

Department of
Community Investment

Memorandum

Tuesday, July 28, 2015

TO: Redevelopment Commission
FROM: Scott Ford
SUBJECT: Option Agreement for Lots 2 and 3 of the plat at Coveleski Park Minor Subdivision

Included in the Commissioners pack is an executed Option Agreement between Swing-Batter-Swing, LLC and the Redevelopment Commission. This Agreement outlines the negotiated terms for the exclusive option to purchase the two parcels which abut the northern boundary of Four Winds Field (Lots 2 and 3 of the plat at Coveleski Park Minor Subdivision).

In April 15, 2015 the Redevelopment Commission adopted Resolution Numbers 3284 and 3285 to establish the minimum offering price of for disposition of the parcels to be collectively, \$402,000. As of May 14, 2015 no bids were received and following Section 22 of the Redevelopment Statue, the City was free to negotiate terms with prospective purchasers.

Andrew Berlin, the owner of Swing-Batter-Swing and the South Bend Cubs has invested over \$7.3 million in upgrades to Four Winds Field and the facility has become magnet for visitors, setting numerous single game and an overall season attendance record in 2014.

Key Terms:

- **Period:** The initial term extends from the Effective Date through the end of 2016, with the annual opportunity for three one-year extensions to extend through December 31, 2019.
- **Option Price:** The initial Option price is \$1.00, and it steps up with each extension at the following schedule: \$1,000.00 for the first extension, \$5,000.00 with the second extension, and \$10,000.00 for the final extension. For each extension the payment and a written report to the Commission would be due by January 31st of the year under consideration. In the event that Swing Batter Swing seeks to execute the Option the purchase price for the property would be \$1.00.
- **Exercise of Option:** In order to exercise the Option, Swing-Batter-Swing will need to provide development plans to be approved by the Redevelopment Commission as part of the Purchase Agreement for the property. The development is intended to be a mixed-use project consistent with the dense, urban village environment with pedestrian-oriented space including residential and/or commercial and/or retail and/or hospitality uses.



REAL ESTATE OPTION AGREEMENT

This Option Agreement (this "Option Agreement") is made as of July 30, 2015 (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 Swing-Batter-Swing, LLC, an Indiana 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 I.C. 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 in attached Exhibit A (the "Property"), which abuts the stadium commonly known as Four Winds Field at Stanley Coveleski Stadium (the "Stadium").

C. Pursuant to the Act, the Commission adopted Resolution Numbers 3284 and 3285, collectively attached as Exhibit B, on April 15, 2015, whereby the Commission established the minimum offering prices for the respective portions of the Property, which together equal Four Hundred Two Thousand Dollars (\$402,000.00).

D. Pursuant to the Act, the Commission publicized its intent to sell the Property and invited bids for the purchase of the Property 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 the Property, 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 the Property on the terms stated in this Option Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are 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 December 31, 2016 (the "Option Period"), provided, however, that the Option Period may be extended for no more than three (3) additional terms of one (1) year each. To extend the Option Period to December 31, 2017, the Company will deliver to the Commission by January 31, 2017, (i) a payment in the amount of One Thousand Dollars (\$1,000.00) and (ii) a written report satisfactory to the Commission concerning any development prospects or plans for the Property. To extend the Option Period to

December 31, 2018, the Company will deliver to the Commission by January 31, 2018, (i) a payment in the amount of Five Thousand Dollars (\$5,000.00) and (ii) a written report satisfactory to the Commission concerning any development prospects or plans for the Property. To extend the Option Period to December 31, 2019, the Company will deliver to the Commission by January 31, 2019, (i) a payment in the amount of Ten Thousand Dollars (\$10,000.00) and (ii) a written report satisfactory to the Commission concerning any development prospects or plans for the Property. Notwithstanding any provision herein to the contrary, this Option Agreement will terminate immediately in the event of any conveyance, transfer, or assignment that causes Andrew 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 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 11) of its intent to purchase the Property (the "Notice of Intent"). The Notice of Intent will include detailed site plans and specifications for the Company's proposed development of the Property as a mixed-use project including, without limitation, residential, commercial, and retail/hospitality uses, which will comply with all applicable zoning and land use laws and regulations. Notwithstanding any provision herein to the contrary, the Company will not be deemed to have exercised the Option until the Commission adopts a resolution approving such site plans and specifications delivered to the Commission with the Company's Notice of Intent.

