

DRAFT: 7/13/07 @ 2:00 p.m.

Stadium Management Agreement

**The Professional Baseball Stadium
at Harrison Square**

Fort Wayne, Indiana

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Stadium Management Agreement

This Stadium Management Agreement is made and entered into as of this ____ day of July, 2007, by and between **THE CITY OF FORT WAYNE, INDIANA, DEPARTMENT OF REDEVELOPMENT, BY THE FORT WAYNE REDEVELOPMENT COMMISSION** (the “City”) and **HARDBALL CAPITAL LLC**, a Georgia limited liability company (the “Manager”).

Background

- A. City intends to construct and own the Stadium defined below.
- B. Manager is skilled and experienced in the management, operation, maintenance and supervision of professional baseball stadiums.
- C. City desires to engage Manager as an independent contractor on the terms and conditions set forth below, and Manager desires to accept such engagement.
- D. Manager, or its principals, will form an Indiana limited liability company (“_____”) to be owned and controlled by the individuals who own and control Hardball Capital LLC and once formed such new entity shall assume the rights and assume the obligations of Manager hereunder.

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

The balance of this page has been intentionally left blank.

Part I - Basic Data

The following defined terms shall have the meaning set forth below:

“Commencement Date” – The earlier of [March 1, 2009] or substantial completion of the Stadium.

“Manager’s Notice Address”

Hardball Capital, LLC
30 Ivan Allen Blvd., Suite 900
3445 Peachtree Road, NE
Atlanta, Georgia 30308
Attention: Jason Freier

and

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

“City’s Notice Address” – The Redevelopment Commission of Fort Wayne, Indiana
City/County Building, Room 840
One Main Street
Fort Wayne, Indiana 46802
Attention: Executive Director

with copies to:

Timothy A. Manges
City Law Department
City/County Building, 9th Floor
One Main Street
Fort Wayne, IN 46802
Attention: City Attorney

and

Baker & Daniels, LLP
111 East Wayne Street, Suite 800
Fort Wayne, Indiana
Attention: Joseph W. Kimmell

“Stadium” That certain Professional Baseball Stadium to be located in the area bounded generally by Harrison Street, Brackenridge Street, Ewing Street and Jefferson Boulevard, Fort

Wayne, Indiana, together with all personal property (excluding any Hardball Office property) attached thereto, located thereon or used in connection therewith.

Part II - Management Terms

1. Retention of Manager; General Definitions.

1.1. Retention of Manager. City hereby retains Manager to perform the services described below in accordance with the terms and conditions of this Agreement, utilizing trained, experienced personnel and employing professional stadium management practices and techniques. Manager accepts the relationship of trust and confidence established between it and City by this Agreement and covenants to use its best skill and prudent business judgment in furthering the interests of City. Manager will act in a fiduciary capacity for the benefit of City with respect to the proper protection of and accounting for the Stadium. Manager's duties and responsibilities will commence on the Commencement Date and shall continue until the expiration or earlier termination of this Agreement in accordance with Article 10.

1.2. General Definitions. As used in this Agreement, any capitalized term not defined herein shall have the same meaning as is set forth in the Stadium License Agreement. The following terms shall have the following respective meanings:

“Advisory Board” shall mean the five (5) member Advisory Board. (The Advisory Board is to be responsible for overseeing the management and operation of the Stadium.) The Advisory Board will be comprised of one appointee from Hardball and four (4) appointees by the Mayor of Fort Wayne from each of the following organizations, their successors and assignees:

- (a) Fort Wayne Allen County Convention and Tourism Authority (Grand Wayne Center Board) President or Grand Wayne Center Board designee;
- (b) Downtown Improvement District Chair or DID Board designee;
- (c) Controller or Chief Financial Officer of the City of Fort Wayne; and
- (d) Convention and Visitors Bureau Chair, or CVB Board designee.

The terms of the Advisory Board appointees shall be as follows:

- The Controller or Chief Financial Officer of the City of Fort Wayne will be appointed to serve a term coinciding with his/her service as Controller or Chief Financial Officer.
- With respect to the appointees referenced in (a), (b) and (d) above, the president or chair, as the case may be, will be appointed to serve terms coinciding with their service as president or chair of their respective board, with reappointment if they are re-elected as president or chair of their board. Designees will be appointed to serve a term also coinciding with the president's or chair's term and could be reappointed if the board so designates.

