

**RESOLUTION NO. 3345**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
APPROVING ASSIGNMENT OF REAL ESTATE OPTION AGREEMENT,  
DEVELOPMENT PLANS, REAL ESTATE PURCHASE AGREEMENT, AND  
DEVELOPMENT AGREEMENT IN CONNECTION WITH THE DEVELOPMENT OF  
A MIXED-USE PROJECT ON PROPERTY LOCATED IN THE RIVER WEST  
DEVELOPMENT AREA**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), governing body of the City of South Bend, Department of Redevelopment, exists and operates pursuant to Ind. Code 36-7-14 (as amended, the “Act”); and

WHEREAS, in furtherance of its purposes under the Act, the Commission entered into that certain Real Estate Option Agreement dated July 30, 2015 (the “Option Agreement”), with Swing-Batter-Swing, LLC for the purchase of certain Commission-owned real property (the “Property”) located in the City of South Bend (the “City”); and

WHEREAS, on August 22, 2016, pursuant to Section 9 of the Option Agreement, the owner of Swing-Batter-Swing, LLC requested that the Commission consent to an assignment of the Option Agreement from Swing-Batter-Swing, LLC to Heading for Home LLC (the “Company”) by executing the Assignment and Assumption of Real Estate Option Agreement dated August 22, 2016, by and between Swing-Batter-Swing, LLC and the Company attached hereto as Exhibit 1 (the “Assignment”); and

WHEREAS, the Commission consents to Swing-Batter-Swing, LLC’s assignment of the Option Agreement to the Company; and

WHEREAS, on August 22, 2016, the owner of the Company submitted its Notice of Intent (as defined in the Option Agreement) to purchase the Property from the Commission, which includes the site plans and specifications for the Company’s proposed development of the Property as a mixed-use project attached hereto as Exhibit 2 (the “Development Plans”); and

WHEREAS, in accordance with Section 3 of the Option Agreement, the Commission desires to approve the Development Plans and thereby accept the Company’s exercise of its option to purchase the Property in accordance with the terms of the Option Agreement; and

WHEREAS, the Option Agreement provides that, upon the Company’s exercise of its option, the Commission and the Company will enter into a purchase agreement for the Property containing certain provisions; and

WHEREAS, in accordance with the Option Agreement, the Commission and the Company desire to enter into the purchase agreement attached hereto as Exhibit 3 (the “Real Estate Purchase Agreement”); and

WHEREAS, in furtherance of its purposes under the Act, the Commission desires to promote the Company's development of the Property into a mixed-use project by expending tax increment finance revenues for certain local public improvements on or around the Property; and

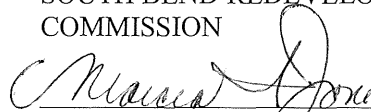
WHEREAS, to provide for the Commission's expenditure of tax increment finance revenues and the Company's concomitant obligations, the Commission and the Company desire to enter into the development agreement attached hereto as Exhibit 4 (the "Development Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

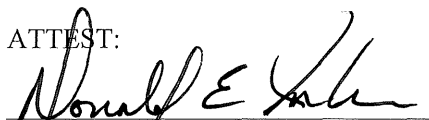
1. The Commission hereby consents to Swing-Batter-Swing, LLC's assignment of the Option Agreement to the Company and will execute the Assignment simultaneously with this Resolution.
2. The Commission hereby approves the Development Plans included in the Company's Notice of Intent to purchase the Property.
3. The Commission hereby approves, and will execute simultaneously with this Resolution, the Real Estate Purchase Agreement.
4. The Commission hereby approves, and will execute simultaneously with this Resolution, the Development Agreement.
5. This Resolution will be in full force and effect upon its adoption by the Commission.

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on August 25, 2016, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

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

4000.0000069 52958757.002

**EXHIBIT 1**

**Assignment and Assumption of Real Estate Option Agreement between  
Swing-Batter-Swing, LLC and Heading for Home LLC**

[See attached.]

**ASSIGNMENT AND ASSUMPTION  
OF  
REAL ESTATE OPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF REAL ESTATE OPTION AGREEMENT (this “**Assignment and Assumption**”) dated as of August 22, 2016, is entered into by and between Swing-Batter-Swing, LLC, an Indiana limited liability company (“**Assignor**”), and Heading for Home LLC, a Delaware limited liability company (“**Assignee**”).

**RECITALS**

A. Reference is hereby made to that certain Real Estate Option Agreement dated July 30, 2015, by and between Assignor and the South Bend Redevelopment Commission (“**Commission**”) (the “**Option Agreement**”) in connection with the option to purchase the Property, as that term is defined in the Option Agreement. All initially-capitalized terms not otherwise defined herein shall have the meanings set forth in the Option Agreement unless the context clearly indicates otherwise.

B. Assignor desires to assign to Assignee, all of Assignor’s right, title, interests, and obligations as option holder in, to and under the Option Agreement with respect to the Property, and Assignee desires to accept the assignment thereof and assume Assignor’s right, title, interests, and obligations thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**AGREEMENT**

**1. Assignment and Assumption.**

1.1 Assignment. Assignor hereby transfers, assigns and conveys, without recourse, representation or warranty, express or implied, all of Assignor’s rights, interests, liabilities and obligations in and to the Property, and all of Assignor’s rights, interests, liabilities and obligations under the Option Agreement to acquire same to Assignee. Assignee hereby assumes all such rights, interests, liabilities and obligations, and joins in all representations, warranties, releases, and indemnities, of Assignor under the Option Agreement relating to such Property and the Option Agreement assigned to it above. Assignee agrees that its option to acquire the Property pursuant to the Option Agreement shall be subject to all terms and conditions thereof. Commencing as of the date hereof, Commission shall have the right to deal exclusively with Assignee with respect to the Option Agreement.

1.2 Assumption. Assignee hereby assumes all of the terms and provisions under the Option Agreement, and all of Assignor’s obligations under the Option Agreement arising after the date hereof and agrees fully and faithfully to pay, perform and discharge, as and when payment, performance and discharge are due, all of Assignor’s obligations under the Option Agreement arising after the date hereof.



1.3 Successors and Assigns. This Assignment and Assumption shall be binding on and inure to the benefit of Assignor and Assignee and their respective heirs, executors, administrators, successors in interest and permitted assigns.

1.4. Consent. This Assignment shall be subject to the consent of the Commission.

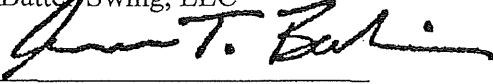
1.5. Representation. Assignor represents and warrants that the Assignee is controlled by Andrew Berlin.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Real Estate Option Agreement as of the day and year first above written.

ASSIGNOR:

Swing-Batter Swing, LLC

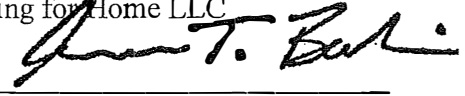
By: \_\_\_\_\_



ASSIGNEE:

Heading for Home LLC

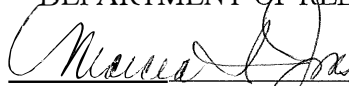
By: \_\_\_\_\_



The undersigned hereby consents to this Assignment.

COMMISSION:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT



\_\_\_\_\_  
marcia i. jones, President

ATTEST:



Donald E. Inks, Secretary

**EXHIBIT 2**

**Development Plans**

[See attached.]

August 22, 2016

South Bend Redevelopment Commission  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601  
Attn: Brian Pawlowski, Acting Executive Director,  
Department of Community Investment

Re: Notice of Intent to Exercise Option ("Notice") pursuant to that certain Real Estate Option Agreement dated July 30, 2015

---

Dear Sir/Madam:

Pursuant to the terms contained in the Real Estate Option Agreement (the "Option Agreement") dated July 30, 2015 by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the "Commission"), and Swing-Batter-Swing, LLC, an Indiana limited liability company, which has assigned its interest concurrently herewith to Heading for Home LLC, a Delaware limited liability company (the "Company") with offices at 501 W. South Street, South Bend, Indiana 46601, this letter shall serve as the written notice of the Company's intent to exercise its option to purchase that certain property legally described in the Option Agreement (the "Property") as required under Section 3 of the Option Agreement. Any capitalized term used but not defined in this Notice shall have the meaning set forth in the Option Agreement.

