

1 Lessee, as the assignee of the Original Lease Agreement, as amended, extended the term of the Original
2 Lease Agreement, as amended, for an additional thirty (30) years; to make certain improvements to the
3 buildings thereon, namely a Kroger Store and a Family Dollar Store; to obtain additional rent for the
4 benefit of Oakland Fraternal Cemetery; and other matters set forth therein; and,

5 **WHEREAS**, a Third Amendment to Lease Agreement (“Third Amendment”), dated November 12,
6 2015, and recorded with the Pulaski County Clerk’s Office as Instrument No. 2015072250, was executed
7 by the City, as Lessor, East Roosevelt Road Shopping Center, LLC, and LMS Properties, LLC (“Current
8 Lessee”), in order to amend and renew the Original Lease Agreement, as amended, and to consent to
9 assignment of the Original Lease Agreement, as amended, to Current Lessee pursuant to a Special
10 Warranty Deed and Assignment of Ground Lease dated November 3, 2015 (“Third Assignment”),
11 recorded November 16, 2015, as Instrument No. 2015072410; and,

12 **WHEREAS**, on February 18, 2020, the Board of Trustees of the Oakland & Fraternal Historic
13 Cemetery Park approved the Fourth Amendment to Lease Agreement and Consent to Assignment of
14 Lease.

15 **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY**
16 **OF LITTLE ROCK, ARKANSAS:**

17 **Section 1.** The Little Rock City Board of Directors hereby consents to the assignment of the Original
18 Lease Agreement, as amended, by LMS Properties, LLC, to Fourth Assignee Grow Into You Foundation,
19 Inc., a 501 (c)(3) organization.

20 **Section 2.** The Board of Directors hereby authorizes the Mayor and City Clerk to execute the Fourth
21 Amendment to Lease Agreement and Consent to Assignment of Lease attached to this resolution as
22 Exhibit A to memorialize this consent to assignment of the Original Lease Agreement, as amended.

23 **Section 3. Severability.** In the event any title, section, paragraph, item, sentence, clause, phrase, or
24 word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or
25 adjudication shall not affect the remaining portions of the resolution which shall remain in full force and
26 effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the
27 resolution.

28 **Section 4. Repealer.** All laws, ordinances, resolutions, or parts of the same, that are inconsistent
29 with the provisions of this resolution, are hereby repealed to the extent of such inconsistency.

30 **ADOPTED: February 18, 2020**

31 **ATTEST:**

APPROVED:

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33 _____
34 **Susan Langley, City Clerk**

_____ **Frank Scott, Jr., Mayor**

1 **APPROVED AS TO LEGAL FORM:**

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4 **Thomas M. Carpenter, City Attorney**

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1 **Exhibit A**

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3 **FOURTH AMENDMENT TO LEASE AGREEMENT**
4 **AND CONSENT TO ASSIGNMENT OF LEASE**
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6 **THIS FOURTH AMENDMENT TO LEASE AGREEMENT AND CONSENT TO**
7 **ASSIGNMENT OF LEASE** (“Fourth Amendment”) is made and entered into by and between the City
8 of Little Rock (hereinafter “Lessor” or “City”) whose address is 500 West Markham Street, Little Rock,
9 Arkansas, LMS Properties, LL,C whose address is 111 Center Street, Suite 1510, Little Rock, Arkansas,
10 72201 (hereinafter “Current Lessee”), and Grow Into You Foundation, Inc., a 501 (c)(3) organization
11 (hereinafter “Fourth Assignee”), whose address is 11612 Storywood Drive, Riverview, Florida, 33578.

12 **W I T N E S S E T H:**

13 **WHEREAS**, on June 11, 1959, the City and the East 26th Street Development Corporation (“Original
14 Lessee”) entered into a certain Lease Agreement (“Original Lease Agreement”) for the benefit of the
15 Oakland & Fraternal Historic Cemetery Park, which Original Lease was recorded with the Pulaski County
16 Circuit Clerk’s Office at Book 1,029 at Pages 238 through 244 and had an expiration date of December
17 11, 1974; and,

18 **WHEREAS**, by Amendment to Lease Agreement dated January 27, 1977 (the “First Amendment”),
19 the City and the Original Lessee amended the Original Lease Agreement by agreeing to honor a Sub-
20 Lease contraction executed February 23, 1962 with a Sublessee, Worthen Bank and Trust Company, and
21 consented to the assignment by the Original Lessee of its rights in the Original Lease Agreement, as
22 amended, to S. Sherman, Ruby S. McCaskill and Sam Strauss, Jr., as Trustee for Steven Strauss, Sam
23 Strauss, III, and Susan Strauss (“First Assignees”); and,

