

LICENSE AGREEMENT FOR WALKWAY PLAZA AT BERLIN PLACE

This License Agreement For Walkway Plaza At Berlin Place (this "Agreement") is made effective as of February _____, 2018 (the "Effective Date"), by and among the City of South Bend Board of Park Commissioners (the "Board") 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 (the "Company") (each a "Party," and collectively, the "Parties").

RECITALS

A. The South Bend Redevelopment Commission (the "Commission") has contracted with the Company for the Company's mixed-use development (the "Project") of certain real property located in the City of South Bend (the "City"), identified as Lots 2 and 3 (together, the "Project Site") on the recorded plat of Coveleski Park Minor Subdivision attached as Exhibit A (the "Coveleski Subdivision"), under the terms and provisions of the Development Agreement dated August 25, 2016, and the Real Estate Purchase Agreement dated August 25, 2016, as amended by the First Amendment to Real Estate Purchase Agreement dated October 27, 2016, the Second Amendment to Real Estate Purchase Agreement dated December 15, 2016, and the Third Amendment to Real Estate Purchase Agreement dated February 23, 2017 (collectively, the "Project Agreements").

B. In accordance with the Project Agreements, the Commission conveyed the Project Site to the Company on March 23, 2017, by a quit claim deed recorded on March 29, 2017, as Document No. 1707347 in the Office of the Recorder of St. Joseph County.

C. The Board owns Lot 1 of the Cove Subdivision, which contains the stadium commonly known as Four Winds Field at Coveleski Stadium (the "Stadium") and a walkway area bisecting the Project Site and providing public pedestrian access to the Stadium from the abutting public rights-of-way (the "Public Walkway Area").

D. As part of the Company's development of the Project Site under the Project Agreements, the Company desires to alter and construct certain improvements upon a portion of the Public Walkway Area to create a new plaza serving the public and residents and invitees of the Project (the "Walkway Plaza"), as depicted in attached Exhibit B (the "Walkway Plaza Site Plan").

E. The Board desires to permit the Company's alterations of the Public Walkway Area and use of the Walkway Plaza upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into and made a part of this Agreement.

2. Non-Exclusive License. Subject to the limitations and requirements stated in this Agreement, and provided that the Company's use is reasonable at all times and comports with all

applicable laws, the Board hereby grants to the Company and its agents, contractors, invitees, and licensees a temporary, non-exclusive license to: (a) enter upon, alter, and improve the portions of the Public Walkway Area necessary to create the Walkway Plaza as depicted in the Walkway Plaza Site Plan; and (b) clean, repair, and maintain the Walkway Plaza (the "Non-Exclusive License"). Notwithstanding the foregoing, the Company and its agents, contractors, invitees, and licensees may temporarily block, obstruct, close-off, fence, barricade, and otherwise restrict access to all or any part of the Public Walkway Area as the Company deems necessary or desirable during the initial construction of the Project on the Project Site or the initial construction of the Walkway Plaza.

3. Exclusive License. Subject to the limitations and requirements stated in this Agreement, and provided that the Company's use is reasonable at all times and comports with all applicable laws, the Board hereby grants to the Company and its agents, contractors, invitees, and licensees an exclusive license to use those portions of the Walkway Plaza as depicted on the Walkway Plaza Site Plan (and denoted as "Exclusive License Areas") for purposes consistent with the commercial elements of the Project, including, but not limited to the use of portions of the Walkway Plaza for outdoor dining, seating, and the consumption of alcoholic beverages (the "Exclusive License"). Pursuant to the Exclusive License, the Company and its agents, contractors, invitees, and licensees may block, obstruct, close-off, fence, and otherwise restrict access to all or any part of the Exclusive License Areas. The Non-Exclusive License and the Exclusive License are individually referred to herein as a "License" and collectively as the "Licenses."

