

**DRAFT: 07/13/07/2:00 p.m.**

**STADIUM LICENSE AGREEMENT**

**By and Between**

**HARDBALL CAPITAL LLC,  
FORT WAYNE PROFESSIONAL BASEBALL LLC**

**and**

**THE CITY OF FORT WAYNE, INDIANA,  
DEPARTMENT OF REDEVELOPMENT BY  
THE FORT WAYNE REDEVELOPMENT COMMISSION**

**July \_\_\_\_\_, 2007**

## **STADIUM LICENSE AGREEMENT**

This Stadium License Agreement ("Agreement") is made and entered into as of the day and date set forth below, by and between **HARDBALL CAPITAL LLC**, a Georgia limited liability company, **FORT WAYNE PROFESSIONAL BASEBALL LLC**, an Indiana limited liability company (collectively "Hardball"), and **THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT, BY THE FORT WAYNE REDEVELOPMENT COMMISSION** (the "City") (Hardball and the City are sometimes herein referred to collectively as the "Parties," or singularly as each "Party").

### **ARTICLE I** **RECITALS**

Hardball owns and operates a Minor League professional baseball team (the "Club") in the Midwest League of Professional Baseball (the "Midwest League"); and

Hardball and the City desire that Hardball cause the Club to play its home baseball games in a stadium (the "Stadium", as further defined herein) to be constructed by the City for an amount not to exceed Thirty Million Dollars (\$30,000,000) (the "Project Budget"), with Five Million Dollars (\$5,000,000) of such costs to be paid by Hardball; and

Hardball has agreed, in connection with the City's commitments hereunder, to construct condominiums and retail space in accordance with the Condominium/Retail Economic Development Agreement between the City, Hardball, and Barry Real Estate Companies, LLC; and

The City intends to construct the Stadium and license certain use of the same to Hardball under the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hardball and the City agree as follows:

### **ARTICLE II** **DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set forth below.

A. "Announced Attendance" shall mean the announced attendance for all Hardball Home Baseball Games.

B. "Board of Advisors" shall have the meaning set forth in Article XXIII hereof.

C. "Broadcast Rights" shall mean the exclusive worldwide right, on a live or delayed basis, to produce and distribute programming by means of the transmission or retransmission of electronic signals, including over-the-air VHF and UHF signals, internet or otherwise "online", cable (basic, premium and pay-per-view), multi-channel distribution systems, wire, fiber, microwave, satellite, master antenna and direct broadcast satellite, as well as recorded visual images with or without sound, including photographs, films, videotapes and cartridges. Broadcast Rights shall also include the copyrights for any such programming or portions thereof and the exclusive right to make, use, sell and license the same for commercial or non-commercial purposes.

D. "City Maintenance and Improvement Fund" shall have the meaning set forth in Article IV(D) herein.

E. "City Event" shall mean any event, activity or program held at the Stadium that is not a (i) Hardball Home Baseball Game, (ii) Hardball Event or (iii) other activity that is not otherwise related to the administration or operation of Hardball's regular business at the Stadium.

F. "City Financing" shall mean the financing source and structure to be used by the City to fund construction of the Stadium, as more particularly described on Exhibit II, F.

G. "City Maintenance Obligations" shall have the meaning set forth in Article IV(C)(ii).

H. "City Park" shall mean the city park to be created in the area between the Stadium, the Hotel and parking deck and bounded on the north by Jefferson Boulevard.

I. "Club" shall have the meaning set forth in the Recitals.

J. "Condominium/Retail Economic Development Agreement" shall mean the Condominium/Retail Economic Development Agreement of even date herewith between Barry Real Estate Companies, Inc. and the Redevelopment Commission of the City of Fort Wayne, Indiana.

K. "Food and Beverage Concessions" shall mean all food and beverage (both alcoholic and non-alcoholic) products and services required or appropriate for, and sold or provided at, any and all Stadium Events, whether through fixed or portable stands, machines or vendors, including but not limited to, dining, Suite waitperson service, catering, concessions vending, vending machines, roving vendors, picnics, snack bars and any other food or beverages served at the Stadium.

L. "Food and Beverage Concessions Equipment" shall mean all equipment required to store, prepare, display, service, distribute and sell Food and Beverage Concessions at the Stadium as defined and detailed in the Food and Beverage Concessions Equipment List at Exhibit II(L).

M. "Hardball Areas" shall mean the areas designated in the Plans and Specifications as administrative offices, team store(s), designated storage areas, and the Home Team locker room during the baseball season, and coaching offices during the baseball season and, subject to the terms of the Management Agreement, all kitchens, food and beverage preparation, storage and sales areas.

N. "Hardball Contribution" shall have the meaning set forth in Article IV(A).

O. "Hardball Events" shall mean Hardball Special Events and Hardball Home Baseball Games.

P. "Hardball Events Attendance" shall mean the Announced Attendance together with the actual attendance for all other Hardball Events for which an admission fee is charged or a room rental or other facility fee is charged. Hardball Events Attendance shall not include attendance from:

- (a) free or discounted tickets for youth groups;
- (b) charitable fundraisers and donations;
- (c) employees, or media and game day performance personnel; or
- (d) complimentary tickets granted visiting and home teams, scouts and other Major League and Minor League Baseball personnel.

Q. "Hardball Event Novelties and Souvenirs" shall mean any novelty clothing or souvenir sold at any Hardball Event.

R. "Hardball Home Baseball Game" shall mean all home games of the Club.

S. "Hardball Maintenance Obligations" shall have the meaning set forth in Article IV(C)(i).

T. "Hardball Parking Areas" shall mean those areas marked as "Hardball Parking Areas" on Exhibit V(B)(1) attached.

U. "Hardball Special Event" shall mean any event that is not a Hardball Home Baseball Game and is an event conducted at the Stadium and scheduled by Hardball pursuant to Article IX herein, including concerts, exhibition games and other sporting events.

V. "Hotel" shall have the meaning set forth in Article XXII.

W. "Maintenance Budget" shall have the meaning set forth in Article IV(D) hereof.

X. "Naming Rights" shall have the meaning set forth in Article VIII.

Y. "Naming Rights Sponsor" shall mean the entity after whom the Stadium shall be named. A Naming Right Sponsorship will be sold for the economic benefit of both the City and Hardball as further described in Article VIII.

Z. "Novelties and Souvenirs" shall mean any product, item, device, souvenir, novelty, supply or other similar kind of personal property. Novelties and Souvenirs shall include baseball caps and hats, bats, T-shirts, sweatshirts, jerseys and pullovers, baseballs, baseball and other sports and entertainment trading cards, baseball gloves, scorecards, programs, souvenir books and other products related to the forgoing products or related to or sold in conjunction with Hardball Home Baseball Games or Hardball Events.

