

EXHIBIT A

LICENSE AGREEMENT

This License Agreement made and entered into this ____ day of _____, 2017, by and between the **LOUISVILLE AND JEFFERSON COUNTY LANDBANK AUTHORITY, INC.**, a public body corporate and politic, hereafter referred to as “**Landbank**”, whose address is 444 South Fifth Street, Suite 500, Louisville, Kentucky 40202, and **LOUISVILLE GROWS, INCORPORATED**, a Kentucky nonprofit corporation, hereafter referred to as “**Licensee**”, whose address is 1641 Portland Ave., Louisville, Kentucky 40203.

RECITALS

WHEREAS, Landbank holds fee simple title to the property located at 634 S. 18th Street, Louisville, Kentucky (tax parcel 001J-0102-0000) and 636 S. 18th Street, Louisville, Kentucky (tax parcel 001J-0103-0000) which properties are hereafter referred to as the “Premises” and are more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Louisville/Jefferson County Metro Government has been selected by the Department of Housing and Urban Development to receive three CHOICE Action Grants (hereinafter the “Grant(s)”) in order to provide physical improvements in blighted neighborhood communities in order to enhance and accelerate the transformation of said neighborhoods;

WHEREAS, the Russell Neighborhood in Louisville, Kentucky has been identified as a neighborhood which would benefit from the Grants, and Landbank, as the fee simple owner of the Premises which are located within the Russell Neighborhood, has agreed to allow the Premises to be utilized by Licensee as a Grant recipient, in order to improve said community; and

WHEREAS, Licensee desires to develop, operate and use the Premises for ten years as a community garden and orchard for the benefit of the public and the citizens living in the surrounding neighborhood; and

WHEREAS, Landbank is willing to grant Licensee a license for ten years to have the use and possession of the Premises for purposes of developing and operating a community garden and orchard upon the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the Recitals and the mutual promises contained in this Agreement, the parties hereto agree as follows:

1. The Recitals are hereby made a part of this Agreement.
2. The initial term of this Agreement shall be for the balance of one calendar year beginning on _____, 2017, and terminating on _____, 2018, and shall continue

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thereafter for successive terms of one year each, up to a maximum of ten years unless sooner terminated pursuant to the terms of this Agreement. Each annual successive term shall be automatically extended for another year subject to either party's right at any time to elect to terminate this Agreement for any reason whatsoever, with or without cause, by giving the other party thirty (30) days written notice in accordance with Paragraph 19 of this Agreement.

3. Licensee shall be solely responsible for all site preparation necessary to make the Premises usable for the purposes permitted by this License. Licensee accepts the Premises AS IS WITH ALL FAULTS.

4. Licensee shall use the Premises solely for the purpose of developing and operating a community garden and orchard as set out in the proposal attached hereto as Exhibit B and incorporated herein by reference.

5. Licensee, at its sole expense, shall maintain the Premises in good order and condition and state of repair and shall keep the Premises as described in Exhibit A and surrounding property, including public streets and sidewalks which provide ingress and egress to the Premises, free of debris and litter at all times during the term of this License.

6 At all times during the term of this License, Licensee shall conduct operations on the Premises in a safe, prudent, orderly, lawful and business-like manner in full compliance with all laws, ordinances and regulations which may be applicable to the Premises or Licensee's use thereof. Further, Licensee shall not commit or suffer waste upon the Premises or allow any part thereof to become a nuisance.

7 Licensee shall provide at its sole expense, any utility service hookups and their installation by the appropriate licensed contractors.

8 Licensee shall obtain and be solely responsible for obtaining all required permits and licenses necessary for its operation of the community garden and orchard at the Premises from the appropriate governmental authorities.

9 Licensee, prior to the end of the term of the License, shall return the Premises to its original condition, to the satisfaction of Landbank.

10 Licensee shall at all times be responsible for the actions of its employees, contractors, subcontractors, sub-licensees or other persons using any portion of the Premises with the approval or authority of Licensee and Licensee shall insure that all such persons adhere to the requirements of this License.

