

**Enrolled Minutes of the Fifth Regular or Special Meeting  
For the Twenty-Seventh Highland Town Council  
Regular Meeting  
Monday, February 13, 2012**

*Study Session.* The Twenty Seventh Town Council of the Town of Highland, Lake County, Indiana met in a study session preceding the regular meeting on Monday, February 13, 2012 at 6:32 p.m. in the regular place, the plenary meeting chambers of the Highland Municipal Building, 3333 Ridge Road, Highland, Indiana.

*Silent Roll Call:* Councilors Bernie Zemen, Dan Vassar, Brian Novak and Konnie Kuiper were present. Councilor Mark Herak arrived at 6:45 p.m. owing to work. The Clerk-Treasurer, Michael W. Griffin was present to memorialize the proceedings. A quorum was attained.

**General Substance of Matters Discussed.**

1. The Town Council discussed the agenda of the imminent regular meeting.
2. The Town Council discussed with the Public Works Director his methodology in selecting professional construction or design engineers for works associate with the road and street projects generally, and in arriving at the recommendation for Garcia Associates in particular.
3. The Town Council discussed the proposed license to encroach agreement with SPAIN, Inc. for the sidewalk café near Traditions Restaurant on Highway Avenue.
4. The Town Council discussed the shared appointment that the Towns of Highland, Griffith and Munster share for a position on the Regional Bus Authority.
5. The Town Council, the Metropolitan Police Chief and the Redevelopment Director discussed the last event for which Growlers sought a controlled event permit and permission to host an event at the municipal property adjoining the Growlers' bar. The discussion included dilation upon reports that the outdoor music event went beyond the times authorized in the noise and controlled event permits, and the allegation that members from the live band warned patrons that a formal sobriety check point conducted by the Highland Metropolitan Police Department and noted its location.

The Redevelopment Director reported that Growlers had inquired about using the adjoining municipal property for another event. (It is noted that the adjoining property is owned by the Redevelopment Department of the Town of Highland.) The Redevelopment Director allowed that she would contact representatives from Growlers to discuss the concerns from these reports at the next study session of the Town Council.

6. The Public Works Director offered a brief report on the status of the Indiana Department of Transportation's Project eliminating the bridge on Indianapolis Boulevard, between Ridge Road and 81<sup>st</sup> Street.
7. The Metropolitan Police Chief reported on a call for service to which his department responded involving a neighborhood complaint involving boys wearing masks and engaged in a competition with *airsoft* guns. It was noted that these guns shoot a projectile and as such are prohibited under current municipal ordinance. The Metropolitan Police Chief further indicated that the participants projected the ordinance and asked if some area could be set aside to permit airsoft gun competition and play. He further indicated that he expected that some of the participants may attend the meeting to present the request to the Town Council.

8. The Town Council discussed a request from a local Girl Scout representative for some representation from the elected leadership of the Town at an event to celebrate Girl Scouting, to be convened at Wicker Memorial Park, scheduled for March 12, 2012, a date which conflicts with the standing plenary business meeting of the Town Council.

The study session ended at 7:02 O'clock p.m.

*Regular meeting.* The Twenty Seventh Town Council of the Town of Highland, Lake County, Indiana met in its regular session on Monday, February 13, 2012 at 7:05 O'clock P.M. in the regular place, the plenary meeting chambers of the Highland Municipal Building, 3333 Ridge Road, Highland, Indiana.

The Council President Bernie Zemen presided and the Town Clerk-Treasurer, Michael W. Griffin, was present to memorialize the proceedings. The meeting was opened with Councilor Konnie Kuiper reciting the Pledge of Allegiance to the Flag of the United States of America and offering a prayer.

**Roll Call:** Present on roll call were Councilors Bernie Zemen, Mark Herak, Dan Vassar, Brian Novak, and Konnie Kuiper. The Clerk-Treasurer, Michael W. Griffin was present to memorialize the proceedings. A quorum was attained.

**Additional Officials Present:** Rhett L. Tauber, Town Attorney; John M. Bach, Public Works Director; Peter Hojnicky, Metropolitan Police Chief; William R. Timmer, Jr., CFOD, Fire Chief; Alex M. Brown, CPRP, Parks and Recreation Superintendent; Kenneth J. Mika, Building Commissioner and Cecile Petro, Redevelopment Director were present.

**Also Present:** Ed Dabrowski, Contract IT Coordinator; and Dennis Adams, Metropolitan Police Commissioner were also present.

**Additionally present:** Shawn Pettit, of Lamar Advertising; and Mark and Gayle Spain of SPAINS, Inc., were additionally present.

**Minutes of the Previous Meetings**

The minutes of the regular (rescheduled) meeting of 30 January 2012 were approved by general consent.

