

## COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT

THIS COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT (this "Assignment") is made and delivered as of March 23, 2017, by **HEADING FOR HOME LLC**, a Delaware limited liability company (the "Borrower") to and for the benefit of **WINTRUST BANK**, its successors and assigns (the "Lender").

### RECITALS

A. Pursuant to that certain Construction Loan Agreement dated as of the date hereof between Borrower and Lender (together with all renewals, amendments, modifications, increases and extensions thereof, the "Loan Agreement"), Lender has agreed to make a loan to Borrower in the maximum principal amount of **FIFTEEN MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS** (\$15,400,000.00) (the "Loan"). The Loan is evidenced by that certain Promissory Note dated as of even date herewith in the principal amount of \$15,400,000.00 from Borrower payable to the order of Lender (the "Note"). Capitalized terms used and not specifically defined herein shall bear the same meaning as in the Loan Agreement.

B. The Loan is secured by, among other things, that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing, dated as of even date herewith by Borrower for the benefit of Lender (together with all renewals, modifications, increases and extensions thereof, the "Mortgage"), which grants Lender a first priority security interest in the real property described therein (the "Property"), and by certain other instruments (such other documents evidencing or securing the Loan, together with the Note, the Loan Agreement and the Mortgage, as the same may be amended, modified, replaced or restated from time to time, are hereinafter collectively referred to as the "Loan Documents").

C. The Borrower entered into that certain Development Agreement dated as of August 25, 2016 by and between Borrower and the City South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "City"), and related documents, in connection with the Property (as amended, restated and/or supplemented from time to time, the "Development Agreement"), which Development Agreement is attached hereto as **Exhibit A**, and pursuant to which the Borrower and the City agreed to the terms and conditions of the Project (as therein defined), and the tax increment finance revenues in the amount of \$3,400,000.00 to be used for paying the cost associated with the construction, equipping, inspection and delivery of the Local Public Improvements (as defined in the Development Agreement).

D. As an express condition precedent and requirement of the Loan and the Loan Documents, Borrower has agreed to grant, pledge, convey and assign to Lender a first and paramount lien and security interest in and to such Development Agreement.

**ACCORDINGLY**, in consideration of the making of the Loan, and for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, Borrower and Lender agree as follows:

1. **Creation of Security Interest.** Borrower does hereby sell, assign, pledge, transfer and grant a security interest to Lender in and to any and all of Borrower's right, title and interest in and to the Development Agreement (the "Collateral") as collateral for the Loan.

2. **Borrower's Liabilities.** This Assignment is made and given as collateral security for the prompt payment when due of any and all obligations of Borrower to Lender, including without limitation, the indebtedness and liabilities evidenced by the Note and the Mortgage, all of which have been made by Borrower with or for the benefit of Lender, whether such indebtedness or obligations are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, evidenced or arising and howsoever acquired Lender, and any and all renewals, extensions or refinancings thereof (all of the foregoing are hereinafter collectively referred to as the "Liabilities"). Upon full payment by Borrower of all Liabilities, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically cease to exist and the Borrower shall notify the City of same in writing within thirty (30) days after the date this Assignment and the lien or charge created hereby or resulting herefrom ceases to exist.

3. **Representations and Covenants.** Borrower warrants, represents and covenants as follows:

(a) Borrower has full right, power and authority to grant and make this Assignment and that there are no other liens, claims or encumbrances respecting the Collateral.

(b) Borrower has duly authorized, executed and delivered this Assignment; this Assignment constitutes the legal, valid and binding obligations of Borrower and is enforceable in accordance with its terms; and the execution and delivery of this Assignment does not violate the organizational documents of Borrower.

(c) Borrower shall not sell, transfer, assign, pledge, encumber or mortgage all or any portion of the Collateral or any interest therein without the prior written consent of Lender, or permit anything to be done that may impair the value of any of the Collateral or the security intended to be afforded by this Assignment.

(d) Borrower shall sign and execute alone or with Lender any financing statement or other document or procure any documents and pay any connected costs, expenses and fees, including court costs and attorneys' fees, necessary to protect the security interest under this Assignment against the rights, interests or claims of third parties.

(e) Borrower will punctually and promptly perform its respective covenants, agreements and conditions required to be performed under this Assignment.

(f) Borrower shall at all times honor, perform and abide by the terms and conditions of each agreement or contract constituting the Collateral.

(g) Borrower represents, warrants and covenants that it is the sole owner of all right, title and interest under all of the documents, instruments and agreements constituting the Collateral.

(h) Borrower agree to take all reasonable efforts to enforce performance by the other party to each agreement or contract constituting the Collateral of each and every material obligation, covenant, condition and agreement to be performed by such other party.

(i) Borrower has not performed any act which might prevent Borrower from performing its respective obligations hereunder or which might prevent Lender from enforcing its rights pursuant to the terms and provisions hereof.

(j) Until the Liabilities have been paid in full, Borrower agrees to promptly deliver to Lender true, complete and correct copies of each agreement or contract constituting the Collateral.

