

RESOLUTION NO. 3, SERIES 2017

A RESOLUTION AUTHORIZING A LICENSE AGREEMENT FOR ONE (1) PARCEL OF REAL PROPERTY THROUGH THE RUSSELL CHOICE ACTION GRANT

WHEREAS, The Urban Renewal and Community Development Agency of Louisville (“Agency”) owns the vacant parcel of real property located at 510 South 18th Street (Tax Parcel ID: 02-002L-0072-0000) (the “Property”), which the Agency holds for development as provided in the Russell Neighborhood Urban Renewal Plan (the “Plan”); and

WHEREAS, the Agency has named Sweet Peaches, LLC, a Kentucky Limited Liability Company, as the potential licensee (“Licensee”) for the Property, provided that Licensee obtains a Choice Neighborhoods Action Grant from US HUD through Louisville/Jefferson County Metro Government for construction of certain improvements to the Property and provides the Agency with a Certificate of Good Standing from the Secretary of State of the Commonwealth of Kentucky no later than two (2) months from the date of the approval of this Resolution; and

WHEREAS, Licensee has presented a letter of intent to the Agency describing its intended use of the Property as an outdoor venue for community meetings and gatherings free and open to the public; and

WHEREAS, the Agency is interested in pursuing said proposal;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE

SECTION 1. That the Commissioners of the Urban Renewal and Community Development Agency of Louisville find that the statements contained in the above recitals are true and correct.

SECTION 2. That the Commissioners of the Urban Renewal and Community Development Agency of Louisville, subject to the conditions contained in the foregoing recitals, hereby authorize the issuance of a license agreement to Licensee for the Property, substantially in form and substance as the draft License Agreement attached hereto as Exhibit A.

SECTION 3. That this Resolution shall become effective upon its passage.

BY: _____ **DATE APPROVED:** _____
James R. Frazier, Chairman
Urban Renewal and Community Development Agency of Louisville

APPROVED AS TO FORM:
MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

_____ **DATE APPROVED:** _____
Edward S. Carle
Assistant County Attorney
Counsel for Urban Renewal and Community
Development Agency of Louisville
531 Court Place, Suite 900
Louisville, KY 40202
(502) 574- 3349

LICENSE AGREEMENT

This agreement (“**Agreement**”) made and entered into this ____ day of _____, 2017, by and between **THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE**, a public body corporate and politic, hereafter referred to as “**Urban Renewal**”, whose address is 444 South Fifth Street, Suite 500, Louisville, KY 40202, and Sweet Peaches, LLC, a Kentucky Limited Liability Company, hereafter referred to as “**Licensee**”, whose address is 1800 West Muhammad Ali Blvd., Suite A, Louisville, Kentucky 40210.

RECITALS

WHEREAS, Urban Renewal holds fee-simple title to the property located and known as 510 South 18th Street, Louisville, Kentucky 40203 (tax parcel 002L-0072-0000), which property is hereafter referred to as the “**Premises**” and is more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, until Licensee is able to implement a redevelopment plan for the Premises that has been approved by Urban Renewal, Licensee desires to operate and use the Premises for a community park for the benefit of the public and citizens living in the surrounding neighborhood; and

WHEREAS, Urban Renewal is willing to grant Licensee a license to have the exclusive use and possession of the Premises for developing a community park, subject to 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 three years beginning on the date of the execution of this Agreement by both parties and terminating on _____, 2020, and shall continue thereafter for successive terms of one year each, up to a maximum of seven 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 to elect not to extend this Agreement for another year by giving the other party Ninety (90) days prior written notice in accordance with Paragraph 19 of this Agreement.
3. Licensee shall be solely responsible for all the 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 operating a community park for the benefit of the public and citizens living in the surrounding neighborhood.
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 Premise 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 park 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 Urban Renewal.

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.

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 in good order, condition and state of repair the above-mentioned Premises 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 Urban Renewal. The parties agree that Urban Renewal 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 benefit 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 hereto. 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 Urban Renewal or Licensee.

