

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

This Fourth Amendment to Development Agreement (this “Fourth Amendment”), is effective as of March 14, 2019 (the “Fourth Amendment 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 Parties entered into that certain Development Agreement dated August 25, 2016, as amended by the First Amendment, dated June 15, 2017, the Second Amendment, dated April 26, 2018, and the Third Amendment, dated June 28, 2018 (collectively, the “Development Agreement”), concerning the Developer’s development of the Developer Property as a mixed-use project including, without limitation, residential, commercial, and retail/hospitality uses.

B. In accordance with and subject to the terms of the Development Agreement, the Commission agreed to expend no more than Four Million Ninety-Three Thousand Dollars (\$4,093,000.00) (the “Funding Amount”) to complete certain Local Public Improvements in support of the Developer’s construction on the Developer’s Property.

C. Pursuant to Section 5.2(c) of the Development Agreement, bids were received for the Local Public Improvements by the City of South Bend Board of Public Works (the “Board”), as the Commission’s agent, and the winning bid exceeded the Funding Amount.

D. At its public meeting on June 26, 2018, the Board conditionally awarded the contract for the Local Public Improvements (the “LPI Contract”) upon the Commission’s increase of the Funding Amount by Forty-Five Thousand Dollars (\$45,000.00) (the “Funding Amount Increase”).

E. The Commission increased the Funding Amount to accommodate the LPI Contract; however, the actual Funding Amount Increase should have been Ninety-Five Thousand Dollars (\$95,000), which error the Parties desire to correct in accordance with the terms of the Development Agreement and as set forth herein.

F. Additionally, the Parties desire to extend the Mandatory Project Completion Date to accommodate continued work on the Project.

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

1. In Section 1.3 of the Development Agreement, which defines the Commission’s Funding Amount, the term “Four Million Ninety-Three Thousand Dollars (\$4,093,000.00)” shall be deleted and replaced with the term “Four Million One Hundred Forty-Three Thousand Dollars (4,143,000.00).”

2. Section 4.5 of the Development Agreement shall be deleted in its entirety and replaced with the following:

The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement on or before June 30, 2019 (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.

3. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of completing the Local Public Improvements, including the Funding Amount Increase, which amount shall be paid to the Commission within five (5) business days of the Fourth Amendment Effective Date.

4. Unless expressly modified by this Fourth Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

5. Capitalized terms used in this Fourth Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.

6. The recitals set forth above are hereby incorporated into the operative provisions of this Fourth Amendment.

7. This Fourth Amendment will be governed and construed in accordance with the laws of the State of Indiana.

8. This Fourth Amendment 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.

SIGNATURE PAGE FOLLOWS

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

COMMISSION:

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

DEVELOPER:

HEADING FOR HOME LLC,
a Delaware limited liability company

By: _____
Name: Andrew Berlin
Title: Manager