**Staff Reports:** The Council received the following reports as information for the record:

• **Building & Inspection Report for January 2012**

| Permit Type              | Number. | Residential | Commercial | Est. Cost    | Fees       |
|--------------------------|---------|-------------|------------|--------------|------------|
| Commercial               | 0       | 0           | 0          | \$0.00       | \$0.00     |
| Buildings:               |         |             |            |              |            |
| Commercial               | 1       | 0           | 1          | \$5,500.00   | \$128.00   |
| Additions or Remodeling: |         |             |            |              |            |
| Signs:                   | 1       | 0           | 1          | \$16,050.00  | \$430.50   |
| Single Family:           | 0       | 0           | 0          | \$0.00       | \$0.00     |
| Duplex/Condo:            | 0       | 0           | 0          | \$0.00       | \$0.00     |
| Residential              | 0       | 0           | 0          | \$0.00       | \$0.00     |
| Additions:               |         |             |            |              |            |
| Residential              | 26      | 26          | 0          | \$151,006.00 | \$3,315.00 |
| Remodeling:              |         |             |            |              |            |
| Garages:                 | 1       | 1           | 0          | \$12,000.00  | \$327.50   |
| Sheds:                   | 0       | 0           | 0          | \$0.00       | \$0.00     |

|                                |           |           |          |                     |                   |
|--------------------------------|-----------|-----------|----------|---------------------|-------------------|
| Decks & Porches:               | 1         | 1         | 0        | \$2,050.00          | \$192.00          |
| Fences                         | 4         | 3         | 1        | \$6,142.00          | \$325.00          |
| Swimming pools:                | 0         | 0         | 0        |                     | \$0.00            |
| Drain Tile                     | 2         | 2         | 0        | \$11,974.00         | \$267.00          |
| /Waterproofing                 |           |           |          |                     |                   |
| Misc.                          | 2         | 2         | 0        | \$0.00              | \$164.50          |
| <b>Total:</b>                  | <b>38</b> | <b>35</b> | <b>3</b> | <b>\$204,722.00</b> | <b>\$5,149.50</b> |
| <b>Electrical Permits</b>      | <b>8</b>  | <b>7</b>  | <b>1</b> |                     | <b>\$891.00</b>   |
| <b>Mechanical Permits</b>      | <b>5</b>  | <b>4</b>  | <b>1</b> |                     | <b>\$354.50</b>   |
| <b>Plumbing Permits</b>        | <b>8</b>  | <b>7</b>  | <b>1</b> |                     | <b>\$1,086.2</b>  |
| <b>Water Meters</b>            | <b>4</b>  | <b>2</b>  | <b>2</b> |                     | <b>\$920.00</b>   |
| <b>Water Taps</b>              | <b>0</b>  | <b>0</b>  | <b>0</b> |                     | <b>\$0.00</b>     |
| <b>Sewer/Storm Taps</b>        | <b>0</b>  | <b>0</b>  | <b>0</b> |                     | <b>\$0.00</b>     |
| <b>Total Plumbing Permits:</b> | <b>12</b> | <b>9</b>  | <b>3</b> |                     | <b>\$2,006.20</b> |

**January Code Enforcement:**

Warnings: 143  
Citations: 7

**January Inspections:**

Building: 26      Electrical: 20      Plumbing: 5      HVAC 4  
Electrical Exams: 2

**• Fire Department Report for January 2012**

|                   | Month     | Y.T.D. |
|-------------------|-----------|--------|
| General Alarms    | 8         | 8      |
| Still Alarms      | 2         | 2      |
| Paid still alarms | 7         | 7      |
| <b>Total:</b>     | <b>17</b> |        |

**• Workplace Safety Report for January 2012**

There was one incident in December. The following incident summary was filed:

| Department    | Injuries this Month | Year to Date 2012 | Total in 2011 | Restricted Days 2012 | Lost Workdays This Year | Restricted Days Last Year (2011) | Lost Workdays Last Year (2011) |
|---------------|---------------------|-------------------|---------------|----------------------|-------------------------|----------------------------------|--------------------------------|
| Parks         | 0                   | 0                 | 0             | 0                    | 0                       | 0                                | 0                              |
| Fire          | 0                   | 0                 | 1             | 0                    | 0                       | 1                                | 0                              |
| Police        | 2                   | 2                 | 3             | 0                    | 0                       | 0                                | 0                              |
| Street        | 0                   | 0                 | 5             | 0                    | 0                       | 2                                | 0                              |
| Water & Sewer | 0                   | 0                 | 4             | 00                   | 0                       | 4                                | 77                             |
| Maint.        | 0                   | 0                 | 1             | 0                    | 0                       | 0                                | 0                              |
| Other         | 0                   | 0                 | 2             | 0                    | 0                       | 0                                | 0                              |
| <b>TOTALS</b> | <b>2</b>            | <b>2</b>          | <b>16</b>     | <b>0</b>             | <b>0</b>                | <b>7</b>                         | <b>77</b>                      |

Effective January 1, 2002, OSHA changed the record keeping guidelines. The municipality now counts the number of days lost from the day after the injury until the employee returns to work. Weekend, holidays, vacation days or other days scheduled off are included in the lost days count to a maximum of 180 days.