“Affiliate of Manager” shall mean any person or entity which (i) is a director, officer, partner, member or trustee of Manager, or in which Manager is a director, officer, partner, member or trustee, (ii) has any direct or indirect legal or beneficial interest in Manager, or in which Manager has any direct or indirect legal or beneficial interest, or (iii) directly or indirectly controls, is controlled by or is under common control with Manager.

“Agreement” shall mean this Management Agreement, which consists of Part I and Part II and such other Parts as may be attached hereto and executed by City and Manager, including all Schedules and Exhibits hereto, all as amended from time to time in accordance with the terms hereof.

“Annual Maintenance Budget” shall have the meaning set forth in **Section 2.6(b)**.

“Books and Records” shall have the meaning set forth in **Section 4.3**.

“Business Day” shall mean every day that is not a Saturday, Sunday or day on which banks in Indiana are required by law or executive action to be closed for the transaction of normal banking business.

“City Events” shall have the meaning set forth in the Stadium License Agreement.

“City Related Parties” shall mean City, members of the Advisory Board appointed by the City, employees, advisors and agents of City.

“Damages” shall mean all claims, actions, suits, proceedings, judgments, damages, fines, penalties, losses and expenses, including reasonable attorneys’ fees, consultants’ and expert witness fees and court costs, including any such costs incurred in any bankruptcy or other legal or administrative proceeding.

“Fort Wayne Professional Baseball, LLC” shall mean Fort Wayne Professional Baseball, LLC, an Indiana limited liability company.

“Hardball” shall mean Hardball Capital LLC, a Georgia limited liability company.

“Hardball Office property” shall mean the desks, chairs, telephone, computers, tables and other personal property supplied and used by Hardball at the Stadium.

“Insurance Requirements” shall mean all requirements of any insurance policy covering the Stadium or the use thereof, all requirements of the issuer of any such policy, and all requirements, orders, rules or regulations of the National Board of Fire Underwriters (or similar agencies) applicable to the Stadium.

“Legal Requirements” shall mean all federal, state and municipal laws, rules or regulations including, but not limited to, those established from time to time by Minor League Baseball, applicable to the Stadium or the use or operation thereof.

“Licenses” shall mean all permits, licenses, approvals, consents and other entitlements required for the operation, occupancy and leasing of the Stadium.

“Minor League Baseball” shall mean the National Association of Professional Baseball Leagues, Inc., with its principal offices located in St. Petersburg, Florida.

“Monthly Statement” shall have the meaning set forth in **Section 4.2**.

“Professional Baseball Management Standards” shall have the meaning set forth in **Section 2**.

“Service Contracts” shall have the meaning set forth in **Section 2.7**.

“Stadium Area” shall have the meaning set forth in the Stadium License Agreement.

“Stadium License Agreement” shall mean that certain Stadium License Agreement between the City, Hardball and Fort Wayne Professional Baseball, LLC of even date herewith.

“Stadium Manager” shall have the meaning set forth in **Section 2.2**.

2. Manager Appointment/Manager’s Responsibilities.

Appointment/General Responsibilities. Subject to the provisions of this Agreement, Manager shall manage, operate and maintain the Stadium and Stadium Area in a manner consistent with modern Class A and Class AA Affiliated Professional Baseball Stadium and in accordance with standards and practices of prudent, qualified and professional managers that manage and maintain properties similar to the Stadium (collectively, the foregoing standard shall be referred to as the “Professional Baseball Management Standards”). Manager shall perform its duties hereunder: (a) in accordance with the terms of this Agreement; and (b) in compliance with all applicable laws, rules and regulations, including the Legal Requirements.

2.1. Manager’s Personnel; Independent Contractor.

(a) Manager has in its employ at all times a sufficient number of capable employees to enable it to properly, adequately, safely and economically manage, operate, maintain and account for the Stadium and otherwise perform its obligations hereunder in accordance with the terms of this Agreement.

