



Department of
Community Investment

Memorandum

March 26, 2015

TO: South Bend Redevelopment Commission
FROM: David Relos, Economic Resources *DR*
SUBJECT: Agreement for Sale of Land – Run Faster Run / Swing Batter Swing
Coveleski Lot 5 (Batting Training Facility)

On September 11, 2014, the Commission entered in to a Memorandum of Understanding with Swing Batter Swing, the owner of the South Bend Cubs Class A Minor League Baseball team. This MOU provided for the construction of a training facility to be used by the team and open to the public, with a private investment of at least \$1,000,000 and containing six batting tunnels, two regulation pitching mounds, and an observation deck.

In the intervening months, the parcels around Coveleski Stadium have been replatted to delineate development parcels owned by the Commission and those parcels owned by Parks.

To accommodate the training facility, Lot 5 was created and subsequently taken through the disposition process. On February 12, 2015, the Commission received no bids for Lot 5. Per statute, when receiving no conforming bids and after a 30 day period, the Commission may negotiate the price for the sale of property.

Because of the size and scope of this development, and as contemplated in the MOU, the sales price for this parcel is \$1. Run Faster Run, a wholly owned subsidiary of Swing Batter Swing, in turn agrees to complete the project within six months, pay all closing costs, and allow public use of the facility when not being used by the team.

This facility will enhance the Cove, team, and larger region, by being a unique destination point that will draw more people to the stadium and downtown area.

Staff requests approval of the Agreement for Sale of Land with Run Faster Run.



**AGREEMENT FOR SALE OF LAND
FOR PRIVATE DEVELOPMENT**

THIS AGREEMENT FOR SALE OF LAND FOR PRIVATE DEVELOPMENT (the “Agreement”) is made on March 26, 2015 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, established under the Redevelopment of Cities and Towns Act of 1953, as amended, being Indiana Code 36-7-14-1, *et seq.* (the “Act”), and having its office at 1400 S. County-City Building, South Bend, Indiana 46601 (the “Commission”), Run-Faster-Run LLC, an Indiana limited liability company, having its office at 501 W. South Street, South Bend, Indiana 46601 (the “Developer”), and Swing-Batter-Swing, LLC, an Indiana limited liability company, having its office at 501 W. South Street, South Bend, Indiana 46601 (the “Parent Company”) (each a “Party,” and collectively, the “Parties”).

RECITALS

1. The Commission has investigated areas within the corporate boundaries of the City of South Bend (the “City”) and has prepared and approved plans to redevelop the area known as the River West Development Area (the “Area”), formerly known as the South Bend Central Development Area.

2. The Developer is a wholly-owned subsidiary of the Parent Company.

3. The Parent Company 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”).

4. The Team plays its home games at a stadium commonly known and operated as Four Winds Field at Stanley Coveleski Stadium (the “Stadium”) pursuant to a Stadium Use, Management and Operations Agreement dated as of October 13, 2011, between the Parent Company, as assignee of South Bend Professional Baseball Club LLC, and the City of South Bend Board of Park Commissioners (the “Park Board”), as the same has been amended.

5. Following the completion of the public bidding procedure provided in Section 22 of the Act, in which the Commission received no bids, and as anticipated under the terms of a Memorandum of Understanding dated September 2, 2014, and entered into by the Parent Company, the Commission, the Park Board, and the City of South Bend Board of Public Works (the “Board of Works”) (the “MOU”), the Developer has offered to purchase from the Commission the property described in **Exhibit A** attached hereto (the “Property”).

6. The Property is located in the Area and is subject to a Development Area Plan, as amended, recorded on October 30, 2013, as Document No. 1333046 (the "Area Plan"). The Property abuts the Stadium.

7. The Commission is willing to sell the Property to the Developer, as a wholly owned subsidiary of the Parent Company, in accordance with the terms of this Agreement, and Developer wishes to develop the Property in accordance with the Area Plan and the terms of this Agreement.

8. The Commission believes that developing the Property in accordance with this Agreement furthers the objectives and public purposes stated in the Act and is in the best interests of the health, safety, and welfare of the City and its residents.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Agreement, the Parties agree as follows:

SECTION I. SALE, PURCHASE PRICE.