Enclosed are the schematics for the Company's proposed development of the Property as a mixed-use project including, without limitation, residential, commercial, and retail/hospitality uses. Pursuant to Section 3 of the Option Agreement, the Company now desires for the Commission at the Commission's next meeting to consider a resolution approving: (i) the attached schematics, (ii) the assignment of the Option Agreement to the Company, (iii) the Development Agreement, dated as of August 25, 2016, by and between the Commission and the Company, and (iv) the form of Real Estate Purchase Agreement, dated August 25, 2016, by and between the Commission, as the seller and the Company, as the buyer.

All terms and conditions contained in the Option Agreement shall continue in full force and effect and all Commission and Company obligations shall continue as stated therein.

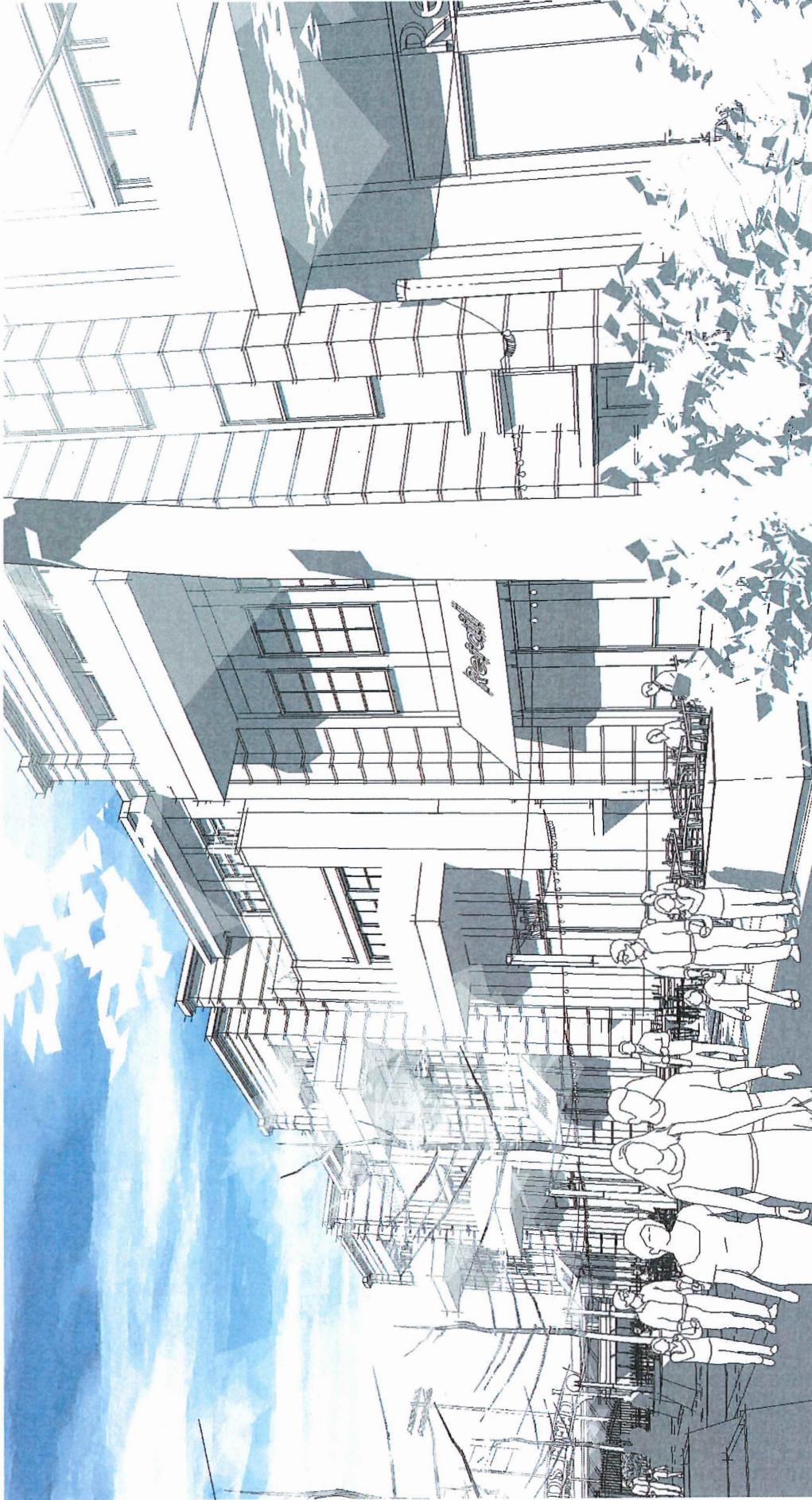
Sincerely,

HEADING FOR HOME LLC

By: 