4. Term. The Licenses will commence on the Effective Date of this Agreement and will terminate as provided in this Section 4. In its sole and absolute discretion, the Board may revoke and terminate any License upon the Board's determination that one or more of the following (each a "Termination Event") has occurred or is occurring: (a) the Company breaches any of its obligations under this Agreement and such breach is not cured within thirty (30) days from the date of the Board's written notice to Company; (b) the Company or any other party acting for or on behalf of the Company breaches any term or provision of any of the Project Agreements, subject to notice and cure as expressly provided therein; (c) the Company's use of the Public Walkway Area violates any term or provision of this Agreement or applicable law; or (d) the Company's use of the Public Walkway Area harms or endangers public health, safety, or general welfare; or (e) after the completion of the initial construction of the Project, the Board may revoke and terminate the Exclusive License as to any portion of the Exclusive License Areas in which the Company shall have abandoned the uses of such portions the Exclusive License Areas for a period in excess of five (5) years. Following its determination that a Termination Event has occurred, the Board will notify the Company in writing at the Company's address stated above. Upon termination of any License, the Company will remove any and all improvements from the Public Walkway Area as the Board may require, and the Company will not be entitled to reimbursement or compensation in any amount for the value of its improvements to the Public Walkway Area. Except as specifically set forth under this Section 4, the Board may not terminate the Licenses granted under this Agreement.

5. Approvals; Compliance with Laws. The Company understands and agrees that it will secure in its own name and at its own expense all necessary permits and authorizations, other than the Licenses herein granted, if any, needed to conduct its operations associated with the

Project, including commercial operations connected to or making use of the Walkway Plaza. The Company understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to its use of the Walkway Plaza in connection with the Project.

6. Maintenance. At all times during the term of the License, the Company, at its expense, will be solely responsible for maintaining the Walkway Plaza in good, clean, and safe condition and repair, including, without limitation, surface maintenance, snow and ice removal, landscaping, and all other maintenance incidental to the use of the Walkway Plaza for the purposes stated in this Agreement. The Board will not be required to pay or reimburse the Company for any costs incurred by the Company in carrying out the Company's maintenance obligations under this Agreement.

7. Lighting. At all times during the term of the Licenses, the Company will provide adequate lighting of and upon the Walkway Plaza. The Company will bear all costs of installing and maintaining the facilities necessary for the Company to provide adequate lighting of and upon the Walkway Plaza. The adequacy of lighting provided by the Company under this Section 7 will be determined by the Board in its reasonable discretion.

8. Public Access. Except for the Exclusive License Areas, the entirety of the Public Walkway Area (including all portions of the Walkway Plaza situated within the Public Walkway Area), will remain open to the public for pedestrian ingress and egress at all times during the term of the License, unless otherwise determined by the Board, but in all instances subject to the Licenses granted under Sections 2 and 3 of this Agreement. The Company will not obstruct, block, or close any portion of the Public Walkway Area except as expressly provided under Sections 2 and 3 of this Agreement.

9. City Access to Drainage Facilities; Condition of Drainage Facilities; Plaza Restoration Costs. At all times during the term of the Licenses, the Board, the City's Engineering Department, and the Board's agents and contractors will have access to all facilities comprising or serving the French drain system situated beneath the Public Walkway Area, including no less than eight (8) manholes existing as of the Effective Date (collectively, the "Drainage Facilities"). The Company will not damage, destroy, or alter any of the Drainage Facilities during the initial construction of the Project, the initial construction of the Walkway Plaza, or otherwise. Upon the Company's completion of the initial construction of the Project and the Walkway Plaza, and at any time thereafter, the Board's designee may inspect the condition of the Drainage Facilities to determine whether the Drainage Facilities were damaged, destroyed, or altered by the Company's or the Company's contractors' construction, repair, maintenance or operation of the Project or the Walkway Plaza, and the Company will cooperate in any such inspection. In the event any damage, destruction, or alteration of the Drainage Facilities results from the Company's or the Company's contractors' construction, repair, maintenance, or operation of the Project or the Walkway Plaza, the Company, at its sole cost, will repair or replace the affected Drainage Facilities to the Board's reasonable satisfaction. In the event the City or the Board carries out maintenance, repair, or replacement of the Drainage Facilities that results in the damage to or destruction of any part of the Company's improvements to the Walkway Plaza, the Board will restore the damaged or

destroyed improvements to a condition reasonably equivalent to that which existed immediately prior to the damage or destruction caused by the Board or the Board's agents or contractors.

10. Property Taxes. The Company will pay any and all property taxes assessed against the Public Walkway Area for the Company's use thereof during the term of the Licenses.