(b) All matters relating to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of Manager (with respect to which Manager shall exercise reasonable care); Manager is in all respects the employer of such employees. Manager shall negotiate with any union lawfully entitled to represent such employees and may execute in its own name, and not as agent for City, collective bargaining agreements or labor contracts resulting therefrom. Manager represents that it is and will continue to be an equal opportunity employer and that it shall advertise as such. This Agreement is not one of agency by Manager for City, but one with Manager engaged independently in the business of managing properties as an independent contractor. All employment arrangements are therefore solely Manager’s responsibility and City shall not have any liability with respect thereto. Except as expressly set forth herein, nothing contained herein shall be deemed to permit Manager to

charge City, or to use the income of the Stadium to pay, for the services of Manager's employees.

(c) Manager shall fully comply with all applicable laws, rules, regulations and orders relating to worker's compensation, social security, unemployment insurance, wages, hours, working conditions and other matters pertaining to Manager's personnel. Manager shall indemnify, defend and hold harmless the City and all City Related Entities from and against all Damages arising out of or relating to Manager's failure to comply with this **Section 2.1**. Manager's indemnification obligations under this **Section 2.1(c)** shall survive the termination or expiration of this Agreement.

(d) Manager shall be solely responsible for its personnel both during the term of this Agreement and in the event of the termination of this Agreement.

2.2. Stadium Manager. Manager shall promptly notify City of any change in the individual appointed from time to time by Manager to be primarily responsible for the management of the Stadium.

2.3. Compliance with Laws, Licenses, Etc.

(a) Except to the extent not in Manager's control, or as expressly assumed by City hereunder or under the Stadium License Agreement, Manager will be responsible for compliance with the Legal Requirements and Insurance Requirements.

(b) Manager, and/or its affiliates, shall, at Manager's expense, obtain and maintain all Licenses.

(c) Manager will be responsible, except as provided in this Agreement or the Stadium License Agreement, at Manager's expense, for compliance with all contracts and agreements relating to the use, management or operation of the Stadium.

(d) Manager shall, at Manager's expense, maintain its legal existence and good standing and obtain and maintain in effect all licenses and permits necessary or desirable to carry out its duties hereunder.

2.4. Security. The City, at its expense, shall be responsible for all reasonable security outside the Stadium Area for all Stadium Events and inside the Stadium Area for all City Events. Hardball shall be responsible, at its expense, for security inside the Stadium Area for all Hardball Events. It is anticipated that the Stadium concourse and City Park located adjacent to the Stadium will generally be open to the public on non-event days and, during such times, the City shall be responsible for security inside the Stadium Area.

2.5. Energy Management. Manager shall exercise diligent care to provide appropriate energy management and shall utilize commercially prudent utility conservation techniques.

2.6. Stadium Operations.

(a) Manager agrees to manage, operate and maintain the Stadium throughout the term hereof in accordance with Professional Baseball Management Standards. Manager shall at its expense be responsible for the costs of all Hardball Maintenance Obligations as set forth on Exhibit IV(C)(i) to the Stadium License Agreement. The City shall at its expense be responsible for the cost of all City Maintenance Obligations set forth on Exhibit IV(C)(ii) to the Stadium License Agreement.

(b) On or before [August ____] of each year during the term of this Agreement, Manager shall prepare and submit to City for City's approval a detailed Annual Maintenance Budget (the "Annual Maintenance Budget"). Such Annual Maintenance Budget shall identify all maintenance to the Stadium which Manager believes will be required in the period commencing October 1 and ending on September 30 of the following year. The Annual Maintenance Budget shall also provide a detailed summary of all maintenance, repairs, and replacements which are completed at the Stadium in the then current year (concluding September 30), including all maintenance or repairs which are the responsibility of the Manager.

(c) The Annual Maintenance Budget shall be in a form and with such content and detail as may be reasonably requested by the City.

(d) The Advisory Board shall promptly review and as appropriate approve the Annual Maintenance Plan. As provided in **Section 2.9** below, Manager shall comply with all bidding procedures and provide the City with such documentation of the same as may be reasonably requested from time to time by the City.

(e) The Manager shall submit requests for payment from the City, or requests for reimbursement when Manager has made payment for a City Maintenance Obligation directly, in such form and content with supporting documents as may from time to time be reasonably required by the City.

(f) Unless determined otherwise by the City, actions of the City as contemplated hereunder, shall be conducted under the direction of the Advisory Board.

