

**LEASE AND MANAGEMENT AGREEMENT
BY AND BETWEEN
THE BOARD OF PARK COMMISSIONERS FOR THE CITY OF SOUTH BEND
AND
THE INDIANA GOLF FOUNDATION d/b/a FIRST TEE --INDIANA
INMICHIANA**

THIS LEASE AGREEMENT is made effective the second day of October 2020 (“Effective Date”) by and between The City of South Bend, Indiana Venues, Parks & Arts Department, by and through its Board of Park Commissioners (the “City”), having its offices located at 219 S. St. Louis Blvd., South Bend, Indiana 46617 and The Indiana Golf Foundation, an Indiana non-profit corporation operating as First Tee--Indiana in Michianan (“IGF”), having its offices located at 2625 Hurricane Road, Franklin, Indiana 46131.

RECITALS

WHEREAS, the Board of Park Commissioners for the City of South (“City”) is authorized under I.C. 36-10-4 to administer, improve and lease park property for the City of South Bend; and

WHEREAS, the City, through its Board of Park Commissioners, is the owner of certain real property and improvements located within the City of South Bend, Indiana and commonly known as Studebaker Golf Course, which property is more specifically described at **EXHIBIT 1** attached hereto and incorporated herein (“Premises”); and

WHEREAS, IGF is a not-for-profit corporation organized under the laws of the State of Indiana whose primary mission to bring character education through the game of golf to young people; and

WHEREAS, the City and IGF have been working together to promote and support golf education in South Bend since 2017, by and through a certain Facility Use Agreement for a First Tee Center at Studebaker Golf Course, effective February 20, 2017;

WHEREAS the Facility Use Agreement has been successful for the City, IGF and the community at large;

WHEREAS, the City and IGF continue to prioritize youth golf education as valuable tool to enhance recreational opportunities and education in the community; and

WHEREAS, the City and IGF are committed to the continued and ongoing development, support and enrichment of youth golf education and share the goal of providing a top-flight golf experience for the youth of all South Bend neighborhood communities; especially underserved South Bend communities; and

WHEREAS, the City has determined that it is in the best interest of City and the citizens of South Bend to enter into this agreement with IGF related to the lease to it the Premises for the period of twenty-five (25) years under the terms and conditions set forth in this Lease Agreement (“Agreement”).

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

ARTICLE 1.0 RECITALS; OTHER AGREEMENTS; DEFINITIONS

1.1 Recitals. The Recitals set forth above are incorporated and made part of this Lease and Management Agreement for all purposes.

1.2 Definitions. Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein and the following terms are more specifically set forth below:

<i>Board</i>	The City of South Bend, Board of Park Commissioners
<i>Capital Project</i>	New construction of a building or facility as well as the expansion, renovation, or replacement of an existing facility or facilities.
<i>City</i>	The City of South Bend, Indiana
<i>Effective Date</i>	October 2, 2020
<i>Expiration Date</i>	October 1, 2045
<i>Term</i>	25 years
<i>Termination</i>	October 1, 2045
<i>Studebaker Golf Course</i>	718 E. Calvert St., South Bend, IN 46613

ARTICLE 2.0 LEASE OF PREMISES

2.1 Premises. For the duration of this Agreement, City hereby leases to IGF and IGF hereby leases from the City the approximately 3.16 acres of real property and improvements which constitute a portion of the Studebaker Golf Course located at 718 E. Calvert St., South Bend, IN 46613 and more particularly described on **EXHIBIT 1** attached hereto and incorporated herein (“Premises”). The Premises and the equipment, buildings, fixtures, and furnishings for the Studebaker Golf Course are owned by the City shall be used exclusively by IGF to provide golf activities and offer golf education opportunities to the community. IGF shall not use or permit the Premises or aforementioned equipment, buildings, fixtures, or furnishings to be used for any other purpose without prior written consent of City.

2.3 Rent. During the Term of this Agreement, IGF shall pay to City an annual lease payment for the Premises and any City owned Personal Property of One Dollar (\$1.00) due and payable on or before January 1 during each year the Agreement is in effect.

2.4 Delivery of Possession, Lease Term. IGF shall have and hold the Premises commencing on the second day of October 2020 (“Term”). The parties agree to meet annually on a mutually agreeable date during the term of the Agreement to discuss any proposed revisions to the Agreement, changes in the allocation of funds or other budgetary concerns.

