

**SPORTS FACILITIES  
USE AGREEMENT**

between

City of Peoria, Arizona,  
an Arizona municipal corporation

and

The Baseball Club of Seattle, LLLP, a Washington limited liability limited  
partnership dba the Seattle Mariners Baseball Club

\_\_\_\_\_, 2012

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## SPORTS FACILITIES USE AGREEMENT

THIS FIRST AMENDED AND RESTATED SPORTS FACILITIES USE AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2012 by and among the CITY OF PEORIA, an Arizona municipal corporation (the "City") and The Baseball Club of Seattle, LLLP, a Washington limited liability limited partnership dba the Seattle Mariners Baseball Club (the "Mariners").

### **1. Recitals.**

Unless otherwise defined herein, capitalized terms used in this Section 1 shall have the meaning ascribed to them in Section 2 of this Agreement.

1.1. Club. The Mariners owns a franchise for a Major League Baseball Club.

1.2. Original Agreement. The City and the Mariners entered into a Sports Facilities Use Agreement dated June 3, 1993 and recorded in the Office of the City Clerk for the City of Peoria, Arizona as LCON 3493 [*Mariners*] ("Original Agreement").

1.3. Partnership. Over the past 19 years, the City and the Mariners have engaged in a successful partnership that has benefitted the two parties, City residents and guests, and baseball fans of all ages.

1.4. Continuation of Partnership. Prior to the termination of the Original Agreement on January 31, 2014, the City and the Mariners have concluded that they would like to continue and expand upon their successful partnership for up to another 20-year period by entering into this Agreement, which supersedes and replaces the Original Agreement.

1.5. Memorandum of Understanding. On May 15, 2012, the City Council approved a memorandum of understanding among the City, the Padres and the Mariners and approved drafting this Agreement to formalize the concepts set forth in the memorandum of understanding.

1.6. Economic Development. The City is authorized by its Charter and Code to participate in economic development and recreational activities.

1.7. Major League Baseball. The City recognizes the economic development impact of continuing to conduct Major League Baseball Spring Training Season games in the City due to, among other things, the national publicity that the City receives, the substantial direct and indirect economic return resulting from such spring training, and indirect increased excise tax revenues.

1.8. Sports Complex Improvements Agreement. For the foregoing reasons, the City has entered or will soon enter into a Sports Complex Improvements Agreement with the Mariners and TEAM 2, in which the City has agreed to construct improvements to the Clubhouses, the Stadium and related facilities.

1.9. Spring Training Season. The Mariners are willing to continue to conduct its Major League Baseball Spring Training Season at the Complex on the terms set forth in this Agreement.

1.10. Retention of Governmental Powers. Notwithstanding any contrary interpretation of the provisions of this Agreement, the actions required to be taken by the City pursuant to this Agreement are not a delegation of the City's governmental, legislative, executive, judicial or regulatory powers, and nothing in this Agreement shall be construed as a limitation on the exercise by the City of such powers.

1.11. Public Interest. The City finds that this Agreement is in the public interest.

## **2. Definitions**

The following terms shall have the meanings ascribed to them as follows:

2.1. "Activities" has the meaning set forth in Section 9.4.1.

2.2. "Affiliate" or "Affiliated" of any person (the "Subject Person") means any other person (the "Affiliated Person") who (a) is Directly or Indirectly controlled by, or under common control with, the Subject Person; (b) owns Directly or Indirectly 5% or more of any class of the outstanding debt or equity of the Subject Person; (c) is a general partner, officer or director of the Subject Person or of any person described in clause (a) or (b) above; or (d) is a member of the Immediate Family of the Subject Person or of any person described in clauses (a) through (c) above; provided, however, that a person shall not be an Affiliated Person solely by reason of being indebted to another person who, by virtue of owning outstanding debt of such Subject Person, controls such Subject Person.

2.3. "Annual Attendance Differential Charge" has the meaning set forth in Section 3.3.3.

2.4. "Architect" means the Person or Persons selected by the City, with the approval of the Clubs, to perform the normal functions of an architect with respect to the design and supervision of construction of any Project Phase, including the determination of whether such Phase has been completed in full compliance with the applicable Plans. The City has selected Populous as the Architect for Phase I.

2.5. "AZSTA" means the Arizona Sports and Tourism Authority, a corporate and political body of the State of Arizona, which was created to provide, among things, a mechanism to provide funds for the construction and renovation of major league baseball spring training facilities in Arizona.

2.6. "Base Program" means the general program requirements for any Project Phase.

2.7. "Basic Ticket Price" means the price charged for an individual seat in the Stadium, excluding (a) any Service Charge and, (b) the Complex Improvement Surcharge, and (c) the Non-General Admission Surcharge.

2.8. "BOC" means the Office of the Commissioner of Baseball, an unincorporated association comprised of the Major League Baseball Clubs who are party to the Major League Constitution, and any successor organization thereto.

2.9. "Capital Improvement" means any Improvement, excluding any Improvement constructed pursuant to the Sports Complex Improvements Agreement, costing in excess of \$25,000.00 and having a useful life greater than three years, including any construction or repair thereof provided that the cost of such construction or repair is of a type which under GAAP and GASB is to be capitalized. The Capital Improvements shown on the Plans (as the same may be amended through the date of Final Completion), whether heretofore or hereafter constructed, repaired or replaced, will be referred to in this Agreement as "Existing Capital Improvements." Capital Improvements not shown on the Plans (as the same may be amended through the date of Final Completion), but rather added thereto subsequent to the date of Final Completion, will be referred to in this Agreement as "New Capital Improvements." Capital Improvements may also include replacement of Existing Capital Improvements and New Capital Improvements, and, if mutually agreeable to the City, the Padres and the Mariners in each instance, regular operation and maintenance or repair of capital items or equipment.

2.10. "Capital Improvement Account" has the meaning set forth in Section 12.3.

2.11. "City" means the City of Peoria, Arizona, a municipal corporation of the State of Arizona, any of its administrative departments, divisions and functions, and its successors and assigns.

2.12. "Club" means the Major League Baseball Club owned by the Mariners.

2.13. "Clubs" means both the Major League Baseball Club owned by the Padres and the Major League Baseball Club owned by the Mariners.

2.14. "Clubhouse" means the Mariners' clubhouse building, or, depending on the context, the clubhouse buildings of both Clubs, each such Clubhouse identified as such in the Plans and each containing, among other things, major and minor league locker rooms, training rooms, a strength and conditioning area, food service area, and adjoining administrative space, including offices, media space and storage facilities.

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

2.16. "Complex" means the Site and all Improvements now or hereafter located on it, including without limitation those set forth in the Plans. The Complex is presently divided into three sub-areas -- the Stadium Facilities, the Padres Facilities, and the Mariners Facilities.

2.16.1. "Complex Improvement Account" has the meaning set forth in Section 12.4.1.

2.16.2. "Complex Improvement Surcharge" means a surcharge imposed on each Game ticket sold, as described in Section 8.1.8 for the purpose of funding Complex Improvements.

2.16.3. "Complex Improvements" means those designated projects constituting New Capital Improvements that the parties mutually agree from time to time by letter agreement are to be funded by the Complex Improvement Surcharge. Complex Improvements may also include replacement of Existing Capital Improvements and New Capital Improvements, and, if mutually agreeable to the City, the Padres and the Mariners in each instance, regular operation and maintenance or repair of capital items or equipment. Each such letter agreement must identify the scope of such project with specificity.

2.17. "Concession Agreement" means the contractual arrangement between the City and the Concessionaire which defines the terms on which food and beverages are sold at the Stadium.

2.18. "Concessionaire" means the Person selected by the City to sell food and beverages at the Stadium.

2.19. "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers specified for "All Items" (Western Region) published by the Bureau of Statistics of the United States Department of Labor (1982 - 84 =100). If the method by which such index is calculated is hereafter substantially changed, appropriate adjustments will be made by the parties to produce results approximating as nearly as

possible the results which would have been obtained absent such change. A change in the base year shall be deemed such a substantial change. If the index is no longer published or otherwise becomes unavailable to the public, a reasonable substitute index shall be mutually agreed upon by the City, the Padres and the Mariners.

2.20. “Default Rate” means an annual rate of interest equal to the lesser of (a) the United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal plus 1.5%, or (b) 10%.

2.21. “Direct” or “Indirect” or “Directly” or “Indirectly” means through one or more tiers of subsidiaries, partnerships or other tiered structures.

2.22. “Exclusive Mariners Facilities” has the meaning set forth in Section 6.2.1.

2.23. “Expedited ADR” means the Expedited Alternative Dispute Resolution procedures attached to this Agreement as Exhibit B.

2.24. “Field(s)” means collectively the playing fields within the Complex, including the field within the Stadium and the practice fields.

2.25. “Final Completion” or “Finally Complete” means, with respect to the applicable Project Phase, the stage of construction after Substantial Completion has been achieved when the construction work has been completed in accordance with the Sports Complex Improvements Agreement and the contract for construction, all "punch list" items have been satisfactorily completed, and the City has received all required deliverables, permits, warranties, and other required documents and certifications (e.g. LEED).

2.26. “Force Majeure” has the meaning set forth in Section 23.4.

2.27. “Future Improvements” has the meaning set forth in Section 12.5.

2.27.1. “Future Improvements Budget” has the meaning set forth in Section 12.5.

2.28. “GAAP” means Generally Accepted Accounting Principles.

2.29. “GASB” means Governmental Accounting Standards Board.

2.30. “Game Day Operations” mean the customary operations to be provided by Mariners or the City, as the case may be, at each Game during the Spring Training Season, more particularly described in Sections 10.2 and 11.7.

2.31. "Game(s)" means Spring Training Season exhibition games played between the Club and another Major League Baseball Club in the Stadium during the Spring Training Season of each year, pursuant to the schedule announced by Major League Baseball or games played in the Stadium between the Club and another baseball team at any point in the year.

2.32. "Gate Receipts" means the gross amount of monies actually received from the sale of tickets to Games played at the Stadium, including any amount received from the Ticket Agency or other third party ticketing service as a refund or rebate of a portion of any Service Charge, all without reduction for taxes, Third Party Surcharges, fees or selling costs, but excluding (a) Service Charges retained by the Ticket Agency or other third party ticketing service, if any; (b) returns that are refunded (for example, because of cancellation of a Game due to weather); (c) drafts until paid; (d) credit card receipts until payment is received; (e) the Complex Improvement Surcharge and (f) the Non-General Admission Surcharge. "Gate Receipts" include monies received that are subject to refund but are not returned to the purchaser within twelve months of the scheduled Game. "Gate Receipts" shall not include any imputed value for guest, press or media passes.

2.33. "Home Team" means the team which acts as a host team for its opponent during a Game (i.e. the team that takes the field in the first half of each inning and bats in the last half of each inning of such Game).

2.34. "Immediate Family" means any spouse, son, daughter or parent of any individual (by blood, adoption or marriage), or any trust, estate, partnership, joint venture, company, corporation, operation or any other legal entity or business or investment enterprise Directly or Indirectly controlled by such spouse, son, daughter or parent.

2.35. "Improvements" means the Stadium, Clubhouse, Parking Lots, Fields, batting cages and tunnels, pitching mounds, landscaped areas and all other improvements to real property now or hereafter located on the Site.

2.36. "Legal Requirements" means all federal, state, county and other governmental laws (including applicable constitutions), ordinances, codes, rules, regulations, statutes and orders (including court and administrative agency orders), all covenants and restrictions of record, and the requirements of all fire insurance underwriters or rating bureaus, applicable to the Project, Complex, or Site."

2.37. "Major League Baseball" or "MLB" means, depending on the context, any or all of (a) the BOC, each other MLB Entity and/or all boards and committees thereof, including, without limitation, Executive Council and the Ownership Committee, and/or (b) the Major League Baseball Clubs acting collectively.

2.38. “Major League Baseball Club” means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.

2.39. “Major League Constitution” means the Major League Constitution adopted by the Major League Baseball Clubs (which amended and superseded the Major League Agreement dated January 1, 1975, the Agreement in re Major Leagues Central Fund dated as of December 8, 1983, as amended, and the respective constitutions of the former American and National Leagues of Professional Baseball Clubs) as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Baseball Clubs.

2.40. “Mariners” means The Baseball Club of Seattle, LLLP, a Washington limited liability limited partnership dba the Seattle Mariners Baseball Club or its successors or assigns.

2.41. “Mariners Facilities” means the land and Improvements within the area designated in the Plans as the Mariners Facilities Area, including Mariners’ Clubhouse, practice fields, batting cages and tunnels, pitching mounds, observation tower, practice area concession stand, and parking lot.

2.42. “Minor League” means the level of professional baseball in the United States and Canada and potentially elsewhere which is below that of Major League Baseball, and which includes, without limitation, those teams which participate in leagues which are members of the National Association of Professional Baseball Leagues.

2.43. “Minor League Affiliate” means any Minor League team which has a player development agreement or similar relationship with the Mariners.

2.44. “MLB Approval” means, with respect to the Major League Baseball Clubs, the Commissioner, the BOC or any other MLB Entity, any approval, consent or no-objection letter required to be obtained from such Person(s) pursuant to the MLB Rules and Regulations (as exercised in the sole and absolute discretion of such Person(s)).

2.45. “MLB Entity” means each of the BOC, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., The MLB Network, LLC, MLB Advanced Media, L.P., and/or any of their respective present or future affiliates, assigns or successors.

2.46. “MLB Governing Documents” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (a) the Major League Constitution, (b) the Basic Agreement between the Major League

Baseball Clubs and the Major League Baseball Players Association, (c) the Professional Baseball Agreement between the BOC, on behalf of itself and the Major League Baseball Clubs, and the National Association of Professional Baseball Leagues, (d) the Major League Rules (and all attachments thereto), (e) the Interactive Media Rights Agreement, effective as of January 20, 2000, by and among the BOC, the various Major League Baseball Clubs, MLB Advanced Media, L.P. and various other MLB Entities and (f) each agency agreement and operating guidelines among the Major League Baseball Clubs and any MLB Entity, including, without limitation, the Amended and Restated Agency Agreement, effective as of November 1, 2006, by and among Major League Baseball Properties, Inc., the various Major League Baseball Clubs and the BOC (and the Operating Guidelines related thereto).

2.47. “MLB Rules and Regulations” means (a) the MLB Governing Documents, (b) any present or future agreements or arrangements entered into by, or on behalf of, the BOC, any other MLB Entity or the Major League Baseball Clubs acting collectively, including, without limitation, agreements or arrangements entered into pursuant to the MLB Governing Documents, and (c) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or behalf of, the Commissioner, the BOC or any other MLB Entity as in effect from time to time.

2.48. “Net Concession Revenue” means the gross income that the City receives either from the Concessionaire each year under the Concession Agreement (1) attributable to Games during the Spring Training Season; or (2) attributable to the Mariners Facilities year-round. The parties contemplate that the amount to be received by the City from the Concessionaire will be in the form of a negotiated percentage of gross receipts.

2.49. “Net Novelty Revenue” means the gross income received by the Mariners from the sale of Novelties at Games during the Spring Training Season, or at the Mariners Facilities year-round, less the direct costs of purchasing, producing and selling the Novelties and also less a reasonable novelty sales management fee; alternatively this may be in the form of a negotiated percentage of gross receipts.

2.50. “Net Parking Revenue” means the gross income received from parking at the Complex on Game days during the Spring Training Season, or at the Mariners Facilities year-round, less the direct costs of parking lot attendants and on-site traffic control personnel and equipment utilized exclusively on those days; alternatively this may be in the form of a negotiated percentage of gross receipts.

2.51. “Net Program Revenue” means the gross income received from sales of Programs and sales of advertising for Programs, less the direct costs of advertising, producing and selling the Programs.

2.52. “Net Stadium Advertising Revenue” means the gross income received by either party from the sale of signs, announcements, or other visual or audio displays at the Stadium and Stadium Facilities, less normal commissions paid to third parties or to the Mariners’ commissioned salespeople for securing the advertising, less the direct costs, if any, of producing, constructing, and/or erecting the advertising and less the revenue generated directly by the Mariners from the sale of Scoreboard Signage, if the Mariners elect to sell such signage. For advertising that appears as part of a scoreboard or scoring system other than the Scoreboard Signage, the direct cost of constructing or renovating the scoreboard or scoring system may be offset against these specific advertising revenues until such construction costs have been fully recaptured.

2.53. “Non-Exclusive Facilities” has the meaning set forth in Section 6.2.1.

2.54. “Non-General Admission Surcharge” has the meaning set forth in Section 8.1.8.

2.55. “Non-Spring Training Advertising Benefits” has the meaning set forth in Section 8.5.2.

2.56. “Non-Spring Training Season” means the period from the end of the Spring Training Season each year during the Term until the start of the Spring Training Season the following year during the Term.

2.57. “Novelties” means souvenir items sold at the Stadium Facilities on Game days during the Spring Training Season, or at the Mariners Facilities year-round, including but not limited to any items which carry the trademark or logo of any Major League Baseball Club. “Novelties” shall not include Programs, tickets, food or beverages, or any containers or packaging used with food or beverages.

2.58. “O, M & R Reserve Account” has the meaning set forth in Section 12.2.

2.59. “O, M & R Costs” are expenditures that are not classified as New Capital Improvement expenditures, and include without limitation all such costs incurred for:

2.59.1. Operation, maintenance, repair and replacement of the Complex and the Improvements, including Existing Capital Improvements and New Capital Improvements, in neat, clean, safe and good order and condition, including without limitation parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, lighting facilities, building exteriors and roofs, fences and gates, and heating, air conditioning, plumbing, electrical, fire detection, sprinkler, utility and life safety systems and equipment;

2.59.2. Trash disposal, security services, and janitorial services to the Stadium and other habitable portions of the Complex on Game days, business days, and such other days as may reasonably be required, including replacement of light bulbs and tubes. O, M & R Costs shall not include janitorial, pest control, or security services within the Clubhouse.

