to, any lien under Wis. Stat. Ch. 779, Subch. I, any materialman, contractor, construction, or other lien to attach or to exist against the Property or the Premises as a result or consequence of GP's action or inaction. If any such lien does attach, GP shall promptly provide CITY with notice of such lien, and GP shall, at its sole expense and in a reasonable period of time, cause such lien to be removed from title.
16. **Lien Waivers.** Upon completion by GP of any installation or repair work that could result in a lien attaching to the Premises, GP shall obtain, and, if CITY so requests, GP shall provide to CITY lien waivers from each contractor and subcontractor who performed work or labor, or who provided services, materials, or supplies with respect to such work.
17. **Utilities.** Should GP desire utilities to the Premises, it shall be at GP's sole expense and GP shall first obtain approval from the Commissioners of the Department of City Development and the Department of Public Works, or their respective designees, and shall also obtain any required permits for the work.
18. **Insurance.** GP shall obtain and maintain insurance as described and in strict compliance with **Exhibit B** attached hereto. GP shall provide CITY with a certificate of insurance evidencing such coverage.
19. **Indemnification.** To the fullest extent permitted by law, GP agrees to defend, indemnify, and hold harmless CITY, its officers, agents and employees from and against

all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever which may come against CITY on account of injury or death of any person or persons or damage to any property occurring directly or indirectly from the performance or lack of performance or work hereunder, or negligence or carelessness, by GP or its employees, agents or servants, in connection with the Use during the Term, including, without limitation, claims related to a breach of GP's obligations under Section 9 of this Agreement. The indemnifications contained herein shall survive the Term of this License.

20. **Retained Rights.** CITY expressly retains its rights, title and interest in and to the Property (including the Premises) and nothing contained herein shall be deemed an amendment to any such rights, title or interest. CITY expressly retains all rights it has under Wis. Stat. §893.80.
21. **Defaults and Remedies.** CITY retains all rights at law and in equity in the event of a breach by GP hereunder, including, but not limited to, the right to seek specific performance, and the right to recover damages.
22. **Condemnation of or Damage to Premises.** If the Premises (or a part thereof), at any time during the Term, get condemned by any public authority with the power of eminent domain (or are voluntarily transferred in lieu of, or under threat of, condemnation), or if the Premises are damaged in whole or in part by fire or some other cause so as to render - in CITY's reasonable opinion – all or any significant portion of the Premises unfit for the Use, CITY may terminate this Agreement, and GP shall not be entitled to any part of the condemnation award or insurance proceeds (if any). Notwithstanding anything to the contrary contained herein, if the Premises or any part thereof are damaged by act, omission, default or negligence of GP, or its employees, agents or servants, this Agreement shall continue and GP shall be responsible to repair or restore the Premises, but not the Hoop Houses, at GP's cost and expense.
23. **No Right to Assign or Sub-License.** GP has no right to assign or transfer any interest whatsoever in and to this Agreement, or in and to the Property or Premises unless agreed to in writing by CITY.
24. **Termination of Agreement.** Notwithstanding anything to the contrary contained herein, either CITY or GP may (for any reason, including no reason) terminate this Agreement at any time upon ninety (90) days' prior advance written notice. Upon termination, GP shall peaceably and quietly deliver, yield up, and surrender the Premises and remove the Hoop Houses and repair and restore the Premises as called for herein. Any of GP's property not removed (including the Hoop Houses) shall, at CITY's option, either become the sole property of CITY or be stored on-site or off-site at GP's expense.

25. **Waiver.** No delay, waiver, omission or forbearance on the part of CITY or GP to exercise any of either party's respective rights hereunder shall be deemed a waiver of such rights.
26. **Governing Law.** This Agreement shall be construed according to the laws of the State of Wisconsin.
27. **Notices.** All notices permitted or required hereunder shall be considered given (i) upon receipt if hand-delivered by commercial courier or otherwise personally delivered, (ii) if sent by facsimile, then at the time sent, if sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) and so long as the sender does not receive any error or "busy" or "inability to send" notification, and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and addressed to the party intended as follows:
- A. **If to CITY:**
City of Milwaukee
c/o City Real Estate
809 North Broadway
Milwaukee, WI 53202
Fax: 414-286-0395
Phone: 414-286-5820
- With a copy to:**
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2620
Fax: (414) 286-8550
- B. **If to GP:**
Growing Power, Inc.
Attn: Will Allen, CEO
5500 W. Silver Spring Drive
Milwaukee, WI 53218
Phone: (414) 527-1546
Fax: (414) 527-1908

The parties hereto may, from time to time, as needed, change the recipient and address information above by providing notice of new/replacement information by notice as required hereunder.

