

**FIRST AMENDMENT TO AMENDED AND RESTATED STADIUM USE,  
MANAGEMENT AND OPERATIONS AGREEMENT  
DATED JANUARY 19, 2021**

This First Amendment to the Amended and Restated Stadium Use, Management and Operations Agreement dated January 19, 2021 (this "First Amendment") is made effective as of [ ] (the "Effective Date"), by and between the South Bend Redevelopment Authority, (the "RDA"), and Swing Batter Swing LLC, an Indiana limited liability company (the "Team") (each a "Party," and collectively the "Parties").

**RECITALS**

A. The City of South Bend Board of Park Commissioners ("Parks Board") and Team entered into a certain Stadium Use, Management, and Operations Agreement dated January 19, 2021 (the "Stadium Agreement") for the use of Four Winds Field at Coveleski Stadium which is located at 501 West South Street, South Bend, Indiana 46601 ("Stadiums").

B. Team owns the Club (as defined herein).

C. The Park Board transferred its property interest in the Stadium to its successor in interest, the South Bend Redevelopment Authority ("RDA") effective May 20, 2024 to facilitate the financing of the renovation of the Stadium described herein.

D. The Park Board assigned its interest in the Stadium Agreement to the RDA effective May 20, 2024. ("Assignment"). The Assignment received all necessary PDL Approvals (as defined herein) on March 22, 2024.

As part of the Assignment of the Stadium Agreement to the RDA, it was expressly recognized the ongoing management of the Stadium Agreement would remain under the Parks Board.

E. The City of South Bend, Indiana (the "City") has committed to a major renovation project of approximately Forty Eight Million Dollars (\$48,000,000.00) to the Stadium into a state of the art baseball facility in full compliance with the PDL Rules and Regulations to better service the needs of the citizens of the City, fans of the Team and the Player Development opportunities for the players.

F. The City, through its authorized representatives, and the Team have submitted this First Amendment for review by MLB PDL, as defined herein, to receive PDL Approval, as defined herein, permitting the Parties to execute this First Amendment.

G. The Team and the RDA agree to the proposed modifications, and, therefore, the Parties now amend the Stadium Agreement as stated in this First Amendment.

H. The Parties acknowledge various City entities are described in this First Amendment, including the RDA, Park Board, and the Board of Public Works (individually "City Entity" and collectively "City Entities"). The obligations of the City Entities are collectively those of the City to be fulfilled as the City shall determine, and enforceable against the City or the appropriate City Entity as applicable to the defined obligation under this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this First Amendment to the Stadium Agreement, the adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

1. Article 1 of the Stadium Agreement is hereby modified by adding Sections 1.14 through 1.29 as stated hereinbelow to address required PDL Rules and Regulations as defined herein.

Section 1.14 "Club" means the professional baseball club currently known as the South Bend Cubs

Section 1.15 "Commissioner" means the Commissioner of Baseball as elected under the Major League Constitution or, in the absence of a Commissioner, any Person or body succeeding to the powers and duties of the Commissioner pursuant to the Major League Constitution.

Section 1.16 "Major League Baseball" or "MLB" means, depending on the context, any or all of (a) the Office of the Commissioner of Baseball, each other MLB PLD Entity and/or all boards and committees thereof and/or (b) the Major League Clubs acting collectively.

Section 1.17 "Major League Baseball Club" or "Major League Club" means any professional baseball club entitled to the benefits, and bound by the terms, of the Major League Constitution.

Section 1.18 "Major League Constitution" means the Major League Constitution adopted by the Major League Clubs as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein, and all replacement or successor agreements that may in the future be entered into by the Major League Clubs.

Section 1.19 "South Bend Cubs PDL License Agreement" means that certain player development license agreement entered into between Team and MLB PDL pursuant to which the Club has been granted the right to participate in the Professional Development League System.

