

OPERATING AGREEMENT

This Operating Agreement (this "Operating Agreement") is made effective as of May 1, 2018, by and between the Heading for Home LLC, a Delaware limited liability company, ("HFH"), and Swing-Batter-Swing, LLC, an Indiana limited liability company ("Operator").

RECITALS

WHEREAS, HFH is the owner in fee simple of certain real property described in **Exhibit A** attached hereto and incorporated herein ("Lot 2"), upon which HFH constructed a mixed-use development including, without limitation, residential, commercial, and retail/hospitality uses (the "Development") for certain uses, including use by the general public and which certain real property abuts the real property upon which the Stadium is situated; and

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

WHEREAS, the City of South Bend Department of Parks and Recreation, by and through the Board of Park Commissioners (hereinafter referred to as "Park Board") is the owner in fee simple of the real property described in **Exhibit C** 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 which abuts Lot 2; and

WHEREAS, pursuant to a Lease Agreement dated May 1, 2018 (the "Lease" attached hereto as **Exhibit D** and incorporated herein by reference), by and between HFH and the Park Board, HFH leased Lot 2 to the Park Board creating the Park Board's interest in Lot 2, and pursuant to a Sublease Agreement dated May 1, 2018 (the "Sublease" attached hereto as **Exhibit E** and incorporated herein by reference) by and between the Park Board and HFH, the Park Board leased Lot 2 to HFH; and

WHEREAS, the Operator, as assignee of South Bend Professional Baseball Club LLC, and the Park Board entered into a Stadium Use, Management and Operations Agreement dated as of October 13, 2011, amended (the "Stadium Use Agreement"); and

WHEREAS, pursuant to Article VI of the Stadium Use Agreement, as amended, the Park Board granted to the Operator to provide all food and beverage services required or appropriate for any and all events at the Stadium, including without limitation, dining, catering, vending and Food and Beverage Services, through fixed and portable Food and Beverage Service stands, vending machines, roving vendors, snack bars, Food and Beverage Area and any other areas in the Stadium for which it is reasonable and appropriate to serve food and beverages (collectively, the "Food and Beverage Services") in compliance with all statutes and regulations concerning the sale of alcoholic beverages and the Park Board shall maintain an Indiana Alcoholic Beverage Permit for the sale of alcoholic beverages in the Stadium; and

WHEREAS, HFH desires to have Operator use its knowledge and experience to operate food and beverage services at the Rooftop Deck, and Operator desires to provide such services, all on the terms and conditions set forth in this Operating Agreement;

NOW THEREFORE, in consideration of the mutual covenants and benefits contained herein, the parties agree as follows:

ARTICLE I

TERM OF AGREEMENT

Section 1.1 Term. The term of this Operating Agreement 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 Sublease shall be automatically renewed for a period of two (2) additional terms of five years each upon Operator's exercise of its option to renew the Stadium Use Agreement in accordance with Section 2.01 of the Stadium Use Agreement

ARTICLE II

FOOD AND BEVERAGE SERVICES

Section 2.1 Grant of Exclusive Management. During the term of this Operating Agreement, Operator shall provide for the operation, management and provision of all food and beverage services required or appropriate for any and all events at the Rooftop Deck, including without limitation dining, catering, vending, through fixed and portable stands, vending machines, roving vendors, snack bars, Food and Beverage Service Areas and any other areas in the Rooftop Deck for which it is reasonable and appropriate to serve food and beverages (collectively, the "Food and Beverage Services") at the Rooftop Deck. Such operation, management and provision for the Rooftop Deck shall be consistent with Operator's rights and obligations to provide Food and Beverage Services for the Stadium under Article VI of the Stadium Use Agreement.

Section 2.2 Alcoholic Beverage Compliance. Operator shall promptly notify the Park Board and the City of South Bend Department of Law of any notice or citation received by Operator or HFH 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 Operator or HFH. Park Board will not terminate this Operating Agreement without first giving notice to Operator or HFH stating cause for termination and, within thirty (30) days after receipt of such notice, the Operator or HFH 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, service of alcoholic beverages under this Operating Agreement will immediately cease.

ARTICLE III

SERVICES OF MANAGER

Section 3.1 Management of Operation. Operator will provide such management, supervisory, advisory, and administrative services as advisable and necessary to carry out the Food and Beverage Services at the Rooftop Deck. Such services will include negotiating contracts required in the ordinary course of business; providing advice on the sale and service of food, alcoholic beverages and nonalcoholic beverages; advising, supervising and consulting with HFH regarding operational matters concerning food, alcoholic beverages and nonalcoholic beverages; and generally providing day-to-day supervision and direction for the operation of the Food and Beverage Services.