Andrew T. Berlin, its Manager

Enclosures



Berlin Flats

Jan. 22, 2016

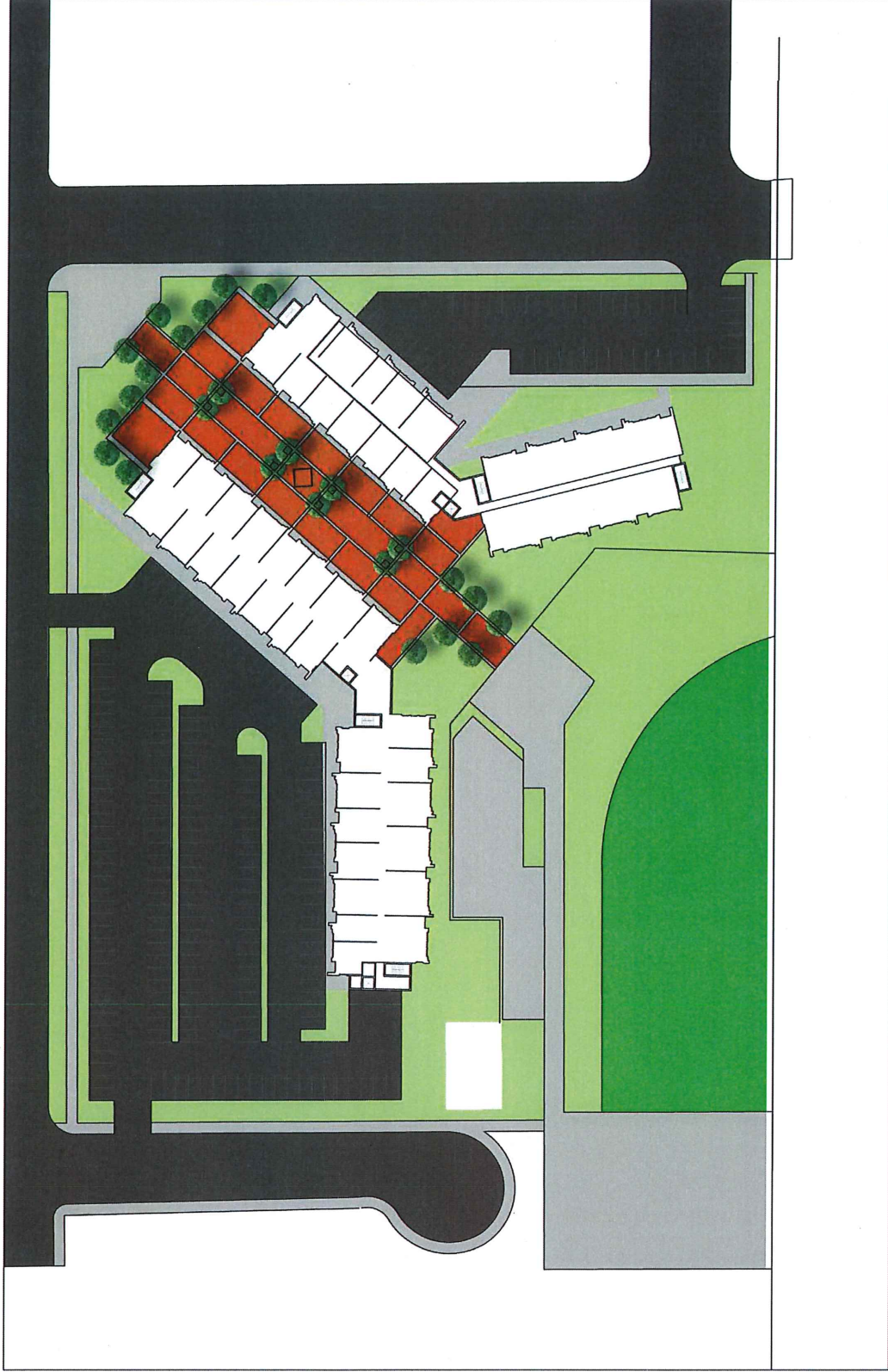
Project No. 15M119

Cover

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN





**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®

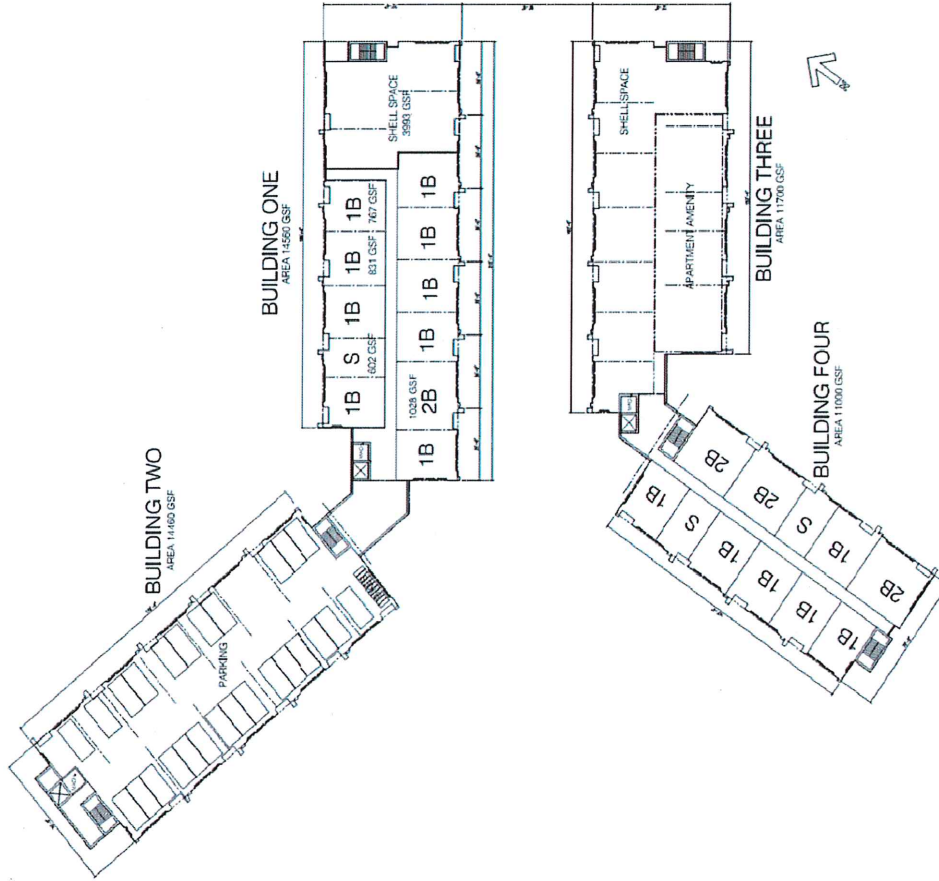
## Site Plan

Berlin Flats - South Bend, IN

Berlin Flats

Jan. 22, 2016