Subject to all of the terms of this Agreement, the Commission agrees to sell and the Developer agrees to purchase the Property for the sum of One Dollar (\$1.00) payable in full in cash at closing (the "Purchase Price").

SECTION II. CONVEYANCE OF PROPERTY.

A. Form of Deed. Subject to the terms of this Agreement, the Commission shall convey to the Developer, and the Developer shall accept, title to the Property by quit claim deed (the "Deed"). In addition to the other conditions, covenants, and restrictions in this Agreement, such conveyance and title shall be subject to:

1. Building and land use provisions and restrictions stated in the Area Plan.
2. Applicable building codes and zoning ordinances.
3. Any and all other covenants, restrictions, easements and reservations of record.

B. Conditions Precedent to Closing. Prior to and as conditions precedent to Closing (as defined below):

1. The Developer shall submit to the Commission a final site plan and any additional information requested by the Commission, in accordance with Section IV.A. of this Agreement, relating to the Developer's development

plan for the Property attached hereto as **Exhibit B** (the “Project Development Plan”); and

2. Upon the Commission’s request, the Developer shall submit to the Commission evidence satisfactory to the Commission of binding commitments for financing the Project (as defined below).

C. Time and Place of Closing on Sale of the Property. Subject to the terms and conditions of this Agreement, the Commission shall deliver the Deed and possession of the Property to the Developer and the Developer shall pay the Purchase Price to the Commission at a mutually agreed time and place (the “Closing”) on April 3, 2015, or an earlier or later date mutually agreed upon by the Parties in writing (the “Closing Date”).

D. Closing Costs. The Developer will pay all closing costs, including, without limitation, the following: (1) all service fees or expenses charged by any title company or escrow agent involved in the Closing; and (2) all fees related to the filing or recordation of documents associated with the Closing.

E. Recordation of Deed. The Commission (or its designee) shall promptly record the Deed in the Office of the Recorder of St. Joseph County, Indiana.

F. Title Insurance. The Developer will pay all costs associated with any owner’s policy or lender’s policy of title insurance related to its acquisition of the Property under this Agreement, and the Commission will have no obligation to furnish any such policy.

SECTION III. NATURE OF IMPROVEMENTS; TIME FOR COMMENCEMENT AND COMPLETION; PHASING OF PROJECT AND LIQUIDATED DAMAGES; PARKING ON PROPERTY; LIQUOR LICENSING; ACCESS EASEMENT AGREEMENT; REPRESENTATIONS OF PARENT COMPANY.

A. Nature of Improvements. The construction of improvements on the Property (the “Project”) shall be substantially of the same size, scope, and nature as that specified in the Project Development Plan and as proposed by the Developer to the Commission for disposition and development of the Property. The Commission has relied upon all descriptions, discussions, drawings, and other representations of the Project by the Developer. Those matters, as well as the Project Development Plan and any additional information gathered pursuant to Section IV.A. of this Agreement, are incorporated into this Agreement by reference.

B. Time for Commencement and Completion of Project. Immediately following the Closing, the Developer will continue its work on the Project. The Developer will reach Substantial Completion (as defined below) of the Project on or before the date that is six (6) months after the Effective Date of this Agreement (the “Project Completion Deadline”).

C. Value of Property. Developer understands and acknowledges that in offering the Property for sale, the Commission obtained two (2) independent appraisals as required by I.C. 36-7-14 and determined that the fair market value for the Property is One Hundred Seven Thousand Eight Hundred Fifty and 00/100 Dollars (\$107,850.00) (the "Market Value"). Notwithstanding the foregoing, the Parties understand and agree that in the event that the Developer (i) fails to complete construction of the Project by the Project Completion Deadline, or (ii) the Developer defaults in its obligations under this Agreement and fails to cure such default by the Project Completion Deadline, then the Developer shall pay as liquidated damages to the Commission the Market Value without any reduction, offset, or recoupment. The payment of liquidated damages under this Section III.C. shall be in addition to any other remedies and shall not waive any other right or remedy under this Agreement, at law, or in equity.