2.7. Service Contracts.

(a) Manager may, as necessary and/or appropriate to fulfill its obligations hereunder, negotiate and enter into bona fide contracts with parties for janitorial services, landscape maintenance and such other maintenance services for the Stadium (the "Service Contracts") as Manager shall reasonably determine to be advisable. Any Service Contract which is a City Maintenance Obligation, or otherwise the responsibility of the City, must be approved in writing by the City if such expense is not included in the Annual Maintenance Budget or is not cancelable without cost or penalty upon thirty (30) days' notice by the City. All Service Contract: (i) shall be in the name of Manager and (ii) shall be terminable upon no more than thirty (30) days' notice without penalty or premium. To the extent required in **Section 3.3**, each Service Contract shall provide that the service provider thereunder must obtain the insurance described in **Section 3.3** hereof and must provide satisfactory evidence of such insurance to Manager.

2.8. City Events. Manager will use diligent efforts to collect all charges or fees which may become due at any time from any City Event and will use diligent efforts to ensure a user's compliance with the rules and regulations applicable to the Stadium.

2.9. Competitive Bidding. When required by state or local law, all contracts for repairs, capital improvements, goods and services for which the City is obligated to pay will be awarded on the basis of competitive bidding conducted in accordance with applicable legal requirements.

2.10. Repairs. Manager shall make, or cause to be made, all repairs to the Stadium as required. Manager shall not make expenditures for capital improvements for which the City is obligated to make payment, or which are City Maintenance Obligations, unless the same are specifically set forth in the Annual Maintenance Budget, or are otherwise approved in writing by City; provided, however, Manager may make expenditures for repairs without City's prior approval if it is necessary to prevent imminent damage to the Stadium or the health or safety of any person on or about the Stadium, or if City or Manager is threatened with immediate criminal or civil liability. City must be informed of any such expenditures as quickly as possible thereafter.

2.11. Stadium Use.

Manager and City shall work together in good faith to cause the Stadium to be utilized for the benefit of downtown Fort Wayne and the surrounding community.

2.12. Notices to City. Manager shall promptly notify City in writing if Manager becomes aware of any of the following:

- (a) any default or alleged default by Manager;
- (b) any litigation or potential litigation affecting the Stadium or City, or any litigation affecting Manager that could reasonably be expected to have a material and adverse effect on Manager;
- (c) any casualty, loss, injury, claim or other event relating to the Stadium that might result in a claim under any applicable insurance policies;
- (d) any violation or alleged violation of any Legal Requirements or Insurance Requirements;
- (e) any involuntary lien filed against the Stadium; and
- (f) any material increases or decreases in costs, expenses or income not reflected in the Annual Maintenance Budget.

3. Insurance and Claims.

3.1. Manager's Insurance. Manager will maintain (as an operating expense of the Stadium with respect to on-site employees only) Workers' Compensation and similar insurance

as required by law. Manager will maintain the following levels and type insurance coverage to the extent commercially available (not chargeable to the City).

- (a) Employer's Liability - \$500,000 each accident; \$500,000 disease - policy limit; \$500,000 disease - each employee.
- (b) Automobile Liability - As to any vehicle owned, non-owned or hired by Manager, \$1,000,000 covering losses due to the insurer's liability for bodily injury or property damage.
- (c) Uninsured/Underinsured Motorists' Coverage for any owned car - \$1,000,000.
- (d) Excess Liability Coverage – \$5,000,000.
- (e) Commercial General Liability - \$1,000,000 per occurrence and in the aggregate.

The minimum A.M. Best's rating of each insurer is A-VII. Manager will furnish City with certificates of insurance simultaneously with the execution of this Agreement and whenever coverage is renewed or replaced, evidencing the aforesaid coverages, which will include provisions to the effect that City will be given at least 30 days' prior written notice of cancellation or non-renewal of or any material change in any of the aforesaid policies. City will be named as an additional insured with respect to all insurance policies required under (b) and (d) above and as loss payee as respects (c) above. All liability policies shall contain endorsements that (i) delete any employee exclusion on personal injury coverage, (ii) include employees as additional insureds and (iii) contain cross-liability, waiver of subrogation and such other provisions as City may reasonably require. Such insurance shall also include broad form contractual liability insurance insuring all of Manager's indemnification obligations under this Agreement.

