

# LOAN AGREEMENT

THIS LOAN AGREEMENT (“Loan Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between Friends of Red Oak Community School, LLC., a Washington limited liability company, having its principal office at 15405 SE 37<sup>th</sup> Street, Ste. 100, Bellevue, WA 98006 (the “Lender”), and Sunbury Urban Farm, an Ohio nonprofit, having its principal place of business at \_\_\_\_\_ (the “Borrower”).

## *RECITALS*

- A. Borrower owns certain real property legally described in **Exhibit A** hereto (collectively the “Property”).
- B. Lender and Borrower wish to enter into an agreement whereby Lender will loan up to Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00) to Borrower (the “Loan”) to be used in connection with improvements on the Property.

## *AGREEMENT*

THEREFORE, in consideration of the covenants made in this Loan Agreement and in the attachments hereto, the parties agree as follows:

- Promissory Note. Subject to the provisions of this Loan Agreement, Lender agrees to lend up to a maximum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00) to Borrower, which shall be evidenced by a promissory note, a copy of which is attached as **Exhibit B** (“Note”). The amounts actually advanced on the Note shall be referred to as the “Loan.” Borrower shall use the Loan proceeds to make improvements on the Property.
- Mortgage. As security for the Loan, Borrower shall execute a mortgage on the Property in the form attached as **Exhibit C**, pledging the Property as collateral (“Mortgage”). The Mortgage shall be recorded concurrent with Closing of the Loan. This Loan Agreement, the Note, and the Mortgage are collectively referred to herein as the “Loan Documents.”
- Initial and Annual Loan Fees. Borrower agrees to pay all costs and expenses incurred in connection with preparation and execution of the Loan Documents and closing of the Loan, including, but not limited to the cost of recording, title insurance, escrow, transfer taxes (if any), mortgage taxes (if any), certified copies of instruments and attorney fees and costs (“Initial Loan Fee”). The entire balance of the Initial Loan Fee shall be paid in full concurrent with Closing of the Loan. In addition, Borrower agrees to pay all ongoing service-related fees (“Service Fees”) associated with the Loan (beginning concurrent with the date this Agreement is signed) which include, but are not limited to, (i) monthly paying agent services, (ii) third party legal, accounting and tax preparation expenses due by the Lender, (iii) and all other third-party costs that would otherwise be an obligation to the Lender (collectively the “Expenses”). All of the foregoing costs and expenses are referred to collectively as the “Loan Expenses.”

4. Right to Make Payments. If mechanics liens or orders or assignments of contract are filed against the Property or any tax, assessments, sewer or water service charges, charged against the Property are not paid when due, Lender may pay them if Borrower fails to pay said amounts within the time specified in any notice given by Lender to Borrower pursuant to the terms of the Mortgage. Payments made by Lender under this paragraph are added to the balance of the Note and secured by the Mortgage as if they were installments paid to Borrower. Notwithstanding the foregoing, nothing in this paragraph shall be construed to create an obligation for Lender to make such payments.

5. Conditions to Closing. The obligation of Lender to make the Loan hereunder is subject to the fulfillment, to Lender's satisfaction, by or on behalf of Borrower of the conditions set forth in this Section 5 on or before the Closing Date or the date of any subsequent advance of the Loan. All documents and instruments referred to below or in any other such written instrument must be acceptable to Lender in form and content. If Lender disburses funds without requiring the satisfaction of each of the foregoing conditions, Borrower's obligation to meet the unsatisfied conditions shall not be deemed waived (unless specifically waived in writing by Lender) and Lender may require compliance with each of such conditions before further Loan proceeds, if any, are disbursed.

a. Loan Documents. All Loan Documents shall have been executed and delivered to Lender by Borrower and such other persons or entities as Lender may require and the Deeds of Trust shall have been duly recorded in the real property records of the county in which the Property is situated.

b. Loan Expenses. Borrower shall have paid the Loan Expenses incurred as of the Closing Date or the date of any subsequent advance.

c. UCC Searches. Lender shall have received current uniform commercial code searches covering Borrower and such other persons and entities as Lender may require, and such searches reveal no filings related to or which could relate to the Property.

d. Title Insurance. Lender shall have received an ALTA standard coverage lender's policy of title insurance (the "Title Policy") from Stewart Title Company (or such other title insurance company as is acceptable to Lender, the "Title Company") in an amount not less than the amount of the Loan, insuring the Mortgage as a lien on Borrower's interest in the Property and reflecting liens, encumbrances and other exceptions to title reasonably acceptable to Lender. The Title Policy shall contain such title insurance endorsements and reinsurance or coinsurance agreements as Lender may reasonably require.