D. Parking Agreement. Promptly following the Closing and before the Commission issues a Certificate of Completion to the Developer under Section V, the Developer will enter into an agreement with the Park Board establishing their mutual rights to parking facilities at the Stadium and on the Property, as contemplated in the MOU.

E. Liquor Licensing. The Developer acknowledges and agrees that the Commission's conveyance of the Property to the Developer under this Agreement will not include any right or interest in the alcoholic beverage permits or licenses held by the City or the Park Board in relation to the Stadium. In the event the Developer wishes to seek such permits or licenses, it will do so at its own expense.

F. Access Easement Agreement. Promptly following Closing, the Developer intends to negotiate with the Park Board to enter into an Access Easement Agreement providing access to the Property through the Stadium. The Commission agrees to make reasonable efforts to facilitate the negotiations between the Developer and the Park Board. The Developer agrees that any such Access Easement Agreement will include terms specifying that its right of access will terminate in the event the Team ceases its operations at the Stadium.

G. Representations of Parent Company. The Parent Company represents and warrants that it is the sole owner of the Developer. The Parent Company guarantees the performance of all of the Developer's obligations under this Agreement.

SECTION IV. TIME FOR CERTAIN OTHER ACTIONS.

A. Time for Submitting Plans for Design Development Review. Prior to Closing, the Commission may request, and Developer will provide, further information in connection with the Project Development Plan. The Project Development Plan and supplements thereto will serve the Commission in its determination of whether the Developer has completed the Project and is entitled to a Certificate of Completion (as defined below).

B. Time for Submitting Financial Commitment. Prior to Closing, upon the Commission's request, Developer shall submit to the Commission evidence satisfactory to the Commission of binding commitments for financing the Project.

SECTION V. COMPLETION.

A. Substantial Completion Defined. In this Agreement, “Substantial Completion” means the stage in the construction of the Project when (1) the Project is sufficiently complete in accordance with the Project Development Plan so that the Developer can occupy or use the Project facility for its intended purposes, including use of the Project facility by members of the public, and (2) the Developer has received a certificate of occupancy or its equivalent from the relevant local government authority.

B. Certificate of Completion. Promptly after the Developer reaches Substantial Completion of the Project, the Commission will issue to the Developer an instrument acknowledging the same (the “Certificate of Completion”).

C. Form of Certification. The Certificate of Completion will be in such form as to be recordable in the Office of the Recorder of St. Joseph County, Indiana.

D. Refusal or Failure to Provide Certificate. If the Commission refuses or fails to provide the Certificate of Completion within thirty (30) days after the Developer’s written request, the Commission shall provide the Developer with a written statement indicating how the Developer failed to comply with the provisions of this Agreement and giving the measures necessary, in the Commission’s reasonable opinion, for the Developer to take in order to obtain such Certificate of Completion.

SECTION VI. RESTRICTIONS UPON USE OF PROPERTY.

A. Agreements of Developer. The Developer agrees and the Deed shall state that the Developer and its successors and assigns shall:

1. Devote the Property only to uses stated in the Project Development Plan (or any supplement thereto approved by the Commission pursuant to Section IV.A. of this Agreement) and in conformity with the objectives and provisions of the Area Plan; and
2. Not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or the Project constructed on the Property.

B. Enforceability of Covenants. The Parties agree and the Deed shall expressly state that the covenants in this Section shall be covenants running with the land and, except only as otherwise specifically provided in this Agreement, shall be binding for the benefit of and shall be enforceable by:

1. the Commission;

2. its successors and assigns;
3. the City of South Bend, Indiana; or
4. any successors in interest to the Property.

The covenants shall be enforceable against:

1. the Developer;
2. its successors and assigns;
3. every successor in interest to the Property; and
4. any party in possession or occupancy of the Property.

The Parties further agree that the covenants in Section VI.A.1. shall remain in effect from the date of the Closing until the earlier of December 31, 2025 or Team, or its successors or assigns, ceases operations at the Stadium. The covenants in Section VI.A.2. shall remain in effect without limitation as to time, but they shall bind the Developer and each successor in interest to or possession of the Property only for the time that such party, respectively, shall have title to, an interest in, or possession of the Property.

