

HOLLADAY PROPERTIES, AND CITY OF SOUTH BEND, INDIANA PARKING LOT USE AGREEMENT

This Parking Lot Use Agreement (the “Agreement”) is made effective as of July 24, 2023 (“Effective Date”) by and between HP Blackbird, LLC, (the “Owner”) and the City of South Bend Indiana, acting by and through its Board of Park Commissioners (the “City”) (Each a “Party” and together the “Parties”), for the use of the parking lot area of Owner (hereinafter, the “Parking Premises”).

1. TERM, TERMINATION AND RENEWAL. The term of this Agreement shall commence as of the Effective Date and continue through the termination of the City’s Use on September 11, 2023.
2. OWNERSHIP. Owner owns the Parking Premises located at 320 E. Jefferson, South Bend, IN 46624

The Parking Premises are also set forth in the map attached herein as Exhibit “A”.

3. USES. The Parking Premises shall be used for:

City

- a. Special event parking on September 9th and 10th, 2023, including but not limited to, parking by special event attendees, organizers, vendors, and volunteers for FusionFest
- b. Public parking on September 9th and 10th, 2023 by persons accessing Howard Park.

The City shall develop and install signage acceptable to Owner to explain permitted uses and restrictions. The City agrees not to erect, place, or permit the erection or placement of temporary structures on the Parking Premises lot surface. The City agrees not to cause or permit tent stakes or similar objects to be installed, nailed, or otherwise embedded into the Parking Premises lot surface.

Owner

- a. Parking for Owner uses, and/or other existing uses of the Parking Premises during all other days and times during the term of this Agreement.
 - b. Owner agrees not to interfere with the City’s uses on September 9th and 10th, 2023.
4. WARRANTY. Owner warrants that the Parking Premises shall be free of any defect in equipment, material, design, or workmanship prior to the City’s uses. Upon receipt of notice from the City, and following a reasonable investigation as to causation, Owner agrees to remedy any failure to conform, or any defect in the Parking Premises caused solely by the negligence of Owner or a contractor engaged by Owner, normal wear and tear excepted.

5. FEES. City may charge, collect and retain any revenues from City's use of the Parking Premises.
6. SUPERVISION & ENFORCEMENT. The City shall be responsible for supervision and enforcement of parking on the Parking Premises during the City uses, and Owner shall be responsible for supervision and enforcement of parking on the Parking Premises during all other times.
7. SECURITY. The City shall be responsible for security of the Parking Premises consistent with the level of security provided at other City venues, operations, and events during the City uses, and Owner shall be responsible for security of the Parking Premises during all other times.
8. MAINTENANCE. Owner shall be responsible for the on-going and annual maintenance of the Parking Premises and for the ongoing maintenance of lighting and associated utility costs. The City shall be responsible for trash removal from the Parking Premises following the City uses.
9. RESTITUTION AND REPAIR. The City shall be responsible for any Parking Premises damage caused at or during permitted during the City uses. Owner shall be responsible for any Parking Premises damage caused at or during all other times.
10. INSURANCE. The City maintains blanket insurance coverage over real and personal property and is covered by a non-reverting insurance premium and liability reserve fund created by The City, pursuant to Indiana Code 34-13-3-4, as amended from time to time. The City shall maintain insurance coverage throughout the term of this Agreement.

Owner maintains a commercial general liability insurance policy with limits in the following amounts:

Each Occurrence Limit: \$1,000,000.00

General Aggregate Limit: \$2,000,000.00

Owner shall maintain commercial general liability coverage throughout the term of this Agreement, and upon request, agrees to provide the City with a Certificate of Insurance.

11. INDEMNIFICATION. Each Party agrees to defend, indemnify and save harmless the other Party from and against any and all claims, losses, actions, damages, liability and expenses (including reasonable fees and expenses of legal counsel) arising out its material breach of this Agreement. Owner agrees to defend, indemnify, and hold harmless the City from any third-party claim pertaining to this Agreement, excepting any claims that arise out of the negligence or intentional acts of the City, its officials, members, employees, and agents.
12. GOVERNING LAW. This Agreement is governed by and construed according to the laws of the State of Indiana. Any action to enforce the terms of this Agreement or to construe the terms of this Agreement must be filed in the State Courts of St. Joseph County, Indiana. Due to the complexity, high cost, and time involved in commercial litigation before a jury,

the parties knowingly, voluntarily, and irrevocably waive any and all rights to trial by jury of any dispute to enforce the terms of or to construe the terms of this Agreement.

18. NOTICES. Any notice required or permitted to be given under the terms of this Agreement shall be deemed given when reduced to writing and placed in the United States Mail, with first-class and certified mail, return receipt requested, postage fully prepaid, and addresses to the other Party at the address shown, as follows:
 - A. HP Blackbird, LLC
Attn: Legal Department
3454 Douglas Road, Suite 250
South Bend, Indiana 46635
 - B. City of South Bend
Venues Parks and Arts Department
Attn: Executive Director
301 S. St. Louis Blvd.
South Bend, Indiana 46617
19. AUTHORITY. The Parties warrant that each has approved the terms of this Agreement and the person signing on behalf of each Party is duly authorized to execute this Agreement.
20. RELATIONSHIP. Both Parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one Party shall not be deemed or construed to be the employee(s) or agent(s) of the other Party for any purpose whatsoever. Neither Party will assume liability for any injury (including death) to any person(s), or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other Party.
21. SUCCESSORS AND ASSIGNS. Except as otherwise expressly provided herein, this Agreement, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Lessor and Lessee.
22. ENTIRE AGREEMENT. This Agreement and the exhibit(s) attached hereto sets forth all the covenants, provisions, agreements, conditions and understandings between the Parties concerning the matters contained herein and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.
23. INTERPRETATION and SURVIVAL. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. It is agreed that, without limiting any other provision, all obligations of the Parties to indemnify, hold harmless, and/or defend the other shall survive the termination or cancellation of this Agreement.

24. SEVERABILITY. The invalidity of any provision, clause, or phrase will not serve to render the balance of this Agreement ineffective or void.
25. COUNTERPARTS AND EXECUTION. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All Parties to this Agreement acknowledge that they are relying upon the advice of counsel and enter into this Agreement pursuant to their own free will.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

(OWNER)

(CITY)

HP BLACKBIRD, LLC

BY: HOLLADAY MANAGER, LLC
ITS: MANAGER

BY: _____

TIMOTHY E. HEALY
ITS: MANAGER

CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS

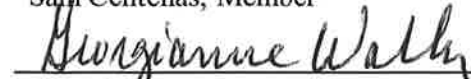


Mark Neal, President

Consuella Hopkins, Vice President



Sam Centellas, Member



Georgianne Walker, Member

ATTEST:

Jessica Williams, Clerk