

EAST FRANKLIN FARMER'S MARKET AT LIBERTY PARK  
LEASE AGREEMENT

This Lease Agreement ("Agreement") is made this 4TH day of January, 2017 by and between The City of Franklin, Tennessee ("City") and James Gardner, d/b/a East Franklin Farmer's Market at Liberty Park ("Lessee").

RECITALS

WHEREAS, the City owns, operates and maintains certain facilities for athletic and passive parks and other public uses, which facilities are generally known as Liberty Park, 2098 Turning Wheel Road, Franklin, Tennessee, located within the City's corporate limits.

WHEREAS, the City desires to make available to Lessee, and Lessee desires to operate a Saturday farmer's market (Farmers' Market) located within phase II parking area at Liberty Park.

NOW, THEREFORE, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, and for the good and valuable consideration, the parties hereto agree as follows:

- 1. Premises.** The City hereby lease to Lessee and Lessee hereby leases from the City a designated parking space(s) within the phase II of Liberty Park located in Liberty Park ("Premises") as shown on the attached Exhibit A.
- 2. Lease Term.** The term of the lease shall commence January 1, 2017 ("Initial Period") and expire on December 31, 2017. Lessee may occupy Premises only on Saturdays between the hours of 7:00 a.m. and 2:00 p.m., or at other times as may be approved in writing by the City Parks Director.
- 3. Use of Premises.** Lessee shall have the right to occupy and use the premises for the purposes of a Farmers' Market for the length of the lease term. Lessee shall use and occupy the premises in a safe and careful manner and in compliance with all applicable municipal, state and federal laws, rules and regulations prescribed by the City and other governmental authorities as may be in force and effect during the term of the Agreement. Lessee shall not do any act or suffer any act during the term of the Agreement, which will in any way deface, alter or injure any part of the Premises, except normal wear and tear.
- 4. Equipment.** Lessee shall supply and maintain all of its own equipment, including but not limited to small shade tents no larger than 10' x 10' (if needed), tables on which to display food products and trailers attached to vehicles owned by the lessee. Installation of any equipment requires written consent by the City of Franklin Parks Department in conjunction with the City of Franklin Building and Neighborhood Services Department. Lessee shall be responsible for cleanliness and overall appearance of the parking spaces. Lessee shall have the right to engage janitorial services at Lessee's sole expense, but only with the City's permission and approval. The City reserves the right to require proof of insurance of any janitorial service engaged by Lessee.
- 5. Vendors.** Lessee shall be responsible for a maximum of eight (8) total local farmers that provide seasonal, local agricultural products, which may include meats; eggs; produce; and jarred food produced

from their farms. Items sold will be strictly limited to foods grown or produced on area farms, and may not include non-agricultural items such as, but not limited to, store bought food for resale, trinkets, t-shirts, crafts, art, or food truck vendors.

6. **Refrigeration / Electrical.** Lessee shall be responsible for providing electricity through low volume generators to provide any refrigeration necessary for participants of Farmers' Market.

7. **Utilities.** The City will not supply gas, electric, water, or sewer throughout the term of the Lease. The City shall provide a dumpster or other trash receptacle near Premises for Lessee's use, and will provide weekly trash pickup for this container.

8. **Property Maintenance.** The City shall provide all property maintenance required on the Premises to keep the property essentially in the same condition as when Lessee takes possession of the Premises. Should Lessee require additional maintenance, Lessee shall request the maintenance in writing to the City. Lessee will not erect any permanent structures nor make any changes to the Premises or any surrounding areas, including landscape, grounds, parking lot or equipment. Lessee is responsible at the end of each closing of the market to ensure that the grounds and parking lot are left free of all debris. The City of Franklin Parks Department agrees to maintain the area, making sure the grass is mowed and maintained at a reasonable height level in order to accommodate the Market set up for each Saturday. No vehicles will be permitted to drive onto any of the grassy areas if the grounds are soft or soggy from past or current rains, thus preventing any damage to the parkgrounds.

9. **Signage.** Lessee shall have the right to erect a sign in the landscaped areas and park entrances so long as the sign conforms to the City of Franklin Municipal Code. Temporary signage may be erected on the premises at the direction of the Lessee two hours prior to start time of the market and removed within one hour after the market closes each Saturday (or other day as approved by the City Parks Director). No temporary signage may be left on the premises.

10. **Assignment.** The Lessee shall not assign, sublet, or any way part with the possession of the Premises without first obtaining the written consent of the City.

