

Resolution No. 2017-10

Resolution Concerning Speedway Rosner, LLC

WHEREAS, the Town of Speedway, Indiana ("Town of Speedway") is a municipality duly organized and existing pursuant to the laws of the State of Indiana.

WHEREAS, the Speedway Redevelopment Commission (the "SRC") is a redevelopment commission duly organized and existing pursuant to the laws of the State of Indiana.

WHEREAS, on December 15, 2014 the SRC and Speedway Rosner, LLC ("Speedway Rosner") entered into a Purchase and Economic Development Agreement (the "Economic Development Agreement").

WHEREAS, pursuant to the Economic Development Agreement, Speedway Rosner agreed to acquire certain real estate on Main Street in the Town of Speedway and construct improvements on the real estate.

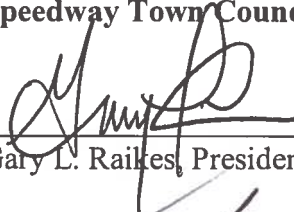
WHEREAS, the Town of Speedway and the SRC have learned that a portion of the improvements constructed by Speedway Rosner encroach on real estate owned by the Town of Speedway (the "Encroachment").

NOW, THEREFORE, BE IT RESOLVED that the Town of Speedway hereby agrees as follows:

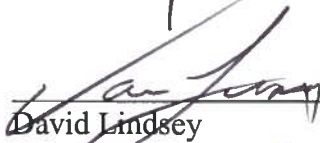
1. The SRC and the Town Speedway have worked in cooperation with Speedway Rosner to investigate the concerns arising from and relating to the Encroachment.
2. The SRC, the Town of Speedway, and Speedway Rosner, with the assistance of their respective legal counsel, have documented (a) scope of the Encroachment, and (b) the rights and responsibilities of the SRC, the Town of Speedway, and Speedway Rosner relating to the Encroachment.
3. The rights and responsibilities of the SRC, the Town of Speedway, and Speedway Rosner relating to the Encroachment are set forth in the document titled License to Encroach attached hereto as Exhibit 1.
4. The Town of Speedway hereby authorizes and approves the License to Encroach in the form attached hereto as Exhibit 1 and further authorizes the President of the Town of Speedway Town Council to execute and deliver the License to Encroach.

ADOPTED by a vote of 5 to 0 at a properly convened public meeting of the
Speedway Town Council this 8th day of May, 2017.

Speedway Town Council



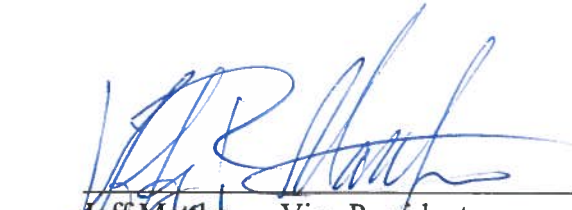
Gary L. Raikes, President



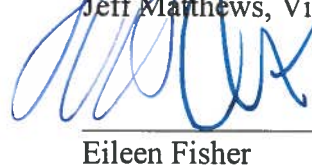
David Lindsey



Jason DeLisle

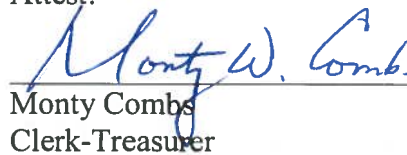


Jeff Matthews, Vice President



Eileen Fisher

Attest:



Monty Combs
Clerk-Treasurer

3194988/23326-39

EXHIBIT 1

LICENSE TO ENCROACH

This License to Encroach (the "License") is made this ____ day of May, 2017, and is by and between Town of Speedway, Indiana (the "Town"), the Speedway Redevelopment Commission (the "SRC"), and Speedway Rosner, LLC ("Rosner").

RECITALS:

WHEREAS, the Town is the fee owner of certain real estate located along Main Street in the Town of Speedway, Indiana (the "Town's Parcel"); and

WHEREAS, Rosner has erected a building (the "Rosner Building") on real estate commonly known as 1552-1564 Main Street in the Town of Speedway, Indiana and described on Exhibit A attached hereto; and

WHEREAS, the handicap access ramp affixed to the Rosner Building (the "Encroachment") encroaches onto the Town's Parcel at a location described on Exhibit B and more particularly depicted on Exhibit C, both of which are attached hereto (the "Encroachment Area").