C. Beneficiaries of Covenants. The Parties agree that the Commission, its successors and assigns, and the City of South Bend, Indiana, shall be deemed beneficiaries of the covenants in this Section. The Deed shall state that the covenants shall run in favor of the Commission for the entire period the covenants shall be in force and effect, regardless of whether the Commission has at any time been, or is the owner of any land or interest in any land in favor of which such covenants relate. If the above covenants are breached, the Commission shall have all of the rights and remedies to which they or any other beneficiary of the covenant may be entitled.

SECTION VII. ASSIGNMENT AND TRANSFER.

A. Representations as to Development. The Developer represents and agrees that its purchase of the Property and its other undertakings under this Agreement are and will be used for redevelopment of the Property and not for speculation in land holding. The Developer further recognizes that:

1. in view of the importance of the development of the Property to the general welfare of the City,
2. the substantial financial and other public assistance that has been made available for the purpose of making such development possible, and

3. the fact that a transfer in ownership of the Developer to a non-affiliated person or entity is, for practical purposes, a transfer or disposition of the Property then owned by the Developer;

the qualifications and identity of the Developer and its shareholders, members or partners are of particular concern to the Commission. The Developer further recognizes that it is due to such qualifications and identity that the Commission is entering into this Agreement with the Developer and in so doing is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants.

B. Prohibition Against Transfer of Interest. The Developer agrees that any transactions with respect to the equity of the Developer, including any increased capitalization, merger, transfer or transfers of ownership of the outstanding shares of the Developer, or otherwise, which results in the ownership by persons who are not presently shareholders, members or partners of the Developer of 50% or more of the outstanding equity of the Developer at any time prior to the date of issuance of a Certificate of Completion, will constitute a violation of this Agreement unless the Commission has given prior written approval to such transfer or transfers, which approval will not be unreasonably withheld.

C. Prohibition Against Transfer of Property or Assignment of Agreement. The Developer represents and agrees for itself, its successors and assigns, that except for security for obtaining financing needed to enable the Developer to complete the Project, and except for any other purpose authorized by this Agreement, the Developer has not made and will not make any of the following prior to receiving the Certificate of Completion without first obtaining the Commission's written consent:

1. any total or partial sale, assignment, conveyance, or lease relating to this Agreement or the Property; or
2. any trust or power relating to this Agreement or the Property; or
3. any transfer in any other mode or form, with respect to this Agreement or the Property or any part thereof, of any interest therein; or
4. any contrary or agreement to do any of the above.

D. Approval of Qualifications Prior to Transfer. The Commission may require as conditions precedent to any approval of transfer or assignment any and all information regarding the qualifications, financial responsibility, legal status, experience, background and any and all other information it deems necessary or desirable in order to achieve and safeguard the purposes of the Act, the Area Plan, and this Agreement.

E. Exempted Transfer for Estate Planning Purposes. Notwithstanding the foregoing or anything to the contrary herein, the provisions of Sections VII A. through VII. D. shall not apply in the case of the Developer or the Parent Company upon a transfer made for bona fide

estate planning purposes of a member of the Developer or the Parent Company or an individual that is a beneficiary or grantor of a trust that is a member of the Developer or the Parent Company, that is a natural person (the "Member"), either during his or her lifetime or on death by will or intestacy to his or her spouse, parent, child (natural or adopted), or any other direct lineal descendant and/or ancestor of such Member (or his or her spouse) (all of the foregoing collectively referred to as "family members"), or any other relative approved by the Commission, or any custodian or trustee of any trust, partnership, or limited liability company for the benefit of, or the ownership interests of which are owned wholly, by such Member or any such family members.

F. No Transfer of Developer's Obligations. Absent specific written agreement by the Commission to the contrary, no transfer or approval by the Commission thereof shall relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the improvements and completion of the Project from any of its obligations with respect thereto.

G. Information as to Interest. The Developer agrees that during the period between execution of this Agreement and the Commission's issuance of the Certificate of Completion, the Developer will promptly notify the Commission of any and all changes in the ownership of shares or partnership interest, or any other act or transaction involving or resulting in any change in the ownership of such interest in the Developer or the relative distribution thereof, of which it or any of its officers have been notified or otherwise have knowledge or information, and which results in the ownership of 50% or more of all outstanding equity of the Developer by persons who are not presently shareholders, members or partners of the Developer.

