

JOINT USE AGREEMENT

This Joint Use Agreement (this “Agreement”) is made and entered into as of the __ day of _____, 2024 by and between The Ohio State University (the “University”), 281 W. Lane Ave., Columbus, Ohio 43210, an instrumentality of the State of Ohio, Highland Youth Garden Inc. 106 S. Wheatland Avenue, Columbus, Ohio 43204 (“The Partner”) a non-profit 501(c)(3) organized and existing under the laws of the State of Ohio.

RECITALS

WHEREAS, in 2024, the 135th General Assembly reappropriated state capital funds to the University, through the Chancellor of the Ohio Department of Higher Education (the “Chancellor”), for the following project (the “Project”), as more fully described herein:

Project Name: Highland Garden Inc.
Legislation: House Bill 2
Capital Appropriation: C315IX
Total Appropriation Amount: \$50,000 (the “Appropriation”).

WHEREAS, in accordance with the terms hereof, the Appropriation is to partially fund design and construction of capital improvements to the Project; and such Project shall expand the partnerships and activities between the Community Partner and the University.

WHEREAS The Ohio State University has an opportunity to expand its partnerships and activities in the Columbus area and would benefit from having a space locally to support a variety of engagements; and

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and the Partner hereby agree as follows:

AGREEMENT

1. Commitment.

- A. The Partner hereby represents to the University that The Partner (i) owns the property at 106 S. Wheatland Avenue, Columbus, Ohio 43204 at which The Project will be constructed (ii) will continue to be the owner of the property and (iii) that no other person, party, or entity has any rights in or to such property and building.
- B. Highland Youth Garden Inc. agrees to perform The Project as set forth above, and in accordance with the terms hereof, so that the project may be used and occupied as detailed above and dedicated to serving the needs of central Ohio, including, without limitation, the University. Highland Youth Garden Inc. shall design and construct the Project in a safe manner consistent with generally accepted standards, and in accordance with all applicable legal requirements, including without limitation, all

pertinent federal, state and local laws as well as state administrative regulations, and the provisions of Ohio Revised Code Chapter 4115 regarding prevailing wages. It is hereby expressly agreed that The Partner shall follow competitive bidding procedures as outlined generally in ORC chapter 153, which shall include, at a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders, and such selection procedures as directed by laws applicable to the University.

- C. Prior to performing the Project Highland Youth Garden Inc. shall provide the University with a copy of the plans and specifications. It shall be the responsibility of Highland Youth Garden Inc. to ensure that the same comply with the applicable laws and requirements of public authorities, and the delivery of the plans and specifications to the University shall not be deemed a representation or warranty of any kind that the same satisfy the requirements or standards of any governmental authority having jurisdiction thereof or otherwise suitable for the purposes for which they were designed. From time to time during the performance of the Project, but in no event less than once a month, Highland Youth Garden Inc. shall provide the University with an update on the Project status.
 - D. The University through its faculty, staff and students shall be given the right to use and occupy teaching and residency activities with the University upon such terms and conditions as the parties reasonably agree and as further outlined in Attachment A, hereby incorporated. Either party of this Agreement, shall, upon request, supply the requesting parties with all pertinent records which measure the nature and extent of use of the facility by the University, the terms and conditions governing such use and the specific benefits derived by the University under this Agreement. As applicable, the parties understand the Ohio Department of Higher Education (ODHE) program approval is a separate process, and this JUA does not exempt the University from seeking approval under ODHE rules.
2. Term. The term ("Term") of this Agreement shall commence as of the date the University has access to the facility and shall expire on the day which is the last day of the month in which the twentieth (20th) anniversary of the date the University has access to the facility, unless sooner terminated pursuant to the terms hereof or at law. In the event that the University's use is terminated prior to its expiration in accordance with the term hereof, Highland Youth Garden Inc. shall reimburse the State of Ohio in an amount calculated by (a) dividing the funds contributed by the State of Ohio by twenty (20) and (b) multiplying that sum by twenty (20) less the number of full years the Project has been utilized by the University in accordance with this Agreement. The Reimbursement Amount shall be paid in cash, by wire or by certified check.
 3. Funds used for Capital Improvements. Except for the funds used to cover the University's administrative costs, the full amount of the Appropriation shall be used by The Highland Youth Garden Inc. only for capital improvements that are part of the Project and not for operating costs.

