



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: September 13, 2018

FROM: David Relos, Property Development Manager *DR*

SUBJECT: License Agreement (Vickie L Gabbard Trust)

Which TIF? (circle one) **River West**; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

As part of the planned demo of the Fat Daddy’s buildings, this License Agreement will allow the City, through its contractor, to remove two second story walkways between one of the buildings and a privately owned building adjacent and connected to it. After the removal of the connections the remaining openings will be infilled with brick of similar style.

Commission approval is requested.

INTERNAL USE ONLY: Project Code: N/A ;

Total Amount new/change (inc/dec) in budget: -0- ; Breakdown:

Costs: Engineering Amt: ; Other Prof Serv Amt ;

Acquisition of Land/Bldg (circle one) Amt: ; Street Const Amt ;

Building Imp Amt ; Sewers Amt ; Other (specify) Amt:

 . Going to BPW for Contracting? Y/N

Is this item ready to encumber now? N/A Existing PO# Inc/Dec \$

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

1400S County-City Building | 227 W. Jefferson Blvd. | South Bend, Indiana 46601 | p 574.235.9371 | f 574.235.9021 | www.southbendin.gov

**LICENSE AGREEMENT
FOR TEMPORARY USE OF PRIVATE PROPERTY**

This License Agreement (this “Agreement”) is made on September _____, 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 the Vickie L. Gabbard Trust (the “Trust”) with a mailing address of 750 East 8th Street, Mishawaka, Indiana 46544 (each a “Party,” and collectively, the “Parties”).

RECITALS

WHEREAS, the Trust owns certain real property and improvements located within the City of South Bend, Indiana (the “City”), as more particularly described in **Exhibit A** attached hereto (the “Property”); and

WHEREAS, the Commission is engaged in a project with regard to which it will be demolishing certain structures (the “Project”) located on the real property adjoining the Property, commonly known as Fat Daddy’s (“Fat Daddy’s”); and

WHEREAS, a Fat Daddy’s structure is physically connected to the Property on the second floor of the structure on the Property; and

WHEREAS, the Commission desires temporary access to the Property for the sole purpose of permanently walling off with similar style brick the connection to the structure on the Property as part of the Project (the “Activity”); and

WHEREAS, the Trust is willing to permit the Commission to gain access to and temporarily use the Property for the Activity, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Trust grants to the Commission, its agents, contractors, employees, and invitees, a temporary, non-exclusive license to enter and use the Property for the sole purpose of conducting the Activity, provided that the Commission’s use of the Property is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission understands that its access to the Property is limited to the areas required to complete the Activity.

2. The Commission’s license to use the Property for the Activity shall be effective upon the execution date of this Agreement, and the Commission agrees that it will not store or allow to be stored any supplies, materials, goods, or personal property of any kind on the Property or otherwise use the Property for any purposes except the Activity. Immediately upon the completion of the Activity, the Commission will remove or cause to be removed from the Property all supplies, materials, goods, and personal property (including trash) used by it or its agents, employees, contractors, or invitees in connection with the Activity. At all times during the period

of the Activity and the Project, the Commission will use or cause to be used commercially reasonable efforts to keep the Property in good order and condition.

3. The Commission understands and agrees that the Trust shall not be liable for any loss, damage, destruction, or theft of the Commission's property or the property of the Commission's agents, contractors, employees, or invitees, or any bodily harm or injury that may result from the Commission's use of the Property. The Commission understands and agrees that it will be solely responsible for the safety and security of all persons on the Property and any personal property the Commission or its agents, contractors, employees, or invitees use in connection with the Activity while on the Property.

4. The Commission shall not, without the prior written consent of the Trust, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

5. The Commission understands and agrees that it will secure in its own name (or the name of the City) and at its own expense all necessary permits and authorizations needed in order to conduct the Activity.

6. The Commission understands and agrees that it will, at its own expense, observe and comply with, or cause to be observed and complied with, all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Activity.

7. The Trust 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 Commission's permitted use of the Property with regard to the Activity and the other terms of this Agreement.

8. To the extent that any portion of the Property is disturbed or damaged in connection with the Commission's use of the Property, the Commission, at its sole expense, shall restore or cause to be restored the Property to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Trust.

9. The Commission agrees and undertakes to indemnify and hold the Trust and its agents, employees, successors, assigns, and licensees harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the Trust 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 Commission's use of the Property. If any action is brought against the Trust, or its agents, employees, successors, or assigns, in connection with the Activity, the Commission agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein. Notwithstanding the foregoing or anything herein to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

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

Agreement may be separately executed in counterparts by the Parties, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures

11. 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.

12. Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

13. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

14. This Agreement will be governed by and construed in accordance with the laws of the State of Indiana and the courts of St. Joseph County, Indiana shall have jurisdiction over any claims that arise hereunder.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have each executed this License Agreement for Temporary Use of Private Property to be effective as of the Effective Date stated above.

**SOUTH BEND REDEVELOPMENT
COMMISSION**

By: _____
Marcia I. Jones, President
South Bend Redevelopment Commission

ATTEST:

Donald E. Inks, Secretary
South Bend Redevelopment Commission

VICKIE L. GABBARD TRUST

By: *Vickie Gabbard*
Vickie L. Gabbard, Trustee

EXHIBIT A

Description of Property

The following real property commonly known as 112 West Monroe Street, South Bend, Indiana, Parcel Key no. 018-3017-0627:

A lot or parcel of land 33 feet in width, East and West, taken off of and from the entire width of the West end of Lot Numbered Nineteen (19) as shown on the Recorded Plat of Samuel Martin's Addition to the City of South Bend; together with a permanent easement designated over the following parcel of real estate, to wit: Commencing at a point on the North line of Lot Numbered Nineteen (19) of Martin's Addition to the City of South Bend, Indiana, which is 33 feet East of the Northwest corner of said Lot Number Nineteen (19); thence continuing East along the north line of said Lot Number Nineteen (19) a distance of 3.8 feet; thence South a distance of 66 feet to a point on the South line of said Lot Number Nineteen (19) which is located 36.75 feet East of the Southwest corner of said Lot Number Nineteen (19); thence West along the South line of said Lot Number Nineteen (19) a distance of 3.75 feet; thence North to the point of beginning.