

**SECOND AMENDMENT TO SPORTS FACILITY USE AGREEMENT
CITY CONTRACT NO. 67917**

This Second Amendment to Sports Facility Use Agreement (the "Second Amendment") is made and entered into by and among the **CITY OF PHOENIX** ("City"), an Arizona municipal corporation, the **PHOENIX PARKS AND RECREATION BOARD**, ("Board"), a duly appointed Board of the City of Phoenix, and the **ATHLETICS INVESTMENT GROUP LLC d.b.a. (and successor in interest to) the OAKLAND ATHLETICS BASEBALL COMPANY** ("Team"), a California limited liability company.

RECITALS

A. City, Board, and Team on April 20, 1994, entered into a certain Sports Facility Use Agreement (City Contract No. 67917) (the "Agreement") for the use of Phoenix Municipal Stadium and the Papago Facilities by Team for spring training and player development activities.

B. On March 9, 1999, City, Board, and Team entered into the First Amendment amending Sections 5.8 and 5.16 of the Agreement.

C. The parties, pursuant to Section 5.18 of the Agreement, have agreed to an appropriate improvement program to cure deficiencies for the Stadium as set forth in **Attachment No. 1** to this Second Amendment (the "Stadium Improvements"); provided, however, City's obligation to construct the Stadium Improvements is subject to the terms and conditions of this Second Amendment.

D. The parties desire to further amend the Agreement and the First Amendment as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual covenants and considerations herein contained, the parties agree as follows:

ARTICLE IV. TERM, FEES, PAYMENTS AND ACCOUNTS

1. **Section 4.2.** Section 4.2 is hereby amended in its entirety to state as follows:

4.2. Options to Renew

Upon the expiration of the initial Term of the Agreement on December 31, 2004, the Term of the Agreement shall be automatically extended for an additional ten (10) year period (the "Extended Term").

2. **Section 4.4.** Section 4.4 is amended to state in its entirety as follows:

4.4. Annual Use Fee

During the Extended Term of this Agreement, Team shall pay City an "Annual Use Fee" according to the following schedule for the use of the Stadium and Papago Baseball Facilities, which shall be paid on or before June 15 of each year:

<u>Rent Schedule</u>	
2004	\$275,000
2005	\$300,000
2006	\$300,000
2007	\$325,000
2008	\$325,000
2009	\$350,000
2010	\$375,000
2011	\$375,000
2012	\$400,000
2013	\$425,000
2014	\$425,000

3. **Section 4.5.** Section 4.5 is amended in its entirety as follows:

4.5. Strikes/Lockouts

A. In the event of a loss of a total spring training season because of a strike, lockout and/or order of the Office of the Commissioner of Baseball ("OCOB"), in lieu of the Annual Use Fee required by Section 4.4 herein, Team shall pay 73.9% of that portion of the Field Maintenance Budget attributable to the Papago Field Facilities for that calendar year, based on the extent of Team's permitted share of the joint use of the Papago Field Facilities as established in the Agreement.

B. In the event of a loss of a partial spring training season because of a strike or a lockout, Team shall pay the Annual Use Fee as required by Section 4.4 herein, but shall be entitled to deduct a pro rata amount from the Annual Use Fee for that

calendar year for home games not played, calculated on the basis of the total number of Home Games scheduled.

C. During any period of such strike, lockout and/or order of the OCOB, Team shall continue to be responsible for its herein agreed share of Papago utility costs and any other Team responsibilities regarding the Papago Baseball Facilities.

D. City's sole and exclusive remedies for any such strike, lockout and/or OCOB order are set forth in the Agreement. Team shall not be responsible for any direct, general or consequential damages suffered or incurred by City and/or otherwise resulting from any third party claims against City due to any such strike, lockout and/or OCOB order.

4. **Section 4.6.** Section 4.6 is amended in its entirety as follows:

4.6 Time for Payment

Team shall pay all fees and other monies specified in the Agreement, billed to Team and, thus, due to City on a monthly basis not later than thirty (30) days following the end of each month except for the: (a) payment of the Annual Use Fee, and Annual Scoreboard Fee, which shall be paid by June 15 of each year; and (b) the annual funding of the Capital Improvement Account, which is made when due pursuant to Paragraph 4.10 below.