Section 1.20 "MLB PDL" means, depending on the context, any or all of (i) MLB Professional Development Leagues, LLC, a Delaware limited liability company, and/or (ii) the boards, committees and subcommittees related thereto.

Section 1.21 "MLB PDL Entity" means each of MLB PDL, the Office of the Commissioner of Baseball, MLB Advanced Media, L.P. and/or any of their respective present or future affiliates, assigns or successors.

Section 1.22 “PDL Approval” means, any approval, consent or no-objection letter required to be obtained from MLB PDL or any other MLB PDL Entity pursuant to the PDL Rules and Regulations.

Section 1.23 “PDL Club” means a professional baseball club participating in the Professional Development League System pursuant to a player development license agreement between the owner of such club and MLB PDL pursuant to which such owner has been granted the right to participate in the Professional Development League System.

Section 1.24 “PDL Governance Agreement” means that certain Professional Development Leagues Governance Agreement, effective as of February 12, 2021 by and between MLB PDL and each PDL Club, as may be amended, modified, supplemented or restated from time to time.

Section 1.25 “PDL Governing Documents” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (i) the Major League Constitution; (ii) the Major League Rules (and all attachments thereto); (iii) the PDL Operating Guidelines; (iv) the PDL Governance Agreement; and (v) the PDL License Agreements.

Section 1.26 “PDL License Agreement” means each player development license agreement entered into between a PDL Club and MLB PDL pursuant to which such PDL Club has been granted the right to participate in the Professional Development League System, including, without limitation, the South Bend Cubs PDL License Agreement.

Section 1.27 “PDL Rules and Regulations” means: (i) the PDL Governing Documents; (ii) any present or future agreements or arrangements entered into by, or on behalf of, MLB PDL or any other MLB PDL Entity or the Major League Clubs acting collectively specifically related to or generally applicable to the Professional Development League System or the PDL Clubs, including, without limitation, agreements or arrangements entered into pursuant to the PDL Governing Documents; and (iii) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or on behalf of, the Commissioner, MLB PDL or any other MLB PDL Entity as in effect from time to time specifically related to or generally applicable to the Professional Development League System or one or more of the PDL Clubs.

Section 1.28 “Professional Development League System” means a system of professional baseball leagues comprised of professional baseball clubs that compete at different levels and serve to assist with the development of players for Major League Baseball Clubs.

Section 1.29 “Untenantability Period” shall mean the period following the determination by MLB PDL, in a written directive, declaration or ruling addressed to Team (sent in good faith and not at the request of Team) and provided to the City that the condition of the Stadium is such that MLB PDL prohibits the playing of home games at the Stadium, in each case pursuant to which a home game cannot reasonably be held, or reasonably foreseen to be held, at the Stadium in accordance with MLB PDL standards for exhibition of MLB PDL games, as such standards may be determined and applied by MLB PDL from

time to time; provided that such standards are consistently applied without discrimination in application to the Club, Team or the Stadium.

2. Section 1.03 of the Stadium Agreement is deleted and replaced by the following:

“Board Events” shall mean any event or activity held at the Stadium, including Event Space, except a Team Event or Team Special Event, under the authority of the Park Board. It is understood requests made by the Park Board or the City will be granted unless the Team has a prior commitment which conflicts with the request for a Board Event.”

3. Section 1.05 of the Stadium Agreement is deleted and replaced by the following:

“Baseball Season” shall mean the time in which the Club plays its home games generally during the months of April through September, subject to the PDL Rules and Regulations.

4. Section 1.08(f) of the Stadium Agreement is deleted and replaced by the following:

“PDL Services – PDL services shall mean any and all services required by the South Bend PDL License Agreement.”

