

**LEASE AGREEMENT**

**by and between**

**HEADING FOR HOME LLC**

**and**

**CITY OF SOUTH BEND  
DEPARTMENT OF PARKS AND RECREATION**

## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") made effective the 1st day of May, 2018, by and between Heading for Home LLC, a Delaware limited liability company, (hereinafter referred to as "Landlord"), and the City of South Bend Department of Parks and Recreation, by and through the Board of Park Commissioners (hereinafter referred to as "Park Board");

### RECITALS

WHEREAS, Park Board is the owner in fee simple of the real property described in **Exhibit A** attached hereto and incorporated herein (the "Stadium Parcel"), upon which the stadium commonly known as Four Winds Field at Stanley Coveleski Stadium (the "Stadium") is situated; and

WHEREAS, the manager of the Sublessee is also the manager of Swing-Batter-Swing, LLC (the "SBS"); and

WHEREAS, SBS presently owns and operates a professional minor league baseball team in South Bend, Indiana, currently known as the "South Bend Cubs," a Class A Minor League Franchise in the Midwest League of Professional Baseball Clubs, Inc., a member of the National Association of Professional Baseball Leagues, Inc. (the "Team"); and

WHEREAS, the Landlord and the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "Commission") entered into that certain Real Estate Purchase Agreement dated as of August 25, 2016 (the "Purchase Agreement") under which the Landlord agreed to purchase from the Commission certain real property described in **Exhibit B** attached hereto and incorporated herein ("Lot 2"), which abuts the Stadium Parcel; and

WHEREAS, pursuant to the terms of the Purchase Agreement, Commission conveyed Lot 2 to Landlord on August 25, 2016; and

WHEREAS, Landlord and the Commission entered into that certain Development Agreement dated as of August 25, 2016 (the "Development Agreement") under which the Landlord agreed to develop Lot 2 into a mixed-use development including, without limitation, residential, commercial, and retail/hospitality uses (the "Development"); and

WHEREAS, the Development includes a hospitality space on the roof as described in **Exhibit C** attached hereto and incorporated herein (the "Rooftop Deck") for certain uses, including use by the general public; and

WHEREAS, the Team plays its home games at the Stadium pursuant to a Stadium Use, Management and Operations Agreement dated as of October 13, 2011 (the "Stadium Use Agreement"), between SBS, as assignee of South Bend Professional Baseball Club LLC, and the Park Board; and

WHEREAS, pursuant to Article VI of the Stadium Use Agreement, the Park Board granted to SBS an exclusive food, beverage, souvenir and novelty franchise permitting the sale of food and beverages from certain areas of the Stadium in compliance with all statutes and regulations concerning the sale of alcoholic beverages; and

WHEREAS, pursuant to the Stadium Use Agreement, the Park Board will maintain an Indiana Alcoholic Beverage Permit for the sale of alcoholic beverages in the Stadium; and

WHEREAS, the Landlord, SBS and the Park Board desire to extend the area subject to the Indiana Alcoholic Beverage Permit to include the Rooftop Deck and to consolidate the management and sale of food and beverages at the Rooftop Deck with the management and sale of food and beverages at the Stadium as provided to SBS under the Stadium Use Agreement; and

WHEREAS, the Landlord desires to lease the Rooftop Deck to the Park Board and the Park Board desires to lease the Rooftop Deck from Landlord for the uses and purposes described in this Lease;

**WITNESSETH:**

FOR AND IN CONSIDERATION of the full and faithful compliance by the parties hereto with each and all of the terms, covenants and conditions herein contained to be complied with by them, Landlord does hereby lease, let and demise unto Park Board the real estate described in **Exhibit C** attached hereto and made a part hereof, together with the improvements constructed thereon and all appurtenances thereto (hereinafter referred to as the "demised premises"). The demised premises are leased by Landlord to Park Board subject to covenants, easements, conditions and restrictions of record, and subject to provisions of applicable building codes and zoning ordinances.

**ARTICLE I**  
**TERM**

1.1 The initial lease term (the "Initial Term"), subject to all of the provisions and conditions herein contained, shall commence June 1, 2018, (the "Commencement Date"), and continue through December 30, 2021, the most recent renewal term of the Stadium Use Agreement and the Underlying Lease less one day. This Lease shall be automatically renewed for a period of two (2) additional terms of five years each upon SBS's exercise of its option to renew the Stadium Use Agreement in accordance with Section 2.01 of the Stadium Use Agreement.