5. **Section 4.10.** A new Section 4.10 is hereby added to state in its entirety as follows:

4.10. Capital Improvement Account

Beginning June 15, 2005, Team and City shall establish a facility improvement trust account at a mutually agreed upon Phoenix, Arizona bank, which shall be funded by Team annually at the time of the Annual Use Fee payment in the amount of Fifty Thousand Dollars [\$50,000] (the "Capital Improvement Account"). Either City or Team may propose capital improvements for the purpose of replacing or otherwise improving any existing Facility improvement and/or the construction of any new Facility improvements, which shall be paid from and out of the Capital Improvement Account. Funds shall not be withdrawn from the Capital Improvement Account without the joint written authorization of City and Team; which shall not be unreasonably withheld. However, any Capital Improvement Account withdraw request by Team shall be deemed reasonable if such will be substantially used to replace or otherwise improve any existing Facility improvements and/or the construction of any new Facility improvements substantially consistent with and/or similar to those improvements delineated in that document entitled Capital Improvement Fund Projects, attached to this Agreement's Second Amendment as Attachment 2 and incorporated herein by this reference.

ARTICLE V. USE OF MUNICIPAL STADIUM

6. **Section 5.1.** Section 5.1.B is hereby deleted in its entirety without changing or otherwise replacing the format numbering of the Agreement – i.e., Section 5.C will not become Section 5.B.

7. **Section 5.1.** Section 5.1.C is hereby amended to state in its entirety as follows and Sections 5.1.D and 5.1.E are hereby added as new sections:

5.1. Team Exclusive Use

C. Team shall have the exclusive use of Buildings A, C and E within the Stadium during the Spring Training Season and exclusive use of Room 105 of Building E within the Stadium for use as a walk-in Team novelty store on such days and at such times as Team may desire and at all other times during the Term of this Agreement, except that during Spring Training, City shall have exclusive use of one (1) room in Building C to be designated by Team and at times other than Spring Training Team shall have exclusive use of one (1) room in Building C to be designated by City. Team may store furniture in the Administration building year round, provided, that City shall have access to, and shall have the right to rent the space at any time except for the Spring Training Season. Team shall negotiate in good faith with any prospective tenant regarding the use of the furniture if the space is rented. In the event an agreement cannot be reached for the furniture use, Team may be required to relocate the furniture at its expense during the period that the space is rented; provided, however, subject to availability, City shall diligently and in good faith make available to Team, or otherwise allow it to use, any other reasonably appropriate space at no cost to Team to relocate and otherwise store the furniture. However, the actual cost to relocate the furniture will be borne by Team.

D. Team shall have exclusive use of Rooms A024 and A010 for the purpose of storing any equipment and supplies. In addition, Team may store weight equipment in the Building A weight room year round, provided that City has the right to rent the room at any time except for the Spring Training Season. Team shall negotiate in good faith with any prospective tenant regarding the use of the weight equipment if the room is rented. In the event an agreement cannot be reached for the equipment use, Team may be required to relocate the equipment at its expense during the period that the room is rented.

E. Team and City shall share use of the existing maintenance shop and the new maintenance shop when constructed as part of the Stadium Improvements.

8. **Section 5.2.** Section 5.2 is hereby amended in its entirety as follows:

5.2. Scheduling of Spring Training Games

A. Team shall schedule a minimum of fourteen (14) Home Games and shall be available for playing at the Stadium during the Cactus League Spring Training Season a minimum of twenty-six (26) consecutive days commencing with the first official spring training game played in the Cactus League. Team shall furnish City with its spring training exhibition game schedule no later than December 1st of the year prior to the next February opening of spring training activities by Team.

B. Team recognizes that City will suffer economic damages should it fail to schedule and play the required minimum fourteen (14) Home Games or to be available for playing at the Stadium the required minimum twenty-six (26) consecutive day period (collectively, the "Playing Obligation"); provided, however, in all cases Team's satisfaction of such Playing Obligation shall be subject to a "Force Majeure Event" (as defined herein below). Therefore, upon the occurrence of a Force Majeure Event Team shall be excused from satisfying the Playing Obligation and have no liability to City as a result of the Force Majeure Event or any third party making a claim against City with respect thereto. However, if Team fails to satisfy the Playing Obligation, and such is not excused as provided in the preceding sentence, then Team agrees to pay City, in addition to other payment obligations under this Agreement, stipulated "Liquidated Damages," as follows: (a) for each Home Game below the minimum fourteen (14) Home Games that Team fails to schedule and play unless such failure to schedule and play is the result of a "Force Majeure Event," Team shall pay City Twenty-Five Thousand Dollars (\$25,000.00); and (b) for each day Team is not available for playing the required minimum twenty-six (26) day period, Team shall pay City Fifteen Thousand Dollars (\$15,000.00); provided, however, in no case shall the cumulative amount of any Liquidated Damages exceed the sum of Three Hundred Ninety Thousand Dollars (\$390,000) in any one year. Team and City hereby agree and otherwise acknowledge the determination of any damage that may be suffered by City with respect to any unexcused failure by Team to satisfy the Playing Obligation would be extremely difficult and impracticable to determine; as such, the payment by Team to City of the Liquidated Damages, as applicable, shall be City's sole and exclusive legal and equitable remedy with respect thereto. To be entitled to relief from performance of Playing Obligation due to a Force Majeure Event, Team shall notify City immediately, or as soon as reasonably practicable, by telephone and in writing, except for inclement weather condition (which the City is presumed to have knowledge of without notice from Team), at such time as Team becomes aware of the occurrence or the foreseeable occurrence of a Force Majeure Event. Notwithstanding the definition of Force Majeure in Section 16.6 and/or any other provision of this Agreement which addresses Force Majeure or Force Majeure Event, for purposes of this Paragraph only, "Force Majeure Event" means any of the following events which are beyond the reasonable control of Team and prevents or delays Team from satisfying the Playing Obligation: Acts of God; acts of the (Federal, State and/or Local) Government; inclement weather; terrorism; criminal acts adversely affecting the