5. Section 1.08(g) of the Stadium Agreement is hereby added and reads as follows:

“Ongoing Maintenance of Equipment – the Team shall have the sole responsibility to maintain the non-structural operational infrastructure of the Stadium, including but not limited to, non-structural equipment and all other elements in the Stadium. It is understood between the Parties a specific list of non-structural operational infrastructure is not feasible given the size and scope of the Stadium. However, the Parties agree the Team shall be responsible for day-to-day non-structural operational equipment, including preventative maintenance to equipment, the hiring and scheduling of vendors, payment of all invoices related to such work, and the replacement of equipment, if and when necessary as long as the cost of the equipment does not exceed Twenty-Five Thousand Dollars (\$25,000.00) per year, per piece of equipment, and One Hundred Thousand Dollars (\$100,000.00) in the aggregate. Under such situation, the City will contribute an amount to cover the excess payments greater than Twenty-Five Thousand Dollars (\$25,000.00) per piece of equipment, and One Hundred Thousand Dollars (\$100,000.00) in the Aggregate during the first five (5) years of this First Amendment. For years 6-10 of this First Amendment, the Team shall be responsible for the replacement cost of the equipment as long as it does not exceed Twenty-Five Thousand Dollars (\$25,000.00) per piece of equipment and One Hundred Twenty Thousand (\$120,000.00) in the aggregate. For years 11-20 of this First Amendment, the Team shall be responsible for the replacement cost of the equipment as long as it does not exceed Twenty-Five Thousand Dollars (\$25,000.00) per piece of equipment and One Hundred Twenty-Five Thousand (\$125,000.00) in the aggregate. The Parties hereto agree to increase the aggregate amount in a manner calculated based on the then applicable Consumer Price Index level during any renewal period of this First Amendment. It is further understood that any and all kitchen equipment is a Team responsibility and shall not be included in the aggregate cap. The Park Board, or its designee, shall approve any replacement of permanent equipment in order to be sure such

equipment is of the appropriate standard. Further, the Park Board, or its designee, shall have the right to audit the Stadium in order to confirm the Team is maintaining the Stadium and associated equipment at an appropriate standard. The Team shall be the beneficiary of any equipment related warranties associated with the Stadium and such rights shall be assigned to the Team by the City. Notwithstanding, the foregoing, it shall be the Team's sole responsibility to maintain and replace any and all equipment related to the "splash pad" play area up to the amount per year of One Hundred Thousand Dollars (\$100,000.00). The City agrees to provide troubleshooting support for minor issues if and when requests. Any chemical purchases required for operation shall be the responsibility of the Team."

6. Section 2.01 of the Stadium Agreement is deleted in its entirety and replaced by the following:

"The initial term ("Initial Term") of this First Amendment to the Stadium Agreement shall commence effective with the Effective Date hereof ("Commencement Date") and continue through September 30, 2044. 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 RDA or Park Board, or its successor, 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 Team elects an Additional Term or Terms, all remaining terms and conditions of this Agreement will remain in full force and effect upon the mutual consent of the Parties."

7. Section 3.02 of the Stadium Agreement is deleted in its entirety and replaced by the following:

"STADIUM IMPROVEMENTS. The Parties agree all Stadium Improvements required under any previous stadium use agreement have been completed and the Parties will work together in good faith to complete any required Stadium Improvements under the PDL Rules and Regulations. The Parties hereto both note the joint efforts to exceed facility standards set forth in the PDL Rules and Regulations, specifically the improvements made to the stadium lighting, extended safety net installation, planned installation of a new stadium field, locker room renovations and the Stadium upgrades contemplated under the stadium renovation."

8. Section 4.01 of the Stadium Agreement is deleted in its entirety and replaced by the following:

"USE FOR HOME GAMES. Except as provided by the PDL Rules and Regulations, or due to an Untenantability Period, or in the event that the Stadium is unusable due to a force majeure, the Team agrees to cause the Club 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 Stadium, the Park Board shall permit Team to use the Stadium for practices and tournaments. The Team shall be permitted to conduct promotional events before and after baseball games with all such events being scheduled

pursuant to 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.”

9. The first sentence of Section 4.02 is deleted in its entirety and replaced by the following:

“Subject to the PDL Rules and Regulations, 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.”

