

**ORDINANCE NO. 2018-23**

**AN ORDINANCE AMENDING ORDINANCE NO. 2017-160 TO CORRECT THE SCOPE OF THE PROJECT, AMENDING THE DEVELOPMENT AGREEMENT, AUTHORIZING THE TRANSFER OF A TREX LIQUOR LICENSE INTO THE CITY BY THE B'S KITCHEN, LLC, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDED DEVELOPMENT AGREEMENT, AND DECLARING AN EMERGENCY.**

**WHEREAS**, B's Kitchen, LLC has proposed the redevelopment of a portion of 211 Franklin Avenue, Kent, Ohio, property owned by it, into a bakery, bar, restaurant, and apartments; and

**WHEREAS**, B's Kitchen, LLC has asked Kent City Council to allow the transfer of a liquor license from outside of Kent, into the City, by the TREX process, for use at 211 Franklin Avenue, Kent, Ohio; and

**WHEREAS**, the City of Kent, Ohio requires the approval of City Council to allow the transfer of a liquor license from outside of the City limits, for use within the City limits, under the Transfer Exempt Permit (TREX) Guidelines of the City, approved by City Council on May 15, 2013; and

**WHEREAS**, the City of Kent Council requires that certain economic development criteria be met and that a Development Agreement be executed before Kent City Council will authorize the transfer of a liquor license into the City by the TREX process; and

**WHEREAS**, B's Kitchen, LLC has indicated in its application to the City for the TREX liquor license transfer approval that it will do the following:

- a) It will spend a minimum of \$175.00 per square foot for the redevelopment of 211 Franklin Avenue, Kent, Ohio, consisting of approximately 26,200 square feet of retail/commercial/residential space; and
- b) It will sell liquor (D-5 liquor license) as well as other non-alcoholic beverages; and
- c) That it will not transfer the liquor license or licenses within the City without prior approval from Kent City Council.

**WHEREAS**, the City of Kent may approve the transfer of a liquor license into the City if the redevelopment of properties that are currently blighted, deteriorated or underdevelopment/underused will occur; and

**WHEREAS**, the City of Kent, Ohio will only approve the transfer of a TREX liquor license into the City of Kent, Ohio if City Council retains the right to approve the future transfer of said liquor license to a new location within the City and/or to a new owner at the same or new location within the City. B's Kitchen, LLC may move the liquor license outside of the City limits without City Council's approval; and

**WHEREAS**, the Kent City Council also looks at the character of the principals of the applicant in making its decision to approve a TREX, as the City Council does not want applicants who will cause problems for the City in the future, negatively affecting economic development within the City.

**WHEREAS**, this Ordinance corrects Ordinance No. 2017-160 and the Development Agreement referred to therein as Exhibit A;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

**SECTION 1.** That Kent City Council hereby approves the Amended Development Agreement with B's Kitchen, LLC, and the City Manager is hereby authorized to execute the Amended Development Agreement on behalf of the City, attached hereto and incorporated herein.

**SECTION 2.** That, conditioned on B's Kitchen, LLC executing the Amended Development Agreement, the Kent City Council has approved the transfer of a D-5 liquor license into the City of Kent, Ohio via the TRES process, to be used by B's Kitchen, LLC at 211 Franklin Avenue, Kent, Ohio.

**SECTION 3.** That all provisions in Ordinance No. 2017-160 and the Development Agreement referred to therein (Exhibit A) inconsistent or conflicting with the provisions in this Ordinance and the attached Amended Development Agreement be, and hereby are, repealed.

**SECTION 4.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal actions, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 5.** That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of the City, and for the further reason that this Ordinance is required to be immediately effective in order to induce the redevelopment to proceed, thereby eliminating blighted conditions and preventing the recurrence of those conditions, for which reasons and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: February 7, 2018  
Date

J. Fiala  
Jerry T. Fiala  
Mayor and President of Council

EFFECTIVE: February 7, 2018  
Date

ATTEST: Tara Grimm  
Tara Grimm, CMC  
Clerk of Council

I, TARA GRIMM, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF *ORDINANCE No.* \_\_\_\_\_, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
TARA GRIMM, CMC  
CLERK OF COUNCIL

**AMENDED DEVELOPMENT AGREEMENT**

THIS AMENDED DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the CITY OF KENT, OHIO, a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of Ohio and a duly adopted Charter (hereinafter referred to as the "City"), and B'S KITCHEN, LLC, an Ohio limited liability company (hereinafter referred to as the "Redeveloper").