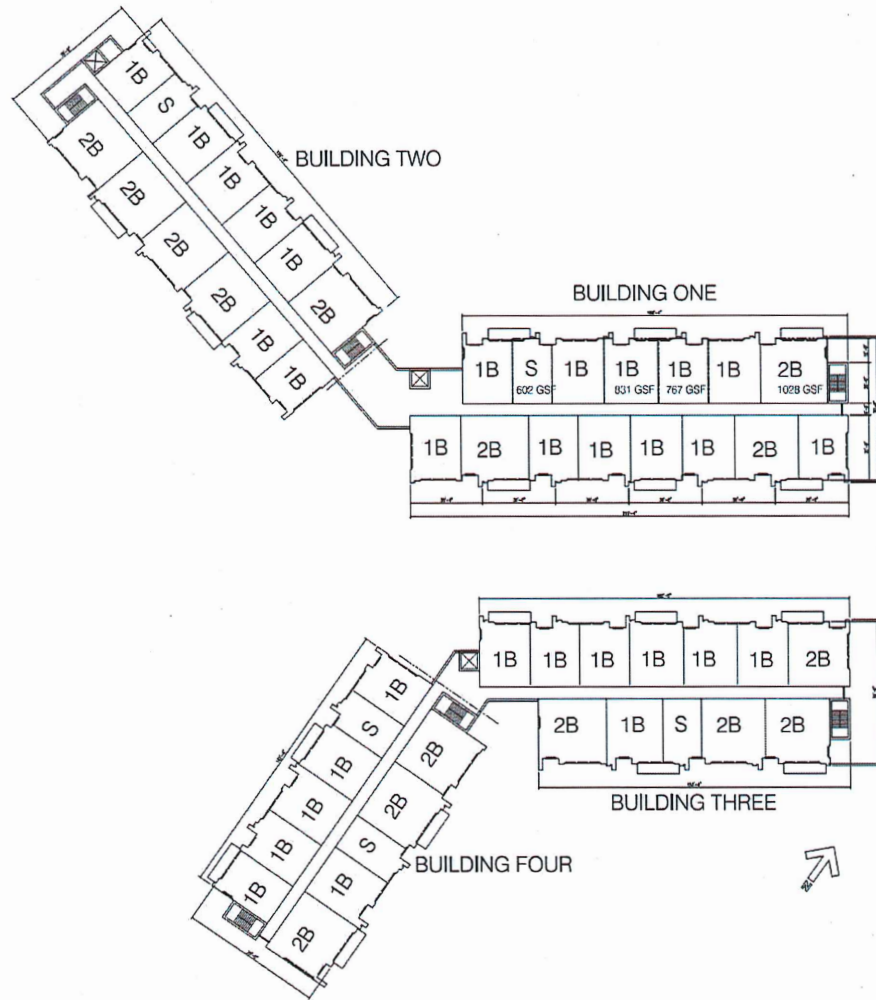
Project No. 15M119



26 at-grade parking stalls

**First Floor Plan**

Berlin Flats - South Bend, IN



Berlin Flats

Second Floor Plan

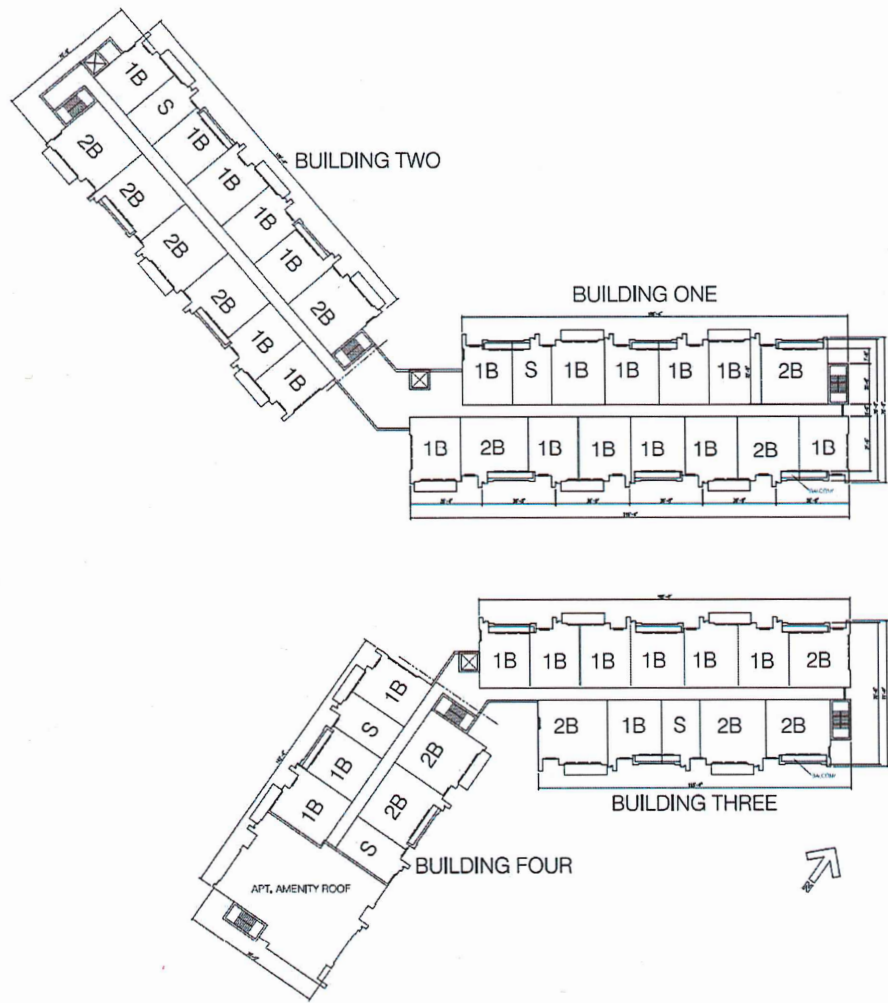


**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®

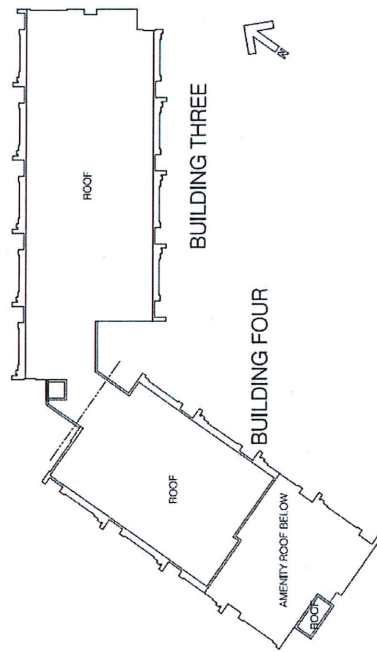
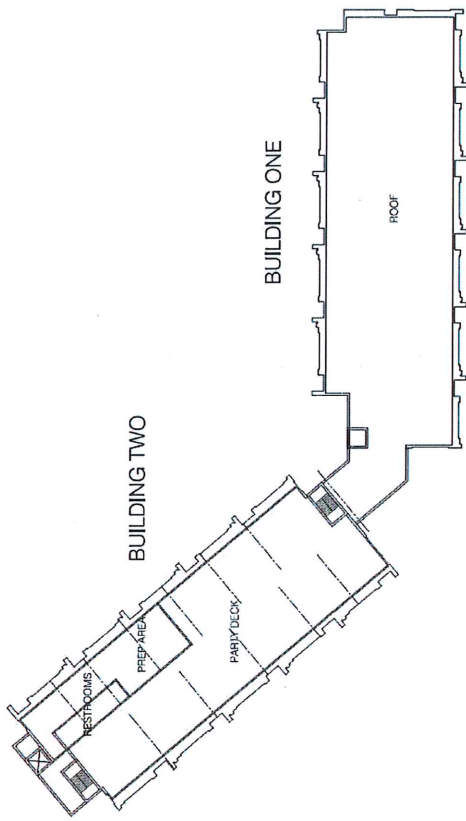
Jan. 22, 2016