11. Hazardous Substances. The Company will not, without the prior written consent of the Board, cause or permit, knowingly or unknowingly, any Hazardous Substance to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property. For purposes of this Agreement, "Hazardous Substance" means, without limitation, any substance, chemical, material or waste, whether solid, liquid, gaseous or thermal, (i) the presence of which causes a nuisance or trespass of any kind; (ii) which is regulated by any Environmental Law as defined herein because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including, but not limited to, petroleum and petroleum products, polychlorinated biphenyls, trichloroethylene, trichloroethane and other chlorinated industrial solvents, and a volatile organic compounds; or (iii) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law such as the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §11001 *et seq.*), the Hazardous Substances Transportation Act (49 U.S.C. §1801 *et seq.*), or the Clean Air Act (42 U.S.C. §7401 *et seq.*), or Indiana Environmental Legal Action statute (I.C. § 13-30-0, *et seq.*). For purposes of this Agreement, "Environmental Law" means, as amended and as now in effect, any and all federal, state, local, and foreign statutes, regulations, ordinances, and other provisions having the force or effect of law, all judicial and administrative orders and determinations, all contractual obligations, and all common law concerning public health and safety, worker health and safety, pollution, or protection of the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances, or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise, or radiation.

12. Security. The Company understands and agrees that neither the City nor the Board will be liable for (a) any loss, damage, destruction, or theft of the property of the Company or its agents and/or contractors or (b) any bodily harm or injury that may result from the Company's use of the Public Walkway Area, including all portions of the Walkway Plaza situated within the Public Walkway Area. The Company understands and agrees that it will at all times be solely responsible for the safety and security of all property and persons on the Walkway Plaza.

13. Insurance. The Company will purchase and maintain comprehensive insurance policies as are appropriate for (a) the work being performed with respect to the Walkway Plaza and (b) following construction of the Walkway Plaza improvements, the residential and commercial operations of the Project and any operations taking place on the Walkway Plaza, including, without limitation, a commercial general liability insurance policy in an amount not less

than Five Million Dollars (\$5,000,000.00), inclusive of the limit of any umbrella policy following the form of the commercial general liability policy. All such insurance policies will be maintained in insurance companies rated A- or better by A.M. Best Company, will be countersigned by an agent of the insurer who is a resident of Indiana, and will name the City and the Board as additional insureds. The Company will prove such adequate insurance coverage by submitting to the Board both a certificate of and a copy of each such policy, and the Company will notify the Board of any change in or termination of such coverage.

14. Indemnification. The Company agrees and undertakes to indemnify and hold the City and the Board, and their respective agents, employees, successors, and assigns (the "Indemnified Parties"), harmless from and against any liabilities, losses, costs, damages, or expenses, including attorneys' fees, which the City or the Board may suffer or incur as a result of any claims or actions brought by any person or entity arising out of the License granted herein or the Company's use of or improvement of the Public Walkway Area, except to the extent caused by the City's or the Board's gross negligence or willful misconduct. If any action is brought against one or more of the Indemnified Parties, the Company agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

15. License Only. The Board and the Company mutually acknowledge that this Agreement does not constitute a lease of or an easement in the Public Walkway Area or any other portion of Lot 1 of the Subdivision. This Agreement grants the Company no interest of any kind in Lot 1 of the Subdivision except the Licenses granted above and which Licenses are revocable in accordance with the terms of this Agreement.

16. Entire Agreement. This Agreement embodies the entire agreement between the Board and the Company and supersedes all prior discussions, understandings, or agreements, whether written or oral, between the Board and the Company concerning its subject matter.

17. Parties Benefitted. The Board and the Company acknowledge and agree that this Agreement is for the benefit of the Board and the Company and that there are no third-party beneficiaries of this Agreement.