16. This Agreement shall be governed by and construed in accordance with the laws of the State 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 thereunder. Service of process may be accomplished by following the procedures prescribed by law.

17. Licensee agrees to defend, indemnify, and hold harmless Urban Renewal and Louisville/Jefferson County Metro Government (“**Metro Government**”), their elected and appointed officials, directors, employees, and agents from and against any and all claims, damages, losses, and expenses (including reasonable attorney fees) resulting from, directly or indirectly, the Licensee’s (or Licensee’s subcontractors, if any) acts or failure to act or arising out of its performance or breach of this Agreement, provided that such claim, damage, loss, or expense is: (i) attributable to personal injury or damage to property, including the loss of use resulting therefrom, or breach of contract, and (ii) not caused by the negligent act or omission of Urban Renewal or Metro Government or their elected or appointed officials, employees, and agents acting within the scope of their employment or agency. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

18. Licensee shall provide Urban Renewal and/or Metro Government with Insurance coverage in accordance with Exhibit B attached hereto and made a part hereof.

19. 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 given by Urban Renewal to Licensee, Urban Renewal 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 Urban Renewal, including but not limited to, replacement value or fair market value of any improvements placed on the Premises.

20. All notices provided for in this Agreement shall be in writing and sent to the following addresses by registered or certified U.S. Mail, return receipt requested, postage prepaid,:

IF TO URBAN RENEWAL:

Urban Renewal and Community Development Agency of Louisville
c/o Develop Louisville – Office of Vacant & Public Property Administration
444 South Fifth Street, 5th Floor
Louisville, KY 40202
Attention Director
Email Address: Laura.Grabowski@Louisvilleky.gov
Facsimile No. (502) 574-4199

IF TO LICENSSEE:

Sweet Peaches, LLC
1800 West Muhammad Ali Blvd.
Louisville, KY 40210
ATTN: Chief Executive Officer

21. 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 reasonable practicable after commencement of performance thereof.

22. 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 material 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 Urban Renewal. 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.

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 Urban Renewal in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Urban Renewal-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 Urban Renewal notifies Licensee of the existence thereof, Urban Renewal may, without waiver of any other rights or remedies, bond, pay or otherwise extinguish such liens and any expenses incurred by Urban Renewal 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.

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(Signature Page Follows)

WITNESS, the agreement of the parties hereto by their signatures affixed hereon as of the date first above written.

APPROVED AS TO FORM:

**MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY**

**URBAN RENEWAL AND COMMUNITY
DEVELOPMENT AGENCY OF LOUISVILLE**

By: _____
Edward S. Carle
Assistant Jefferson County Attorney
531 Court Place, Suite 900
Louisville, KY 40202
(502) 574-3349

BY: _____
James R. Frazier, Chairman

LICENSEE

SWEET PEACHES, LLC

By: _____

Title: its Manager

EXHIBIT A

510 South 18th Street

Tax Parcel 002L00720000

Beginning on the West side of 18th Street, 118 feet South of Walnut Street; running thence Southwardly along the West line of 18th Street, 42-1/2 feet to the North line of an alley; and extending back Westwardly of that width throughout, the Southern line of said lot binding on the Northern line of said alley, 60 feet.

BEING the same property acquired by Urban Renewal and Community Development Agency of Louisville, by Deed dated February 19, 1993 of record in Deed Book 6293, Page 576, in the Office of the County Clerk of Jefferson County, Kentucky.

EXHIBIT B

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 304.10-40). 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 Urban Renewal and approved by the Urban Renewal's Risk Management Division. Licensee shall not allow any subcontractors 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 Urban Renewal. Urban Renewal may require Licensee to supply proof of subcontractor's insurance via Certificates of Insurance, or at Urban Renewal'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 Urban Renewal and Community Development Agency of Louisville, 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 \$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 Urban Renewal's Risk Management Division.

III. MISCELLANEOUS

- A.** The licensee shall procure and maintain insurance policies as described herein and for which Urban Renewal 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 Urban Renewal 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, KY 40202

- 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, KY 40202

- 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 of 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 Urban Renewal, 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 of liabilities of the Licensee.**