



Department of
Community Investment

Memorandum

Thursday August 25th, 2016

TO: South Bend Redevelopment Commission

FROM: Sarah Heintzelman, Business Development

SUBJECT: Temporary Use Agreement of Redevelopment Commission Owned Property

Colfax Hill Partners LLC, is an Indiana limited liability company that has developed the parcel at the corner of Hill and Colfax into a multistoried mixed use building. They are looking to lease 14 spaces at 126 Niles Ave. currently owned by the Commission to help meet the parking needs of their new development.

This lease will help Colfax Hill Partners offer additional parking for both their residential and commercial tenants. The company will lease 14 spaces at \$25 dollars a space per month for a one year term. This property currently has a building used by Parks for storage equipment for the East Race and the agreement does ensure access for the Park's Department to their facility.

Staff requests approval for the Temporary Use of Redevelopment Commission Property Agreement with Colfax Hill Partners.



LICENSE AGREEMENT
FOR TEMPORARY USE OF REDEVELOPMENT COMMISSION PROPERTY

This License Agreement (this “Agreement”) is made on August 25, 2016 (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 Colfax Hill Partners, LLC, an Indiana limited liability company with a registered office address of 1115 Burns Avenue, South Bend, Indiana 46617 (the “Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

A. The Commission owns certain real property and improvements located within the River East Development Area of the City of South Bend, Indiana (the “City”), commonly known as 126 Niles Avenue, South Bend, Indiana, Parcel Key No. 018-5004-0076 (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 the apartment building located at 525-527 E Colfax Avenue, South Bend (the “Company’s Building”) as well as temporary access to the Property for the purpose of parking construction vehicles and equipment being used to complete the construction of 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 and for temporary parking of construction vehicles and equipment, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants stated 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 fourteen (14) 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 construction vehicles and equipment being used to complete construction of 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, and the Company may not enter or use any structure on or other area of the Property.

2. **Term.** The Company’s license to use the Parking Spaces shall be effective starting on the Effective Date and ending on August 31, 2017 (the “Term”). Upon ninety (90) 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; Assignment. The Parties acknowledge and intend that this Agreement will not constitute a lease of the Property or the Parking Spaces, and the Company will have no right or authority to convey any leasehold interest in the Property or the Parking Spaces to any other person or entity; provided Company may permit the tenants of Company's Building to utilize the Parking Spaces licensed to Company hereunder and may charge the tenants a fee for the same. Any attempt by the Company to grant or lease any interest in the Property or the Parking Spaces other than as limited herein 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 license fee of Four Thousand Two Hundred Dollars (\$4,200.00) payable in monthly installments of Three Hundred Fifty Dollars (\$350.00) (calculated as \$25.00 per parking space per month) (the "License Fee"). The Company will pay the Monthly License Fee to the Commission 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.

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. Accordingly, the Company will not obstruct or hinder any operations by the Commission or the Commission's agents, contractors, tenants, or licensees using the building on the Property or areas of the Property other than the Parking Spaces designated in accordance with Section 1 of 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 or equipment of the Company's tenants or contractors, 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. Indemnification. The Company agrees and undertakes to indemnify and hold the City and the Commission, and their respective agents, employees, successors, and assigns, harmless from 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. If any action is brought against the City or the Commission, or their respective agents, employees, successors, or 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.

12. 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. The Company agrees to include the Commission and the City as additional insureds on any such policy and produce to the Commission a certificate of insurance evidencing the same. 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.

13. 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.

14. 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.

15. Authority. 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.

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

By: _____
Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

COLFAX HILL PARTNERS, LLC,
an Indiana limited liability company

By: Andra C. Sieradzki
_____, Member
Andra C. Sieradzki, manager
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