**Appointments:**

• **Statutory Boards and Commissions**

Executive Appointments made by Town Council President

Legislative or Fiscal Body Appointments made by Town Council

*Executive Appointments (May be made in meeting or at another time)*  
(Appointments have been placed on agenda in case there is readiness to act)

1. **Municipal Plan Commission** (1) appointments to be made by Town Council President.  
(Note: once held by J. Slagle (D) who resigned)

The Town Council President announced his executive appointment of **James DeGraaf (D)**, 3620 Ridge Road, Highland, to the Municipal Plan Commission, a four-year term.

2. **Waterworks Board of Directors:** (1) appointment to be made by Town Council President.  
(Note: Currently serving Jim Norris (R))

The Town Council President announced his executive re-appointment of **James D. Norris**, 3119 Lois Place, Highland, to a three-year term on the Board of Waterworks Directors.

3. **Board of Sanitary Commissioners:** (1) appointment to be made by Town Council President. (Note: currently serving, D. Jones (R))

The Town Council President announced his executive re-appointment of **David Jones**, 3705-41<sup>st</sup> Lane, Highland, to a four year term on the Board of Sanitary Commissioners.

*Legislative Appointments*

4. **Traffic Safety Commission:**

(6) appointments to be made by the Town Council. **Term: 1 year.** (Note: Appointees must be from or represent the following: One from Town Council; One from the Town Board of Metropolitan Police Commissioners; Two from Metropolitan Police Department; One from the Fire Department and One from Public Works Department. Currently serving, Brian Novak, Town Council Representative; Jim DeGraaf Town Board of Metropolitan Police Commissioners Representative; John Banasiak and Pete Hojnicky, Metropolitan Police Representatives; John M. Bach, Public Works Department Representative; and William R. Timmer, Jr., CFOD, Fire Department Representative.)

Councilor Novak moved seconded by Councilor Kuiper to appointment the following persons to the Traffic Safety Commission. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The following persons were appointed to a one-year term to the Traffic Safety Commission.

|   |  |
|---|--|
| Brian Novak                                       | Town Council Member Representative     |
| Sgt. John Banasiak                                | Police Department Representative       |
| William Timmer, CFOD                              | Fire Department Representative         |
| John Bach   | Public Works Department representative |
| Dennis Adams                                      | Metropolitan Police Commission         |
| Peter T. Hojnicky, Chairman ( <i>ex-officio</i> ) | and Police Department Representative   |

**Unfinished Business and General Orders:**

1. **Works Board Order No. 2012-04:** An Order Approving the Garfield Avenue Improvement Project and Approving and Authorizing An agreement between Garcia Consulting and the Town of Highland to perform Preliminary Design Engineering and professional services in support Thereof.

Councilor Vassar moved the passage and adoption of Works Board Order No. 2012-04, seconded by Councilor Kuiper. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The order was adopted.

THE TOWN of HIGHLAND  
ORDER OF THE WORKS BOARD NO. 2012-04

AN ORDER APPROVING THE GARFIELD AVENUE IMPROVEMENT PROJECT AND APPROVING AND AUTHORIZING AN AGREEMENT BETWEEN GARCIA CONSULTING AND THE TOWN OF HIGHLAND TO PERFORM PRELIMINARY DESIGN ENGINEERING AND PROFESSIONAL SERVICES IN SUPPORT THEREOF.

**Whereas**, The Town of Highland, through its Town Council, which is the Works Board of the Municipality pursuant to I.C. 36-1-2-24(3), has received a request from the residents in the 3500 block of Garfield Avenue a requesting consideration to reconstruct the 3500 blocks of Garfield Avenue; and

**Whereas**, Garcia Consulting has offered and presented an agreement to provide and **furnish preliminary or design engineering and professional** services in consideration for fees to be charged and billed monthly based upon a lump sum of the value of the engineering services completed, in an estimated fee of Thirteen Thousand Dollars (\$13,000); and

**Whereas**, There are sufficient and available appropriations balances on hand to support the payments under the agreement, pursuant to IC 5-22-17-3(e); and

**Whereas**, The Town of Highland, through its Town Council now desires to approve the project and to accept and approve the agreement for services as herein described.

**Now Therefore Be it Ordered** by the Town Council of the Town of Highland, Lake County, Indiana, in its role as the Works Board as follows:

**Section 1.** That the Public Works Director is hereby authorized and approved to proceed with the reconstruction the 3500 block of Garfield Avenue to be known as the Garfield Avenue Improvement Project;

**Section 2.** That the Professional Engineering and Design Services proposal, (incorporated by reference and made a part of this Order) between Garcia Consulting and the Town of Highland, is hereby approved, adopted and ratified in each and every respect;

**Section 3.** That the terms and charges under the agreement for preliminary design engineering services in the not to exceed fee amount of Thirteen Thousand Dollars (\$13,000.00) is found to be reasonable and fair;

**Section 4.** That the Town of Highland, through its Board of Works, believes that Garcia Consulting Engineers has demonstrated professional competence and qualifications to perform the particular professional engineering services called for in the Agreement and associated project, pursuant to I.C. 5-16-11.1-5;

**Section 5.** That the Director of Public Works be authorized to execute the Agreement with his signature as attested thereto by the Clerk-Treasurer.

