

EXECUTION COPY

**AMENDED AND RESTATED  
STADIUM USE, MANAGEMENT AND OPERATIONS AGREEMENT**

**BY AND BETWEEN**

**SWING BATTER SWING, LLC AND THE  
BOARD OF PARK COMMISSIONERS OF THE  
OF THE CITY OF SOUTH BEND**

Date: JANUARY 19, 2021

## STADIUM USE, MANAGEMENT AND OPERATIONS AGREEMENT

This Stadium Use, Management and Operations Agreement (“Stadium Agreement”) is made and entered into effective the 19th day of January, 2021, by and between Swing Batter Swing, LLC, an Indiana limited liability company, hereinafter referred to as the “Team” and the Board of Park Commissioners of the City of South Bend, Indiana, hereinafter referred to as the “Park Board”, the governing body of the Venues, Parks & Arts Department of the City of South Bend, hereinafter referred to as the “Park Department”. The Team and Park Board are individually referred to as a “Party” or collectively as “Parties”.

WHEREAS, the Team is a Professional Development Licensee pursuant to a Professional Development License (“PDL”) with MLB Professional Development League, LLC, a wholly owned affiliate of Major League Baseball, an unincorporated association of Professional Baseball Teams (“MLB”) The Team is one (1) of a total of One Hundred Twenty (120) PDL Licensees (“PDLLs”); and

WHEREAS, the PDL entitles the Team to play at the High “A” level up to a maximum of One Hundred Thirty Two (132) professional baseball games (“Season”), including a maximum of sixty-six (66) home games (“Home Games”) at Four Winds Field (“Four Winds” or the “Stadium”) with players, coaching staff, trainers, and other personnel provided by the Chicago Cubs or by another Major League Club; and

WHEREAS, the PDL requires the Team and all PDLLs to (i) make significant capital improvements to the playing facility of every PDLLs and; (ii) assume additional operational expenses creating a different and more challenging business model for PDLLs.

WHEREAS, the Team and Park Board desire to provide in this Stadium Agreement a sustainable business environment for the Team to remain in South Bend and play its Home Games at Four Winds pursuant to this Stadium Agreement; and

WHEREAS, since the last Stadium Agreement was executed December 13, 2011 (“Previous Agreement”) the Park Department, other City of South Bend Agencies ( collectively the “City”) and the Team have made certain capital improvements to the Stadium which cost the City One Million Seven Hundred and Fifty Thousand Dollars (\$ 1,750,000.00 ) and the Team Nine Million Two Hundred Sixty Seven Thousand Five Hundred Sixty Five Dollars ( \$ 9,267,565.00 ) (Team’s Investment”)

WHEREAS, the Parties enter into this Stadium Agreement in recognition of the significant changes the Team faces as a result of the PDL and the Team’s Investment.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt of which is mutually acknowledged, the Team and the Park Board agree as follows:

ARTICLE I  
DEFINITIONS

For purposes of this Stadium Agreement, the terms defined in this section shall have the meanings as specified herein whether stated in the plural or singular.

Section 1.01 "FOOD AND BEVERAGE SERVICES" shall mean all food and beverage services required or appropriate for any and all events at the Stadium, including without limitation, dining, catering, vending and Food and Beverage Services, through fixed and portable Food and Beverage Service stands, vending machines, roving vendors, snack bars, Food and Beverage Service Areas and any other areas in the Stadium for which it is reasonable and appropriate to serve food and beverages.

Section 1.02 "COMMON AREAS" shall mean all portions of the facility except the Team Areas as defined in Section 1.04.

Section 1.03 "BOARD EVENTS" shall mean any event or activity held at the Stadium, except a Team Event or Team Special Event, under the authority of the Park Board.

Section 1.04 "TEAM AREAS" shall mean the Team administrative office area, locker room area, training area, press box area, field maintenance building, dugouts, Food and Beverage Service Areas, Team novelty and souvenir sales area and all Specialized Seating Areas except the area utilized by the City of South Bend pursuant to Section 7.02 herein.

Section 1.05 "BASEBALL SEASON" shall have the same meaning found in the PDL.

Section 1.06 "TEAM EVENTS" shall mean any Team Home Game or other events held at the Stadium by the Team with the approval of the Park Board pursuant to Section 12.03 other than a Team Special Event.

Section 1.07 "TEAM SPECIAL EVENTS" shall mean events held at the Stadium which are (a) not related to baseball or the Team and (b) in an amount and frequency to be determined by the Team each calendar year during the term of this Stadium Agreement. By way of example only, and not by way of limitation in any manner whatsoever, Team Special Events would include concerts, films, theatrical productions and other entertainment events of any kind held at the Stadium. Further, so long as proposed Team Special Events would not cause a scheduling conflict with already-scheduled Park Board events to be held at the Stadium, Park Board approval for Team Special Events shall not be unreasonably delayed, withheld or denied by the Park Board.

Section 1.08 "TEAM STADIUM SERVICES" shall mean and consist of the following:

- a. Field Maintenance – field maintenance shall include, but not be limited to, maintenance of the playing field which maintenance shall include periodic brushing, sweeping, cleaning, watering, infill leveling, and other chemical treatments required to maintain the field at professional stadium quality in an attractive condition, repair and replacement attributable to wear resulting from the

normal use of the field, specialized turf care as required such as aeration and other treatments which are required to maintain the quality of the field as defined herein and the maintenance of all un-sodded areas of the field.

- b. Field Preparation - field preparation in advance of baseball games which shall include, but not be limited to, lining the field, preparation of the un-sodded areas of the field, installation of bases, restoration of the field surface as required by uses of the field other than for baseball games, and such other services needed to fully prepare the field for Team baseball games.
- c. Pre-Event Field Preparation – pre-event field preparation shall mean the preparation of the field for any Team Event or Team Special Event other than a baseball game as may be required for such event including but not limited to conversion of the playing field for other athletic events, installation of any supplemental seating equipment, installation of stage or platform equipment and/or temporary lighting which may be required for the event. Pre-Event Field Preparation shall be performed by the Team or, when necessary, by other parties under the supervision of the Team.
- d. Janitorial Services – janitorial services shall mean the cleaning and maintenance of all Team Areas and Common Areas during and after all Team Events or Team Special Events held in the Stadium including the stocking of all restrooms with paper products as required prior to such events, the disposal of all trash collected from such areas immediately after such events, the pickup of all trash and debris from the on-site parking areas and supplemental parking areas on the morning following such events and any needed clean-up of trash and debris from public areas surrounding the Stadium or such supplemental parking areas as may be used by attendees of the Stadium. All Janitorial Services provided to the Team Areas and Common Areas shall include all action necessary to maintain the areas in a clean and attractive manner and in compliance with all legal requirements.
- e. Facility Services – field services shall mean the operation and staffing of the Stadium scoreboard, the public address system, the box office, all ticket booths, ushering services and parking lot attendant services, first-aid room, on-site and supplement parking lot security services, the opening and closing of the Stadium, the operation of all stadium utilities at all Team Events and Team Special Events.
- f. PDL Services – PDL services shall mean any and all services required by any PDL between the Team and MLB.