AA. "Parking Areas" shall mean those areas marked as "Parking Areas" on Exhibit V(B)(1) attached.

BB. "Performance License Fees" shall have the meaning set forth in Article IV(A)(2) herein.

CC. "Permanently Affixed Stadium Signage" shall mean all advertising signage at the Stadium that is permanently affixed to any interior portion of the Stadium including, the outfield fence(s) and other field surface walls surrounding the field and around the concourse, picnic areas, suite level, foul poles, lighting structures, dugouts, the service level and the west facade of the parking deck. It shall also include marquee signage at or near the entrances to the Stadium. Certain Permanently Affixed Stadium Signage shall be subject to approval by the Board of Advisors. Exhibit II, FF sets forth areas of the Stadium where (i) interior signage that may be placed in the discretion of Hardball [outfield fences, scoreboard, other field-surface walls surrounding the field and around the concourse, dugouts, picnic areas, suite level and service levels], (ii) interior signage which must be approved by the Board of Advisors in its reasonable discretion [signage clearly visible from outside the Stadium, light poles, foul poles, west facade of the parking deck], (iii) exterior signage (e.g., the entrance marquee) that will be included in the Plans and Specifications, and (iv) limited exterior signage (e.g., the Naming Rights Sponsor) may be used.

DD. "Plans and Specifications" shall mean that certain Schematic Design and Program Summary attached as Exhibit II(GG), which may be amended by mutual agreement of the Parties, specifically describing the design of the Stadium and Stadium Area and all included amenities.

EE. "Project Budget" shall have the meaning set forth in the Recitals.

FF. "Regular Season" shall mean those professional baseball games that are played in any calendar year by and between baseball teams in the League pursuant to

scheduling by the League excluding pre-season, spring-training, exhibition, all-star, post-season or playoff games.

GG. "Scoreboard Advertising" shall mean any and all advertising displayed on the Stadium scoreboard, including audio, video and message center advertising.

HH. "Shared Parking Areas" shall have the meaning set forth in Exhibit V(B)(1).

II. "Stadium" shall mean the planned Minor League baseball stadium located in the City of Fort Wayne, Indiana, within the area bounded generally by Harrison Street, Brackenridge Street, Ewing Street, and Jefferson Boulevard, all of which is more specifically described in the Plans and Specifications.

JJ. "Stadium Area" shall mean all areas as designated on the attached Exhibit II(LL).

KK. "Stadium Equipment" shall have the meaning set forth in Article XV(B) hereof.

LL. "Stadium Events" shall mean all City Events and all Hardball Events.

MM. "Stadium Management Agreement" shall mean that certain Stadium Management Agreement by and between Hardball or an affiliate thereof and the City, of even date herewith, providing for the management and operation of the Stadium, a copy of which is attached hereto as Exhibit II(PP).

NN. "Stadium Manager" shall have the meaning set forth in the Stadium Management Agreement.

OO. "Stadium Area Maintenance" shall include, but not be limited to, maintenance of the playing field and landscaped areas inside the Stadium Area (excluding the City Park), which maintenance shall include regular mowing, watering, fertilizing and other chemical treatments required to maintain the field and landscaping at professional stadium quality and the grounds in an attractive and clean condition, specialized turf care as required, such as aeration and other treatments which are required to maintain the quality of the field as defined herein, recycling requirements and the maintenance of all unsodded areas of the field and Stadium Area.

PP. "Stadium Services" shall mean and consist of the following:

1. Operation Services. The operation and staffing of the Stadium scoreboard, the public address system, the box office, security within the Stadium Area, all ticket booths and ushering services, first-aid room, the opening and closing of the Stadium and the operation of all Stadium facilities (excluding Hardball Areas) at all Stadium Events.

2. Field Preparation. Field preparation in advance of baseball games or other on-field Stadium Events which shall include, but not be limited to, lining the field, preparation of the unsodded areas of the field, installation of bases, restoration of the field surface as required, and such other services needed to fully prepare the field for baseball games and other Stadium Events.

3. Janitorial Services. The cleaning and maintenance of the interior portions of the Stadium Area during and after all Stadium Events, including the stocking of all restrooms with paper products as required prior to such events, the pick up and disposal of all trash collected immediately after such events and any necessary clean-up of trash and debris from the Stadium Areas used by attendees of Stadium Events. All janitorial services provided to the Stadium Area shall include all action necessary to maintain the areas in a clean and attractive manner and in compliance with all legal requirements.

4. Pre-Event Stadium Services. The preparation of the Stadium for any Stadium Event as may be required, 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, installation of any additional sound equipment and/or temporary lighting that may be required for the Stadium Event.

QQ. "Suites" shall mean those twelve (12) ("Individual Suites" each having a seating capacity for a minimum of ten (10) persons outdoors.

RR. "Team Store(s)" shall mean the merchandise store(s) located within the Stadium, which is more specifically described in the Plans and Specifications.

SS. "Utilities" shall mean the electric, gas, sewage and water services utilized at the Stadium and in the Stadium Area.

### **ARTICLE III**

#### **TERM**

A. Term Of Agreement. This Agreement is effective and enforceable immediately upon execution by the Parties. The term of Hardball's license rights under this Agreement, plus any extension (collectively the "Term"), shall commence on [April 1], 2009 and shall expire, unless extended or sooner terminated as provided herein, on September 30, 2029.

B. Options By Hardball. Hardball may extend this Agreement on the terms set forth herein for up to two (2) successive additional terms of five (5) years each by giving notice in writing to the City before one (1) year prior to end of the then current Term.

**ARTICLE IV**  
**FINANCIAL TERMS**

A. License Fees.

1. Base License Fees. In consideration for the License to use the Stadium granted to it by the City pursuant to this Agreement, Hardball will contribute Five Million Dollars (\$5,000,000) (the "Hardball Contribution") in cash or cash and property equivalents acceptable to the City (valued at fair market value) in connection with the construction and equipping of the Stadium. Such payment may be in-kind in the form of equipment which is included in the Plans and Specifications. Any such equipment will be credited against the Hardball Contribution at fair market value.

2. Performance License Fees. Hardball shall also pay to the City on or before January 31 of each year for the prior calendar year throughout the Term hereof additional performance license fees in accordance with the following schedule (the "Performance License Fees"):

Annual Hardball Events Attendance at all Hardball Events	Additional License Fees Payable (per person in excess of 275,000)
0-275,000	\$ 0
275,000+	\$1.00

By way of example, should the Hardball Events Attendance for the calendar year ending December 31, 2009 be 300,000, Hardball would pay the City the sum of Twenty Five Thousand Dollars (\$25,000). Should Hardball Events Attendance be 350,000, Hardball would pay the City the sum of Seventy Five Thousand Dollars (\$75,000). All revenues from this Performance License Fee will be deposited directly into the City Maintenance Fund described in Section IV(D).