18. Assignment. The Company may assign this Agreement without the Board's consent to: (a) any assignee that is an affiliated entity controlled by the Company or that the Company has a majority interest in such entity, or (b) any successor of Company resulting from a merger, consolidation, sale or acquisition of the Company or the Company's interest in the Project; provided: (i) the Company shall provide the Board with notice of such assignment; (ii) such assignee expressly assumes and abides by all of the terms, conditions, and obligations hereunder, including all insurance requirements and obligations; and (iii) the Company and such assignee execute an assignment and assumption of this Agreement in form and substance reasonably acceptable to the Board. Except as set forth in the preceding sentence, the Company may not assign this Agreement without first obtaining the Board's written consent to such assignment. In the event the Company seeks the Board's consent to an assignment of this Agreement, the Company will provide to the Board any and all information reasonably requested by the Board concerning the proposed assignee's identity, corporate existence, financial standing, or other matters relevant to the Board's consideration.

19. Authority; Counterparts; Signatures. Each undersigned person signing on behalf of his or her respective Party certifies that he or she is duly authorized to bind his or her respective Party to the terms of this Agreement. This Agreement may be separately executed in counterparts by the Board and the Company, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

20. Amendment. This Agreement may be amended or modified only by a written instrument signed by an authorized representative of each Party.

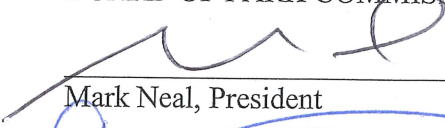
21. Interpretation; Governing Law. Both Parties having participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this Agreement be presumptively resolved, against either Party. This Agreement will be construed in accordance with and governed by the laws of the State of Indiana.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have each executed this License Agreement For Walkway Plaza At Berlin Place to be effective as of the Effective Date stated above.

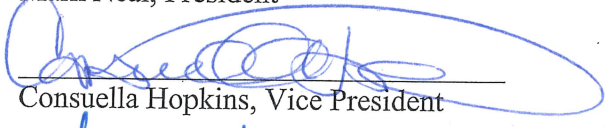
CITY OF SOUTH BEND
BOARD OF PARK COMMISSIONERS


HEADING FOR HOME LLC

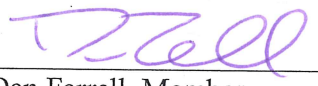


Mark Neal, President

Andrew T. Berlin, Manager



Consuella Hopkins, Vice President

Aimee Buccellato, Member

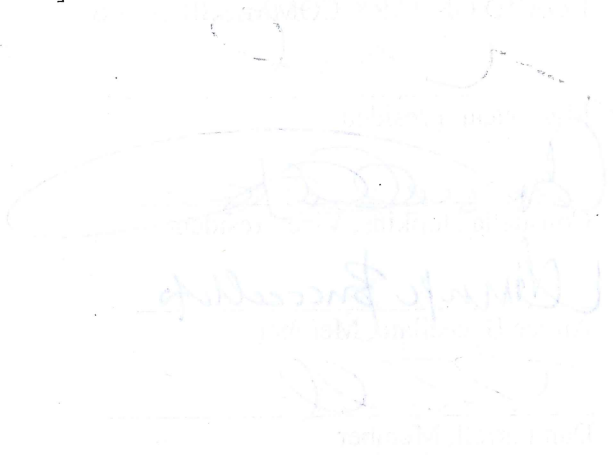
Dan Farrell, Member

(Signature Page to License Agreement For Walkway Plaza At Berlin Place)

EXHIBIT A

Coveleski Park Minor Subdivision

[See attached.]



1503430

RECORDED AS PRESENTED ON
02/17/2015 09:52:05 AM
PHILLIP B. DITSCHOFF
ST. JOSEPH COUNTY
RECORDER
FEE: \$20.00

DEPARTMENT OF REVENUE

NOTARY PUBLIC - STATE OF INDIANA
 My commission expires on 11/10/2014
 My commission number is 110000000000000000000000

NOTARY PUBLIC, RESIDING IN St. Joseph, COUNTY
 MY COMMISSION EXPIRES September 23, 2017
 AGED BY St. Joseph, COUNTY, Indiana

DEPT. OF COMMUNITY INVESTMENT
 227 W. JEFFERSON, STE 1400S
 SOUTH BEND, IN 46601

CITY OF SOUTH BEND
 227 W. JEFFERSON, IN 46601

SCALE: 1" = 20'
 DATE: 02/17/2015
 BY: PHILLIP B. DITSCHOFF
 COUNTY: ST. JOSEPH
 PLAT: COVELESKI PARK MINOR SUBDIVISION
 FILE NO: 1503430
 SEE 11/17/2015 09:52:05 AM