**ARTICLE II**  
**USE AND OCCUPANCY**

2.1 Park Board shall use and occupy the demised premises solely for the purposes set forth in the Purchase Agreement and this Lease. Park Board shall sublease the demised premises, during the term of the Lease, to the Landlord pursuant to the Sublease Agreement attached hereto as **Exhibit D** and incorporated herein by reference. The Landlord shall enter into an operating agreement with SBS to consolidate the management of the food and

beverage services at the Stadium and the Rooftop Deck, pursuant to the Operating Agreement attached hereto as **Exhibit E** and incorporated herein by reference.

2.2 Landlord and Park Board acknowledge that the demised premises shall, during the term of this Lease, be used for certain hospitality uses, including such other allied purposes as may be incidental thereto, as provided for in the Purchase Agreement, the Sublease Agreement, and the Operating Agreement.

2.3 Park Board, for itself, agrees not to use or suffer or permit any person to use, in any manner whatsoever, the demised premises for any purpose calculated to injure the reputation of the premises or to impair the value of the demised premises, nor for any purpose or use in violation of any federal, state, county or municipal law or ordinance. Park Board will neither commit nor permit waste upon the demised premises.

2.4 Landlord shall promptly notify the Park Board and the City of South Bend Department of Law of any notice or citation received by Landlord or SBS regarding compliance with or any violation of alcoholic beverage rules or regulations and shall fully cooperate with any related investigation. In the event the Park Board or the City of South Bend receives knowledge or notice of any violation of such rules or regulations, the Park Board or the City of South Bend shall promptly notify the Landlord. Park Board will not terminate this Lease without first giving notice to Landlord stating cause for termination and, within thirty (30) days after receipt of such notice, the Landlord having failed to cure such cause for termination to Park Board's reasonable satisfaction, or if such cause for termination cannot reasonably be cured within such 30-day period, having failed to proceed diligently to cure such cause of any violation of such rules and regulations or other administrative action, with respect to the Stadium or the Rooftop Deck, which results in the suspension, revocation, or other material detriment to the Park Board's Indiana Alcoholic Beverage Permit, the Park Board may terminate this Lease in its sole discretion.

### **ARTICLE III** **RENTAL**

3.1 Park Board shall pay as base rent for said demised premises, without relief from valuation or appraisal laws, the sum of One and 00/100 Dollar (\$1.00) per month, payable in advance on the first day of each calendar month throughout the term hereof to the attention of Landlord at 501 W. South Street, South Bend, Indiana 46601, or such other place as Landlord may from time to time designate in writing.

### **ARTICLE IV** **REAL ESTATE TAXES**

4.1 Landlord agrees that it shall pay, in addition to all other sums agreed to be paid by it in this Lease, all real property taxes and assessments against the real estate and improvements constituting the demised premises which fall due during the term of this Lease, as provided in the Sublease Agreement and the Operating Agreement. Landlord shall be solely responsible and shall pay all real property taxes which fall due during the term of this Lease.

4.2 Landlord shall be solely responsible and shall pay for all personal property taxes on all personal property, inventory and fixtures located in or about the demised premises

which accrue during the term of this Lease pursuant to the Sublease Agreement and the Operating Agreement.

**ARTICLE V**  
**MAINTENANCE AND REPAIRS**

5.1 Landlord agrees that it shall, at its own cost and expense, make all repairs of whatever kind and nature, foreseen or unforeseen, as may be required to keep the demised premises and fixtures thereon in good condition and repair pursuant to the terms and conditions of the Sublease Agreement and the Operating Agreement.

5.2 Park Board shall not make any structural alterations, additions or leasehold improvements to the demised premises.

**ARTICLE VI**  
**INSURANCE AND INDEMNITY**

6.1 Throughout the term of this Lease, Landlord agrees to indemnify, defend and save harmless Park Board from and against all claims of whatever nature arising from any act, omission or negligence of Landlord, or Landlord's contractors, agents, servants or employees, or arising from any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring during the term hereof in or about the demised premises, or if such accident, damage or injury results, or is claimed to have resulted, from any act or omission of Landlord, or its agents or employees. This indemnity, defense and hold harmless agreement shall include indemnity against all costs, expenses, attorney fees, penalties, judgments and/or liabilities in, or connected with, any such claim or proceeding brought thereon in defense thereof.

6.2 Landlord shall provide and maintain during the Initial Term and any renewal term hereof, for the benefit of Landlord and Park Board, public liability and property damage insurance in such amounts and in such form as required in the Sublease Agreement and the Operating Agreement.