4. Purchase Price. In the event the Company exercises the Option, the Commission will sell the Property to the Company for One Dollar (\$1.00) (the "Purchase Price"), in consideration of the Company's proposed use of the Property in accordance with the terms of this Option Agreement and the purchase agreement 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. In addition, the purchase agreement will require the Company to develop the Property into a mixed-use project, consistent with a dense urban village environment comprised of pedestrian-oriented space including residential and/or commercial and/or retail and/or hospitality uses, all in accordance with the Commission-approved site plans and specifications delivered to the Commission with the Company's Notice of Intent. At closing, the Commission shall deliver to the Company a quit claim deed conveying the Property to the Company free and clear of all encumbrances, excepting and subject to all legal highways, applicable zoning ordinances, easements and other restrictions of record, and real estate taxes and assessments. The Company will pay all closing costs, recording fees, and title company charges arising out of the closing.

6. 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.

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

8. 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.

9. 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.

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

11. 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: Chris Fielding

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: Swing-Batter-Swing, 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: Richard L. Hill, Esq.

12. 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.

13. Entire Agreement. 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.

14. 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.


15. 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.

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

**SOUTH BEND REDEVELOPMENT
COMMISSION**

SWING-BATTER-SWING, LLC

Marcia I. Jones, President



Signature
Andrew T. Berlin

Printed Name and Title

ATTEST:

Donald E. Inks, Secretary

4000.0000069 71429305.007

Exhibit A

Description of Property

Lots 2 and 3 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 Nos. 18-3014-051501 and 18-3014-051502]

Exhibit B

South Bend Redevelopment Commission Resolution Numbers 3284 and 3285

[See attached.]

RESOLUTION NO. 3284

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

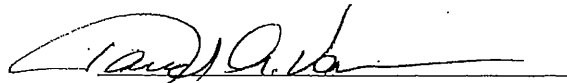
WHEREAS, each such appraisal has been reviewed by a qualified Redevelopment staff person and no corrections, revisions, or additions were requested by such reviewer; and

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. 3284

Property	Size	Minimum Offering Price	Proposed Use
Lot 2 of the Coveleski Park Minor Subdivision	<u>Lot:</u> 117,672 SF 2.70 Acres +/-	\$287,500	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. 3285

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

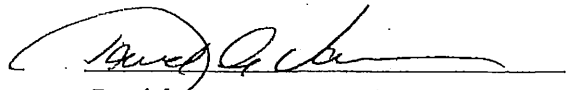
WHEREAS, each such appraisal has been reviewed by a qualified Redevelopment staff person and no corrections, revisions, or additions were requested by such reviewer; and

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. 3285

Property	Size	Minimum Offering Price	Proposed Use
Lot 3 of the Coveleski Park Minor Subdivision	<u>Lot:</u> 46,609 SF 1.07 Acres +/-	\$114,500	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.

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 July 30, 2015 (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 Swing-Batter-Swing, LLC, an Indiana 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 as follows (the "Property"):

Lots 2 and 3 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 Nos. 18-3014-051501 and 18-3014-051502]

B. As of the Effective Date hereof, the Commission and the Company 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 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 December 31, 2016, unless earlier terminated pursuant to the terms of the Agreement. The initial term of the Option may be extended by the Company for no more than three (3) additional terms of one (1) year each.

2. This Memorandum may be executed in any number of counterparts, each of which 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.

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 _____, 2015.

My Commission Expires:

Notary Public
Residing in St. Joseph County, Indiana

SWING BATTER-SWING, LLC

Andrew T. Berlin

Andrew T. Berlin, Manager

STATE OF ILLINOIS)
) SS:
COOK 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 Swing-Batter-Swing, 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 28 day of July, 2015.

My Commission Expires:

5/24/18

Ann M. Rupcich
Notary Public
Residing in Cook County, Illinois

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.