H. Right of First Refusal. This Section VIII.H. will apply on and after the date on which the Commission issues to the Developer a Certificate of Completion of the Project. In the event the Developer determines to sell or otherwise dispose of the Property after receiving a Certificate of Completion of the Project, the Commission and the Park Board will have a right of first refusal as to such sale or disposition if (a) the proposed buyer is not an owner or an affiliate of the owner of the Team or will not become an owner of the Team at the time of the sale or disposition of the Property; or (b) the sale or disposition will result in the Team losing priority access to the completed Project facility. Within ten (10) days of receiving an offer from a proposed buyer of the Property, the Developer will provide written notice of such offer (the "Notice of Offer") to the Commission and the Park Board, including the name of the proposed buyer, a certification by the proposed buyer of the purchase price offered by the proposed buyer, and an explanation of the proposed buyer's intended use of the completed Project facility and the Property. The Commission or the Park Board each will have a right to purchase the Property at a purchase price not less than the greater of (i) the purchase price offered by the proposed buyer, or (ii) the fair market value of the Property as determined by the average of three appraisals (one prepared by an appraiser, licensed in the State of Indiana, to be appointed by the Commission, one prepared by an appraiser, licensed in the State of Indiana, to be appointed by the Developer, and one prepared by an appraiser, licensed in the State of Indiana, appointed by the other two appraisers). The Commission's and the Park Board's rights of first refusal will expire sixty (60) days after the date(s) on which each receives copies of all three (3) appraisal reports from the

appraisers retained in accordance with this Section VII.H., during which time the Developer will take no action regarding the sale or other disposition of the Property. Following the expiration of the sixty-day period, if the Commission or the Park Board has not exercised its right to purchase the Property, the Developer may proceed with the sale or other disposition of the Property.

SECTION VIII. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES.

A. Mortgage and Other Encumbrance of Property: Before securing any financing by mortgage or similar lien instrument with regard to any part of the Property, the Developer shall notify the Commission in writing. The Commission understands that any interest it may retain in the Property will be subordinate to the interest of a mortgagee. In addition, the Developer shall promptly notify the Commission of any encumbrance that has been attached to the Property, whether by the Developer's voluntary act or otherwise.

B. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, any mortgage holder authorized by this Agreement shall not be obligated by this Agreement to construct or complete the Project or to guarantee such construction or completion. No covenants or provisions in the Deed shall be construed so to obligate such holder. Nothing in this Agreement shall be construed to permit or authorize any such holder to use the Property in any manner not provided for or permitted in the Area Plan or this Agreement or to construct any improvements other than those provided for or permitted in the Area Plan or this Agreement.

C. Copy of Notice of Default to Mortgagee. Whenever the Commission delivers a notice or demand to the Developer with respect to any breach or default under this Agreement the Commission shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder as shown in the records of the Commission.

D. Mortgagee's Option to Cure Defaults. After any breach or default referred to in Section VIII.C., above, each such holder shall have the right at its option:

1. to cure or remedy such breach or default to the extent that it relates to the part of the Property covered by its mortgage; and
2. to add the cost of doing so to the mortgage debt and the lien of its mortgage.

Such holder shall not undertake or continue the construction beyond the extent necessary to conserve or protect those improvements or construction already made without first having expressly assumed the obligation to complete the construction on the Property.

This assumption shall be made by written agreement pursuant to terms and conditions satisfactory to the Commission. Any holder who properly completes the Project shall be entitled to request a Certificate of Completion under the same terms and conditions provided for the Developer under Section V.