e. Litigation. There shall be no litigation pending against Borrower, which in Lender's opinion could or does affect Borrower's ability to perform all of its obligations under the Loan Documents.

f. No Condemnation. There shall be no eminent domain or condemnation proceeding pending or threatened against the Property. This condition shall be deemed satisfied if Lender has received condemnation proceeds or a cash deposit from Borrower sufficient in Lender's judgment to pay the cost of all repairs necessary as a result of the condemnation and any related costs or expenses.

g. Property Conditions. The Property shall be in the same or better condition as it was upon execution of the Loan and there shall be no casualty or damage to the Property, which in Lender's opinion, impairs Lender's security for repayment of the amounts owed under the Note and Loan Agreement and secured by the Mortgage.

h. Other Conditions. All other conditions or obligations under the Loan Documents to be complied with prior to the closing and funding of the Loan, shall have been complied with, and all of the representations and warranties of Borrower in the Loan Documents shall be true and correct in all material aspects.

6. Borrower's Representations and Warranties. Borrower represents and warrants to Lender that (i) the following are true as of this date, and shall remain true, and (ii) Borrower shall comply with all of its obligations under this Section 6, so long as any amount is still outstanding under the Note or the Loan Documents:

a. Legal Standing. Borrower is duly organized and validly existing under the laws of the State of Ohio and is qualified to do business in the State of Ohio. Borrower is not a "foreign person" within the meaning of Section 1445 and 7701 or the Internal Revenue Code.

b. Authority. Borrower has the legal authority to enter into and perform its obligations under the Loan Documents and Borrower has duly authorized the person signing the Loan Documents to do so.

c. Binding Agreement. The Loan Documents constitute valid and legally binding obligations of Borrower, enforceable in accordance with their terms.

d. No Default. Borrower's execution and performance of its obligations under the Loan Documents will not violate any agreement or instrument by which Borrower is bound, and will not result in a default under any such agreement or in the imposition of any lien or encumbrance upon any of Borrower's assets except as created by the Loan Documents.

e. Title. Upon Closing, Borrower will have marketable title to the Property, free of any security interest, lien, or other encumbrances, except as evidenced in the Title Policy or the Loan Documents or as specifically disclosed in writing to Lender.

f. Insurance. Borrower has and will maintain property insurance on the Property, liability insurance with respect to its business and other insurance in accordance with the requirements of the Mortgage. Borrower shall provide Lender with verification of this insurance coverage and shall name Lender as an additional named insured on Borrower insurance policies related to the Property.

g. Hazardous Waste. To the best of Borrower's knowledge (1) there are no Hazardous Substances (as defined below) currently located in, on, or under the Property in a manner or quantity that presently violates any Environmental Law (as defined below), (2) there are no underground storage tanks located on the Property; and (3) there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of Hazardous Substances or the violation of Environmental Laws at the Property.

The term “Hazardous Substances” shall mean any substance or material now or hereafter defined or regulated as a hazardous substance, hazardous waste, toxic substance, pollutant, or contaminant under any federal, state or local law, regulation, or ordinance (“Environmental Law”) governing any substance that could cause actual or suspected harm to human health or the environment. The term “Hazardous Substances” specifically includes, but is not limited to, petroleum, petroleum by-products, and asbestos.

7. Borrower’s Affirmative Covenants. So long as the Borrower shall have obligations under the Loan Documents and, until payment in full of each Loan and performance of all other obligations of Borrower hereunder, Borrower will, unless Lender shall otherwise consent in writing:

a. Preservation of Existence, Etc. Maintain its existence as a 501(c)(3) nonprofit corporation qualified to do business in the State of Ohio.

b. Compliance with Laws. Comply with all material laws, statutes, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting Borrower or the operations thereof, and it will not commit, suffer or permit any act to be done in violation of any law, ordinance or regulation, except, in each case, where such noncompliance or act would not have a material adverse effect upon Borrower’s assets, operations or financial condition.

c. Payment of Taxes. File or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to Borrower and pay or cause to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable other than those payable without penalty or interest; provided, however, Borrower shall not have to pay any such taxes so long as Borrower shall contest, in good faith and at its cost and expense, in its own name and behalf, the amount or validity thereof, in an appropriate manner or by appropriate proceedings; and provided, further, that each such contest must operate during the pendency thereof to prevent the collection of or other realization upon such tax, and to prevent the sale, forfeiture, or loss of its property or any part thereof.

d. Inspection Rights. Permit Lender or its duly authorized representatives and agents (i) access (wherever regularly located) during normal business hours, upon reasonable advance notice, to the books and records of Borrower, and to make such books and records available for audit, inspection and copying, at reasonable times, upon reasonable advance notice and under reasonable conditions to Lender and its duly authorized representatives and (ii) to discuss the affairs, finances, and accounts of Borrower with appropriate officers of Borrower and its respective representatives and agents.

