



Department of
Community Investment

Redevelopment Commission Agenda Item

DATE: October 13, 2016
FROM: Brian Pawlowski, Interim Executive Director
SUBJECT: Real Estate Option Agreement (Heading for Home LLC)

This Real Estate Option Agreement (Agreement) is for the former Michiana Lock & Key and Studebaker Museum properties, located in the 500 block of S. Lafayette & Main streets. Both sites are vacant land.

The Agreement gives Heading for Home LLC an option to purchase these sites through March 31, 2018. Two one year extensions may be granted, with a year one extension payment of \$5,000 and a year two extension of \$10,000. If exercised, the option price would be \$1 and include a written explanation and, as applicable, a graphical depiction for the planned use.

Staff requests approval of this Agreement.

INTERNAL USE ONLY: Project Code: _____
Total Amount new/change (inc/dec) in budget: _____; broken down by:
Acct # various
Going to BPW for Contracting? Is this item ready to encumber now?
Existing PO# _____ Inc/Dec \$ _____



REAL ESTATE OPTION AGREEMENT

This Option Agreement (this “Option Agreement”) is made as of September 29, 2016 (the “Effective Date”) by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Heading for Home LLC, a Delaware limited liability company with offices at 501 W. South St., South Bend, Indiana 46601 (the “Company”) (each a “Party” and collectively the “Parties”).

RECITALS

A. The Commission exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Ind. Code 36-7-14 (the “Act”).

B. In furtherance of its purposes under the Act, the Commission owns certain real property located in South Bend, Indiana, and more particularly described and designated as Parcels 1 through 7 in attached **Exhibit A** (collectively, the “Property”).

C. Pursuant to the Act, the Commission adopted Resolution Number 3286 on April 15, 2015, whereby the Commission established the minimum offering price of Thirty-One Thousand Five Hundred Dollars (\$31,500.00) for the portion of the Property designated in Exhibit A as Parcel 1.

D. Pursuant to the Act, on April 24, 2015, and May 1, 2015, the Commission publicized its intent to sell Parcel 1 and invited bids for the purchase of Parcel 1 to be submitted by May 14, 2015, at 9:00 a.m.

E. As of May 14, 2015, at 9:00 a.m., the Commission received no bids for Parcel 1, and, therefore, the Commission, having satisfied the conditions stated in Section 22 of the Act, now desires to grant to the Company an option to purchase Parcel 1 on the terms stated in this Option Agreement.

F. Pursuant to the Act, the Commission adopted Resolution Number 3333 on March 24, 2016, whereby the Commission established the minimum offering price of Two Hundred Eighty Thousand Dollars (\$280,000.00) for the portion of the Property designated in Exhibit A as Parcels 2 through 7, collectively.

G. Pursuant to the Act, on April 1, 2016, and April 8, 2016, the Commission publicized its intent to sell Parcels 2 through 7 and invited bids for the purchase of Parcels 2 through 7 to be submitted by April 28, 2016, at 9:00 a.m.

H. As of April 28, 2016, at 9:00 a.m., the Commission received no bids for any of Parcels 2 through 7, and, therefore, the Commission, having satisfied the conditions stated in Section 22 of the Act, now desires to grant to the Company an option to purchase Parcels 2 through 7 on the terms stated in this Option Agreement.

I. Resolution Numbers 3286 and 3333 are collectively attached hereto as **Exhibit B** and, taken together, establish the minimum offering price of Three Hundred Eleven Thousand Five Hundred Dollars (\$311,500.00) for the Property.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Exclusive Option to Purchase. The Commission hereby grants the Company an exclusive option to purchase the Property, subject to the terms and conditions stated in this Option Agreement (the "Option").