2.59.3. Water, sewer, gas, electricity, and other publicly mandated services to the Complex;

2.59.4. Labor, salaries and applicable fringe benefits, and costs, materials, supplies and tools, used in cleaning, maintaining, repairing and replacing the Complex and its Improvements; and

2.59.5. Replacing Improvements as mandated by any governmental agency and any repairs or removals necessitated thereby.

2.60. "Opt-Out Termination Date" has the meaning set forth in Section 3.3.3.

2.61. "Option Date" has the meaning set forth in Section 3.3.3.

2.62. "Original Agreement" has the meaning set forth in Section 1.2.

2.63. "Padres" means Padres, L.P., a Delaware limited partnership dba the San Diego Padres Baseball Club, or its successors or assigns.

2.64. "Parking Lots" means the outdoor parking lots within the Site, containing vehicular parking, together with the driveways, fences and lighting incidental to the use thereof, the locations of which Parking Lots are shown in the Plans.

2.65. "Person" means any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business or investment enterprise.

2.66. "Phase I" means the planning, development, design, and construction of that phase of the Project described in the applicable Base Program, attached hereto as Exhibit A, which consists generally of improvements to each Team's Clubhouse and Team Facilities pursuant to the terms of the Sports Complex Improvements Agreement, and which is planned for the 2013-14 time period.

2.67. "Phase II" means the planning, development, design, and construction of the phase of the Project that consists generally of improvements to the Stadium pursuant to the terms of the Sports Complex Improvements Agreement, and which is planned for the 2014-15 time period.

2.68. "Phase III" means the planning, development, design, and construction of the phase of the Project that consists generally of future improvements to the Team Facilities and the Stadium pursuant to the terms of the Sports Complex Improvements Agreement, tentatively planned for the 2021-2027 time period.

2.69. "Plans" means the detailed architectural plans and specifications describing the size and character of the Complex, the Project or any Project Phase as to architectural, structural, mechanical and electrical systems, all as agreed upon by the City and the Clubs pursuant to the Sports Complex Improvements Agreement.

2.70. "Player Development Programs" means programs during the Non-Spring Training Season which the Mariners or its Minor League Affiliates either administer, manage or participate in as a means of providing instruction, training and competition for its players. Such programs currently include the extended spring training, summer rookie league, and fall instructional league.

2.71. "Program" means any publication or scorecard sold at the Stadium Facilities on Game days which provides specific information on the Mariners together with rosters and a scorecard for that particular Game. "Program" does not include the Mariners' magazine, yearbook, or equivalent publications or any playbills that are given away to Game attendees.

2.72. "Project" means the planning, development, design, and construction of the improvements to the Complex contemplated in the Sports Complex Improvements Agreement, including Phase I, Phase II, and Phase III.

2.73. "Project Phase" means Phase I, Phase II, or Phase III, depending on the context of the sentence.

2.74. "Promotions" has the meaning set forth in Section 8.1.7.

2.75. "Replacement Team" has the meaning set forth in Section 3.3.3.

2.76. "Resident Discount" has the meaning set forth in Section 8.1.6.

2.77. "Scoreboard Signage" has the meaning set forth in Section 8.5.1.

2.78. "Service Charge" means the convenience fee, if any, charged to the consumer by the Ticket Agency, or any other third party ticketing entity, in conjunction with sales of Game tickets by telephone or at locations remote from City facilities. The Service Charge shall not include any convenience fee or surcharge imposed by any party to this Agreement or the Sponsoring Organization unless mutually agreed to in writing by the parties.

2.79. “Site” means the land area located in the vicinity of 83rd Avenue and Paradise Lane in the City of Peoria, Maricopa County, Arizona, as shown definitively in the map attached as Exhibit D to the Agreement.

2.80. “Sponsoring Organization” means a non-profit organization selected by the City which is associated with Major League Baseball Clubs, within the meaning of Arizona Revised Statutes § § 42-1310.01(A) (30); 42-1310.09(C)(8); 42-1310.13(A)(3); and 42-1310.14(B)(4).

2.81. “Sports Complex Improvements Agreement” or “SCIA” means that certain agreement by and among the City, the Mariners and TEAM 2 executed contemporaneously with this Agreement.

2.82. “Spring Training Advertising Benefits” has the meaning set forth in Section 8.5.2.

2.83. “Spring Training Season” means the annual use period during which Major League Baseball conducts spring training operations and/or training for the Major League Baseball championship season, this period generally running from February 1 through April 15 of each calendar year, but subject to change at the discretion of Major League Baseball.

2.84. “Spring Training Settlement” has the meaning set forth in Section 8.8.1.

2.85. “Stadium” means the sports stadium building located at the Site and to be improved in conformity with the Plans, where Games are to be played by the Mariners.

2.86. “Stadium Facilities” means the land and Improvements within the area designated in the Plans as the Stadium Facilities Area, including the Stadium itself, the public Parking Lots adjacent to the Stadium, and all landscaped areas and other improvements to real property related to the Stadium within that Area, all as more fully described in the Plans.

2.87. “Substantial Completion” or “Substantially Complete” or “Substantially Completed” means, with respect to the applicable Project Phase, that (a) the affected areas are operational and usable in all material respects for the purpose(s) intended; (b) all required governmental permits, approvals and certificates of occupancy have been properly and validly issued; and (c) the Architect has certified to the Clubs or the affected Club and the City that such Phase has been completed in full compliance with the Plans (subject only to minor and insubstantial “punch list” items which do not affect operations by the Clubs or the affected Club in any material fashion; such punch list items shall be corrected to the reasonable satisfaction of the Clubs or the affected Club within 60 days after the date the applicable Project Phase is otherwise Substantially Complete, unless such Substantial Completion date falls immediately prior to a Spring

Training Season, in which case such punch list items shall be corrected within 60 days of completion of such Spring Training Season).

2.88. "TEAM 2" means the Major League Baseball club occupying or using the facilities identified as the "TEAM 2 Facilities" in the Plans and sharing the use of the Stadium with Mariners during the Spring Training Season, which club is currently THE SAN DIEGO PADRES.

2.89. "TEAM 2 Facilities" means the land and Improvements within the area designated in the Plans as the TEAM 2 Facilities Area, including TEAM 2's clubhouse, practice fields, batting cages and tunnels, pitching mounds, observation tower, practice area concession stand, and parking lot.

2.90. "Term" has the meaning set forth in Section 3.

2.91. "Third Party Surcharges" means ticket surcharges not approved by each of the City, the Padres and the Mariners.

2.92. "Third Party User" has the meaning set forth in Section 6.4.

2.93. "Ticket Agency" means the Person selected by the City to assist the City or the Sponsoring Organization in carrying out the City's obligations set forth in Section 8.1.2.

### **3. Term.**

3.1. Twenty-Year Term. The Term of this Agreement shall commence on February 1, 2013 and shall terminate, subject to the rights of early termination and options hereinafter provided in this Section, on January 31, 2034.

3.2. Options to Renew. The Mariners shall have, and the City hereby grants to the Mariners, the option of renewing this Agreement and extending the Term for up to two additional two year periods on the same terms as are set forth in this Agreement. Such options are exercisable by the Mariners by written notification to the City not less than one year prior to the then scheduled expiration of the Term. No later than two years prior to the conclusion of the Term, the City and the Clubs shall meet to discuss the Clubs' future plans and the potential exercise of the options.

3.3. Early Termination.

3.3.1. Number of Cactus League Teams. If at any time fewer than a total of six (6) Major League Baseball Clubs conduct spring training in the Cactus League, then the Mariners shall have the option at any time thereafter (so long as fewer than six Major League Baseball Clubs continue to conduct spring

training in the Cactus League) to terminate this Agreement, without penalty, by giving one year prior written notice thereof to the City.

3.3.2. Future Improvements Funding. If the City has failed to provide funding for the Future Improvements Budget in the schedule required in Section 12.5, the Mariners shall have the option to terminate this Agreement, without penalty, by giving written notice thereof to the City with a copy of such notice to TEAM 2. The City shall have 90 days following receipt of such termination notice to fully cure the lack of funding. Any such termination will be effective on January 31 of the year following the date of the termination notice unless another later date is specified in such notice.

3.3.3. The Mariners Opt-Out Option. The Mariners shall have the option to terminate this Agreement at any time pursuant to this Section 3.3.3. If the Mariners wishes to terminate this Agreement pursuant to this Section 3.3.3, it must comply with all of the following requirements:

(a) The Mariners must provide written notice to the City two (2) years prior to the desired termination date. For purposes of this Subsection, the date that the Mariners provides the written notice shall be the “Option Date,” and the date two years from the Option Date shall be the “Opt-Out Termination Date.”

(b) On or before the Opt-Out Termination Date, the Mariners shall pay to the City all remaining bond principal, including a bond call premium of up to 2%, owed by the City in connection with its initial financing of the Mariners’ Clubhouse, as such amount may be reduced from time to time by regular or pre-payments of principal or a refinancing, provided that such refinancing does not increase the principal balance or extend the term of repayment, calculated as of the Opt-Out Termination Date.

(c) Within 90 days after the Opt-Out Termination Date, the Mariners shall pay to the City a one-time penalty in accordance with the following schedule, but without duplication:

If the Opt-Out Termination Date occurs prior to:	The penalty payment amount shall be:
January 31, 2019	\$20,000,000.00
January 31, 2024, but on or after January 31, 2019	\$15,000,000.00
January 31, 2029, but on or after January 31, 2024	\$10,000,000.00

January 31, 2034, but on or after January 31, 2029	\$5,000,000.00
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(d) The Mariners shall use its reasonable efforts to find another Major League Baseball Club to relocate to the City as a replacement for the departure of the Mariners (“Replacement Team”) and the City shall reasonably cooperate in such efforts. All of the following requirements shall apply to the Replacement Team:

(i) The Replacement Team shall agree to a lease or use agreement with the City, including a term that is no shorter than the remaining term of this Agreement if the Mariners had not terminated pursuant to this Section 3.3.3.

(ii) After the fifth Spring Training Season played by the Replacement Team, the City shall calculate the average annual attendance at all Games in which the Replacement Team is designated as the Home Team over the five-year period. The City will compare this attendance number to the average annual attendance at Games in which the Mariners was the Home Team in the final five full seasons prior to the Opt-Out Termination Date. If the Replacement Team’s average annual attendance is less than the Mariners’ average annual attendance, the City shall notify the Mariners in writing of the deficiency (the “Annual Attendance Differential Charge”), if any. The Annual Attendance Differential Charge, if any, shall be calculated as follows: (a) the City’s share of Gate Receipts (as determined in accordance with Section 8.1.4) PLUS the City’s share of Net Parking Revenue (as defined below and determined in accordance with Section 8.1.4) from the final five full seasons of the Mariners’ Home games MINUS (B) the City’s share of Gate Receipts PLUS the City’s share of Net Parking Revenue from the most recent five seasons of the Replacement Team’s Home games. If the Replacement Team is present at the Complex for less than five seasons, then the averages shall be adjusted accordingly. Unless the Mariners disputes in writing the Annual Attendance Differential Charge, the Mariners shall make payment of the Annual Attendance Differential Charge to the City within 30 days of receipt of the City’s notice. While this Subparagraph will survive termination of this Agreement, the requirement shall end after the Replacement Team’s first five seasons at the Complex.

(iii) After the Opt-Out Termination Date, and in the event that the Mariners is unable to find a Replacement Team, for each full season that a Replacement Team fails to play a Spring Training Season at the Complex, the Mariners shall pay the City \$10,000,000.00 for each such year. While this Subparagraph will survive termination of this Agreement, the Mariners' obligation to make such payments shall end on the earlier of January 31, 2034 and the date that a Replacement Team enters into a lease or use agreement with the City in accordance with the requirements set forth in Subparagraph 3.2.3(d)(i).

#### **4. Ownership and Use.**

4.1. City Ownership. The Complex is owned by the City. Except as set forth herein, the Mariners or any of its Affiliates shall not own or have any possessory or other right, title or interest in the Complex. This Agreement does not create or grant any possessory interest or similar right, title or interest in the Complex to the Mariners or any of its Affiliates.

4.2. City Reserved Use. Except as provided in Sections 5 and 6 of this Agreement, the City reserves the right to use the Complex and to enter any portion of it.

#### **5. Use of Complex During Spring Training Season.**

5.1. In General. The use of the Complex shall be divided into two distinct time periods: the Spring Training Season, and the Non-Spring Training Season. The use of the Stadium Facilities and the Mariners Facilities during the Spring Training Season shall be governed by the following provisions:

5.1.1. The Mariners Facilities. During the Spring Training Season in each year of the Term, the Mariners will have a full complement of both Major League and Minor League players and coaching staffs at its Facilities for a majority of this time period. Because of the intensity of the contemplated use for this period, the Mariners shall have the exclusive right to use the entirety of the Mariners Facilities during the Spring Training Season. Should the City desire to use a portion of the Mariners Facilities during the Spring Training Season, the City shall be required to obtain the prior written consent of the Mariners as a condition to its doing so. Such consent may be granted or withheld in the Mariners' sole and absolute discretion.

5.1.2. Stadium. During the Spring Training Season in each year of the Term, the Stadium Facilities will be subject to shared use between the Padres and the Mariners. Each of the City, the Padres and the Mariners shall use

reasonable efforts to accommodate the other parties concerning the scheduling and use of the Stadium; provided, however, that unless mutually agreed by City, the Padres and the Mariners, in no event shall the Stadium or any portion of it be utilized during the Spring Training Season at any time during the Term of this Agreement by any Person other than the Padres or the Mariners (except for Major League Baseball Clubs playing in Games against the Padres or the Mariners). If the City proposes a use of the Stadium or Stadium Facilities that does not involve any access to the field within the Stadium by the proposed user, then such agreement shall not be unreasonably withheld by the Mariners. Such agreement shall not be required for tours and small receptions provided they do not interfere with the Mariners' use of the Stadium or involve any access to the field within the Stadium.

5.2. The Mariners Spring Training Commitment. Subject to Section 23.21, the Mariners shall use its reasonable efforts:

5.2.1. To arrange for a schedule during each Spring Training Season that provides for Games as follows: (a) if the Mariners is the only Major League Baseball Club using the Stadium as its "home" field during that Spring Training Season, a schedule of at least fifteen Games against other Major League Baseball Clubs; or (b) if the Padres and the Mariners are sharing use of the Stadium during that Spring Training Season, a schedule that results in at least one game against another Major League Baseball Club at the Stadium by either the Padres or the Mariners on each day from the first day of such schedule until the Mariners break camp approximately four to five days prior to the start of the Major League Baseball championship season.

5.2.2. To schedule and play one charity game each year (such charity game to be played prior to the Spring Training Season Games), with the Mariners' normal share of Gate Receipts, Net Concession Revenue, Net Novelty Revenue, and Net Parking Revenue to be donated to local non-profit organizations selected by the City. In advance of each charity game, the City and the Clubs shall mutually agree upon a list of potential recipients of this donation. The charity game may be played between the Padres and the Mariners. In the event that the charity game is played between the Padres and the Mariners, both Clubs' share of the Gate Receipts shall also be donated to local non-profit organizations selected by the City.

5.3. Partial or No Spring Training Season. Notwithstanding Section 5.2 above, in the event that the Spring Training Season is canceled or shortened due to events such as labor problems, strikes, lockouts, restrictions imposed by changes in Major League Baseball collective bargaining agreements, changes in the MLB Rules and Regulations, including without limitation Games required to be played outside of Arizona

during the Spring Training Season, or other events that are beyond the control of the Mariners, the obligations of the Mariners under this Agreement shall be modified as follows:

5.3.1. In the event of a partial Spring Training Season consisting of eight or more Mariners home Games at the Stadium, this Agreement shall remain in effect with no change.

5.3.2. In the event of (a) a partial Spring Training Season consisting of less than eight Mariners home Games at the Stadium, or (b) a Spring Training Season consisting of no Mariners home Games at the Stadium, where the Mariners or any of its Minor League Affiliates nevertheless uses the Complex for purposes permitted by Section 5, then in addition to any fees or amounts paid to the City pursuant to this Agreement, the Mariners shall also pay to the City the reasonable cost of overseeding the Fields within the Mariners Facilities in anticipation of that Spring Training Season (if such overseeding was performed), and one-half of the cost of overseeding the field in the Stadium.

5.3.3. In the event that a Mariners Spring Training Season is materially shortened or interrupted to permit the Mariners to fulfill a commitment to Major League Baseball, such as playing games in another country, the Mariners will make a reasonable good faith effort to seek from Major League Baseball a schedule change of relatively equal value.

5.4. City Scheduling. In the event that the City desires to use any portion of the Complex during the Spring Training Season, the City shall be required to obtain the prior written consent of the Mariners as a condition to it doing so. Such consent may be granted or withheld in the Mariners' sole and absolute discretion.

5.5. Right of Entry. The City reserves the right to enter any portion of the Complex upon reasonable prior notice to the Mariners, notwithstanding the exclusive right of the Mariners or any of its Affiliates to use such portion, if in the reasonable judgment of the City such entry is necessary to repair or maintain the Complex or is necessary as a result of an emergency.

## **6. Use of Complex During Non-Spring Training Season.**

6.1. In General. During the Non-Spring Training Season, the Mariners shall have the non-exclusive right to use the Complex for its Major League Baseball operations, its Minor League baseball programs (including use by its Minor League Affiliates), its Player Development Programs, and any other use not inconsistent with this Agreement. The Mariners' right to use the Complex, including its right to use portions of the Complex on an exclusive basis and to approve use of portions of the Complex by third parties, is set forth below.

## 6.2. Use of the Mariners Facilities.

6.2.1. Mariners Use. During the Non-Spring Training Season, the Mariners shall have the exclusive right to use, or subject to Section 9.3, permit a third party to use, the Mariners Clubhouse, two-and-one-half practice fields (those not part of the four field cloverleaf), the batting tunnels, the practice pitching mounds adjacent to the Mariners Clubhouse, and the parking spaces within the Mariners Facilities (together, the “Exclusive Mariners Facilities”). During the Non-Spring Training Season, the Mariners shall have the non-exclusive right to use, or permit a third party to use, the remaining portions of the Facilities, excluding the exclusive facilities of TEAM 2 (the “Non-Exclusive Facilities”), with reasonable notice to the City and subject to availability and payment of normal consistent rental fees.