Section 1.09 “PARK BOARD STADIUM SERVICES” shall mean those Field Preparation, Pre-Event Field Preparation, Janitorial or Facility Services in the Team or Common Areas used by the Park Board which are required for Park Board events in the Stadium excluding Janitorial Services, relating to the Food and Beverage Service Areas and scoreboard message center staffing required to display advertising sold by the Team at Park Board Events.

Section 1.10 This section is intentionally left blank.

Section 1.11 "FIELD AND COMMON AREA UTILITIES" shall mean all required electric and gas services for the playing field, on-site parking lot, Common Areas of the stadium, and Team Areas of the stadium.

Section 1.12 "PARK BOARD EVENT FOOD AND BEVERAGE SERVICE GROSS SALES" shall mean all Food and Beverage Service sales at Park Board Events excepting from such amounts state sales tax applicable to such sales.

Section 1.13 "PARK BOARD NOVELTY AND SOUVENIR GROSS SALES" shall mean the sale of Park Board novelty and souvenir items by the Team on behalf of the Park Board excepting from such amounts state sales tax and the cost to the Park Board of the novelties sold as certified by the Park Board to the Team as provided for herein.

## ARTICLE II TERM OF AGREEMENT

Section 2.01 The initial term ("Initial Term") of this Stadium Agreement shall commence effective on January 19, 2021 ("Commencement Date") and continue through December 31, 2025. In addition to the Initial Term, the Team shall have the option to three (3) additional terms of five (5) years each (each an "Additional Term" and together the "Additional Terms"). Team may exercise its right to each Additional Term by notifying the Park Board in writing on or before August 1 of the last year of the then applicable Term of its intent to extend the Term (the Initial Term together with the Additional Term(s) are collectively the "Term"). In the event the Team elects an Additional Term or Terms, all remaining terms and conditions of this Agreement will remain in full force and effect.

## ARTICLE III MODIFICATIONS TO STRUCTURE

Section 3.01 STRUCTURAL MODIFICATIONS. Any structural modifications to the Stadium made by the Park Board during the Term of this Agreement shall be subject to the prior approval of the Team, which approval shall not be unreasonably withheld.

Section 3.02 STADIUM IMPROVEMENTS. The Parties agree all Stadium Improvements required under the Previous Stadium Agreement have been completed and will work together in good faith to complete any required Stadium Improvements under the PDL between the Team and MLB.

## ARTICLE IV TEAM USE OF STADIUM

Section 4.01 USE FOR HOME GAMES. The Team agrees to play all its home games during its Baseball Season at the Stadium during the Term. In addition to permitting the Team to use the Stadium for its home games during the Baseball Season, the Park Board shall permit the

Team to use the Stadium for practice, tournament and when applicable Midwest League All Star Game play on those dates approved by the Park Board and the Team in accord with the provisions of Section 12.03 herein. The Team shall be permitted to conduct promotional events before and after baseball games with all such events being scheduled pursuant to said Section 12.03. During the Baseball Season, the Team will have access to all Team Areas in the Stadium and will be provided adequate designated storage space during the Baseball Season and in between Baseball Seasons at the Stadium.

Section 4.02 STARTING TIMES FOR TEAM EVENTS AND TEAM SPECIAL EVENTS. Subject to the PDL, no Team Event or Team Special Event shall be scheduled to start later than 9:00 P.M. without the prior approval of the Park Board. In the case of a Team double header baseball game, this Section shall not preclude the second game from being played upon the completion of the first game.

Section 4.03 ADDITIONAL USE OF THE STADIUM BY THE TEAM. The Team will be permitted to schedule additional Team Events other than baseball events and Team Special Events in the Stadium subject to the approval of the Park Board, which approval shall not be unreasonably withheld.

Section 4.04 COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES AND REPAIR OF DAMAGE. In the use of the Stadium pursuant to this section, the Team shall not permit the violation of any applicable laws or ordinances or permit the structure to be damaged by its use. Any damage caused by the use of the Team shall be promptly reported to the Park Board and repaired by the Team in an acceptable workmanlike manner guaranteeing the restoration of the damaged portion of the structure to its condition prior to such damage, in compliance with all of the applicable zoning, fire code, building and health department statutes, ordinances, rules and regulations.

Section 4.05 COMPLIANCE WITH OCCUPANCY LIMITATIONS. The use of the Stadium by the Team pursuant to this Stadium Agreement shall not result in the Stadium occupancy limitations being exceeded. The use of temporary seating and/or seating in areas other than those areas designated as permanent seating areas or in such supplemental seating areas as may be designated by the Park Board, is subject to the prior approval of the Park Board.

Section 4.06 ADMINISTRATIVE OFFICE AREA. In consideration of the Team playing its Home Games at the Stadium during its Baseball Season, and providing Food and Beverage Services and Park Board Stadium Services as provided herein and to facilitate the provision of such services, 2,250 square feet of finished office space in the Stadium will be provided for the use of the Team on a year-round basis during the term of this Stadium Agreement, such office space being designated as the Administrative Office Area. All furnishings and equipment required for such space shall be the sole responsibility of the Team. The Team shall provide all Janitorial Services required for the Administrative Office Area and adjoining non-public restrooms and shall maintain such areas in a clean condition at all times. Upon reasonable notice to the Team, the Park Board may inspect the areas. Upon termination of this Stadium Agreement, the Team shall surrender possession of the areas to the Park Board in the same condition as received, normal wear and tear accepted.

Section 4.07 TEAM AREA FURNISHINGS. The Team shall be responsible for the provision of all furnishings required for its utilization of the Team Areas, except for the wooden lockers permanently installed in said areas by the Park Board.

Section 4.08 NAMING RIGHTS. The Team shall have the right to sell naming rights to the Stadium and to have signage affixed to the interior and exterior of the Stadium for such purpose. Any revenues generated from such sale shall belong to the Team. The naming rights sponsor and all exterior signage shall be subject to the approval of the Park Board, which approval shall not be unreasonably withheld, conditioned or delayed. The Team will also continue to use the name, in its discretion, "The Cove" or "Coveleski Field" in referring to either the ballpark or the field of play. At the conclusion of each Term, the Team and the City shall enter into good faith discussions regarding potential revisions to the terms and provisions of this Section 4.08.

## ARTICLE V STADIUM OPERATION AND SERVICES

Section 5.01 TEAM STADIUM SERVICES. The Team will provide all Team Stadium Services required for Team Events and Team Special Events held in the Stadium and will retain, employ, compensate, train and manage sufficient numbers of personnel to provide such services in a high quality and professional manner during the term of this Stadium Agreement.

Section 5.02 PARK BOARD STADIUM SERVICES. Throughout the term of this Stadium Agreement, the cost of Park Board Stadium Services shall be assessed in accord with the Schedule of Services and Costs. At no time will the charges in such schedule, or subsequent schedules to be agreed to, exceed the actual costs of such services to the Team including any management fee assessed pursuant to the schedule. The schedule shall be reviewed and modified, upon the agreement of the Parties, if necessary, during the term of this Stadium Agreement. The Parties agree to meet on an annual basis to agree on reasonable costs.