Unless an extension agreement is negotiated and signed by the parties, this Agreement will expire upon the earlier of: (1) 11:59 p.m. on October 1, 2045 (“Expiration Date”); or (2) 180 days after written notice of either party of its intent to terminate this Agreement (“Termination Date”). Should either party give notice of its intent to terminate, it agrees to work in good faith with the other in relation to the property’s future use, as permissible under governing laws, regulations, ordinances and rules.

2.5 City’s Right of Entry. The City or its designated representative may enter the Premises at any mutually agreeable time for the purpose of inspecting or maintaining the Premises. In the event of an emergency, the City or its representatives may enter the Premises without consent or agreement.

2.6 First Option to Purchase. In the event the City elects to sell the Premises during the initial or any renewal term of this Agreement, the City grants IGF an exclusive first option to purchase (“First Option to Purchase”). Consideration of the depreciated value of any IGF financed and constructed capital improvements shall be taken into consideration during negotiations.

ARTICLE 3.0 CAPITAL IMPROVEMENTS; CAPITAL CONTRIBUTIONS;
MASTER PLAN

3.1 IGF Capital Improvement Responsibility. IGF is hereby empowered to develop the premises as it deems appropriate and in the best interest of the public. In furtherance thereof, IGF may construct capital improvements and major alterations to the Studebaker Golf Course buildings and grounds consistent with the plans outlined in **EXHIBIT 2** of this Agreement, incorporated herein by reference and attachment.

3.2 Requirement of City Approval for Certain Capital Improvements. Except as consistent with and provided for in **EXHIBIT 2**, IGF shall not make any expenditure of funds for any single capital improvement or alteration to the Premises in excess of Ten Thousand Dollars (\$10,000) without the prior approval of the City through the Park Board. IGF shall be responsible for all funding associated with such alterations and capital improvements and shall obtain any required permits for such alterations, and comply with all state, federal and local building requirements and City Engineering standards. IGF shall maintain records of all capital projects and, upon request of the City, provide a report of all capital projects to the City.

3.3 Control and Ownership of Capital Project. IGF shall be the contracting party for any capital projects or improvements to the Premises. The parties recognize and acknowledge that the provisions of Indiana Code § 36-1-12-0.1, *et seq.* do not apply to projects for which IGF is the contracting party because IGF is not a political subdivision or an agency of a political subdivision. The parties further recognize and acknowledge that this Agreement is a lease agreement with a political subdivision under Indiana Code § 36-10-4 *et seq.* Any capital project that results in the erection or remodel of a fixture shall become the property of City without the requirement of reimbursement to IGF.

3.4 Warranty. IGF warrants that any capital improvements to the Premises furnished by it shall be performed in good and workmanlike manner. IGF further warrants that the improvements shall be free of any defect in equipment, material, design or workmanship. Upon receipt of notice from the City, and following a reasonable investigation as to causation, IGF agrees to remedy any failure to conform, or any defect in the improvements caused by the negligence of IGF or its contractor.

3.5 Bond. IGF agrees to require its contractor, for an Capital Improvement that it conducts on the Premises during the term of this Agreement, a performance bond in an amount no less than \$700,000 for the term of the construction, provide evidence of the same to the City.

ARTICLE 4.0 USE AND MAINTENANCE

4.1 Use of the Premises. IGF acknowledges and agrees that the Premises shall only be used for educational programs consistent with the purposes and intent of this Agreement, as well as the occasional use of the Premises for entertainment, fundraising or similar uses as a source of revenue for the IGF, as long as such activities and uses are consistent with governing laws, ordinances, rules and regulations.

IGF shall use the Premises in a careful and proper manner in compliance with all applicable laws, ordinances, rules, and regulations. IGF shall not cause or permit toxic or hazardous substances to be brought, kept, or used in or about the Premises without the prior written consent of the City.

4.2 Maintenance of the Premises. The Parties mutually agree that the Premises are an asset of the City. For purposes of this Agreement, Studebaker Golf Course shall be defined as all facilities, structures, building, equipment, fixtures, appliances, grounds, driveways, paths, walkways, parking lots and fencing on or around the Premises and any and all landscaping in, on or around same.