B. City's Events.

1. City Event Concessions. As additional consideration for the license rights granted Hardball hereunder, Hardball will, on the 15th day of each month, promptly pay to the City Ten Percent (10%) of all gross after tax revenues generated from the sale of Food and Beverage Concessions from all City Events that have taken place since the prior settlement date. The City's share of concessions revenue from City Events will be deposited directly into the City Maintenance Fund described in Section IV(D).

2. City Event Costs. The City shall reimburse Hardball for the actual direct costs and expenses incurred by Hardball for all Stadium Services incurred as a result of all City Events. All such payments due Hardball from



the City for the Stadium Services shall be paid within thirty (30) days after being invoiced for such City Events. The City shall be responsible for all damage to the Stadium or any portion thereof (exclusive of ordinary wear and tear) that occurs during a City Event.

3. City Event Revenues. Excluding Food and Beverage Concession sales (described above), the City will retain all revenues from all City Events including, without limitation: ticket sales, merchandise sales (other than the sales of baseball novelties, which shall be sold only by Hardball), program and advertising sales, signage (subject to the restrictions described in Article XII), parking, Suite ticket sales, and broadcast rights. Any merchandise sales conducted by the City will be from portable displays. The City will not sell merchandise out of the team store(s). All revenues generated for the City from City Events will be deposited directly into the City Maintenance Fund described in Section IV(D).

C. Maintenance. Hardball shall pay and be responsible for the costs of all Maintenance set forth on Exhibit IV(C)(i) (the "Hardball Maintenance Obligations"). The City will, within thirty (30) days after being invoiced for the same, reimburse Hardball for all City Maintenance Expenses as set forth on Exhibit IV(C)(ii) ("City Maintenance Obligations").

D. City Maintenance and Improvement Fund. The City shall establish a maintenance fund (the "City Maintenance and Improvement Fund") for the long term maintenance needs of the Stadium. The primary purpose of the City Maintenance and Improvement Fund shall be to assure that the Stadium remains a first-class minor league facility and an asset to downtown Fort Wayne and the surrounding community for at least the life of this Agreement. The City shall deposit annually a sum equal to not less than Two Hundred Thirty Thousand Dollars (\$230,000) into the City Maintenance Fund. Under the direction of the Board of Advisors, such City Maintenance Fund shall be used for the City Maintenance Obligations as set forth on Exhibit IV(C)(ii) or other capital improvements. At the conclusion of construction of the Stadium, the Stadium architect, HOK Sport, shall prepare a long-term Capital Maintenance Schedule. The Capital Maintenance Schedule will be attached hereto. The Board of Advisors shall review and not unreasonably withhold its approval of an annual maintenance budget covering City Maintenance Obligations (the "Maintenance Budget") to be recommended by Hardball in consultation with the Board of Advisors each year in accordance with the timing and procedures to be mutually agreed in good faith between Hardball and the City. The Maintenance Budget shall be developed using (but not controlled by) the Capital Maintenance Schedule attached hereto on Exhibit IV(D) (the "Capital Maintenance Schedule"), but may be altered with consent of the Board of Advisors and Hardball. Beginning in 2014, during any calendar year in which the City's immediately preceding five-year annual average contribution to the City Maintenance Fund reaches or exceeds one and one-half percent (1.5%) of the hard construction costs of the Stadium, such excess may, in the sole discretion of the City, be applied to the City's Maintenance Obligations, the City's Stadium operating expenses, or such other Stadium Area capital improvements as the City deems appropriate.

E. Revenue Retention. Hardball shall be entitled to collect and retain all revenues received from the operations of the Stadium during Hardball Events, including (but not limited to) all Permanently Affixed Stadium Signage, Scoreboard Advertising, ticket sales and licenses, suite rentals or sublicenses, souvenirs, concessions, programs, parking (if controlled by Hardball and not the City), pouring or beverage advertising revenue, other vending or licensing revenues, scoreboard advertising, broadcast rights and advertising, and all other revenues from all Hardball Events. Hardball will not be entitled to a share in any parking revenues generated by the City at City controlled facilities.

F. Naming Rights. As described further in Article VIII, the City and Hardball shall share in all Naming Rights.

## **ARTICLE V**

### **CITY'S OBLIGATIONS**

In consideration of the covenants, terms, and conditions set forth in this Agreement, the City and Hardball agree as follows:

A. Stadium. The City agrees to cause the Stadium, and the Stadium Area to be completed consistent with the Plans and Specifications, and shall in all respects meet (i) the requirements of this Agreement; and (ii) all applicable federal, state and local zoning, fire code, building and health department statutes, ordinances, rules and regulations.

B. Parking.

1. Hardball Parking Areas. For the Term of this Agreement, the City shall provide use of and access to the Parking Areas described on Exhibit V(B)(1). Area delineated "Exclusive Parking Areas" on Exhibit V(B)(1), shall be comprised of 45 parking spaces. The area designated "Shared Parking Areas" shall be the remainder of the space in the lot to be constructed immediately south of the Stadium between the Stadium and Brackenridge Street. The Shared Parking Areas shall be comprised of a minimum of 30 parking spaces. The Exclusive Parking Areas shall be available to Hardball at all times throughout the Term. Areas designated Shared Parking Areas shall be available to Hardball between April 1 and September 15 of each year and shall be available for use by the City during the remainder of each year.

Notwithstanding Exhibit V(B)(1) or the foregoing, the Parking Areas may be relocated and redeveloped by the City; provided, however, the City shall, at its expense, construct (prior to the loss of any such parking) alternate replacement parking of like quality in reasonable proximity to the current location, not fewer in number, and otherwise reasonably acceptable to Hardball.

The City shall provide, at a cost of One Dollar (\$1.00) per space, one hundred twenty-five (125) parking spaces in the adjacent lot or parking deck for "VIP" and Suiteholder parking at Stadium Hardball Events at the Stadium. Such cost shall be adjusted in accordance with increases in the CPI every five (5) years throughout the Term hereof. Hardball shall pay for all 125 parking spaces per event in arrears on the 15th day of each month through the Term. Hardball is required to pay for the 125 parking spaces regardless of whether those spaces are actually used by Hardball or attendances at Hardball Events. The City shall also provide, at Hardball's request, up to 125 additional spaces at a cost of Two Dollars (\$2.00) per space in the adjacent lot or parking deck for "VIP" and Suiteholder parking at Stadium Hardball Events at the Stadium. Such cost shall be adjusted in accordance with increases in the CPI every five (5) years throughout the Term hereof. Hardball shall notify the designated City representative no later than 24 hours before any Hardball Event of the number of such additional spaces it desires.

Such Hardball spaces will only be available for use by Hardball during regularly scheduled Hardball Home Baseball Games and Hardball Special Events, after 6:00 p.m. and on weekends and State and Federal holidays. The City will also cooperate with Hardball to procure, at Hardball's cost, access to additional parking for game day employees.