6.2.2. City Use. During the Non-Spring Training Season, the City may use, or permit a third party to use, any portion of the Mariners Facilities not being used by the Mariners; provided, however, that if the third party is to use any portion of the Exclusive Mariners Facilities, the Mariners shall have the right to approve or disapprove such use in its sole and absolute discretion; and provided further, that all use of the Non-Exclusive Facilities shall be restricted to baseball and baseball-related activities or for a purpose that will not materially alter or damage the Mariners Facilities.

6.3. Use of the Stadium. The Mariners and its Minor League Affiliate(s) shall have the right to non-exclusive use of the Stadium during the Non-Spring Training Season on a priority basis over other potential users of the Stadium (and on an equal basis with TEAM 2). In order to retain this priority, the Mariners shall notify the City at least 180 days in advance of any planned use of the Stadium. The City may charge the Mariners a fee for Non-Spring Training Season use of the Stadium, such fees to be reasonably set and consistent with set use fees, but in no event to exceed that charged to any other athletic organization for comparable use. All use of the field within the Stadium during the Non-Spring Training Season shall be restricted to baseball and baseball-related activities or for a purpose that will not materially damage the field within the Stadium. The parties agree that concerts and similar events are not prohibited by the preceding sentence as long as the City fully performs its obligations under Section 11.5.

6.4. Scheduling of Other Uses by the Mariners. The parties to this Agreement recognize that a third party whom the Mariners permit to use all or a portion of the Exclusive Mariners Facilities (“Third Party User”) may also require use of a portion of the Non-Exclusive Facilities, and that the parties would lose shared revenues if scheduling conflicts prevented such use. To avoid such scheduling conflicts, the parties

agree that a Third Party User shall have certain limited scheduling priority on the use of the Non-Exclusive Facilities, as set forth below.

6.4.1. Scheduling Priority. The Third Party User shall have priority in scheduling for use of the Non-Exclusive Facilities over all other potential users, except the Mariners; provided, however, that this scheduling priority must be exercised in accordance with the procedure set forth in Section 6.4.2; and provided, further, that such scheduling priority must reasonably accommodate the needs of amateur baseball programs within the City.

6.4.2. Scheduling Procedure. To effectuate the scheduling priority established under Section 6.4.1, at least 120 days prior to the Third Party User's planned use of the Non-Exclusive Facilities, the Mariners must give the City written notice (a) identifying the potential Third Party User; (b) describing the portion of the Facilities to be used; and (c) stating the proposed terms of such use. Following receipt of such notice, the City will make reasonable good faith efforts to reduce such terms to a written use agreement between the City and the Third Party User, subject to payment by the Third Party User of normal consistent rental fees. If such written use agreement is not executed by 90 days prior to the planned use, the Third Party User shall have no further scheduling priority.

6.5. Scheduling of Other Uses by the City. Consistent with Section 6.2.2, the City must have the consent of the Mariners to schedule any use by a third party of any portion of the Exclusive Mariners Facilities. The City may schedule use of any portion of the Non-Exclusive Facilities by a third party without the Mariners consent; provided, however, that the Mariners' consent must be obtained if (a) the third party is a professional baseball team; or (b) the third party will also be using some portion of the Exclusive Mariners Facilities; or (c) the City wishes to commit to use of a portion of the Non-Exclusive Facilities by a third party more than 120 days prior to the date of the planned use, or 90 days prior to such planned use if a Third Party User has been identified under Section 6.4.2.

6.5.1. Selection of Facilities. In the event that a third party contacts the City with a desire to use, in whole or in part, the Exclusive Facilities, the City shall select which Club's facility to use in the following fashion: (a) if the third party was referred to the City by one of the Clubs, the City shall give that Club the first priority in licensing use of its Exclusive Facilities to the third party, (b) if neither Club referred the third party to the City, the City shall coordinate with each Club to determine willingness of the Clubs to license the use of their Exclusive Facilities to the third party, and (c) if both Clubs are willing to license the use of their Exclusive Facilities to the third party, the City will attempt in good faith to alternate between use of the two Clubs' Exclusive Facilities.

6.6. Right of Entry. The City reserves the right to enter any portion of the Complex upon reasonable prior notice to the Mariners, notwithstanding the exclusive right of Mariners to use such portion, if in the reasonable judgment of the City such entry is necessary to repair or maintain the Complex or is necessary as a result of an emergency.

## **7. Future Economic Development in and adjacent to the Complex.**

7.1. Economic Development. The Mariners acknowledge and support the City's goal of promoting economic development, including further development of permanent structures on and around the Complex within the Economic Development Area (as defined below). The City acknowledges and supports the Mariners' concern that such development not adversely impact any aspect of the Clubs' operations, the Spring Training experience of Mariners officials, players or fans, or any rights or revenue streams reserved to the Mariners in a material way. The Mariners and the City pledge to work cooperatively to discuss openly and assess carefully any potential future economic development in the Economic Development Area, with the objective of fostering economic development that does not have an adverse impact on Mariners interests. Any such future development in the Economic Development Area shall be subject to this advance consultation, and to the principle of "no material adverse impact" described above.

7.2. Economic Development Area. For the purposes of this Section 7, the "Economic Development Area" shall be considered to be the Complex, adjacent parking lots and other land adjacent to the Complex that is owned or controlled by the City as of the date of this Agreement, a map of which appears as Exhibit E to this Agreement. In conjunction with any proposed development or subpart thereof, if requested by the Mariners, the City will provide the Mariners with third-party technical studies and other independent analyses demonstrating that the proposed development or subpart being questioned would have not material adverse impact on the Mariners' operations, the Spring Training experience for Mariners officials, players or fans, or any rights or revenue streams reserved to the Mariners. If following such consultation and analysis the Mariners continue to believe that City-proposed development would have a material adverse impact, and if the City disagrees and wishes to proceed with the development plans proposed, the City will give the Mariners written notice of its intent to proceed. Following receipt of such notice, the Mariners shall have 30 days to challenge the City's decision by initiating the Expedited ADR procedure. If the dispute proceeds to arbitration, the arbitrator shall determine if a material adverse impact exists, as defined more fully in Section 7.1. If the arbitrator's decision is that a material adverse impact exists, the proposed development plans shall not proceed until such impact is fully mitigated. If the arbitrator's finding is that a material adverse impact does not exist, the proposed development plans may proceed in a manner no more impactful than as

described in the Expedited ADR proceeding. The arbitrator may retain jurisdiction to ensure compliance with the intent of this Section.

## **8. Spring Training Season Revenues and Responsibilities.**

### 8.1. Tickets.

8.1.1. Sponsoring Organization. The City may, at its option, select a Sponsoring Organization to sponsor Games and/or to manage ticket sales, collect the proceeds of tickets sales, and account to the City and the Mariners for Gate Receipts or to assist with other activities related to the Games.

8.1.2. Responsibility for Ticket Sales. The City, either by itself or through a Sponsoring Organization shall have the right and responsibility to manage the sale of tickets to all Games, which may include selecting a Ticket Agency reasonably acceptable to the Mariners and TEAM 2. The Mariners agree that the Peoria Diamond Club, as currently organized, is acceptable to the Mariners as a Sponsoring Organization. The City shall not change the Sponsoring Organization without complying with the terms of this Section 8.1.2. The City, either itself or through the Sponsoring Organization or Ticket Agency, shall be responsible for sale of tickets, collection of the proceeds of ticket sales, and accounting to the Mariners for all Gate Receipts consistent with Section 8.8.1.

8.1.3. Establishment of Basic Ticket Price. At least 180 days prior to the start of each Spring Training Season during the Term and after receiving input from the City, the Mariners shall make a determination regarding the pricing structure and Basic Ticket Prices for the Mariners home Games during that Spring Training Season. The Mariners agrees that (a) it will not set a Basic Ticket Price such that its average ticket price will exceed the average ticket price of the two highest Cactus League teams from the prior year without the City's approval, (b) notwithstanding the provisions in (a) above, general admission seating shall not exceed the median ticket price for comparable seating at other Cactus League venues from the prior year, (c) prior to the sale of tickets each year, the City shall be entitled to submit a structure of meaningful discounts to City residents, which shall be subject to discussion with and approval by the Mariners, with the Mariners' approval not to be unreasonably withheld, and (d) prior to the sale of tickets each year, the City shall be entitled to submit to the Mariners a structure of promotions of general applicability, which shall be subject to discussion with and approval by the Mariners, with the Mariners' approval not to be unreasonably withheld. The parties expressly agree that the discounts and promotions set forth in Sections 8.1.6 and 8.1.7 below are acceptable without further discussion or approval. The Mariners and TEAM 2 shall give good faith consideration to employing a uniform pricing structure for tickets, but this shall

not be mandatory. No surcharge, fee, tax, or premium may be added to the Basic Ticket Price unless agreed to by the Mariners and the City, except for (i) a reasonable Service Charge, (ii) a Complex Improvement Surcharge, and (iii) a Non-General Admission Surcharge. Subject to Section 14.3, any tax on ticket sales that may at any time apply shall be included as part of the Basic Ticket Price, unless prohibited by law. In the event that a new pricing structure is implemented by the Mariners, the City shall not be required to incur any incremental, direct ticketing expenses (such as software acquisition, third-party contracts or other incremental operating costs) but excluding costs that can be borne by a third party ticket vendor. The City shall make a good faith effort to transfer any such costs to its third party ticket vendor.

8.1.4. Division of Gate Receipts. The City, either directly or through the Ticket Agency or Sponsoring Organization, shall collect all Gate Receipts and pay the Mariners 80% of all Gate Receipts. The visiting team share, if any, shall be paid by the Mariners or its designee from this eighty percent (80%) share. At the Mariners' request, the City or its Sponsoring Organization shall pay the visiting team's share, if any, and offset it against this eighty percent (80%) share. If the Padres play a Game against the Mariners, the City shall pay each Club 40% of all Gate Receipts.

8.1.5. Complimentary Tickets and Passes. The Mariners shall have the right to request and receive complimentary tickets to any of the Games as may be reasonably necessary for Mariners' employees, families, associates or marketing or promotional needs. The Mariners may require that the City or the Sponsoring Organization allocate certain seats in advance to the Mariners for such purposes. Otherwise, such tickets will be provided on a best available seat basis. The Mariners may also issue press and media passes on a complimentary basis. Such complimentary tickets and passes are excluded from calculation of Gate Receipts.

8.1.6. Resident Discount. The Mariners agree that the City may offer a discounted ticket price for such Games as may be mutually agreed upon by the Mariners and the City prior to each Spring Training Season. The discounted ticket price will be limited to only Peoria residents (the "Resident Discount"). For purposes of this Agreement, "Peoria resident" is defined as a person who by display of a valid Arizona Motor Vehicle Operator's License or a City of Peoria Utility Billing statement dated within 45 days of purchase can demonstrate that they are a resident of the City of Peoria, Arizona. The City shall be responsible for administering the Resident Discount and shall indemnify and hold the Mariners harmless with respect to any claims or challenges related to the Resident Discount. The Mariners expressly agree that the following Resident Discount program is acceptable to the Mariners with no further discussion or

approval required: for approximately one-third of the Mariners' home Games (to be identified by the Mariners after receiving input from the City and prior to each Spring Training Season), no Resident Discounts will be offered or accepted without express agreement of the Mariners; for the remaining approximately two-thirds of the Mariners' home Games, a Resident Discount of \$4 per ticket may be offered by the City; for one of those discounted games, mutually agreed upon by the City and the Mariners, the City may offer a \$7 per ticket Resident Discount. The Resident Discount shall be limited to reserved seating areas. The Mariners may identify certain additional seating areas for which Resident Discounts will not apply. In choosing the games subject to the Resident Discount, the Mariners agree to consider including at least one game occurring on a Saturday or Sunday. The parties agree to review the discount levels provided in this Section periodically during the Term to determine if any changes are desirable, but no changes shall be made without the prior written consent of the Clubs and the City.

8.1.7. Promotions. The Mariners agree that the City may offer promotions of general applicability for such Games as may be agreed upon by the Mariners and the City prior to each Spring Training Season. These promotions shall consist of discounted ticket prices (the "Promotions"), and the City shall be responsible for administering any Promotion and shall indemnify and hold the Mariners harmless with respect to any claims or challenges related to the Promotions. The Mariners expressly agree that the following Promotion program is acceptable to the Mariners with no further discussion or approval required: for approximately one-third of the Mariners' home Games (to be identified by the Mariners after receiving input from the City prior to each Spring Training Season), a Promotion of \$3 per ticket may be offered by the City, provided, however, that the Mariners may identify certain seating areas for which the Promotions will not apply, such as premium seating or seats priced close to the value of the Promotion, and any such Promotion may not be combined with any other discount or promotion, including a Resident Discount. The parties agree to review the discount levels provided in this Section periodically during the Term to determine if any changes are desirable, but no changes shall be made without the prior written consent of the Clubs and the City.

8.1.8. Establishment of Surcharges. The City may impose a Complex Improvement Surcharge of \$1.00 on each Game ticket sold (the "Complex Improvement Surcharge"). The amount of the Complex Improvement Surcharge from time to time may be amended by the City and the Mariners by execution of a letter agreement signed by both parties. Proceeds from the Complex Improvement Surcharge shall be deposited into the existing Complex Improvement Account, dedicated exclusively to funding Complex Improvements, and shall be administered consistent with Section 12.4. The City may also

impose a second ticket surcharge of \$0.50 on each Game ticket sold for a reserved seat (the “Non-General Admission Surcharge”). The proceeds from the Non-General Admission Surcharge shall be deposited into the Capital Improvements Account, which shall be administered consistent with Section 12.3. Following the 2016 Spring Training Season, each surcharge will be subject to adjustment consistent with the CPI for years after 2014, with the adjustment to be applied once every three years (subject to a cap of a 15% increase for any such three-year period). If requested by the Clubs, the City shall cause the total amount of the surcharges to be disclosed as a “facilities surcharge” on all hardcopy and digital tickets for which such surcharges are imposed.

## 8.2. Concessions.

8.2.1. Selection of Concessionaire. The City shall have the right and responsibility to manage the sale of food and beverages at Games and to select the Concessionaire, with input from the Mariners on the selection criteria and the terms of the Concession Agreement. The Mariners shall have the right to approve the terms of the Concession Agreement and the prices of items to be sold by the Concessionaire, which approval shall not be unreasonably withheld.

8.2.2. Division of Concession Revenue. The City and the Mariners shall share equally all Net Concession Revenue attributable to Games, provided that, when the Padres and the Mariners play each other, the Clubs will share their half of Net Concession Revenue equally without regard to which of the Clubs is the Home Team.

8.2.3. Concession Sales at the Mariners Facilities. During the Spring Training Season, the City shall have the right and responsibility to manage the sales of food and beverages at the snack bar located within the Mariners Facilities and/or by use of portable food carts or vendors located within the Mariners Facilities. If the City conducts these sales through a non-profit-organization who retains all proceeds, the Mariners shall not be entitled to any revenues from such sales. If the City receives any portion of the revenues from such sales or permits any Person other than a non-profit organization to conduct these sales, then Net Concession Revenues from such sales will be shared equally between the City and the Mariners.

## 8.3. Novelty Sales.

8.3.1. Responsibility for Novelty Sales. The Mariners shall have the right and responsibility to manage the sale of Novelties and/or to select a Person responsible for sales of Novelties with input from the City. The Mariners shall receive a management fee of 5% of gross revenue from the sale of Novelties.

The City and the Padres shall have the right to approve the terms of any agreement with a third party seller of Novelties and the prices of items to be sold, which approval shall not unreasonably be withheld.

8.3.2. Division of Novelty Revenue. The City and the Mariners shall share equally all Net Novelty Revenue derived during Games, provided that, when the Padres and the Mariners play each other, the Clubs will share their half of Net Novelty Revenue without regard to which of the Clubs is the Home Team. For Novelty sales on days that no Games are played, 50% of Net Novelty Revenue shall go to the City and 25% shall go to each Club.

8.4. Programs. The City shall have the right and responsibility to manage the production of Programs for and sale of Programs at Games. This right and responsibility includes the right and responsibility to sell advertising for Programs, subject to any product exclusivity requirements or limitations that the Mariners may impose with reasonable notice to the City. The City may request that the Sponsoring Organization manage this responsibility. The Mariners shall have the right to approve the price of Programs, which approval shall not be unreasonably withheld. The City and the Mariners shall share equally all Net Program Revenue derived during Games, provided that when the Padres and the Mariners play each other, the Clubs will share their half of Net Program Revenue without regard to Home Team.

8.5. Stadium Advertising.

8.5.1. The City shall coordinate the sale of all advertising at the Stadium Facilities, recognizing that the Mariners and TEAM 2 may assist in the sale of such advertising. All such advertising shall comply with all applicable MLB Rules and Regulations regarding stadium advertising. All Net Stadium Advertising Revenue attributable to the Spring Training Season shall be shared by the parties as follows: 50% of Net Stadium Advertising Revenue to the City and 25% to each of the Clubs. The Mariners shall have the right to sell advertising on the two largest signage areas located on its respective side of the Stadium scoreboard (the "Scoreboard Signage"). The revenue received from the Scoreboard Signage shall be excluded from Net Stadium Advertising Revenue with the effect that the Mariners will retain 100% of such revenue, less any costs of producing and installing the Scoreboard Signage. If the Mariners wish to sell the Scoreboard Signage during a particular Spring Training Season, it shall notify the City in writing no later than November 30 of the relevant year. In the event that the Stadium scoreboard is replaced and the available signage is modified, the Mariners shall retain the right to sell signage areas on its side of the new Stadium scoreboard that are at least as large as the current signage areas. The City and the Mariners shall communicate with each other regarding potential

advertising partners and existing or proposed exclusivities, if any, in connection with each party's efforts to sell advertising within the Stadium Facilities.