During the term of this Agreement and any extension of its term, IGF will be responsible for all routine maintenance and day-to-day maintenance, including but not limited to, janitorial services, window washing, general upkeep, repair, and replacement for the Premises. Any work done with regard to these particular issues will be conducted in a timely and workmanlike manner. IGF shall be responsible for snow plowing and snow shoveling of the Premises as described herein, and shall be responsible for maintaining the Premises free from trash, litter, and debris. Any damage caused by IGF, its employees, agents, contractors and vendors shall be IGF's sole responsibility and at IGF's sole expense. In the event that it becomes necessary for the City to undertake such activities, IGF shall reimburse the City for all expenses and associated costs.

4.3 Parking Lot – Studebaker Golf Course. There exists a parking area owned by the City of South Bend that is located within Studebaker Park ("Park") and adjacent to the Golf Course ("Parking Lot"). The City shall maintain the Parking Lot in good repair and in a safe and structurally sound condition and shall be responsible for snowplowing in a manner consistent with the City's usual and customary practice for public facilities.

ARTICLE 5. UTILITIES

5.1 Natural Gas, Electricity and Telephone Service. The City shall be responsible for providing all natural gas, electricity, and telephone service reasonably necessary and appropriate to the continued operation of the golf course, at the City's sole cost and expense.

5.2 Water/Sewer. The City shall be responsible for providing water and sewer service reasonably necessary and appropriate for the continued operation of the golf course at the City's sole cost and expense.

ARTICLE 6.0 INSURANCE

6.1 Responsibility for Insurance Coverage. During the Term of this Agreement, IGF shall, at IGF's expense, procure and keep in force at all times insurance written by an insurer licensed to conduct business within the State of Indiana, insuring IGF. IGF shall procure the following insurance coverage, and shall provide evidence of same to the City:

Commercial General Liability. Coverage shall have minimum limits for bodily injury of \$1,000,000 per occurrence, combined single limit for bodily injury liability and property damage liability with an umbrella coverage limit of \$5,000,000. The City shall be listed as an additional named insured under the policy. IGF shall provide the City with a Certificate of Insurance evidencing the same.

Workers' Compensation. Insurance covering all employees with statutory limits in compliance with applicable State and Federal laws.

Motor Vehicle Insurance. Vehicles owned or used by IGF for Studebaker Golf Course business under this Agreement shall at all times be insured against loss or damage resulting to persons with minimum liability limits of \$500,000 per occurrence, \$1,000,000 aggregate, and against loss or damage resulting to persons with minimum liability limits of \$500,000 per occurrence, \$1,000,000 aggregate, and against loss or damage to property with minimum liability of \$100,000 per occurrence.

Property Insurance. City shall provide property insurance coverage for all its owned assets, including the capital improvements to the Premises, including fixtures. City may elect to be self-insured.

ARTICLE 7.0 NAMING RIGHTS PROVISION

7.1 Naming Provision. The name of the Studebaker Golf Course shall remain "Studebaker Golf Course" during the term of this Agreement, unless both parties mutually agree in writing to a name change.

Naming Rights. IGF may grant naming rights within any new improvements IGF constructs on the Premises, with the prior consent and approval of the City. The City shall not unreasonably withhold consent and approval. No naming rights may be granted following a notice of termination by either party without the consent and approval of the City.

ARTICLE 8.0 **DEFAULT; TERMINATION OF AGREEMENT WAIVER OF**
JURY TRIAL; ATTORNEYS FEES

8.1 Events of Default; Remedies; Attorney Fees Upon Default. The following occurrences are “Events of Default”:

- (a) IGF vacates or abandons the Premises or IGF vacates or abandons the Premises; or the City vacates or abandons the Premises ; or
- (b) This Lease Agreement or the Premises or any part of the Premises are taken upon execution or by other process of law directed against IGF or are taken upon or subjected to any attachment by any creditor of IGF or claimant against IGF and the attachment is not discharged within fifteen (15) days; or
- (c) IGF Tee or its parent organization files a petition in bankruptcy or insolvency under the bankruptcy laws of the United States, or involuntary proceedings under any bankruptcy or insolvency act for the dissolution of IGF are instituted against IGF, or a receiver or trustee is appointed against all or substantially all of IGF’s property and proceedings are not dismissed within ninety (90) days; or
- (d) City files a petition for bankruptcy or insolvency under the bankruptcy laws of the United States, or involuntary proceedings under any bankruptcy or insolvency act are instituted against the City, or a receiver or trustee is appointed against all or substantially all of City’s property and proceedings are not dismissed within ninety (90) days; or
- (e) Either City or IGF materially breaches any of the other agreements, terms, or conditions of this Agreement and the breach continues for a period for sixty (60) days after notice by City or IGF to the breaching party.

