LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made and entered into this 23rd day of September, 2014, ("**Lease Date**") by and between the **GRACE EVANGELICAL LUTHERAN CHURCH**, a California non-profit corporation ("**Church**"), and the **CITY OF RIALTO**, a California general law municipal corporation ("**City**"). The Church and the City are sometimes jointly referred to herein as the "Parties," and individually as a "Party."

RECITALS:

A. The Church is the owner of that certain improved property located at 539 North Acacia, in the City of Rialto, California ("**Church Property**") and depicted on Exhibit A.

B. Pursuant to that certain letter agreement dated September 15, 1997 and accepted by the Church on October 26, 1997 ("**Existing Agreement**"), the Church granted use of a portion of the Church Property as depicted on Exhibit A ("**Demised Premises**") to the City for use as part of the "Community Garden Project" which is a component of the City's environmental education program, to provide an opportunity for low income citizens of the community to enhance their food supply, a social opportunity for singles, seniors and other local residents, and an encouragement for schools to develop classroom gardens, as well as to pursue the mission of the Church for such community ("**Community Garden Project**").

C. Over the years, the City has improved the Demised Premises with a water system, defined garden plots, administered the Community Garden Project and paid the operating costs of the Community Garden Project.

D. The Parties wish to continue the Community Garden Project on the Demised Property in accordance with the terms and obligations set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

AGREEMENT

1. LEASE. Upon the terms and conditions set forth herein, the Church leases the Demised Premises to the City and the City leases same from the Church for the Permitted Use (as defined in Section 2). As consideration for the Lease, the City shall comply with the obligations set forth in Section 4 and shall not otherwise be obligated to pay any money as rent. The City shall have (i) the exclusive right to the Demised Premises, together with (ii) the non-exclusive right to use a portion of the Church Property for vehicular access, parking in the area depicted on Exhibit A, and storage of waste bins (in the southeast corner of the parking lot) and (iii) the water lines previously installed by the City ("**Water Lines**") to serve the exclusive garden area ("**Leased Premises**"). As of the Effective Date (as defined in Section 2.1), the Original Agreement shall terminate.

2. USE. The City shall use the Leased Premises solely to operate a Community Garden Project ("**Permitted Use**") in accordance with the rules and regulations created by the City working with members of the Church and other community volunteers ("**Rules and Regulations**"). The City shall have the right to allow third parties to access and use the Leased Premises as follows: (i) those persons who qualify as participants in the Community Garden Project to access the Leased

Premises to garden specified portions of the Demised Premises ("**Gardeners**"); and (ii) necessary for the performance of the City's obligations under Section 4. The Church will ensure access for Gardeners and City staff during daylight hours. In any circumstance where access cannot be allowed, barring an emergency situation, the Church will give the City's Garden Manager at least fourteen (14) days' prior notice (i.e. maintenance of parking lot or construction projects). The City must request use for a special event and/or use of other church property (i.e. kitchen, fellowship hall) in writing at least thirty (30) days prior to the Church secretary and Chairman of the Board of Trustees. Permission for such use is at the discretion of the Church council.

3. TERM.

3.1. Original Term. This Lease shall (a) commence on the later to occur of ("**Effective Date**"): (i) the date of execution and delivery of this Lease by both Parties, and (ii) the date of approval of this Lease by the City Council, and (b) terminate on December 31, 2023 ("**Termination Date**"). The period between the Effective Date and the Termination Date is hereinafter referred to as the "**Original Term**".

3.2. Right of Early Termination. At any time during the Original Term, either Party may terminate this Lease, with or without cause, by written notice to the other Party of its election to terminate specifying the date of termination which shall be not less than ninety (90) days after the date of the notice.

3.3. Negotiation of Extension. No earlier than one hundred-eighty (180) days and no later than ninety (90) days prior to expiration of the Original Term, the Parties shall meet and confer in good faith to negotiate a continuation of this Lease for an additional period and the terms thereof. However, neither Party shall be required to continue this Lease beyond the Original Term, or be required to negotiate for more than ninety (90) days, and neither Party shall be prevented from exercising any rights of a Party solely because of such negotiations.