e. Keeping of Books. Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of Borrower in accordance with GAAP consistently applied.

f. Insurance. Maintain or cause to be maintained, with insurance companies, insurance of such type, against such risks and in such amounts and with deductions as are consistent with coverage as are customarily carried by organizations similar to that of Borrower,

which insurance shall include property damage, fire and extended coverage, general liability and property damage liability insurance; Lender will be named an additional insured under all such policies. Borrower shall at all times also maintain worker's compensation coverage as required by the laws of the State of Ohio.

g. Financial Statements and Other Reports. Within 120 days following the end of Borrower's fiscal year, furnish to Lender its financial statements, whether audited or unaudited, as of the end of each of its fiscal year and for the fiscal year ended on such date, and promptly upon the request of Lender, such other information regarding the financial position, results of operations, business or prospects of Borrower, as such party may reasonably request from time to time.

h. Notice of Certain Events. Provide Lender notice:

(i) promptly in writing of the occurrence of any Event of Default or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto;

(ii) promptly in writing of the occurrence of any "default," "loan agreement default," or "event of default" or any event which, with the passage of time or service of notice, or both, would constitute a "default," "loan agreement default," or "event of default," specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto;

(iii) promptly in writing of the occurrence of the filing of any petition in bankruptcy (or other commencement of a bankruptcy or similar proceeding) by or against Borrower, under the Bankruptcy Code, as amended, or under any other insolvency act or law, state or federal, now or hereafter existing; and

(iv) of any significant adverse change since the latter of the date hereof or the date of the most recent notice given pursuant to this Section in the financial condition of Borrower within ten (10) days of the occurrence of the circumstances giving rise to the adverse change.

i. Payment of Obligations. Pay when due all of its obligations and liabilities, except where the same are being contested in good faith by appropriate proceedings diligently prosecuted and, if so required by Lender, for which appropriate reserves for the accrual of same satisfactory to Lender are maintained.

j. Additional Instruments. Execute and deliver such additional instruments and to perform such additional acts as may be necessary, in the reasonable opinion of Lender, to carry out the intent of the Loan Documents or to perfect or give further assurances of any of the rights granted or provided for in the Loan Documents.

k. Condition of Property. Maintain and preserve the Property in a good and marketable condition, free from any Hazardous Substances and in compliance with all Environmental Laws.

8. Borrower's Negative Covenants. So long as Borrower shall have obligations under the Loan Documents and, until payment in full of each Loan and performance of all other obligations of Borrower hereunder, Borrower will not, unless Lender shall otherwise consent in writing:

a. Dissolution, Merger, Sale of Assets. Dissolve, sell or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another corporation.

b. Negative Pledges. Create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Property prior to or in parity with the Mortgage without prior written consent of Lender.

c. Diversion of Funds for Unrelated Purposes. Divert any substantial part of its corpus or income for a purpose or purposes other than those for which Borrower is organized and operated.

9. Indemnification. Borrower agrees to pay for and indemnify, defend and hold harmless Lender for all damages, causes of action, claims, liens for materials, labor or services furnished to make improvements on the Property, judgments and liabilities (including attorney's fees and costs) arising from or related to the Property and the operation of Borrower, provided however, Borrower shall not have any duty to indemnify if any such damage, claim, judgment or liability arises in connection with the negligent act or omission of Lender. Except as limited herein, Borrower shall defend against any action or proceeding brought against Lender on these liens or claims. Except in the case of breach of this Loan Agreement by Lender and except in the case of the intentional or negligent act or omission of Lender, Lender shall not be liable to Borrower, or any person or entity claiming through Borrower, in connection with the Loan or the Loan Documents.

10. Defaults. Any of following shall constitute an "Event of Default":

a. Assignment of this Loan Agreement without prior written consent of Lender, which may be granted or withheld in Lender's sole discretion.

b. The improvements on the Property are, in the judgment of Lender, materially injured or destroyed by fire or other casualty and will not or cannot be restored or rebuilt through insurance proceeds or otherwise.

c. A petition in bankruptcy is filed by or against Borrower; a receiver or trustee of Borrower's property is appointed; Borrower files a petition for reorganization under any of the provisions of the Bankruptcy Act or of any other law; Borrower makes an assignment for the benefit of creditors, without Lender's prior consent; or is judged insolvent by any state or federal court.

d. Any material breach by any party under the terms set forth in the Loan.

e. Borrower breaches any other obligation in the Loan Documents, including the failure to make any required payment when due.

f. The failure of any representation or warranty made by or on behalf of Borrower in connection with the Loan or the Loan Documents to be correct when made.

g. A material adverse change in Borrower's financial condition.

h. Any event occurs which results in an adverse change in Borrower's operations and financial condition which gives Lender reasonable grounds to believe that Borrower may not, or will be unable to, perform or observe in the normal course its obligations under any of the Loan Documents.

i. Any material default by Borrower under any other loan agreement with any third party.

