



Department of
Community Investment

Memorandum

February 22, 2018

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources *DR*
SUBJECT: License Agreement For Temporary Parking (Hibberd Development LLC)

This License Agreement (Agreement) allows Hibberd Development LLC to park eighteen vehicles in the recently acquired parking lot at 322 S. Lafayette. This parking lot is directly behind the Hibberd Building, and will allow construction and ultimately tenant parking for this project.

The license fee is \$20 per space per month, and may be terminated with a 30 day notification period.

Commission approval is requested for this License Agreement for Temporary Parking.

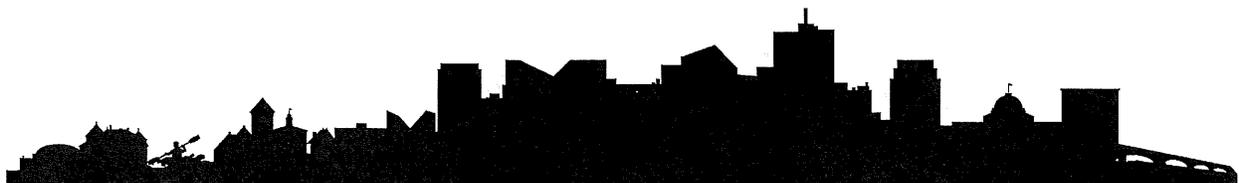
INTERNAL USE ONLY: Project Code: _____

Total Amount new in budget: N/A ; broken down by:

Acct # _____

Going to BPW for Contracting? N/A Is this item ready to encumber now? N/A

Existing PO# (no) Inc/Dec \$ n/a



LICENSE AGREEMENT FOR TEMPORARY PARKING

This License Agreement For Temporary Parking (this “Agreement”) is made on February 22, 2018 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Hibberd Development, LLC, an Indiana limited liability company with its registered office at 1329 E. Washington St., South Bend, Indiana 46617 (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

A. The Commission owns, or will acquire from the South Bend Board of Public Works, certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana (the “City”), described as Lot Number Two Hundred Seventy-Nine (279) as shown on the Original Plat of the City and commonly known as 322 S. Lafayette Boulevard, South Bend, Indiana, Parcel Key Number 018-3008-0256 (the “Property”).

B. The Company desires temporary access to the Property for the purpose of parking passenger vehicles of the Company’s tenants residing in and licensees and invitees visiting the building at 321 S. Main Street owned and operated by the Company (the “Company’s Building”).

C. The Commission is willing to permit the Company to gain access to and temporarily use the Property to provide parking spaces to the Company’s tenants, licensees, and invitees, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Parties agree as follows:

1. License. The Commission grants to the Company a temporary, non-exclusive license to enter and use eighteen (18) parking spaces located on the Property (the “Parking Spaces”) for the parking of passenger vehicles of the Company’s tenants residing in the Company’s Building and licensees and invitees visiting the Company’s Building, provided that the Company’s use of the Property is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission, or its authorized representative, reserves the right to specifically designate the location and configuration of the Parking Spaces on the Property that are available for the Company’s use and may modify such location or configuration during the Term (as defined below) upon reasonable notice to the Company. The Company’s license is limited to use of the Parking Spaces as stated above and a reasonable course of ingress to and egress from the Parking Spaces.

2. Term. The Company’s license to use the Parking Spaces shall be effective starting on January 1, 2018, and shall terminate upon revocation as set forth in this Agreement (the “Term”). Upon thirty (30) days’ written notice to the Company, the Commission or the Commission’s authorized representative may revoke and terminate the license at any time for any reason, including, without limitation, to accommodate future development of the Property or the surrounding area, as determined in its, his, or her sole discretion. Notwithstanding the foregoing sentence, the Commission or the Commission’s authorized representative may revoke and

terminate the license without notice in the event there exists any default of the Company's obligations under this Agreement.

3. No Lease or Easement; Assignment. The Commission represents that it is the sole owner in fee simple of the Property and has the lawful right to permit the Company to use the Property under this Agreement. The Parties acknowledge and intend that this Agreement will not constitute a lease of or an easement over the Property or the Parking Spaces, and the Company will have no right or authority to convey any leasehold or other interest in the Property or the Parking Spaces to any other person or entity, provided, however, that the Company may permit the tenants of Company's Building to use the Parking Spaces licensed to Company hereunder and may charge the tenants a fee for such use not to exceed the License Fee defined in Section 4 below. Except as expressly provided in this Agreement, any attempt by the Company to grant or lease any interest in the Property or the Parking Spaces to any other person or entity will be void ab initio and of no force or effect. The Parties agree that neither this Agreement nor any of the Company's rights under this Agreement may be assigned, in whole or in part, to any other party without the Commission's prior written consent.