11. **Rent.** Lessee agrees to pay and shall be required to pay to the City during this Agreement rent in the amount of fifty dollars (\$50.00) per year, to be paid on January 1, 2017. Rent shall be payable to the City of Franklin, and mailed to the City of Franklin Parks Department, Attention Lisa Clayton, Parks Director at P.O. Box 305, Franklin, Tennessee 37065 or at such other place as the City may from time to time designate in writing.

12. **The City Shall Have No Liability.** The City shall not be liable to Lessee or Lessee's employees, agents, guests, licensees or invitees or to any other person whomsoever for any injury, including death, to persons or damage to property on or about the Premises, which is caused by the negligence or misconduct of Lessee, its employees, licensees, agents, guests, licensees or invitees entering the Premises or Liberty Park under expressed or implied invitation of Lessee arising out of or relating to the use of the Premises by Lessee in the conduct of its business herein or arising out of or relating to any breach or default by Lessee in the performance of its obligations hereunder and Lessee hereby agrees to indemnify the City and hold the City harmless from any loss, expense, or claims arising out of or relating to such damage, injury or death. Lessee further agrees to be responsible for and indemnify and hold the City, its mayor, aldermen, employees and officials harmless from any damages or expenses to Lessee, arising out of or caused by burglary, theft, or other illegal acts performed on the Premises and to notify the City of such an event within twenty-four (24) hours of Lessee's notification of such an event.

13. **Alterations.** Lessee will not make any alterations, additions, substitutions, subtractions or replacements to the Premises which would have an adverse effect on either the nature of the Premises or the function or value of the Premises, unless such alterations, additions, substitutions, subtractions, replacements or improvements may be readily removed or re-added without damage to the Premises. Any alterations, additions or improvements to the Premises which may not be readily removed without damage to the Premises, and any substitutions or replacements, shall be considered to constitute a part of the Premises and shall be approved by the City in writing prior to commencement of any work on the Premises.

14. **Liens and Encumbrances.** Lessee shall keep the Premises free and clear of all liens and encumbrances except those created or permitted under this Agreement.

15. **Accident Report Form.** Lessee shall submit within a twenty-four (24) hour period of any accident a report detailing such to the City of Franklin Parks Department.

16. **Repair of Damage.** The City is responsible for construction and repair of general wear and tear of the Premises. Lessee agrees to notify the City of any damages to the Premises that occur during the term of this Agreement. Before taking possession of the Premises, Lessee shall notify the City in writing of any previously existing damage. Lessee shall remain responsible for all damage apart from normal wear and tear occurring during the term of the lease.

17. **Insurance.** Lessee during the term of this Agreement shall procure and maintain at its sole cost and expense, insuring Lessee and the City against any and all liability from injury or death to a person or persons, and for damage or destruction of property occasioned by or arising out of or in connection of the Premises. Lessee shall maintain minimum insurance as provided by the Governmental Tort Liability Act as may be in effect at time of performance, currently as follows:

17.1 General Liability Insurance with minimum limits of not less than \$250,000.00 for bodily injury or death of any one (1) person in any one (1) accident, occurrence or act, and not less than \$250,000.00 for bodily injury or death of all persons in any one (1) accident, occurrence or act, and \$100,000.00 for injury or destruction of property of others in any one (1) accident, occurrence or act.

17.2 Property damage coverage shall cover the Premises against vandalism and all equipment and contents. The insurance policy or policies must be submitted annually and must show the City as the certificate holder for the duration of this Agreement. All insurance policies must be submitted to the City of Franklin Parks Department prior to the beginning of intended use and will remain on file on an annual basis.

17.3 Product Liability Coverage with minimum limits of not less than \$100,000 for bodily injury or death of any (1) person in any one (1) accident, occurrence or act, and not less than \$250,000 for bodily injury or death of all persons in any one (1) accident, occurrence or act, and \$100,000.00 for injury of others in any one (1) accident, occurrence or act arising from the vendor of goods that designed, manufactured, sold or furnished that product.

