

SUBLEASE AGREEMENT

by and between

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

and

HEADING FOR HOME LLC

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (the "Sublease") is effective as of the 1st day of May, 2018, by and between City of South Bend Department of Parks and Recreation, by and through the Board of Park Commissioners ("Park Board"), and Heading for Home LLC, a Delaware limited liability company, ("Sublessee").

WITNESSETH:

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, Sublessee 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 Sublessee 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 Sublessee on August 25, 2016; and

WHEREAS, Sublessee and the Commission entered into that certain Development Agreement dated as of August 25, 2016 (the "Development Agreement") under which the Sublessee 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

(Signature Page and Notary Page of Park Board to Sublease Agreement)

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 Sublessee, 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, Park Board is currently leasing the Rooftop Deck from Sublessee pursuant to that certain Lease Agreement dated May 1, 2018, by and between Park Board and Sublessee (the "Underlying Lease") in **Exhibit D** attached hereto and incorporated herein; and

WHEREAS, pursuant to Section 2.1 of the Underlying Lease, Park Board shall sublease the Rooftop Deck to Sublessee, and Sublessee shall sublet the same under the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions hereinafter set forth, it is mutually agreed as follows:

1. Rooftop Deck. Park Board hereby leases to Sublessee, and Sublessee hereby subleases from Park Board, upon the terms and conditions set forth herein, the Rooftop Deck, including all rights and obligations in the Underlying Lease.

2. Term. The term of this Sublease 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 SBS's exercise of its option to renew the Stadium Use Agreement in accordance with Section 2.01 of the Stadium Use Agreement. Sublessee shall accept the Rooftop Deck in the condition, as is, where is, without representation or warranty and without any further obligation of Park Board to improve or otherwise modify the Rooftop Deck.

3. Rent. Sublessee agrees to pay to Landlord, as defined in the Underlying Lease, during the term of this Sublease the sum of One and 00/100 Dollar (\$1.00) per month payable directly to the Landlord. Such monthly payment to the Landlord shall satisfy the Park Board's rental payment pursuant to the Underlying Lease.

4. Use.

(a) Sublessee may use the Rooftop Deck solely for the purposes set forth in the Purchase Agreement, Development Agreement, Underlying Lease and

this Sublease. Sublessee 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 here to as **Exhibit E** and incorporated herein by reference.

(b) Sublessee shall, during the term of the Underlying Lease and this Sublease, use the Rooftop Deck for certain hospitality uses, for such other allied purposes as may be incidental thereto, as provided in the Underlying Lease and the Operating Agreement.

5. Compliance with Underlying Lease. All rights and obligations contained in the Underlying Lease conferred and imposed upon Park Board, to the extent applicable to the Rooftop Deck, shall be considered rights and obligations of Sublessee hereunder. Park Board represents and warrants that Sublessee, as Landlord under the Underlying Lease, has consented to the terms and conditions of this Sublease. Sublessee acknowledges and agrees that it has been provided a copy of the Underlying Lease and will occupy the Rooftop Deck in compliance with the terms thereof, except as specifically set forth in this Sublease.

6. Maintenance and Repairs. Sublessee shall, at its cost and expense, make all repairs of whatever kind and nature, foreseen and unforeseen, as may be required to keep the demised premises and fixtures thereon in good condition and repair pursuant to the terms of the Underlying Lease and the Operating Agreement.

7. Insurance. Sublessee or SBS 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 Underlying Lease and the Operating Agreement:

(a) Property Insurance – at least \$2,000,000

(b) Commercial General Liability – at least \$1,000,000, each occurrence

8. Indemnity.

(a) Throughout the term of this Sublease, Sublessee 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 Sublessee, or Sublessee'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 Sublessee, 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.

(b) Whenever (i) 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 Sublease or anyone claiming by, through or under them in connection with the demised premises and (ii) 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 Sublease 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.

9. Surrender. Sublessee shall, immediately prior to expiration or sooner termination of the Sublease, restore the Rooftop Deck to the condition that Park Board is required to surrender the same under the Underlying Lease. Any damage caused by such removal shall be repaired and replaced by Sublessee.

10. 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:

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

SUBLESSEE

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. 96th 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.

11. Default and Remedies. In the event Sublessee defaults in the performance of any of its obligations hereunder, and such default continues for ten (10) days after the giving of notice of such default with respect to the failure to pay any monies, or thirty (30) days after the giving of notice of default with respect to the failure to perform or comply with any non-monetary obligations of this Sublease Agreement, then Park Board may cure any such default and add the cost thereof (including reasonable attorneys' fees) to Rent, or may terminate this Sublessee upon giving ten (10) days' notice of termination to Sublessee. If such default cannot be remedied with a period of thirty (30) days by use of reasonable diligence under the circumstances, then such additional time shall be granted as may be necessary to cure the default provided that Sublessee takes prompt action, on receipt of notice to remedy the default, and proceeds diligently thereafter to pursue the cure of such default.

In the event of termination hereunder on account of a default by Sublessee, it shall remain liable for all Rent and other sums due under this Sublease for the balance of the term of Underlying Lease as the same fall due.

In the event that there is a termination of the Underlying Lease, Sublessee agrees and acknowledges that, at the request and option of the landlord under the Underlying Lease, it will attorn to such landlord and that the Sublessee shall continue in effect with such landlord, in accordance with the terms and conditions in this Sublease described.

12. Alcoholic Beverage Compliance. Sublessee shall promptly notify the Park Board and the City of South Bend Department of Law of any notice or citation received by Sublessee 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 Sublessee or SBS. Park Board will not terminate this Sublease without first giving notice to Sublessee or SBS stating cause for termination and, within thirty (30) days after receipt of such notice, the Sublessee or SBS 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 Sublease in its sole discretion.

13. Environmental Indemnity. In addition to the environmental duties of Park Board assumed by Sublessee under Article XVIII of the Underlying Lease, Sublessee agrees to protect, defend, indemnify and save harmless Park Board from and against all liabilities,

obligations, claims, damages, penalties, causes of action, response and clean up costs, and other costs and expenses (including, without limitation, reasonable attorney fees, paralegal fees, the cost of any remedial action, consultant fees, investigation and laboratory fees, court costs and litigation expenses), imposed upon or incurred by or asserted against Park Board by reason of Sublessee's occupation, if any, of the demised premises pursuant to this Sublease in violation of Sublessee's representations and warranties contained in Article XVIII of the Underlying Lease.

14. Assignment. Sublessee shall not assign or sublet its interest herein.

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

16. Miscellaneous.

(a) This Sublease shall be subject to the terms and conditions of the Development Agreement, Purchase Agreement, and Underlying Lease.

(b) Each term and provision of this instrument performable by Park Board and Sublessee shall be construed to be both a covenant and a condition.

(c) Time is and shall be of the essence of this Sublease and of each term or provision hereof.

(d) If any term or provision of this Sublease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, 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 Sublease shall be valid and be enforceable to the fullest extent permitted by law.

(e) 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 Sublease.

(f) Nothing in this Sublease shall cause Sublessee in any way to be construed as a partner, joint venturer or associated in any way with Park Board in the operation of said demised premises, or subject Sublessee to any obligation, loss, charge or expense connected with or arising from the operation or use of said demised premises or any part thereof. The obligations of each individual party hereunder shall be joint and several.

(g) This Sublease 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 Sublease 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

LEASE AGREEMENT

EXHIBIT E
OPERATING AGREEMENT