

LICENSE AGREEMENT FOR USE

This License Agreement for Use (this “Agreement”) is dated as of April 23, 2020, by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Cultivate Culinary School and Catering, Inc., an Indiana nonprofit corporation (“Cultivate”) (each a “Party,” and collectively, the “Parties”).

RECITALS

- A. The Commission owns certain real property and improvements located within the River West Development Area of the City of South Bend, Indiana (the “City”), as more particularly described on **Exhibit A** (the “Property”).
- B. Cultivate is a nonprofit corporation that helps people who are struggling with food security.
- C. Cultivate desires to use the Property for planting raised beds of herbs and vegetables (the “Use”).
- D. The Commission is willing to permit Cultivate to gain use the Property for the Use, 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 Cultivate a non-exclusive license for the Use, provided that the Use is reasonable at all times and comports with the terms of this Agreement and all applicable laws. Further, at Cultivate's sole discretion and expense, Cultivate may also have access to the Property for the purposes of any soil, groundwater, or other investigatory purpose as may be needed for the Use.
- 2. **Term and Termination.** Cultivate’s license to use the Property shall commence on April 1, 2020 and shall terminate upon ninety (90) days’ written notice to Cultivate from the Commission or the Commission’s authorized representative. Additionally, the Commission or its authorized representative may revoke and terminate the license upon ninety (90) days’ written notice at any time for any reason, including, without limitation, for the transfer of the Property, 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 Cultivate’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 Cultivate 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, and Cultivate will have no right or authority to convey any leasehold or other interest in the Property to any other person or entity. Except as expressly

provided in this Agreement, any attempt by Cultivate to grant or lease any interest in the Property 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 Cultivate'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. Maintenance. At all times during the period of the license, Cultivate will keep the Property in good order and condition and free of debris.

5. Security. Cultivate understands and agrees that the Commission shall not be liable for any loss, damage, destruction, or any bodily harm or injury that may result from Cultivate's use of the Property.

6. Storage. Cultivate agrees that it 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.

7. Regulations; Other Permits. Cultivate 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 Property. Cultivate 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 Property in accordance with the terms of this Agreement.

8. 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 Cultivate's license under this Agreement.

9. Restoration. To the extent that any portion of the Property is disturbed or damaged in connection with Cultivate's use of the Property, Cultivate, at Cultivate'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.

10. Indemnification. Cultivate 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 Cultivate's use of the Property. If any action is brought against the City or the Commission, or their respective officials, employees, agents, successors, and assigns, in connection with Cultivate's use of the Property, Cultivate agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

11. Insurance. Cultivate, at Cultivate's sole expense, shall maintain during the term of this Agreement commercial general liability insurance covering Cultivate in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence, inclusive of the limit an umbrella or excess policy. Cultivate 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 within thirty (30) days of the execution of this Agreement and annually thereafter. To the extent that the Commission or the City is harmed as a result of Cultivate's use of the Property, Cultivate hereby grants the Commission first priority on any proceeds received from Cultivate'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.

12. 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.

13. Waiver. 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.

14. Severability. 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.

15. Counterparts; Signatures. This Agreement may be separately executed in counterparts by the Commission and Cultivate, 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.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this License Agreement for Use to be effective as of the date set forth above.

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Marcia I. Jones, President

ATTEST:

Quentin M. Phillips, Secretary

CULTIVATE CULINARY SCHOOL AND CATERING, INC.

By: _____
Printed: _____
Title: _____

EXHIBIT A

Property

Lot 1 of the Prairie Avenue Minor Subdivision, commonly known as 1503 Prairie Avenue, South Bend, Indiana 46613.

Parcel Key No. 018-8052-2114

AND

Lot 2 of the Prairie Avenue Minor Subdivision, commonly known as 1505 Prairie Avenue, South Bend, Indiana 46613.

Parcel Key No. 018-8052-211401