Section 5.03 QUALITY OF TEAM STADIUM SERVICES AND PARK BOARD STADIUM SERVICES. The provision of Team Stadium Services and Park Board Stadium Services shall be provided in a manner to promote the use of the Stadium, attract the public to Team and Park Board events scheduled at the Stadium, and shall be of acceptable quality consistent with the standards required of a first-class professional baseball facility. Should the quality of services be unacceptable to the Park Board, notice shall be provided to the Team and the Team shall have ten (10) days to improve the quality of such services. The Park Board reserves the right, subsequent to the passage of said ten (10) day period to undertake corrective action with its own resources and invoice the Team for the cost of such corrective action. The cost shall be paid by the Team within ten (10) days of receipt of such invoice. This Section does not authorize the Park Board to retain, terminate, supervise, or take other direct actions relating to the employees of the Team.

Section 5.04 OPERATION OF STADIUM BOX OFFICE. The Team, in addition to providing ticketing services for all of its Home Games pursuant to the provisions of Section 5.01 herein, shall operate the Stadium Box Office during home season baseball games and conduct

advance ticket sales for all events held in the Stadium for which advance ticket sales are available. Such advance ticket sales will be coordinated with other Park Board and/or City of South Bend outlets where advance ticket sales for events held at Park Board or City of South Bend facilities are conducted. The Park Board shall, at the request of the Team, sell advance tickets for Team Events and Team Special Events from ticket outlets operated by the Park Board and the City of South Bend.

Section 5.05 ON-SITE AND SUPPLEMENTAL PARKING AREA CLEAN-UP. The cleaning of all on-site and supplemental parking areas provided by the Park Board as an element of either Stadium Services or Park Board Stadium Services shall be completed on the morning following the event incidental to the provision of such services. Should the services not be completed by that time, and upon reasonable advance notice to the Team, the Park Board reserves the right to conduct such services and invoice the Team for the services provided.

Section 5.06 ON-SITE SECURITY SERVICES. The Team shall hire uniformed off-duty South Bend Police Department Officers for all on-site security services. Should, for any reason, off-duty South Bend Police Officers be unavailable for such employment as required herein, or not be available at a cost reasonably comparable to private security services, other appropriate security officers may be hired by the Team. There shall be at least one (1) such officer employed at each Team baseball game held at the Stadium during the months of April and May of each year, and at least two (2) such officers employed at each Team baseball game held at the Stadium from the months of June through the end of the season in each year. The number of officers provided at Team promotional events, other Team Events, Team Special Events and Park Board Events shall be adequate for the security of those persons attending the particular event and the provision of security for the Stadium and its contents and shall include on-site parking lot and supplemental parking lot security. The Team may provide parking lot and supplemental parking lot security by the use of Team employees. If Team employees are utilized for such purposes, they shall be uniformed and equipped with appropriate radio communications equipment. Officers shall be directed to be at the Stadium at its opening to the public and until the Stadium is closed to the public. When necessary, the Team shall consult with the Chief of the South Bend Police Department or his designee to determine the adequacy of intended security for Team Events other than baseball events, Team Special Events and Park Board Events.

Section 5.07 BRUSHES, CLEANERS AND TURF CHEMICALS. The Team shall provide all brushes, cleaners and other turf chemicals required for the provision of Field Maintenance.

Section 5.08 PARK BOARD NOTICE TO TEAM OF REQUESTED LEVEL OF FACILITY SERVICES. The Park Board shall, in advance of each Park Board Event held in the Stadium, estimate the attendance at each Park Board Event and the desired level of staffing for ticket booths, ushering services, and parking lot attendant services, in addition to the starting time of the Park Board Event and anticipated completion time.

Section 5.09 FIELD RESTORATION COSTS AND DAMAGE TO THE FIELD. All costs of field restoration required as a result of damage to the field shall be borne by the Party conducting



the event causing the damage to the field and shall be payable as an element of either Team Stadium Services or Park Board Stadium Services as the case may be.

ARTICLE VI  
FOOD AND BEVERAGE SERVICES

Section 6.01 GRANT OF EXCLUSIVE FRANCHISE TO TEAM. The Park Board hereby grants to the Team an exclusive food, beverage, souvenir and novelty franchise permitting the sale of food and beverages from those areas of the Stadium designated as Food and Beverage Service Areas and Team Novelty and Souvenir Areas at all Team and Park Board events held in the Stadium throughout the term of this Stadium Agreement. The grant of this exclusive franchise includes the right of the Team to provide Food and Beverage Services, either directly or by entering into a Food and Beverage Service Agreement granting a license to operate the Food and Beverage Service Areas and certain novelty sales to such professional food and beverage service operator as may be agreed to and approved by the Team and the Park Board.

Section 6.02 MENU AND PRICE LIST. The menu and price list of food and beverages to be sold in the Stadium as provided herein shall be reported to the Park Board at the start of each season.

Section 6.03 TEAM SOUVENIR AND NOVELTY ITEMS AND PARK BOARD SOUVENIR AND NOVELTY ITEMS. The grant of the franchise provided herein by the Park Board to the Team shall include the right to sell Team souvenir and novelty items from those areas designated as Team novelty and souvenir sales areas. In consideration of the grant of said franchise, the Team shall, on behalf of the Park Board, sell Park Board souvenir and novelty items from the Team souvenir and novelty areas at all Team Events, Team Special Events and Park Board Events.

Section 6.04 NOT-FOR-PROFIT SOUVENIRS AND NOVELTIES. The Park Board reserves the right to authorize not-for-profit and other community groups to sell souvenir and novelty items in the Stadium during the use of the Stadium by such groups. Such sales shall be from areas other than the Team Souvenir and Novelty Areas. The Team shall have the right to approve the sale of such souvenir and novelty items in advance of their sale which approval shall not be unreasonably withheld, and which shall be directed to assuring that the souvenir and novelty items sold are not substantially similar to Team souvenir and novelty items. The Team shall have no responsibility for the collection and payment of any sales taxes due or payable incidental to such sales, and the Park Board shall indemnify and hold harmless the Team for any claims concerning sales tax due or payable as a result of such sales.

Section 6.05 COMPLIANCE WITH STATE AND LOCAL RULES AND REGULATIONS. The Team shall assure that the Food and Beverage Service Areas are operated in a clean and healthy manner and in compliance with all rules, regulations, statutes and ordinances.

Section 6.06 COMPLIANCE WITH STATE ALCOHOLIC BEVERAGE STATUTES AND REGULATIONS. The Team shall assure that the provision of Food and Beverage Services

is in compliance with all statutes and regulations concerning the sale of alcoholic beverages including but not limited to the proper training and licensing of all employees who serve or dispense alcoholic beverages.

Section 6.07 LICENSES AND PERMITS. The Team is responsible to assure that all applicable state and/or local permits and licenses for the provision of Food and Beverage Services in the Stadium, with the exception of the Indiana Alcoholic Beverage Permit referred to herein, will be obtained either directly or, during the period of the Team's agreement with a food and beverage provider. During the term of this Stadium Agreement, the Park Board will maintain an Indiana Alcoholic Beverage Permit for the sale of alcoholic beverages in the Stadium.