6.3 From and after the commencement date of the Lease and throughout the residue of the term of the Lease, Landlord shall procure and pay for fire and casualty insurance as required by the terms of the Sublease Agreement and the Operating Agreement.

6.4 Whenever (a) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Lease or anyone claiming by, through or under them in connection with the demised premises and (b) such party is then either covered in whole or in part by insurance with respect to such loss, cost, damage or expenses (or is required under this Lease to be so insured), then the party so insured (or so required) hereby releases the other party from any liability said other party may have on account of such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance (or which could have been recovered had insurance been carried as so required) and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof, provided that such release of liability and waiver of the right of subrogation shall not be operative in any case if the effect thereof is to invalidate such insurance coverage or increase the cost thereof (provided that in the case of increased cost, the other party shall have the right, within

thirty (30) days following written notice, to pay such increased cost thereon, thereupon keeping such release and waiver in full force and effect). Notwithstanding anything to the contrary in this Agreement, the release stated in the foregoing sentence will not apply to any loss or damage covered, in whole or in part, by the City of South Bend's liability self-insurance mechanism.

**ARTICLE VII**  
**SIGNS AND ADVERTISING**

7.1 Park Board shall not have the right to install or maintain signage upon the demised premises.

**ARTICLE VIII**  
**DESTRUCTION OF PREMISES**

8.1 If the demised premises shall be damaged or destroyed by any cause during the term of this Lease, this Lease shall remain in full force and effect and Landlord shall as rapidly and as reasonably practical repair such damage at its expense. Such repair or restoration of said building by Landlord shall be at least to the condition of the building immediately prior to such damage or destruction, and in accordance with plans and specifications mutually agreed upon at that time; or if such plans cannot be agreed upon, then in accordance with the original plans and specifications. The work of restoration or rebuilding shall be in full compliance with all laws and regulations and governmental ordinances applicable thereto. All insurance proceeds received from the fire and extended coverage insurance shall be used and applied toward such rebuilding and restoration, but in the event such insurance proceeds are not sufficient, Landlord shall be solely responsible for any further costs and charges of any type or nature to complete such restoration and rebuilding.

8.2 If the demised premises or improvements thereto are damaged to such extent that they cannot be repaired within ninety (90) days of such occurrence, or in the event such damage occurs within the last six (6) months of the lease term, this Lease may be cancelled at the option of either Landlord or Park Board upon written notice given within thirty (30) days from the date of such occurrence, and in such event, all rent shall be prorated to the date of such occurrence and Landlord shall be entitled to all proceeds received from the fire and extended coverage insurance.

**ARTICLE IX**  
**EMINENT DOMAIN**

9.1 If the demised premises shall be taken under the power of eminent domain, then the term of this Lease shall cease only on the part so taken from the date possession shall be taken for any public purpose, and the minimum rent shall be paid up to that date. If in such event any part of the demised premises is taken, Landlord shall rebuild and restore said demised premises at its expense and as rapidly as possible, and Park Board shall be entitled to an equitable abatement of the fixed minimum rent until the premises are restored, and thereafter said rent shall be equitably reduced on account of any floor space taken by such eminent domain proceedings.

9.2 If more than Fifteen Percent (15%) of the rooftop constituting the demised premises shall be taken under the power of eminent domain, then from that date either party shall

have the right to terminate this Lease as of the date possession of the part condemned is so taken, by written notice to the other within thirty (30) days after such date.

9.3 Landlord may, as permissible by applicable law, prosecute at its option, claims, against the public or private bodies designated as the taking authority, on the account of any taking or appropriation of the demised premises and Landlord shall be entitled to the entire award for said taking. For the purpose of this paragraph, acquisition of all or part of the demised premises by governmental or quasi-governmental authority by means of voluntary negotiations and contracts in lieu of condemnation shall be deemed to be acquisition by the exercise of the power of eminent domain.

**ARTICLE X**  
**QUIET ENJOYMENT**

10.1 Landlord covenants and agrees that if Park Board shall pay and otherwise perform and do all the things and matters herein provided for to be done by Park Board, Park Board shall peaceably and quietly have, hold and enjoy the said demised premises during the term of this Lease as provided in this Lease.

**ARTICLE XI**  
**ASSIGNMENT AND SUBLETTING**

11.1 Park Board may not assign or sublet the demised premises, except to the Landlord as provided in the Sublease Agreement and the Operating Agreement. Landlord may not assign or sublet its rights pursuant to this Lease except as provided in the Sublease Agreement and the Operating Agreement.