2. Option Period. The Company must exercise the Option, if at all, on or after the Effective Date of this Option Agreement and no later than March 31, 2018 (the "Option Period"), provided, however, that the Option Period may be extended for no more than two (2) additional terms of one (1) year each. If the Company desires to extend the Option Period through and including March 31, 2019, the Company will deliver to the Commission by February 1, 2018, (i) a payment in the amount of Five Thousand Dollars (\$5,000.00) and (ii) a written report concerning any development prospects or plans for the Property. If the Company desires to extend the Option Period through and including March 31, 2020, the Company will deliver to the Commission by February 1, 2019, (i) a payment in the amount of Ten Thousand Dollars (\$10,000.00) and (ii) a written report concerning any development prospects or plans for the Property. Notwithstanding any provision herein to the contrary, this Option Agreement and all rights hereunder will terminate immediately in the event of any conveyance, transfer, or assignment that causes Andrew T. Berlin not to have a majority ownership interest in the minor league baseball team currently known as the South Bend Cubs, which is 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"). The preceding sentence shall not apply to any conveyance, transfer, or assignment for bona fide estate planning purposes of such majority ownership interest in the Team that does not cause Andrew T. Berlin to lose management control of the Team.

3. Exercise of Option. The Company may exercise the Option by giving to the Commission written notice (as provided in Section 12) of its intent to purchase the Property (the "Notice of Intent"). The Notice of Intent will include a written explanation and, as applicable, a graphical depiction of the Company's planned use of the Property after acquiring it from the Commission.

4. Purchase Price. In the event the Company exercises the Option, the Commission will sell the Property to the Company for the purchase price of One Dollar (\$1.00) (the "Purchase Price"), in accordance with the terms of the purchase agreement to be prepared as described in Section 5 below.

5. Purchase Agreement and Closing. If the Company exercises the Option, the Commission and the Company will promptly negotiate the terms of a purchase agreement for the Property. The Commission and its counsel shall be responsible for preparing the initial draft of

the purchase agreement, which will be in a form customary for transactions of similar scope and significance to the Parties and will include customary representations, warranties, indemnities, covenants, conditions of closing, and other customary matters. The Company will pay all closing costs, recording fees, and title company charges arising out of the closing.

6. Interim License; Indemnity. The Commission hereby grants to the Company a license to use the Property for the limited purpose of vehicular parking for the Team's guests during all events at Four Winds Field, including, but not limited to, the Team's home games (the "License"). Unless earlier revoked by the Commission, the License will terminate immediately upon the termination of this Option Agreement or the closing described in Section 5, as the case may be. The Company will indemnify, defend, and hold harmless the Commission and the City of South Bend from and against any claims, liabilities, or losses of any kind suffered by the Commission or the City of South Bend arising out of the Company's use of the Property under the License herein granted.

7. Recording of Memorandum. The Parties agree to execute and record in the Office of the Recorder of St. Joseph County, Indiana, a memorandum of this Option Agreement in the form attached hereto as **Exhibit C** (the "Memorandum"). The Company will pay all recording fees associated with the Memorandum.

8. Governing Law. This Option Agreement will be governed by and construed in accordance with the laws of the State of Indiana.

9. Benefit of the Parties. This Option Agreement is made solely for the benefit of the Parties, and no one else shall acquire or have any right under (or by virtue of) this Option Agreement, except as expressly provided herein.

10. Binding Effect and Assignment. This Option Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. The Company may not assign this Option Agreement to any other party without the Commission's prior written consent, except that the Commission's prior written consent will not be required in the event of a conveyance, transfer, or assignment permitted in accordance with the last sentence of Section 2 above.

11. Amendment. This Option Agreement may be amended only by a written instrument signed by authorized representatives of both Parties.

12. Notices. All notices and other communications required or permitted under this Option Agreement will be in writing and will be furnished by hand delivery or by registered or certified mail to the Parties at the addresses set forth below. Any such notice shall be duly given upon the date it is delivered to the addresses shown below, addressed as follows:

Commission: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601

Attn: Executive Director of Community Investment

With a copy to: South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

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

With a copy to: Faegre Baker Daniels LLP
202 S. Michigan St., Suite 1400
South Bend, IN 46601
Attn: Anne E. Fischesser, Esq.