3.2. Indemnification.

- (a) Manager shall indemnify, hold harmless, protect and defend (with counsel approved by City), the City and City Related Parties from and against all Damages in any manner related to, arising out of or resulting from:
 - (i) any failure of Manager or Manager's agents, servants or employees to perform their obligations under this Agreement;
 - (ii) any acts of Manager or Manager's agents, servants or employees beyond the scope of its authority under this Agreement; or
 - (iii) any gross negligence, willful misconduct or illegal acts or omissions of Manager or Manager's agents, servants or employees.

Notwithstanding any other provisions of this Agreement to the contrary, Manager's obligations under this **Section 3.2** shall survive the expiration, termination or cancellation of this Agreement.

(b) The City shall protect, defend, indemnify and hold harmless Manager from and against any and all Damages arising out of the performance by City of its obligations and duties hereunder in accordance with the terms hereof with respect to the Stadium; provided, however, that City does not hereby agree, and shall not be obligated, to so indemnify Manager from any Damages arising out of any act or omission of Manager or any of its agents, officers, employees or representatives, which act or omission constitutes gross negligence, willful misconduct, is in breach of this Agreement or is outside the scope of Manager's authority as provided herein or any Damages for which Manager is covered by insurance, or for which Manager would be covered by insurance if it maintained the insurance required by this Agreement.

3.3. Contractors' and Subcontractors' Insurance. To the extent commercially available and for contracts in excess of \$100,000, Manager will require that all parties performing work on or with respect to the Stadium, including, contractors, subcontractors and service vendors, maintain insurance coverage at such parties' expense, in the following minimum amounts:

- (a) Workers' Compensation - Statutory amount.
- (b) Automobile Liability - \$1,000,000 covering losses due to the insurer's liability for bodily injury or property damage.
- (c) Medical Expenses - \$5,000 per person per accident.
- (d) Commercial General Liability: Bodily injury and property damage - \$1,000,000 combined single limit with Contractual Liability coverage.
- (e) Excess Liability Coverage - \$2,000,000 or such greater amount as is needed for the specific job.

The minimum A.M. Best's rating of each insurer is A-/VII. Manager must obtain City's written permission to waive any of the above requirements. Higher amounts may be required by City if the work to be performed is deemed by City to be hazardous. Manager will obtain and keep on file a certificate of insurance which shows that each such party is so insured. City will be named as an additional insured with respect to Contractors' and Subcontractors' Auto Liability, Commercial General Liability and Excess Liability policies. Manager must obtain indemnification and hold harmless provisions in favor of City and Manager. All coverages listed above shall apply on a primary and non-contributory basis.

3.4. Waiver of Subrogation. Insofar as, and to the extent that, the following provision may be effective without invalidating or making it impossible to obtain insurance, Manager and City agree that with respect to any hazard, liability, casualty or other loss or claim which is covered by insurance then being carried by either City or Manager: (a) the party carrying such insurance and suffering such loss releases the other party of and from any and all claims with

respect to such loss to the extent of the insurance proceeds paid with respect thereto and specifically excepting from such release any deductible required to be paid therewith; and (b) their respective insurance companies shall have no right of subrogation against the other or their respective agents, contractors, employees, licensees or invitees on account thereof.

3.5. Service Contracts. Manager shall use diligent efforts to cause to be included in all Service Contracts provisions requiring the service provider to indemnify, defend (with counsel approved by City), protect and hold harmless the City Related Entities from all Damages in any manner arising from or related to the acts or omissions of such service provider or its employees, agents or contractors.

3.6. Claims. Manager shall promptly investigate and make a full and timely report to City of any casualty, accident, injury or other similar matter affecting the Stadium. Manager shall also file such reports in a timely manner to the applicable insurance carriers in accordance with the terms and conditions of the relevant policies. Manager shall cooperate with and assist City and the applicable insurance carrier in connection with the investigation and processing of insurance claims affecting the Stadium.