8.5.2. For purposes of this Agreement, Net Stadium Advertising Revenue shall be deemed to be "attributable to the Spring Training Season" in the following circumstances:

(a) If derived from the sale of signs (whether fixed or temporary), announcements or other visual or audio displays presented during the Spring Training Season only; or

(b) If derived from the sale of signs (whether fixed or temporary), announcements or other visual or audio displays, presented at any time during the Non-Spring Training Season, to an advertiser who also purchases signs (whether fixed or temporary), announcements or other visual or audio displays during the Spring Training Season (such Revenue to be consolidated with Revenue received from advertising presented during the Spring Training Season); provided, however, that the foregoing shall not apply to revenue from advertising presented during the Non-Spring Training Season and the City shall not be obligated to share such revenue if (i) such advertising is subject to a written agreement between the City and the advertiser which separates the advertising benefits to be provided during the Spring Training Season (the "Spring Training Advertising Benefits") from those advertising benefits to be provided during the Non-Spring Training Season (the "Non-Spring Training Advertising Benefits"), (ii) such written agreement separates the advertising revenue to be allocated to the Spring Training Advertising Benefits from the advertising revenue to be allocated to the Non-Spring Training Advertising Benefits, and (iii) the advertising revenue allocation for the Spring Training Advertising Benefits is fair and reasonable in comparison to both the advertising revenue allocation for the Non-Spring Training Advertising Benefits and the fair market value of the Spring Training Advertising Benefits.

8.5.3. Subject to compliance with MLB Rules and Regulations, as applicable, the City may sell signs (whether fixed or temporary), announcements or other visual or audio displays for year-round display, or for display only during all or part of the Spring Training Season, or for display only during all or part of the Non-Spring Training Season, or in any combination of the foregoing. The advertising rates for those various periods shall be set by the City, with the reasonable approval of the Mariners and TEAM 2, the intent of the parties being that such advertising rates not artificially discourage advertisers from including the Spring Training Season within their advertising programs. Any Person who

purchases the right to display signs or other visual messages during the Spring Training Season shall have the right to purchase the on-going display of such signs or other visual messages during the Non-Spring Training Season, at the established rates.

8.5.4. The parties recognize that advertisers may elect to purchase advertising space only during the Spring Training Season, making such space available for sale by the City during the Non-Spring Training Season. Where such space remains available, the City may sell the right to display fixed and temporary signs and other visual displays, as well as audio messages, during the Non-Spring Training Season (with such display rights not extending into the Spring Training Season) to advertisers who do not also purchase signs, announcements or other visual or audio displays during the Spring Training Season. The City shall be entitled to keep all Net Stadium Advertising Revenue derived from such sales, or to allocate such Revenue among users of the Stadium or Stadium Facilities during the Non-Spring Training Season (which may or may not include the Mariners), as the City sees fit.

8.6. Parking. The City shall have the right and responsibility to manage parking at the Stadium. The City may request that the Sponsoring Organization manage this responsibility. The Mariners shall have the right to approve the price of parking at the Stadium, which approval shall not unreasonably be withheld. The City and the Mariners shall share equally all Net Parking Revenue attributable to Games, provided that, when the Padres and the Mariners play each other, the Clubs will share their half of Net Parking Revenue without regard to which of the Clubs is the Home Team. The City acknowledges a common goal of preserving the existing parking revenues and developing additional parking if and when feasible.

8.7. Broadcasting. The Mariners shall have and retain all rights relating in any way to the broadcasting of its Games via any media, and to all revenue derived from the sale of broadcast rights, broadcast advertising, or other sources of revenue relating to broadcasting of Games. The City shall have the right to charge reasonable hook-up fees for television production trucks or similar support equipment.

8.8. Accounting.

8.8.1. City's Responsibility. The City shall institute a method of accounting for the collection, calculation, and payment to the Mariners of the Mariners' appropriate share of Gate Receipts, Net Concession Revenue, Net Program Revenue, Net Stadium Advertising Revenue, and Net Parking Revenue. Except for Gate Receipts, the City shall furnish an accounting statement within 30 days following the final Game of each Spring Training Season and shall pay the Mariners' appropriate share of each of these items within 60 days following

the final Game of each Spring Training Season (the “Spring Training Settlement”). As to Gate Receipts, the City shall furnish an accounting statement and shall pay the Mariners’ appropriate share within five days after each Game.

8.8.2. The Mariners’ Responsibility. The Mariners shall institute a method of accounting for the collection, calculation, and payment to the City and the Padres of the appropriate share of Net Novelty Revenue. The Mariners shall furnish an accounting statement within 30 days following the final Game of each Spring Training Season and shall pay the City’s and the Padres’ appropriate share of Net Novelty Revenue within 60 days following the final Game in each Spring Training Season.

8.8.3. Right to Inspect. Each party may, upon reasonable notice and during business hours, examine, inspect and copy the books and records pertaining to Gate Receipts, Net Concession Revenue, Net Program Revenue, Net Stadium Advertising Revenue, Net Parking Revenue, and Net Novelty Revenue. Either party may, at its own expense, cause an audit to be performed of the other party’s pertinent books and records.

8.8.4. Games Between the Padres and the Mariners. Notwithstanding any contrary provisions of this Section 8, at any Game where the Padres play the Mariners, Gate Receipts, Net Concession Revenue, Net Program Revenue, and Net Parking Revenue which otherwise would have been paid by the City to the Home Team shall be equally divided and paid one-half to each of the Padres and the Mariners.

8.9. Subservience. For the avoidance of doubt, all sections of this Article 8 shall be subject to Section 23.21.

## **9. Non-Spring Training Season Fees and Obligations.**

9.1. Use Fee. The Mariners shall pay the City an annual use fee of \$1 for the use of the Complex. For the avoidance of doubt, the Mariners shall not be required to pay any annual use fees in 2012 or 2013.

9.2. Sharing of Related Income. Should the City and the Mariners agree to permit a third party to use any portion of the Exclusive Mariners Facilities during the Non-Spring Training Season, as permitted and limited by the provisions of Section 6, the Mariners shall receive from the City as a credit against future utility payments owing to the City a portion of any gross revenue received by the City from the third party for its use of that portion of the Exclusive Mariners Facilities. The specific allocation of the gross revenue received from the third party by the City shall be negotiated and mutually agreed upon by the Mariners and the City on a case by case basis, with both parties committed to the principle that the allocation will fairly reflect the degree to which the

third party will (a) use the Exclusive Mariners Facilities; (b) use the Non-Exclusive Facilities; and (c) cause the City to incur additional costs for maintenance, utilities or other items. Once the aggregate amount of such credit equals the Mariners' share of the current year's utility payment determined in accordance with Section 15.2, the excess amount shall be paid currently to the Mariners rather than credited against future utility payments. Any such credits remaining upon expiration or termination of this Agreement, including any extensions thereof, shall be paid to the Mariners within 30 days after such expiration or termination. As used in this Section 9.2, "gross revenue" means any and all monies paid or other value given by the third party without deduction for any costs, expenses, overhead, taxes, or offsets of any character. Credit for this share of gross revenue shall be made by the City to the Mariners within ten days of receipt of the gross revenue by the City.

9.3. City Use of Fields. Section 9.2 shall not apply to revenue received by the City for use of any or all of the four practice fields located in the cloverleaf section of the Mariners Facilities, as long as such use: (a) is not by a Major League Baseball team, Minor League team or Minor League Affiliate; and (b) is not by a third party which is also using any other portion of the Exclusive Mariners Facilities.

9.4. Sharing of Other Income Generated During the Non-Spring Training Season at the Mariners Facilities.

9.4.1. Admission and Parking Fees. Unless mutually agreed between the City and the Mariners, no admission or parking fees shall be assessed by the City or the Mariners for games, events or activities ("Activities") of the Mariners occurring at the Mariners Facilities during the Non-Spring Training Season. In the event that the City, the Mariners proposes to charge for parking, programs or admission to such Activities, then the City and the Mariners agree to meet and confer regarding the feasibility and appropriateness of such charges and the disposition of revenues from such Activities, if any. The requirements of this Section 9.4.1 shall in no way limit the ability of the City to assess charges or fees for events or games at the Complex unrelated to Mariners' Activities.

9.4.2. Concession Sales at the Mariners Facilities During the Mariners' Non-Spring Training Season Activities. During such times in the Non-Spring Training Season that the Mariners is conducting Activities at the Mariners Facilities, the City shall have the right and responsibility to manage the sales of food and beverages at the snack bar located within the Mariners Facilities and/or by use of portable food carts or vendors located within the Mariners Facilities. If the City conducts these sales through a non-profit organization and said non-profit organization retains all proceeds, the Mariners shall not be entitled to any revenues from said sales. If the City receives any portion of the revenues from such sales or permits other than a non-profit organization to conduct these sales,

then Net Concession Revenues from such sales will be shared such that the City receives 50% of Net Concession Revenues and the Mariners receives 50%. The requirements of this Section 9.4.2 shall in no way limit the ability of the City to conduct concession sales, either itself or through a non-profit organization of the City's choosing, for games, events or activities at the Complex unrelated to the Mariners' Activities, and all such unrelated sales, whether by City or a non-profit organization, are exempt from the requirement regarding sharing such revenues with the Mariners.

9.4.3. Novelty Sales at the Mariners Facilities during the Non-Spring Training Season. In the event that either the City or the Mariners proposes to sell Novelties at the Mariners Facilities during the Non-Spring Training Season, the following terms shall apply:

(a) For sales at the Exclusive Mariners Facilities, the Mariners shall have the exclusive right to conduct such sales itself or to select a Person to conduct such sales, if any. The City and the Mariners shall share equally Net Novelty Revenue from such sales at the Exclusive Mariners Facilities.

(b) For sales at the Non-Exclusive Facilities of professional baseball related Novelties only, the Mariners shall have the right to approve the Person selected by the City to conduct such sales including the selection criteria, the terms of any agreement for such Novelty sales, and the prices of items to be sold, which approval shall not unreasonably be withheld. The parties shall share the Net Novelty Revenue from sales of professional baseball-related Novelty items sold during the Non-Spring Training Season at the Non-Exclusive Facilities so that the City shall receive 50% of Net Novelty Revenue and each Club shall receive 25%.

(c) For sales during the Non-Spring Training Season occurring at the Non-Exclusive Facilities of Novelties unrelated to professional baseball, the City shall have the right to conduct such sales itself or to select the Person to conduct such sales without any input from the Mariners. The City is not required to share any of the proceeds of such sales with the Mariners.

9.4.4. Advertising at the Mariners Facilities. Unless mutually agreed between the City and the Mariners, no fees or charges shall be assessed by the City or the Mariners for advertising on the Mariners Facilities during the Non-Spring Training Season Period. In the event that the City or the Mariners proposes to charge for advertising to be located on the Mariners Facilities, then the City and the Mariners agree to meet and confer regarding the feasibility and

appropriateness of such advertising and the disposition of revenues from such advertising, if any.

9.5. Sharing of Other Income Generated by the Mariners During the Non-Spring Training Season at the Stadium Facilities.

9.5.1. Stadium Advertising. The City shall be responsible for the sale of all advertising at the Stadium and Stadium Facilities for the Non-Spring Training Season, subject to the provisions of Section 8.5 above. The City shall be entitled to keep all Net Stadium Advertising Revenue derived from such sales which is not attributable to the Spring Training Season, or to allocate such Revenue among users of the Stadium or Stadium Facilities during the Non-Spring Training Season (which may or may not include the Mariners), as the City sees fit, as set forth in Section 8.5.4 above.

9.5.2. Other Stadium Income. In the event that the City or the Mariners proposes to stage games, events or activities involving the Mariners or its Minor League Affiliates within the Stadium during the Non-Spring Training Season, the City and the Mariners agree to meet and confer regarding the feasibility and appropriateness of admission fees or charges; Parking Lot charges; sales of programs, concessions and/or Novelties; and additional sales of advertising and the disposition of revenues from these specific sales, if any. Unless mutually agreed by the City or the Mariners, neither party shall charge any fees for admission or parking at proposed games, events or activities at the Stadium Facilities during the Non-Spring Training Season. The requirements of this Section 9.5 shall in no way limit the ability of the City to assess charges or fees for events, games or activities at the Stadium Facilities unrelated to the Mariners' Activities.

**10. The Mariners Obligations.**

10.1. Stadium Home Games. Subject to MLB Rules and Regulations, the Mariners shall utilize the Stadium as its "home field" for the Spring Training Season Games of the Mariners throughout the Term of this Agreement; provided, however, that this obligation extends only until the Mariners break camp approximately four to five days prior to opening day of the Major League Baseball championship season and in no way limits the Mariners' right and ability to host games at other locations after breaking camp.

10.2. Game Day Operations. Without limiting the City's obligations under this Agreement, the Mariners shall provide the following customary Game Day Operations for each Game played by the Mariners in the Stadium during the Spring Training Season, at no cost to the City:

10.2.1. Game Supplies. Bats, balls and similar disposable supplies for the play of the Game.

10.2.2. Umpires. All umpires required to officiate at the Game.

10.3. Spring Training Program. All programs sold at the Games shall include a one-half page advertisement acknowledging the role of the City in providing and operating the Complex.

10.4. Spring Training Broadcasts. The Mariners' regular play-by-play announcers shall use reasonable efforts to promote the tourism attributes and attractions of the City on all radio broadcasts of the Club's Spring Training Season Games.

10.5. Championship Season Promotion. The Mariners shall make reasonable good faith efforts to promote the City and the next year's Spring Training activities. Such promotion may be through the Mariners' publications, game programs, media advertising, or otherwise, subject to reasonable availability.

10.6. Clubhouse Equipment. The Mariners shall be responsible for installing in its Clubhouse any furniture, photocopying machines, fax machines and other such office equipment, and the supplies for operating the same, for exclusive use by the Mariners.

10.7. Clubhouse Maintenance. The Mariners shall keep those portions of its Clubhouse over which it has exclusive use in neat, clean, safe and good order, condition and repair, consistent with the general industry standard, subject to reasonable wear and tear. In furtherance thereof, the Mariners shall provide daily janitorial services to those portions of its Clubhouse for each day of its exclusive use by the Mariners.

10.8. Willful Damage. The Mariners shall be responsible for any maintenance, repair or restoration related to damage occurring to property as a result of any willful act of misconduct, misuse or abuse by the Mariners, any Affiliate of the Mariners, any of its officers, agents, employees or contractors, and any invitees of the Mariners, including opposing teams.

10.9. Compliance with Law. The Mariners shall conduct its business in a lawful manner and shall not use or permit the use of the Complex in any manner that will tend to create waste or a nuisance.

10.10. Security. The Mariners shall provide and pay for security in its Clubhouse. During the Non-Spring Training Season, the Mariners also shall provide and pay for security in its Clubhouse and Parking Lot at its Facilities.

## **11. City Obligations.**

11.1. Condition of Premises. On the commencement of the Term of this Agreement, the City shall make the Complex available for the Mariners in an “as-is” condition. Upon completion of Phase I, the City shall make the Complex available for the Mariners’ use in a like-new, clean and Finally Completed condition. The City warrants to the Mariners that the plumbing, lighting, air conditioning, heating and other systems in the Complex shall at all times be in good operating condition. If it is determined that this warranty has been violated, then it shall be the obligation of the City, after receipt of written notice from the Mariners setting forth with specificity the nature of the violation, to correct the violation promptly, at the City’s sole expense.

11.2. Compliance with Law. The City warrants to the Mariners that the Complex, in the state existing on the date that the Term of this Agreement commences, does not violate any Legal Requirements in effect on such date. In addition, but without limiting the Mariners’ obligations under Section 10 of this Agreement, the City shall, at the City’s expense, promptly comply with all applicable Legal Requirements relating to the physical condition of the Complex, now in effect or which may hereafter come into effect during the Term, whether or not they reflect a change in policy from those now existing. If it is determined that this Section has been violated, then it shall be the obligation of the City, after receipt of written notice from the Mariners setting forth with specificity the nature of the violation, to correct the violation promptly, at the City’s sole expense.

11.3. Management of Complex. The City shall be responsible for managing the operation of the Complex. To carry out this responsibility and ensure appropriate communication with the Mariners, the City will designate a representative of the City to be responsible for overall coordination of events and operations at the Complex. The City’s representative shall be responsible for the overall management of the Complex, promotion of Games and other events at the Complex, and maximization of potential revenue for the City and the Mariners under this Agreement. Included among these responsibilities are the overall responsibility to manage ticket sales and distribution, Stadium advertising sales, Program production and sales, concessions, parking, and other operational, logistical, and administrative requirements of the Complex; provided, that nothing in this overall management responsibility shall prevent the City from subcontracting specific operations, although the City must obtain the Mariners’ consent prior to subcontracting any operations, with such consent not to be unreasonably withheld.

### **11.4. Maintenance of Complex.**

11.4.1. The City shall keep the Complex, including the Stadium, Clubhouse (except to the extent of the Mariners’ responsibility therefore under

Section 10.7), Parking Lots, practice fields, batting cages and tunnels, pitching mounds, landscaped areas and all other Improvements within the Complex, in neat, clean, safe and good order, condition and repair, as a high-quality Major League Baseball Spring Training practice and playing facility, and in accordance with Major League Baseball standards, without regard to whether the maintenance, repair or restoration required to do so is interior or exterior, structural or non-structural, routine or extraordinary.

11.4.2. The City shall bear all O, M & R Costs that may be incurred in connection with the performance of its obligations under Section 11.4.1, except as otherwise provided in Section 11.4.3 below.

11.4.3. The City shall not be responsible for any maintenance, repair or restoration related to damage occurring to property as a result of any willful act of misconduct, misuse or abuse by the Mariners, any Affiliate of the Mariners, or any of their respective officers, agents, employees or contractors.

11.4.4. The City shall inspect the Complex as often as reasonably necessary to determine its compliance with the provisions of this Section.