Section 6.08 VENDING MACHINES. The Park Board reserves the right to approve the location, extent and use of vending machines provided either directly by the Team or pursuant to the Team's contract with a food and beverage provider. The Team acknowledges that it is the Park Board's desire that vending machines be used to appropriately supplement the provision of Food and Beverage Services rather than to substitute for the provision of said services in the Stadium.

Section 6.09 QUALITY OF FOOD AND BEVERAGE SERVICES. The Team acknowledges that the provision of high-quality Food and Beverage Services in a manner pleasing to the public is of utmost importance to the overall success of the Stadium and at events held in the Stadium. The Team shall take all reasonable efforts to assure that food is of high quality and consistent with the goals of the Team and the Park Board to enhance attendance at all events held in the Stadium.

Section 6.10 SERVICES TO SPECIALIZED SEATING AREAS. The Team in the provision of Food and Beverage Services shall provide wait person Food and Beverage Services to all Specialized Seating Areas.

Section 6.11 BEVERAGES IN BOTTLES, GUM AND TOBACCO PRODUCTS. The Team agrees that in the provision of Food and Beverage Services no beverages in glass bottles or gum products will be sold in the Stadium.

## ARTICLE VII ADVERTISING, MARKETING AND BROADCAST RIGHTS

Section 7.01 TEAM MARKETING RESPONSIBILITIES ON BEHALF OF THE PARK BOARD. The Team shall market and enter into contractual arrangements suitable to the Park Board for the use of those areas of the Stadium designated as Specialized Seating Areas and for the provision of advertising space on the outfield advertising wall and the scoreboard message center. The Team shall additionally be responsible for marketing internal Stadium advertising which may be available during the term of this Stadium Agreement. All advertising shall be in good taste and consistent with the overall goals of the Team and the Park Board to provide family entertainment through baseball and other athletic and recreational events at the Stadium. The Park Department may advertise its programs at the stadium without charge at mutually agreeable locations and with mutually agreeable media.

Section 7.02 SPECIALIZED SEATING AREAS. One (1) Specialized Seating Area shall be designated by the Park Board for the use of the City of South Bend city government for all events held in the Stadium and will not be subject to utilization as provided for in Section 7.01 herein. One (1) Specialized Seating Area shall be designated by the Park Board for the use of the Team. Should the Park Board or Team, during the term of this Stadium Agreement, determine to market their designated Specialized Seating Areas for use by other parties, income from use of Specialized Seating Areas shall remain with the Party which has the right to such areas by either the Park Board or the Team shall accrue to the benefit of the Party with the right to use of such areas.

Section 7.03 IMPROVEMENTS TO AND MARKETING OF SPECIALIZED SEATING AREAS. All improvements to the Specialized Seating Areas shall be subject to the prior approval of the Park Board. The Team shall utilize a Specialized Seating Area Ticket Agreement in the marketing of said areas, the form and content of which shall be approved by the Park Board and which shall provide the purchaser of Specialized Seating Area season tickets access to the assigned Specialized Seating Area at all events in the Stadium during the calendar year except those events that may require the purchase of separate admission tickets.

Section 7.04 PARK BOARD SALE OF SCOREBOARD MESSAGE CENTER ADVERTISING FOR PARK BOARD EVENTS. The Park Board shall have the right to sell scoreboard message center advertising to be displayed at Park Board Events to be held at the Stadium. The sale of scoreboard message center advertising for such events shall not preclude the Team from selling advertising to be displayed at the events. All revenues generated by the sale of such advertising by the Park Board shall be the property of the Park Board. The cost of providing staffing for the scoreboard message center shall not be an element of Park Board Stadium Services when provided by the Team to display message center advertising sold by the Team at Park Board Events.

Section 7.05 EXCLUSIVE BROADCAST RIGHTS. The Team shall have the exclusive right to broadcast, televise, cablecast and webcast all Team Events and Team Special Events held in the Stadium during the term of this Stadium Agreement.

## ARTICLE VIII COMPENSATION PAYABLE BY THE TEAM TO THE PARK BOARD

Section 8.01 AMOUNT OF COMPENSATION PAYABLE. In consideration of the use of the Stadium by the Team as provided herein, and the granting of the exclusive food, beverage, souvenir, Upper Deck, and novelty franchise, as provided for in Section 6.01 herein, the Team, shall pay to the Park Board the following payments during the term of this Stadium Agreement:

The Team will pay the Park Board annually throughout the Term the sum of Seventy-Five Thousand Dollars (\$75,000) in five (5) equal installments of Fifteen Thousand Dollars (\$15,000) from May 1 through September 1.

In addition, the Team will pay the following annually throughout the Term:

<u>Per Ticket Amount</u>	<u>Actual Turn-style Attendance</u>
\$ 0.25	125,000- 174,999
\$ 0.50	175,000- 199,999
\$ 1.00	200,000 +

Section 8.02 MAINTENANCE OF BOOKS AND ACCOUNTS. All books, accounts, and records, including all state gross sales tax returns and such other reports that the Team may be required to furnish to any governmental agency, shall be open to the inspection of the Park Board at all reasonable times. Such books and records shall be maintained by the Team for at least a three-year (3) period from the end of the calendar year in which the filing as referred to herein occurred. The Park Board agrees that the purpose of such information shall be to gather information in preparation for renewal of this Stadium Agreement. A Team representative shall meet with the director of the Park Department monthly during the Baseball Season to discuss matters of mutual interest.

Section 8.03. REPORTS. The Team shall report actual attendance at all games at the stadium to the Board at its regularly scheduled monthly meetings from May through October.

Section 8.04 NO WAIVER OF DEFICIENCY. The acceptance of any amount by the Park Board shall not be construed as an admission of the accuracy of the financial statement or statements filed with such amount or an admission or acceptance of the sufficiency of the amount to comply with the terms of this Stadium Agreement.

## ARTICLE IX FACILITY MAINTENANCE

Section 9.01 STRUCTURAL AND SYSTEMS MAINTENANCE. Maintenance of all structural components of the Stadium and all heating, ventilating, air conditioning, plumbing and electrical systems shall be the responsibility of the Park Board. The Park Board shall conduct such routine and preventive maintenance of such systems as is required.

Section 9.02 OPERATION OF HEATING AND AIR CONDITIONING SYSTEMS. The operation of the heating and air conditioning systems shall be the responsibility of the Park Board. The Park Board will train appropriate staff of the Team to enable the staff to properly regulate the heating and air conditioning systems for Team Events, Team Special Events, and Park Board Events held in the Stadium.

Section 9.03 EXTERIOR SITE MAINTENANCE. While the Team will provide Field and Surrounding Grounds Maintenance as a component of Team Stadium Services, the Park Board shall be responsible for all long-term maintenance of the external grounds of the Stadium. The Park Board's responsibility will include, but not be limited to repaving, striping and sealing of the paved areas and capital improvements to and replacement of the landscaped areas which shall include required replacement of trees and shrubs.

Section 9.04 LONG-TERM FIELD MAINTENANCE. The Team shall perform Field and Surrounding Grounds Maintenance as a component of Team Stadium Services, including sod

replacement necessitated by the normal wear and tear of the field turf. Sod removal and/or replacement necessitated by the conversion of the Stadium field for athletic events or resulting from damage to the field occurring at Team Events, Team Special Events, or Park Board Events, shall be handled pursuant to the Stadium Operation and Services Article of this Stadium Agreement.