10. Section 8.01 of the Stadium Agreement is deleted in its entirety and replaced effective for the 2024 Season by the following:

“AMOUNT OF COMPENSATION PAYABLE. In consideration for the use of the Stadium by the Team in addition to the other terms and conditions as provided herein this First Amendment to the Stadium Agreement and in recognition of the Teams financial responsibility for ongoing maintenance costs, there shall be no annual payment to the Park Board, RDA, or City throughout the Initial Term. The Parties understand a negotiation on an annual payment sum shall be negotiated for any and all Additional Terms.”

11. Section 8.02 of the Stadium Agreement is hereby deleted in its entirety effective for the 2024 Season.

12. Section 8.03 of the Stadium is now known as Section 8.02.

13. Section 8.04 of the Stadium Agreement is hereby deleted in its entirety.

14. Section 9.01 of the Stadium Agreement is hereby deleted in its entirety and replaced by the following:

“OPERATIONAL, STRUCTURAL AND SYSTEMS MAINTENANCE. Within the interior of the Stadium as depicted on site map attached hereto as Exhibit “A” and incorporated herein by reference, Maintenance of all non-structural operational components and all heating, ventilating, air conditioning, plumbing and electrical systems, but only during their useful life shall be the responsibility of the Team as set forth under Section 1.08(g). The City shall be responsible for the Maintenance of all structural components of the Stadium such as by way of example, the Roof, Facades, Pillars and Bricks and the replacement of all heating, ventilating, air conditioning, plumbing, and electrical systems after the expiration of each systems useful life, and also for the Maintenance of the exterior of the Stadium as depicted on the site map attached hereto as Exhibit B.”

15. Section 9.02 of the Stadium Agreement is hereby deleted in its entirety and replaced by the following:

“OPERATION OF HEATING AND AIR CONDITIONING SYSTEMS. 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.”

16. Section 9.04 of the Stadium Agreement is hereby deleted in its entirety and replaced by the following:

“The Team shall, at its sole expense, replace the playing field sod in its entirety no later than April 1, 2025. The playing field sod shall be replaced every seven (7) to ten (10) years as necessary to meet the requirements of the PDL Rules and Regulations after the April 1, 2025 playing field sod replacement. It is understood by the Parties, should the Indiana Legislature increase the Professional Convention Sports Development Fund cap to Six Million Dollar (\$6,000,000.00) (“Cap”) or more after the First Amendment Effective Date, the City shall be responsible for the next playing field sod replacement in its entirety which should occur between 2032 and 2035 as necessary to meet the requirements of the PDL Rules and Regulations. If the Cap does not reach Six Million Dollars (\$6,000,000.00) during this time period, Landlord shall apply whatever monies exist from the Cap allocation and the Team shall be responsible for fifty percent (50%) of the field replacement costs. The Team shall be solely responsible for all costs associated with the third playing field replacement during the Term or subsequent Additional Term. Playing field sod removal and/or replacement necessitated by the conversion of the Stadium playing field for athletic events or resulting from damage to the playing field occurring at Team Events, Team Special Events, or Park Board Events, shall be handled pursuant to [the Stadium Operation and Services, Article V of this First Amendment to the Stadium Agreement]. To the extent the City must follow public bidding statutes in field replacement the specifications for same shall take into consideration the PDL Rules and Regulations and responsible bidders who have experience in MLB PDL compliant field replacement.”

17. Section 10.01 shall be deleted in its entirety.

18. Section 10.02 shall be deleted in its entirety and renumbered as Section 10.01 and replaced with the following:

“The Team shall be responsible for the payment of all utilities at the Stadium.”