2. Parking Maintenance. Hardball shall perform all required maintenance necessary to keep the Hardball Parking Areas (which does not include the City's parking garage) in first-rate condition including, but not limited to, snow removal, patching and filling, resurfacing and restriping, gates and gate upkeep (if applicable), fencing and fence upkeep and lighting. The City will reimburse Hardball for the costs of maintaining the Shared Parking Areas incurred during the time that the City is entitled to use those areas (September 15 through April 1).

3. Adequacy of Patron Parking. The City has provided Hardball with parking studies demonstrating the existence of adequate parking within one-half (1/2) mile of the Stadium, per the guidelines of Major League Rule 58, Section 7.1.

C. Security.

Stadium Security. The City, at its expense, shall determine and be responsible for all reasonable security outside the Stadium Area for all Stadium Events and inside the Stadium for all City Events. Hardball shall determine and be responsible, at its expense, for all reasonable security inside the Stadium Area for all Hardball Events.

D. City Park.

The area designated "City Park" in the Plans and Specifications shall be developed and maintained as a park through the Term, but will be considered part of the Stadium Area during Stadium Events (both Hardball Events and City Events). It shall be the responsibility of Hardball to clean and restore the area after each Hardball Event. It shall be the responsibility of the City to reimburse Hardball or Manager for the costs of cleaning and restoring the park after each City Event. Aside from event related use, repair and restoration, the general maintenance, plantings and landscaping with the Park shall be the responsibility of the City.

The City Park may, in the City's discretion, be named after a significant historical figure and/or a benefactor to be identified and recognized by the City.

E. Additional Suites. The Plans and Specifications currently anticipate twelve (12) Suites. In the event Hardball desires additional Suites, the City and Hardball agree to work together in good faith to modify the Plans and Specifications, consistent with the overall Stadium design, to incorporate the additional Suites; provided, however, any such additional suites shall be constructed at Hardball's cost and expense, which shall be in addition to the Hardball Contribution.

**ARTICLE VI**  
**HARDBALL'S OBLIGATIONS**

A. Hardball Home Baseball Games and Hardball Events. Hardball will play all of its Hardball Home Baseball Games at the Stadium, provided, however, Hardball may from time-to-time hold a game (not more than two per season) at the ballpark of its major league affiliate.

At Hardball's sole cost and expense, Hardball or an affiliate thereof will provide Stadium Services throughout the Stadium Area at all Hardball Events. Hardball and/or the Stadium Manager, pursuant to the Management Agreement, will retain, employ, compensate, train and manage sufficient numbers of personnel to provide such services in a quality and professional manner. Hardball shall be responsible for all damage to the Stadium or any portion thereof (exclusive of ordinary wear and tear) that occurs during a Hardball Event.

B. City Events. Pursuant to the terms of the Management Agreement, Hardball shall provide Stadium Services at all City Events.

C. Condominium and Retail Development. As a condition to the City's obligations hereunder, Hardball, or a related entity, shall fully satisfy all of its and/or their obligations under the Condominium/Retail Economic Development Agreement. Full compliance with such Agreement is a material condition to the City's obligations hereunder. In the event of a breach of such Agreement by Hardball and/or its affiliate, the City shall, after written notice and thirty (30) day right to cure such breach, have the right to terminate

its obligations under this Agreement and retain all rights to receive and retain the Hardball Contribution. Hardball's right to cure such breach may be extended for an additional period not to exceed sixty (60) days provided Hardball is proceeding in good faith to cure the breach and it is not feasible that the breach may be cured in the thirty (30) day period (the thirty (30) day and sixty (60) day cure periods referenced above shall collectively be referred to herein as the "Initial Cure Period"). Additionally, Hardball's right to cure a breach pursuant to this Section may be further extended for an additional period beyond the Initial Cure Period of not to exceed ninety (90) days provided (i) Hardball is proceeding in good faith to cure the breach; (ii) it is not feasible that the breach may be cured in the Initial Cure Period; and (iii) Hardball pays the City as liquidated damages a fee of Five Thousand Dollars (\$5,000) per day until the breach has been fully cured.

D. Stadium Maintenance. Hardball, either directly or through the Stadium Manager, shall perform all maintenance, restoration, replacement and repairs for the Stadium Area and all components thereof and improvements thereon, of whatever kind and nature, foreseen or unforeseen, as may be necessary to keep the entire Stadium Area in first class condition and repair, including but not limited to the major maintenance, restoration, repair and replacement of all structural (including, without limitation the roofing and roof components) and concrete components, all heating, air conditioning, ventilating, plumbing, and electrical systems, playing surface replacement, field drainage systems, field lighting system (including field lighting installation and reinstallation), Stadium scoreboard, Stadium Area lighting, Parking Area improvements and lighting, grandstands, sound system, seating, bleachers, elevators, entry way area, glass, walls, roof, sidewalks and exterior landscaping maintenance, and all maintenance, repairs and restoration of Stadium Equipment. The obligation to pay for such maintenance is set forth in Article IV(C) hereinabove.

E. Alcoholic Beverage Permit. Hardball shall (either on its own behalf, through Stadium Manager, or through a related entity acceptable to the City) obtain and maintain in good standing at its expense throughout the Term hereof, a Three-way Alcoholic Beverage Permit for use at all Stadium Events. The City will assist, as appropriate, Hardball's acquisition of a full liquor license applicable to appropriate areas within the Stadium.

## **ARTICLE VII** **CONCESSIONS; NOVELTIES & SOUVENIRS**

A. Concessions Manager. In consideration of the covenants, terms and conditions set forth in this Agreement, Hardball and the City agree that Hardball or an affiliate thereof shall act as the exclusive provider of Food and Beverage Concessions at the Stadium pursuant but subject to the terms of the Management Agreement. Hardball shall, at its sole discretion, but pursuant to the Stadium Management Agreement, have the right to subcontract or sublicense for the provision of Food and Beverage Concessions at the Stadium to a qualified third party reasonably acceptable to the City. Any such third party will be subject to the same obligations as would Hardball if it provided these services

directly. Any such sublicense or subcontract must be terminable by the City at no penalty or expense to the City in the event the Stadium Management Agreement is terminated.

B. Novelties. Nothing contained in this Agreement shall be construed to limit the City from selling or authorizing a third party to sell Novelties or Souvenirs at City Events, provided that the City will not at any time sell or authorize the sale of Food and Beverage Concessions by parties other than the Stadium Manager under the terms of the Management Agreement nor can it sell baseball novelties. The City shall solely retain all revenue from the sale of its own Novelties and Souvenirs at the Stadium during City Events. Any such sales by the City shall be from temporary displays. The City will not be entitled to sell merchandise out of the team store(s). Notwithstanding the forgoing, or anything else herein to the contrary, Hardball shall retain all revenue from the sale of all baseball-related, Club-related or League-related Novelties and Souvenirs at all Stadium Events and from all sales of any type from the Stadium Souvenir Stores. To the extent permitted by law, the City shall not provide vendor licenses allowing the sale of food and beverage or of baseball novelties on the sidewalks in a distance of 1,000 feet from the Stadium structure.

