

## **LICENSE AGREEMENT**

This LICENSE AGREEMENT (the "Agreement"), is made and entered into as of March \_\_, 2017, between the City of Beacon, a municipal corporation, duly organized and existing under the laws of the State of New York, having its principal office at One Municipal Center, Beacon, New York 12508 (hereinafter "Licensor" or the "City") and Things You Love Events, LLC, duly organized and existing under the laws of the State of New York, having its principal place of business at 35 North Elm Street, Beacon, New York 12508 (hereinafter "Licensee").

### **RECITALS**

A. The City is the owner of certain real property known as the Henry Street Parking Lot #1, located at the intersection of Henry Street and South Chestnut Street, Beacon, New York (the "Property").

B. Licensee has requested a license to enter upon and use the Property for the purpose of operating a flea market on the Property on Sundays during the months April through November, from 7:00 a.m. to 4:00 p.m.

C. Licensor is willing to grant the requested permission subject to and upon the following terms and conditions:

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(1) **GRANT**: Subject to the terms and conditions of this Agreement and upon representation from Licensor that it is the owner of the Property the Licensor hereby grants to Licensee a non-exclusive license (the "License") to enter upon and use the Property solely for the purpose of the Permitted Use as defined in Paragraph Four (4) below.

(2) **TERM**: Subject to the terms of this Agreement, the term of the License shall commence upon the date of execution of this Agreement by the parties hereto and continue until November 30, 2017. The Property shall not be used by Licensee on the Spirit of Beacon day. The City further reserves the right, upon two (2) weeks prior notice, to make the Property unavailable for Licensee's use in the event it is required for use by the City for a City event or a third party event the City has authorized to use the Property. This Agreement may be terminated on thirty (30) days written notice by either party, without cause.

(3) **FEE**: In exchange for and as consideration for this License, Licensee agrees to pay to Licensors the sum of Two Hundred and Twenty (\$220.00) Dollars for each day the flea market operates on the Property, beginning April 1, 2017, through the date of the expiration or termination of this Agreement. To the extent the flea market is unable to operate because of inclement weather or due to the actions of the City, or the Licensee advises the City in writing via e-mail to the City Administrator by 5:00 p.m. the Friday before the anticipated use, Licensee shall not be required to pay a fee for the week in question. The fee shall be payable monthly and payment shall be due on the fifteenth day of each month commencing on April 15, 2017.

(4) **PERMITTED USE**: The License granted hereunder shall be solely for the Permitted Use described in sections 4(a) through 4(i) herein. Use of the Property by Licensee for anything other than the Permitted Use shall be deemed a breach of this License Agreement. The following is permitted under this Agreement:

- a. The Licensee shall operate a flea market on the Property;
- b. The layout for the operation of the flea market, including the location of entrances and exits and proposed locations for vendors, is set forth on Exhibit "1" attached hereto;
- c. Walk-in spaces on the Property as set forth in Exhibit "1" shall be reserved for Beacon residents until 7:30 a.m. on Sunday morning;
- d. A portable toilet shall be installed on the Property by Licensee from the period April 1 through November 30, in the location set forth on Exhibit "1", and Licensee shall be responsible for installing and maintaining the portable toilet;
- e. The Property will be closed off with barriers installed by Licensee starting at 8:00 p.m. on Saturdays before the day the flea market is to operate. Licensee is responsible for the installation and removal of all barriers and must permit vehicles located on the Property prior to 8:00 p.m. to vacate the Property at all times. In the event the flea market anticipates it is not going to operate on any Sunday between April 1 and November 30, Licensee shall not install any barriers the previous Saturday. Notwithstanding the provisions in Paragraph Three (3) above, if barriers are installed on the previous Saturday, and the flea market is unable to operate on Sunday for any reason not caused by the City, the Licensee shall remain responsible for the payment of the required fee.
- f. A sign shall be posted at Licensee's sole cost and expense notifying persons using the Property for parking that the parking lot will be closed on Saturday starting at 8:00 p.m. until Sunday at 4:00 p.m. from April 1 to November 30. Licensee shall use its best efforts to

have owners remove vehicles from the Property starting Saturday evening before the flea market is scheduled to operate. The City shall have no obligation to ensure that vehicles are removed from the Property. Any vehicles remaining on the Property after 8:00 p.m. on a Saturday shall be roped off in a manner to protect them from damage and a notice placed on the car with a phone number for the owner to call in the event the owner wishes to remove the vehicle. Licensee shall cooperate with the car owner so the car may leave the Property.