Section 3.2 Alcoholic Beverage Services. Guests at the Rooftop Deck shall be encouraged by Operator to drink responsibly. Guests must be 21 years of age or older to purchase and consume alcohol. Proper identification is necessary to purchase any alcoholic beverages. Guests will not be allowed to bring alcohol into or out of the Rooftop Deck except for into or out of the Stadium.

Section 3.3 Procurement. Operator will purchase all products, supplies, and outside services needed in the operation of the Food and Beverage Services at the Rooftop Deck. Such items and services will be purchased from dependable suppliers taking into account the quality and quantity required for the Rooftop Deck.

Section 3.4 Personnel.

(a) Operator shall hire and employ in its own name the number of personnel required for the operation of the Food and Beverage Services under this Operating Agreement. Such personnel shall satisfy the requirements of all applicable laws regarding the operation of alcoholic beverage services. Operator shall pay for all such personnel's salary, fringe benefits, workers' compensation, income tax withholding, insurance and any other obligations and expenses associated with employing such personnel including any and all related claims.

(b) Notwithstanding anything to the contrary herein, the sale and service of alcoholic beverages by the Operator shall be in compliance with applicable laws.

(c) Operator will train, supervise, direct, discipline, and, if necessary, discharge personnel working at the Rooftop Deck in accordance with Operator's personnel policies. All personnel directly or indirectly involved with the sale and service of alcoholic beverages will receive training in responsible alcoholic beverage services.

Section 3.5 Books, Account, Records. Operator shall maintain complete and accurate books of account, reflecting all sales, gross receipts and sales tax records of alcoholic

beverage services hereunder. Operator will render to HFH monthly statements of the alcoholic beverage services performed under this Operating Agreement, on or before the fifteenth (15th) day of the following month. Operator shall maintain such books of account with respect to the alcoholic beverage services hereunder and shall permit HFH to inspect and examine such books of account at such reasonable times as HFH may request for the purpose of verifying and determining the correctness of Operator's payments to HFH hereunder. HFH will use its best efforts to exercise its inspection and examination rights in such manner that will not unreasonably disrupt the Rooftop Deck.

Section 3.6 Payment of Costs and Expenses. Operator will promptly pay and discharge all the proper bills due and payable related to the Food and Beverages Services at the Rooftop Deck. HFH 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 Rooftop Deck as provided in the Lease and Sublease.

Section 3.7 Taxes. HFH shall pay all real property taxes and assessments against the real estate and improvements constituting the demised premises which accrue during the term of this Operating Agreement, as provided in the Lease and the Sublease. HFH 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 fall due during the term of this Operating Agreement pursuant to the Lease and Sublease. HFH shall be solely responsible and shall pay all real property taxes which fall due during the term of this Operating Agreement.

ARTICLE IV

FINANCIAL ARRANGEMENTS

Section 4.1 Management Fee. Operator shall be entitled to retain, as compensation for its services during the term of this Operating Agreement, a Management Fee in an amount equal to 99% of the Adjusted Gross Receipts (as defined below) for each reporting period or portion thereof, during the term of this Operating Agreement. Operator shall pay HFH 1% of the Adjusted Gross Receipts (the "HFH Payment").

As used in this Operating Agreement, the following terms shall have the following meanings:

(a) "Gross Receipts" shall mean all gross receipts received by Operator or its designee from sales of food and beverages by Operator at the Rooftop Deck, whether such amounts are evidenced by cash, check, and credit card or otherwise. Gross receipts shall be collected by Operator or its designee.

(b) "Adjusted Gross Receipts" shall mean the Gross Receipts in any reporting period less deductions for Federal, state and municipal excise, sales and taxes (whether paid or unpaid and due and owing) accruing during such reporting period with respect to the related Gross Receipts.

ARTICLE V

DEFAULT AND TERMINATION

Section 5.1 Default; Termination. If either party breaches any of its obligations under this Operating Agreement and fails to fully cure or remedy such breach or failure within thirty (30) days after written notice from the non-breaching party specifying the nature of such failure, breach or default in reasonable detail, including the factual circumstances and the applicable sections of this Operating Agreement alleged to be breached, the alleged breaching party shall be in default hereunder; provided that in the event that such breach is not capable of cure within such thirty (30)-day period, then, provided the breaching party has promptly commenced to cure such default within that period and is diligently pursuing the cure, the breaching party shall have an additional reasonable period of time to cure such default. In the event of any uncured default has a material adverse effect on the non-defaulting party, such non-defaulting party shall have the right to terminate this Operating Agreement upon an additional thirty (30) days' written notice to the defaulting party.

ARTICLE VI

INSURANCE

Section 6.1 Required Policies of Insurance.