4. CITY'S DUTIES AND OBLIGATIONS. As consideration for the use of the Leased Premises, the City shall, at its own cost and expense:

i. Provide access to water service, trash removal and general maintenance and care for the Demised Premises.

ii. Provide the expertise and personnel necessary for the operation of the Community Garden Project.

iii. Reasonably monitor Participants' use of the Demised Premises and enforce the Rules and Regulations.

iv. Not commit, permit or allow any waste, environmental hazard or nuisance to exist on the Demised Premises or permit, use or allow the Demised Premises to be used for any unlawful purpose or activity caused by the City, its employees, Participants, contractors or invitees.

v. Reimburse the Church a portion of reasonable costs incurred by the Church for the maintenance of the parking areas on the Church Property provided that the City's contribution shall not exceed 25%.

vi. Upon termination of this Lease, promptly remove all improvements on the Demised Premises as requested by the Church in a written notice delivered to the City within sixty (60) days of the termination of this Lease.

5. **CHURCH'S OBLIGATIONS.** The Church shall (i) maintain the Church Property in good condition and repair in accordance with all applicable laws and statutes, and (ii) allow the City reasonable access to the Demised Premises.

6. **BREACH.** A Party shall be in default under this Lease if such Party failures to comply with any term or condition of this Lease within ten (10) business days following written notice from the other Party specifying the noncompliance in reasonable detail ("**Noncompliance Notice**"). If such noncompliance cannot be cured within the ten (10) business day period, this provision shall be satisfied if the defaulting Party commences correction within such period and thereafter proceeds in good faith and with reasonable diligence to complete correction as soon as possible but not later than thirty (30) days after the date of the Noncompliance Notice.

7. **INDEMNIFICATION.**

   7.1. City's Indemnity. The City shall indemnify, protect and hold the Church and its employees, agents, members and volunteers harmless from and against any and all liabilities, claims and/or losses arising, directly or indirectly, entirely or in part, out of (1) any injury to any person occurring on the Demised Premises except to the extent caused by the negligence or intentional misconduct of the Church, the Church's agents, employees, members, volunteers or invitees, or (2) any injury to any person occurring on the designated parking area, if such injury is alleged to arise out of the person's presence there in connection with the Demised Premises and if such injury is not alleged to result from the condition of the designated parking area, (3) any damage to the Church's parking lot caused by the Water Lines; or (4) the City's breach or default in the performance of any obligation of the City under this Lease. If any action or proceeding is brought against the Church by reason of any such claim, the City, upon receipt of written notice from the Church, shall defend the same, at the City's expense. Notwithstanding anything in this Lease to the contrary, the foregoing covenants under this Section shall be deemed continuing covenants for the benefit of the Church and shall survive the expiration of this Lease, but only to the extent that the causes giving rise to the City's obligations under this Section occur before the expiration of this Lease. The duty of the City to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code.

   7.2. Church's Indemnity. The Church shall indemnify, protect and hold the City and its, employees, agents, invitees, and Participants harmless from and against any and all liabilities, claims and/or losses of any kind arising, directly or indirectly, entirely or in part, out of (1) any occurrence within the Church's Property regardless of the cause except to the extent caused by the negligence or intentional misconduct of the City, its agents or employees or Participants, and except for any injury to any person occurring on the designated parking area, if such injury is alleged to arise out of the person's presence there in connection with the Demised Premises and if such injury is not alleged to result from the condition of the designated parking area, (2) any occurrence on the Church Property to the extent caused by the negligence or intentional misconduct of the Church, the Church's agents, employees, members, volunteers or invitees, (3) any breach of the Church's representations, warranties or covenants under this Lease, or (4) the acts or omissions of the Church, its authorized representatives, members, volunteers, contractors, licensees and/or invitees. If any action or proceeding is brought against the City by reason of any such claim, the Church, upon receipt of written notice from the City, shall defend the same, at the Church's expense. Notwithstanding anything in this Lease to the contrary, the foregoing covenants under this Section shall be deemed continuing covenants for the

benefit of the City and shall survive the expiration of the Lease, but only to the extent that the causes giving rise to the Church's obligations under this Section occur before the expiration of this Lease. The duty of the Church to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code.

7.3. **Miscellaneous.** Any acceptance by a Party of insurance certificates and endorsements does not relieve the other Party from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause also shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

8. GENERAL PROVISIONS.

8.1. **Subordination of Lease.** The Church reserves the right to subordinate this Lease at all times to a lien or mortgage or mortgages now or hereafter placed on the Church's Property. The City agrees to execute and promptly deliver upon reasonable notice, any instrument or document subordinating this Lease to the lien of any such mortgage or mortgages as shall be desired by the Church and the Church's mortgagee(s) provided that the City receives a reasonable non-disturbance agreement.