## **ARTICLE VIII** **STADIUM NAMING RIGHTS**

The City and Hardball will work together and in good faith to market the naming rights for the Stadium (the "Naming Rights") to a Naming Rights Sponsor. After payment to Hardball for advertising inventory used in securing such Naming Rights, the City and Hardball shall share all Naming Rights revenues. For the initial term of the Naming Rights Agreement, which is anticipated to be 10-15 years, the City and Hardball shall each receive fifty percent (50%) of all revenues related to Naming Rights for the Stadium up to Three Hundred Thousand Dollars (\$300,000) per year net of costs for signage and inventory. The City shall receive One Hundred Percent (100%) of all such revenues in excess of Three Hundred Thousand Dollars (\$300,000) per year, net of costs for signage and inventory,. Following the initial term of the Naming Rights Agreement, the \$300,000 figure will be adjusted per increases in the CPI and the same formula will be utilized (i.e., the City receives fifty percent (50%) of all revenues up to the CPI-adjusted figure and 100% above that amount (net of costs and inventory, if any). The terms and structure of such Naming Rights shall be mutually satisfactory to both Hardball and the City. All revenues derived by the City from the sale of Naming Rights will be deposited directly into the City Maintenance Fund described in Section IV(D). The City Park may, in the City's discretion be named after a benefactor to be identified and recognized by the City.

## **ARTICLE IX** **STADIUM USE**

### A. Hardball's Rights and Obligations.

1. Use of Stadium Prior to Completion. Hardball shall be permitted to use appropriate portions of the Stadium, consistent with the terms and conditions of this Agreement including the Hardball Areas as soon

as such areas are completed and approved for occupancy. The City shall cause to have issued appropriate occupancy permits for the same as soon as possible, which shall in no event be later than March 1, 2009. Hardball will use commercially reasonable efforts to work with the League to extend its 2009 home opening game as late as possible so as to maximize the time available for completion of construction of the Stadium.

2. Hardball Home Baseball Games and Hardball Events.

(a) Scope. Hardball shall have exclusive use of the Stadium for conducting Hardball Home Baseball Games and Hardball Events. Such use shall include that portion of each such day reasonably necessary for the event.

(b) Ticketing. Hardball shall be exclusively responsible for all ticket printing, sales and distribution related to Hardball Home Baseball Games and Hardball Events. The Stadium Manager shall provide all ticket services for all City Events. In satisfaction of this obligation, Hardball shall have the right to designate the identification of seating at the Stadium and to conduct such ticket sales at the Stadium box office at all times it deems proper. Hardball may, in its discretion, issue complimentary admissions to each Hardball Event and Home Baseball Game to Hardball and visiting team personnel, guests and officials and representatives of the media. Hardball shall have the right to charge any amount it deems appropriate for tickets for admission to Hardball Home Baseball Games and tickets to Hardball Events.

(c) Hardball Home Baseball Game Promotion Tickets. Hardball shall provide at no cost to the City, for the City's use, as may be reasonably requested by the City from time to time, complimentary tickets not to exceed twenty five (25) per event for admission for Hardball Home Baseball Games and reasonable complimentary access to other Hardball Events. The type of ticket to each event shall be determined by Hardball based on availability. These tickets shall be used only by City personnel and their guests and shall not be resold or otherwise distributed.

3. Suites.

(a) Suites. For the Term of this Agreement, Hardball shall have the right to sublease or sublicense each of the Suites for Hardball Events. Any such sublessee or licensee shall, subject to reasonable limitations or conditions which may be established by the City, have the right to purchase from the City twenty (20) tickets to each City Event (which shall entitle the sublicense to occupy the suite for that

event) and shall have the right to utilize the suite at any non-ticketed City Event.

(b) Suite Furnishings. As described in the Plans and Specifications, twelve (12) Suites shall be designed and constructed by the City, at the City's cost, but as part of the Project Budget and include the following amenities, among any others set forth in the Plans and Specifications:

- (i) wall mounted television with cable hook-up;
- (ii) fixed and wireless internet;
- (iii) carpet, trim, ceiling and lighting, and otherwise finished and ready for occupancy;
- (iv) wet bar, refrigerator;
- (v) telephone, intercom and fully wired for Stadium sound and closed-circuit television;
- (vi) cabinetry and closet; and
- (vii) basic furnishing package.

Any additional Suites will be at Hardball's cost and not included in the Project Budget.

4. Administrative Offices. In order to facilitate the satisfaction of its obligations undertaken pursuant to this Agreement and to perform its business as anticipated under the Agreement, Hardball shall at all times during the Term of this Agreement have the right of access to and exclusive use of all Hardball Areas. All equipment, desks, phones and other personal property required for the Hardball Areas shall be Hardball's cost and responsibility.

5. Stadium Souvenir Stores and Box Offices. During the Term of this Agreement and any early occupancy of the Stadium as such occupancy is permitted pursuant to Subparagraph 1 above, Hardball shall have the exclusive right to occupy and operate the Stadium Souvenir Stores.

6. City Control. Subject to Hardball's license rights during the Term of this Agreement, the City does not relinquish and does retain full ownership of the Stadium and Stadium Area. Therefore, all duly authorized representatives of the City shall have reasonable access to all areas of the Stadium and Stadium Area at any time and on any occasion.



## **ARTICLE X** **SCHEDULING**

It is understood that Hardball shall, during the Term, be granted priority use of the Stadium for Hardball Home Baseball Games at the Stadium. Nonetheless, the City and Hardball agree to work together and in good faith to efficiently and effectively accomplish a scheduling of events at the Stadium. As such, the Parties have adopted the following scheduling procedure:

A. Proposed Schedule/City Events. On or before [January 15] of each year, Hardball shall provide the City a schedule of Hardball Home Baseball Games, including potential post-season tournament game dates as accurately as possible. Prior to [March 1] of that year, Hardball shall deliver to the City those dates upon which Hardball desires to conduct up to five (5) Hardball Events at the Stadium during such year. Within [ ] days thereafter, the City shall provide Hardball with those dates upon which the City desires to conduct up to five (5) City Events at the Stadium during such year.