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11 Licensee agrees that any maintenance work it does on the subject property under this Agreement shall be done in such a manner as to promote and preserve public safety and welfare and with a minimum of disruption and interference with the free flow of vehicular and/or pedestrian traffic over public rights of ways adjacent to the Premises.

12 Licensee shall, at its expense, keep the Premises in good order, condition and state of repair during the period of this Agreement. Licensee shall make no alterations to, nor make any improvements on, the Premises without the prior written approval of Landbank. The parties agree that Landbank may waive the performance of any items, conditions and covenants herein, provided that such waiver shall not be construed or deemed a continuing waiver of the same or any subsequent conduct which may constitute a default of any provision. Any amendments or modifications to this Agreement must be in writing and signed by both parties.

13 If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

14 The covenants, conditions, warranties and agreements made and entered into by the parties hereto are declared binding on, and shall inure to the benefits of their respective successors and assigns.

15 This Agreement represents the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations and agreements relative thereto. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Landbank or Licensee.

16 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising hereunder. Service of process may be accomplished by following the procedures prescribed by law.

17 Licensee shall provide Landbank and/or Louisville/Jefferson County Metro Government with Insurance coverage in accordance with Exhibit C attached hereto and made a part hereof.

18 If, through any cause, Licensee shall fail to fulfill its obligations under this Agreement or if it shall violate any of the covenants, terms or conditions herein, and if such failure or violations should continue for a period of thirty (30) days after written notice of such is

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given by Landbank to Licensee, Landbank shall thereupon have the right to terminate this License and specify the effective date thereof. Upon such termination, Licensee shall not be entitled to any compensation from Landbank, including but not limited to, replacement value or fair market value of any improvements placed on the Premises.

19 All notices provided for in this Agreement shall be sent to the following addresses:

IF TO LANDBANK:

Louisville Jefferson County Land Bank Authority, Inc.
444 South Fifth Street, 5th Floor
Louisville, Kentucky 40202

IF TO LICENSEE:

Louisville Grows Incorporated
Attention: _____
1641 Portland Ave.
Louisville, Kentucky 40203

20 Time shall be of the essence with respect to the duties and obligations imposed on the parties hereto. With respect to any duty or obligation imposed upon a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such party to commence and perform the same in a diligent manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of performance thereof.

21 This Agreement does not convey a permanent interest in the Premises or lands and does not run with the land. Accordingly, Licensee shall not transfer or assign any right or interest in the Agreement. Any attempt to assign or transfer the Agreement shall be considered a substantial breach and shall render the Agreement a nullity.

23 It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Licensee to be an agent, partner, joint venturer, officer or official of the Landbank. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

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24 Licensee agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Licensee also agrees to notify the Landbank in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Landbank-owned Premises where Licensee performs work under this Agreement.

25 Licensee shall keep the Premises free from any liens or claims of lien arising out of work performed, materials furnished or obligations incurred by, for or at the instance of Licensee. In the event that any liens are filed arising out of work performed, materials furnished or obligations incurred by, for or at the insistence of Licensee and Licensee fails to bond, pay or otherwise extinguish such liens within thirty (30) days after Landbank notifies Licensee of the existence thereof, Landbank may, without waiver of any other rights or remedies, bond, pay or otherwise extinguish such liens and any expenses incurred by Landbank in connection therewith and shall be reimbursed by Licensee upon demand as additional rent hereunder.

26 Each of the parties hereto covenant and warrant to the other that their respective entities have the full right, power and authority to enter into this Agreement and that the person executing this Agreement on its behalf has been duly authorized by the party to sign and execute this Agreement on its behalf and the Agreement is a valid and binding obligation on the party and enforceable in accordance with its terms.

27 Licensee agrees to comply with the Insurance Requirements set forth on the attached Exhibit C, incorporated herein by reference, and to maintain policies in accordance with said requirements.

(Signature Page Follows)

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WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM:

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

LOUISVILLE AND JEFFERSON COUNTY
LANDBANK AUTHORITY, INC.