**ARTICLE XII**  
**UTILITIES**

12.1 Landlord shall be solely responsible for and shall promptly pay all charges for gas, heat, electricity and any other utilities or services used or furnished to the demised premises as provided in the Sublease Agreement and the Operating Agreement.

**ARTICLE XIII**  
**MORTGAGE SUBORDINATION/ESTOPPEL CERTIFICATES**

13.1 Upon written request or notice by Landlord, Park Board agrees to subordinate its rights under this Lease to the liens of any mortgages or deeds of trust that may now or hereafter be placed upon the building and the demised premises, and to any and all advances to be made thereunder, and all renewals, replacements and extensions thereof.

13.2 Park Board agrees to execute such subordination, non-disturbance and attornment agreements requested by such mortgagees provided that Park Board's right pursuant to this Lease shall be honored so long as Park Board is not in default pursuant to this Lease. Park Board further agrees to execute estoppel certificates in reasonable form as requested by Landlord.

**ARTICLE XIV**  
**DEFAULT**

14.1 If Park Board shall be in default in the payment of rental or any other charges provided for herein and such default shall continue for a period of five (5) days after written notice from Landlord to Park Board as herein provided, or if Park Board shall be in default in the performance of any of the other covenants, promises or agreements herein contained for Park Board to be kept and performed and such default shall continue for thirty (30) days after Landlord shall have notified Park Board in writing of the existence of such default, or if Park Board is adjudicated a bankrupt, or if a permanent receiver is appointed for Park Board's property, including Park Board's interest in the demised premises, and such receiver is not removed within thirty (30) days after appointment, or if, whether voluntarily or involuntarily, Park Board takes advantage of any debtor relief proceeding under present or future law whereby the rent, or any part thereof, is or is proposed to be reduced or payment thereof deferred, or if Park Board makes an assignment for the benefit of creditors, or if the demised premises or Park Board's effects or interest therein shall be levied upon or attached under process against Park Board, not satisfied or dissolved within thirty (30) days from such levy or attachment, or if Park Board abandons the demised premises, then, and in any or all said events, Park Board shall be deemed to have breached this Lease and Landlord shall have the right at its option to:

(a) Enter upon and take possession of the demised premises as Park Board's agent without terminating this Lease, and re-let the demised premises at the best price obtainable by reasonable effort and for such term as Landlord deems proper; or

(b) Forthwith cancel and terminate this Lease by notice in writing to Park Board; and if such notice shall be given, all rights of Park Board to the use and occupancy of said demised premises shall terminate as of the date set forth in such notice and Park Board will at once surrender possession of the demised premises to Landlord and remove all of Park Board's effects therefrom, and Landlord may forthwith re-enter the premises and repossess itself thereof, which repossession of the demised premises will be Landlord's sole and exclusive remedy.

**ARTICLE XV**  
**SURRENDER OF POSSESSION**

15.1 Whenever the said term herein demised shall be terminated, whether by lapse of time, forfeiture or in any other way, Park Board covenants and agrees that it will at once surrender and deliver up said demised premises peaceably in as good of condition as when Park Board took possession, ordinary wear and tear and any alterations and approved changes and any damage caused by perils covered by insurance excepted, and if Park Board shall hold over after any termination of this Lease, the same shall create no more than a month-to-month tenancy at the rent herein set forth and under all other applicable conditions herein provided.



**ARTICLE XVI**  
**MECHANICS' LIENS**

16.1 Nothing in this Lease shall authorize Park Board to do any act which shall in any way encumber the title of Landlord in and to the demised premises, nor shall the interest of Landlord in the demised premises be subject to any lien arising from any act or omission of Park Board.

16.2 If any mechanics' lien or liens shall be filed against the demised premises for work done or materials furnished to Park Board, Park Board shall within forty-five (45) days after it has actual notice of such lien, at its own expense, cause such lien or liens to be discharged by payment of such claims or by filing of bond pursuant to statute.

16.3 Should Park Board fail to pay any such lien or post bond therefor, Landlord may, but it shall not be required to do so, discharge such mechanics' lien or liens by payment thereof, and the amount paid by Landlord together with Landlord's costs and expenses shall be due and payable from Park Board forthwith on demand.