**WITNESSETH:**

WHEREAS, the City has been active in the redevelopment and clearance of underdeveloped, blighted, and deteriorated areas in the City, and in this connection is engaged in carrying out the Downtown Urban Renewal Plan dated January 2001 (the "Urban Renewal Plan"); and

WHEREAS, the Redeveloper intends to develop the property currently owned by B's Kitchen, LLC located at 211 Franklin Avenue, Kent, Ohio (the "Property") by constructing approximately 26,200 square feet of retail/commercial/residential space, such improvements hereinafter referred to as the "Private Improvements;" and

WHEREAS, the City believes that the redevelopment of the Property with the Private Improvements pursuant to this Agreement and the fulfillment generally of this Agreement are in the best interests of the City and its residents, and are necessary to provide for the productive development and reuse of property, to provide for the creation of jobs and employment opportunities, and to improve the economic and general welfare of the people of the City; and

WHEREAS, the City has determined that it is in its best interests of the City and its citizens to aid the Redeveloper in the construction project; and

WHEREAS, the Redeveloper needs to acquire a liquor license in order to sell wine, beer and spirituous liquor at said location – specifically, a D-5 license, using the TREX liquor license provisions of Ohio Revised Code § 4303.29.

WHEREAS, the construction and use of the Private Improvements is dependent upon the City agreeing to accept a transfer of a liquor license from another location in the State to the City (TREX license); and

WHEREAS, Redeveloper has agreed to construct the Private Improvements at 211 Franklin Avenue, Kent, Ohio for a minimum amount of \$175.00 per square foot; and

WHEREAS, pursuant to the provisions of Ohio Revised Code § 4303.29, the City of Kent will only agree to execute this agreement and approve the TREX liquor license, if its approval is required before Redeveloper may transfer the liquor license referred to above to another location and/or to another owner, whether at the same location or another location; and

WHEREAS, the Kent City Council considered the following criteria prior to consenting to entering into this Agreement:

- a) The financial strength of the Redeveloper; and
- b) The amount of monies being invested into 211 Franklin Avenue, Kent, Ohio; and
- c) The amount of square foot space being redeveloped by the Redeveloper; and
- d) The character of the principals of B's Kitchen, LLC; and
- e) That it is a D-5 license being requested.

WHEREAS, both parties acknowledge that the additions of new venues open for the sale of alcoholic beverages within the City, may cause additional work for the staffs of the Kent City Police Department and Fire Department.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the City and the Redeveloper agree as follows:

**Section 1.   Redevelopment of the Property.**

The Redeveloper agrees to redevelop the Property by constructing the Private Improvements thereon consistent with all Federal, State and local laws. The Redeveloper has submitted construction plans for the Private Improvements to the City for approval and has agreed to begin construction upon approval of such plans and complete construction in a timely manner.

The City and the Redeveloper each shall proceed in good faith and diligently, and in cooperation with the other, to carry out the activities necessary to cause construction of the Private Improvements to begin within 180 days of the execution of this Agreement (the "Commencement Date").

If the Commencement Date has not occurred by the 180-day anniversary of the execution of this Agreement by both the City and the Redeveloper, this Agreement shall terminate, unless that date is further extended in writing by the City and the Redeveloper. Any such extension must be approved by City Council. If this Agreement terminates because the Commencement Date has not occurred within the permitted period, neither the City nor the Redeveloper shall be deemed to have defaulted hereunder and the sole remedy of the City and the Redeveloper is the termination or extension of this Agreement.

**Section 2.   Redevelopers Responsibilities.**

In exchange for the approval of the transfer of the liquor license into the City by the City Council, described in Section 3 of this Agreement, the Redeveloper shall:

- a) Use its best efforts to begin construction of the Private Improvements by the Commencement Date by investing a minimum of \$175.00 per square foot for the redevelopment of 211 Franklin Avenue, for the construction of 26,200 square feet

of retail/commercial/residential space, and to complete such construction in a timely manner.

- b) Continually follow and obey all local, state and federal laws in the redevelopment of the property and in the operation of the retail/commercial/residential space.
- c) Receive the written permission of the City of Kent Council prior to transfer said license to a new location and/or to a new owner at the same or different location.

**Section 3. Responsibilities of the City.**

- a) The City, in exchange for the Redeveloper performing the requirements listed in Section 2, above, shall conditionally approve the transfer of a liquor license into the City of Kent pursuant to Ohio Revised Code § 4303.29, in the name of the Redeveloper, for location at 211 Franklin Avenue, Kent, Portage County, Ohio.
- b) The City, upon written request from the Redeveloper, shall review any proposal to relocate the said liquor license to a different location within the City of Kent, or to transfer said liquor license to a different owner at the same or different location within the City of Kent. The City shall approve the transfer and/or relocation of the license within the City, if the City Council, after reviewing the following criteria, to see if the new owner will provide some or all of the following:
  - i) The financial strength of the proposed new owner is adequate to complete the new redevelopment criteria; and
  - ii) The amount of monies, if any, being invested into the new location in Kent, Ohio meet or exceed those expended by this Redeveloper; and
  - iii) The amount of square foot space being redeveloped by the new owner; and
  - vi) The character of the person or people constituting the new owner shall be upstanding; and
  - v) That it is a D-5 license being transferred.