1503430

RECORDED AS PRESENTED ON
02/17/2015 09:52:05 AM
PHILLIP B. DITSCHOFF
ST. JOSEPH COUNTY
RECORDER
FEE: \$20.00

DEPARTMENT OF REVENUE

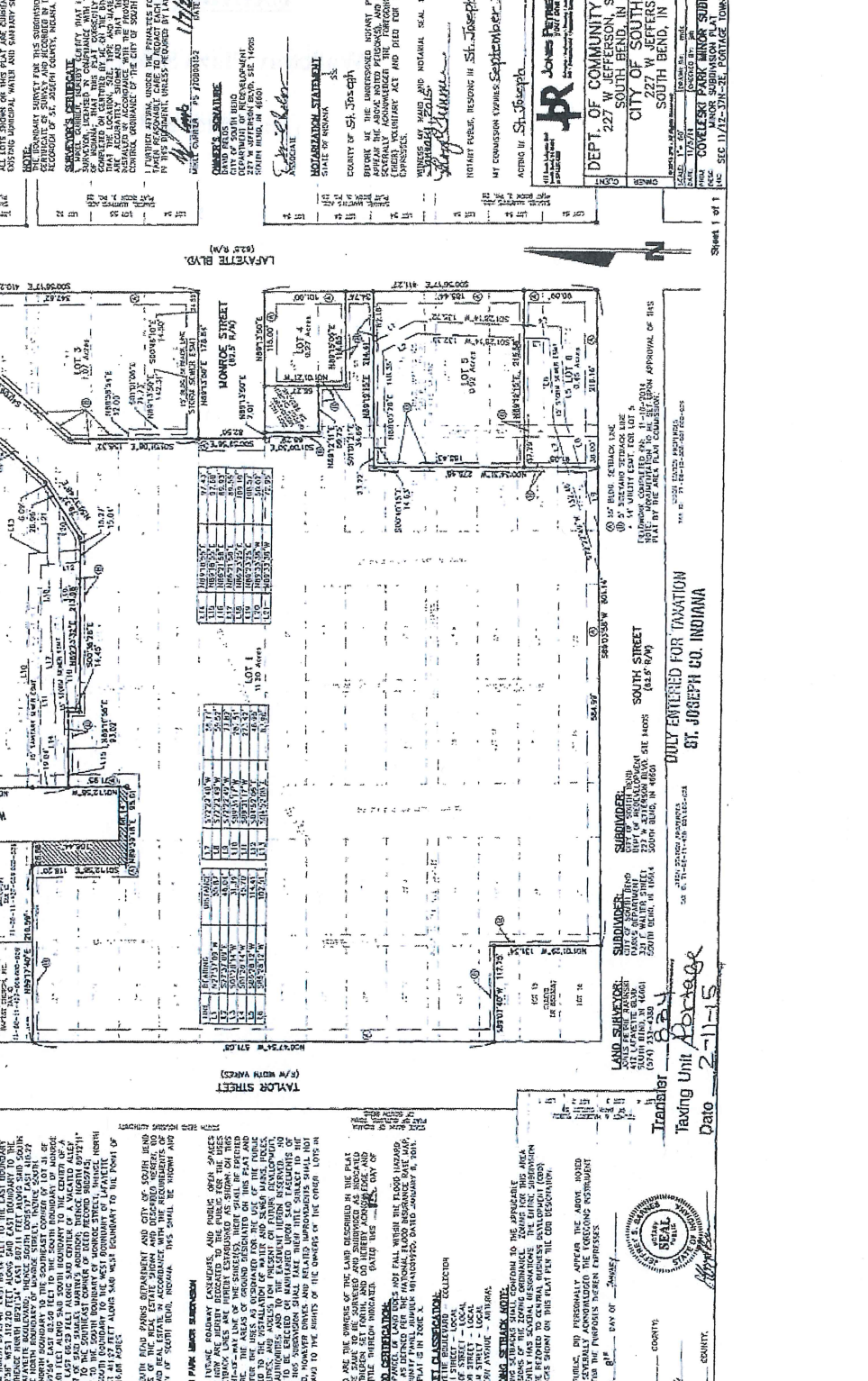
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 SOUTH BEND, IN 46601