11.5. Field Maintenance. The parties acknowledge that the condition of the Fields is of the utmost importance for the operations of the Mariners. Maintaining it will require a high degree of expertise and care. Toward that end, the parties agree as follows:

11.5.1. The City shall provide and maintain all necessary Field equipment, such as bases, bullpen home plates, pitching rubbers, bullpen pitching rubbers, outfield fences, batting cages, protective screening and similar items for the play of each Game, but excluding bats, balls and similar supplies. The City shall also provide and maintain protective padding in the Stadium.

11.5.2. The City shall maintain the Fields, at the City's expense, strictly in accordance with the standards set forth in Exhibit C. In connection with its fulfillment of this responsibility, the City shall provide the services of an experienced groundskeeper who must have specific experience in the care and maintenance of baseball fields at the professional level, responsible for overall management of the maintenance of the fields. The City shall provide the Mariners and TEAM 2 an opportunity for reasonable input regarding the selection criteria and performance of the groundskeeper, and shall give good faith consideration to such input. This groundskeeper shall be reasonably available at the Site as needed throughout the year, and on-site at the Complex on a full time basis during the 30 day period immediately prior to the first scheduled Game of

each Spring Training Season during the Term of this Agreement and throughout the Spring Training Season itself.

11.5.3. If the Mariners determines in good faith that the Fields are not being properly maintained, the Mariners shall give written notice of that determination to the City. If the City fails to initiate actions to correct the problem within ten days after its receipt of the Club's notice, then the Mariners may perform such maintenance to the Fields as it considers necessary to meet minimum standards for a Major League Baseball facility. As soon thereafter as practicable, Expedited ADR shall be convened to determine whether the Fields were being properly maintained by the City:

(a) If it is determined by Expedited ADR that the Fields were being properly maintained by the City, then the Mariners shall not be entitled to any reimbursement for any sums expended by it to effect what it considered to be proper maintenance of the Fields.

(b) If it is determined by Expedited ADR that the Fields were not being properly maintained by the City, then the City, at its election, shall either (i) immediately reimburse the Mariners for all sums expended by it to effect proper maintenance of the Fields, plus interest thereon at the Default Rate, or (ii) cause all sums next-to-become-due to the City under this Agreement to be paid to the Mariners instead of the City, until such time as the Mariners has been reimbursed for all sums expended by it to effect proper maintenance of the Fields, plus interest thereon at the Default Rate (or until no further sums remain due to the City, at which time the City shall reimburse the Mariners forthwith upon request).

11.6. Security. The City shall provide and pay for a level of security and police protection in and around the Stadium Facilities that is commensurate with other spring training facilities in the Cactus League. During the Spring Training Season, the City also shall provide and pay for a level of security and police protection in and around the Mariners Facilities, excluding within the Clubhouse, that is commensurate with other spring training facilities in the Cactus League. In the event that the Mariners desire a higher level of security or police protection, the City and the Mariners shall meet to discuss an appropriate sharing of the relevant incremental costs.

11.7. Game Day Operations. Without limiting the Mariners' obligations under Section 10.1 of this Agreement, the City shall provide the following customary Game Day Operations for each Game played by the Mariners in the Stadium during the Spring Training Season, at no cost to the Mariners:

11.7.1. Parking and Traffic Control. The City shall either provide, or designate an entity to provide, parking and traffic control, and the necessary personnel and equipment therefor, in and around the Complex on the days of Games.

11.7.2. Public Address. The City shall provide one public address announcer for each Game.

11.7.3. Scoreboard. The City shall provide one trained scoreboard operator for each Game.

11.7.4. Ticket Collection. The City shall provide sufficient personnel to collect tickets at each Game.

11.7.5. Ushering. The City shall either provide ushering, or designate an entity to provide ushering, in the Stadium on the days of Games.

11.7.6. Medical Support. The City shall either provide, or designate an entity to provide, medical support personnel in the Stadium for each Game.

11.7.7. Game Day Security. In addition to the City's obligations under Section 11.6 of this Agreement, the City shall provide and pay for on-site security and police protection in and around the Complex on the day of Games.

11.7.8. Stand-by Personnel. The City shall arrange to have electricians, plumbing and maintenance personnel, and such other personnel as are customarily made available at other Major League Baseball spring training facilities in the Cactus League, available on a stand-by basis on the days of Games.

11.7.9. Post-Game Cleanup. The City shall be responsible for all cleanup necessary to keep the Stadium Facilities neat, orderly, sanitary and odor-free (including, but not limited to, sweeping, power-washing, refuse disposal and other detailed cleaning).

11.7.10. Non-Smoking. The Stadium shall be designated "non-smoking" except for an area located in the outer part of the Stadium to be mutually agreed upon by the City and the Mariners.

11.8. Defaults; Emergencies. If the City defaults in the performance of any of its obligations under this Section 11, the Mariners shall provide written notice of such default to the City and shall afford the City such grace period to cure the default as may be provided in this Agreement. Notwithstanding the foregoing, however, and whether or not the City is in default, if the Mariners in good faith determines that any obligation to

operate or maintain the Complex imposed upon the City by this Agreement must be performed on an emergency basis (that is, that it must be performed prior to the expiration of the applicable grace period, in order to prevent an imminent danger to health or safety), then the following provisions shall govern:

11.8.1. Notice Practicable. If practicable, the Mariners shall give written notice to the City specifying the nature of the emergency, and the date and time by which the Mariners considers it necessary to commence work to remedy the matter. Following its receipt of such a notice:

(a) The City may commence such work prior to the date and time so specified by the Mariners and prosecute the same diligently to completion; if the City does so, the Mariners shall not undertake such work itself.

(b) If, however, the City disputes whether the requested work is an emergency, or whether it is required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility, the City shall so inform the Mariners in writing prior to the date and time specified by the Mariners in its notice. If the City gives timely notice, and if practicable, the dispute shall be submitted to Expedited ADR prior to the date and time specified by the Mariners in its notice.

(c) If (i) the City does not commence such work prior to the date and time specified by the Mariners and prosecute the same diligently to completion, or (ii) the City fails to give timely notice of a dispute, or (iii) it is not practicable to submit the matter to Expedited ADR prior to the date and time specified by the Mariners in its notice, then in either such event, the Mariners may commence the work necessary to remedy the matter on an emergency basis and prosecute the same diligently to completion.

11.8.2. Notice Not Practicable. If the nature of the emergency makes notice impracticable, then the Mariners may commence work to remedy the matter on an emergency basis and prosecute the same diligently to completion.

11.8.3. Expedited ADR. If the Mariners commences work on an emergency basis under this Section 11.8, then as soon thereafter as practicable, Expedited ADR shall be convened to determine whether the Mariners' work was reasonably required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility:

(a) If it is determined by Expedited ADR that the work was not required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility, then the Mariners shall not be entitled to any reimbursement for any sums expended by the Mariners on the work it commenced on an emergency basis.

(b) If it is determined by Expedited ADR that the work was required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility, then the City, at its election, shall either (i) immediately reimburse the Mariners for all sums expended by it on the work it commenced on an emergency basis, plus interest thereon at the Default Rate, or (ii) cause all sums next-to-become due to the City under this Agreement to be paid to the Mariners instead of the City, until such time as the Mariners has been reimbursed for all sums expended by it on the work it commenced on an emergency basis, without interest (or until no further sums remain due to the City, at which time the City shall reimburse the Mariners forthwith upon request).

## **12. Reserve Accounts.**

12.1. In General. In order to provide sources of funds for the performance of the City's obligations under this Agreement in whole or in part, but not as a limitation on such obligations, the City shall establish certain reserve accounts as set forth in this Section 12.

### 12.2. O, M & R Reserve Account.

12.2.1. The City shall maintain the previously-established "O, M & R Reserve Account" to provide assurance to the Mariners that, in the event revenues generated to the City are not sufficient to fund the O, M & R Costs of the Complex, this additional source of funding will also be available.

12.2.2. During each year of the Term, if the balance in the O, M & R Reserve Account falls below \$100,000.00 the City shall appropriate within its budget an amount sufficient to return the balance of the O, M & R Reserve Account to \$100,000.00. If the balance in the O, M & R Reserve Account exceeds \$100,000.00 at any fiscal year-end, the City shall not be obligated to budget any additional amount to the beginning balance for the following fiscal year.

12.2.3. Interest on amounts in the O, M & R Reserve Account shall be credited to the O, M & R Reserve Account.

12.2.4. In the event revenues generated to the City from the Complex are not sufficient to fund the City's operation and maintenance of the Complex, the City may withdraw funds from the O, M & R Reserve Account to provide such funding.

12.3. Capital Improvement Account; Non-General Admission Surcharge.

12.3.1. The City shall create a "Capital Improvement Account" to fund certain New Capital Improvements or to replace certain Existing Capital Improvements. The Capital Improvement Account shall be funded by the Non-General Admission Surcharge; interest accumulating pursuant to Section 12.3.2.

12.3.2. Interest on amounts in the Capital Improvement Account shall be credited to the Capital Improvement Account.

12.3.3. The City may use the funds in the Capital Improvement Account at its discretion.

(a) Not less than 30 days prior to the City's use of any Capital Improvement Account funds for a project, the City shall furnish to the Mariners a written description of the project for the purpose of allowing the Mariners to assess (x) whether the project is properly classified as a Capital Improvement, and (y) whether the proposed additional Capital Improvements would materially interfere with the Mariners' use and enjoyment of the Complex. If the Mariners disputes whether a project constitutes a Capital Improvement, or believes in good faith that a proposed project would materially interfere with the Mariners' use and enjoyment of the Complex, then the Mariners shall notify the City within ten business days following the Mariners' receipt of notification of the project. If the Mariners gives timely notice, the dispute shall be submitted to Expedited ADR.

(b) The Mariners may at any time request that the City include a Capital Improvement Account proposed project by providing written notice of such request to the City not later than the conclusion of the Spring Training Season of each year, describing in reasonable detail the work to be performed. The City may elect to fund such project in the following year.

12.3.4. Incidental expenditures of the City directly related to Capital Improvements, including reasonable design, engineering, financial, administrative and legal expenditures, may be paid from the Capital Improvement Account.

12.4. Complex Improvement Account Procedure; Complex Improvement Surcharge.

12.4.1. Administration of Funds. The proceeds of the Complex Improvement Surcharge shall be held in trust by the City, in an interest-bearing account (the "Complex Improvement Account"), for the exclusive purpose of funding Complex Improvements and shall not be used for Capital Improvements required to be funded by the Capital Improvement Account or for O,M&R Costs required to be funded by the O,M&R Reserve Account unless expressly agreed in writing by the City, the Mariners and TEAM 2. Interest earned on amounts in the Complex Improvement Account shall be credited to the Complex Improvement Account. Within 30 days following the end of the Spring Training Season, the City shall provide the Mariners with an accounting of the Complex Improvement Surcharge collected that Spring Training Season, and the cumulative amount available in the Complex Improvement Account.

12.4.2. Approval and Funding of Complex Improvements. During each Spring Training Season, and at any other time as mutually agreeable, the Padres, the Mariners and the City shall meet to review the desirability of planning any Complex Improvements. Any of the Padres, the Mariners or the City shall be entitled to propose Complex Improvements, but no expenditure from the Complex Improvement Account shall be made without a letter agreement signed by the City, the Padres, and the Mariners, stating with specificity precisely the nature of the work to be done, who will manage the work, approval rights on budget and design of the non-managing party, and the amount authorized to be spent from the Complex Improvement Account.

12.4.3. Alternative Dispute Resolution. When the parties meet to review the desirability of planning proposed Complex Improvements, the parties should make a good faith effort to attempt to agree on Complex Improvements to be made. If any party believes that another party is not acting in good faith, has notified the other party of that belief, and has been unable to resolve the dispute, then the matter may be submitted to Expedited ADR for a resolution of whether the proposed Complex Improvements are consistent with the intent and purposes of this Agreement and the disapproving party is in breach of its obligation to consider such proposals in good faith. If the duly appointed arbitration panel determines that both of these conditions are met, it shall be empowered to direct that the proposed Complex Improvement proceed on such terms and conditions as it deems reasonable and appropriate; provided, however that the arbitration panel shall have no authority to approve any proposed Complex Improvement that the City is required to fund from either the O,M&R Reserve Account or the Capital Improvement Account.

12.4.4. Excess Funds. To the extent that funds in the Complex Improvement Account remain unspent at the end of the Term, they shall be divided between the City and the Mariners as if they were considered to be included within the definition of Gate Receipts.

12.4.5. Effect. Complex Improvement Surcharges authorized by the parties and collected by the City prior to the date hereof, to the extent that they have not been spent on mutually agreed projects prior to the date hereof, shall be placed in the Complex Improvement Account and treated as Complex Improvement Surcharges collected pursuant hereto.

12.4.6. The City expressly affirms its intent to expand the Stadium to approximately 10,000 fixed seats or some other mutually agreeable size at such time as this expansion may be economically justified. In furtherance of this general objective, the City and the Mariners will review the issue of Stadium expansion in good faith each year as part of the annual Capital Improvement budget process. This Section 12.4.6 is intended to express a general understanding between the Mariners and the City that each will move forward in good faith when Stadium expansion is economically justified. This Section 12.4.6 does not create a binding obligation to proceed with expansion in the absence of appropriate financing sources.

12.5. Future Improvements Budget. The City agrees to use its best efforts to maximize potential AZSTA funding, or other similar funding sources, for future Complex Improvements beyond those contemplated elsewhere herein (the "Future Improvements"). The City agrees to provide or cause to be provided an additional \$12,000,000 ("Future Improvements Budget") for such additional Complex improvements to be completed no later than the start of 2027 Spring Training. The City will make such funds available for the Future Improvements at the rate of \$2,000,000 per year from 2021 through 2026. The first \$6,000,000 of the Future Improvements Budget shall go toward additional improvements to the Padres Facilities and the Mariners Facilities, as determined by each Club, with half of this amount budgeted to each Club. The remainder of the Future Improvements Budget shall go toward additional mutually agreed upon (among the City, the Padres and the Mariners) improvements to the Stadium, provided that all approval rights over the design of such improvements shall be reserved to the Clubs. If the promised Future Improvements Budget has not been made available for completion of work prior to the 2027 Spring Training, the Mariners may terminate this Agreement pursuant to Section 3.3.2. See also Section 7.6 of the Sports Complex Improvements Agreement.

### **13. Alterations and Additions.**

13.1. Minor Improvements. The Mariners may make “minor improvements” to the Complex without prior approval. “Minor improvements” shall mean any work, installation, construction, repair or the like which does not require a permit from any federal, state or local governmental agency; provided, however, that any such minor improvements shall (a) be solely for purposes permitted by this Agreement, and (b) shall not be commenced unless and until the Mariners, at its expense, provides adequate security to the City for any such work, to the extent required by A.R.S. § 34-221 et seq., as it may be amended.

13.2. All Other Improvements. Except for the “minor improvements” described in Section 13.1, the Mariners shall not construct any improvements on or otherwise alter, change or improve any part of the Complex, without the prior written consent of the City, not to be unreasonably withheld but which may be conditioned upon such terms and conditions as the City may reasonably deem necessary (including, but not limited to, a requirement that the Mariners, at its expense, provide payment and performance bonds to the City for any such work, to the extent required by A.R.S. § 34-221 et seq., as it may be amended). Requests by the Mariners to construct any such improvements on or otherwise to alter, change or improve any part of the Complex shall be presented to the City in written form. If the City gives its consent to the Mariners’ undertaking such work, the consent shall be deemed conditioned upon the Mariners’ acquiring a permit to do so from applicable governmental agencies, furnishing a copy thereof to the City prior to the commencement of the work, and complying with all conditions of said permit in a prompt and expeditious manner.

13.3. Ownership of Such Improvements. All improvements, alterations or other changes made by the Mariners to any part of the Complex pursuant to this Agreement, other than that which is so affixed to the Complex that it cannot be removed without material damage to it, shall remain the personal property or equipment of the Mariners and may be removed by the Mariners upon expiration or termination of this Agreement.

#### **14. Taxes.**

14.1. In General. The City shall pay all real estate, personal property and other taxes and assessments, if any, relating to the Complex; provided, however, that the City shall have no obligation, other than as provided in Section 14.2, to pay any personal property tax relating to the Mariners’ equipment, personal property and fixtures purchased and installed by the Mariners at the Complex.

14.2. No Possessory Interest. The parties contemplate that no possessory interest or similar tax will be imposed upon the Mariners by reason of this Agreement by any taxing authority during the Term of this Agreement, because, among other reasons, the Mariners does not have exclusive and continuous use and control of the Complex. If any such tax is imposed upon the Mariners by any taxing authority during the Term of

this Agreement, then upon payment thereof by the Mariners, all sums next-to-become-due to the City under this Agreement shall be paid to the Mariners instead of the City, until such time as the Mariners has been reimbursed for all such taxes paid (or until no further sums remain due to the City, at which time the City shall reimburse the Mariners forthwith upon request). If any possessory interest or similar tax is imposed upon the Mariners by any taxing authority during the Term of this Agreement, the Mariners shall reasonably cooperate with the City in any effort to rescind or reduce it.

14.3. Ticket Sales and Other Taxes. If the City increases the rate of any tax on any revenue source in which the Mariners shares under the terms of this Agreement at any time after the date of this Agreement, or if the City imposes any new tax on the sale of tickets or on any other revenue source in which the Mariners share under the terms of this Agreement that is not in effect on the date of this Agreement, then all sums next-to-become-due to the City under this Agreement shall be paid to the Mariners instead of the City, until such time as the Mariners has received payments in the same amount as it would have received, had taxes not been so increased or imposed by the City (or until no further sums remain due to the City, at which time the City shall pay such amount to the Mariners forthwith upon request). The City shall make reasonable efforts to prevent any such increases or new taxes from being imposed by other governmental agencies.