24 **WHEREAS**, by Assignment of Lease dated January 20, 1977 (“First Assignment”), recorded with
25 the Pulaski County Clerk’s Office at Book 1,740 Page 667 through Page 672, the Original Lessee
26 assigned the Original Lease Agreement, as amended, to First Assignees; and,

27 **WHEREAS**, by Assignment of Lease dated July 25, 1983 (“Second Assignment”), recorded
28 September 15, 1983, as Instrument No. 83-47637, Ruby S. McCaskill assigned to Lee S. Thalheimer and
29 Bruce Thalheimer all her undivided interest as a lessee in the Original Lease Agreement, as amended;
30 and,

31 **WHEREAS**, the First Amendment was modified to change the name of one of the First Assignees
32 from S. Sherman to Sherman Realty Co., Inc. by initialing and recorded same as Instrument No. 83-47637
33 (the “Modified First Assignment”); and,

34 **WHEREAS**, by an Amendment and Renewal of Lease Agreement last executed on October 11,
35 2001, (the “Second Amendment”), recorded with the Pulaski County Clerk’s Office on October 22, 2001,

1 as Instrument No. 2001082279, the City, as Lessor, and East Roosevelt Road Shopping Center, LLC,
2 Lessee, as the assignee of the Original Lease Agreement, as amended, extended the term of the Original
3 Lease Agreement, as amended, for an additional thirty (30) years; to make certain improvements to the
4 buildings thereon, namely a Kroger Store and a Family Dollar Store; to obtain additional rent for the
5 benefit of Oakland Fraternal Cemetery; and other matters set forth therein; and,

6 **WHEREAS**, a Third Amendment to Lease Agreement (“Third Amendment”), dated November 12,
7 2015, and recorded with the Pulaski County Clerk’s Office as Instrument No. 2015072250, was executed
8 by the City, as Lessor, East Roosevelt Road Shopping Center, LLC, and LMS Properties, LLC, (“Current
9 Lessee”) in order to amend and renew the Original Lease Agreement, as amended, and to consent to
10 assignment of the Original Lease Agreement, as amended, to Current Lessee pursuant to a Special
11 Warranty Deed and Assignment of Ground Lease dated November 3, 2015 (“Third Assignment”),
12 recorded November 16, 2015, as Instrument No. 2015072410; and,

13 **WHEREAS**, on February 18, 2020, the Board of Trustees of the Oakland & Fraternal Historic
14 Cemetery Park approved the Fourth Amendment to Lease Agreement and Consent to Assignment of
15 Lease; and,

16 **WHEREAS**, on _____, 2020, the City of Little Rock Board of Directors adopted Resolution
17 No. _____ to consent to the assignment of the Original Lease Agreement, as amended, by
18 Current Lessee to Fourth Assignee Grow Into You Foundation, Inc. (“Fourth Assignment”); and,

19 **WHEREAS**, the City Board of Directors also authorized the Mayor and City Clerk to execute this
20 Fourth Amendment to Lease Agreement to, *inter alia*, memorialize the consent to the assignment by
21 Current Lessee to Fourth Assignee; and ,

22 **WHEREAS**, the City, Current Lessee and Fourth Assignee desire to enter into this Fourth
23 Amendment to Lease Agreement and Consent to Assignment of Lease as set forth below.

24 **NOW, THEREFORE, INCONSIDERATION OF THE PREMISES TO BE DEMISED, THE**
25 **INTENTIONS OF THE PARTIES, AND OTHER COVENANTS, CONDITIONS, WARRANTIES**
26 **AND AGREEMENTS HEREINAFTER SET FORTH, IT IS HEREBY AGREED AS FOLLOWS:**

27 **CONSENT TO ASSIGNMENT AND AMENDMENT AND RENEWAL OF**
28 **ORIGINAL LEASE AGREEMENT, AS AMENDED.**

29 The City, as Lessor, hereby consents to
30 an assignment by Current Lessee to Fourth Assignee of all of Current Lessee’s rights pursuant to
31 the Original Lease Agreement, as amended, and Fourth Assignee agrees to assume all liabilities
32 and obligations of Current Lessee arising pursuant to the Original Lease Agreement, as amended,
33 after the date of the assignment of the Original Lease Agreement, as amended, to Fourth
34 Assignee. Upon the assignment to and assumption of the Original Lease Agreement, as amended,
by Fourth Assignee, the Lessor hereby releases LMS Properties, LLC, from any obligations under

1 the Original Lease Agreement, as amended, occurring after the effective date of such assignment
2 and assumption.