If any one or more Events of Default set forth above occurs by IGF as the breaching party, then the City may, at the City’s sole option: (i) re-enter and repossess the Premises in accordance with all applicable law; (ii) sue for any damages sustained; or (iii) terminate this Agreement. Upon such material default by IGF, the City shall have any or all of the above remedies and all other remedies at law or in equity, all of which amounts owing by IGF shall be paid upon demand.

If any one or more Events of Default set forth above occurs by City as the breaching party, then IGF may, at IGF’s sole option: (i) sue for any damages sustained,; or (ii) terminate this Agreement. Upon such material default by City, IGF shall have all of the above remedies and all

other remedies at law, in equity or given by this Agreement, all of which amounts owing by City shall be paid upon demand.

8.2 Notice of Default. If either party fail to comply with or perform any conditions or covenants under this Agreement, and such failure continues for more than sixty (60) days after written notice thereof by the other, a default shall occur, and the non-defaulting party shall have the option to terminate this Agreement by giving the defaulting party a written notice of termination specifying a date upon which this Agreement shall terminate, provided, however, that if the defaulted party is pursuing a cure for the default in good faith, then the non-defaulting party shall give due consideration to the granting of a reasonable extension of time to complete the cure of the default, and, provided, further, that in any event the non-defaulting party may, in its sole discretion, grant an extension of time to cure the default. In the event of a default, either party may seek all other remedies provided for hereunder or now or hereafter existing in law or in equity. Election of any of these remedies by either party shall not constitute a waiver of the right to pursue other available remedies. No waiver of a default shall operate as a waiver of any other default or of the same default on another occasion.

8.3 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 knowingly, intentionally, and voluntarily 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 arising against all parties to such actions and proceedings.

8.4 Attorney Fees. In the event of any litigation or mediation between the parties, regarding an alleged breach of this Agreement, neither party shall be entitled to attorney fees.

ARTICLE 9.0 INDEMNIFICATION

9.1 IGF's Duty to Indemnify. IGF agrees to hold harmless, indemnify, and defend the City, its directors, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs), all the foregoing being a "Claim" arising out an injury (whether mental or corporeal) to persons, including death, or damage to property, with respect to or incidental to IGF's performance of this Agreement, other than those Claims arising out of the gross negligence or willful misconduct of the City, its directors, officers or employees.

9.2 City's Duty to Indemnify. City agrees to hold harmless, indemnify, and defend IGF, its directors, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs), all the foregoing being a "Claim" arising out an injury (whether mental or corporeal) to persons, including death, or damage to property, with respect to or incidental to City's performance of this Agreement and its ownership and operation of the Studebaker Golf Course, other than those Claims arising out of the gross negligence or willful misconduct of IGF, its directors, officers or employees. Nothing in this Agreement shall be construed or interpreted as a waiver of the City's right to immunity or other such protections afforded under Indiana law including the Indiana Tort Claims Act, IC § 34-13-3, as amended from time-to-time.

ARTICLE 10.0 NOTICES

10.1 Notices. All notices from City to IGF shall be deemed duly served if mailed, postage prepaid, by registered or certified U.S. Mail to IGF at the following address:

Indiana Golf Foundation
PO Box 516
Franklin, IN 46131
Attn: Mike David, Executive Director

All notices from IGF to City shall be deemed duly served if mailed, postage prepaid, by registered or certified U.S. Mail to City at the following address:

Board of Park Commissioners
City of South Bend
201 S. St. Louis Blvd.,
South Bend, IN 46617
Attn: Executive Director, Venues Parks and Arts

With a Copy to:
City of South Bend Department of Law
227 West Jefferson
County-City Building, Ste. 1200-South
South Bend, Indiana 46601
Attn: Corporation Counsel

ARTICLE 11.0 MISCELLANEOUS PROVISIONS

11.1 IGF Tax Exempt Status. IGF is a non-profit corporation, duly incorporated, validly existing and in good standing under the laws of the State of Indiana. IGF shall, at all times during the term of this Agreement, maintain its tax-exempt status.

11.2 Authority. City and IGF confirm to one another through the signatures to this Agreement that each has full power and authority to enter into this Agreement. The action contemplated by this Agreement has been duly authorized by all actions necessary for City and IGF. No other action is necessary on the part of either City or IGF to authorize execution of this Agreement.