19. Sections 10.03; 10.04 and 10.05 shall be renumbered as Sections 10.02; 10.03 and 10.04.

20. Section 11.01 of the Stadium Agreement is hereby deleted in its entirety and replaced by the following:

“USE OF PARK BOARD HEAVY EQUIPMENT. During the term of this First Amendment to the Stadium Agreement, the Park Board shall make available to the Team certain items of heavy equipment, for its exclusive use and enjoyment, with said items being listed at Exhibit “B”. Said equipment will at all times remain under the control of the Team and the Team shall indemnify and hold harmless the RDA, Park Board, and the City

including all board members, commissioners, officers, directors, duly authorized agents, employees and sub-contractors from any damage and injury resulting from the use of the equipment by the Team. 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. The Team is solely responsible for all maintenance of this heavy equipment and all training requirements necessary for the Team's safe use of said heavy equipment."

21. The last sentence of Section 12.03 is hereby deleted in its entirety and replaced by the following:

"The Parties agree that any and all scheduling decisions described in Article XII of this Stadium Agreement are subject to the PDL Rules and Regulations."

22. Section 14.01 of the Stadium Agreement is hereby deleted in its entirety and replaced by the following:

"MAINTENANCE OF SOUTH BEND CUBS PDL LICENSE AGREEMENT. The Team represents that as of February 12, 2021, it is a party to the South Bend Cubs PDL License Agreement. During the term of this Stadium Agreement, the Team shall use its best efforts to remain a PDL Club in good standing. 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 South Bend Cubs PDL License Agreement."

23. Section 18.01 of the Stadium Agreement is hereby deleted in its entirety and replaced by the following:

"COMPLIMENTARY TICKETS. The Team shall provide the Park Board, or its designee, with up to thirty (30) complimentary tickets for each Team baseball game to assist the Park Board and the City of South Bend in the marketing of the Stadium."

24. Section 19.03 of the Stadium Agreement is hereby deleted in its entirety.

25. Section 24.08 shall be amended only to name "Executive Director of South Bend Venues Parks & Arts in place of Aaron Perri as Executive Director of South Bend Venues Parks & Arts and add the following language at the end of Section 24.08 as follows: "Should the Parties wish to designate another individual to receive notices under this Section 24.08 they shall send such designation in writing to the Board of Park Commissioners or Swing Batter Swing, LLC addresses listed herein."

26. Section 24.09 is hereby deleted in its entirety and replaced by the following:

"AMENDMENT, MODIFICATION, OR ALTERATION. No amendment, modification or alteration of the terms of this Stadium Agreement shall be binding unless (i) in writing, dated subsequent to the date hereon and duly executed by the Parties and (ii) all necessary PDL Approvals have been obtained in advance thereof."



27. A new Section 24.25 shall be added with the following:

“MISCELLANEOUS MLB PDL COMPLIANCE PROVISIONS. Any contrary provision contained herein notwithstanding.

- a. The Recitals are incorporated into the Operative Provisions of this First Amendment as if fully set out therein.
- b. This Stadium Agreement and any rights granted to the RDA, Park Board, City or Team hereunder shall in all respects be subordinate to the PDL Rules and Regulations, as long as Team is party to the South Bend Cubs PDL License Agreement currently in effect. The issuance, entering into, amendment or implementations of any PDL Rules and Regulations shall be at no cost or liability to any MLB PDL entity or to any entity related thereto. The territory within which RDA, Park Board or City is granted rights under this Stadium Agreement is limited to, and nothing herein should be construed as conferring on RDA, Park Board or City rights in areas outside of the PDL Club Marketing Territory (as defined in the South Bend Cubs PDL License Agreement). No rights, exclusivities, or obligations involving the internet or any interactive or on-line media (as defined in the applicable PDL Rules and Regulations) are conferred by this Stadium Agreement, except as are specifically approved in writing by MLB PDL.
- c. RDA agrees if the date upon which any termination or suspension of this Stadium Agreement falls during the regular season or postseason, the effective date of such termination or suspension shall be the first day of the month following the final home game of such season, and, in no event shall RDA, Park Board or City terminate or suspend Team’s rights under this Stadium Agreement during any season or post season.
- d. If, any time prior to the expiration of the term of this Stadium Agreement, it is terminated by RDA, Park Board or City for any reason and any legal action challenging the right of RDA, Park Board or City to terminate this First Amendment and seeking specific performance has either been: (i) finally adjudicated in a court of competent jurisdiction as evidenced by a final non-appealable order; or (ii) settled withdrawn or otherwise concluded, in either case solely with respect to the request for specific performance and the South Bend Cubs PDL License Agreement has been terminated RDA, Park Board or City agrees to enter into a Use Operation and Management Agreement with substantially the same similar terms to this Stadium Agreement with any replacement PDL Club identified by MLB PDL to the extent such PDL Club is reasonably acceptable to RDA, Park Board or City. To the extent such Use Operation and Management Agreement is not entered into RDA, Park Board, or City agrees to meet promptly with MLB PDL to work together to ascertain whether a replacement PDL Club can be identified, and if such MLB PDL Club is so identified RDA, Park Board, or City shall offer to enter into a Use Operations and Management Agreement with such PDL Club. For