13. Severability. If any term, provision, covenant, or restriction contained in this Option Agreement that is intended to be binding and enforceable is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the terms, provisions, covenants, and restrictions contained in this Option Agreement will remain in full force and effect and will in no way be affected, impaired, or invalidated.

14. Entire Agreement; Recitals; Exhibits. This Option Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements or understandings of any kind between the Parties with respect to the subject matter hereof. The exhibits attached hereto and the recitals set forth above are incorporated into this Option Agreement by reference.

15. Authority. The undersigned persons executing and delivering this Option Agreement on behalf of each of the Parties represent and certify that they are the duly authorized officers of such respective Party and have been fully empowered to execute and deliver this Option Agreement on behalf of such Party and that all necessary action to execute and deliver this Option Agreement has been taken by such Party.

16. Counterparts; Facsimile Signatures. This Option Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Any electronic version of a manually executed original shall be deemed a manually executed original.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Real Estate Option Agreement to be effective as of the Effective Date stated above.

**SOUTH BEND REDEVELOPMENT
COMMISSION**

HEADING FOR HOME LLC

Marcia I. Jones, President

Andrew T. Berlin, Manager

ATTEST:

Donald E. Inks, Secretary

4000.0000069 35206453.005

Exhibit A

Description of Property

Parcel 1

Lot 4 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. 018-3014-051503]

Parcel 2

Lots Numbered Fifty-five (55), Fifty-six (56) and Fifty-seven (57) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the West half of the vacated alley lying East and adjacent and also the North half of the vacated alley lying South and adjacent to said lots. [Parcel Key No. 018-3015-056301]

Parcel 3

Lots Numbered Fifty-eight (58), Fifty-nine (59) and Sixty (60) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, recorded in the Office of the Recorder of St. Joseph County, Indiana, in Plat Book 3, Page 28, together with the West half of the vacated alley lying East of and adjacent to said Lots and together with the South half of the vacated alley lying North of and adjacent to said Lot Fifty-eight (58). [Parcel Key No. 018-3015-0563]

Parcel 4

Lots Numbered Forty-six (46), Forty-seven (47) and Forty-eight (48) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, recorded in the Office of the Recorder of St. Joseph County, Indiana, in Plat Book 3, page 28, together with the East half of the vacated alley lying West of and adjacent to Lots Numbered Forty-six (46), Forty-seven (47) and Forty-eight (48) and together with the South half of the vacated alley lying North of and adjacent to said Lot Forty-six (46). [Parcel Key No. 018-3015-0581]

Parcel 5

A lot or parcel of land 31 feet in width, taken off of and from the South side of Lot Numbered Forty-five (45) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the East half of the vacated alley lying West and adjacent to said lot and the North half of the vacated alley lying South and adjacent to said lot. [Parcel Key No. 018-3015-0580]

Parcel 6

Lot Numbered Forty-five (45) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, excepting 3 feet in width North and South taken off of and from the entire length of the North side, and also excepting 31 feet in width North and South taken off of and from the entire length of the South side of said lot, together with the East half of the vacated alley lying West and adjacent to said lot. [Parcel Key No. 018-3015-0579]

Parcel 7

The South half of Lot Numbered Forty-four (44) and a parcel of land 3 feet in width, North and South, taken off of and from the entire length of the North side of Lot Numbered 45, all as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the East half of the vacated alley lying West and adjacent to said lot. [Parcel Key No. 018-3015-0578]

Exhibit B

South Bend Redevelopment Commission Resolution Numbers 3286 and 3333

[See attached.]

