



## WESTFIELD REDEVELOPMENT COMMISSION

### AMENDMENT TO MANAGEMENT AGREEMENT

This AMENDMENT TO MANAGEMENT AGREEMENT (“Agreement”) is made effective as of January 1, 2018 (the “Effective Date”), by and between the **WESTFIELD REDEVELOPMENT COMMISSION**, an Indiana municipal corporation, (“Commission”), as successor in interest to the City of Westfield, Indiana and **BULLPEN TOURNAMENTS, LLC**, an Indiana limited liability company, as successor in interest to Indiana Bulls Baseball, Inc. (“BPT”).

#### RECITALS

Commission is the lessee of certain real estate located in Hamilton County, Indiana (the “Real Estate”), commonly known as the Grand Park Sports Complex;

The City of Westfield, Indiana (“City”) and Indiana Baseball Bulls, Inc. (“Bulls”) entered into that certain Management Agreement (“Management Agreement”) dated February 27, 2014 pursuant to which the Bulls agreed to provide certain management and maintenance of the baseball diamonds and associated improvements and facilities located on the Real Estate (the “Diamond Sports Facilities”). Pursuant to that certain Operating Agreement and Assignment dated April 2, 2014 by and between the Bulls and BPT, and that certain Assignment and Assumption Agreement dated October 30, 2014 by and between the Bulls, the BPT and the Commission, the Bulls assigned its rights and obligations under the Management Agreement to BPT.

The City conveyed the title to the Real Estate to the Westfield Redevelopment Authority (“RDA”) on April 10, 2017. The RDA then leased the Real Estate to the Commission on September 12, 2017 and the Management Agreement was assigned to the Commission.

In the course of the operation and management of the Diamond Sports Facilities, the parties have determined that it is in the best interests of both parties to adjust the rights and obligations of the Commission and BPT under the Agreement.

#### AGREEMENT

IN CONSIDERATION of the premises, the mutual covenants contained herein, each act to be performed hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The foregoing recitals are true and are incorporated herein.
2. Amendment of Rights and Obligations. From the Effective Date set forth above until the 15<sup>th</sup> day of December 2020, (the “Term”), the following rights and obligations of the parties are amended. Upon the expiration of the Term, the rights and obligations of the parties will revert to and be restored to those set forth in the Agreement.
  - (a) Maintenance and Service. Section 2.02 of the Agreement and Exhibit C thereto are amended as follows:

BPT will maintain (to a level customary for facilities of a size and type similar to the Sports Campus) the real property comprising the common areas (the “Diamond Sports Common Areas”) of the Sports Campus adjacent to and supporting the Diamond Sports Facilities (including all fixtures and improvements located thereon) together with all personal property located thereon. The maintenance of the Diamond Sports Common Areas includes, but is not limited to, mowing and maintaining grass, cleaning of and all janitorial services for the buildings and the removal of all garbage. The Commission will remain responsible for the maintenance of the ponds and the existing trees surrounding the Diamond Sports Facilities.

(b) Admission Revenue. Section 4.01 of the Agreement is amended to provide that all “Admission Net Revenues”, as that term is defined in the Agreement, will be paid to and retained by BPT.

(c) Merchandise Revenue. Section 4.03 of the Agreement is amended to provide that BPT will receive all revenue from the sale of any merchandise at the Diamond Sports Facilities other than apparel with the “Grand Park” brand.

3. Construction.

4. Authority. The undersigned person executing this Agreement on behalf of each party represents and certifies that he/she is a duly elected officer, member, manager, partner or representative of that party and has been fully empowered, by proper resolution, consent or other action of that party, to execute and deliver this Agreement; that each party has full capacity to enter into this Agreement; and that all necessary action for entering into this Agreement has been taken and done.

5. Indemnification. BPT will indemnify, defend, and hold harmless Commission, its elected officials, agents, representatives, and employees, the Westfield Redevelopment Commission and its members and the Westfield Redevelopment Authority and its members from and against any and all claims, actions, causes of action, liability, losses, damages, costs, obligations, and expenses (including reasonable attorneys’ fees) relating to, resulting from, or arising out of: (a) BPT’s construction of the Building Improvements; (b) BPT’s acts and omissions in connection with Building Improvements or this Agreement; (c) BPT’s failure to cure a default of this Agreement; or (d) any act or omission of any BPT Party, or other party claiming by, thru, or under any BPT Party, in connection with the Building Improvements. This Section 9 will survive the termination of this Agreement.

6. Mechanic’s Liens. If because of any action or omission (or alleged act or omission) of the BPT or the BPT Parties under this Agreement, any mechanic's or other lien, charge or order for the payment of money or other encumbrance will be filed against the Real Estate (whether or not such lien, charge, order or encumbrance is valid or enforceable as such), BPT will, at its own cost and expense, cause the same to be discharged of record or insured over or bonded within sixty (60) days after notice to the BPT of the filing thereof. This Section 10 will survive the termination of this Agreement

7. No Recording. Neither this Agreement nor any memorandum hereof may be recorded in the Office of the Recorder of Hamilton County, Indiana.

8. Severability. If any one or more of the provisions contained in this Agreement will be held invalid, illegal, or unenforceable, this Agreement will be construed to give effect to the balance of its terms.

9. Binding Effect; Applicable Law. All rights and obligations hereunder will be binding upon and inure to the benefit of Commission and BPT, their respective permitted successors, assigns and legal

representatives. However, BPT may not assign this Agreement without the prior written consent of Commission. This Agreement is executed under and will be construed in accordance with the laws of the State of Indiana and there are no promises or agreements between the parties hereto other than those contained or referred to herein.

10. Attorneys' Fees. If either party brings any action to interpret or enforce this Agreement, or for damages for any alleged breach hereof, the prevailing party will be entitled to reasonable attorneys' fees and costs as awarded by the court in addition to all other recovery, damages and costs. In the event that litigation is not initiated and either party engages legal counsel to enforce its rights under this Agreement, the prevailing party will be entitled to reasonable attorney fees and expenses. The "Prevailing Party" will mean the party who receives substantially the relief sought by said party. This provision will survive the expiration or termination of this Agreement.

11. Modification, Counterparts. This Agreement may not be amended or modified unless in writing and signed by both parties hereto. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and together will constitute one and the same instrument.

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Signature Page Follows***

IN WITNESS WHEREOF, Commission and BPT herein have executed this Agreement to be effective as of the Effective Date.

**COMMISSION:**

**Westfield Redevelopment Commission,**  
an Indiana municipal corporation

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**BPT:**

**Bullpen Tournaments, LLC**  
an Indiana limited liability company

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

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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