14.4. Taxes Defined. As used in this Section 14, the term “tax” or “taxes” shall include any form of taxes, fees, levies, charges or assessments, general, special, ordinary or extraordinary (irrespective of the nature thereof, including without limitation, any amount taxed, levied, charged or assessed, based on the fact of a transaction or on a possessory right or interest), and any license fee, rental or other possessory tax, improvement bond or bonds, levy or other form of tax (other than inheritance, personal income or estate taxes) imposed by any authority having the direct or indirect power to tax, including, without limitation, any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, or any other governmental entity against (a) the Complex or any portion thereof, (b) any legal or equitable possessory or other interest of the Mariners or any Affiliate of the Mariners in the Complex or in any portion thereof, (c) the Mariners’ or any Affiliate of the Mariners’ right to revenues or other income therefrom, or (d) the Mariners’ or any Affiliate of the Mariners’ business conducted at the Complex.

## **15. Utilities.**

15.1. Services Provided by City. The City will furnish the following utility services for the occupied portion of the Complex:

15.1.1. Air conditioning (heating or cooling as required by the seasons), in temperatures and amounts which are reasonably required for

comfortable occupancy under the Mariners' business operations, including evening, weekend and holiday operations.

15.1.2. Water for lavatory, shower and toilet purposes, cold water for drinking and hot water for lavatory purposes, all at points of supply provided for in the Plans.

15.1.3. Electrical service and lighting for the Complex.

15.1.4. Any hook-up or meter installation charges to provide specially or exclusively-metered water, gas, heat, light, electrical power, or other utilities to the Clubhouses.

15.2. Utility Charges. The City shall pay for all water, gas, heat, light, electrical power, and other utilities supplied to the Complex, including but not limited to field water, sewer and garbage pickup costs, except as follows:

15.2.1. The Mariners shall pay for up to \$90,000 (the "Utility Cap") in 2014 for all water, gas, heat, light, electrical power, and other utilities incurred by the Mariners at its Clubhouse, with such costs to be deducted from the Mariners' Spring Training Settlement. In each year after 2014, the Utility Cap will be adjusted by the CPI on the later of January 31 of the relevant year or the date the new annual CPI information is released by the U.S. Bureau of Labor Statistics. The City shall be responsible during each year for any Clubhouse utility costs over the Utility Cap. For the avoidance of doubt, the Mariners shall not be required to pay any Clubhouse utility costs in 2012 or 2013.

15.2.2. In addition, the Mariners shall pay for telephone, cable television, fax and other communication usage charges incurred by the Club at its Clubhouse.

## **16. Insurance.**

### 16.1. Liability Insurance.

16.1.1. By the Mariners. The Mariners shall obtain and keep in force during the Term of this Agreement a policy of Commercial General Liability insurance protecting the Mariners and the City (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Complex and all areas appurtenant to it in connection with the operations of the Mariners. Such insurance shall be on an occurrence basis, providing single limit coverage in an amount not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate. A certificate of insurance shall be furnished by the

Mariners to the City each year at least 30 days prior to the opening of the applicable Spring Training Season.

16.1.2. By City. The City shall also obtain and keep in force during the Term of this Agreement, or may provide through self-insurance by a duly created municipal insurance trust authority created in accordance with state law, a policy of Commercial General Liability insurance protecting the City and the Mariners and each of their subsidiaries or affiliated entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Mariners, and their directors, officers and employees (as an additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Complex and all areas appurtenant to it. Such insurance shall be on an occurrence basis, providing single limit coverage in an amount not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate, with deductibles not exceeding \$25,000 per occurrence. A certificate of insurance shall be furnished by the City to the Mariners each year at least 30 days prior to the opening of the applicable Spring Training Season.

16.2. Workers' Compensation Insurance.

16.2.1. Both parties shall maintain Workers' Compensation in compliance with state statutory laws, including Employers' Liability with minimum limits of:

\$1,000,000 Each Accident;

\$1,000,000 Disease - Each Employee;

\$1,000,000 Disease - Policy Limit.

16.3. Automobile Liability Insurance.

16.3.1. Both parties shall maintain Automobile Liability Insurance, covering owned, non-owned, leased or hired automobiles, with a minimum combined single limit of:

\$1,000,000 Each Accident.

16.4. Property Insurance.

16.4.1. By City. The City shall obtain and keep the following policies of insurance in force during the Term of this Agreement, or may provide the

same through self-insurance by a duly created municipal insurance trust authority created in accordance with state law:

(a) Property insurance for the full replacement value of the Complex (including all improvements and personal property), with deductibles not exceeding \$25,000 per occurrence, protecting the City, the Mariners (as a loss payee) against loss by "all risk" perils, including but not limited to fire, extended coverage, windstorm, hurricane, vandalism, malicious mischief and earthquake. Such insurance is to contain a replacement cost endorsement, and endorsements eliminating any coinsurance provisions.

(b) For any work of construction conducted on the Site by or at the direction of the City, builder's risk insurance, protecting the City and the Mariners (as a loss payee) at any time that construction is in progress, with such limits, form, endorsements and coverages as are available and as are reasonably required by the Mariners.

16.5. Policies. All insurance policies obtained pursuant to this Section 16 shall be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to both parties with an A.M. Best rating of A- VIII or better. All liability insurance policies must contain Cross Liability Endorsements, or their equivalents. The General Liability policy shall include no third-party-over action exclusions or similar endorsements or limitations. At the City's election, all or a portion of the City's insurance may be provided by self-insurance. Upon commencement of the Term, each party shall furnish to the other party a certificate of insurance and a certified copy of all insurance policies required by this Section. Renewal policies shall be obtained in advance of termination of each policy, and renewal certificates shall be delivered by each party to the other party (together with certified copies of the applicable policy if requested) prior to termination (together with evidence of payment of all insurance premiums if requested). Each party shall provide the other with 30 days written notice of cancellation of the any of the insurance policies required herein. The named insured's liability insurance shall be primary and non-contributory with any insurance maintained by the additional insured for claims arising in connection with the Named Insured's operations.

16.6. Self-Insurance. If the City elects to self-insure, the City shall furnish the Mariners with (a) a certification that the City is prepared to expend such funds as may be necessary to meet the requirements of this Section 16 and that City is duly authorized to self-insure for such purposes; and (b) an opinion of counsel that the City's obligation to expend such funds is valid, binding and enforceable against the City.

16.7. Remedies. If either party fails to obtain, keep in force or provide evidence of any of the insurance policies or insurance coverage required by this Section 16, the other party may give written notice to the defaulting party, and the defaulting party shall have until the earlier of (a) five days after its receipt of such notice, or (b) regardless of whether notice shall have been given, one (1) day before the date the required insurance will lapse, to cure the default. If the default is not cured with such period, then the other party shall have the remedies set forth in Sections 21 or 22 below.

16.8. Waiver of Subrogation. Each party hereby releases and relieves the other party, and waives its entire right of recovery against the other party, for direct or consequential loss or damage arising out of or incident to the perils covered by any property insurance carried by the other party, whether due to the negligence of the released party or its agents, employees, contractors or invitees. If necessary, all property insurance policies required by this Agreement shall be endorsed to so provide.

## **17. Indemnification.**

**17.1. By the Mariners.** The Mariners agrees to and will at all times defend, indemnify, save and hold the City, its elected officials, officers, agents and employees harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs, including reasonable attorney's fees at trial or appellate level, and all court costs, arising out of:

17.1.1. Injury to or death of persons (including personnel or employees of the City or the Mariners), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of any willful and wanton or negligent act or omission of the Mariners or any Affiliate of the Mariners or any of their respective agents, officers, servants, employees, contractors or subcontractors.

17.1.2. Injury, death or damage with respect to any spectator or other invitees (excluding professional baseball players, coaches, umpires and managers) directly resulting from the course of play during any of the Games, even if the acts or omissions giving rise to such injury, death or damage are not willful, wanton or negligent.

17.1.3. Any breach or default in the performance of any obligation on the Mariners' part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of the Mariners shall not extend to liabilities caused by any willful, wanton, or negligent act or omission of the City or any of its agents, officers, servants, employees, contractors or subcontractors. In the event any action or proceeding shall be brought against the City by reason of any claim for which the City is entitled to indemnification hereunder, the Mariners, upon notice from the City,

shall defend the same at the expense of the Mariners, with counsel reasonably satisfactory to the City, which consent shall not be unreasonably withheld.

17.2. By City. The City agrees to and will at all times defend, indemnify save and hold the Mariners, and their respective employees, agents, officers, directors, shareholders, partners, successors and assigns, harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs, including reasonable attorneys' fees at trial or appellate level, and all court costs, arising out of:

17.2.1. Injury to or death of persons (including personnel or employees of the City or the Mariners), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of or in connection with any willful, wanton or negligent act or omission of the City or any agent, officer, servant, employee, contractor or subcontractor of the City.

17.2.2. Any act or omission (whether or not such act or omission is willful, wanton or negligent) occurring or failing to occur at the Complex at a time when the Mariners or any Affiliate of the Mariners or any of their respective agents, officers, servants, employees, contractors or subcontractors are (a) not present on any part of the Complex, or (b) not in control of that portion of the Complex at which the alleged act or omission occurred.

17.2.3. Any liability tied to the real property of the Site (whether or not such liability arises out of, or in connection with, any willful, wanton or negligent act or omission), including but not limited to environmental liability.

17.2.4. Any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of the City shall not extend to liabilities caused by any willful, wanton, or negligent act or omission of the Mariners or any Affiliate of the Mariners or any of their respective agents, officers, servants, employees, contractors or subcontractors. In the event any action or proceeding shall be brought against the Mariners or any Affiliate of the Mariners by reason of any claim for which Mariners or any of its Affiliates is entitled to indemnification hereunder, the City, upon notice from Mariners, shall defend the same at the expense of the City, with counsel reasonably satisfactory to Mariners, which consent shall not be unreasonably withheld.

## **18. Damage or Destruction.**

18.1. Decision To Rebuild. If any part of the Complex is damaged or destroyed by fire, flood or other casualty, but to such an extent that the Complex remains

substantially suitable for the Mariners' activities at the Complex, this Agreement shall continue in full force and effect, and the City shall repair and rebuild the Complex with reasonable diligence to the condition immediately before such loss. In the event that such damage or destruction is of such an extent as would substantially and adversely affect the Mariners' activities at the Complex and repairing and rebuilding the Complex would result or does result in the Mariners' being denied effective use of the Complex for more than one complete Spring Training Season, then the Mariners may terminate this Agreement by giving written notice thereof to the City within 60 days after the date of damage or destruction. If such damage or destruction is total or of such extent as would substantially and adversely affect the Mariners' activities at the Complex and insurance proceeds are not available to the City, then the City may elect not to repair or rebuild the Complex by giving written notice thereof to the Mariners within 60 days after the date of the damage or destruction, in which event the Mariners may terminate this Agreement by written notice to the City within 120 days after the date of the damage or destruction. If the City does not timely notify the Mariners of the City's election not to repair or rebuild, the City shall rebuild or repair such damage or destruction with reasonable diligence to the condition immediately before such loss, and this Agreement shall continue in full force and effect.

18.2. Limit to Insurance Proceeds. Notwithstanding any of the foregoing provisions of this Section 18, the City's obligation to perform any repair, restoration or rebuilding hereunder shall be limited to its expenditure of the sum of (a) all proceeds available under insurance policies required pursuant to Section 16 of this Agreement, plus (b) the amount of all deductibles and self-insurance coverage. If the foregoing sum is not sufficient to allow the City to repair and rebuild the Complex substantially to the condition immediately before the loss, the City shall advise the Mariners of that fact within 60 days after the date of the damage or destruction, in which event the Mariners may terminate this Agreement by written notice to the City within 120 days after the date of the damage or destruction.

18.3. Abatement. If, as a result of any repair, restoration or rebuilding hereunder, there is a substantial interference with the operation of the Mariners' programs at the Complex requiring the Mariners temporarily to utilize other facilities, the Mariners shall have the right to schedule Games at another facility (notwithstanding any other provision in this Agreement to the contrary), and there shall be an equitable abatement of all fees due and other charges payable by the Mariners under this Agreement during the period of such interference.

18.4. Failure To Repair. If the City is obligated to repair or rebuild the Complex under the provisions of this Section 18 and does not commence such repair or rebuilding within 90 days after the occurrence of the damage or destruction, or if the City commences such repair or rebuilding but does not prosecute the same diligently to completion, then the Mariners may, at its option, cancel and terminate this Agreement

by giving the City written notice of the Mariners' election to do so at any time prior to substantial completion of the work of repair or rebuilding. In such event, this Agreement shall terminate as of the date of such notice.

## **19. Condemnation.**

19.1. Total Taking. In the event the entire Complex is appropriated or taken under the power of eminent domain, or sold under threat thereof (all of which will be referred to as a "condemnation"), by any public or quasi-public authority, this Agreement shall terminate as of the date the condemning authority takes title or possession, whichever first occurs. The Mariners shall have claim to the award in condemnation for the City's interest in the Site and Complex; provided, however, that the Mariners shall have a claim to any portion of the award in condemnation for the interest of the Mariners under this Agreement.

19.2. Partial Taking. In the event that only a portion of the Complex is condemned, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs; provided, however, that if so much of the Complex is taken by such condemnation as would substantially and adversely affect the Mariners' activities at the Complex, the Mariners shall have the option, to be exercised in writing within 60 days after the City shall have given the Mariners written notice of the condemnation (or in the absence of such notice, within 60 days after the condemning authority shall have taken possession), to terminate this Agreement as of the date the condemning authority takes such possession. If the Mariners does not give timely notice to terminate, this Agreement shall remain in full force and effect as to the remainder of the Complex that is suitable for the use then being made of the Complex by the Mariners, with all fees and other charges payable by the Mariners under this Agreement equitably adjusted for as long as reasonably necessary to account for the loss of the use of the condemned portion of the Complex, and the City shall, to the extent of condemnation proceeds received by it, acquire or add adjacent property and construct additional Improvements with reasonable diligence, in order to restore the Complex as nearly as possible to the condition immediately before the condemnation. Whether this Agreement terminates or continues in full force or effect, the Mariners shall not have claim to the award in condemnation for the City's interest in the Site and Complex; provided, however, that the Mariners shall have a claim to any portion of the award in condemnation for the interest of the Mariners under this Agreement.

19.3. Abatement. If, as a result of any condemnation, there is a substantial interference with the operation of the Mariners' programs at the Complex requiring the Mariners temporarily to utilize other facilities, the Mariners shall have the right to schedule Games at another facility (notwithstanding any other provision in this Agreement to the contrary), and there shall be an equitable abatement of all fees and

other charges payable by the Mariners under this Agreement during the period of such interference.

19.4. Failure To Repair. If the City is obligated to make the Complex suitable for use by the Mariners following a condemnation under the provisions of this Section 19 and does not commence to acquire or add adjacent property or construct additional Improvements necessary to do so within 90 days after the date of the condemnation, or if the City commences such acquisition or construction but does not prosecute the same diligently to completion, then the Mariners may, at its option, cancel and terminate this Agreement by giving the City written notice of its election to do so at any time prior to substantial completion of the acquisition or construction, whichever shall first occur. In such event, this Agreement shall terminate as of the date of such notice.

19.5. City Condemnation. The City agrees that the City itself shall not appropriate or condemn any interest of the Mariners under this Agreement by power of eminent domain.

## **20. Assignment.**

20.1. Prohibition Against Assignment. The Mariners shall not sell, assign or otherwise transfer all or any portion of its interest in this Agreement without the consent of the City, except as follows:

20.1.1. The Mariners shall have the right, without such consent, to transfer all of its rights and obligations under this Agreement to any Person that shall thereafter own the Major League Baseball franchise now held by the Mariners; provided, however, that such transferee shall assume the obligations of the Mariners under this Agreement; and provided, further, that all necessary MLB Approvals have been obtained with respect to the transfer of such Major League Baseball franchise to such transferee.

20.1.2. Subject to Section 3.3.3, the Mariners shall also have the right, without such consent, to transfer its interest in this Agreement freely to another Major League Baseball club; provided, however, that such transferee shall assume the obligations of the Mariners under this Agreement; and provided, further, that the Mariners must first obtain the consent of TEAM 2 before making an assignment to a team in the National League team. Additionally, in the event that such assignment would result in a reduction of the total number of Major League Baseball Clubs conducting Spring Training games within a 400 mile radius of the Stadium, the Mariners must also obtain the consent of the City before making an assignment, such consent not to be unreasonably withheld.

20.2. Notice; Release from Liability. The Mariners shall promptly notify the City of any transfer of its interest in this Agreement. Unless the transferee of such interest

shall expressly assume the obligations of the Mariners hereunder in writing (in which case the Mariners shall be released from any liability arising hereunder from and after the date of such assumption and transfer), the Mariners shall remain primarily liable under this Agreement notwithstanding any such transfer.

20.3. Right to Approve Assignment of Rights. The Mariners shall have the right to approve the assignment to another Major League Baseball club of TEAM 2's rights to use portions of the Complex, and may deny such assignment in its sole and absolute discretion.

## **21. City Default.**

21.1. Default. If the City shall default in any of its obligations under this Agreement, the Mariners shall provide notice of such default to the City and afford the City a grace period to cure said default, as follows:

21.1.1. Where a grace period is specifically provided for in any Section of this Agreement, that specific grace period shall apply.

21.1.2. Where a grace period is not specifically provided for in any other Section of this Agreement, the Mariners shall provide notice of such default to the City and afford the City a grace period of 30 days to cure said default; provided, however, that if the default in question is a non-monetary default that cannot be cured within such 30 day period, the City shall be afforded such additional time (but in no event more than 60 additional days) as shall be reasonably required to cure such default if the City has commenced the appropriate cure within said initial 30 day period, and thereafter proceeds with reasonable diligence to cure said default.

21.2. Rights and Remedies. If the City remains in default hereunder beyond the expiration of the applicable grace period stated above, the Mariners shall have the right (but not the obligation):

21.2.1. To cure such default on behalf of the City, in which event the City shall immediately reimburse the Mariners for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

21.2.2. To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate, by set off against all sums next-to-become-due to the City under this Agreement; and

21.2.3. In the event of a material breach that substantially affects the Mariners' ability to utilize the Complex for the purposes intended under the terms of this Agreement, to terminate this Agreement.