(a) The Operator shall, effective as of the date of this Operating Agreement, and thereafter during the term of this Operating Agreement, keep in full force and affect the following policies of insurance:

Comprehensive general liability insurance, including products liability insurance against any and all claims and losses arising out of its activities under this Operating Agreement in the following minimum amounts:

- Personal Injury - \$1,000,000.00 each person and each accident, \$1,000,000.00 aggregate;
- Property Damage - \$1,000,000.00 each incident; \$1,000,000.00 aggregate;
- Umbrella Liability Coverage and Umbrella Liability Policy in an amount not less than \$4,000,000.00 for any one occurrence in excess of the aforementioned general insurance;
- Dram Shop – a certificate obtained either by the Team or the Operator or such other Food and Beverage Service operator providing Dram Shop liability coverage naming, in the case of a certificate provided by a Food and Beverage Service operator or such other successor operator, the Team, Operator, the Park Board and the City as additional named insureds or, in the case of a certificate provided by the Team, naming the Park Board and the City as

additional named insureds with the amount of the coverage identical to that of the comprehensive general liability coverage as required herein.

- Workers Compensation – the Operator shall provide and keep in full force and effect during the term of this Operating Agreement, workers compensation insurance in full compliance with the laws of the State of Indiana.

(b) HFH shall at all times during the term hereof keep in full force and affect the following policies of insurance, as required by the terms of the Sublease (i) property insurance in an amount not less than \$2,000,000 and (ii) commercial general liability insurance in an amount not less than \$1,000,000 per occurrence.

ARTICLE VII

INDEMNIFICATION

Section 7.1 Operator's Indemnification. Throughout the term of this Operating Agreement, Operator agrees to indemnify and save harmless HFH from and against all claims of whatever nature, except those resulting from the negligence of HFH or its agents, arising from any act, omission or negligence of Operator, or Operator'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 Operator, or its agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, attorney fees and/or liabilities in, or connected with, any such claim or proceeding brought thereon in defense thereof.

Section 7.2 HFH's Indemnification. Throughout the term of this Operating Agreement, HFH agrees to indemnify and save harmless Operator from and against all claims of whatever nature, except those resulting from the negligence of Operator or its agents, arising from any act, omission or negligence of HFH, or HFH'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 HFH, or its agents or employees. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses, attorney fees and/or liabilities in, or connected with, any such claim or proceeding brought thereon in defense thereof.

Section 7.3 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 Operating Agreement 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 Operating Agreement 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).

ARTICLE VIII

MISCELLANEOUS

Section 8.1 Other Agreements. This Operating Agreement shall be subject to the terms and conditions of the Lease and the Sublease.

Section 8.2 Notices. 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:

HFH	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 th Street, Suite 600 Indianapolis, IN 46240
Operator	Swing-Batter-Swing, 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 th Street, Suite 600 Indianapolis, IN 46240

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.

Section 8.3 Severability. 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.

Section 8.4 Titles of Articles and Sections. Any titles of the several parts, sections and paragraphs of this Operating Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.5 Entire Agreement. This Operating Agreement constitutes the final, complete and exclusive written expression of the intent of the parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements.

Section 8.6 No Third-Party Beneficiaries. Nothing in this Operating Agreement, express or implied, is intended or shall be construed to confer upon any other person, firm or corporation other than the parties hereto and the City of South Bend and the Park Board, any remedy or claim under or by reason of this Operating Agreement or any term, covenant or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties herein. The City of South Bend and the Park Board are hereby deemed to be third-party beneficiaries of this Operating Agreement, and each will be entitled to enforce the terms of this Operating Agreement against the parties hereto and their successors and assigns.

Section 8.7 Further Assurances. The Operator and HFH shall each undertake in good faith as permitted by law any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Operating Agreement.

Section 8.8 Amendment. This Operating Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Operator and HFH, in accordance with this Operating Agreement.

Section 8.9 Assignment. The Operator and HFH shall not have the authority to assign or otherwise transfer this Operating Agreement or any provision thereof to any other person, corporation, partnership or other entity without the other party's written consent, which shall not be unreasonably withheld.

Section 8.10 Governing Law. This Operating Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

Section 8.11 Waiver. The waiver by either the Operator or HFH of any default by the other party of any provision of this Operating Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Operating Agreement.

Section 8.12 Force Majeure. Whenever a period of time is herein prescribed for action to be taken by a party hereto, such party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or

restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of such party.

[Remainder of page intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Heading for Home LLC and Swing-Batter-Swing, LLC have hereunto executed this Operating Agreement effective as of the day and year first above written.

HEADING FOR HOME LLC

SWING-BATTER-SWING, LLC

Signature

Signature

Printed Name and Title

Printed Name and Title

EXHIBIT A

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 B

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 C

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 E
LEASE AGREEMENT

Exhibit D

EXHIBIT D
SUBLEASE AGREEMENT

Exhibit E