E. Commission's Option to Pay Mortgage Debt or Purchase Property. In any case, where after default or breach that has not been cured by the Developer or any successor in interest under this Agreement, any mortgage holder of any part of the Property:

1. has, but does not exercise, the option to complete the improvements relating to the part of the Property covered by its mortgage or for which it has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or
2. begins construction but does not complete such construction within the period as agreed upon by the Commission and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in this Agreement), and such default shall not have been cured within sixty (60) days after written demand by the Commission so to do,

the Commission shall have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured under it, and every mortgage instrument made prior to the Commission's issuance of a Certificate of Completion of construction with respect to the Property by the Developer or successor in interest shall so provide. In the event ownership of any part of the Property has vested in such holder by way of foreclosure or action in lieu of foreclosure, the Commission shall be entitled, at its option, to a conveyance of any part of the Property (as the case may be) upon delivering to such holder an amount equal to the sum of:

1. the mortgage debt at the time of foreclosure or action in lieu of foreclosure, less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings;
2. all expense with respect to the foreclosure;
3. the net expense, if any, exclusive of general overhead, incurred by such holder in and as a direct result of the subsequent management of the Property;
4. the costs of any improvements made by such holder; and
5. an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

F. Commission's Option to Cure Mortgage Default. Prior to the Commission's issuance of a Certificate of Completion, if the Developer or any successor in interest defaults or

breaches any of its obligations under any mortgage or other instrument creating an encumbrance or lien upon any part of the Property, the Commission, at its option, may cure such default or breach. If this occurs, the Developer or successor in interest shall reimburse the Commission for all costs incurred by the Commission in curing such default or breach. Such reimbursement shall be in addition to and without limitation upon any other rights or remedies to which the Commission is entitled. Any such lien shall be subject always to the lien (including any lien contemplated, because of advances yet to be made) of any then existing mortgages on the Property authorized by this Agreement, including any lien contemplated, because of advances yet to be made.

G. Mortgage and Holder. For the purposes of this Agreement: the term “mortgage” shall include a deed of trust or other instrument creating an encumbrance or lien upon any part of the Property as security for a loan to construct and otherwise finance the Project; the term “holder” in reference to a mortgage shall include any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust, including, but not limited to, the Federal Housing Commissioner, the Administrator of Veterans Affairs, and any successor in office of either such official.

SECTION IX. REMEDIES.

A. In General. Except as otherwise provided in this Agreement, upon any default in or breach of this Agreement by either party or any successor to such party, such party (or successor), upon written notice from the other, shall proceed immediately to cure or remedy such default or breach within thirty (30) days after receiving the notice. If action is not taken or not diligently pursued or the default or breach is not cured or remedied within a reasonable time, the aggrieved party may institute proceedings necessary or desirable in its opinion to cure and remedy the default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

B. Termination by Developer Prior to Conveyance. If the Commission does not tender conveyance or possession of the Property in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within forty-five (45) days after the date of written demand by the Developer, this Agreement shall be terminated at the option of the Developer, by written notice to the Commission, and, except for return of any Deposit, neither the Commission nor the Developer shall have any further rights against or liability to the other under this Agreement.

C. Termination by Commission Prior to Conveyance.

In the event that:

1. prior to conveyance of the Property to the Developer and in violation of this Agreement:

- a. the Developer (or successor in interest) assigns or attempts to assign this Agreement or any rights therein or the Property, or
 - b. there is any change in the ownership of the Developer or with respect to the identity of the parties holding membership interest in the Developer or the degree thereof, which the Commission reasonably has refused to approve; or
2. the Developer does not submit reasonably satisfactory development plans or evidence of necessary financing, in satisfactory form and in the manner and by the dates respectively provided in this Agreement therefore;

then this Agreement and any rights of the Developer in this Agreement and the Property shall, at the option of the Commission, without need of the consent of the Developer, be terminated.

D. Revesting Title in Commission upon Happening of Event Subsequent to Conveyance to Developer. If, subsequent to conveying any part of the Property to the Developer and prior to the Commission's issuance of a Certificate of Completion:

1. the Developer (or successor in interest) shall default in or violate its obligations with respect to the construction of the Project, including the nature and the dates for the beginning and completion thereof, or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months after written demand by the Commission so to do; or
2. the Developer (or successor in interest) shall fail to pay real estate taxes or assessments on the Property when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall cause any levy or attachment to be made, or any materialmen's or mechanic's lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments are not paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the Commission made for such payment, removal, or discharge, within ninety (90) days after written demand by the Commission so to do; or
3. there is, in violation of this Agreement, any transfer of any part of the Property, or any change in the ownership or distribution of the stock of the Developer, or with respect to the identity of the parties in control of the Developer or the degree thereof as provided in Section VII, and such violation shall not be cured within sixty (60) days after written demand by the Commission to the Developer,

then the Commission shall have the right to re-enter and take possession of the Property and to terminate and re-vest in the Commission the estate conveyed by the Deed to the Developer. The intent of this provision, together with other provisions of this Agreement, is that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that the event of any default, failure, violation, or other action or inaction by the Developer specified in this Section IX.D. the Developer's failure to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the Commission at its option may declare a termination in favor of the Commission of the title, and of all the rights and interest in and to the Property conveyed by the Deed to the Developer, and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the Property, shall revert to the Commission; provided, that such condition subsequent and any re-vesting of title as a result thereof in the Commission: (a) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage authorized by this Agreement, and (ii) any rights or interests provided in this Agreement for the protection of the holders of such mortgages; and (b) shall not apply to individual parts of the Property, if any, (or in the case of parts sold or leased, the part so conveyed) on which the construction thereon has been completed under this Agreement.

E. Resale of Reacquired Property; Disposition of Proceeds. Upon the re-vesting in the Commission of title to the Property or any part thereof as provided in Section IX.D., above, the Commission shall, pursuant to its responsibilities under laws of the State of Indiana, use its best efforts to resell the Property or part thereof (subject to such mortgage liens and other interests as set forth in Section IX.D. above) as soon and in such manner as the Commission shall find feasible and consistent with the objectives of laws of the State of Indiana and of the Area Plan to a qualified and responsible party or parties (as determined by the Commission) who will assume the obligation of making or completing the construction of the Project in its stead or of another project as shall be satisfactory to the Commission and in accordance with the uses specified for such Property or part thereof in the Area Plan. Upon such resale of the Property, the proceeds shall be applied:

1. First, to reimburse the Commission, on its own behalf or on behalf of the City of South Bend, Indiana, for all costs and expenses incurred by the Commission, including but not limited to:
 - a. salaries of personnel, in connection with the recapture, management, and resale of the Property or part thereof, but less any income derived by the Commission from the Property or part thereof in connection with recapture such management or resale;
 - b. all taxes, assessments, and water and sewer charges with respect to the Property or part thereof, or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the Commission, an amount, if paid, equal to such taxes, assessments, or charges, as determined by the

appropriate assessing officials, as would have been payable if the Property were not so exempt;

- c. any payments made or needed to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title in the Commission or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;
 - d. any expenditures made or obligations incurred in making or completing the construction or any part thereof on the Property or part thereof;
 - e. and any amounts otherwise owing the Commission by the Developer and its successor or transferee; and
2. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to:
- a. the sum of the Purchase Price paid by it for the Property (or allocable to the part thereof) and the cash actually invested by the Developer in construction on the Property or part thereof, less
 - b. any gains or income withdrawn or made by the Developer from this Agreement or the Property.

Any balance remaining after such reimbursements shall be retained by the Commission as its property.

F. Other Rights and Remedies of Commission; No Waiver by Delay. The Commission shall have the right to institute such actions or proceedings, as it may deem desirable, for putting into effect the purposes of this Section IX. This includes the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Developer, and (subject to such mortgage liens and conveyances as provided in Section IX.D. hereof) its successors in interest and assigns, in the Property, and the revesting of title in the Commission. Any delay by the Commission in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section IX shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way. This provision intends that the Commission should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved; nor shall any waiver in fact made by the Commission with respect to any specific default by the Developer under this Agreement be considered or

treated as a waiver of the Commission's rights to any other defaults by the Developer under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

G. Enforced Delay in Performance for Causes Beyond Control of Party. For the purposes of any of the provisions of this Agreement, neither the Commission nor the Developer, as the case may be, nor any successors in interest, shall be considered in breach of or in default in its obligations with respect to the preparation of the Property for the Project, or the beginning and completion of construction, or progress in respect thereto, in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence. These include, but are not limited to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos and unusually severe weather, or delays of subcontractors due to such causes. The purpose and intent of this provision is that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Developer with respect to construction of the Project shall be extended for the period of the enforced delays as determined by the Commission. The party seeking the benefit of the provisions of this paragraph shall, within ten (10) days after the beginning of the enforced delay, have first notified the other party thereof in writing and of the cause or causes thereof, and shall have requested an extension for the period of the enforced delay.

H. Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative. The exercise by either party of any one or more of such remedies shall not preclude the exercise, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, manner or time thereof, any obligation of the other party, or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to that particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver of any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

I. Party in Position of Surety With Respect to Obligations. The Developer, for itself, its successors and assigns, and for all other persons who are or who shall become liable upon or subject to any obligation or burden under this Agreement, whether by express or implied assumption or otherwise, hereby waives, to the fullest extent permitted by law, any and all claims or defenses otherwise available on the ground of its or their being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of Agreement.

SECTION XI. MISCELLANEOUS.

A. Conflict of Interest; Commission Representatives Not Individually Liable. No member, official or employee of the Commission shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly, interested. No member, official or employee of the Commission shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount that may become due to the Developer, successor or assign or on any obligations under the terms of this Agreement.

B. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

1. The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

C. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to nor shall be merged by reason of any Deed transferring title to the Property from the Commission to the Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

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

E. Notices and Demands. Any notice required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below, or at such other address(es) designated from time to time by a Party in writing.

Developer:

Run-Faster-Run LLC
501 W. South Street
South Bend, Indiana 46601

Attn: Joe Hart

With a copy to:

Faegre Baker Daniels LLP
202 South Michigan Street
Suite 1400
South Bend, IN 46601
Attn: Richard Hill

Parent Company:

Swing-Batter-Swing, LLC
501 W. South Street
South Bend, Indiana 46601
Attn: Joe Hart

With a copy to:

Faegre Baker Daniels LLP
202 South Michigan Street
Suite 1400
South Bend, IN 46601
Attn: Richard Hill

Commission:

South Bend Redevelopment Commission
1400 S. County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601
Attn: David Relos

With a copy to:

South Bend Department of Law
1200 S. County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601
Attn: Corporation Counsel

F. Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana, and any action to enforce the terms or conditions of this Agreement shall be commenced in the courts of St. Joseph County, Indiana.

G. Authority. Each of the undersigned persons executing and delivering this Agreement on behalf of each Party represents and certifies that he or she has been fully empowered to execute and deliver this Agreement and that all necessary action has been taken and done by such Party.

H. Severability. If any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property, is held invalid, such invalidity will not affect the application or validity of any other provision, covenant, agreement, or portion of this Agreement

I. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument.

J. Integration. This Agreement supersedes all prior agreements, negotiations, and discussions relative to the subject matter of this Agreement and is a full integration of the agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date set forth above.

[SIGNATURE PAGE(S) ATTACHED]

**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____ and _____, known to me to be the _____ and _____ respectively of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Agreement for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the _____ day of _____, 2015.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

RUN-FASTER-RUN LLC

Date: _____, 2015

Printed Name and Title

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____, known to me to be the _____ of Run-Faster-Run LLC, and acknowledged the execution of the foregoing Agreement for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ___ day of _____, 2015.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

SWING-BATTER-SWING, LLC

Date: _____, 2015

Printed Name and Title

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____, known to me to be the _____ of Swing-Batter-Swing, LLC, and acknowledged the execution of the foregoing Agreement for Sale of Land for Private Development.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the ___ day of _____, 2015.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lot 5 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.: 018-3014-051504

EXHIBIT B

PROJECT DEVELOPMENT PLAN

Run-Faster-Run LLC (the “Developer”) will construct on the Property a six-tunnel, indoor baseball and softball hitting and training facility, covering approximately 11,200 square feet of interior space (the “Facility”). The Facility will contain restrooms and an observation area. The Developer will expend no less than One Million Dollars (\$1,000,000.00) in constructing the Facility.

Upon completion of the Facility, the Developer will make the Facility available for public use, subject to priority access granted to a professional minor league baseball team through a lease between the Developer and Swing-Batter-Swing, LLC. The Developer will publicly advertise the regular hours of operation when the Facility will be open for the public’s use at commercially reasonable rates.

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