## ARTICLE X UTILITIES

Section 10.01 WATER AND SEWAGE SERVICE. The Park Board shall be responsible for all water and sewage service required for the operation of the Stadium during the term of this Stadium Agreement.

Section 10.02 OTHER UTILITIES. The Team shall be responsible for the payment of all utilities other than those referred to in Section 10.01.

Section 10.03 LIGHT BULB REPLACEMENT. The Team will be responsible for all light bulb replacement in the Team Areas and Common Areas of the Stadium during the term of this Stadium Agreement.

Section 10.04 REPLACEMENT OF FIELD AND EXTERIOR SITE LIGHTS. The Park Board shall be responsible for the replacement of exterior site lights while the Team shall be responsible for the replacement of field lights.

Section 10.05 MAINTENANCE OF ELECTRONIC SCOREBOARD. The Team shall be responsible for the routine maintenance of the electronic scoreboard, including but not limited to changing the light bulbs and replacing electronic components of the scoreboard as needed. The Park Board will provide all required software packages, operating and maintenance instructions and spare electrical components in addition to replacement bulbs for installation by the Team. The structural maintenance of the scoreboard and all matters relating to the warranty of the scoreboard by the manufacturer shall be the responsibility of the Park Board.

## ARTICLE XI EQUIPMENT

Section 11.01 USE OF PARK BOARD HEAVY EQUIPMENT. During the term of this Stadium Agreement, the Park Board shall make available to the Team certain items of heavy equipment with said items being listed at Exhibit "A". Said equipment will at all times remain under the control of the Park Board and the Team shall indemnify and hold harmless the Park Board and the City of South Bend and its respective officers, directors, duly authorized agents, employees and sub-contractors from any damage and injury resulting from the use of the equipment by the Team, except from any damage and injury caused by an equipment malfunction or when operated by a Park Department operator. The Team shall use the equipment in a careful and proper manner and shall repair, or if necessary, replace any equipment damaged by its negligent or reckless use. On all occasions, the use of the front-end loader and grader shall be provided by the Park Board with a Park Department operator. Reasonable notice shall be provided to the Park Board by the Team in advance of the use of the front-end-loader or grader.

Section 11.02 STADIUM EQUIPMENT PROVIDED BY THE PARK BOARD. The Park Board shall provide for the use of the Team the items of equipment listed at Exhibit "B". The Team shall use the equipment in a careful and proper manner and shall repair, or if necessary, replace, any equipment damaged by its negligent or reckless use. Park Board shall maintain the equipment in good repair during the term of this agreement and shall promptly replace any equipment which cannot be repaired. The Team shall indemnify and hold harmless the Park Board and the City of South Bend and its respective officers, directors, duly authorized agents and employees and sub-contractors from any damage or injury resulting from the negligent use of the equipment by the Team.

Section 11.03 EQUIPMENT PROVIDED BY THE TEAM. The Team shall provide for the use of the Park Board the items of equipment listed at Exhibit "C". The Park Board shall use the equipment in a careful and proper manner and shall repair, or if necessary, replace, any equipment damaged by its negligent or reckless use. The Team shall maintain the equipment in good repair during the term of this agreement and shall promptly replace any equipment which cannot be repaired. The Park Board shall indemnify and hold harmless the Team and its respective officers, directors, duly authorized agents and employees, and subcontractors from any damage or injury resulting from the use of the equipment by the Park Board.

## ARTICLE XII SCHEDULING

Section 12.01 AGREEMENT OF THE PARTIES. The Team and Park Board agree that all scheduling for events in the Stadium should be coordinated in a fashion to maximize the beneficial use of the Stadium by the community and the Team.

Section 12.02 SCHEDULING FOR THE TEAM HOME SEASON SUBSEQUENT YEARS. No later than June 1 of each year throughout the Term of this Stadium Agreement, the Park Board will provide to the Team a listing of those Park Board Events which are priority events for purposes of scheduling during the Baseball Season. In no case shall such events or the preparation for such events result in a preemption of the Stadium for more than a total of fifteen (15) days during the Team's home Baseball Season with no single event being more than four (4) days in duration. Such dates shall be incorporated into the Team's proposed Home Games, a copy of which proposed schedule shall be filed with the Park Board at the time of its receipt of the schedule prepared by MLB. The Team shall have priority in the selection of its Home Games, tournament game dates, All-Star game dates, if applicable, and MLB exhibition baseball games, and will be provided ten (10) rain dates during the home Baseball Season prior to the scheduling of additional Park Board Events during the Baseball Season. The Team shall submit its approved Home Games by April 1 of each year throughout the Term, or as soon thereafter as such schedule is provided to the Team by MLB.

Section 12.03 SCHEDULING OF OTHER STADIUM EVENTS. All additional scheduling of events (after the priority scheduling of Team Events) in the Stadium shall be conducted by the Park Board consistent with the following order of priority:

- Park Board Events consisting of baseball games other than those being priority events as described in Section 12.03 herein;
- Team Special Events as defined herein;
- Park Board Events, other than those being priority events or baseball games and other Team Events;
- Open date scheduling.

The Team shall notify the Park Board of requested dates for Team Special Events for each year throughout the Term no later than April 1 of each year. The balance of the events scheduled at the Stadium shall be scheduled with conflicts in requested dates being resolved on the basis of the following criteria:

- The date the request was received by the Park Board;
- The requested event's ability to maximize the productive long-term use of the Stadium;
- The desire of the Team and the Park Board to encourage the use of the Stadium for family recreational and entertainment events;
- The desire of the Park Board to provide the opportunity of equal access to the Team for the scheduling of Team Events after the scheduling of those Park Board Events which are priority events, the Team's home Baseball Season schedule, Park Board Events consisting of baseball games, and the Team Special Events.

The Parties agree that any and all scheduling decisions described in Article XII of this Stadium Agreement are subject to all requirements MLB imposes upon the Team pursuant to the PDL

Section 12.04 ACCESS FOR BASEBALL PRACTICES. The Team shall have reasonable access to the Stadium to conduct practice during its home Baseball Season.

Section 12.05 COORDINATION OF SCHEDULING. All scheduling will be coordinated with the Team to assure that the required Park Board Stadium Services can be provided by the Team without hindering the provision of Team Stadium Services as required for the Team's use of the Stadium.

### ARTICLE XIII INDEMNIFICATION AND INSURANCE

Section 13.01 INDEMNIFICATION. The Team agrees to indemnify and hold harmless the Park Board and the City of South Bend and its respective officers, directors, duly authorized agents and employees from any and all claims brought against them for personal injury, death, property

damage and any other losses, damages, charges or expenses, including attorney's fees, which are in connection with, or by reason of any act, omission or negligence of the Team or of any occupant, visitor or user present on or about the Stadium in connection with the Team's activities pursuant to this Stadium Agreement. Excepted from this indemnification are any and all claims brought against the Park Board and the City of South Bend, and its respective officers, directors, duly authorized agents, and employees resulting from the operation of the front-end loader or grader by a Park Department operator as provided for in Section 11.01 herein.