4. License Fee. In consideration for the license granted in this Agreement, the Company will pay a monthly license fee of Three Hundred Sixty Dollars (\$360.00) (calculated as \$20.00 per parking space per month) (the "License Fee"). The Company will pay to the Commission the License Fee for the months of January and February of 2018 on the Effective Date and thereafter on the first business day of each month during the Term of this Agreement.

5. Maintenance. At all times during the period of the license, the Company will keep the Property in good order and condition, including, without limitation, clearing all ice and snow from the Parking Spaces (as the same may be designated or configured from time to time pursuant to Section 1 of this Agreement) and any path of vehicular access to such Parking Spaces from the public rights-of-way abutting the Property, which will be the Company's responsibility unless the City or the Commission undertakes to remove ice and snow from the entirety of the Property.

6. Security. The Company understands and agrees that the Commission shall not be liable for any loss, damage, destruction, or theft of the Company's property or any bodily harm or injury that may result from the Company's use of the Property. The Company understands and agrees that it will at all times be solely responsible for the safety and security of all persons, property, and vehicles, including any property contained within the vehicles, on the Property in connection with the Company's use of the Parking Spaces under the terms of this Agreement.

7. Storage. The Company agrees that it will not store any supplies, materials, goods, or personal property of any kind on the Property without the prior written consent of the Commission. In addition, the Company will not cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

8. Regulations; Other Permits. The Company understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to its use of the Parking Spaces. The Company understands and agrees that it will secure in its own name and at its own

expense all other permits and authorizations, if any, necessary for its use of the Parking Spaces in accordance with the terms of this Agreement.

9. Commission's Use. The Commission reserves the right to use the Property during the Term of this Agreement for any purpose that does not substantially interfere with or obstruct the Company's license under this Agreement.

10. Restoration. To the extent that any portion of the Property is disturbed or damaged in connection with the Company's use of the Property, including disturbances or damage caused by the vehicles of the Company's tenants, licensees, or invitees, the Company, at the Company's sole expense, shall restore the Property to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Commission.

11. Property Taxes. The Company will be responsible for the payment of all real property taxes and assessments, of any nature whatsoever (the "Taxes"), levied against the portion of the Property containing the Parking Spaces for all periods during the term of the Company's license. The Commission will have no liability for any Taxes associated with the Property, whether accruing during the term of the license or after the term of the license, and nothing in this Agreement will be construed to require the proration or other apportionment of Taxes resulting in the Commission's liability therefor.

12. Indemnification. The Company agrees and undertakes to defend, indemnify, and hold harmless the City and the Commission, and their respective officials, employees, agents, successors, and assigns, from and against any liability, loss, costs, damages, or expenses, including attorneys' fees, which the City or the Commission may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the license granted herein by the Commission or the Company's use of the Property or the Parking Spaces. If any action is brought against the City or the Commission, or their respective officials, employees, agents, successors, and assigns, in connection with the Company's use of the Property, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

13. Insurance. The Company, at the Company's sole expense, shall maintain during the Term of this Agreement commercial general liability insurance covering the Company in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, inclusive of the limit an umbrella or excess policy. The Company agrees to include the Commission and the City as additional insureds on any such policy and produce to the Commission evidence of the same, including without limitation a properly endorsed policy and a certificate of insurance. To the extent that the Commission or the City is harmed as a result of the Company's use of the Property, the Company hereby grants the Commission first priority on any proceeds received from the Company's insurance. Notwithstanding anything in this Agreement to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

14. Integration; Amendment. This Agreement supersedes all prior negotiations, understandings, and agreements, whether written or oral, concerning the subject matter of this

Agreement and constitutes the Parties' entire agreement. This Agreement may not be altered except by a written instrument signed by authorized representatives of both Parties.

15. Counterparts; Signatures. This Agreement may be separately executed in counterparts by the Commission and the Company, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

16. Authority. Each undersigned person signing on behalf of his or her respective Party certifies that he or she is duly authorized to bind his or her respective Party to the terms of this Agreement.

17. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, the Parties have executed this License Agreement For Temporary Parking to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

HIBBERD DEVELOPMENT, LLC,
an Indiana limited liability company

Mark W. Neal, Manager
Dated:

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