Project No. 15M119

Berlin Flats - South Bend, IN







**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN

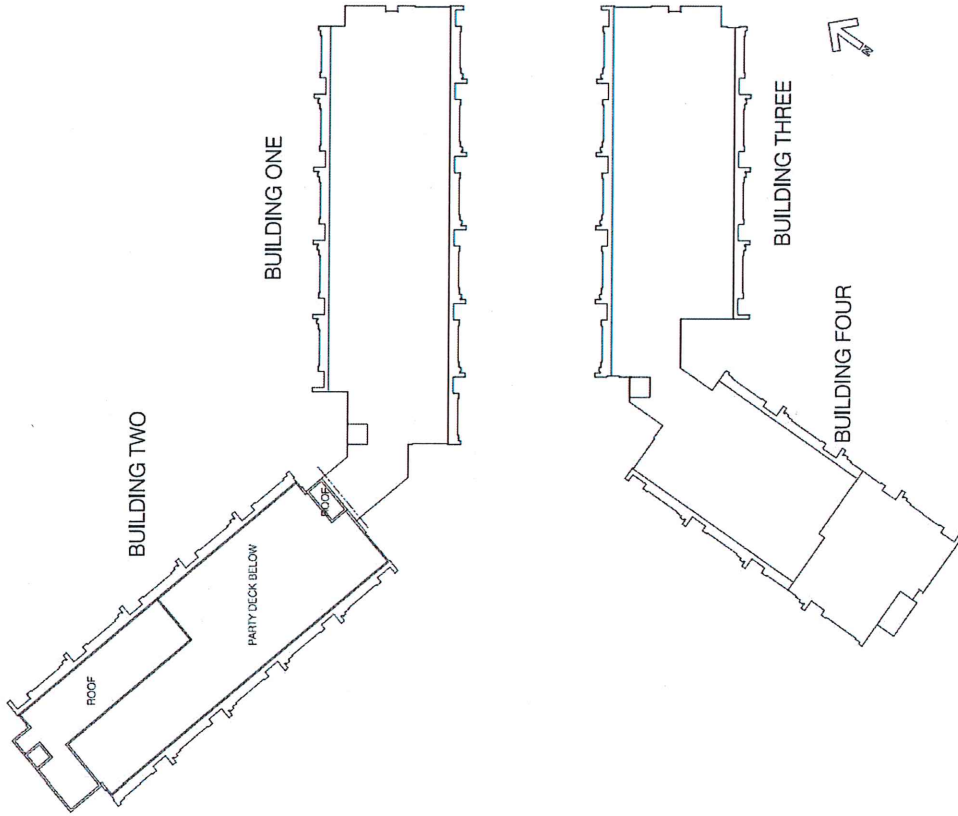
## Club Level Floor Plan

Berlin Flats - South Bend, IN

Berlin Flats

Jan. 22, 2016

Project No. 15M119



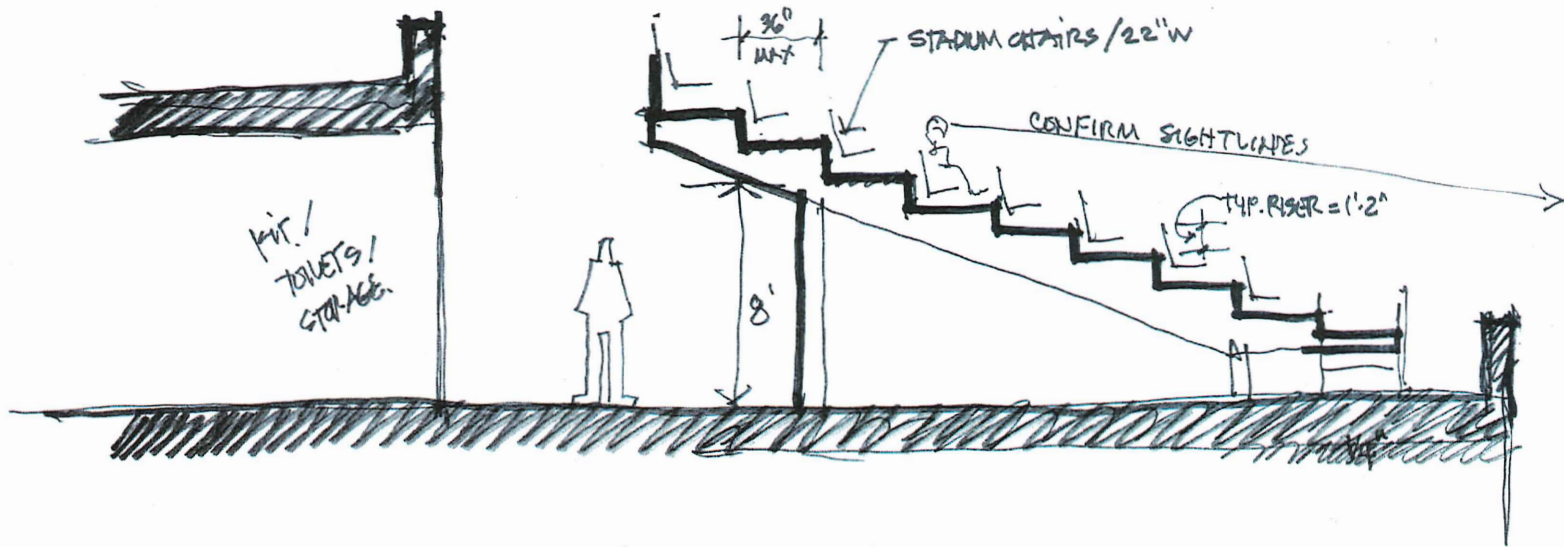
**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN

**Roof Plan**

Berlin Flats - South Bend, IN

Berlin Flats

Jan. 22, 2016 Project No. 15M119







## Berlin Flats

Jan. 22, 2016

Project No. 15M119

## Perspective

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN<sup>®</sup>









Berlin Flats

Jan. 22, 2016

Project No. 15M119

Perspective

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®





Berlin Flats

Jan. 22, 2016

Project No. 15M119

Perspective

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®





Berlin Flats

Perspective

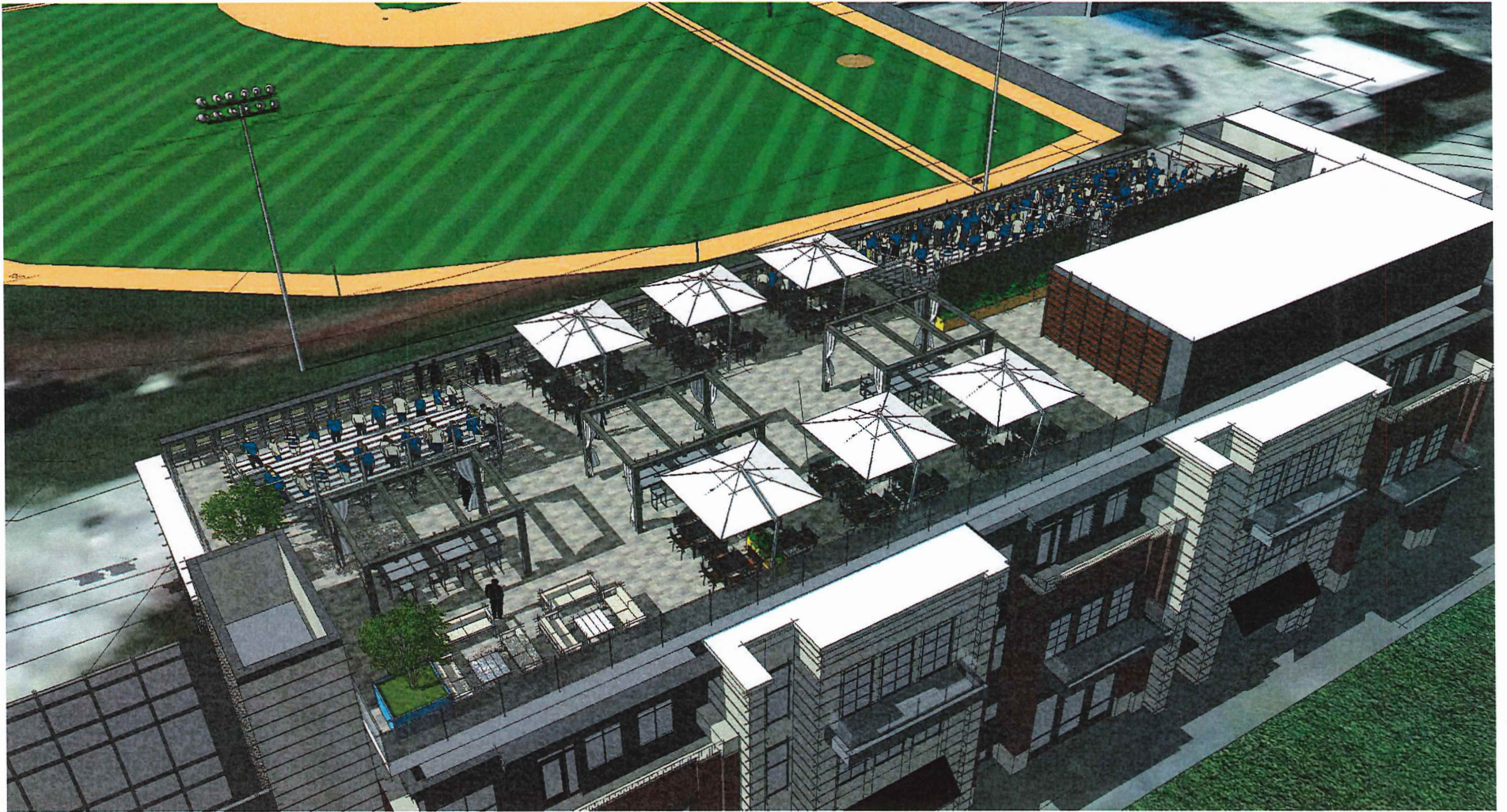
Jan. 22, 2016

Project No. 15M119

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®





Berlin Flats

Jan. 22, 2016

Project No. 15M119

Perspective

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®





Berlin Flats

Jan. 22, 2016

Project No. 15M119

Perspective

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN®





Berlin Flats

Jan. 22, 2016

Project No. 15M119

Elevation

Berlin Flats - South Bend, IN

**BROWNING  
DAY MULLINS  
DIERDORF**  
LEADERSHIP + DESIGN

**EXHIBIT 3**

**Real Estate Purchase Agreement**

[See attached.]

## **REAL ESTATE PURCHASE AGREEMENT**

This Real Estate Purchase Agreement (this “Agreement”) is made on August 25, 2016 (the “Contract Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Heading for Home LLC, a Delaware limited liability company with its principal place of business at 501 W. South St., South Bend, Indiana 46601 (“Buyer”) (each a “Party” and together the “Parties”).

### RECITALS

A. Seller exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Ind. Code 36-7-14 (the “Act”).

B. In furtherance of its purposes under the Act, Seller owns certain real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

C. Swing-Batter-Swing, LLC holds an exclusive option to purchase the Property from Seller upon certain conditions pursuant to the Parties’ Real Estate Option Agreement dated July 30, 2015 (the “Option Agreement”), which option was placed of record by the Memorandum Of Real Estate Option Agreement dated July 30, 2015, and recorded on July 31, 2015, as Document No. 1519603 in the Office of the Recorder of St. Joseph County, Indiana.

D. On August 22, 2016, pursuant to Section 9 of the Option Agreement, Swing-Batter-Swing, LLC requested the Commission’s consent to an assignment of the Option Agreement from Swing-Batter-Swing, LLC to Buyer, and Seller has consented to the assignment as set forth in Resolution No. 3345 dated August 25, 2016.