11. Remedies. Upon an Event of Default, Lender shall provide Notice of Default as required by the Mortgage. In the event Borrower fails to cure the default within the time specified in the Notice of Default, Lender may exercise any or all of the remedies available under the Loan Documents, or by law. Lender's remedies, after the occurrence of an Event of Default include, but are not limited to, the following:

a. Lender's obligation to make any additional advances shall cease.

b. At Lender's option, all unpaid principal and accrued interest payable under the Note and this Loan Agreement shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Borrower expressly waives.

c. Lender may, in Lender's sole discretion, continue to make additional advances without giving up or waiving any of its rights.

No remedy conferred upon or reserved to Lender under the Loan Documents, or at law or in equity shall be exclusive to any other remedy available to Lender, and, to the extent permitted by applicable law, all such remedies shall be cumulative and in addition to every other remedy available to Lender. Lender's failure to take any of the actions available to it after the occurrence of an Event of Default shall not affect Lender's right to later pursue any or all of its remedies against Borrower with regard to that Event of Default. Lender's waiver of its rights in regard to one Event of Default shall not affect Lender's rights or remedies upon the occurrence of any later or other Event of Default.

12. Modification. This Loan Agreement cannot be changed or modified without the express written consent of the parties hereto.

13. Effectiveness. This Loan Agreement shall continue in full force and effect so long as Borrower remains obligated to Lender under this Loan Agreement or the Note.

14. Assignment; Successors. Lender may assign all or part of its interest under the Loan Documents to any person without affecting Borrower's liability under the Loan Documents. Lender shall notify Borrower of any such assignments. Notwithstanding anything to the contrary herein, Borrower shall not assign its rights or interests under any of the Loan Documents to any person or entity without Lender's prior written consent, which may be withheld in Lender's sole and absolute discretion. Subject to the foregoing, this Loan Agreement shall apply to and bind the parties' successors and assigns.

15. Attorneys' Fees. In the event that an attorney be employed or expense be incurred to compel payment of the Note or any portion thereof or in connection with any default by Borrower hereunder or under the Note, whether or not an action is commenced by Lender, Borrower promises to pay all such expense and attorneys' fees, including but not limited to, attorneys' fees incurred in any bankruptcy or judicial or non-judicial foreclosure proceedings.

16. Notices. Any notices required or permitted to be given under this Loan Agreement or any other Loan Document shall be given in writing, and shall be deemed given: (a) upon personal delivery; (b) upon receipt via certified mail, postage prepaid with return receipt; or (c) upon receipt when sent via any other form of delivery. Notice shall be sent to the parties' address set forth below its signature, or as the parties subsequently designate in writing.

17. No Oral Agreements. No oral agreement to waive or modify any term of the Note, this Loan Agreement, or any of the Loan Documents will be effective.

18. Interpretation. This Loan Agreement shall be given a fair and reasonable interpretation in accordance with the words contained in it without regard to whether a provision was drafted by one party or its counsel.

19. Applicable Law. This Loan Agreement shall be governed by, construed, and enforced under the laws of the state of Ohio. If a court of competent jurisdiction determines that any portion of this Loan Agreement is invalid or unenforceable, that determination shall not affect the validity or enforceability of the remaining provisions of this Loan Agreement.

20. Counterparts; Facsimile. This Loan Agreement may be executed in one or more counterpart, which together shall constitute one and the same instrument. A party hereto may deliver an executed counterpart to the other party by facsimile or other electronic means of transmission and such transmission shall constitute delivery. At the request of the other party, a party shall confirm execution of this Loan Agreement as so transmitted by delivering an original counterpart.

[Remainder of this page intentionally left blank.]



The parties have executed this Loan Agreement, effective as of the date set forth above.

Sunbury Urban Farm, a  
Ohio nonprofit,

Friends of Red Oak Community School, LLC,  
By: CIT Fiduciary, LLC, Manager

\_\_\_\_\_

\_\_\_\_\_

Chris Walcott, Manager

Address:

2140 Sunbury Road  
Columbus, OH 43219

Address:

15405 SE 37<sup>th</sup> Street, Ste. 100  
Bellevue, WA 98006

**Exhibit A**

(Attach Legal Description)

**Exhibit B**

(Attach Promissory Note)

**Exhibit C**

(Attach Mortgage)