18. **No Agency/Partnership/Joint Venture.** Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and

agent between or among any of the parties. None of the parties hereto shall hold itself out in any manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

**19. Terminations/Notices.** This Agreement may be terminated by either party, with or without cause, upon thirty (30) day's written notice. Any notice provided pursuant to the Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or set forth in such other document which the Agreement may accompany, or such other address as either party may in the future specify in writing to the other):

**In the case of the City: In the case of Lessee:**

City of Franklin Parks Department  
Attn: Lisa Clayton, Director  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305  
Phone: 615/794-2103  
E-mail: Lisac@franklintn.gov

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**20. Events of Default.** The occurrence of any one or more of the following events constitutes an "Event of Default" under this Agreement:

Lessee's failure to make during the Agreement any lease payment as described in Paragraph 11 above (or any other payment) as it becomes due in accordance with the terms of this Agreement, and the failure continues for fifteen (15) days after the due date;  
or

Lessee's failure to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Agreement, and the failure is not cured or steps satisfactory to the City taken to cure the failure, within fifteen (15) days after written notice of the failure to Lessee by the City; or

The discovery by the City that any material statement, representation or warranty made by Lessee in this Agreement or in any writing delivered by Lessee pursuant to or in connection with this Agreement is false, misleading or erroneous in any material respect;  
or

The initiation by Lessee of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of Lessee; or Lessee shall be or become insolvent, or admit in writing its inability to pay its or his debts as they mature, or make an assignment for the benefit of creditors; or Lessee shall apply for or consent to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such receiver, trustee or similar officer shall be appointed without the application or consent of Lessee; or Lessee shall institute (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against Lessee, or any judgment, writ, warrant of attachment or execution or similar process shall be issued or levied against a



substantial part of the property of Lessee.

**21. Remedies.** Upon the occurrence of an Event of Default, and as long as the Event of Default is continuing, the City may, at its option, exercise any one or more of the following remedies as to the Premises:

- (a) By written notice to Lessee, declare an amount equal to all amounts then due under the terms of the Agreement and all remaining lease payments due thereon, whereupon that amount shall become immediately due and payable;
- (b) Within fifteen (15) days after written demand or notice to Lessee, enter and take immediate possession of the Premises wherever situated, without any court order or process of law and without liability for entering the premises;
- (c) Lease or sublease the Premises for the account of Lessee, holding Lessee liable for all lease payments and other payments due to the effective date of such leasing or subleasing and for the difference between the purchase price, rental and other amounts paid by the purchaser, lessee or sublessee pursuant to such lease or sublease and the amounts payable by Lessee; and
- (d) Exercise any other right, remedy or privilege which may be available to it under the applicable laws of the State of Tennessee or any other applicable law or proceed by appropriate court action to enforce the terms of this Agreement or to recover damages for the breach of this Agreement or to rescind this Agreement as to the Premises.

Lessee will remain liable for all covenants and obligations under this Agreement, and for all legal fees and other costs and expenses, including court costs awarded by a court of competent jurisdiction, incurred by the City with respect to the enforcement of any of the remedies under this Agreement, when a court of competent jurisdiction has finally adjudicated that an Event of Default has occurred.

Upon an Event of Default or as otherwise required herein or in any Agreement, Lessee shall within ten (10) calendar days after notice from the City, at its own cost and expense: (a) remove all contents of the Premises and, if deinstallation, disassembly or crating is required, cause the equipment to be deinstalled, disassembled and crated. If Lessee refuses to leave the Premises in the manner designated, the City may enter upon the Premises and take possession of the Premises and charge to Lessee the costs of such taking. To the extent permitted by applicable law, Lessee hereby expressly waives any damages occasioned by such taking. If Lessee makes modifications to the Premises after build out and such modifications impede the taking of possession of the Premises, the cost of removing the impediments and restoring the site shall be the sole expense of Lessee. All of Lessee's right, title and interest in the Premises, the possession of which is taken by the City upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment), shall pass to the City, and Lessee's rights in such Equipment shall terminate immediately upon such repossession.

**22. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. All remedies herein conferred upon or reserved to the City shall survive the termination of this Agreement.

**23. Headings.** All section headings contained in this Agreement are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

24. **Governing Law and Venue.** The Agreement constitutes the entire agreement and is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.

25. **Damage by Casualty.** In case the Premises or any part thereof shall at any time during the said term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the Premises cannot be rebuilt or restored by the Lessor within One Hundred Twenty (120) days thereafter, then this Lease Agreement shall terminate; but if the Premises can be rebuilt or restored within One Hundred Twenty (120) days the Lessor will at his own expense and with due diligence so rebuild or restore the Premises, and rent shall abate under this Agreement until the Premises shall have been so rebuilt or restored.

26. **Holding Over.** Should Lessee hold over the term hereby created with the consent of Lessor, Lessee shall become a Lessee from month to month at the monthly rental rate then payable hereunder and otherwise upon the covenants and conditions in this Lease contained, and shall continue to be such Lessee until thirty (30) days after either party serves upon the other notice of intention to terminate such monthly tenancy.

