

**LICENSE AGREEMENT**  
**FOR TEMPORARY USE OF REDEVELOPMENT COMMISSION PROPERTY**

This License Agreement (this "Agreement") is made on April 26, 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 Earth Designs Real Estate, LLC, an Indiana limited liability company with a registered office address of 234 S. Coquillard St., 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"), as described in the attached Exhibit A, and which improvements include a building used by the City in conjunction with the nearby East Race Waterway (the "Building").

B. The Company desires to use an area of the Building comprised of two offices and two restrooms, as more particularly described in the attached Exhibit A (the "Office Area"), for the purpose of carrying out general office functions while the Company conducts construction operations for improvements to property in the vicinity of the Property (the "Activity").

C. The Commission is willing to permit the Company to gain access to and use the Office Area 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. License. The Commission grants to the Company a revocable, non-exclusive license to enter and use the Office Area for the Activity, provided that the Company's use of the Office Area and 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 modify the location and configuration of the area of the Property that is available for the Company's use during the Term (as defined below), upon reasonable notice to the Company. The Company's license is limited to use of the Office Area as stated above and the Company may not enter or use any other area of the Building or any other structure on the Property.

2. Term. The Company's license to use the Office Area shall be effective starting on May 1, 2018, and shall terminate upon revocation as set forth in this Agreement (the "Term"), or as otherwise mutually agreed by the Parties. 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; No Assignment; No Estate or Interest. The Parties acknowledge and intend that this Agreement is a license and will not constitute a lease of or an easement over the Property or the Office Area to the Company. This Agreement does not convey any estate or interest in the Property or the Office Area to the Company, and does not convey any future promise or option to the Company in any regard to an estate or interest in the Property or the Office Area. Furthermore, the Company will have no right or authority to convey any interest in the Property or the Office Area to any other person or entity. Any attempt by the Company to grant or lease any interest in the Property or the Office Area 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 or use of the Property or the Office Area under this Agreement is assignable or transferable, in whole or in part, to any other person or entity.

4. No License Fee; Improvements. In lieu of a monetary fee for its licensed use of the Office Area, the Company may undertake to complete, at the Company's sole expense, upgrades to the Office Area necessary to facilitate its use of the Office Area under the terms of this Agreement; provided, however, that the Company shall undertake no such upgrades without obtaining prior written consent from the Commission. Upon the termination of this Agreement, the Commission will own any improvements to the Office Area, and the Company will have no right to be reimbursed for or recover any value of any improvements to the Office Area made by the Company.

5. Maintenance; Damage. At all times during the period of the license, the Company will keep the Office Area in good order and condition. To the extent that any portion of the Office Area is disturbed or damaged in connection with the Company's use of the Office Area, the Company, at the Company's sole expense, shall restore the Office Area to the condition that existed immediately prior to such disturbance or damage to the satisfaction of the Commission.

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 Office Area under the terms of this Agreement.

7. Hazardous Materials. The Company shall not, without the prior written consent of the Commission, 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. Compliance; 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 Office Area. 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 Office Area in accordance with the terms of this Agreement.

9. Commission's Use. The Commission retains possession and control of the Property, including the Office Area, and reserves the right to use the Property during the Term of this Agreement for any purpose, including, but not limited to, general maintenance, 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, 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 Office Area 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 indemnify and hold the City of South Bend 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 of South Bend 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 of South Bend 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.

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. The Company agrees to include the Commission and the City of South Bend 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 of South Bend 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 of South Bend waive any governmental immunity or liability limitations available to them under Indiana or other applicable 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/her respective Party certifies that he/she is duly authorized to bind his/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.]

## **EXHIBIT A**

### **Description of the Property**

Real property located in the City of South Bend, St. Joseph County, Indiana, more particularly described as follows:

Lot Numbered Ninety-two (92) as shown on the Original Plat of the Town of Lowell, now a part of the City of South Bend.

Commonly known as 126 N. Niles Avenue, South Bend, Indiana.

Parcel Key No. 018-5004-0076

### **Description of Office Area**

Two (2) rooms in the front of the Building (as described in the Agreement) (the "Front Rooms"), both accessible through the front door of the Building facing Niles Avenue and which are located in the northwest and southwest corners of the Building and separated by a single door, as well as access to the two (2) restrooms located on the north side of the hallway that is connected to and accessible from the Front Rooms.

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

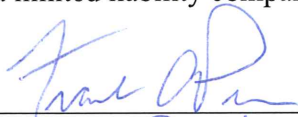
SOUTH BEND REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
David Varner, Vice President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

EARTH DESIGNS REAL ESTATE, LLC,  
an Indiana limited liability company

By:   
\_\_\_\_\_  
FRANK A. PERRI, Member

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