RESOLUTION NO. 3286

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT
COMMISSION APPROVING THE FAIR MARKET VALUE OF
PROPERTY IN THE RIVER WEST DEVELOPMENT AREA.**

WHEREAS, the property identified at Exhibit "A" attached hereto and incorporated herein has been appraised by two qualified, independent, professional real estate appraisers and a written and signed copy of their appraisals is contained in the Commission's files; and

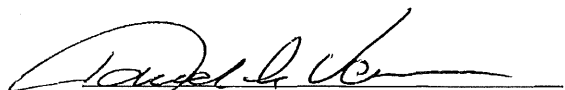
WHEREAS, each such appraisal has been reviewed by a qualified Redevelopment staff person and no corrections, revisions, or additions were requested by such reviewer; and

WHEREAS, the reviewer has prepared a written report which indicates that the appraisals are complete and consistent in the factual data contained therein, comply with existing statutory and regulatory requirements and are acceptable for the determination of fair market value.

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, that based upon such appraisals and the review thereof, the offering price of the property described at Exhibit "A" is hereby established as stated therein and all documentation related to such determination is contained in the Commission's files.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on April 15, 2015, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

CITY OF SOUTH BEND
DEPARTMENT OF REDEVELOPMENT



David A. Varner, Vice-President

ATTEST:


Donald E. Inks, Secretary

EXHIBIT "A"
RESOLUTION NO. 3286

Property	Size	Minimum Offering Price	Proposed Use
Lot 4 of the Coveleski Park Minor Subdivision	<u>Lot:</u> 11,761 SF .27 Acres +/-	\$31,500	Commercial projects that are permitted within the Central Business District zoning designation. Strong emphasis will be placed during the review process on compatibility with the goals and objectives of the River West Development Area; Coveleski Park Planning Area; and the surrounding neighborhood.

RESOLUTION NO. 3333

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT
COMMISSION ESTABLISHING THE OFFERING PRICE OF
PROPERTY IN THE RIVER WEST DEVELOPMENT AREA**

WHEREAS, the South Bend Redevelopment Commission (the "Commission"), the governing body of the City of South Bend, Department of Redevelopment, exists and operates pursuant to I.C. 36-7-14 (the "Act"); and

WHEREAS, the Commission may dispose of real property in accordance with Section 22 of the Act; and

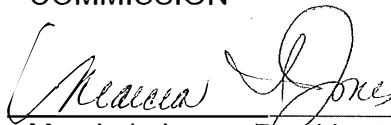
WHEREAS, the real property identified at Exhibit A attached hereto and incorporated herein has been appraised by two qualified, independent, professional real estate appraisers and a written and signed copy of their appraisals is contained in the Commission's files; and

WHEREAS, each such appraisal has been reviewed by a qualified Redevelopment staff person, and no corrections, revisions, or additions were requested by such reviewer.

NOW, THEREFORE, BE IT RESOLVED by the Commission, pursuant to Section 22 of the Act, that based upon such appraisals, the offering price of the property described at Exhibit A is hereby established as stated therein, which amount is not less than the average of the two appraisals, and all documentation related to such determination is contained in the Commission's files.

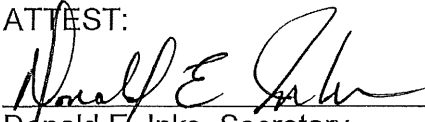
ADOPTED at a meeting of the South Bend Redevelopment Commission held on March 24, 2016, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION



Marcia I. Jones, President

ATTEST:



Donald E. Inks, Secretary

**EXHIBIT A
TO RESOLUTION NO. 3333**

Property	Size	Minimum Offering Price	Proposed Use
500 Block S. Lafayette & Main	<u>East Tract</u> 1.23 acres +/-	<u>East Tract</u> \$127,500	Commercial projects that are permitted within the Central Business District zoning designation. Strong emphasis will be placed during the review process on compatibility with the goals and objectives of the River West Development Area; the planning efforts of the Central Business District and Coveleski Stadium area; and the surrounding neighborhood.
	<u>West Tract</u> 1.62 acres +/-	<u>West Tract</u> \$130,000	
	<u>Total</u> 2.85 acres +/-	<u>Total</u> \$280,000	

Exhibit C

Memorandum of Option Agreement

MEMORANDUM OF REAL ESTATE OPTION AGREEMENT

This Memorandum of Real Estate Option Agreement (this “Memorandum”) is entered into as of September 29, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Heading for Home LLC, a Delaware limited liability company with offices at 501 W. South St., South Bend, Indiana 46601 (the “Company”) (each a “Party” and collectively the “Parties”).