**Be is So Ordered.**

**DULY, PASSED AND ADOPTED** by the Town Council of the Town of Highland, Lake County, Indiana this 13 day of February, 2012 having passed by a vote of 5 in favor and 0 opposed.

TOWN COUNCIL of the TOWN of  
HIGHLAND, INDIANA

Bernie Zemen, President

Attest:

Michael Griffin, IAMC/MMC/ CPFA  
Clerk-Treasurer

- 2. Works Board Order No. 2012-05:** An Order of the Works Board Accepting the Quotation of Brown Equipment Company, Inc. for One (1) New Spaulding Mfg. RMV Crack Sealer 130 as the Lowest Responsive and Responsible Quote.

Councilor Novak moved the passage and adoption of Works Board Order No. 2012-05, seconded by Councilor Herak. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The order was adopted.

**Town of Highland  
Board of Works  
Order of the Works Board 2012-05**

**AN ORDER OF THE WORKS BOARD ACCEPTING THE QUOTATION OF BROWN EQUIPMENT COMPANY, INC. FOR ONE  
(1) NEW SPAULDING MFG. RMV CRACK SEALER 130 AS THE LOWEST RESPONSIVE AND RESPONSIBLE QUOTE**

**Whereas**, the Town of Highland, Department of Public Works, as part of its public duties, has responsibility for maintaining public ways, throughout the Town of Highland and the Director of Public Works has determined a need to purchase a pavement crack sealer in order to carry out its responsibility;

**Whereas**, the Public Works Director, pursuant to §31.19(D)(1) of the HMC, serves as the Purchasing Agent for the Public Works Department;

**Whereas**, the Purchasing Agent, pursuant to §31.20(F) of the HMC, expected that the purchase **may** be more than \$25,000 but not more than \$75,000, prepared specifications for one (1) new pavement crack sealer, and invited quotes in accordance with §31.20(F) of the HMC;

**WHEREAS**, THE FOLLOWING QUOTES HAVE BEEN RECEIVED:

|                               |              |
|-------------------------------|--------------|
| Brown Equipment Company, Inc. | \$33,292.00  |
| EJ Equipment                  | \$39,996.00  |
| Bonnell Industries, Inc.      | \$34,305.00; |

**Whereas**, the Town Council as the Works Board of the Municipality, pursuant to §31.17(A)(1) of the HMC serves as purchasing agency for the Public Works Department;

**Whereas**, the purchase price exceeds \$10,000.00 and, pursuant to §31.18(C) of the HMC requires the express approval of the purchasing agency; and;

**Whereas**, the purchase will be supported by the Municipal Corporation Capital Development fund and there is sufficient appropriation in order to support the purchase; and

**Whereas**, the Town Council now desires to approve and authorize the Public Works Director to complete the purchase pursuant to the terms stated herein,

**Now Therefore Be it Ordered** by the Town Council of the Town of Highland, Lake County, Indiana, in its role as Works Board as follows:

**Section 1.** That the quote of Brown Equipment Company, Incorporated is hereby accepted in the amount of Thirty-three Thousand, Two Hundred Ninety-two Dollars and no Cents (\$33,292.00) for the purchase of ONE (1) NEW SPAULDING MFG. RMV CRACK SEALER 130 is hereby accepted as the lowest responsive and responsible quote;

**Section 2.** That the Public Works Director is hereby authorized to issue a purchase order to Brown Equipment Company, Incorporated and to execute all documents necessary to implement the purchase thereof;

**Section 3.** That the Municipal Fiscal Officer is hereby authorized to identify and expend funds from the Municipal Cumulative Capital Development Fund in order to support and implement the purchase.

**Be it So Ordered.**

**DULY, PASSED AND ADOPTED** by the Town Council of the Town of Highland, Lake County, Indiana this 13<sup>th</sup> day of February having passed by a vote of 5 in favor and 0 opposed.

**TOWN COUNCIL of the TOWN of  
HIGHLAND, INDIANA**

Bernie Zemen, President (IC 36-5-2-10)

*Attest:*

Michael W. Griffin, IAMC/MMC/CPFA

Clerk-Treasurer (IC 33-16-4-1;IC 36-5-6-5)

3. **Works Board Order No. 2012-06:** An Order Authorizing, Approving and Adopting a revised modified LICENSE Agreement with The TOWN of HIGHLAND, as Licensor and LAMAR Advertising Company, as Licensee, and approving a reasonable license fee.

Councilor Kuiper moved the passage and adoption of Works Board Order No. 2012-06, seconded by Councilor Novak. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The order was adopted.