- g. During the period the flea market is in operation, the entrance into the Property from South Chestnut Street and the Southeast exit from the Property onto Henry Street will remain open. The Southwest exit onto Henry Street shall be closed during the operation of the flea market;
- h. The Licensee shall maintain four to six trash barrels distributed throughout the Property during the operation of the flea market. All trash barrels shall be maintained by Licensee and emptied and removed each Sunday at the time the flea market operations conclude;
- i. The Licensee shall offer at least one stall to the City of Beacon School District during any week the flea market is in operation, at no charge; and
- j. No food or beverage vendors will be allowed to operate on the Property.
- k. The installation, at Licensor's discretion, during the term of this Agreement, at Licensee's cost, of the following signs (to be provided by Licensee) within the public right of way in the following locations: (i) Two signs back to back at Teller and Henry on an existing aluminum lamp pole; (ii) One sign on an existing pole on Wolcott and Teller; (iii) Two signs on opposite sides of Wolcott, approaching Main Street, on existing posts.

(5) **MAINTENANCE:** The Licensee shall be responsible for maintaining the Property at all times the Property is being used for the Permitted Use. Licensee shall ensure that the Property is clean, that all garbage is disposed of properly and that all vendor's equipment and barriers are removed by 4:00 p.m. each Sunday following the operation of the flea market.

(6) **SUPERVISION:** Licensee shall be responsible for and take all precautions for the protection of all persons and of real and personal property using the Property for the Permitted Use.

(7) **HOURS OF OPERATION:** The Permitted Use shall be allowed from April 1 through November 30, on Sundays during the hours 8:00 a.m. to 4:00 p.m., weather permitting. Vendors may arrive at the Property at 7:00 a.m. on the day the flea market is to operate. The Property shall be closed to vehicle parking beginning at 8:00 p.m. Saturday the evening before the flea market is to operate.

(8) **NON-ASSIGNABILITY:** It is expressly understood between the Parties herein that this License does not run with the Property, is not coupled with any other interest, is not assignable, and may be terminated by Licensors at any time for a breach of this Agreement, or without cause on thirty (30) day notice as set forth in Paragraph Two (2) above. This Agreement shall not be Recorded.

(9) **INSURANCE:** Throughout the term of this Agreement, Licensee shall obtain and maintain, at Licensee's sole cost and expense, and keep in force for the benefit of Licensee, with Licensors named as an additional insured, insurance policies providing the following coverage:

A comprehensive policy of general public liability insurance, protecting and indemnifying Licensors and Licensee against any and all liabilities and claims for damages to persons or property occasioned on or about any part of the Property, and all other areas adjacent to the Property, with such policy to be in the minimum amount of One Million Dollars (\$1,000,000.00) combined single limit per occurrence with an aggregate of Two Million Dollars (\$2,000,000.00), for personal injury and property damage;

All insurance policies required to be procured and maintained hereunder shall (i) be issued by financially responsible insurance companies acceptable to Licensors; (ii) be written as primary policy coverage and not contributing with or in excess of any coverage which Licensors may carry; (iii) insure and name Licensors as an additional insured; and (iv) contain an express waiver of any right of subrogation by the insurance company against Licensors and/or its agents and employees. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of Licensee (or its invitees arising under or out of this Agreement). On or before the execution of this Agreement by the parties herein, Licensee shall deliver to Licensors certificates of insurance evidencing all of the coverages required hereunder. Each insurance policy (and any renewal or extension thereof) required to be carried hereunder shall provide that, unless Licensors shall first have been given thirty (30) days prior written notice, (i) such insurance policy shall not be canceled and shall continue in full force and effect; (ii) the insurance carrier shall not, for any reason whatsoever, fail to renew such insurance policy; and (iii) no material changes may be made in such insurance policy (which changes shall also require Licensors's prior written approval).