4. Financial Reporting and Record Keeping.

4.1. Financial Controls. Manager will ensure such control over accounting and financial transactions as is reasonably required to protect City's assets from theft, gross negligence or fraudulent activity on the part of Manager's employees or other agents. Uninsured losses arising from theft, gross negligence or fraud of Manager, its employees or agents are to be borne by Manager and not as an operating expense of the Stadium.

4.2. Monthly Statements. On the 15th day of each month throughout the term hereof Manager shall provide City with a monthly statement (the "Monthly Statement") setting forth:

- (a) A current user summary and detailed use activity report;
- (b) Invoices for reimbursement from the City or the Capital Maintenance Fund;
- (c) Expenses and receipts for all City Events;
- (d) All expenditures by Manager or Hardball on Stadium Maintenance;
- (e) Such other related information as the City may reasonably request; and
- (f) A detailed accounting of Hardball Events Attendance and all Performance License Fees to be paid by Hardball to the City under the Stadium License Agreement.

4.3. Books and Records. Manager shall maintain at the Stadium separate and accurate books, records, files and accounts for _____ (collectively, the "Books and Records") in a good and orderly fashion. The Books and Records shall be the property of City, shall be kept at the Stadium or at Manager's Notice Address (or such other location as City may approve) and shall include the following:

- (a) Executed use agreements for City Events, stadium use or sublicense agreements, original insurance certificates, correspondence, all of which may be maintained by Manager in electronic form;
- (b) Maintenance and repair files;
- (c) Accounting books and records and supporting documentation for Performance License Fees and reimbursement and expenses for City Events;
- (d) Operation files, including HVAC, concessions, and equipment maintenance schedules, warranties, and operation manuals;
- (e) Service contracts, including cleaning, maintenance, landscaping, snow removal, trash removal, etc.;
- (f) Permits and licenses;
- (g) Copies of insurance policies or certificates; and
- (h) Such other information relating to the Stadium as City reasonably requests from time to time.

5. City's Right to Audit.

5.1. Right to Audit. City will at all times and with a minimum of five (5) days advance notice have the right to conduct audits and examinations of, and to make copies of, the Books and Records. Such audit will be for the purpose of confirming compliance with Manager's and Hardball's obligations hereunder and under the License Agreement. Such right may be exercised through any agent or employee of City, including any certified public accountants designated by City. Should City discover either weaknesses in internal control or errors in record keeping, Manager will correct such discrepancies promptly upon City's request and will inform City, in writing, of the action taken to correct such audit discrepancies. All audits conducted by City will be at the sole expense of City, unless such audit reveals a discrepancy detrimental to City in excess of five percent (5%) and over \$5,000, in which case Manager shall bear the cost of such audit.

6. City Proceeds. Manager will transfer to the City on a monthly basis all funds collected from the operation of the Stadium which are the property of City as soon as practical.

7. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting City which arise out of any of the matters relating to this Agreement or otherwise, Manager shall notify City immediately upon becoming aware of same and Manager shall give City all pertinent information possessed by Manager and reasonable assistance in the defense or other disposition thereof.

8. Compensation. As compensation for its service hereunder, Manager shall be entitled to receive Ninety Percent (90%) of the gross after tax Food and Beverage Concessions, as provided in the Stadium License Agreement.

9. Termination; Appointment of New Manager.

9.1. Termination. The term of this Agreement will be for a period of five (5) years and will be renewed automatically for five (5) successive periods of five (5) years each, unless (i) Manager is in default hereunder, (ii) the Stadium License Agreement is no longer in force, or (iii) Hardball is in default under the Stadium License Agreement, which default has not been cured within thirty (30) days after written notice of the same.

9.2. Termination Without Notice.

Without limitation of City's rights under **Section 9.1** hereof, upon the occurrence of any one or more of the following events, at the sole election of City and without further notice to Manager, this Agreement will be deemed terminated: (i) dissolution or termination of the legal existence of Manager or Hardball, whether by merger, consolidation or otherwise, unless such termination or dissolution is pursuant to a reorganization by Manager or Hardball in which Manager or Hardball provides the City prior notice thereof; (ii) termination or suspension of Hardball's membership in the League or an acceptable equivalent (as defined in the Stadium License Agreement); (iii) cessation on Manager's part to do business; or (iv) the filing of proceedings by or against Manager or any general partner or parent corporation of Manager for bankruptcy, insolvency, reorganization or other relief of debtors, or any assignment for the benefit of the creditors of Manager.