Said consent shall not be unreasonably withheld.

**Section 4. Assignment or Sale of Liquor License.**

The liquor license in question may only be transferred by the Redeveloper with the consent of the City as outlined in Section 3.

**Section 5. Remedies.**

(a) General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by the Redeveloper, or any successor, the City may, upon written notice to the Redeveloper, withdraw its approval of the transfer of the liquor license into the Kent City limits and take whatever steps are necessary to

cause the liquor license to be revoked, within thirty (30) days after receipt of such notice. In case such action is taken by the City and the default or breach is not diligently pursued by the Redeveloper to cure the default or breach within a reasonable time, the City may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; or to revoke the liquor license into the City, mandating the closing of the establishment and the relocation of the liquor license to a location outside of the City limits.

(b) Force Majeure. Neither the City nor the Redeveloper shall be considered in default in its obligations to be performed hereunder, other than for the payment of money, if delay in the performance of such obligations is due to causes beyond its reasonable control and without its fault or negligence, including but not limited to, acts of God or of the public enemy, acts of the federal or State government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, or other events beyond the reasonable control of a party and without its fault or negligence; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall within 30 days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other party in writing of the duration of the delay.

**Section 6. Conflict of Interest; City's Representatives not Individually Liable.**

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the City shall be personally liable to the Redeveloper or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Redeveloper or successor or on any obligations under the terms of this Agreement.

**Section 7. Notice.**

(a) A notice, demand, or other communication under this Agreement by either the City or the Redeveloper to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (i) In the case of the Redeveloper is addressed to or delivered personally to the Redeveloper at:

B'S KITCHEN, LLC.  
6188 Marteney Avenue  
Kent, Ohio 44240  
Attention: Badreeyeh Al-hasawi

- (ii) In the case of the City, is addressed to or delivered personally to the City at:

City Manager  
c/o Community Development Dept.  
930 Overholt Road  
Kent, Ohio 44240

with a copy to the Law Director, at the same address.

Or at such other address with respect to either the City or the Redeveloper may from time to time, designate in writing and forward to the other as provided in this Section.

**Section 8. Counterparts.**

This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

**Section 9. Jurisdiction.**

The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement may be brought in a court of record in Portage County, Ohio or in the courts of the United States of America located in such state or commonwealth.

**Section 10. Captions.**

The captions to the section of this Agreement are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Agreement.

**Section 11. Severability.**

The parties hereto intend and believe that each provision of this Agreement comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Agreement is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and the rights, obligations and interests of the City and Redeveloper under the remainder of this Agreement shall continue in full force and effect.

**Section 12. No Oral Modification.**

This Agreement may not be modified or discharged orally, but only by an agreement in writing signed by the City and Redeveloper.

**Section 13. Costs of Enforcement.**

Redeveloper agrees to pay the costs and expenses, including but not limited to reasonable attorney fees and legal expenses incurred by City in the exercise of any right or remedy available to the City under this Agreement.

IN WITNESS WHEREOF, the City of Kent, Ohio and B's Kitchen, LLC have each caused this Agreement to be duly executed in its behalf, on or as of the day and year first above written.

**CITY OF KENT, OHIO**

By \_\_\_\_\_  
David Ruller, City Manager

**B'S KITCHEN, LLC**

By \_\_\_\_\_,  
Badreyyeh Al-hasawi



STATE OF OHIO )  
 )SS:  
COUNTY OF PORTAGE )

Before me a Notary Public in and for said County and State, personally appeared David Ruller, the City Manager for the City of Kent, Ohio, who acknowledged that he signed the foregoing instrument as the fully authorized officer of said City of Kent, Ohio, a municipal corporation of the State of Ohio, and that the same is its free act and deed and his free act and deed, respectively, as such officer and individually.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO )  
 )SS:  
COUNTY OF PORTAGE )

Before me a Notary Public in and for said County and State, personally appeared Badreyyeh Al-hasawi, the Managing Member of B's Kitchen, LLC, an Ohio limited liability company, who acknowledged that he did sign the foregoing instrument on behalf of such company as the free act and deed of himself and of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Chad Murdock, acting Law Director  
City of Kent