Licensee shall not do or permit to be done any act or thing upon the Property that will invalidate or be in conflict with any insurance policies covering the same. Licensee shall

promptly comply with all insurance underwriters, rules, orders, regulations, or requirements relating to such insurance policies, and shall not do or permit anything to be done in or about the Property which shall increase the rate of insurance on the Property.

(10) **INDEMNIFICATION:** Licensee shall defend, indemnify, protect, and hold harmless Licensor and its respective elected officials, officers, employees, agents, contractors, subcontractors or legal representatives, (the "Licensor Parties") from and against any and all claims, actions, suits, damages, liabilities, costs, and expenses, including, without limitation, reasonable attorneys' fees and disbursements, that: (i) arise from or are in any way connected with the License granted hereunder for the Property or any portion thereof or any of Licensee's activities on the Property, unless caused by the acts or omissions of Licensor; (ii) arise from or are in any way connected with any act or omission of Licensee or Licensee's invitees; (iii) result from any default of this Agreement or any provision hereof by Licensee; (iv) result from the presence of Licensee's or the Licensee's invitees' property or equipment on the Property; or (v) result from injury to any person or property or loss of life sustained in or about the Property caused by or arising out of Licensee or Licensee's acts or omissions, all regardless of whether such claims are asserted or incurred before, during, or after the term of this Agreement. Licensee's obligations under this paragraph shall survive the revocation or termination of this Agreement.

(11) **WAIVER OF RESPONSIBILITY:** Neither Licensor nor the Licensor Parties shall be liable for, and Licensee waives, all claims for loss or damage, economic or otherwise, to persons or property sustained by Licensee or any person claiming by, through or under Licensee resulting from any accident or occurrence in, on or about the Property, or any part of the Property, including, without limitation, claims for loss, theft or damage, resulting from any cause whatsoever, except for willful misconduct by Licensor. To the maximum extent permitted by law, Licensee shall use and occupy the Property and such other portions of the Property as Licensee is herein given the right to use, at Licensee's own risk.

(12) **VACATION OF PREMISES:** Upon termination of this Agreement, Licensee shall promptly (i) refrain from accessing and/or using the Property, and (ii) return the Property to its original condition prior to the Permitted Use. Licensee shall repair any damage to the Property caused by Licensee's use thereof.

(13) **GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the state in which the Property is located and shall not be modified, altered, or amended except in writing as agreed to by the parties hereto.

(14) **NOTICES:** All notices or other communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by certified mail, postage prepaid, return receipt requested; or (iii) one (1) business day after being sent by overnight delivery service, all to the following addresses:

If to Licensor: City of Beacon  
One Municipal Plaza  
Beacon, New York 12508

Attention: City Administrator

With a Copy to: Keane & Beane, P.C.  
445 Hamilton Avenue, 15<sup>th</sup> Floor  
White Plains, New York 10601  
Attention: Nicholas Ward-Willis, Esq.

If to Licensee: Things You Love Events, LLC  
35 North Elm Street  
Beacon, New York 12508

Attention:

Each party shall have the right to designate other or additional addresses or addressees for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

(15) **COUNTERPARTS:** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the parties hereto have signed this Agreement as of the date first written above.

**THINGS YOU LOVE EVENTS,  
LLC**

**CITY OF BEACON**

By: \_\_\_\_\_  
Emma Dewing

Title: \_\_\_\_\_

By: \_\_\_\_\_  
Anthony Ruggiero

\_\_\_\_\_  
City Administrator

STATE OF NEW YORK                    )  
  )     SS.:  
COUNTY OF DUTCHESS                )

On the \_\_ day of \_\_\_\_\_ in the year 2017 before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Signature and Office of individual  
taking acknowledgement

STATE OF NEW YORK                    )  
  )     SS.:  
COUNTY OF DUTCHESS                )

On the \_\_ day of \_\_\_\_\_ in the year 2017 before me, the undersigned, personally appeared Anthony Ruggiero, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Signature and Office of individual  
taking acknowledgement

**EXHIBIT A**

**Property**