27. **Severability.** In any provision of, or any covenant, obligation or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. The invalidity or unenforceability shall not affect any valid or enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

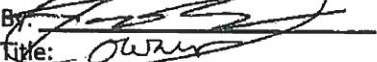
28. **Entire Agreement.** This Lease Agreement and its attachments contain the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this Lease Agreement shall be valid or binding; and this Lease Agreement may not be enlarged, modified or altered except in writing signed by the parties and attached hereto.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement by their authorized officers as of the date set forth above.

CITY OF FRANKLIN, TENNESSEE

JAMES GARDNER, d/b/a GARDNER  
FAMILY FARMS – EAST FRANKLIN  
FARMER'S MARKET AT LIBERTY PARK

By:   
Eric Stuckey  
City Administrator

By:   
Title: Owner

Approved as to form:


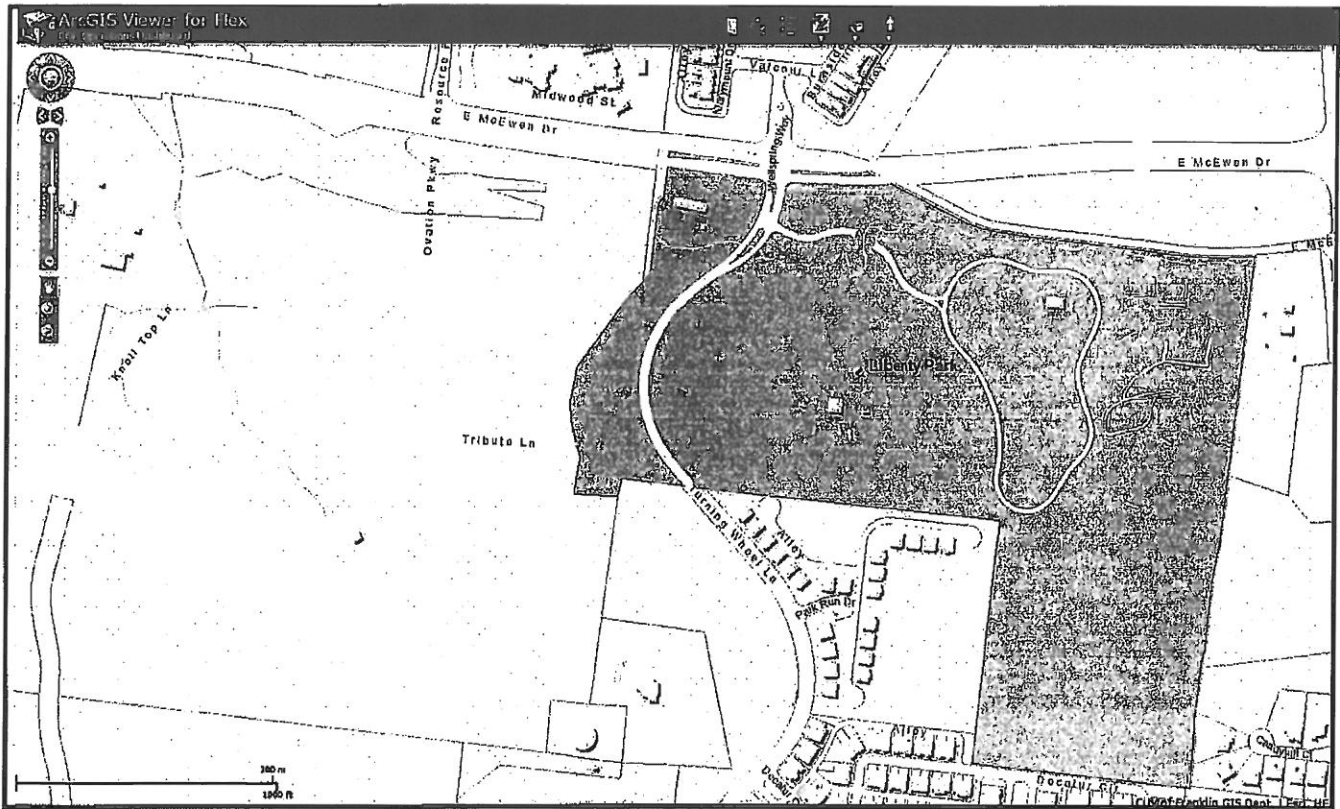
  
Kristen L. Corn, Assistant City Attorney

Exhibit A

Liberty Park  
2097 Turning Wheel Road  
East Franklin Farmer's Market



**Liberty Park**  
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