4. Insurance.

- A. Highland Youth Garden Inc. agrees that it shall, at its sole cost and expense, procure and continue in force during the Term of this Agreement (i) a policy of comprehensive general personal injury and property damage liability insurance against claims for bodily injury, death and property damage (including completed operations and contractual liability), on an occurrence basis in an amount not less than \$1,000,000 combined single limits and (ii) all-risk property insurance, including fire and casualty insurance for The Highland Youth Garden Inc. Project, in an amount equal to their full replacement cost but in no event less than the Appropriation.
- B. Prior to any contractor being permitted to perform work on the Project, and throughout the entire period any Project alterations or improvements are being performed, it shall be the obligation of Highland Youth Garden Inc. to require each of the contractors to carry and maintain in full force and effect commercially reasonable insurance coverages consistent with standard insurance requirements for contractors performing similar work in a similar location.
- C. The insurance policies described in Paragraphs 4(A) and 4B above shall be carried with companies licensed to do business in the State of Ohio, and, upon request from the University, The Highland Youth Garden Inc. shall provide a Certificate of Insurance evidencing the above coverages. All such policies shall name the University, and its directors, employees, faculty and agents and such other persons or entities as the University may reasonably request from time to time, each as an "Additional Insured" and shall contain a waiver of the insurer's right of subrogation against the University and its carrier. The University shall not at any time be liable for damage or injury to persons or property in or around The Highland Youth Garden Inc. Project. Any coverage limit required herein shall not be construed as a limitation or satisfaction of any hold harmless or indemnification agreement contained herein.

5. Indemnity and Hold Harmless. The Highland Youth Garden Inc. shall indemnify, defend and save harmless the University, its affiliates, shareholders, directors, officers, agents, employees and contractors from and against any and all loss, cost (including attorneys' fees, and all construction, operation, and maintenance costs), damage, expense and liability (including statutory liability and liability under workers' compensation laws) in connection with claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings, arising out of any act or neglect by The Highland Youth Garden Inc., its agents, employees, contractors, licensees, invitees, representatives, or visitors, in, on or about The Highland Youth Garden Inc. Project or in connection with this Agreement or the Project, including without limitation, the construction, operation or maintenance of The Highland Youth Garden Inc. Project and the use of the Appropriation. This provision shall survive the expiration or sooner termination of this Agreement.

6. Distribution of Funds and Administrative Costs. After the full execution and delivery of this Agreement, the University shall submit to the Controlling Board a formal written request for

the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the Project. Such administrative costs shall be \$750.00, which is equal to 1.5% of the Appropriation, and shall be paid to the University upon receipt of the Appropriation. At any time the full execution and delivery of this Agreement but in no event after eleven (11) months after such date, The Highland Youth Garden Inc., on behalf of itself, shall submit a written draw request detailing expenditures to the University for the permitted use of the remaining Appropriation in the amount of \$49,250.00 for the Project. The University shall disburse the above amounts to Highland Youth Garden Inc. after the University's receipt of the Appropriation, approved invoices or other appropriate documentation of such expenses and completes any other necessary reviews and approvals.

7. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
8. Assignment. This Agreement may not be assigned by The Highland Youth Garden Inc. in any form or to any extent, without the prior written consent of the University, together with the written consent and approval of the Chancellor. Any assignment without such written consent shall be null and void.
9. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University:

General Counsel
Office of Legal Affairs
The Ohio State University
1590 North High Street, Suite 500
Columbus, Ohio 43210-2178

with a copy to:

Planning and Real Estate
The Ohio State University
Gateway D, 1534 N. High Street - 2nd Floor
Columbus, Ohio 43201

To the Community Partner:

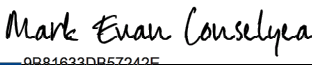
Highland Youth Garden Inc.
106 S. Wheatland Avenue

Columbus, Ohio 43204

10. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.
11. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Chancellor.
12. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.
13. Trademarks/Service marks. The Highland Youth Garden Inc. shall not make use of the University's name or other identifying marks or property of the University, nor make any representation, either express or implied as to University's promotion or endorsement of the Project unless it has received the prior written permission from the University to do so.
14. Recitals. The Recitals above are incorporated herein by reference.

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

THE OHIO STATE UNIVERSITY

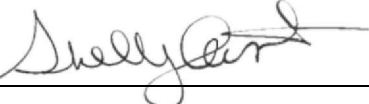
By: 
0884633DB57242E...

Name: Mark Conselyea

Title: Interim Senior Vice President

Date: 10/31/2024

THE HIGHLAND YOUTH GARDEN CENTER

By: 

Name: Shelly Casto

Title: Executive Director

Date: 10/28/2024

Joint Use Agreement Worksheet – Attachment A

The Ohio Department of Higher Education
Charitable Pharmacy and Market

Section I: State appropriation information.

1. Amount of state appropriation provided:	\$ <u>50,000</u>
2. Estimated annual debt service on the appropriation:	\$ <u>4,013</u>
3. Term of the state bond, in years:	<u>20</u>

Section II: Estimated value of use of the machinery and facility.

Use(s) of the Facility	Annual value of use of mach.	# of years
a. <u>Educational events on food production</u>	\$ <u>9,750.96</u>	20
b. _____	\$ _____	20
c. _____	\$ _____	20
d. _____	\$ _____	20
e. <u>Total</u>	\$ <u>9,750.96</u>	20

(* List additional uses on separate page as needed.)

Section III:

On a separate page, explain how each use listed in Section II was valued for this analysis.

Section III: Value Analysis

Overview of Project

Highland Garden Inc. grows minds, grows food, and grows community in partnership with our Hilltop neighbors in Columbus, Ohio. Located in one of the most economically challenged areas of Central Ohio, the seeds for Highland Garden Inc. were planted in 2009 when a neighborhood recreation center closed, and local educators and lovers-of-gardening began growing food and teaching children on the plot. Now, we feature one of the largest high tunnels in the city, an outdoor education center, and a nearly half-acre plot full of arbors, structures, and crops. We offer a diverse,

hands-on learning environment for children, giving them the space and guidance to grow their own food and explore nature.

Highland Garden Inc. is purchasing and renovating a property at 106 S. Wheatland Ave., overlooking their main garden location. With this property Highland Garden will add after-school and full-day summer camp activities.

Highland Garden Inc’s location, history of engagement, infrastructure and local partner collaboration make us an ideal partner with OSU Extension to engage Hilltop residents in food, nutrition, and agriculture. Highland Youth Garden is partnering with the College of Food, Agricultural, and Environmental Science’s Franklin County Extension Office to provide space for events and programming. These events include experiential garden walks, on-farm research trials, and community education on food production.

Annual Value to The Ohio State University for Use of Commercialization Space at Highland Garden

Space

Both the new Garden House property and existing land owned by Highland Garden will provide space for OSU to host two 3-hour educational events each year. These events, in partnership with Highland Garden, will be run by OSU faculty in order to provide on-site educational opportunities.

Below are established hourly rental rates for each space on the Highland Youth Garden property using rates charged for spaces with similar uses at the same size by other organizations:

Space Name	Hourly Rate
Garden House interior	\$415.20
Garden House exterior	\$112.32
High Tunnel/Outdoor Kitchen	\$1097.64
Total	\$1625.16

At a total hourly rate of \$1625.16 a single, 3-hour event is valued at \$4,875.48. With 2 events per year, the total value to the university is \$9,750.96.