Section 13.02 INSURANCE POLICIES ON TEAM PROPERTY. The Team shall, effective as of the Commencement Date, obtain policies of insurance on any property or equipment placed within the Stadium and maintain such policies on all its property or equipment placed in the Stadium during the term of this Stadium Agreement. Such policies shall provide for fire, theft, vandalism and extended coverage for the Team's equipment. Neither the Park Board or the City of South Bend shall have any responsibility or liability whatsoever with respect to any loss or theft of or damage to the personal property of the Team, its employees and players, players for opposing teams, umpires, concessionaires, employees and agents of concessionaires, stadium attendees, and others, except to the extent that any such loss, theft or damage shall be shown to have been caused by the actions of the Park Board, its employees or its agents. Proof of such insurance shall be presented to the Park Board no later than January 15<sup>th</sup> of each calendar year.

Section 13.03 INDEMNIFICATION FOR LOSS, THEFT OR DAMAGE TO PERSONAL PROPERTY. The Team indemnifies and holds harmless the Park Board, the City of South Bend, and its officers, directors, employees and agents with respect to any claim or liability for loss or theft of or damage to personal property of the Team, its employees and players, players for opposing teams, umpires, concessionaires, employees and agents of concessionaires, stadium attendees, and others, except to the extent that such loss, theft or damage is from the act of the Park Board, its employees, agents or sub-contractors.

Section 13.04 REQUIRED POLICIES OF INSURANCE. The Team shall, effective as of January 1, 2021, and thereafter during the term of this Stadium Agreement, keep in full force and affect the following policies of insurance:

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

Personal Injury - \$1,000,000.00 each person and each accident, \$1,000,000.00 aggregate

Property Damage - \$1,000,000.00 each incident; \$1,000,000.00 aggregate

Umbrella Liability Coverage and Umbrella Liability Policy in an amount not less than \$4,000,000 for any one occurrence in excess of the aforementioned general liability insurance.



Dram Shop - a certificate obtained either by the Team or the Food and Beverage Service operator providing Dram Shop liability coverage naming, in the case of a certificate provided by the Food and Beverage Service operator, the Team, the Park Board and the City of South Bend as additional named insureds or, in the case of a certificate provided by the Team, naming the Park Board and the City as additional named insureds with the amount of the coverage identical to that of the comprehensive general liability coverage as required herein.

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

Section 13.05 NAMED INSURED AND CERTIFICATES OF INSURANCE. All of the insurance policies described in Sections 13.04 herein shall show the Team, the City of South Bend and the Park Board as named insureds as their interest may appear. All such policies shall contain an endorsement giving the Park Board ten (10) days prior written notice in advance of any material alteration or cancellation of said policies. All such insurance policies shall be written by companies authorized to do business in the State of Indiana.

Section 13.06 INSURANCE PROVISIONS IN TEAM'S CONTRACT FOR FOOD AND BEVERAGE SERVICES. The Team shall not permit a modification in the insurance provisions of its Food and Beverage Service Contract as approved by the Park Board in Article VI. above during the term of this Stadium Agreement.

#### ARTICLE XIV

##### Professional Development License

Section 14.01 MAINTENANCE OF Professional Development License. The Team represents it, as of the effective date of this Stadium Agreement, has been (i) invited by MLB to be a PDLL, as defined above, and (ii) provided the terms and conditions of the PDL which are subject only to the execution of the PDL within thirty (30) days of the tender of the actual PDL to the Team. During the term of this Stadium Agreement, the Team shall use its best efforts to maintain in good standing the PDL. The Team agrees to take commercially reasonable steps to refrain from any conduct or activities which would cause the early termination or non-renewal of the PDL. Should the PDL terminate earlier than the complete term of the PDL by MLB, or if not renewed by MLB, the Team and Park Board agree to work in good faith to obtain the best possible professional or amateur baseball team, including but not limited to, a team in a Partner MLB League like a Prospect League or a College wood bat league also affiliated with MLB (collectively "MLB Affiliated League") to replace a team which would otherwise play under a PDL. In the event MLB refuses to offer the Team an opportunity participate under a PDL or with a MLB Affiliated League, the Park Board and Team shall continue to negotiate in good faith to agree on another team which best replaces, to the satisfaction of the Park Board, the PDL. If at the option of the Park Board, the Team cannot find a satisfactory team this Stadium Agreement shall be terminated. The Park Board understands MLB has a great deal of discretion in granting, terminating or not renewing PDLs. The Team agrees it will use commercially reasonable efforts to avoid MLB exercising its discretion to terminate or not renew its PDL or having MLB direct

the use of the PDL in another City or in the playing of the Team Home Games in any location other than Four Winds.

ARTICLE XV  
PARKING

Section 15.01 USE OF PROPERTY SURROUNDING THE STADIUM. The Park Board shall during the term of the Stadium Agreement maintain the property which it owns surrounding the Stadium structure as parking for the use of persons attending events at the Stadium.

Section 15.02 CLAEYS CANDY LOT. The Team acknowledges that the Park Board has entered into a Lease Agreement with Claeys Candy, Inc. (“Claeys”) for the use of certain real property owned by Claeys for on-site parking with Claeys retaining the use of a portion of said property during certain hours for its manufacturing operations.

Section 15.03 SNOW REMOVAL FOR ON-SITE PARKING. The Park Board shall remove snow from the on-site parking areas and shall assure that the Team has access to its on-site staff parking spaces on a year-round basis.

Section 15.04 SUPPLEMENTAL PARKING. The Park Board and the City of South Bend shall utilize their best efforts to obtain supplemental parking in close proximity to the Stadium site and shall make any such property obtained or leased available to persons attending all Team Events, Team Special Events, and Park Board Events in the Stadium.

Section 15.05 MODIFICATION OF TEAM RESPONSIBILITIES IF PARK BOARD FEES CHARGED. If the Park Board determines to charge a fee for on-site parking and for supplemental parking areas for non-Team Events, it shall have the responsibility to provide parking lot attendants and clean-up services, and neither the provision of attendants nor provision of such clean-up services shall be an element of either Team Stadium Services or Park Board Stadium Services.

ARTICLE XVI  
TRAFFIC CONTROL AND POLICE PATROLS

Section 16.01 TRAFFIC CONTROL. Traffic control on all public streets around the Stadium shall be the responsibility of the Park Board. The Park Board shall assure that an adequate number of officers of the South Bend Police Department are provided when necessary to assure safe and efficient traffic control before and after Team Events and Team Special Events in the Stadium and will additionally be available to respond to on-site or supplemental parking lot security problems as required.

ARTICLE XVII  
ASSIGNABILITY OF LEASE SUBJECT TO PRIOR PARK BOARD APPROVAL

Section 17.01 ASSIGNMENT IN GENERAL. Except as provided in the following Section 17.02, the Team shall have no authority to assign or otherwise transfer this Stadium Agreement or

any provision thereof to any other person, corporation, partnership or other entity without the prior written approval of the Park Board, which approval shall not be unreasonably withheld, conditioned or delayed. The consideration of the Park Board of any requested assignment or transfer shall include, but not be limited to, the approval or disapproval of MLB of such assignment or transfer.

Section 17.02 This section is intentionally left blank.