Shawn Pettit of Lamar Advertising was present to discuss the license agreement terms. After motion to adopted was in order but before the vote, Councilor Herak and Shawn Pettit and the Town Council engaged in a colloquy regarding terms of the agreement, particularly inquiring about indemnification, rights to termination of the license, and related details.

**The Town of Highland**  
**ORDER of the WORKS BOARD NO. 2012-06**

An Order Authorizing, Approving and Adopting a revised modified LICENSE Agreement with The TOWN of HIGHLAND, as Licensor and LAMAR Advertising Company, as Licensee, and approving a reasonable license fee.

**WHEREAS**, THE TOWN OF HIGHLAND, LAKE COUNTY, INDIANA, a municipal corporation organized pursuant to the laws of Indiana (hereinafter sometimes described as Licensor) owns and has title to certain real property located in the Town of Highland, Lake County, Indiana, which is particularly described in an exhibit attached to this order;

**WHEREAS**, The Town of Highland, through its Town Council, adopted Works Board Order No. 2008-30 on November 10, 2008, approving a license for and license agreement with THE LAMAR ADVERTISING COMPANY, a private corporation organized pursuant to the laws of Indiana (hereinafter sometimes described as Licensee) in support of the construction and installation of an electronic billboard on property particularly described in the attached exhibit;

**WHEREAS**, The Town of Highland, through its Town Council, adopted Works Board Order No. 2011-14 on April 28, 2011, approving a modification to a license for and license agreement with THE LAMAR ADVERTISING COMPANY, a private corporation organized pursuant to the laws of Indiana (hereinafter sometimes described as Licensee) in support of the construction and installation of an electronic billboard on property particularly described in the attached exhibit;

**WHEREAS**, THE LAMAR ADVERTISING COMPANY, a private corporation organized pursuant to the laws of Indiana (hereinafter sometimes described as Licensee) desires to again **modify** the terms of the license agreement governing the granted license permitting the construction and operation of an electronic commercial billboard advertising structure and all other appurtenances on premises of the Town of Highland (sometime herein described as Licensor) as particularly described herein;

**WHEREAS**, IC 36-8-2-10 provides that a municipality may regulate the operation of businesses, crafts, professions, and occupations;

**WHEREAS**, IC 36-8-2-11 provides that a municipality may regulate solicitation by persons offering goods or services to the public;

**WHEREAS**, IC 36-7-2-2 provides that a municipality may regulate the use, improvement, and maintenance of real property and the location, condition, and maintenance of structures and other improvements; and

**WHEREAS**, The Licensor wishes to grant to the Licensee, a **revised modified** license agreement for the construction and operation of an electronic commercial billboard advertising structure and all other appurtenances on premises of the Licensor as particularly described herein;

**NOW, THEREFORE, BE IT HEREBY ORDERED** by the Highland Town Council, Lake County, Indiana as follows:

**Section 1.** That the **ATTACHED REVISED MODIFIED LICENSE AGREEMENT**, presented by LAMAR ADVERTISING COMPANY, INC., as licensee, to permit the construction and operation of a **two-sided** electronic (light emitting diode) commercial billboard advertising structure and all other appurtenances on premises of the Licensor as particularly described herein is hereby approved in each and very respect;

**Section 2.** That the **TERM OF THE LICENSE SHALL BE** for a period of years as set forth in the licensing agreement set forth herein, and that the licensee initially shall pay *an annual* license fee to the Licensor in the amount of fifteen thousand dollars (\$15,000), escalating over time, as provided in the terms of the modified license agreement **effective August 31, 2012** according to the following schedule:

09/01/2012 to 08/31/2016: Thirty-thousand Dollars (\$30,000.00) per year;  
09/01/2016 to 08/31/2021: Thirty-five thousand Dollars (\$35,000.00) per year;  
09/01/2021 to 08/31/2026: Forty thousand Dollars (\$40,000.00) per year;

**Section 3.** That the Town Council hereby finds and determines that the license fee herein approved is reasonably related to the administrative cost of exercising the regulatory power associated with the licensed activity, pursuant to IC 36-1-3-8(a)(5);

**Section 4.** That the Town Council President be hereby authorized to execute the License Agreement by his signature as thereto attested by the Clerk-Treasurer.

**Be it So Ordered.**

**DULY, PASSED, ADOPTED and ORDERED** by the Town Council of the Town of Highland, Lake County, Indiana, acting as the Works Board, this 13<sup>th</sup> day of February 2012 having passed by a vote of 5 in favor and 0 opposed.

**TOWN COUNCIL as the Works BOARD of the  
TOWN of HIGHLAND, INDIANA**

Bernie Zemen, President (IC 36-5-2-10)

Attest:

Michael W. Griffin, IAMC/MMC/CPFA  
Clerk-Treasurer (IC 33-16-4-1; IC 36-5-6-5)

**4. Resolution No. 2012-12:** A Resolution Authorizing, Establishing, Granting and Approving a License to Encroach upon the Public Way for Use of a Portion of the Sidewalk for Outdoor Dining by SPAINS, Inc. d/b/a Traditions, 2739 Highway Avenue, Highland, Indiana.