operations of the Stadium; civil unrest; riots, war; power outage; earthquakes, fire, flood; strikes; lock outs; and actions of labor unions; and unforeseen environmental or archeological conditions requiring investigation/mitigation by Federal, State or Local laws.

9. **Section 5.6.** Section 5.6.A is hereby amended by deleting the third sentence which makes reference to ticket sales through the Dillards Box Office.

10. **Section 5.8.** Section 5.8 of the Agreement and as amended by the First Amendment is hereby amended to state in its entirety as follows:

5.8. Stadium Advertising

Subject to prior approval by City and compliance with City's sign ordinance, Team shall be permitted to sell space on (i) the fixed advertising billboard above the outfield fence, (ii) any of the advertising signs remaining on the back side of the grandstand following renovation, (iii) up to four (4) green padded areas on the outfield wall provided the advertising is on removable vinyl or banners, (iv) the back of the Stadium along Van Buren Street, (v) any future front monument entrance sign, (vi) banners behind the home plate area, and (vii) any future space which may be available on the press box façade. Team shall be entitled to all revenues derived from such advertising. Team shall also be permitted each year to sell (and retain the revenues therefrom advertising space on the fixed and rotating panels of the replacement scoreboard; in exchange for which Team shall pay Fourteen Thousand Two Hundred Dollars [\$14,200] each year, which will be paid on June 15th of each year (the "Annual Scoreboard Payment.") In the event City passes and/or imposes a tax or levies any assessments, surcharges, exactions or other taxations against Team on interior Stadium advertising, City shall reduce the Annual Use Fee for the year in the amount any such taxes, assessments, surcharges, exactions or other taxations are paid or suffered by Team.

10. **Section 5.16.** Section 5.16 as amended by the First Amendment is hereby restated in its entirety as follows:

5.16 Janitorial Services

City shall provide, at City's expense, all janitorial services within the Stadium, including, but not limited to, janitors to make regular, periodic inspections and cleanup of the restrooms during Home Games, except that during the period of Team's exclusive use of the Stadium, Team shall be responsible for, at Team's expense, janitorial services for the Home Team Clubhouse, the office area within the Stadium used by Team, and Team's novelty store.

11. **Section 5.20.** A new Section 5.20 is hereby added to state in its entirety as follows:

5.20 Stadium Security

A. City and Team shall share the cost of the installation of a first class electronic security system, as proscribed by City's Public Works Department and OCOB, commensurate with the proportional use outlined in Section 5.1 of this Agreement; such cost shall be approved by Team and City, which neither party shall withhold its reasonable consent. City shall be responsible for all operating and maintenance costs, including monthly monitoring and technical maintenance fees for the security system. Team shall be responsible for any charges for false alarms caused solely by Team personnel, but not caused in any way by a malfunction of the security system and/or the acts or omissions of City; in that case, City shall be responsible for any such false alarms.

B. City shall have exclusive possession of all Stadium keys, except to those areas and during those times when Team has exclusive or shared use pursuant to Section 5.1.C. of this Agreement.

ARTICLE VI. USE OF PAPAGO FACILITIES

12. **Section 6.3.C.** Sections 6.3.C.(2)(a)(b) and (c) are hereby amended by deleting "5:00 p.m." and inserting in its place "the conclusion of Team's activities at the Papago Field Facilities."

13. **Section 6.6.** Section 6.6 is hereby amended to state in its entirety as follows:

6.6. Papago Maintenance Building

Team shall have the exclusive use of the Papago Maintenance Building during such time as Team has the responsibility to perform field maintenance service at the Papago Baseball Facilities pursuant to Section 7.1 herein; provided, however, City's maintenance personnel shall have the right to store maintenance supplies and equipment within an area provided by Team for such purposes. In the event Team no longer has responsibility for field maintenance, City shall thereafter have the exclusive use of the Papago Maintenance Building.