9.3. Final Accounting. Upon termination of this Agreement, Manager will deliver to City the following with respect to the Stadium:

(a) A final accounting, reflecting the balance of income and expenses of the Stadium as of the date of termination or withdrawal, to be delivered within sixty (60) days after such termination;

(b) Any balance of any monies of City, prepaid rent or tenant security deposits, or both, held by Manager with respect to the Stadium (less amounts necessary to reimburse or pay Manager, to pay outstanding invoices or for work completed but not yet invoiced), to be delivered immediately upon such termination; and

(c) The Books and Records and all other records, contracts, leases, tenant correspondence, files, receipts for deposits, unpaid bills and other papers, documents or computer disks or information which pertain in any way to the Stadium, to be delivered immediately upon such termination.

9.4. Obligation to Vacate: Orderly Transition. Upon termination of this Agreement, Manager promptly will vacate any office space provided by City for the location of Manager's personnel, reasonable wear and tear excepted. Upon termination of this Agreement, Manager will cooperate in all respects in order to effect an orderly transition of the management functions to a new manager. Manager's obligations under **Section 9.3** and this **Section 9.4** will survive termination of this Agreement. Following termination of this Agreement, neither party shall have any rights or duties hereunder, except that there shall survive such termination: (a) all provisions hereof which expressly declare their survival; (b) those provisions hereof which are

necessary to the proper interpretation and enforcement of the provisions described in clause (a), to the extent of such necessity; and (c) rights and remedies respecting pre-termination breaches hereof. Termination of this Agreement between City and Manager shall not constitute grounds for a termination of Hardball's rights under the Stadium License Agreement.

9.5. Appointment of New Manager. In the event of the termination of Manager by City in accordance with the terms hereof, City shall be entitled to appoint a new Stadium Manager to perform the services of Manager, contemplated hereunder, or to perform such services itself. In the event the City selects a third party manager, such appointment shall be subject to the approval of Hardball Management, LLC, which consent shall not be unreasonably withheld, conditioned or delayed. Whether the City or a third-party manager appointed by the City, the City shall, with respect to all Hardball Maintenance Obligations (including the right of Hardball to approve any budget, as such approval shall not be unreasonably withheld, conditioned or delayed), provide Hardball with an annual maintenance budget and future reporting procedure similar to that to be followed by Manager with respect to City Maintenance Obligations. The City will also use commercially reasonable efforts to cost effectively and efficiently manage the Hardball Maintenance Obligations (which would remain the financial responsibility of Hardball).

10. Subsidiaries and Affiliates. Any contract or lease of any kind whatsoever between Manager and any Affiliate of Manager with respect to the Stadium will be subject to the prior written approval of City, which approval shall not be unreasonably withheld.

11. Requirements for Notice.

(a) All notices given hereunder shall be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service (all charges prepaid) for next business day delivery, addressed as appropriate to City or Manager at City's Notice Address or Manager's Notice Address, respectively.

(b) Any notice or other communication sent or provided above shall be deemed given (i) on the date of delivery, if by hand or (ii) on the date mailed, if sent by overnight express delivery service. Such notice shall be deemed received on the date of receipt by the addressee or the date receipt would have been effectuated if delivery were not refused. Each party hereto may designate a new Notice Address by written notice to the other parties in accordance with this **Section 11.1**. The inability to deliver a notice because of a change of address of which proper notice was not given shall be deemed a refusal of such notice.

12. Certain Representations and Covenants.

12.1. Manager Representations. Manager hereby represents and warrants to City as follows:

(a) Manager has or will acquire all licenses, permits, authorizations and approvals necessary to allow it to enter into this Agreement and perform its duties hereunder;

(b) Neither Manager nor, to the best of Manager's knowledge, after reasonable inquiry, any of its employees, has been convicted of robbery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony drug offense, murder, rape, kidnapping, perjury, assault with intent to kill, a violation of the Employee Retirement Income Security Act of 1974 or any other felonies.

13. Miscellaneous.

13.1. Word Meanings. Words such as "herein," "hereinafter," "hereof" and "hereunder" when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word "including" shall not be restrictive and shall be interpreted as if followed by the words "without limitation."