Councilor Vassar moved the passage and adoption of Resolution No. 2012-12. Councilor Novak seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The resolution was adopted.

**TOWN OF HIGHLAND  
TOWN COUNCIL  
Resolution No. 2012-12**

**A Resolution Authorizing, Establishing, Granting and Approving a License to Encroach upon the Public Way for Use of a Portion of the Sidewalk for Outdoor Dining by SPAINS, Inc. d/b/a Traditions, 2739 Highway Avenue, Highland, Indiana**

**WHEREAS**, SPAINS, Inc. d.b.a. Traditions Restaurant and Pub (Grantee) is the owner of property located in the Town of Highland, Lake County, Indiana (Grantor) which is legally described as follows:

*Part of Lot 13, and Lot 14, Block 11, Original Town of Highland, as shown in Plat Book 1, page 86 more particularly described as follows: Commencing at the Southwest corner of said Lot 14; thence North along the West line of said Lot 14, a distance of 137 feet to the Northwest corner of said Lot 14; thence East along the North line of said Lot 14 and Lot 13, a distance of 100 feet; thence South a distance of 137 feet to a point which is on the South line of said Lot 13, and 100 feet East of the Southwest corner thereof; thence, West along said South line, a distance of 100 feet to the point of beginning, as shown in Plat Book 1, page 86 in Lake County, Indiana. Lake County Old Parcel Number: 16-27-0102-0022, New Parcel Number: 45-07-21-330-014.000-026;*

**WHEREAS**, Subject property lies north of a platted public right-of-way known as Highway Avenue;

**WHEREAS**, Grantee has requested a "Right of Encroachment", hereinafter referred to as "license", to permit the encroachment and operation of an outdoor dining venue on a portion of the sidewalk of the public right-of-way;

**WHEREAS**, IC 36-1-4-6 provides that a unit may "use, improve, develop, insure, protect, maintain, lease, and dispose of its interests in property"; and,

WHEREAS, the Town of Highland, through its Town Council, has determined that a license, which grants such encroachment, would be acceptable subject to terms and conditions of a "License to Encroach", attached and incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of Highland, Indiana that the proposed "License to Encroach" is hereby approved and ratified in each and every respect;

BE IT FURTHER RESOLVED that the Town Council President is hereby authorized to execute the written License by his signature as thereto attested by the Clerk-Treasurer and that the License shall be recorded in the Office of the Recorder, Lake County, Indiana.

DULY ADOPTED by the Town Council of the Town of Highland, Lake County, Indiana this 13<sup>th</sup> day of February 2012. Having been approved by a vote of 5 in favor and 0 opposed.

TOWN COUNCIL of the TOWN of  
HIGHLAND, INDIANA

Bernie Zemen, President (IC 36-5-2-10)

Attest:

Michael W. Griffin, IAMC/MMC/CPFA  
Clerk-Treasurer (IC 33-16-4-1; IC 36-5-6-5)

EXHIBIT

LICENSE TO ENCROACH

1. Spains, Inc., by and through its officers, Mark Spain, President and Jesse Spain, Secretary (hereinafter "Grantee") is the owner of certain real estate legally described as follows:

*Part of Lot 13, and Lot 14, Block 11, Original Town of Highland, as shown in Plat Book 1, page 86 more particularly described as follows: Commencing at the Southwest corner of said Lot 14; thence North along the West line of said Lot 14, a distance of 137 feet to the Northwest corner of said Lot 14; thence East along the North line of said Lot 14 and Lot 13, a distance of 100 feet; thence South a distance of 137 feet to a point which is on the South line of said Lot 13, and 100 feet East of the Southwest corner thereof; thence, West along said South line, a distance of 100 feet to the point of beginning, as shown in Plat Book 1, page 86 in Lake County, Indiana. Lake County Old Parcel Number: 16-27-0102-0022, New Parcel Number: 45-07-21-330-014.000-026;*

2. The Town of Highland (hereinafter "Grantor") maintains a public right-of-way south of the Grantee's property known as Highway Avenue.

3. In consideration of the conditions expressed herein, the Grantor hereby grants to the Grantee a License to Encroach upon a portion of the sidewalk of the public right-of-way, hereinafter referred to as "Licensed Public Right-of-Way", legally described as follows:

The south 3.5 feet lying adjacent to part of Lot 13, Block 11, Original Town of Highland, as shown in Plat Book 1, page 86 in Lake County, Indiana. Lake County Parcel Number: 16-27-0102-0022, New Parcel Number: 45-07-21-330-014.000-026.