3 **2. SERVICE OF NOTICE.** Upon the assignment of the Original Lease Agreement, as
4 amended, to Fourth Assignee, Fourth Assignee agrees to give to the City Fourth Assignee’s
5 address for written notice given pursuant to the Original Lease Agreement, as amended.

6 **3. DUPLICATE ORIGINALS, COPIES.** This Fourth Amendment shall be executed in
7 duplicate originals. Any copy of this Fourth Amendment shall be deemed admissible as an
8 original and shall be deemed authentic for any other use.

9 **4. EFFECTIVE DATE.** This Fourth Amendment shall become effective when signed by
10 all parties hereto and upon the condition that Fourth Assignee is properly authorized to conduct
11 business in the State of Arkansas and after the closing date of the transfer of the Current Lessee’s
12 interest in the Original Lease, as amended, from Current Lessee to Fourth Assignee.

13 **5. AUTHORITY.** The officials who executed this Fourth Amendment hereby represent
14 and warrant that they have full and complete authority to act on behalf of the City, Current Lessee
15 and Fourth Assignee, respectively, and that by their signature below, the terms and provisions
16 hereof, constitute valid and enforceable obligations of each party.

17 **6. PRIOR LEASE AND AMENDMENT TO PRIOR LEASE.** All other terms of the
18 Original Lease Agreement, as amended by the First Amendment, Second Amendment and Third
19 Amendment, shall remain in full force and effect, except as amended by this Fourth Amendment
20 and currently there are no defaults.

21 **IN WITNESS WHEREOF,** the parties have set their hands and seals.

22
23 **CITY OF LITTLE ROCK**

LMS PROPERTIES, LLC

24
25
26 **By:** _____
27 **Frank Scott, Jr., Mayor**

By: _____
Tommy J. Lasiter, Manager

28
29 **Date:** _____

Date: _____

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31 **ATTEST:**

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34 _____
35 **Susan Langley, City Clerk**

GROW INTO YOU FOUNDATION, INC.

36
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38 **By:** _____
39 **Erin NeSmith, Founder**

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41 **Date:** _____

1 **APPROVED AS TO LEGAL FORM:**

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5 **Thomas M. Carpenter, City Attorney**

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1 **ACKNOWLEDGMENT**

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3 **STATE OF ARKANSAS**)
4) **ss.**
5 **COUNTY OF PULASKI**)
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7 On this day personally appeared before me the undersigned, a Notary Public within and for the
8 County and State aforesaid, duly qualified and acting, the within named Frank Scott, Jr., and Susan
9 Langley, to me well known as the Mayor and City Clerk, respectively, of the City of Little Rock,
10 Arkansas, and state that they had executed the foregoing Fourth Amendment to Lease Agreement
11 pursuant to the provisions of Resolution No. _____ for the consideration and purposes
12 therein mentioned and set forth.

13 WITNESS my hand and official seal this ____ day of _____, 2020.

14
15 _____
16 **Notary Public**

17 My Commission expires:
18

19 _____
20 (Notarial Seal)
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22 **ACKNOWLEDGMENT**

23
24 **STATE OF ARKANSAS**)
25) **ss.**
26 **COUNTY OF PULASKI**)
27

28 On this day personally appeared before me the undersigned, a Notary Public within and for the
29 County and State aforesaid, duly qualified and acting, the within named Tommy J. Lasiter, to me well
30 known as the Manager of LMS Properties, LLC, and state that he had executed the foregoing Fourth
31 Amendment to Lease Agreement for the consideration and purposes therein mentioned and set forth.

32 WITNESS my hand and official seal this ____ day of _____, 2020.

33
34 _____
35 **Notary Public**
36

1 My Commission expires:

2

3

4 _____
(Notarial Seal)

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ACKNOWLEDGMENT

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10 **STATE OF ARKANSAS**)

11) ss.

12 **COUNTY OF PULASKI**)

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14 On this day personally appeared before me the undersigned, a Notary Public within and for the
15 County and State aforesaid, duly qualified and acting, the within named Erin NeSmith, to me well
16 known as the Founder of Grow Into You Foundation, Inc., and state that he / she had executed the
17 foregoing Fourth Amendment to Lease Agreement for the consideration and purposes therein mentioned
18 and set forth.

19 WITNESS my hand and official seal this ____ day of _____, 2020.

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Notary Public

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23 My Commission expires:

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26 _____
(Notarial Seal)

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