E. On August 22, 2016, Buyer submitted its Notice of Intent (as defined in the Option Agreement) to purchase the Property from Seller, which Seller approved as set forth in Resolution No. 3345 dated August 25, 2016.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

### **1. OFFER AND ACCEPTANCE**

A copy of this Agreement, signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement and shall be delivered to Seller, in care of the following representative (“Seller’s Representative”):

Brian Pawlowski  
Acting Executive Director  
Department of Community Investment  
City of South Bend  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601

This offer shall expire fifteen (15) days after delivery unless accepted by Seller. To accept Buyer's offer, Seller shall return a copy of this Agreement, counter-signed by Seller in accordance with applicable laws, to the following ("Buyer's Representative"):

Heading for Home LLC  
c/o South Bend Cubs  
501 West South Street  
South Bend, Indiana 46601  
Attn: Joe Hart

With a copy to:

TWG Development, LLC  
333 North Pennsylvania Street, Suite 100  
Indianapolis, Indiana 46204  
Attn: J.B. Curry

With a copy to:

Patzik, Frank & Samotny Ltd.  
150 South Wacker Drive, Suite 1500  
Chicago, Illinois 60606  
Attn: Alan B. Patzik

**2. PURCHASE PRICE**

In accordance with Section 4 of the Option Agreement, the purchase price for the Property shall be One Dollar (\$1.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 10 below (the "Closing," the date of which is the "Closing Date").

**3. BUYER'S DUE DILIGENCE**

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to use the Property for the development of a mixed-use project including, without limitation, residential, commercial, and retail/hospitality uses (the "Buyer's Use"). Seller acknowledges that Buyer's determination whether Buyer's Use is feasible requires investigation into various matters (Buyer's "Due Diligence"). Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory

completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Due Diligence Period. Buyer shall have a period of sixty (60) days following the Contract Date to complete its examination of the Property in accordance with this Section 3 (the "Due Diligence Period").

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, upon Buyer providing Seller with evidence that Buyer has general liability insurance reasonably acceptable to Seller, in the amount of at least One Million Dollars (\$1,000,000), naming Seller as an additional insured and covering the activities, acts, and omissions of Buyer and its representatives at the Property, to

(i) enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, that Buyer may not take any action upon the Property which reduces the value thereof and Buyer may not conduct any invasive testing at the Property without Seller's express prior written consent; further provided, that if the transaction contemplated herein is not consummated, Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives; and

(ii) file any application with any federal, state, county, municipal or regional agency relating to the Property for the purpose of obtaining any approval necessary for Buyer's anticipated use of the Property. If Seller's written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any such application, Buyer may request from Seller such consent or signature, which Seller shall not unreasonably withhold. Notwithstanding the foregoing, any zoning commitments or other commitments that would further restrict the future use or development of the Property, beyond the restrictions in place as a result of the current zoning of the Property, shall be subject to Seller's prior review and written approval.

D. Termination of Agreement. If at any time within the Due Diligence Period Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller's Representative.

#### **4. SELLER'S DOCUMENTS; ENVIRONMENTAL SITE ASSESSMENT**

Upon Buyer's request, Seller will provide Buyer a copy of all known environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative with or without a written request by Seller. In addition to reviewing any environmental reports provided by Seller, Buyer may, at Buyer's sole expense,

obtain a Phase I environmental site assessment of the Property pursuant to and limited by the authorizations stated in Section 3 above.

**5. PRESERVATION OF TITLE**

After the Contract Date, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any interests, liens, restrictions, easements, covenants, reservations, or other matters affecting Seller's title (such matters are referred to as "Encumbrances"). Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for title insurance on the Property (the "Title Commitment") and a survey of the Property (the "Survey") identifying all Encumbrances as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in Section 7 below).

**6. TITLE COMMITMENT AND POLICY REQUIREMENTS**

As a condition precedent to Buyer's obligation to close hereunder Buyer shall receive the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within ten (10) days of the Contract Date. The Title Commitment must (i) agree to insure good, marketable, and indefeasible fee simple title to the Property (including public road access) in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a quit claim deed (the "Deed") from the Seller to the Buyer, and (ii) provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company's title search charges and all costs of the Title Commitment and owner's policy.

**7. REVIEW OF TITLE COMMITMENT AND SURVEY**

Buyer shall give Seller written notice, within ten (10) days after receipt of the last of the Title Commitment and the Survey, of any objections to the Title Commitment or Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a "Permitted Encumbrance." If the Seller is unable or unwilling to correct or commence action to correct the Buyer's title and survey objections within the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period. If Buyer fails to so terminate this Agreement, then such objections shall constitute "Permitted Encumbrances" as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

**8. DISPUTE RESOLUTION**

A. Forum. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St.



Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution.

B. Waiver of Jury Trial. Both Parties hereby waive any right to trial by jury with respect to any action or proceeding relating to this Agreement.

## 9. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller in care of Seller's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel), or to Buyer in care of Buyer's Representative at their respective addresses stated in Section 1 above. Either Party may, by written notice, modify its address or representative for future notices.

## 10. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, the Closing shall be completed through an escrow ("Escrow") at the offices of the Title Company in accordance with the general provisions of the usual form of "New York Style" Deed and Money Escrow Agreement ("Escrow Agreement") then provided and used by the Title Company with such special provisions inserted in the Escrow Agreement as may be required to conform with this Agreement. The Closing Date shall be a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

B. Closing Procedure.

(i) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of the Deed, in the form attached hereto as **Exhibit B**, conveying the Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than Permitted Encumbrances, and the Title Company's delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer in accordance with Section 6 above.

(ii) Possession of the Property shall be delivered to the Buyer at Closing, in the same condition as it existed on the Contract Date, ordinary wear and tear excepted.

C. Condition Precedent. It shall be a condition precedent to Closing that Seller will have approved the relocation of certain public utilities on and/or in the vicinity of the Property to be performed by Seller (or its designee) and will have approved the Development Agreement, dated August 25, 2016, by and between Seller and Buyer and the confirmation of the Funding Amount (as defined in the Development Agreement) to Buyer for development of the Property.

D. Closing Costs. Buyer shall pay all of the Title Company's closing and/or document preparation fees and all recordation costs associated with the transaction contemplated in this Agreement.

## 11. ACCEPTANCE OF PROPERTY AS-IS; DEVELOPMENT PLANS

A. As-Is Transaction. Buyer agrees to purchase the Property “as-is, where-is” and without any representations or warranties by Seller as to the condition of the Property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement will be construed to constitute such a representation or warranty as to condition or fitness. Notwithstanding the foregoing, Seller hereby represents and warrants that Seller has obtained all requisite consents and approvals to execute this Agreement and perform its obligations hereunder.

B. Development Plans. Buyer agrees to develop the Property and carry out Buyer’s Use (as defined above) of the Property in accordance with the terms of Resolution No. 3345 dated August 25, 2016, and the Development Agreement between the Parties dated August 25, 2016.

## **12. TAXES**

Buyer, and Buyer’s successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. Seller shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller’s liability therefor.

## **13. REMEDIES**

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity; provided, however, no Party shall be liable for consequential, speculative or punitive damages. All the Parties’ respective rights and remedies concerning this Agreement and the Property are cumulative.

## **14. COMMISSIONS**

The Parties mutually acknowledge and warrant to one another that neither Buyer nor Seller is represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold harmless one another from any claim for commissions in connection with the transaction contemplated in this Agreement.

## **15. INTERPRETATION; APPLICABLE LAW**

Both Parties having participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this

Agreement be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

**16. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between Seller and Buyer and supersedes all prior discussions, understandings, or agreements, whether written or oral, between Seller and Buyer concerning the transaction contemplated in this Agreement.

**17. ASSIGNMENT**

Buyer and Seller agree that this Agreement or any of Buyer's rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Seller may request and Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee.