B. Remaining Dates. Thereafter, all remaining dates may be utilized on a first-come, first-served basis by providing written notice to the other party, with the express understanding that use of the field will be limited from time to time both by Club practices and to preserve the quality and safety of the field surface in accordance with Article IX. Additional use by the City (beyond the five dates in Section A above) shall only be for direct use by the City of Fort Wayne or an agency affiliated therewith. Other than as noted herein, the City shall not rent or sublicense the Stadium or any part thereof for use by others. The Parties agree to work together in good faith and with the Stadium Manager under the terms of the Management Agreement to schedule any events earlier than the process outlined above may contemplate. The parties also agree to work together to maximize usage of the stadium and to, wherever possible, reschedule smaller or movable events to accommodate larger and/or less movable events.

## **ARTICLE XI** **MARKETING**

Except as otherwise set forth herein, each Party shall be responsible for its own marketing. Hardball shall be responsible for and have the exclusive right of marketing Hardball Home Baseball Games and Hardball Events. The City shall be exclusively responsible for marketing City Events.

## **ARTICLE XII** **ADVERTISING**

A. Permanently Affixed Stadium Signage and Scoreboard Advertising. Hardball shall have the exclusive right to sell, and collect the revenues from, all Permanently Affixed Stadium Signage, and Scoreboard Advertising for Hardball Events which are authorized pursuant to Exhibit [ ] herein. The City can use Scoreboard Advertising and temporary Signage as it deems appropriate during City Events.

B. Advertising at City Events. Subject to the limitations contained in this Agreement, the City shall have the right to sell and retain revenue generated from the sale of advertising associated with City Events, including but not limited to, temporary signage, advertising on the field-side scoreboard message center and video display, print media and broadcast media. Such advertising shall be provided at the City's cost and shall not replace or cover existing advertising except where appropriate to secure a particular event.

### **ARTICLE XIII BROADCAST RIGHTS**

A. Hardball's Broadcast Rights. Hardball shall have exclusive ownership and control over Broadcast Rights associated with Hardball Events. All revenue generated by Hardball relating to such Broadcast Rights shall be retained exclusively by Hardball.

B. City's Broadcast Rights. The City shall have exclusive ownership and control over Broadcast Rights associated with City Events. All revenue generated by the City relating to such Broadcast Rights shall be retained exclusively by the City. All costs incurred in connection with the broadcast of City Events shall be the responsibility of the City.

### **ARTICLE XIV UTILITIES**

The parties agree that, in consideration of the rights and obligations of the Parties set forth herein, and specifically the license fees paid to the City in connection herewith, the City shall be obligated to pay all Utility charges incurred by either party in connection with the operation of the Stadium during the Term hereof.

### **ARTICLE XV EQUIPMENT**

A. Hardball's Obligations. Hardball shall supply, maintain, repair and replace, at its expense, its own office equipment and furniture for its administrative offices.

B. City's Obligations. The City, as part of the Project Budget, will provide the use of all equipment set forth on Exhibit XV(B) attached hereto (the "Stadium Equipment").

C. Food and Beverage Concessions Equipment. Unless purchased by Hardball as part of the Hardball Contribution, the City, as part of the Project Budget, shall purchase and install all Food and Beverage Concessions Equipment necessary to make the Stadium fully operational, consistent with the Plans and Specifications. Unless purchased by Hardball as part of the Hardball Contribution, the Food and Beverage Concessions Equipment shall remain the property of the City, with Hardball being granted, subject to its obligations under this Agreement and the Management Agreement, the exclusive license to use all Food and Beverage Concessions at the Stadium. If purchased by Hardball as part of

the Hardball Contribution, the Food and Beverage Equipment may be retained by Hardball until such time as it is fully amortized or Hardball is in breach of this Agreement or the Management Agreement, whichever comes first, at which time it shall become and remain the property of the City.

## **ARTICLE XVI** **COVENANTS**

### A. Hardball's Covenants.

1. Taxes and Encumbrances. Hardball shall pay promptly when due any and all personal property taxes imposed on its personal property located in the Stadium. To the extent any work is done at the request of and for the sole benefit of Hardball and for which a supplier or contractor has lien rights arising from nonpayment, Hardball further covenants that it will not permit any mechanics liens or similar encumbrance to exist against the Stadium or any property therein and shall, within thirty (30) days of any such lien or encumbrance being asserted against the Stadium or any property therein as a result of action or inaction by Hardball, either cause the same to be released of record, or obtain title or other insurance coverage satisfactory to the City over such lien and proceed diligently to contest the same in good faith.

2. Membership in the League. Hardball agrees to maintain in good standing its membership in the League, or any direct successor to the Midwest League, or an equal or higher classification of affiliated team, throughout the Term hereof.

3. Equal Employment Opportunity And Employment of City Residents. Hardball agrees and covenants to the City that it is presently and will continue to be an equal opportunity employer and at all times shall comply with the laws and regulations that prohibit discrimination. Further, Hardball agrees and covenants to the City that it will use its best efforts to retain the services of area residents for Stadium Services performed pursuant to this Agreement.

4. Prohibition Against Dangerous Materials and Substances. Without the consent of the Board of Advisors, Hardball agrees not to bring into the Stadium any material, substance, equipment or object that is likely to endanger the life or to cause bodily injury to any person within the Stadium, or which is likely to constitute a hazard to property therein without the approval of the City. The parties acknowledge that common field maintenance chemicals and supplies, cleaning solvents and fireworks displays are all to be reasonably used at the Stadium.

B. City's Covenants/Compliance. The City shall construct the Stadium in compliance with the Plans and Specifications, all applicable building, health, safety, bidding, procurement, traffic and zoning ordinances which apply to the Stadium, including the Americans With Disabilities Act, as well as all applicable Environmental Laws.

**ARTICLE XVII**  
**INDEMNIFICATION AND INSURANCE**

A. Indemnification

1. Indemnification of the City by Hardball. Hardball agrees to indemnify and hold harmless the City and its respective officers, directors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including attorneys fees, incurred in connection with, or by reason of any act, omission or negligence of Hardball or the Stadium Manager or its, or their, duly authorized agents, or any breach of this Agreement, in connection with Hardball's or the Stadium Manager's activities pursuant to this Agreement.

2. Indemnification of Hardball by the City. The City agrees to indemnify and hold harmless Hardball and its members, officers, directors, duly authorized agents and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including attorneys fees, incurred in connection with, or by reason of any act, omission or negligence of the City or its duly authorized agents, or any breach of this Agreement, in connection with the City's activities pursuant to this Agreement.

B. Hardball Insurance Policies. Hardball shall, effective as March 1, 2009, or such earlier date that Hardball is permitted to occupy the Stadium pursuant hereto, obtain and maintain throughout the Term of this Agreement, public liability coverage including personal injury liability and contractual liability; if on a commercial general liability form, the limit per occurrence shall be One Million Dollars (\$1,000,000) and an aggregate of Two Million Dollars (\$2,000,000) combined single limit (CSL) per occurrence and include bodily injury and property damage liability; automobile coverage with liability limits of One Million Dollar (\$1,000,000) combined single limits (CSL) bodily injury and property damage per accident; a general umbrella policy of One Million Dollars (\$1,000,000); and workers compensation coverage to protect Hardball's permanent and temporary employees. Such coverage shall be evaluated every fifth (5<sup>th</sup>) year during the term hereof and Hardball, in conjunction with the Board of Advisors, will determine if increases in the amount of coverage are warranted. Hardball will name the City as additional insured on the public liability policy and provide certificates of all insurance or original policies as they shall be on file prior to the beginning of the Term of this Agreement. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of Indiana.