11.3 No Liens. IGF will not suffer, or through its actions, cause to be filed upon the Studebaker Golf Course Premises any lien or encumbrance of any kind.

11.4 Non-Discriminatory Policy. There shall be no discrimination as to race, gender, religion, color, creed, sexual orientation, or national origin, against any worker, employee or applicant or any member of the public in the operations referred to by this Agreement. Further,

there shall be no discrimination regarding any use, service, maintenance or operation of the premises, nor will IGF allow any subcontractors to so discriminate.

11.6 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana. Any legal action arising out of the terms or performance of this Agreement shall be first submitted to mediation before a mediator agreeable to each Party. The Parties agree to split the cost of such mediator on a 50/50 basis. Should mediation not successfully resolve the issues(s) between the Parties, any legal action formally brought by one Party against the other shall be initiated in the State Courts of St. Joseph County, Indiana.

11.7 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation is held to be invalid, void, or otherwise unenforceable, the City, in its sole discretion, may terminate this Agreement by providing written notice to IGF in conformance with ARTICLE 8.0.

11.8 Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out the purposes and intents of this Agreement, and to provide and secure to the other party the full and complete enjoyment of its rights and privileges provided in this Agreement.

11.10 Non-Collusion and Acceptance. The undersigned person(s) acting on behalf of IGF, affirms, subject to the penalties for perjury, that he/she is the properly authorized representative, agent, member or officer of IGF, that he/she has not, nor has any other member, employee, representative, agent or officer of IGF, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

11.12 Entire Agreement. This Agreement contains the sole and entire Agreement of the parties and no prior or contemporaneous oral or written representation or agreement between the parties shall have any legal effect. No provision in this Agreement shall be waived unless such waiver is expressly made in writing and signed by an authorized representative of each Party.

This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of the Agreement. This Agreement may not be amended or modified except by written agreement executed by the Parties, their respective successors, permitted assigns or legal representatives. This Agreement and the rights to payment hereunder shall not be assignable or transferrable to any other party without the prior written consent of the other party hereto.

11.13 Counterparts. This Agreement may be executed in counterparts, all of which shall be deemed originals.

11.14 Headings. All headings in this Agreement are for convenience only and shall not affect the interpretation or enforcement of this Agreement in any way whatsoever. Words used in the singular shall include the plural and words used in the masculine shall include the feminine in all cases where such would apply.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties, through their duly authorized representatives, have caused this Lease Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Lease Agreement and do, by their respective signatures hereby agree to its terms.

**INDIANA GOLF FOUNDATION dba
FIRST TEE OF INDIANA-MICHIANA**

By: _____

Print Name: _____

Title: _____

Date: _____

SOUTH BEND BOARD OF PARK COMMISSIONERS

Mark Neal, President

Consuela Hopkins, Vice-President

Aimee Buccellato, Member

Dan Farrell, Member

Attest this _____ day of _____, 20__.

Eva Ennis

EXHIBIT 1.

Legal Description and Depiction of Studebaker Golf Course

Legal Description:

Part of the South Half of Section 13, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana and being that 3.16 acre parcel described by Lang, Feeney & Associates, Inc. Terance D. Lang, Indiana Professional Surveyor No. 80040523 and shown on an exhibit of that description certified on September 30, 2020 as No. 28012, being more particularly described as follows:

Commencing at the southeasterly corner of Lot 2 as shown on the recorded plat of Riley High School Minor Subdivision in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 9638147; thence for the next two courses along the south line of said Lot 2; the first being South 79°09'02" West, a distance of 48.12 feet; thence along a curve to the right having a radius of 316.64 feet, a central angle of 06°13'37" and limited in length by a chord which bears South 82°09'31" West, a distance of 34.40 feet to the point of beginning; thence South 01°17'05" West, a distance of 275.29 feet; thence South 90°00'00" West, a distance of 524.74 feet; thence North 00°00'00" East, a distance of 226.28 feet to a point on said south line of Lot 2; thence for the next five courses along said south line; the first course being along a curve to the left having a radius of 316.48 feet, a central angle of 32°20'17" and limited in length by a chord which bears North 83°59'23" East, a distance of 176.26 feet; thence North 67°49'15" East, a distance of 52.70 feet; thence along a curve to the right having a radius of 351.97 feet a central angle of 34°30'02" and limited in length by a chord which bears North 85°04'15" East, a distance of 208.75 feet; thence South 77°40'45" East, a distance of 5.30 feet; thence along a curve to the left having a radius of 316.64 feet and limited in length by a chord which bears South 86°12'12" East, a distance of 93.87 feet to the point of beginning. Subject to the legal rights of a public highway, any easements, covenants or restrictions of record.