8.2. **Entire Agreement.** This Lease constitutes the entire agreement between the Parties and supersedes any and all other prior agreement, either oral or written, between Church and City pertaining to Demised Premises including the Original Agreement.

8.3. **Quiet Possession.** The Church covenants that the City, on the performance of the promises, conditions and covenants set forth in this Lease, shall and may peacefully and quietly have, hold and enjoy the Leased Premises for the Term of this Lease.

8.4. **Authority.** Each Party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery this Lease shall be binding upon and enforceable against the Party.

8.5. **Amendment.** This Lease shall not be amended, revised, modified or revoked at any time without the written agreement of both Parties.

8.6. **Binding Effect.** This Lease shall be binding on the Parties, their representatives, successors, and assigns.

8.7. **Governing Law.** This Lease shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the Parties agree that a court of competent jurisdiction in the County of San Bernardino shall be the sole venue and jurisdiction for the bringing of such action.

8.8. **Attorney's Fees.** If either Party commences litigation against the other under this Lease, the prevailing Party shall be entitled to recover from the other Party such costs and reasonable attorneys' fees as may have been incurred, including any and all costs incurred in enforcing, perfecting and executing such judgment.

8.9. **Notices.** Any notice herein required or permitted to be given shall be deemed given (i) three (3) days following the date the same is mailed, by United States certified mail, postage prepaid, return receipt requested, properly addressed to the Party; or (ii) one (1) day following the date the same is mailed by a national overnight delivery service prepaid and delivery receipt requested, properly addressed to the Party. Notices personally delivered

shall be deemed given as of the date of personal delivery. Until changed, as hereinafter provided, notices and communications to the Parties shall be addressed as follows:

To Church:	Grace Evangelical Lutheran Church 539 N. Acacia Rialto, CA 92376 Attn: President
With Copy to:	Grace Evangelical Lutheran Church 539 N. Acacia Rialto, CA 92376 Attn: Chairman of the Board of Trustees
To City:	City of Rialto 150 South Palm Avenue Rialto, CA 92376 Attn: City Administrator
With Copy to:	City of Rialto 150 South Palm Avenue Rialto, CA 92376 Attn: City Attorney

8.10. MISCELLANEOUS. The provisions contained herein shall not be construed in favor of or against either Party, but shall be construed as if both Parties prepared this Lease. The masculine and neuter genders, the singular number and the present tense shall be deemed to include the feminine gender, the plural number and past and future tense, respectively, where the context so requires. The headings contained in this Lease are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Lease. The invalidity or unenforceability of any particular provision of this Lease shall not affect the validity or enforceability of the other provisions. In the event of invalidity or unenforceability of a particular provision, this Lease shall be construed in all respects as if the invalid or unenforceable provisions were omitted. Either Party's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of the other Party. Each Party's performance under this Agreement shall be excused to the extent that such performance is hindered, delayed or made commercially impractical by causes beyond that party's reasonable control.

8.11. Counterparts. This Lease may be executed in several counterparts of which each shall be deemed a duplicate original but all of which shall constitute a single document.

8.12. Exhibits. Exhibit A attached hereto is incorporated herein by reference.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Lease Date.

CITY:

CITY OF RIALTO

By: _____
Deborah Robertson, Mayor

ATTEST:

By: _____
Barbara McGee, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Fred Galante
City Attorney

CHURCH:

GRACE EVANGELICAL LUTHERAN CHURCH, a California corporation

By: _____
Print Name: Ron Pickinpaugh
Its: President

By: _____
Print Name: Allan D. Dellinger
Its: Chair - Board of Trustees

APPROVED:

By: _____
Pastor

EXHIBIT "A"
CHURCH PROPERTY AND DEMISED PREMISES

The **Church Property** is located at 539 N. Acacia Ave., Rialto, California, identified by Assessor's Parcel Number 0133-181-042 and outlined on the map in white.

The **Demised Premises** are legally described as "the easterly 190 feet of the north one-half of the west one-half of Lot 51 of the Town of Rialto and Adjacent Subdivisions as shown by Map filed in Map Book 4, Page 11, records of San Bernardino County, California" and is outlined on the map in red. The City shall have the right to park in the area designated on the map by the cross-hatching in red.

MAP TO BE ADDED PRIOR TO EXECUTION


539 N Acacia Ave, Rialto, CA 92376
Street View · Search nearby
539 N Acacia Ave