4. **Limitation of Lender's Liability.** Notwithstanding anything to the contrary contained in any of the Collateral, the interest of Borrower therein is assigned and transferred to Lender by way of collateral security only, the Lender by its acceptance hereof shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Borrower under the Collateral, whether provided for by the terms thereof, arising by operation of law or otherwise. Borrower hereby acknowledges that Borrower shall remain liable for the due performance of Borrower's obligations under the agreements, instruments and documents constituting the Collateral to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that this Assignment has been made and entered into for the sole protection and benefit of Lender, Borrower, and their respective successors and assigns, and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loan at any time; that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Loan at any time. The relationship between Lender and Borrower is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

5. **Events of Default.** An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Borrower of any of the covenants, agreements, representations, warranties or other provisions of this Assignment; (b) any other Event of Default described in the Note, the Loan Agreement, the Mortgage or the other Loan Documents; or (c) any default or event of default by Borrower as described in the Development Agreement.

6. **Remedies.** At any time upon or following the occurrence of any one or more Events of Default described hereunder, Lender shall without any further notice or any demand to Borrower: (a) be entitled to declare all indebtedness secured hereby and by all other documents and instruments evidencing or securing the Note to be immediately due and payable; (b) exercise any and all rights and remedies provided hereunder or under the Loan Documents, as well as all remedies available at law and in equity; (c) cure any default in such manner and to such extent as Lender may deem reasonably necessary to protect the security hereof, including without

limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender, and also the right to perform and discharge each and every obligation, covenant and agreement of Borrower under any of the documents, instruments and agreements constituting the Collateral, and in connection therewith, to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees and expenses; and/or (d) either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court at any time hereafter, enforce the performance of the covenants and agreements under any of the documents, instruments, agreements and contracts constituting the Collateral, in the name of Borrower or otherwise, provided that Lender shall not be responsible for the performance of any of the covenants and agreements of the Borrower under any of the documents, instruments, agreements and contracts constituting the Collateral.

Further, notwithstanding any other provision herein, upon an Event of Default by Borrower under any of the Loan Documents or under this Assignment, Lender shall have the right, upon written notice to the City, to receive the benefits of the Borrower under the Development Agreement, so long as there is, and continues to be, full compliance with the Development Agreement. In the event that the Lender conveys or assigns any portion of the Collateral, such assignment shall comply with the requirements of the Development Agreement and the Lender shall require that said successor or assign shall be required to comply in full with the Development Agreement.

7. **Waiver and Indemnity.** Borrower hereby agree that no liability shall be asserted or enforced by Borrower against Lender in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Borrower. Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all liability, expense, cost or damage which Lender may incur by reason of act or omission of Borrower under any of the documents, instruments, or agreements constituting the Collateral.

8. **Notice.** Any notice which any party hereto may desire or may be required to give to any other party hereto shall be made in the manner provided in the Loan Agreement. Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Lender by this Assignment is not required to be given.

9. **Miscellaneous.** This Assignment and all rights and liabilities hereunder and in and to any and all Collateral shall inure to the benefit of Lender and its successors and assigns, and shall be binding upon Borrower and its respective successors and assigns. This Assignment and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the substantive laws of the State of Illinois. All provisions of this Assignment shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Assignment which are held unenforceable, invalid or contrary to law by a court of competent jurisdiction, shall be of no force or effect, and in such event each and all of the remaining provisions of this Assignment shall subsist and remain and be fully effective according to the terms of this Assignment as though such invalid, unenforceable or unlawful provision or provision had not been included in this Assignment. Time is of the essence of this

Assignment, the headings of paragraphs in this Assignment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

[REMAINDER OF PAGE INTENTIONALLY BLANK –  
SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, Borrower has executed and delivered this Collateral Assignment of Development Agreement as of the day and year first above written.

**BORROWER:**

**HEADING FOR HOME LLC,**  
a Delaware limited liability company

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

Name: Andrew T. Berlin

Title: Manager

**CONSENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT**

The City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission hereby acknowledges its consent to the attached Collateral Assignment of Development Agreement as of the \_\_\_\_ day of March, 2017:

**CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: March \_\_\_\_\_, 2017

**EXHIBIT A**

**Development Agreement**



## 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.

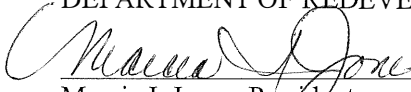
9.14 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

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

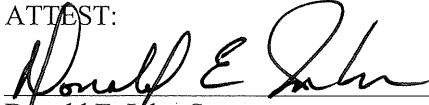
IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

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

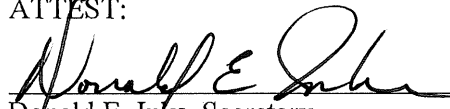
IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

COMMISSION:

CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT

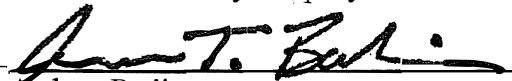
  
\_\_\_\_\_  
Marcia I. Jones, President

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  |