4. The License to Encroach is limited to the operation of an outdoor dining venue.

5. The License to Encroach is subject to the following terms and conditions:

- (a) Any shrubs and plants shall be relocated at Grantee's expense to a specific downtown Highway or Jewett Avenue location approved by the adjacent property owner(s) and the Public Works Director.
- (b) The license shall be revocable by the President of the Town Council for cause upon notice and a hearing for failure to maintain the exterior of the building, the adjacent public way, the remaining landscape features or an increase in responses by the public for incidences involving patrons of the establishment.
- (c) The license to use the sidewalk shall not be transferable or assignable to successor owners of Grantee's premises.
- (d) Outdoor entertainment shall conform to standards prescribed in the Town's noise ordinance.

6. The Grantee agrees to defend, indemnify and hold the Grantor, its agents, officers, and employees harmless from any liability for any injury, claim or cause of action arising out of the encroachment onto the Licensed Public Right-of-Way. Prior to commencing any activity on the premises, Grantee shall provide certificates of general liability insurance and liquor service liability insurance in limits not less than \$2 million naming the Town of Highland, its employees, agents and representatives as "an additional insured".

7. The License to Encroach does not supersede the present or future rights, statutory or otherwise, of the Public Utilities, including but not limited to, the Northern Indiana Public Service Company, AT&T, Comcast, Highland Sanitary District, Highland Water Works District or their respective heirs, successors, and assigns, currently operating within the existing Public right-of-way.
8. The Grantee agrees to maintain the Licensed Public Right-of-Way, without compensation, during the period that the License to Encroach is in full force and effect.
9. This License to Encroach shall run for a term of twenty (20) years.

GRANTOR:

Town of Highland

By:

\_\_\_\_\_  
Bernie Zemen, Town Council President

Attest:

\_\_\_\_\_  
Michael W. Griffin, IAMC/MMC/CPFA  
Clerk Treasurer

GRANTEE:

Spains, Inc.

By:

\_\_\_\_\_  
Mark A. Spain, President

By:

\_\_\_\_\_  
Jesse Spain, Secretary

5. **Action to approve overtime payments for Exempt Salaried Personnel, pursuant to Section 3 of Ordinance No. 1375 the Wage and Salary Ordinance, as amended and Section §4.03.01 of the Compensation and Benefits Ordinance. This waives the provisions of Section § 2.01 of the Compensation and Benefits Ordinance.**

*5.1 The Metropolitan Police Chief requests favorable action for R. Potesta, who is an exempt salaried employee, and investigations division commander, in the amount of \$100 for work associated with Highland Grove Mall Special Security.*

Councilor Herak moved the approval of the overtime as presented for Commander Potesta. Councilor Kuiper seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The overtime was approved.

*5.2 The Metropolitan Police Chief requests favorable action for P. Vassar, who is an exempt salaried employee, Assistant Police Chief and Patrol Division Commander, in the amount of \$100.00, for work associated with Highland Grove Mall Special Security.*

Councilor Herak moved the approval of the overtime as presented for Assistant Chief Vassar. Councilor Kuiper seconded. Upon a roll call vote, there were four affirmatives, no negatives and one abstention. With Councilors Zemen, Herak, Novak, and Kuiper voting in the affirmative and Councilor Vassar abstaining, the motion passed. The overtime was approved.

6. **Action to approve appointment or employment of full-time employee, pursuant to Section §3.03 of the Compensation and Benefits Ordinance.**

*Personnel Notice was filed for Robert Johnsen to be appointed to the position of General Supervisor of Public Works at a bi-weekly salary of \$2231.93 to be effective February 15, 2012.*

*Resignation letter.* With leave from the Town Council, the Town Council President read aloud a letter which had been presented to him immediately before the meeting by Robert Johnsen, which communicated Mr. Johnsen's resignation from the Board of Sanitary

Commissioners. It was noted that it was filed with the appointing authority, and pursuant to IC 5-8-3.5 and IC 5-8-4 the resignation was self-actualizing.

Councilor Vassar moved to authorize and approve the appointment and hire of Robert Johnsen, to the full-time position of General Supervisor in Public Works. Councilor Kuiper seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. Mr. Johnsen was appointed and hired.

With leave from the Town Council, Robert Johnsen was recognized along with his wife and son at the meeting.

**7. Action to authorize and approve the Town Council to execute member signatures on Town Board of Metropolitan Police Commissioner letters commending IDAC Coordinator, Public Safety Radio Operators and Detectives in CID for the dispatch with which charges were filed in a homicide case.**

Councilor Novak moved that the Town Council members be authorized to affix their signatures to letters as described and approved by the Town Board of Metropolitan Police Commissioners. Councilor Herak seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The signatures were authorized.

**New Business:**

With leave from the Town Council, Councilor Novak made a motion to make the following legislative appointments to the Board of Directors of the Main Street Bureau of the Redevelopment Department. Councilor Herak seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The following persons were reappointed or appointed to the Main Street Bureau Board.