21.3. Cumulative Rights. The remedies heretofore described in this Section 21 shall be in addition to any other remedy that the Mariners may have at law and in equity in the event of a default by the City, including without limitation:

21.3.1. An action to recover monies then due and owing from the City, together with interest thereon at the Default Rate from the date on which such monies were due; and

21.3.2. An action for specific performance of nonmonetary covenants and agreements on the part of the City; and

21.3.3. An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the Mariners in connection with the default; provided, however, that in no event shall the City be liable for consequential damages suffered by the Mariners, and the Mariners shall in all events seek to mitigate their damages to the extent required by law.

## **22. Mariners Default.**

22.1. Default. If the Mariners shall default in any of its obligations under this Agreement, the City shall provide notice of such default to the Mariners and afford the Mariners a grace period to cure said default, as follows:

22.1.1. Where a grace period is specifically provided for in any Section of this Agreement, that specific grace period shall apply.

22.1.2. Where the default is a failure by the Mariners to utilize the Stadium as its "home field" for Spring Training Season Games in breach of its obligations under this Agreement (a "Stadium Abandonment"), the City shall provide notice of such default to the Mariners and afford the Mariners a grace period ending five days after the next act or omission constituting Stadium Abandonment.

22.1.3. Where a grace period is not specifically provided for in any other Section of this Agreement, the City shall provide notice of such default to the Mariners and afford the Mariners a grace period of 30 days to cure said default; provided, however, that if the default in question is a non-monetary default that cannot be cured within such 30 day period, then the Mariners shall be afforded such additional time (but in no event more than 60 additional days) as shall be reasonably required to cure such default if the Mariners has commenced the appropriate cure within said initial 30 day period, and thereafter proceeds with reasonable diligence to cure said default.

22.1.4. In addition to any other events of default and any other remedies available under this Agreement, or as provided by law, the City may, at its option and following notice of default and opportunity to cure as provided in this section, terminate this Agreement for default following an additional 30 days prior written notice (during which time the Mariners may cure such default) if the Mariners files a petition in bankruptcy or commences a case for relief from creditors under state or federal bankruptcy law or an order for relief with respect to the Mariners under federal or state bankruptcy law is entered against the Mariners, or the Mariners makes a general assignment for the benefit of creditors, or a receiver is appointed of substantially all of the property of the Mariners including, in any event, this Agreement, in a proceeding based upon the Mariners' insolvency that shall not be discharged within 90 days after such appointment; but neither bankruptcy nor the filing of a petition in bankruptcy, nor the commencement of a case for relief from creditors, nor entry of an order for relief, nor insolvency, nor an assignment for the benefit of creditors nor the appointment of a receiver shall affect this Agreement or constitute a default hereunder so long as the covenants and obligations on the part of the Mariners to be performed hereunder are being performed by the Mariners or someone claiming under the Mariners; provided that such termination shall not occur until the 10th day after the last day of the Spring Training Season occurring in the year of the Term during which the foregoing right to terminate is invoked by the City.

22.2. Rights and Remedies. If the Mariners remains in default hereunder beyond the expiration of the applicable grace period stated above, the City shall have the right (but not the obligation):

22.2.1. To cure such default on behalf of the Mariners, in which event the Mariners shall immediately reimburse the City for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

22.2.2. To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate, by set off against all sums next-to-become-due to the Mariners under this Agreement; and

22.2.3. At the City's option, to terminate this Agreement, in which event the City shall have the right to re-enter or repossess those portions of the Complex subject to this Agreement, either by force (to the extent lawful), summary proceedings, surrender or otherwise, and dispossess and remove the Mariners or other occupants therefrom, without being liable for any prosecution therefore; provided that such termination shall not occur until the 10th day after the last day of the Spring Training Season occurring in the year of the Term during which the foregoing right to terminate is invoked by the City.

22.3. Cumulative Rights. The remedies heretofore described in this Section 22 shall be in addition to any other remedy the City may have at law and in equity in the event of a default by the Mariners, including without limitation:

22.3.1. An action to recover monies then due and owing from the Mariners, together with interest thereon at the Default Rate from the date on which such monies were due; and

22.3.2. An action for specific performance of nonmonetary covenants and agreements on the part of the Mariners; and

22.3.3. An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the City in connection with the default; provided, however, that in no event shall the Mariners be liable for consequential damages suffered by the City, and the City shall in all events seek to mitigate its damages to the extent required by law.

### **23. Miscellaneous.**

23.1. Estoppel Certificates. Each party (as "responding party") shall at any time within fifteen days' after written request from the other party ("requesting party") execute, acknowledge and deliver to the requesting party a statement in writing (a) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), (b) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party (or specifying such defaults, if any are claimed), and (c) providing such other information regarding this Agreement as may reasonably be requested by the requesting party. Any such statements may be conclusively relied upon by any prospective purchaser or encumbrancer of the Mariners or of its interests herein.

23.2. Consents. Whenever a party's approval, permission, consent or satisfaction is required under this Agreement, such approval, permission, consent or satisfaction shall not be unreasonably withheld or delayed, except as and to the extent expressly provided to the contrary in this Agreement.

23.3. Additional Instruments. The parties agree to execute and deliver any instruments in writing, necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever the occasion shall arise and reasonable request for such instrument shall be made.

23.4. Force Majeure. A party shall not be in default under this Agreement if it is unable to fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of a strike, lockout, labor dispute, boycott, material or

energy shortage, casualty loss, weather conditions, acts of God, order of any government officer or court (but excluding orders promulgated by the City itself), national emergency, war, or other cause beyond the reasonable control of such party (collectively, "Force Majeure").

23.5. A.R.S. § 38-511. The Mariners are hereby placed on notice of the provisions contained in A.R.S. § 38-511 (cancellation of contracts with state or political subdivision for conflict of interest).

23.6. Notices. Any notice required to be given hereunder shall be in writing and sent by either overnight courier service or United States certified or registered mail, postage prepaid, addressed to the parties as follows:

If to Padres: Executive Vice President, Chief Financial Officer  
Padres L.P.  
Petco Park  
100 Park Blvd.  
San Diego, California 92101

With a copy to: Senior Vice President – Business Admin. & General Counsel  
Padres L.P.  
Petco Park  
100 Park Blvd.  
San Diego, California 92101

If to Mariners: Executive Vice President, Ballpark Operations and Finance  
The Baseball Club of Seattle, LLLP  
P.O. Box 4100  
Seattle, Washington 98194

With a copy to: Executive Vice President, Legal & Governmental Affairs  
The Baseball Club of Seattle, LLLP  
P.O. Box 4100  
Seattle, Washington 98194

If to City: City Manager  
City of Peoria  
8401 West Monroe  
Peoria, Arizona 85345

With a copy to: City Attorney  
City of Peoria  
8401 West Monroe

Notices shall be deemed given when received or when delivery is refused. Notices by a person designated herein as counsel to a party to this Agreement (or as hereafter changed by notice from a party given as herein required) shall be deemed notice from the City or the Mariners, as applicable. The address for notices to a party may be changed, from time to time, by notice from such party given as herein required.

23.7. No Joint Venture. The City and the Mariners do not intend by entering into this Agreement to create a partnership, joint venture or any relationship other than licensor and licensee. Nothing in this Agreement shall be construed to create such a partnership, joint venture or other relationship.

23.8. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. This Agreement shall not be construed for or against any party on the basis that such party drafted any portion of this Agreement.

23.9. Construe with Neutrality. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

23.10. Binding Effect. The covenants, terms, conditions, provisions and undertakings in this Agreement, or in any renewals hereof, shall extend to and be binding upon the heirs, personal representatives, executors, administrators, successors and assigns of the respective parties hereto as if they were in every case named and expressed, and wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs, personal representatives, executors, administrators, successors and assigns of such party as if in each and every case so expressed.

23.11. Entire Agreement. This Agreement and the Sports Complex Improvements Agreement, together with the attached exhibits and simultaneous writings, contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied on any representation, express or implied, not contained in this Agreement or in simultaneous writings. All prior understandings, terms or conditions are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought; provided that no such waiver, change, modification or discharge shall be entered into until such time as all necessary MLB Approvals have been obtained in advance thereof.

23.12. Severance. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

23.13. Captions. The headings of this Agreement are for convenience only and shall not be deemed a part of this Agreement, nor shall they be deemed to affect the meaning or construction of any portion of this Agreement.

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

23.15. Interest on Delinquent Amounts. Any amounts owing from one party to the other party under this Agreement and not paid when due shall bear interest from and after the due date at the Default Rate until paid.

23.16. Waivers. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent right by either party under the same or any other provision.

23.17. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

23.18. Attorneys' Fees. If an action or proceeding is brought to enforce the terms hereof or declare rights hereunder, including without limitation Expedited ADR, the prevailing party in any such action or appeal therefrom shall be entitled to its reasonable attorneys' fees and costs, to be paid by the losing party as fixed by the court or arbitrator(s) in the same or a separate action or proceeding.

23.19. The Mariners Liability. The term "Mariners" as used herein shall mean only the entities owning, at the time in question, the rights and interests provided to the Mariners under this Agreement. In the event of any transfer of such rights and interests, the entity originally named herein (and in the case of any subsequent transfers, the grantor) shall be relieved from and after the date of such transfer of all liability as respects the Mariners' obligations thereafter to be performed. The obligations contained in this Agreement to be performed by the Mariners shall, subject as aforesaid, be binding on the Mariners' successors and assigns, only during their respective periods of ownership.

23.20. More Favorable Terms.

23.20.1. If at any time during the Term of this Agreement the City (itself, through a sponsoring organization or otherwise) directly or indirectly enters into an agreement with another Major League Baseball Club, which agreement includes among its terms the right to play more than two Spring Training exhibition games in the City during the Spring Training Season, the City

shall immediately notify the Mariners of all terms of such agreement. If the Mariners reasonably believe that any or all of the terms of such agreement are more favorable than the corresponding term(s) contained in this Agreement, then the Mariners shall have the right to require that the term(s) perceived to be more favorable be substituted for the corresponding term(s) of this Agreement for the remainder of the Term, retroactive to the date the City entered into the agreement with the other team. The City agrees to amend this Agreement to incorporate any such term(s).

23.20.2. For purposes of determining whether another agreement contains more favorable term(s), the Mariners may either compare the agreement as a whole to this Agreement as a whole, or may compare individual term(s) of the agreement to the corresponding individual term(s) of this Agreement without regard to comparison of the whole. The Mariners may at its option require substitution of the whole agreement or of any individual term(s) that it considers more favorable, consistent with the preceding paragraph.

23.20.3. Either prior to or immediately upon entering into an agreement with another Major League Baseball Club, the City may request that the Mariners review the terms of said agreement and waive its rights under this Section 23.20. Upon receiving such a request together with a copy of the terms of the agreement or proposed agreement, the Mariners shall have 30 days to review the agreement and to notify the City which, if any, of the terms it considers more favorable and would wish to substitute. Failure by the Mariners to give the City such notice within the 30 day time period shall operate as a waiver of the Mariners' rights under this Section.

#### 23.21. Major League Baseball.

23.21.1. MLB Approval. The Parties acknowledge that this Agreement is subject to the approval of the Office of the Commissioner of Baseball, which the Mariners have received.

23.21.2. Subservience. Notwithstanding any other provision of this Agreement, this Agreement and any rights or exclusivities granted by Mariners hereunder shall in all respects be subordinate to the MLB Rules and Regulations. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. The territory within which the City is granted rights is limited to, and nothing herein shall be construed as conferring on the City rights in areas outside of, the "Spring Training" territory of the Mariners as established and amended from time to time. No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined by the

applicable MLB Entities) are conferred by this Agreement, except as are specifically approved in writing by the applicable MLB Entities.

23.21.3. Changed Circumstances. If Major League Baseball hereafter adopts any new or amended MLB Rules and Regulations or enters into or modifies any of the MLB Rules and Regulations or applies any of the existing MLB Rules and Regulations, and the result thereof, individually or in the aggregate, materially and demonstrably impairs any rights or benefits granted to the City hereunder or results in a material increase in the cost of the City meeting its obligations hereunder, all as measured from the Effective Date hereof (collectively, "Changed Circumstances"), the City will give the Mariners written notice upon experiencing or believing that it may be experiencing Changed Circumstances. During the period of 60 days thereafter, the Mariners and the City shall meet and attempt to negotiate in good faith an appropriate amendment to this Agreement, or other modifications or adjustments to the extent appropriate to mitigate the Changed Circumstances. In the event the parties, after good faith negotiations, are unable to agree on an appropriate amendment or other appropriate modifications or adjustments, the dispute shall be resolved by arbitration conducted in accordance with the Expedited ADR provisions of this Agreement. It shall be the City's burden, in any such arbitration, to provide demonstrable evidence establishing with reasonable certainty the magnitude and value of any diminution of its rights proximately caused by the Changed Circumstances. The Mariners shall have no right to assert an independent claim for additional rights or compensation as a result of any Changed Circumstances that operate to the City's benefit. But if the City asserts a claim for compensation or other adjustments as a result of Changed Circumstances, then in any Expedited ADR proceeding that follows, the Mariners may introduce evidence of any material positive effects received by the City which resulted from any changes to any of the MLB Rules and Regulations or changes in the application of policy under any of the MLB Rules and Regulations after the Effective Date hereof, to offset any City-proposed compensation or other adjustments, provided that the Mariners shall bear a similar burden of establishing any such material positive effects.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first above written.

CITY OF PEORIA, ARIZONA

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*THE BASEBALL CLUB OF SEATTLE, LLLP*

By: \_\_\_\_\_  
*Baseball of Seattle, Inc.*  
*Managing General Partner*

## EXHIBIT LIST

Exhibit A	[Reserved]
Exhibit B	Expedited ADR
Exhibit C	Field Maintenance Standards
Exhibit D	Site
Exhibit E	Economic Development Area

**SPORTS FACILITIES  
USE AGREEMENT**

between

City of Peoria, Arizona,  
an Arizona municipal corporation

and

Padres, L.P., a Delaware limited partnership  
dba the San Diego Padres Baseball Club

\_\_\_\_\_, 2012

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## SPORTS FACILITIES USE AGREEMENT

THIS FIRST AMENDED AND RESTATED SPORTS FACILITIES USE AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2012 by and among the CITY OF PEORIA, an Arizona municipal corporation (the "City") and Padres, L.P., a Delaware limited partnership dba the San Diego Padres Baseball Club (the "Padres").

### **1. Recitals.**

Unless otherwise defined herein, capitalized terms used in this Section 1 shall have the meaning ascribed to them in Section 2 of this Agreement.

1.1. Club. The Padres owns a franchise for a Major League Baseball Club.

1.2. Original Agreement. The City and the Padres entered into a Sports Facilities Use Agreement dated June 3, 1993 and recorded in the Office of the City Clerk for the City of Peoria, Arizona as LCON 3593 [*Padres*] ("Original Agreement").

1.3. Partnership. Over the past 19 years, the City and the Padres have engaged in a successful partnership that has benefitted the two parties, City residents and guests, and baseball fans of all ages.

1.4. Continuation of Partnership. Prior to the termination of the Original Agreement on January 31, 2014, the City and the Padres have concluded that they would like to continue and expand upon their successful partnership for up to another 20-year period by entering into this Agreement, which supersedes and replaces the Original Agreement.

1.5. Memorandum of Understanding. On May 15, 2012, the City Council approved a memorandum of understanding among the City, the Padres and the Mariners and approved drafting this Agreement to formalize the concepts set forth in the memorandum of understanding.

1.6. Economic Development. The City is authorized by its Charter and Code to participate in economic development and recreational activities.

1.7. Major League Baseball. The City recognizes the economic development impact of continuing to conduct Major League Baseball Spring Training Season games in the City due to, among other things, the national publicity that the City receives, the substantial direct and indirect economic return resulting from such spring training, and indirect increased excise tax revenues.

1.8. Sports Complex Improvements Agreement. For the foregoing reasons, the City has entered or will soon enter into a Sports Complex Improvements Agreement

with the Padres and TEAM 2, in which the City has agreed to construct improvements to the Clubhouses, the Stadium and related facilities.

1.9. Spring Training Season. The Padres are willing to continue to conduct its Major League Baseball Spring Training Season at the Complex on the terms set forth in this Agreement.

1.10. Retention of Governmental Powers. Notwithstanding any contrary interpretation of the provisions of this Agreement, the actions required to be taken by the City pursuant to this Agreement are not a delegation of the City's governmental, legislative, executive, judicial or regulatory powers, and nothing in this Agreement shall be construed as a limitation on the exercise by the City of such powers.

1.11. Public Interest. The City finds that this Agreement is in the public interest.

## **2. Definitions**

The following terms shall have the meanings ascribed to them as follows:

2.1. "Activities" has the meaning set forth in Section 9.4.1.

2.2. "Affiliate" or "Affiliated" of any person (the "Subject Person") means any other person (the "Affiliated Person") who (a) is Directly or Indirectly controlled by, or under common control with, the Subject Person; (b) owns Directly or Indirectly 5% or more of any class of the outstanding debt or equity of the Subject Person; (c) is a general partner, officer or director of the Subject Person or of any person described in clause (a) or (b) above; or (d) is a member of the Immediate Family of the Subject Person or of any person described in clauses (a) through (c) above; provided, however, that a person shall not be an Affiliated Person solely by reason of being indebted to another person who, by virtue of owning outstanding debt of such Subject Person, controls such Subject Person.

2.3. "Annual Attendance Differential Charge" has the meaning set forth in Section 3.3.3.

2.4. "Architect" means the Person or Persons selected by the City, with the approval of the Clubs, to perform the normal functions of an architect with respect to the design and supervision of construction of any Project Phase, including the determination of whether such Phase has been completed in full compliance with the applicable Plans. The City has selected Populous as the Architect for Phase I.

2.5. "AZSTA" means the Arizona Sports and Tourism Authority, a corporate and political body of the State of Arizona, which was created to provide, among things,

a mechanism to provide funds for the construction and renovation of major league baseball spring training facilities in Arizona.