**18. BINDING EFFECT; COUNTERPARTS; SIGNATURES**

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed and delivered by Buyer and Seller. This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

**19. AUTHORITY TO EXECUTE; EXISTENCE**

The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, the undersigned representative of Buyer represents and warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of Indiana.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this Real Estate Purchase Agreement to be effective as of the Contract Date stated above.

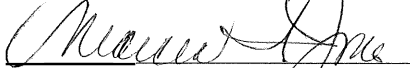
BUYER:

Heading for Home LLC,  
a Delaware limited liability company

\_\_\_\_\_  
Andrew Berlin  
Its: Manager  
Dated:

SELLER:

City of South Bend, Department of Redevelopment,  
by and through its governing body, the South Bend  
Redevelopment Commission

  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

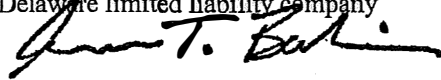
  
\_\_\_\_\_  
Donald E. Inks, Secretary

4000.0000069 35609161.005

IN WITNESS WHEREOF, the Parties hereby execute this Real Estate Purchase Agreement to be effective as of the Contract Date stated above.

BUYER:

Heading for Home LLC,  
a Delaware limited liability company



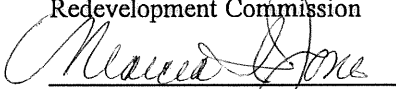
Printed: Andrew Berlin

Its: Manager

Dated: August 25, 2016

SELLER:

City of South Bend, Department of Redevelopment,  
by and through its governing body, the South Bend  
Redevelopment Commission



Marcia I. Jones, President

ATTEST:



Donald E. Inks, Secretary

**EXHIBIT A**

**Description of Property**

Lots 2 and 3 of the plat of Coveleski Park Minor Subdivision recorded on February 11, 2015, as Document No. 1503430 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key Nos. 18-3014-051501 and 18-3014-051502]

**EXHIBIT B**

**Form of Quit Claim Deed**

## QUIT CLAIM DEED

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the “Grantor”)

CONVEYS AND QUIT CLAIMS to Heading for Home LLC, a Delaware limited liability company with its principal place of business at 501 W. South St., South Bend, Indiana 46601 (the “Grantee”),

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the “Property”):

Lots 2 and 3 of the plat of Coveleski Park Minor Subdivision recorded on February 11, 2015, as Document No. 1503430 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key Nos. 18-3014-051501 and 18-3014-051502]

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to the terms and conditions stated in South Bend Redevelopment Commission Resolution No. 3345 dated August 25, 2016, and the Development Agreement between Grantor and Grantee dated August 25, 2016; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; and subject to all applicable building codes and zoning ordinances.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.



GRANTOR:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

*Marcia I. Jones*  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

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

STATE OF INDIANA            )  
  ) SS:  
ST. JOSEPH COUNTY         )

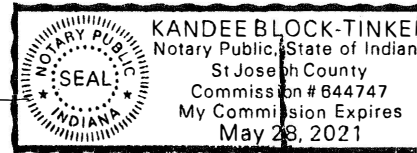
Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Donald E. Inks, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Quit Claim Deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 25<sup>th</sup> day of August, 2016.

My Commission Expires:

May 28, 2021

*Kandee Block-Tinke*  
\_\_\_\_\_  
Notary Public  
Residing in St. Joseph County, Indiana



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

**EXHIBIT 4**

**Development Agreement**

[See attached.]

## DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of August 25, 2016 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Heading for Home LLC, a Delaware limited liability company with offices at 501 W. South St., South Bend, Indiana 46601 (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

### RECITALS

A. The Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (Ind. Code 36-7-14, the “Act”).

B. The Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent.

C. The Commission granted Swing-Batter-Swing, LLC (“SBS”) an exclusive option to purchase certain real property described in attached Exhibit A (the “Developer Property”) upon the terms stated in the Real Estate Option Agreement dated July 30, 2015 (the “Option Agreement”), which Option Agreement SBS assigned to the Developer under the Assignment and Assumption of Real Estate Option Agreement dated August 22, 2016, by and between SBS and the Developer.

D. Upon exercising its option and acquiring the Developer Property from the Commission, the Developer desires to develop the Developer Property as a mixed-use project including, without limitation, residential, commercial, and retail/hospitality uses (the “Project”) in substantial accordance with the plans and specifications, as defined in and attached to the Commission’s Resolution No. 3345 dated August 25, 2016 (the “Development Plans”).

E. The Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the River West Development Area (the “Area”).

F. The Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project.

G. The Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents.

H. The Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in Exhibit B (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

**SECTION 1. DEFINITIONS.**

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to Ind. Code 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Three Million Four Hundred Thousand Dollars (\$3,400,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Private Investment. “Private Investment” means an amount no less than Eighteen Million Dollars (\$18,000,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project.

**SECTION 2. INTERPRETATION, TERMS, AND RECITALS.**

2.1 Interpretation.

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

**SECTION 3. ACCESS.**

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the "Easement") in the form attached hereto as Exhibit C, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) inure to the benefit of the Commission and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works.

**SECTION 4. DEVELOPER'S OBLIGATIONS.**

4.1 Generally. The Parties acknowledge and agree that the Commission's agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer's commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

4.2 The Project.

(a) As a condition precedent to the Parties' respective rights and obligations under this Agreement, the Developer will acquire the Developer Property from the Commission in accordance with the terms and conditions of the Option Agreement.

(b) The Developer will perform all necessary work to complete the improvements set forth in the Development Plans as such Development Plans may be revised upon completion of the finalized survey, engineering, and site layout.

(c) The Developer will expend the Private Investment to complete the Project in substantial accordance with the Development Plans as such Development Plans may be revised upon completion of the finalized survey, engineering, and site layout.

(d) Other than modifications based on the finalized survey, engineering and site layout and modifications due to unforeseen circumstances, the Developer will not undertake any substantial deviation from the Development Plans without first obtaining the Commission's written approval.

Notwithstanding anything to the contrary contained herein, Developer shall not eliminate a commercial component of the development.

4.3 Cooperation. The Developer agrees to endorse and support, at no cost to Developer, the Commission's efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes. To the extent that any portion of this Project is to be located in City owned rights of way, the Commission will assist the Developer in good faith in obtaining for the Developer and its designees access thereto to enable the construction of such portion of the

Project, provided, however, that the Commission will not support or facilitate the vacation of any portion of West Monroe Street lying east of South Lafayette Boulevard for construction of the Project.

4.4 Obtain Necessary Easements. The Developer agrees to request any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission's obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement by the date that is twenty-four (24) months after the Effective Date of this Agreement (the "Mandatory Project Completion Date"). Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to complete the Project or any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.6 RESERVED.

4.7 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the Commission the number of local contractors and local laborers involved in the Project, the amount of bid awards for each material contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

(c) On or before April 15 of the year that is one year after substantial completion of the Project and on each April 15 thereafter until April 15 of the year which is three (3) years after substantial completion of the Project, the Developer shall submit to the Commission a report with the following information: (i) the number of jobs created as a result of the Project and wage and benefit information for the jobs created; and (ii) a detailed description of the of the job and wage details for the number of people employed by the Developer in connection with the Project.

4.8 RESERVED.

4.9 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of construction for the Project (including legal fees, architectural and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.10 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the "Engineering Department"). The Engineering Department may approve or disapprove said bid specifications in its sole discretion and may request revisions or amendments to be made to the same.

4.11 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Project.

4.12 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in Exhibit D attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker's compensation policies).

4.13 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

## **SECTION 5. COMMISSION'S OBLIGATIONS.**

5.1 Generally. The Parties acknowledge and agree that the Developer's agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission's commitment to perform and abide by the covenants and obligations of the Commission contained in the Agreement.