14. **Section 6.9.** Section 6.9.B is hereby amended to state in its entirety as follows:

6.9. Papago Utilities

B. Team shall reimburse City 53.7% of the total electricity and water costs ascribed to the Papago Clubhouse, quarterly, for its percentage share of electricity and domestic water used.

15. **Section 6.10.** Section 6.10 is hereby amended to state in its entirety as follows:

6.10. Papago Security

A. City shall provide general security for the Papago Baseball Facilities in the manner and at such level as is usual and customary for other facilities within Papago Park which shall include, but not be limited to, the use of both marked and unmarked patrols for the inner and distant site boundaries, an office on site for park rangers, and the establishment of a continuous communication link with Phoenix fire and rescue, police and other public safety agencies. Team shall provide such additional security personnel as, Team may desire at Team's expense.

B. City and Team shall share the cost of the installation of a first class electronic security system, as proscribed by City's Public Works Department and OCOB, commensurate with the proportional use outlined in **Attachment 4** to the Agreement; such cost shall be approved by Team and City, which neither party shall withhold its reasonable consent. City shall be responsible for all operating and maintenance costs, including monthly monitoring and technical maintenance fees for the security system. Team shall be responsible for any charges for false alarms caused by Team personnel, but not caused in any way by a malfunction of the security system and/or the acts or omissions of City; in that case, City shall be responsible for any such false alarms.

ARTICLE VII. GENERAL PROVISIONS RELATING TO COMPLEX

16. **Section 7.6.** Section 7.6 is hereby amended to state in its entirety as follows:

7.6. Team and Affiliates Use: Non-Player Development Activity

Except as set forth below, use of the Complex pursuant to this Agreement shall be limited to use by Team or its Minor League Affiliates only for Player Development, the annual college tournament, and Spring Training marketing, unless otherwise permitted by City in writing, subject to such additional terms and conditions as the parties hereto may hereinafter negotiate or otherwise consent to by written agreement. The parties agree that for any other non-player development activity that occurs during Team's exclusive use period, the following procedure shall apply:

A. Any non-player development use of the Complex is subject to the diligent and good faith review and approval of City, including review of the contract(s) between Team and the third party user(s), which City shall not unreasonably withhold such approval.

B. City shall be reimbursed by the third party user for all incremental maintenance costs resulting from their use of the Complex.

C. Team and City shall approve Non-player development camps, clinics or private player instruction in writing ; provided, however either party may withhold approval in its sole and absolute discretion. City and Team shall be reimbursed by the third party user for all incremental maintenance or facility costs resulting from such use. City shall be entitled to all appropriate use fees, facility charges and insurance requirements associated with such use.

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CITY OF PHOENIX PARKS AND RECREATION BOARD

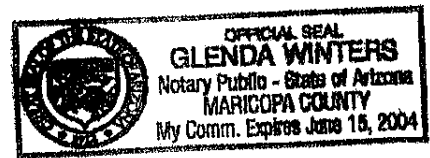
By Jim Holway
Its Chairman

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The following instrument was acknowledged before me this 24th day of September, 2003 by Jim Holway, the Chairman of the CITY OF PHOENIX PARKS AND RECREATION BOARD, on behalf of the Board.

Glenda Winters
Notary Public

My Commission Expires:
June 15, 2004



Attachment No. 1

The renovation of Phoenix Municipal Stadium shall include the following:

Press Box – Expansion and modernization of the Press Box

Dugouts – Expansion of the dugout area

Umpire Locker Room – Construction of a changing area for Umpires

Maintenance Building – Construction of a maintenance building to house field maintenance equipment and supplies.

Perimeter Fencing – Replacement of remaining chain link fencing with wrought iron.

Office Space – Renovation of Team administration offices and stadium operations offices.

Concourse Improvements – Improved landscape/design/signage features to update and modernize the concourse.

Field-level Seating – Additional seating will be installed at the field level, adjacent to the dugouts.

Media Dining Area – Improvements to facilitate press/media catering at the east end of the concourse.

All improvements to be constructed in accordance with the project construction plans as designed by GouldEvans Architects and permitted by the City of Phoenix. A full set of such plans is available for review at the following address:

Phoenix Municipal Stadium
Stadium Operations Office
5999 E. Van Buren
Phoenix, AZ 85008

Attachment No. 2

CAPITAL IMPROVEMENT FUND PROJECTS

Any Capital Improvement Account withdraw request by the ATHLETICS INVESTMENT GROUP, LLC shall be deemed reasonable if such will be substantially used to replace or otherwise improve any existing Facility improvements and/or for the construction of any new Facility improvements substantially consistent with and/or similar to any one or all of the following improvements:

1. Leftfield Outfield bleacher seating;
2. Marquee signage on corner of Van Buren and Priest;
3. Additional seating down right and left field lines; and/or
4. Future replacement of scoreboard.