WITNESSETH

A. The Commission owns certain real property located in South Bend, Indiana, and more particularly described in attached **Exhibit 1** (the “Property”).

B. As of the Effective Date hereof, the Commission and the Company have entered into a Real Estate Option Agreement (the “Option Agreement”) whereby the Commission granted the Company an exclusive option (the “Option”) to purchase the Property upon terms and conditions more particularly stated in the Option Agreement.

C. The Parties desire to place their interests in the Property as a matter of record.

NOW, THEREFORE, the Parties state as follows:

1. The initial term of the Option will commence on the Effective Date and conclude on March 31, 2018, unless earlier terminated pursuant to the terms of the Option Agreement. The initial term of the Option may be extended by the Company for no more than two (2) additional terms of one (1) year each.

2. This Memorandum may be executed in any number of counterparts, each such counterpart, when so executed and delivered, shall be an original, but all such counterparts when taken together shall constitute but one and the same Memorandum.

3. The recitals set forth above are hereby incorporated herein by reference.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Real Estate Option Agreement to be effective as of the Effective Date stated above.

SOUTH BEND
REDEVELOPMENT COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Donald E. Inks, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Memorandum of Real Estate Option Agreement.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2016.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

HEADING FOR HOME LLC

Andrew T. Berlin, Manager

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Andrew T. Berlin, known to me to be the Manager of Heading for Home LLC and acknowledged the execution of the foregoing Memorandum of Real Estate Option Agreement.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ____ day of _____, 2016.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

Exhibit 1

Description of Property

Parcel 1

Lot 4 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. 018-3014-051503]

Parcel 2

Lots Numbered Fifty-five (55), Fifty-six (56) and Fifty-seven (57) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the West half of the vacated alley lying East and adjacent and also the North half of the vacated alley lying South and adjacent to said lots. [Parcel Key No. 018-3015-056301]

Parcel 3

Lots Numbered Fifty-eight (58), Fifty-nine (59) and Sixty (60) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, recorded in the Office of the Recorder of St. Joseph County, Indiana, in Plat Book 3, Page 28, together with the West half of the vacated alley lying East of and adjacent to said Lots and together with the South half of the vacated alley lying North of and adjacent to said Lot Fifty-eight (58). [Parcel Key No. 018-3015-0563]

Parcel 4

Lots Numbered Forty-six (46), Forty-seven (47) and Forty-eight (48) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, recorded in the Office of the Recorder of St. Joseph County, Indiana, in Plat Book 3, page 28, together with the East half of the vacated alley lying West of and adjacent to Lots Numbered Forty-six (46), Forty-seven (47) and Forty-eight (48) and together with the South half of the vacated alley lying North of and adjacent to said Lot Forty-six (46). [Parcel Key No. 018-3015-0581]

Parcel 5

A lot or parcel of land 31 feet in width, taken off of and from the South side of Lot Numbered Forty-five (45) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the East half of the vacated alley lying West and adjacent to said lot and the North half of the vacated alley lying South and adjacent to said lot. [Parcel Key No. 018-3015-0580]

Parcel 6

Lot Numbered Forty-five (45) as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, excepting 3 feet in width North and South taken off of and from the entire length of the North side, and also excepting 31 feet in width North and South taken off of and from the entire length of the South side of said lot, together with the East half of the vacated alley lying West and adjacent to said lot. [Parcel Key No. 018-3015-0579]

Parcel 7

The South half of Lot Numbered Forty-four (44) and a parcel of land 3 feet in width, North and South, taken off of and from the entire length of the North side of Lot Numbered 45, all as shown on the recorded Plat of Samuel Martin's Addition to the Town, now City of South Bend, together with the East half of the vacated alley lying West and adjacent to said lot. [Parcel Key No. 018-3015-0578]