28. **Director.** All submissions to CITY, and all approvals or consents required to be obtained from CITY, hereunder, shall be submitted to, or obtained from the Commissioner of the Department of City Development, or his designee. The

Commissioner's or his designee's signature on any document providing approval or consent shall be absolute proof of such approval or consent.

29. **Severability of Provisions.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Agreement, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.
30. **Captions.** The captions in this Agreement are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions hereof.
31. **Entire Agreement.** This writing constitutes the entire agreement between the parties hereto and may not be amended or altered in any manner except in writing signed by the parties hereto.
32. **Counterparts; Facsimiles; No Recording.** This Agreement may be executed in one or more counterparts, which, when taken together, shall constitute one and the same document. Facsimile signatures shall be accepted as originals. This Agreement, being a personal license, shall not be recorded in the Register of Deeds Office.
33. **Open Records.** This Agreement and certain documents relating thereto are, or may be, subject to Wisconsin's Open Records Law (see Wis. Stat. Ch. 19, Subch. II, and, esp. Wis. Stat. §19.36(3) which includes records produced or collected under this Agreement). Subject to exercising its legal rights under law, GP agrees to cooperate with CITY in the event CITY receives a request under Wisconsin's Open Records Law for this Agreement or for any record relating to, or produced or collected under, this Agreement.—GP acknowledges that failure to do so will be a material breach under this Agreement and GP will defend and hold CITY harmless with respect to liability concerning any such breach. Except as otherwise authorized under Wisconsin's Open Records Law, GP records regarding this Agreement, the Property, the Premises and the Hoop Houses shall be retained for 7 years.
34. **Drafter Doctrine.** The doctrine of construing contracts against the drafter shall not apply to this Agreement, as the parties hereto had the opportunity to review and negotiate this Agreement prior to entry.
35. **Authority.** CITY and GP represent that each has the full power and authority to consummate the transaction contemplated by this Agreement, and all actions, proceedings and/or resolutions of CITY and GP necessary to consummate such transaction have been taken in accordance with applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**CITY:
CITY OF MILWAUKEE**

By: _____
Elaine Miller
Special Deputy Commissioner
Department of City Development
Signed per MCO § 304-49-9

**GP:
GROWING POWER, INC.**

By: _____
Will Allen, CEO

EXHIBIT A: DEPICTION OF THE PREMISES AND HOOP HOUSES
EXHIBIT B: INSURANCE REQUIREMENTS

167315

Exhibit A

Depiction of Premises and Hoop Houses

[Note: The Premises is an area approximately 9,600 s.f. in area]

Exhibit B
CITY OF MILWAUKEE

Insurance Requirements - Right of Entry

Insurance certificates must be sent for inspection and approval prior to commencement of the project to: Elaine Miller, Manager of Real Estate Services, City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202-3617 or by facsimile to (414) 286-0395.

For work performed by contractors and subcontractors, such individuals shall maintain:

TYPE OF INSURANCE

LIMITS

Workers' Compensation	Statutory limits
Employers Liability	
Bodily Injury by Accident	Each Accident \$100,000
Bodily Injury by Disease	Each Employee \$100,000 Policy Limit \$500,000

Public Liability

A Comprehensive General or Commercial General

Insuring Agreement that provides:

Occurrence Coverage

Premises/Operations Protection

Products Completed Operations Protection

Independent Contractors (owners, contractors
protective coverage)

Contractual Liability for Risks Assumed to
this agreement

NOTE: If claims made coverage is provided, the
policy must be amended so all protected occurrences
are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence	\$1,000,000
General occurrence	\$1,000,000
Products/completed operation aggregate	\$2,000,000

Automobile

Business Auto Policy that provides:

Liability coverage for all owned, non-owned
and hired vehicles

Sudden and Accidental Pollution Coverage

Provide MCS-90 Endorsement when applicable
in accordance with the Motor Carrier Act of 1980

For ongoing occupancy, GP shall maintain or cause to be maintained:

Public Liability

A Comprehensive General or Commercial General

Insuring Agreement that provides:

Occurrence Coverage

Premises/Operations Protection

Products Completed Operations Protection

Independent Contractors (owners, contractors
protective coverage)

Contractual Liability for Risks Assumed to
this agreement

* **NOTE:** If claims made coverage is provided, the
policy must be amended so all protected occurrences
are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence \$1,000,000
General occurrence \$1,000,000
Products/completed
operation aggregate \$2,000,000

**THE CITY OF MILWAUKEE AND MILWAUKEE FIRE DEPARTMENT MUST BE
NAMED AS ADDITIONAL INSURED PARTY ON THE POLICY.**