CITY OF SOUTH BEND
 227 W. JEFFERSON, IN 46601

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 DATE: 02/17/2015
 BY: PHILLIP B. DITSCHOFF
 COUNTY: ST. JOSEPH
 PLAT: COVELESKI PARK MINOR SUBDIVISION
 FILE NO: 1503430
 SEE 11/17/2015 09:52:05 AM



**LEGAL DESCRIPTION OF PART 11 AND SOUTHWEST QUARTER SECTION 12, TOWNSHIP 37
 (RE-SUBDIVISION OF LOTS 1-14 OF BLOCK 7, LOTS 1-16 OF BLOCK 8, LOTS
 1-14 OF BLOCK 10, LOTS 24-39, 41-49, 51-59, AND LOTS 60-66, A
 PORTION OF LOT 67, AND LOTS 68-72 OF SAMUEL MARTIN'S ADDITION TO THE CITY OF SOUTH BEND)**

**SUBDIVISION OF SOUTH BEND
 CITY OF SOUTH BEND
 227 W. JEFFERSON, STE 1400S
 SOUTH BEND, IN 46601**

PLAT BY THE ARCHITECTURAL

DEPT. OF COMMUNITY INVESTMENT

NOTARY PUBLIC, RESIDING IN St. Joseph, COUNTY, Indiana

MY COMMISSION EXPIRES September 23, 2017

AGED BY St. Joseph, COUNTY, Indiana

DEPT. OF COMMUNITY INVESTMENT

227 W. JEFFERSON, STE 1400S

CITY OF SOUTH BEND

227 W. JEFFERSON, IN 46601

SCALE: 1" = 20'
 DATE: 02/17/2015
 BY: PHILLIP B. DITSCHOFF
 COUNTY: ST. JOSEPH
 PLAT: COVELESKI PARK MINOR SUBDIVISION
 FILE NO: 1503430
 SEE 11/17/2015 09:52:05 AM

1503430

RECORDED AS PRESENTED ON
02/17/2015 09:52:05 AM
PHILLIP B. DITSCHOFF
ST. JOSEPH COUNTY
RECORDER
FEE: \$20.00

DEPARTMENT OF REVENUE

NOTARY PUBLIC - STATE OF INDIANA
 My commission expires on 11/10/2014
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 MY COMMISSION EXPIRES September 23, 2017
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DEPT. OF COMMUNITY INVESTMENT
 227 W. JEFFERSON, STE 1400S
 SOUTH BEND, IN 46601

CITY OF SOUTH BEND
 227 W. JEFFERSON, IN 46601

SCALE: 1" = 20'
 DATE: 02/17/2015
 BY: PHILLIP B. DITSCHOFF
 COUNTY: ST. JOSEPH
 PLAT: COVELESKI PARK MINOR SUBDIVISION
 FILE NO: 1503430
 SEE 11/17/2015 09:52:05 AM

EXHIBIT B

Walkway Plaza Site Plan

[See attached.]

WALKWAY KEYNOTES

- 1. WALKWAY FADA
- 2. EXCLUSIVE LICENSE AREA
- 3. PUBLIC WALKWAY



333 N. PENNSYLVANIA STREET, SUITE 500
INDIANAPOLIS, INDIANA 46204



7283 Devonshire Station | Indianapolis, Indiana 46226
TEL: 317.327.0000
WWW.STRUCTUREPOINT.COM

PROTECTING
DAYDREAMING
DISCOVERY

404 LAFAYETTE LANSIE STREET
INDIANAPOLIS, INDIANA 46204

THE IVY AT BERLIN
PLACE

SOUTHWEST CORNER OF
WESTERN AVENUE &
LAFAYETTE BOULEVARD

BUILDING 1 : 408 W. WESTERN
BUILDING 2 : 414 W. WESTERN
BUILDING 3 : 415 S. LAFAYETTE
BUILDING 4 : 427 S. LAFAYETTE
SOUTH BEND, IN 46601