**ARTICLE XVIII**  
**DESTRUCTION OF STADIUM**

A. Destruction. If the Stadium or any part of the Stadium Area is wholly or partially destroyed, the City shall, at its expense, promptly commence and diligently complete the restoration of the Stadium (or applicable portion of the Stadium Area) to substantially the same condition as of the date of the Stadium's original completion, with all subsequent improvements, reasonable wear and tear excepted. All repair activities shall be timed and organized in such a manner to facilitate Hardball's ability to play the Hardball Home Baseball Season games at the Stadium and to conduct Hardball Events to the degree feasible and the City agrees to cooperate with Hardball on all such decisions. Should the Stadium or any part thereof be made untenable by Hardball as a result of such destruction, Hardball's obligation to maintain the Stadium shall abate until the Stadium is restored as detailed above.

B. Assistance of the City in Locating a Temporary or Permanent Alternate Facility. If the Stadium or a material portion of the Stadium becomes unavailable on a temporary basis by reason of either partial destruction or repair or restoration, or for any other reason, the City shall utilize commercially reasonable efforts to assist Hardball in locating a temporary facility in which the Club may play baseball games and Hardball may otherwise conduct Hardball Events.

**ARTICLE XIX**  
**CONDEMNATION**

In the event that any portion of the Stadium or material portion of the Stadium is taken from Hardball pursuant to any right 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, Hardball shall receive a portion of any award granted with respect to such taking. Hardball shall also have the independent right to make a claim against the condemner for and retain any award based thereon for the reasonable value of lost profits, improvements made to the Stadium by Hardball, if any, and for the expenses, attorney fees and costs incidental to relocating from the Stadium including, but not limited to, the lost value of this Agreement. Finally, in such event, Hardball shall have the right to terminate this Agreement within One Hundred Eighty (180) days of such taking.

**ARTICLE XX**  
**FORCE MAJEURE**

Hardball and the City 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 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 Party such as strike, lock-out, suspension of play of baseball, 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, players 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 XXI**  
**ASSIGNABILITY AND TRANSFERABILITY**

The City may assign this Agreement for administrative and operational purposes to an authority or authorities, provided, that if such an assignment should be made, such assignee shall be able to enforce the provisions of this Agreement pursuant to such assignment without the further consent of the City. Hardball shall have the right to sublicense the Suite portion of the Stadium; provided, such sublicense abides by all of the applicable terms and conditions hereof and which term shall not extend beyond Hardball's Term. With the consent of the City, which consent shall not be unreasonably withheld, provided Hardball is not in default hereunder, Hardball may assign its rights and responsibilities as described herein and in the related Stadium Management Agreement to an entity (i) with operational and financial capabilities reasonably satisfactory to the City, and (ii) which provides a Minor League professional affiliated baseball Club in the same manner and quality as contemplated hereunder. Any change of management or control of Hardball that results in Hardball no longer being under the control of Jason Freier or Christian Schoen, or in the event of a sale or transfer of control of more than 51% of equity ownership of Hardball Capital LLC or Fort Wayne Professional Baseball LLC shall also constitute an assignment requiring the City's consent hereunder.

**ARTICLE XXII**  
**DEFAULT AND TERMINATION**

In the event that either Party hereto shall otherwise materially breach, violate or fail to fully perform any provision contained in this Agreement, the non-breaching Party may upon thirty (30) days written notice thereof, terminate this 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 continue diligently and in good faith to effect such cure within such period, provided that, unless otherwise provided herein, in no event shall such opportunity to cure exceed ninety (90) days after receipt of such notice. In the event that such breach, violation or non-performance is not cured within said thirty (30) day period or any authorized extension thereof, then this Agreement may be terminated by the non-breaching party upon the expiration of such period. Notwithstanding termination, the non-breaching Party shall be entitled to reimbursement for damages and costs, including reasonable attorneys' fees arising as a result of such breach.

The City shall be entitled to terminate this Agreement, with no obligation to Hardball, at any time prior to November 30, 2007 in the event the City fails to receive satisfactory assurance of construction and completion of a minimum two hundred fifty (250)

room Courtyard by Marriott or other equivalent national brand hotel, or in the event the City, in its sole discretion, is not satisfied the City will close on terms solely acceptable to the City, on the City Financing by November 30, 2007.

Hardball's obligations hereunder shall be subject to obtaining necessary approvals from the Midwest League, the National Association of Professional Baseball Leagues and the Office of the Commissioner of Baseball for the design of the Stadium and for the relocation of the teams home field from Memorial Stadium to the Stadium. Unless such approvals are received, or waived by Hardball and the City prior to November 30, 2007, neither party shall be obligated further hereunder.

### **ARTICLE XXIII BOARD OF ADVISORS**

The Stadium and its operations shall be overseen by a Board of Advisors (the "Board of Advisors"). The Board of Advisors shall consist of representatives set forth in the Management Agreement; should any of these groups cease to exist in their current form, the City will, after consulting with Hardball, identify a similar group from whom the replacement will come, together with one representative of Hardball Capital. The Board shall, subject to the terms of this Agreement and the Management Agreement, be responsible for overseeing the operations and management of the Stadium.

### **ARTICLE XXIV MISCELLANEOUS**

A. Governing Law. This Agreement shall be in governed accordance with the laws of the State of Indiana.

B. Entire Agreement. This Agreement, together with the Condominium/Retail Economic Development Agreement and the Stadium Management Agreement, all of even date herewith, 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.

C. Authority. Hardball and the City, respectively, each represent that it has the authority to be bound by the terms of this Agreement. Once executed by both Parties, this Agreement will constitute a valid and binding agreement, enforceable in accordance with its terms.

D. Costs and Attorney Fees. The Parties hereto agree to pay all expenses incurred by the other in enforcing the provisions of this Agreement, including but not limited to attorney fees, costs and expenses. The Party prevailing in any litigation arising out of any dispute concerning this Agreement shall be entitled to recover all expenses incurred, including without limitation, reasonable attorney fees and related costs and expenses.