ARTICLE XVIII  
TEAM BASEBALL GAME TICKETS

Section 18.01 COMPLIMENTARY TICKETS. The Team shall provide the Park Board with up to twenty (20) complimentary tickets for each Team baseball game to assist the Park Board and the City of South Bend in the marketing of the Stadium.

Section 18.02 TICKETS FOR YOUTH PROGRAMS. The Team shall provide the Park Board with 500 tickets during the Baseball season, for dates mutually agreeable to the Parties, to be used in connection with Park Board Youth recreation programs,

ARTICLE XIX  
DESTRUCTION OF STADIUM

Section 19.01 PARTIAL DESTRUCTION. If the Stadium is partially destroyed by any cause and can be repaired or restored to its prior condition and the destruction does not render the Stadium unusable, this Stadium Agreement shall continue in full force and effect. The Park Board shall, at its expense, promptly commence and diligently complete the restoration of the Stadium to the same condition as of the Commencement Date of this Stadium Agreement, reasonable wear and tear excepted. All repair activities shall be timed and organized in such a manner to facilitate the Team's ability to play their home Baseball Season games at the Stadium to the degree feasible.

Section 19.02 TOTAL DESTRUCTION. In the event the Stadium is destroyed by fire or other casualty, and after consultation with the Team, the Park Board may elect whether to repair or restore the Stadium or to terminate this Stadium Agreement. Such election shall be exercised by the Park Board by giving written notice to the Team within thirty (30) days after such destruction. If the Park Board so elects, this Stadium Agreement shall terminate. If the Park Board elects not to terminate this Stadium Agreement, the Park Board shall proceed as promptly as practical to repair and restore the Stadium to its condition existing immediately prior to such destruction,

Section 19.03 REDUCTION IN MINIMUM ANNUAL PAYMENT. Should the Stadium be unavailable for any of the Team's home Baseball Season games as a result of the partial destruction of the Stadium or by reason of the Park Board's election to repair or restore the Stadium subsequent to total destruction, the minimum annual payment, pursuant to Section 8.03 herein, shall be reduced in an amount proportionate to the ratio of the lost games to the total games scheduled.

Section 19.04 ASSISTANCE OF THE PARK BOARD AND CITY OF SOUTH BEND IN LOCATING A TEMPORARY OR PERMANENT ALTERNATE FACILITY. If the Stadium becomes unavailable on a temporary basis by reason of either the partial destruction of the Stadium or the repair or restoration of the Stadium after total destruction, or for any other reason attributable to the action of the Park Board or City of South Bend, the Park Board and the City of South Bend shall utilize their best efforts to assist the Team in locating an adequate temporary facility within the City of South Bend or the surrounding area,

ARTICLE XX  
CONDEMNATION

Section 20.01 In the event that any portion of the Stadium is taken from the Park Board pursuant to any type of eminent domain exercised by any governmental entity or pursuant to any governmental order and such taking renders the Stadium unfit for its intended purpose, then this stadium Agreement may be terminated by the Park Board by notifying the Team. The Team shall have no right to any portion of any award granted with respect to such taking except that the Team shall have the independent right to make a claim against the condemner for and retain any award based thereon for the reasonable value of improvements made to the Stadium by the Team and for the expenses incidental to relocating from the Stadium including, but not limited to, the relocation of the Stadium Club/Restaurant if operated by the Team, and for the lost value of this Stadium Agreement.

ARTICLE XXI  
SIGNAGE

Section 21.01 The placement of any and all signage, either temporary or permanent, on the exterior or in the interior of the Stadium, including but not limited to the Food and Beverage Service Areas, shall be subject to the prior reasonable approval of the Park Board. The Team acknowledges the intent of the Park Board to assure that all such signage is consistent with the signage plan for the Stadium that is a part of the plans and specifications and that any signage constituting advertising is placed only in those areas of the Stadium designated as Team Advertising Areas as provided for in Section 7.01 herein.

ARTICLE XXII  
FORCE MAJEURE

Section 22.01 The Team and the Park Board agree that with respect to any services to be provided, payments to be made, or action to be taken by either party during the term of this Stadium Agreement, the party required to furnish or perform the same shall in no event be liable for failure to do so when prevented by any cause beyond the reasonable control of such parties such as strike, lock-out, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability, by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to furnish such services, or because of war or other emergency, or for any cause due to any act or neglect of the other party hereto, or in servants, agents, employees, any assignee, or successor in interest to such other party. The time within which such services,

payments, or actions shall be performed or rendered shall be extended for a period of time equivalent to the delay of such cause.

ARTICLE XXIII  
DEFAULT AND REMEDIES

Section 23.01 In the event that either party hereto shall materially breach, violate or fail fully to perform any term or provision contained in this Stadium Agreement, the non-breaching party may, upon thirty (30) days written notice thereof, terminate this Stadium Agreement, provided however that the defaulting party shall have the right and opportunity to cure the default within said thirty (30) day period, or, if such breach, violation or non-performance cannot be cured within a thirty (30) day period, to begin diligently to effect such cure during such period. In the event that such breach, violation or non-performance is not cured within said thirty (30) day period (or, as to defaults not curable within thirty (30) days, diligent efforts to effect a cure during such thirty (30) day period have not begun), then, this Stadium Agreement shall terminate upon the expiration of such period and the non-breaching party shall thereupon have the right to exercise such additional rights or remedies as they may have by law.

ARTICLE XXIV  
MISCELLANEOUS

Section 24.01 EQUAL OPPORTUNITY; NON-DISCRIMINATION; COMPLIANCE. The Team shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Stadium Agreement. The Team shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Stadium Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Team certifies that it is in compliance with each such provision and shall remain in compliance through the term of this Stadium Agreement.

Section 24.02 GOVERNING LAW. This Stadium Agreement shall be construed under and in accordance with the laws of the State of Indiana.

Section 24.03 ENTIRE AGREEMENT. This Stadium Agreement constitutes the final, complete and exclusive written expression of the intent of the parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements.

Section 24.04 AUTHORITY. The Team and the Park Board, respectively, each represent that the individuals acting as signatories to this Stadium Agreement have the authority to bind the Team and the Park Board and that this Stadium Agreement, when properly executed by both parties, will constitute a valid and binding agreement, enforceable in accordance with its terms.

Section 24.05 COSTS AND ATTORNEY FEES. The parties hereto agree to pay all expenses incurred by the other in enforcing the provisions of this Stadium Agreement, including but not limited to attorney fees, costs and expenses. The party who prevails in any litigation arising out of any dispute concerning this Stadium Agreement shall be entitled to recover all expenses incurred, including without limitation, reasonable attorney fees.

Section 24.06 TAXES AND ENCUMBRANCES. The Team shall pay promptly when due any and all personal property taxes imposed on its personal property located in the Stadium. The Team shall not permit any mechanics liens or other encumbrances or liens to exist against the Stadium and shall within thirty (30) days of any such lien or encumbrance being asserted against the Stadium as a result of action or inaction by the Team either cause the same to be released of record or obtain title insurance coverage satisfactory to the Park Board over such lien and proceed diligently to contest the same in good faith.