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties, their successors and assigns, hereby agree as follows:

Section 1. License and Rosner's Liability. The Town hereby grants to Rosner an irrevocable license to permit Rosner to construct, operate, and maintain, at Rosner's sole cost and expense, the Encroachment within the Encroachment Area as depicted on Exhibit D. Rosner hereby releases the Town and the SRC from any and all liability arising from or relating to the Encroachment or Rosner's use of the Encroachment Area.

Section 2. Rosner Indemnifies and Holds the Town and the SRC Harmless for Use of License. Rosner agrees to indemnify and hold the Town and the SRC, including their agents, employees, and contractors, harmless for any and all damages, costs, or expenses including, but not limited to, attorneys' fees and court costs, arising out of or in any way related to the License, the Encroachment, or the use of the Encroachment Area. Rosner's agreement to indemnify and hold the Town and the SRC, including their agents, employees, and contractors, harmless includes, but is not limited to, any and all claims by third parties arising from or in any way related to the License, the Encroachment, or the use of the Encroachment Area. Such indemnity shall be broadly interpreted to include any and all property damages or personal injury (including death) in any way related to, resulting from, or arising out of this License, the Encroachment, or the use of the Encroachment Area.

Section 3. Maintenance and Warranty. Rosner hereby expressly warrants that it shall, at its cost and expense, maintain the Encroachment and the Encroachment Area, keeping them reasonably free of debris, snow, ice, and any other hazards. Rosner also hereby expressly

warrants that the Encroachment and the Encroachment Area shall comply with all applicable laws.

Section 4. Insurance. Rosner hereby expressly warrants that it shall, at its cost and expense, carry and maintain, or cause to be carried and maintained, commercial general liability insurance covering injuries to persons or property arising from or relating to the Encroachment or the use of the Encroachment Area in the amount of not less than Two Million Dollars and No Cents (\$2,000,000.00) for death, personal injury, or property damage in any one (1) occurrence. Rosner shall annually provide the Town and the SRC with a certificate of insurance demonstrating compliance with the requirements set forth in Section 4 on or before December 31.

Section 5. Attorneys' Fees, Court Costs, and Expenses. Rosner shall pay the Town and the SRC for any and all attorneys' fees, expert fees, court costs, settlement payments, mediation costs, or similar expenses incurred by the Town or the SRC for any action brought to enforce or protect the Town's rights or the SRC's rights under this License or otherwise defend against third party claims.

Section 6. Recording. Upon final execution of this License, Rosner shall record this License at its cost with the Marion County Recorder's Office and any other necessary state or federal agencies. This License shall run with the land encumbered and benefitted by this License.

Section 7. Binding on Successors and Assigns. The terms, covenants and provisions of this License are intended to run with the land and inure to the benefit of, and be binding upon, the successors and assigns of Town, the successors and assigns of the SRC, and the successors and assigns of Rosner. Notwithstanding this provision, however, Rosner shall not assign this License or its rights or obligations hereunder, except to any purchaser of the Rosner Building or any lender of Rosner, without the express written consent of the Town and the SRC.

Section 8. Entire Agreement. This License and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between the Town, the SRC, and Rosner concerning the matters set forth herein and there are no covenants, promises, agreements, conditions or understandings, either or written, between them with respect to such matters other than are herein set forth.

Section 9. Amendments in Writing. No subsequent alteration, amendment, change or addition to this License shall be binding upon the Town, the SRC, or Rosner unless reduced to writing and signed by both parties.

Section 10. Governing Law. This License shall be governed by the laws of the State of Indiana and all terms and covenants shall be interpreted in accordance therewith.

Section 11. Severability Provision. In the event that any provision of this License shall be construed as or declared invalid, unenforceable, or unconstitutional, then such invalidity, unenforceability, or unconstitutionality shall not affect the remaining provisions of this License,

and said provisions shall be given full force and effect as if the invalid, unenforceable, or unconstitutional provision did not exist.

Section 12. No Waiver. The failure of either party to enforce any of the provisions of this License at any time shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this License, or any part thereof, nor the right of any party thereafter to enforce each and every such provision.