E. Mutual Dependency and Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this 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 Hardball to perform and have access to the Stadium for all of its intended business operations as contemplated herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

F. Notices and Addresses. All notices required to be given under this Agreement shall be given by (1) certified mail, (2) registered mail or (3) sent via facsimile followed on the same day by recognized overnight courier, in all cases addressed to the proper Party to the following addresses, or at such other address as may be subsequently given in writing pursuant to this Section and shall be deemed given three (3) days after being deposited in the U.S. mails, postage prepaid, in the case of certified or registered mail and on the day following notice by facsimile-and-overnight mail:

IF TO HARDBALL: Hardball Capital, LLC  
30 Ivan Allen Boulevard, Suite 900  
Atlanta, GA 30308  
Attention: Jason Freier, CEO  
Telephone: 404-579-5786  
Facsimile: 404-601-0881

and

Fort Wayne Professional Baseball LLC  
1616 E. Coliseum Boulevard  
Fort Wayne, IN 46805  
Attention: Mike Nutter

IF TO THE CITY: City of Fort Wayne  
City/County Building, 9th Floor  
One Main Street  
Fort Wayne, IN 46802  
Attention: Office of the Mayor  
Telephone: 260-427-1111  
Facsimile: 260-427-5678

With a copy to: City/County Building  
One Main Street, 9th Floor  
Fort Wayne, IN 46802  
Attention: City Attorney



With a copy to: Baker & Daniels, LLP  
111 East Wayne Street, Suite 800  
Fort Wayne, IN 46802  
Attention: Joseph W. Kimmell, Esq.  
Telephone: 260-460-1641  
Facsimile: 260-460-1700

With a copy to: The Redevelopment Commission  
of the City of Fort Wayne, Indiana  
One Main Street, Room 840  
Fort Wayne, IN 46802  
Attention: Executive Director  
Telephone: 260-427-2102  
Facsimile: 260-427-1375

G. Amendment, Modification, or Alteration. No amendment, modification or alteration of the Terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties herein.

H. Rights and Remedies Cumulative. The rights and remedies provided by this 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.

I. The Essence. Time is of the essence for this Agreement.

J. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts and or exchanged via facsimile, each of which shall be deemed an original, but all such counterparts and/or facsimile or originals together shall constitute but one and the same instrument.

K. Headings Only for Reference. The titles of articles and sections of this Agreement are for reference purposes only and shall be of no binding effect.

L. Valid Limited Liability Company. Hardball represents that as of the date of the execution of this Agreement Hardball Capital LLC is organized and in good standing under the laws of the State of Georgia, that it is duly authorized to enter into this Agreement and has taken all requisite corporate 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 this Agreement.

M. Prohibition Against Food and Beverage Being Brought Into the Stadium. Hardball may request the City to 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.

N. Status of Parties. The parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes and nothing contained in this Agreement shall be determined to be creating a partnership or joint venture between Hardball and the City with respect to Hardball's activities conducted in the Stadium or the Stadium Areas pursuant to the terms of this Agreement.

O. Waiver. The waiver by either Hardball or the City of any default or breach by the other Party of any of the provisions of this 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 Agreement.

P. Waste or Nuisance. Hardball shall not commit or permit any waste on or about the Stadium or the Stadium Area during the Term of this Agreement nor shall it maintain, commit or permit the maintenance or commission of any nuisance on or about the Stadium or use the Stadium for any unlawful purposes.

Q. Binding Effect/Benefit. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective affiliates, successors and assigns.

R. References to the City. All references to the City in this Agreement shall be deemed to also be references to such officers or employees or other designees of the City as may be appropriate to implement the terms of this Agreement.

S. Exhibits; Attachments. All exhibits or attachments attached to this Agreement are incorporated into and are a part of said Agreement as if fully set out herein.

T. Hardball's Property Loss and Damage. Nothing herein shall be construed to create a bailment relationship between the City and Hardball or the Club concerning any property brought on the premises of the Stadium by Hardball or the Club unless such property is delivered into the possession of the City.

U. Employee Status. It is understood and agreed that no agent, servant or employee of Hardball or any of its subcontractors shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant or employee of Hardball.

V. Cooperation. The City and Hardball agree to work together in good faith to assure a consistent and effective design throughout the Project and to coordinate construction and project management.

W. Fast Tracking. The City will assist, as appropriate, in "fast-tracking" permitting any clearances to assist in the timely completion of each phase of the Project.

X. Permits. The City will work cooperatively with Hardball to obtain such building permits, noise and light ordinance permits and/or clearances as necessary to alter street and traffic flow as per the City's master plan and in obtaining such other permits and clearances as may be required in order to complete the project as contemplated hereunder.

Y. No Tax. The City will not, without the consent of Hardball, impose a ticket/admission/amusement tax applicable to Team Events during the term hereunder, unless such tax is applicable to all professional sports and entertainment facilities in the City.

Z. Fireworks. So long as permitted by law, the City will assist Hardball so that Hardball can hold an acceptable number of firework nights per each season, consistent with the current practice at Memorial Stadium.

AA. Signage. The City will work with the City Department of Transportation and other appropriate authorities to alter or construct new directional signage on freeways and other major thoroughfares, directing vehicles to the Stadium. The City will assist Hardball in obtaining permission and approval to hang banners within City limits (subject to reasonable restrictions and applicable guidelines) to generate interest in the development of the Project, and major events being held at the Stadium.

BB. Memorial Stadium. The City will assist Hardball, as appropriate, in securing an extension of the Lease Agreement between Hardball and the Allen County War Memorial Coliseum Authority on terms reasonably acceptable to Hardball and the Allen County War Memorial Coliseum Authority.

*Signature Pages Follow*

IN WITNESS WHEREOF, the parties hereunto set their hands and seals on the date written below.

HARDBALL CAPITAL, LLC

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

"Hardball"

THE CITY OF FORT WAYNE, INDIANA,  
DEPARTMENT OF REDEVELOPMENT  
BY THE FORT WAYNE  
REDEVELOPMENT COMMISSION

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

"City"

This Agreement having been reviewed, the action of The Redevelopment Commission for the City of Fort Wayne in entering and executing same is APPROVED.

DATE: \_\_\_\_\_

\_\_\_\_\_  
MAYOR GRAHAM RICHARD

## SUMMARY OF EXHIBITS

<u>Exhibit</u>	<u>Page No.</u>	<u>Description</u>
II(K)	2	Food and Beverage Concessions Equipment List
V(B)(1)	4	Parking Areas
II(Z)	4	Plans and Specifications
II(FF)	4	Stadium Area
IV(A)	6	Base License Fee / (\$5,000,000) Payment Schedule
V(B)(1)	3	Hardball Parking Areas
V(B)(2)	3	Shared Parking Areas
XV(A)	14	Hardball Equipment
XV(B)	14	Stadium Equipment (City's Obligations)
II(II)	4	Stadium Management Agreement
IV(C)(i)	7	Hardball Maintenance Obligations
IV(C)(ii)	7	City Maintenance Obligations
XV(A)	14	Hardball Supplied Equipment
XV(B)	14	Stadium Equipment