By: Sarah Stewart Ashburner
Assistant Jefferson County Attorney

Date: _____

By: William Schreck, Chairman

Date: _____

LOUISVILLE GROWS INCORPORATED
LICENSEE

By: _____

Date: _____

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634 South 18th Street

Tax Parcel 001J-0102-0000

BEGINNING at an iron pin at the intersection of the South line of Magazine Street with the west line of 18th Street; thence with said west line South 01 degrees 37 minutes West 57.00 feet to an iron pin at its intersection with the north line of the tract conveyed to Winston and Joyce Graham by deed of record in Deed Book 5934, Page 107, in the office of the Clerk of Jefferson County, Kentucky; thence with said north line North 88 degrees 10 minutes West 120.00 feet to an iron pin at its intersection with east line of the tract conveyed to Rebound, Inc., by deed of record in Deed Book 6396, Page 595, in the office aforesaid; thence with said east line North 01 degrees 37 minutes East 57.00 feet to an iron pin at its intersection with the south line of Magazine Street aforesaid; thence with said south line South 88 degrees 10 minutes East 120.00 feet to the point of beginning, containing 6,840 square feet.

A plat of the above described property is attached to deed of record in Deed Book 6517, Page 395 in the Office of the Clerk of Jefferson County, Kentucky.

Being the same property conveyed to Louisville and Jefferson County Landbank Authority by General Warranty Deed dated January 24, 2013 of record in Deed Book 10013, Page 312, in the Office of the County Clerk of Jefferson County, Kentucky.

636 South 18th Street

Tax Parcel 001J-0103-0000

BEGINNING in the West line of 18th Street, 57 feet South of Magazine Street; thence Southwardly with 18th Street 26-1/2 feet; thence Westwardly in parallel lines of the same width, 120 feet in depth.

Being the same property conveyed to Louisville and Jefferson County Landbank Authority by General Warranty Deed dated January 15, 2013, of record in Deed Book 10012, Page 203, in the Office of the County Clerk of Jefferson County, Kentucky.

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EXHIBIT B

Louisville Grows Garden and Orchard proposal

EXHIBIT C

INSURANCE REQUIREMENTS

I. INSURANCE REQUIREMENTS

Prior to commencing work under the Agreement, Licensee shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. Licensee shall not commence work under this Agreement until all insurance required under the Agreement has been obtained and until copies of policies or certificates thereof are submitted to Landbank and approved by the Landbank's Risk Management Division. Licensee shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Licensee evidencing proof of coverages.

It is agreed that Licensee shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Landbank. Landbank may require Licensee to supply proof of subcontractor's insurance via Certificates of Insurance, or at Landbank's option, actual copies of policies.

A. **The following clause shall be added to the Licensee's (and approved subcontractors) Commercial General Liability Policies:**

1. **"The Louisville/Jefferson County Metro Government and The Louisville and Jefferson County Land Bank Authority, Inc., their elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the Agreement."**

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the Agreement:

1. **COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with a **\$1,000,000** Combined Single Limit for any one Occurrence and

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\$2,000,000 aggregate for Bodily Injury, Personal Injury and Premises Damage, including:

- a. Premises - Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Premises Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

II. **ACCEPTABILITY OF INSURERS**

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "B+ VI", unless proper financial information relating to the Company is submitted to and approved by Landbank's Risk Management Division.

III. **MISCELLANEOUS**

- A. The Licensee shall procure and maintain insurance policies as described herein and for which Landbank shall be furnished Certificates of Insurance upon the execution of the Agreement. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Agreement, renewal Certificates of Insurance shall be furnished to Landbank at least fifteen (15) days prior to the expiration of any policy(s).

- B. **Upon execution of the Agreement, Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Public Works– Business Unit
611 West Jefferson Street
Louisville, Kentucky 40202

AND

- C. **Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

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- D. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE:** Licensee shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Licensee shall notify Metro's Risk Management Division within two (2) business days. If Licensee fails to notify Metro as required by this Agreement, Licensee agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Landbank, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.
- E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of the Licensee hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Licensee.