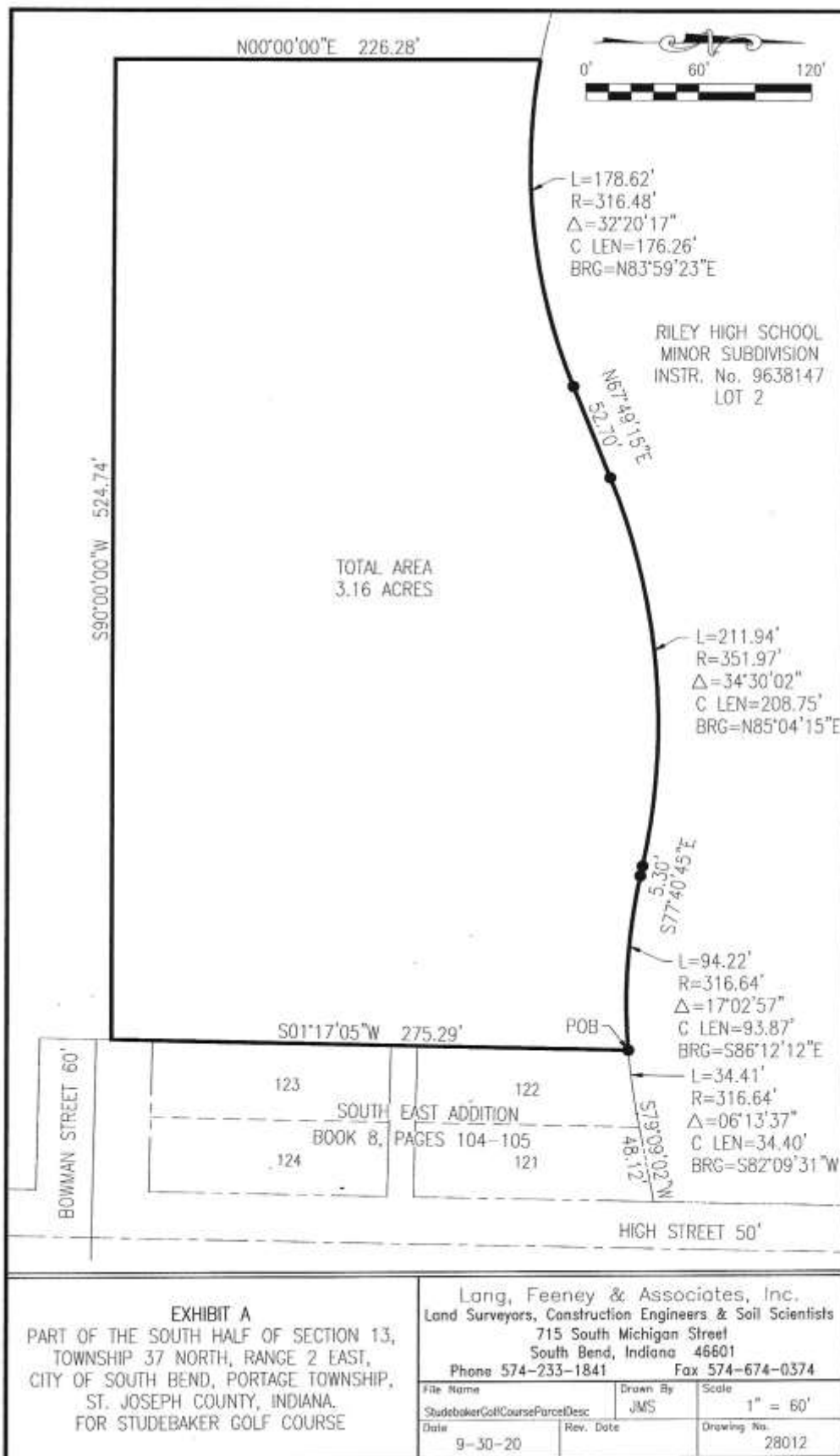


EXHIBIT 2.

Description and Depiction of Capital Improvement