### **5.2 Completion of Local Public Improvements.**

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit B attached hereto on a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) Before any work on the Local Public Improvements will commence, (i) the Developer will have acquired the Developer Property from the Commission in

accordance with the terms of the Option Agreement, and (ii) the Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(c) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(d) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount. In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

## **SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside. Notwithstanding the foregoing, in the event the Project or the terms of this Agreement face legal challenge for any reason other than Developer's failure to comply with the terms hereof, the Developer may elect to abandon the Project.

## **SECTION 7. DEFAULT.**

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written



notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date, subject to an event of Force Majeure as stated in Section 7.4, or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, subject to an event of Force Majeure as stated in Section 7.4, and provided no substitute developer completes the Project, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Percent (100%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand.

7.3 Utility Assessments. The Parties acknowledge that applicable laws, including without limitation Chapter 17, Article 10, of the South Bend Municipal Code, require an owner of property to pay certain costs associated with the City's installation of utilities serving that property. In consideration of the Developer's obligations under this Agreement, the Commission agrees to pay on the Developer's behalf any such installation charges under Chapter 17, Article 10 of the South Bend Municipal Code arising out of the Developer's construction of the Project. By contrast, the Developer will pay when due any charges or fees imposed on the Developer for the Developer's use of the Developer Property following its initial construction of the Project, and the Commission will have no obligation to pay any such charges or fees or to reimburse the Developer for the same.

7.4 Obligation and Rights of Mortgage Lenders. The holder of any mortgage or other security arrangement with respect to the Project, or any portion thereof (the "Holder"), shall not be obligated under this Agreement to construct or complete improvements or to guarantee such construction for completion, but shall otherwise be bound by all of the terms and condition of this Agreement which pertain to the Project or such portion thereof in which the Holder holds an interest. In the event that the Holder elects not to complete the Project, such election shall be made within thirty (30) days of the Holder gaining possession thereof, the Commission shall have the option to repurchase the Project or such portion thereof from the Holder at a purchase price equal to its fair market value. Any such Holder who comes into possession of the Project, or any portion thereof, pursuant to a foreclosure of a mortgage or deed in lieu of such foreclosure shall take the Project, or such portion thereof, subject to any pro rata claims for payments or charges against the Project, or such portion thereof, which accrue prior and subsequent to the time such Holder comes into possession. Nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Project, or any portion thereof, to any uses or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement subject to all of the terms and the conditions of this Agreement.

7.5 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, inclement weather, fires, delays by municipal bodies, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or other circumstances which are not within the reasonable control of the Party to be excused (each, an event of “Force Majeure”). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

**SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.**

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.

8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any liabilities, damages, or losses arising out of any third-party claim for bodily injury or property damage alleged to have occurred in or on the

Developer Property or the improvements constructed thereon, except to the extent caused by the negligence of the Commission or its contractors. .

**SECTION 9. MISCELLANEOUS.**

9.1 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.

9.2 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.3 Waiver of Jury Trial. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both parties.

9.4 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.5 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.6 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and

the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.7 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer:	Heading for Home LLC c/o South Bend Cubs 501 West South Street South Bend, Indiana 46601 Attn: Joe Hart
With a copy to:	TWG Development, LLC 333 North Pennsylvania Street, Suite 100 Indianapolis, Indiana 46204 Attn: J.B. Curry (the Developer's "Project Manager")
With a copy to:	Patzik, Frank & Samotny Ltd. 150 South Wacker Drive, Suite 1500 Chicago, Illinois 60606 Attn: Alan B. Patzik
Commission:	South Bend Redevelopment Commission 1400 S. County-City Building 227 W. Jefferson Blvd. South Bend, IN 46601 Attn: Brian Pawlowski
With a copy to:	South Bend Legal Department 1200 S. County-City Building 227 W. Jefferson Blvd. South Bend, IN 46601 Attn: Corporation Counsel

9.8 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.9 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.10 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.11 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. Prior to substantial completion of the Project, Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole but reasonable discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s). The Commission acknowledges that the Developer intends to contract with the Developer's Project Manager for the provision of certain services associated with constructing the Project and that the Project Manager will serve as the Developer's agent responsible for carrying out certain of the Developer's obligations under this Agreement. The Parties agree, however, that such delegation of responsibilities to the Project Manager will not reduce, relieve, release or otherwise affect the Developer's obligations under this Agreement or the Developer's liability to the Commission therefor.

9.12 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

9.13 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

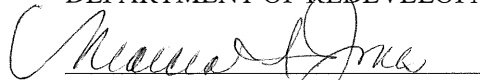
9.14 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.15 Time. Time is of the essence of this Agreement.


IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

COMMISSION:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

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

DEVELOPER:

HEADING FOR HOME LLC,  
a Delaware limited liability company

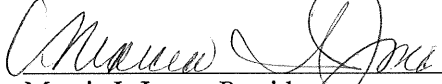
By: \_\_\_\_\_  
Name: Andrew Berlin  
Title: Manager

4000.0000069 65411392.008

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

COMMISSION:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

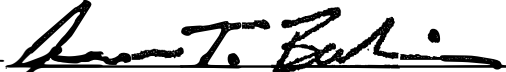
  
\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

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

DEVELOPER:

HEADING FOR HOME LLC,  
a Delaware limited liability company

By: —   
\_\_\_\_\_  
Name: Andrew Berlin  
Title: Manager



**EXHIBIT A**

**Description of Developer Property**

Lots 2 and 3 of the plat of Coveleski Park Minor Subdivision recorded on February 11, 2015, as Document No. 1503430 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key Nos. 18-3014-051501 and 18-3014-051502]

## **EXHIBIT B**

### **Description of Local Public Improvements**

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations:

- A. Site preparation and construction, including building concrete, structural masonry, structural steel/misc. metals, lumber package, framing labor, and earthwork and utilities.
- B. Other infrastructure elements or other improvements to the Developer Property associated with the construction of the Project.

**EXHIBIT C**

**Form of Easement**

[See attached.]

**GRANT OF TEMPORARY EASEMENT**

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”), by and between Heading for Home LLC, a Delaware limited liability company with offices at 501 W. South St., South Bend, Indiana 46601 (the “Grantor”), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the “Grantee”).

WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”), together with the right of ingress to and egress from the Easement for said purposes, all pursuant a certain Development Agreement by and between Grantor and Grantee, dated August 25, 2016 (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee’s contractors acting on Grantee’s behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such date as Grantor and Grantee may agree to in writing.

[Signature page follows.]

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

Heading for Home LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF ST. JOSEPH            )

Before me, the undersigned, a Notary Public in and for said State, personally appeared Andrew Berlin, to me known to be the Manager of the Grantor in the above Grant of Temporary Easement, and acknowledged the execution of the same as the Grantor's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Residing in \_\_\_\_\_ County, IN

My Commission Expires: \_\_\_\_\_

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

EXHIBIT 1

Description of Property

Lots 2 and 3 of the plat of Coveleski Park Minor Subdivision recorded on February 11, 2015, as Document No. 1503430 in the Office of the Recorder of St. Joseph County, Indiana. [Parcel Key Nos. 18-3014-051501 and 18-3014-051502]

**EXHIBIT D**

**Minimum Insurance Amounts**

- |    |                                    |  |
|----|------------------------------------|--|
| A. | Worker's Compensation              |  |
| 1. | State                              | Statutory  |
| 2. | Applicable Federal                 | Statutory  |
| 3. | Employer's Liability               | \$100,000.00   |
| B. | Comprehensive General Liability    |  |
| 1. | Bodily Injury                      | \$5,000,000 Per Occurrence, inclusive of umbrella coverage |
| 2. | Property Damage                    | \$5,000,000 Per Occurrence, inclusive of umbrella coverage |
| C. | Comprehensive Automobile Liability |  |
| 1. | Bodily Injury                      |  |
| a. | \$500,000.00                       | Each Person  |
| b. | \$500,000.00                       | Each Accident  |
| 2. | Property Damage                    |  |
| a. | \$500,000.00                       | Each Occurrence  |