NO DIGGING OR CONSTRUCTION
ON THIS LOT

CERTIFIED BY

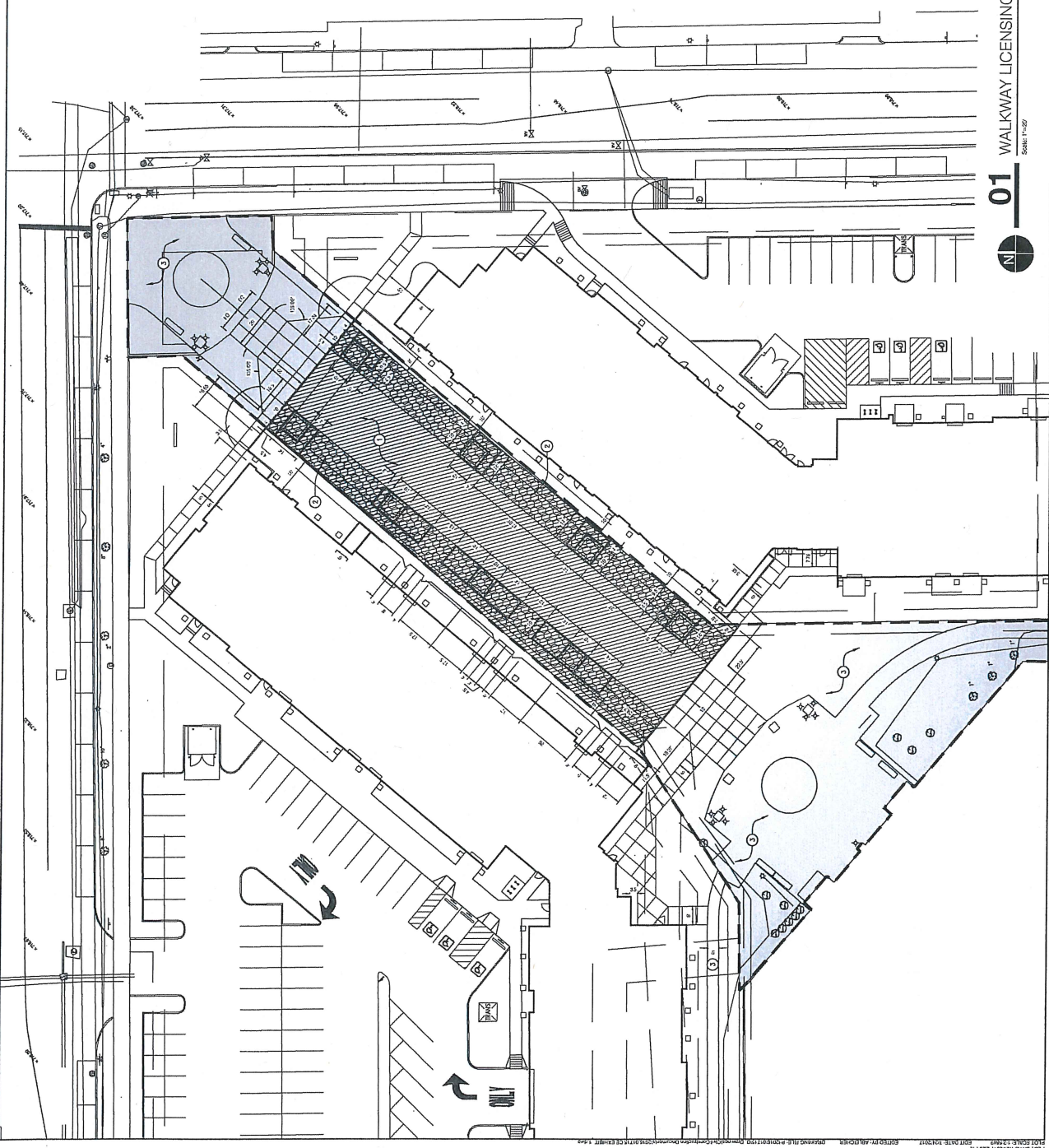
ISSUANCE INDEX
DATE
PROJECT
PROJECT PHASE
BID SET

REVISION SCHEDULE	
NO.	DESCRIPTION

Project Number 2016.0715

SHEET:

EXHIBIT A



01 WALKWAY LICENSING
SCALE: 1"=20'