If, as a result of a change in the method of taxation occurring after the date of this Stadium Agreement, one or more new or additional taxes, levies, assessments or other charges, however designated (“Additional Charges”) are imposed against the Stadium or the Stadium Improvements, or against the Team by reason of its operations at the Stadium or use of the Stadium Improvements (or any tax based upon the amount of compensation payable under Section 8.01 of this Stadium Agreement), by any local governmental entity, then such Additional Charges shall be paid by the City or the Park Board. If deemed necessary by the Team, the Team shall be entitled, in its discretion, to deduct any amount of Additional Charges not paid by the City or by the Park Board from its payments to the Park Board pursuant to any provision of this Stadium Agreement, including Section 8.01 hereof.

Section 24.07 SEVERABILITY. If any one or more of the provisions contained in this Stadium Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability of the Team to perform and have access to the Stadium as provided for herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Stadium Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

Section 24.08 NOTICES AND ADDRESSES. All notices to be given under this Stadium Agreement shall be given (i) in writing (ii) addressed to the proper Party to the following addresses, or at other addresses the Parties may exchange, (iii) by Priority mail or through a commercially recognized delivery service such as FedEx or UPS who provide proof of delivery. Any Notice shall be deemed given upon delivery of the Notice meeting the above requirements (i)-(iii):

#### BOARD OF PARK COMMISSIONERS

Aaron Perri  
Executive Director  
South Bend Venues Parks & Arts  
301 South St. Louis Blvd.  
South Bend, IN 46617

with a copy to:

Corporation Counsel  
1200 County City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601

SWING BATTER SWING, LLC

Andrew Berlin  
Managing Member  
501 West South Street  
South Bend, Indiana 46634

With a copy to:

Richard A. Nussbaum, II  
Attorney at Law  
210 South Michigan Street Suite 500  
South Bend, Indiana 46601

Section 24.09 AMENDMENT, MODIFICATION, OR ALTERATION. No amendment, modification or alteration of the terms of this Stadium Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties and meeting any requirements of the PDL.

Section 24.10 RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies provided by this Stadium Agreement are cumulative and the use of any right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

Section 24.11 TIME OF THE ESSENCE. Time is of the essence for this Stadium Agreement.

Section 24.12 COUNTERPARTS. This Stadium Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

Section 24.13 HEADINGS ONLY FOR REFERENCE. The titles of articles and sections of this Stadium Agreement are for reference purposes only and shall be of no binding effect.

Section 24.14 VALID INDIANA ENTITY. The Team represents that as of the date of the execution of this Stadium Agreement it is organized and in good standing under the laws of the State of Indiana, that it is duly authorized to enter into this Stadium Agreement and has taken all requisite action to obtain such authorization and that no consent of or notice to any other individual,

private or public entity or governmental authority is required in connection with the execution, delivery and performance of the Stadium Agreement.

Section 24.15 PUBLIC ADDRESS ANNOUNCEMENTS REGARDING PARK BOARD AND CITY EVENTS. The Team agrees to make appropriate public address announcements and announcements on the Scoreboard Message Center in regards to future Park Board Events and City of South Bend events held in the Stadium and/or other Park Board or City facilities not scheduled for the same time as any Team Events or Team Special Events.

Section 24.16 PROHIBITION AGAINST FOOD AND BEVERAGE BEING BROUGHT INTO THE STADIUM. The Park Board shall post signs in appropriate locations in the Stadium which shall prohibit patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Stadium.

Section 24.17 STATUS OF PARTIES. Parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes and nothing contained in this Stadium Agreement shall be determined to create a partnership or joint venture between the Team, the Park Board or the City of South Bend with respect to the Team's activities conducted at the Stadium pursuant to the terms of this Stadium Agreement.

Section 24.18 WAIVER. The waiver by either the Team or the Park Board of any default or breach by the other party of any of the provisions of this Stadium Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Stadium Agreement.

Section 24.19 IMPROVEMENTS. The Team shall make no improvements in the Team Areas or any portion of the Stadium without the prior approval of the Park Board.

Section 24.20 WASTE OR NUISANCE. The Team shall not commit or permit any waste on or about the Stadium during the term of this Stadium Agreement nor shall it maintain, commit or permit the maintenance or commission of any nuisance on or about the Stadium or use the Stadium or Team Areas for any unlawful purposes.

Section 24.21 BINDING EFFECT. This Stadium Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 24.22 REFERENCES TO THE PARK BOARD. All references to the Park Board in this Stadium Agreement shall be deemed to also be references to such officers or employees or other designees of the Park Board as may be appropriate to implement the terms of this Stadium Agreement.

Section 24.23 EXHIBITS. All exhibits attached to this Stadium Agreement are incorporated into and are a part of said agreement as if fully set out herein.

Section 24.24 DRUG FREE WORKPLACE. The Team hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Team will give written notice to the




Park Board within ten (10) days after receiving actual notice that the Team or an employee of the Team within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

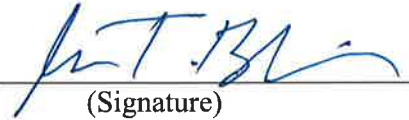
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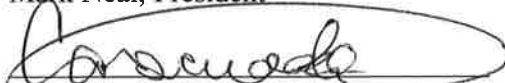
IN WITNESS WHEREOF, the undersigned on behalf of the Park Board and the Team execute this STADIUM USE, MANAGEMENT, AND OPERATIONS AGREEMENT as of the day and year first written above.

BOARD OF PARK COMMISSIONERS

SWING BATTER SWING, LLC

  
\_\_\_\_\_  
Mark Neal, President

  
\_\_\_\_\_  
(Signature)

  
\_\_\_\_\_  
Consuela Hopkins, Vice President

\_\_\_\_\_  
(Printed Name and Title)

  
\_\_\_\_\_  
Aimee Buccellato, Member

  
\_\_\_\_\_  
Dan Farrell, Member

ATTEST:   
\_\_\_\_\_  
Eva Ennis, Clerk

MAYOR OF CITY OF SOUTH BEND, INDIANA

  
\_\_\_\_\_  
James Mueller, Mayor

**EXHIBIT A**

**PARK BOARD HEAVY EQUIPMENT LIST**

**SUBJECT TO REVIEW TO UPDATE**

Front-end loader and licensed operator  
Skid Steer unit with grading attachment and licensed operator  
Reel-mower sharpening equipment  
Chemical Sprayer (backpack)  
Forklift  
Scissor Lift  
Street Roller  
  
Sod-Aeration equipment

**EXHIBIT B**

**PARK BOARD PROVIDED EQUIPMENT LIST**

**SUBJECT TO REVIEW AND UPDATE**

Motorized Utility Cart w/power lift bed  
Motorized Utility Cart w/power lift bed  
Motorized Utility Cart w/power lift bed

**EXHIBIT C**

**TEAM PROVIDED EQUIPMENT LIST**

**SUBJECT TO REVIEW AND UPDATE**

ABI Field Groomer  
Sand Pro – Field Groomer  
John Deere – Aeration Equipment  
Handheld Dirt Compactor  
Pull Behind Grounds Crew Trailer  
Slit Grass Seed Machine  
Outdoor Litter Vacuum  
Reel-type riding mower  
Line Chalker  
3 pitching rubbers  
4 bases  
3 home plates  
Tamp for pitcher's mound  
Infield drag mats