the avoidance of doubt this Section 24.25 of the Stadium Agreement shall survive the termination of the Stadium Agreement.

- e. As long as Team is party to the South Bend Cubs PDL License Agreement in effect, MLB PDL is an intended third party beneficiary of the provisions of this Section 24.25 and each other provision of the Stadium Agreement prohibiting action without first obtaining MLB PDL Approval and, in addition to its right to waive or enforce the provisions of this Section 24.25, MLB PDL shall be entitled and have the right to waive or enforce such other provisions prohibiting action without first obtaining PDL Approval directly against any Party hereto, or their successors and permitted assigns to the extent any such other provision is for the explicit benefit of MLB PDL or any other MLB PDL Entity.
- f. Neither MLB PDL nor any other MLB PDL Entity shall have any liability whatsoever to any Person for actions taken pursuant to this Section 24.25 other than for fraudulent acts. or willful misconduct with respect to this Section 24.25 by MLB PDL, and RDA, Park Board or City hereby releases MLB PDL and each other MLB PDL Entity from any and all claims arising out of or in connection with any such actions. Nothing contained in this First Amendment shall create any duty on behalf of MLB PDL or any other MLB PDL Entity to any other Person.”

28. Capitalized terms used in this First Amendment will have the meanings set forth in the Stadium Agreement unless otherwise stated herein.

29. Unless expressly modified by this First Amendment, the terms and provisions of the Stadium Agreement remain in full force and effect. This First Amendment, when combined with the Stadium Agreement, shall constitute hereafter the Stadium Agreement now referred to collectively as the “Stadium Agreement”.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to the Stadium Agreement to be effective on the Effective Date stated above.

CITY OF SOUTH BEND REDEVELOPMENT  
AUTHORITY

SWING BATTER SWING, LLC

By: \_\_\_\_\_

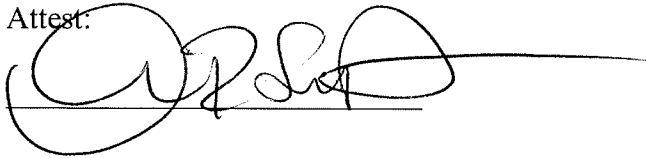
By: \_\_\_\_\_  
Andrew Berlin  
Manager

Attest:

\_\_\_\_\_

CITY OF SOUTH BEND  
BOARD OF PARK COMMISSIONERS

By:  \_\_\_\_\_

Attest:  \_\_\_\_\_

CITY OF SOUTH BEND BY AND THROUGH ITS  
BOARD OF PUBLIC WORKS

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

**EXHIBIT A**  
**DEPICTION OF STADIUM**

**EXHIBIT B**

**LISTING OF PARK BOARD HEAVY EQUIPMENT TO BE PROVIDED AND  
UPDATED PRIOR TO EXECUTION OF FIRST AMENDMENT**