Section 13. Notice. Any notice required or permitted to be given under this License shall be in writing and deemed to have been given when deposited in a United States Post Office, registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

If to the Town:	Town of Speedway, Indiana 1450 N. Lynhurst Drive Speedway, Indiana 46224 Attn: Town Manager
If to the SRC:	Speedway Redevelopment Commission 5620 Crawfordsville Road Speedway Super Center Speedway, Indiana 46224 Attn: Executive Director
If to the SRC:	Bose McKinney & Evans LLP 111 Monument Circle, Suite 2700 Indianapolis, Indiana 46204 Attn: Alan S. Townsend
If to Rosner:	Speedway Rosner, LLC c/o ALO Property Management 10401 N. Meridian Street, Suite 160 Indianapolis, Indiana 46290

Section 14. No Agency Relationship. The relationship of the parties is that of independent contractors and in no way establishes any agency relationship.

WHEREFORE, the undersigned parties have executed this License on the day and date first appearing above.

TOWN OF SPEEDWAY, INDIANA

By: _____
Printed: _____
Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of the Town of Speedway Indiana, who acknowledged the execution of the foregoing on behalf of the town.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public

**SPEEDWAY REDEVELOPMENT
COMMISSION**

By: _____
Printed: _____
Title: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of Speedway Redevelopment Commission, who acknowledged the execution of the foregoing on behalf of the commission.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public

SPEEDWAY ROSNER, LLC

By: _____
Printed: _____
Its: _____

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for said County and State, personally appeared _____, by me known to be the _____ of Speedway Rosner, LLC who acknowledged the execution of the foregoing on behalf of the entity.

WITNESS my hand and Notarial Seal this ____ day of _____, 2017.

Notary Public

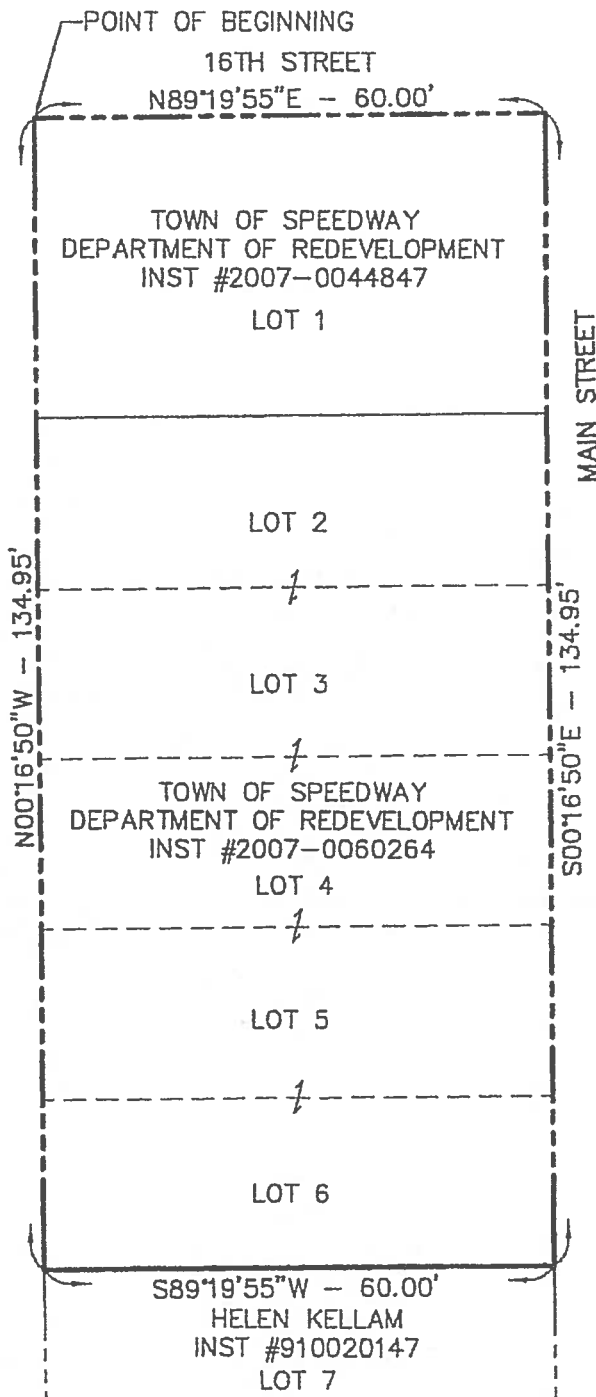
This instrument was prepared by: Alan S. Townsend, Attorney at Law, Bose McKinney & Evans LLP, 111 Monument Circle, Suite 2700, Indianapolis, Indiana 46204