**ARTICLE XVII**  
**NOTICES**

17.1 All notices, demands and requests hereunder shall be in writing and given by hand delivery, or by United States registered or certified mail, or by a nationally recognized air courier:

PARK BOARD

Board of Park Commissioners  
South Bend Park Department  
Attention: President  
321 East Walter Street  
South Bend, IN 46614

with a copy to:

Corporation Counsel's Office  
227 W. Jefferson Blvd, Suite 1200 S  
South Bend, IN 46601

LANDLORD

Heading for Home LLC  
Attn: Joe Hart  
501 W South St  
South Bend, IN 46601

with a copy to:

Faegre Baker Daniels LLP  
Attn: Anne E. Fischesser  
600 E. 96<sup>th</sup> Street, Suite 600  
Indianapolis, IN 46240

17.2 Each party from time to time may change its address for purpose of notice under this Article by giving to the other party notice of such change of address. Any notice,

demand or request given by the United States, registered or certified mail, as provided herein, shall be deemed served on the date it is deposited in the United States mail or with a nationally recognized air courier properly addressed and with postage fully prepaid.

**ARTICLE XVIII**  
**ENVIRONMENTAL REPRESENTATIONS,**  
**WARRANTIES AND INDEMNIFICATION**

18.1 Park Board represents and warrants that during the term hereof it shall not construct, deposit, store, dispose, place or locate upon the demised premises any material, element, compound, solution compound, mixture, substance or other matter of any kind, including solid, liquid or gaseous material, that constitutes a Hazardous Material, as hereafter defined. For purposes of this Article XVIII, Hazardous Material shall mean any material or substance:

(a) defined as a "Hazardous Substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 *et. seq.*) and amendments thereto and regulations promulgated thereunder;

(b) containing gasoline, oil, diesel fuel or other petroleum products;

(c) defined as a "Hazardous Waste" pursuant to the Federal Resources Conservation and Recovery Act and all regulations promulgated thereunder;

(d) containing Polychlorinated Biphenyls (PCB);

(e) containing Asbestos;

(f) which is radioactive;

(g) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance or policy, or which is, or becomes defined as "Hazardous Waste" or as "Hazardous Substance" under any federal, state or local statute, regulation, ordinance or policy or any toxic, explosive, corrosive or other hazardous substance, material or waste, that is or becomes, regulated by any federal, state or local governmental authority or which causes a nuisance on the demised premises or any portion thereof.

18.2 The representations, warranties and indemnification of Park Board pursuant to this Article XVIII shall survive the termination of this Lease.

**ARTICLE XIX**  
**MISCELLANEOUS**

19.1 This Lease shall be subject to the terms and conditions of the Development Agreement and Purchase Agreement.

19.2 Each term and provision of this instrument performable by Park Board and Landlord shall be construed to be both a covenant and a condition.

19.3 Time is and shall be of the essence of this Lease and of each term or provision hereof.

19.4 If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

19.5 The headings of the articles of this instrument are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.

19.6 Nothing in this Lease shall cause Landlord and Park Board in any way to be construed as partners or joint venturers in the operation of said demised premises.

19.7 This Lease, as well as any instrument releasing or terminating the Lease, shall be duly recorded in the Office of the Recorder for St. Joseph County, Indiana, and all recording fees will be paid by the Landlord.

19.8 This Lease shall be governed by the laws of the State of Indiana.

IN TESTIMONY WHEREOF, witness the signature of the Park Board on this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF SOUTH BEND DEPARTMENT OF  
PARKS AND RECREATION, BY AND  
THROUGH THE BOARD OF PARK  
COMMISSIONERS

\_\_\_\_\_  
\_\_\_\_\_, President

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF ST. JOSEPH )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, as President of the Board of Park Commissioners of the City of South Bend, and acknowledged the execution on behalf of said board, having been authorized to, the of the foregoing Lease for the uses and purposes therein contained.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2018.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\_\_\_\_\_  
(Printed Name)

Resident of \_\_\_\_\_ County, Indiana



**EXHIBIT A**

**LEGAL DESCRIPTION OF STADIUM PARCEL**

Lot 1 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 No.: 018-3014-0515

**EXHIBIT B**

**LEGAL DESCRIPTION OF LOT 2 PARCEL**

Lot 2 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 No.: 018-3014-051501

**EXHIBIT C**

**DESCRIPTION OF ROOFTOP DECK**

The rooftop deck facility incorporated into the building known as Building #2 located on a parcel of real estate commonly known as 414 Western Avenue, South Bend, Indiana and legally described as follows:

Lot 2 of the Plat of Coveleski Park Minor Subdivision recorded on February 11, 2015 as Document No. 1503430 in the office of the Recorder of Saint Joseph County, Indiana  
[Parcel Key No.18-3014-051501]



**EXHIBIT D**  
**SUBLEASE AGREEMENT**

**EXHIBIT E**  
**OPERATING AGREEMENT**