13.2. Assignment. Except as contemplated by the Background Recitals on page 1 hereof, without City's prior consent, which approval shall not be unreasonably withheld, Manager shall not transfer, assign, subcontract or delegate its duties under this Agreement, and any attempted transfer, assignment, subcontract or delegation without such consent shall be of no force or effect. The services of Manager hereunder are personal in nature.

13.3. Binding Provisions. Subject to **Section 13.2**, the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assigns of the respective parties hereto.

13.4. Applicable Law. The interpretation, construction and enforceability of this Agreement shall be governed in all respects by the laws of the state of Indiana without regard to any choice of law principles. Any legal proceedings arising out of any of the transactions or obligations contemplated by this Agreement may be brought in the state courts of Indiana situated in Allen County, Indiana, or the United States District Court for the Northern District of Indiana. The parties hereto irrevocably and unconditionally: (a) submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to such jurisdiction; (b) waive any objection which they may now or hereafter have to the venue of any suit, action or proceeding brought in such courts; and (c) waive any claim that any such suit, action or proceeding brought in such court has been brought in an inconvenient forum.

13.5. Separability of Provisions. The parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. If any provision in this Agreement is, however, found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision were not contained herein, and that the rights, obligations, and interests of the parties under the remainder

of this Agreement shall continue in full force and effect. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

13.6. Section Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

13.7. Further Assurances. Manager and City shall execute and deliver such further instruments and do such further acts and things as may reasonably be required to carry out the intent and purposes of this Agreement.

13.8. Entire Agreement. This Agreement and the Schedules and Exhibits attached hereto constitute the entire agreement between the parties hereto with respect to the transactions contemplated herein, and supersede all prior understandings or agreements between the parties. All Exhibits and Schedules are incorporated herein by reference and constitute a part of this Agreement.

13.9. Waiver. The failure by any party hereto to insist upon or to enforce any of its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of such party's right to insist upon strict compliance with the provisions hereof. No delay in exercising any right, power or remedy created hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by any such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof. Each party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement, but only if such waiver is evidenced by a writing signed by such party.

13.10. Agreement in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all shall constitute one and the same Agreement, binding upon all of the parties hereto, notwithstanding that all of the parties may not be signatories to the same counterpart.

13.11. Attorneys' Fees. In the event of a judicial or administrative proceeding or action by one party against the other party with respect to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable costs and expenses including, without limitation, reasonable attorneys' fees and expenses, whether at the investigative, pretrial, trial or appellate level, and whether in any arbitration or bankruptcy proceeding. The prevailing party shall be determined based upon an assessment of which party's major arguments or positions prevailed.

13.12. Time Periods. In the event the time for performance of any obligation hereunder expires on a day other than a Business Day, the time for performance shall be extended to the next day which is a Business Day.

13.13. Modification of Agreement. No modification of this Agreement shall be deemed effective unless in writing and signed by all of the parties hereto.

13.14. Time of the Essence. Time is of the essence of this Agreement.

13.15. Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties. No provision of this Agreement shall run to the benefit of or be enforceable by any party other than the parties hereto and their permitted successors or assigns.

13.16. Consent and Approvals. City's consents or approvals may be given only in writing and only by representatives of City from time to time designated in writing by City.

13.17. Use of City's Name Prohibited. Manager will not use the name of City or any City Related Entity, or any derivation thereof, in any manner whatsoever.

13.18. Confidentiality. Manager and its employees and agents agree to keep all information related to the Stadium and City confidential, except to the extent necessary to carry out Manager's obligations under this Agreement or as may be required by law. The City agrees to keep all information about Manager or Manager's business confidential to the extent permitted by law.

13.19. No Joint Venture. Nothing in this Agreement or in the performance of any obligations hereunder shall be deemed to create any partnership, joint venture or similar relationship between City and Manager

MANAGER:

HARDBALL CAPITAL LLC

By: _____

Its: _____

Dated: _____

CITY:

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

By: _____

Its: _____

Dated: _____

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

Dated: _____

MAYOR GRAHAM RICHARD

SUMMARY OF EXHIBITS

<u>Page</u>	<u>Exhibit</u>	<u>Description</u>
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