I hereby certify under the penalties for perjury that I have exercised reasonable care to redact all social security numbers from this document unless required by law. Alan S. Townsend

3184564_1

EXHIBIT A

EDIT DATE: 12/2/14 EDITED BY: JNHOO P:\2014\01927\0. DRAWINGS\EXHIBITS\201401927.SV.2014-12-02.COMBINED 0.05 AC & 0.14 AC.DWG



SCALE: 1" = 20'

Land Description

All of Lots 1-6 in Speedway City, First Section, an addition to the City of Indianapolis, as per plat thereof recorded in Plat Book 17, Page 2 in the Office of the Recorder of Marion County, Indiana, more particularly described as follows:

Beginning at the Northwest Corner of Lot 1 in said Speedway City, First Section; thence North 89 degrees 19 minutes 55 seconds East 60.00 feet along the North Line of said Lot 1 to its Northeast Corner; thence South 00 degrees 16 minutes 50 seconds East 134.95 feet along the East boundary lines of Lots 1-6 in said Speedway City, First Section to the South Line of said Lot 6; thence South 89 degrees 19 minutes 55 seconds West 60.00 feet along said South boundary line to the Southwest Corner thereof; thence North 00 degrees 16 minutes 50 seconds West 134.95 feet along the West boundary lines of said Lots 1-6 to the Point of Beginning, containing 0.186 acres, more or less.

0.186 ACRE PARCEL EXHIBIT

AMERICAN
STRUCTUREPOINT
INC.

7260 SHADELAND STATION
INDIANAPOLIS, IN 46256-3957
TEL 317.547.5580 FAX 317.543.0270
www.structurepoint.com

DATE: 12/02/14

DRAWN BY: JNH

JOB NO. 201401927

SHEET NO.

1
of
1

DESC. FILE: 201401927

EXHIBIT B

RIGHT-OF-WAY ENCROACHMENT**AREA DESCRIPTION**

Speedway Rosner, LLC

16th Street & Main Street**AREA "A"**

A portion of Main Street adjoining Lots Numbered 1 & 2 in Speedway City (now Town of Speedway), Marion County, Indiana, as per plat thereof recorded In Plat Book 17, page 2 in the Office of the Recorder of Marion County, Indiana, being more particularly described as follows: Beginning at the southeast corner of said Lot 1; thence North 0 degrees 16 minutes 50 seconds West 19.92 feet along the western right-of-way line of Main Street; thence North 89 degrees 43 minutes 10 seconds East 7.50 feet; thence South 0 degrees 16 minutes 50 seconds East 26.00 feet; thence South 89 degrees 43 minutes 10 seconds West 7.50 feet to the western right-of-way line of said Main Street; thence North 0 degrees 16 minutes 50 seconds West 6.08 feet along said right-of-way line to the point of beginning and containing 195 square feet or 0.004 acres, more or less.

AREA "B"

A portion of Main Street adjoining Lots Numbered 3, 4 & 5 in Speedway City (now Town of Speedway), Marion County, Indiana, as per plat thereof recorded In Plat Book 17, page 2 in the Office of the Recorder of Marion County, Indiana, being more particularly described as follows: Beginning at the southeast corner of said Lot 3; thence North 0 degrees 16 minutes 50 seconds West 12.90 feet along the western right-of-way line of Main Street; thence North 89 degrees 43 minutes 10 seconds East 8.00 feet; thence South 0 degrees 16 minutes 50 seconds East 42.50 feet; thence South 89 degrees 43 minutes 10 seconds West 8.00 feet to the western right-of-way line of said Main Street; thence North 0 degrees 16 minutes 50 seconds West 29.60 feet along said right-of-way line to the point of beginning and containing 340 square feet or 0.008 acres, more or less.

The above descriptions were prepared by Tracy L. McGill,
Indiana Registered Land Surveyor, License Number
20500009, on the 27th day of April, 2017.



EXHIBIT C

Location:
1552 - 1564 Main Street
Speedway, Indiana

EXHIBIT D



EXHIBIT D

1 of 2



EXHIBIT D

2 of 2