

Naming Rights Agreement

This Naming Rights Agreement (“Agreement”), effective as of December 16, 2019 (“Effective Date”), is made and entered into by and between The Phair Family (hereinafter, “the Phairs”), whose address is 1612 E Washington St, South Bend, IN 46617, and the City of South Bend, Indiana, Department of Venues Parks & Arts, by and through its Board of Park Commissioners (hereinafter the “City”), (each a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the City owns certain areas, such as the limestone playground entrance area located at Howard Park, 219 S. St. Louis Blvd., South Bend, Indiana 46617 (the “entrance area”); and

WHEREAS, the Parties desire to enter into a naming rights agreement pursuant to which the City will grant the Phairs temporary exclusive naming rights for the City’s entrance area at Howard Park in return for certain benefits set forth below.

NOW THEREFORE, in consideration of the following mutual promises, and all other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

AGREEMENT

1. **Term.** The Initial term of this Agreement shall be for ten (10) years, commencing on December 16, 2019 and ending on December 15, 2029, unless otherwise terminated earlier in accordance with the terms and conditions contained herein. The Parties by mutual written agreement may extend the term of the this Agreement.
2. **Naming Rights Fee.** In consideration of the naming rights and ancillary benefits granted by the City hereunder, the Phairs agree to pay a naming rights fee in the amount of twenty five (“\$25,000”) dollars, in the manner and amounts set forth herein (“Naming Rights Fee”).
3. **Naming Rights Payment Schedule.** The Phairs have the option to pay the Naming Rights Fee to the City over a period of two (2) years. The initial payment of twelve thousand five hundred (\$12,500) dollars shall be paid no later than December 31st, 2019 and then the remaining payment shall be paid in accordance with the following schedule:

Naming Rights Fee Amount	Due Date
\$12,500	December 31, 2019
\$12,500	December 31, 2020
Total: \$25,000	

The Phairs may accelerate the payment of any or all of these payments at any time, at the Phairs discretion, as long as the cumulative total of all payments meets the

total amount of \$25,000 as agreed by the Parties. Payments shall be paid by the Phairs to the City via check or electronic funds transfer acceptable to the Phair's and the City.

4. **Use of Payments.** The payments shall be used exclusively for the Howard Park Development Project.
5. **Acknowledgment.** In consideration for the payment of the consideration and ancillary benefits granted herein, the City agrees to acknowledge Phairs' naming rights during the term of this Agreement by naming the Howard Park limestone playground entrance area after the Phairs via a plaque on the west post of the playground entrance. This agreement also includes a "leaf" upon the permanent donor wall inside of the Howard Park Community Center. Subject to the terms of this Agreement, the Phairs' naming rights will continue for the ten year term of this Agreement. Any additional benefits or rights granted to the Phairs beyond those specified in this section must be mutually agreed to by the Parties and are subject to the payment of additional consideration in an amount agreed to by the Parties.
6. **Modification of Naming.** If during the term of this Agreement, and following receipt of full payment from the Phairs, the useful life of the entrance area expires prior to the expiration of this Agreement, the amenity is destroyed or severely damaged, then the naming rights under this Agreement will cease. In such event, the Parties may mutually agree to provide the Phairs an equivalent naming right.
7. **Promotion.** During the term of this Agreement, the City, in consideration of the naming rights and benefits conferred hereunder, shall have the right, without charge, to photograph, use the names, likenesses, and images of the Phairs or the limestone in photographic, audiovisual, digital or any other form of media (the "Media Materials") and to use, reproduce, distribute, exhibit, and publish the Media Materials in any manner, and in whole or in part, in City brochures, website postings, informational and marketing materials, and reports and publications.
8. **Ownership.** The Phairs acknowledges that at all times the ownership of the entrance area remains with the City.
9. **Assignment.** This Agreement and the rights and benefits hereunder may not be assigned by either Party without the prior written consent of the other Party, which consent shall be in the sole and absolute discretion of the non-assigning Party.
10. **Notices.** Any notice required or permitted to be given hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to a Party, and the addresses set forth below:

The Phair Family
1612 E Washington St
South Bend, IN 46617
Attn: _____

City of South Bend, Indiana
Venues Parks & Arts Department
219 S. St. Louis Street
South Bend, IN 46617
Attn: _____

11. **Termination of Naming.** In addition to any rights and remedies available at law, the City may terminate this Agreement and all rights and benefits of the Phairs hereunder, including termination of naming rights and affixation of the logoed plaque upon the occurrence of the following:
- a. In the event the Phairs fail to make any payment due under this Agreement; and such default is not cured within ten (“10”) business days following the date of written notice of default by the City; or
 - b. In the City’s reasonable opinion, if at any time during the term of this Agreement, the Phairs or the chosen name of the entrance area have developed or acquired a negative connotation for any reason such that the reputation of Howard Park and/or the City is or might be at risk.

If termination is due to failure of payment, as of the effective date of termination, the City shall have no further obligation or liability to the Phairs and shall not be required to return any portion of the Naming Rights Payment already received; and the City may immediately cease to use or display the recognition plaque. The Phairs will be liable to the City for payment of all costs and expenses incurred by the City in removing, discarding, and/or replacing the amenity name. The City may in its sole and absolute discretion determine an alternative recognition for the portion of the payment already received.


If termination is due to a change in circumstances such that the City determines the Phairs or the entrance area has developed or acquired a negative connotation that may or does put the reputation of Howard Park and/or the City at risk, the Phairs shall not be entitled to a refund of any portion of the payment made.

Should the Phairs decide to end affiliation with Howard Park during the timeframe outlined in this agreement, the Phairs will be responsible for the payment to remove the naming rights signage at the entrance area.

12. **Counterparts.** This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the parties.
13. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with regard to the matters referenced herein, and supersedes all prior oral and written agreements, if any, of the Parties in respect hereto. This Agreement may not be modified or amended except by written agreement executed by both Parties hereto. The captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.
14. **Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Indiana and the City of South Bend, without regard to any conflict of law. Any legal proceeding brought in connection with disputes relating to or arising out of this Agreement shall be filed and heard in the courts of St. Joseph County, Indiana.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of the day and year indicated above.

CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS



Mark Neal, President

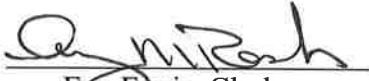
Consuella Hopkins, Vice President



Aimee Buccellato, Member



Dan Farrell, Member

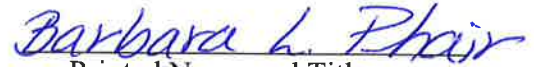
ATTEST: 

Eva Ennis, Clerk
Amy M. Roush

THE PHAIR FAMILY

By 

Signature



Printed Name and Title