- **Main Street Bureau Board:** (11) appointments to be made by the Town Council. Term: two years ending 1 Jan 2014. (*Note: Allencia Ballard, Lisa A. Gibson, Shirley Frankiewicz, Robert Hanrahan III and George Siemer currently serve. 6 vacancies.* )

Allencia Ballard, 9630 Erie Street Highland was re-appointed to a term concluding on the first Monday in January 2014.

Lisa A. Gibson, 3247 Duluth, Highland was re-appointed to a term concluding on the first Monday in January 2014.

Shirley Frankiewicz, 3023 Eder Street, Highland was re-appointed to a term concluding on the first Monday in January 2014.

Robert J. Hanrahan III, 3208 Grand Boulevard, Highland was re-appointed to a term concluding on the first Monday in January 2014.

George Siemer, 3313 Lakeside Drive, Highland was re-appointed to a term concluding on the first Monday in January 2014.

Darlene S. Barron, 8423 Gordon Drive, Highland was initially appointed to a term concluding on the first Monday in January 2013.

**Comments from the Town Council Members**

**(For the Good of the Order)**

- **Councilor Mark Herak:** • *Budget and Finance Chair* • *Liaison to the Board of Waterworks Directors* • *Liaison to the Board of Sanitary Commissioners.*

Councilor Herak offered condolences to the family of William Broderick, the recently elected Clerk-Treasurer of Griffith, who died the prior weekend.

Councilor Herak commended Robert Johnsen on his appointment and hire and for his service as a member of the Board of Sanitary Commissioners.

Councilor Herak commended the Parks and Recreation Superintendent for the recent grand opening and ribbon-cutting ceremony for the reconstructed Lincoln Community Center.

- **Councilor Dan Vassar:** • *Plan Commission Member.*

Councilor Vassar commended Robert Johnsen on his appointment and hire and for his service as a member of the Board of Sanitary Commissioners.

Councilor Vassar also commended the Parks and Recreation Superintendent for the recent grand opening and ribbon-cutting ceremony for the reconstructed Lincoln Community Center.

Councilor Vassar recognized the Redevelopment Commissioner who offered a brief survey of matters that may be considered by the Redevelopment Commission.

- **Councilor Konnie Kuiper:** • *Fire Department, Liaison* • *Town Board of Metropolitan Police Commissioners, Liaison.*

Councilor Kuiper recognized the Police Chief, who offered a brief summary of matters before the Traffic Safety Commission.

- **Council President Bernie Zemen:**

The Council President noted that Strack and Van Til was seeking to convert and improve parts of the current warehouse, located on 45<sup>th</sup> Avenue next to Christenson Chevrolet for its Corporate Headquarters.

Council President Zemen also commended the Parks and Recreation Superintendent for the recent grand opening and ribbon-cutting ceremony for the reconstructed Lincoln Community Center.

Council President Zemen recognized the Building Commissioner to present a brief survey of activity before the Advisory Board of the Zoning Appeals.

Council President Zemen welcomed the Robert Johnsen as an employee. He further revealed his recent employment with the Calumet Area Humane Society.

**Comments from the Public or Visitors**

1. Gayle Spain, 2701 Seeberger Drive, Highland, thanks the Town Council for its approval of the license to encroach agreement.

2. Joseph O'secky, (spelling unclear) 3332 41<sup>st</sup> Street, Highland, requested that the Town Council change its ordinances, which effectively prohibit the use of airsoft guns. He further asked that the Town Council set up places where such guns may be used.

The Metropolitan Police Chief would follow-up.

**Payment of Accounts Payable Vouchers.** There being no further comments from the public or visitors, Councilor Novak moved to allow the vendor accounts payable vouchers as filed on the pending accounts payable docket, covering the period January 31, 2012 through February 13, 2012. Councilor Vassar seconded. Upon a roll call vote, there were five affirmatives and no negatives. The motion passed. The accounts payable vouchers for vendors were allowed and the Clerk-Treasurer was authorized to make payment.

**Vendors Accounts Payable Docket:**

**General Fund, \$376,722.78; Motor Vehicle Highway and Street (MVH) Fund, \$37,245.34; Law Enforcement Cont. Education and Supply Fund, \$4,833.73; Flexible Spending Account (FSA), \$3,959.21; Insurance Internal Service Fund, \$463,211.84; Gasoline & Oil Internal Service Fund, \$23,996.97; Information and Communications Technology Fund, \$5,513.50; Municipal Cumulative Capital Development Fund, \$5,246.00; Safe Neighborhood Grant Fund, \$2,016.00; Sexual Predator Grant Fund, \$2,880.00; Corporation Capital Fund, \$2,414.44; Payroll Fund, \$2.93; Total: \$928,042.74.**

**Adjournment.** Councilor Kuiper moved that the plenary meeting be adjourned. Councilor Vassar seconded. Upon a vote *viva voce*, the motion passed. The regular plenary meeting of the Town Council of Monday, February 13, 2012 was adjourned at 7:43 O'clock p.m. No study session followed the plenary business meeting.

Michael W. Griffin, IAMC/MMC/CPFA  
Clerk-Treasurer