2.6. "Base Program" means the general program requirements for any Project Phase.

2.7. "Basic Ticket Price" means the price charged for an individual seat in the Stadium, excluding (a) any Service Charge and, (b) the Complex Improvement Surcharge, and (c) the Non-General Admission Surcharge.

2.8. "BOC" means the Office of the Commissioner of Baseball, an unincorporated association comprised of the Major League Baseball Clubs who are party to the Major League Constitution, and any successor organization thereto.

2.9. "Capital Improvement" means any Improvement, excluding any Improvement constructed pursuant to the Sports Complex Improvements Agreement, costing in excess of \$25,000.00 and having a useful life greater than three years, including any construction or repair thereof provided that the cost of such construction or repair is of a type which under GAAP and GASB is to be capitalized. The Capital Improvements shown on the Plans (as the same may be amended through the date of Final Completion), whether heretofore or hereafter constructed, repaired or replaced, will be referred to in this Agreement as "Existing Capital Improvements." Capital Improvements not shown on the Plans (as the same may be amended through the date of Final Completion), but rather added thereto subsequent to the date of Final Completion, will be referred to in this Agreement as "New Capital Improvements." Capital Improvements may also include replacement of Existing Capital Improvements and New Capital Improvements, and, if mutually agreeable to the City, the Padres and the Mariners in each instance, regular operation and maintenance or repair of capital items or equipment.

2.10. "Capital Improvement Account" has the meaning set forth in Section 12.3.

2.11. "City" means the City of Peoria, Arizona, a municipal corporation of the State of Arizona, any of its administrative departments, divisions and functions, and its successors and assigns.

2.12. "Club" means the Major League Baseball Club owned by the Padres.

2.13. "Clubs" means both the Major League Baseball Club owned by the Padres and the Major League Baseball Club owned by the Mariners.

2.14. "Clubhouse" means the Padres' clubhouse building, or, depending on the context, the clubhouse buildings of both Clubs, each such Clubhouse identified as such in the Plans and each containing, among other things, major and minor league locker

rooms, training rooms, a strength and conditioning area, food service area, and adjoining administrative space, including offices, media space and storage facilities.

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

2.16. "Complex" means the Site and all Improvements now or hereafter located on it, including without limitation those set forth in the Plans. The Complex is presently divided into three sub-areas -- the Stadium Facilities, the Padres Facilities, and the Mariners Facilities.

2.16.1. "Complex Improvement Account" has the meaning set forth in Section 12.4.1.

2.16.2. "Complex Improvement Surcharge" means a surcharge imposed on each Game ticket sold, as described in Section 8.1.8 for the purpose of funding Complex Improvements.

2.16.3. "Complex Improvements" means those designated projects constituting New Capital Improvements that the parties mutually agree from time to time by letter agreement are to be funded by the Complex Improvement Surcharge. Complex Improvements may also include replacement of Existing Capital Improvements and New Capital Improvements, and, if mutually agreeable to the City, the Padres and the Mariners in each instance, regular operation and maintenance or repair of capital items or equipment. Each such letter agreement must identify the scope of such project with specificity.

2.17. "Concession Agreement" means the contractual arrangement between the City and the Concessionaire which defines the terms on which food and beverages are sold at the Stadium.

2.18. "Concessionaire" means the Person selected by the City to sell food and beverages at the Stadium.

2.19. "CPI" means the Consumer Price Index for Urban Wage Earners and Clerical Workers specified for "All Items" (Western Region) published by the Bureau of Statistics of the United States Department of Labor (1982 - 84 =100). If the method by which such index is calculated is hereafter substantially changed, appropriate adjustments will be made by the parties to produce results approximating as nearly as possible the results which would have been obtained absent such change. A change in the base year shall be deemed such a substantial change. If the index is no longer

published or otherwise becomes unavailable to the public, a reasonable substitute index shall be mutually agreed upon by the City, the Padres and the Mariners.

2.20. “Default Rate” means an annual rate of interest equal to the lesser of (a) the United States Prime Rate as listed in the Eastern print edition of the Wall Street Journal plus 1.5%, or (b) 10%.

2.21. “Direct” or “Indirect” or “Directly” or “Indirectly” means through one or more tiers of subsidiaries, partnerships or other tiered structures.

2.22. “Exclusive Padres Facilities” has the meaning set forth in Section 6.2.1.

2.23. “Expedited ADR” means the Expedited Alternative Dispute Resolution procedures attached to this Agreement as Exhibit B.

2.24. “Field(s)” means collectively the playing fields within the Complex, including the field within the Stadium and the practice fields.

2.25. “Final Completion” or “Finally Complete” means, with respect to the applicable Project Phase, the stage of construction after Substantial Completion has been achieved when the construction work has been completed in accordance with the Sports Complex Improvements Agreement and the contract for construction, all "punch list" items have been satisfactorily completed, and the City has received all required deliverables, permits, warranties, and other required documents and certifications (e.g. LEED).

2.26. “Force Majeure” has the meaning set forth in Section 23.4.

2.27. “Future Improvements” has the meaning set forth in Section 12.5.

2.27.1. “Future Improvements Budget” has the meaning set forth in Section 12.5.

2.28. “GAAP” means Generally Accepted Accounting Principles.

2.29. “GASB” means Governmental Accounting Standards Board.

2.30. “Game Day Operations” mean the customary operations to be provided by Padres or the City, as the case may be, at each Game during the Spring Training Season, more particularly described in Sections 10.2 and 11.7.

2.31. “Game(s)” means Spring Training Season exhibition games played between the Club and another Major League Baseball Club in the Stadium during the Spring Training Season of each year, pursuant to the schedule announced by Major

League Baseball or games played in the Stadium between the Club and another baseball team at any point in the year.

2.32. "Gate Receipts" means the gross amount of monies actually received from the sale of tickets to Games played at the Stadium, including any amount received from the Ticket Agency or other third party ticketing service as a refund or rebate of a portion of any Service Charge, all without reduction for taxes, Third Party Surcharges, fees or selling costs, but excluding (a) Service Charges retained by the Ticket Agency or other third party ticketing service, if any; (b) returns that are refunded (for example, because of cancellation of a Game due to weather); (c) drafts until paid; (d) credit card receipts until payment is received; (e) the Complex Improvement Surcharge and (f) the Non-General Admission Surcharge. "Gate Receipts" include monies received that are subject to refund but are not returned to the purchaser within twelve months of the scheduled Game. "Gate Receipts" shall not include any imputed value for guest, press or media passes.

2.33. "Home Team" means the team which acts as a host team for its opponent during a Game (i.e. the team that takes the field in the first half of each inning and bats in the last half of each inning of such Game).

2.34. "Immediate Family" means any spouse, son, daughter or parent of any individual (by blood, adoption or marriage), or any trust, estate, partnership, joint venture, company, corporation, operation or any other legal entity or business or investment enterprise Directly or Indirectly controlled by such spouse, son, daughter or parent.

2.35. "Improvements" means the Stadium, Clubhouse, Parking Lots, Fields, batting cages and tunnels, pitching mounds, landscaped areas and all other improvements to real property now or hereafter located on the Site.

2.36. "Legal Requirements" means all federal, state, county and other governmental laws (including applicable constitutions), ordinances, codes, rules, regulations, statutes and orders (including court and administrative agency orders), all covenants and restrictions of record, and the requirements of all fire insurance underwriters or rating bureaus, applicable to the Project, Complex, or Site."

2.37. "Major League Baseball" or "MLB" means, depending on the context, any or all of (a) the BOC, each other MLB Entity and/or all boards and committees thereof, including, without limitation, Executive Council and the Ownership Committee, and/or (b) the Major League Baseball Clubs acting collectively.

2.38. "Major League Baseball Club" means any professional baseball club that is entitled to the benefits, and bound by the terms, of the Major League Constitution.

2.39. “Major League Constitution” means the Major League Constitution adopted by the Major League Baseball Clubs (which amended and superseded the Major League Agreement dated January 1, 1975, the Agreement in re Major Leagues Central Fund dated as of December 8, 1983, as amended, and the respective constitutions of the former American and National Leagues of Professional Baseball Clubs) as the same may be amended, supplemented or otherwise modified from time to time in the manner provided therein and all replacement or successor agreements that may in the future be entered into by the Major League Baseball Clubs.

2.40. “Mariners” means The Baseball Club of Seattle, LLLP, a Washington limited liability limited partnership dba the Seattle Mariners Baseball Club or its successors or assigns.

2.41. “Minor League” means the level of professional baseball in the United States and Canada and potentially elsewhere which is below that of Major League Baseball, and which includes, without limitation, those teams which participate in leagues which are members of the National Association of Professional Baseball Leagues.

2.42. “Minor League Affiliate” means any Minor League team which has a player development agreement or similar relationship with the Padres.

2.43. “MLB Approval” means, with respect to the Major League Baseball Clubs, the Commissioner, the BOC or any other MLB Entity, any approval, consent or no-objection letter required to be obtained from such Person(s) pursuant to the MLB Rules and Regulations (as exercised in the sole and absolute discretion of such Person(s)).

2.44. “MLB Entity” means each of the BOC, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., The MLB Network, LLC, MLB Advanced Media, L.P., and/or any of their respective present or future affiliates, assigns or successors.

2.45. “MLB Governing Documents” means the following documents as in effect from time to time and any amendments, supplements or other modifications thereto and all replacement or successor documents thereto that may in the future be entered into: (a) the Major League Constitution, (b) the Basic Agreement between the Major League Baseball Clubs and the Major League Baseball Players Association, (c) the Professional Baseball Agreement between the BOC, on behalf of itself and the Major League Baseball Clubs, and the National Association of Professional Baseball Leagues, (d) the Major League Rules (and all attachments thereto), (e) the Interactive Media Rights Agreement, effective as of January 20, 2000, by and among the BOC, the various Major League Baseball Clubs, MLB Advanced Media, L.P. and various other MLB Entities and (f) each agency agreement and operating guidelines among the Major League Baseball

Clubs and any MLB Entity, including, without limitation, the Amended and Restated Agency Agreement, effective as of November 1, 2006, by and among Major League Baseball Properties, Inc., the various Major League Baseball Clubs and the BOC (and the Operating Guidelines related thereto).

2.46. "MLB Rules and Regulations" means (a) the MLB Governing Documents, (b) any present or future agreements or arrangements entered into by, or on behalf of, the BOC, any other MLB Entity or the Major League Baseball Clubs acting collectively, including, without limitation, agreements or arrangements entered into pursuant to the MLB Governing Documents, and (c) the present and future mandates, rules, regulations, policies, practices, bulletins, by-laws, directives or guidelines issued or adopted by, or behalf of, the Commissioner, the BOC or any other MLB Entity as in effect from time to time.

2.47. "Net Concession Revenue" means the gross income that the City receives either from the Concessionaire each year under the Concession Agreement (1) attributable to Games during the Spring Training Season; or (2) attributable to the Padres Facilities year-round. The parties contemplate that the amount to be received by the City from the Concessionaire will be in the form of a negotiated percentage of gross receipts.

2.48. "Net Novelty Revenue" means the gross income received by the Padres from the sale of Novelties at Games during the Spring Training Season, or at the Padres Facilities year-round, less the direct costs of purchasing, producing and selling the Novelties and also less a reasonable novelty sales management fee; alternatively this may be in the form of a negotiated percentage of gross receipts.

2.49. "Net Parking Revenue" means the gross income received from parking at the Complex on Game days during the Spring Training Season, or at the Padres Facilities year-round, less the direct costs of parking lot attendants and on-site traffic control personnel and equipment utilized exclusively on those days; alternatively this may be in the form of a negotiated percentage of gross receipts.

2.50. "Net Program Revenue" means the gross income received from sales of Programs and sales of advertising for Programs, less the direct costs of advertising, producing and selling the Programs.

2.51. "Net Stadium Advertising Revenue" means the gross income received by either party from the sale of signs, announcements, or other visual or audio displays at the Stadium and Stadium Facilities, less normal commissions paid to third parties or to the Padres' commissioned salespeople for securing the advertising, less the direct costs, if any, of producing, constructing, and/or erecting the advertising and less the revenue generated directly by the Padres from the sale of Scoreboard Signage, if the

Padres elect to sell such signage. For advertising that appears as part of a scoreboard or scoring system other than the Scoreboard Signage, the direct cost of constructing or renovating the scoreboard or scoring system may be offset against these specific advertising revenues until such construction costs have been fully recaptured.

2.52. "Non-Exclusive Facilities" has the meaning set forth in Section 6.2.1.

2.53. "Non-General Admission Surcharge" has the meaning set forth in Section 8.1.8.

2.54. "Non-Spring Training Advertising Benefits" has the meaning set forth in Section 8.5.2.

2.55. "Non-Spring Training Season" means the period from the end of the Spring Training Season each year during the Term until the start of the Spring Training Season the following year during the Term.

2.56. "Novelties" means souvenir items sold at the Stadium Facilities on Game days during the Spring Training Season, or at the Padres Facilities year-round, including but not limited to any items which carry the trademark or logo of any Major League Baseball Club. "Novelties" shall not include Programs, tickets, food or beverages, or any containers or packaging used with food or beverages.

2.57. "O, M & R Reserve Account" has the meaning set forth in Section 12.2.

2.58. "O, M & R Costs" are expenditures that are not classified as New Capital Improvement expenditures, and include without limitation all such costs incurred for:

2.58.1. Operation, maintenance, repair and replacement of the Complex and the Improvements, including Existing Capital Improvements and New Capital Improvements, in neat, clean, safe and good order and condition, including without limitation parking areas, loading and unloading areas, trash areas, roadways, sidewalks, walkways, stairways, parkways, driveways, landscaped areas, striping, bumpers, irrigation systems, lighting facilities, building exteriors and roofs, fences and gates, and heating, air conditioning, plumbing, electrical, fire detection, sprinkler, utility and life safety systems and equipment;

2.58.2. Trash disposal, security services, and janitorial services to the Stadium and other habitable portions of the Complex on Game days, business days, and such other days as may reasonably be required, including replacement of light bulbs and tubes. O, M & R Costs shall not include janitorial, pest control, or security services within the Clubhouse.

2.58.3. Water, sewer, gas, electricity, and other publicly mandated services to the Complex;

2.58.4. Labor, salaries and applicable fringe benefits, and costs, materials, supplies and tools, used in cleaning, maintaining, repairing and replacing the Complex and its Improvements; and

2.58.5. Replacing Improvements as mandated by any governmental agency and any repairs or removals necessitated thereby.

2.59. "Opt-Out Termination Date" has the meaning set forth in Section 3.3.3.

2.60. "Option Date" has the meaning set forth in Section 3.3.3.

2.61. "Original Agreement" has the meaning set forth in Section 1.2.

2.62. "Padres" means Padres, L.P., a Delaware limited partnership dba the San Diego Padres Baseball Club, or its successors or assigns.

2.63. "Padres Facilities" means the land and Improvements within the area designated in the Plans as the Padres Facilities Area, including Padres' Clubhouse, practice fields, batting cages and tunnels, pitching mounds, observation tower, practice area concession stand, and parking lot.

2.64. "Parking Lots" means the outdoor parking lots within the Site, containing vehicular parking, together with the driveways, fences and lighting incidental to the use thereof, the locations of which Parking Lots are shown in the Plans.

2.65. "Person" means any individual, trust, estate, partnership, joint venture, company, corporation, association, or any other legal entity or business or investment enterprise.

2.66. "Phase I" means the planning, development, design, and construction of that phase of the Project described in the applicable Base Program, attached hereto as Exhibit A, which consists generally of improvements to each Team's Clubhouse and Team Facilities pursuant to the terms of the Sports Complex Improvements Agreement, and which is planned for the 2013-14 time period.

2.67. "Phase II" means the planning, development, design, and construction of the phase of the Project that consists generally of improvements to the Stadium pursuant to the terms of the Sports Complex Improvements Agreement, and which is planned for the 2014-15 time period.

2.68. "Phase III" means the planning, development, design, and construction of the phase of the Project that consists generally of future improvements to the Team Facilities and the Stadium pursuant to the terms of the Sports Complex Improvements Agreement, tentatively planned for the 2021-2027 time period.

2.69. "Plans" means the detailed architectural plans and specifications describing the size and character of the Complex, the Project or any Project Phase as to architectural, structural, mechanical and electrical systems, all as agreed upon by the City and the Clubs pursuant to the Sports Complex Improvements Agreement.

2.70. "Player Development Programs" means programs during the Non-Spring Training Season which the Padres or its Minor League Affiliates either administer, manage or participate in as a means of providing instruction, training and competition for its players. Such programs currently include the extended spring training, summer rookie league, and fall instructional league.

2.71. "Program" means any publication or scorecard sold at the Stadium Facilities on Game days which provides specific information on the Padres together with rosters and a scorecard for that particular Game. "Program" does not include the Padres' magazine, yearbook, or equivalent publications or any playbills that are given away to Game attendees.

2.72. "Project" means the planning, development, design, and construction of the improvements to the Complex contemplated in the Sports Complex Improvements Agreement, including Phase I, Phase II, and Phase III.

2.73. "Project Phase" means Phase I, Phase II, or Phase III, depending on the context of the sentence.

2.74. "Promotions" has the meaning set forth in Section 8.1.7.

2.75. "Replacement Team" has the meaning set forth in Section 3.3.3.

2.76. "Resident Discount" has the meaning set forth in Section 8.1.6.

2.77. "Scoreboard Signage" has the meaning set forth in Section 8.5.1.

2.78. "Service Charge" means the convenience fee, if any, charged to the consumer by the Ticket Agency, or any other third party ticketing entity, in conjunction with sales of Game tickets by telephone or at locations remote from City facilities. The Service Charge shall not include any convenience fee or surcharge imposed by any party to this Agreement or the Sponsoring Organization unless mutually agreed to in writing by the parties.

2.79. “Site” means the land area located in the vicinity of 83rd Avenue and Paradise Lane in the City of Peoria, Maricopa County, Arizona, as shown definitively in the map attached as Exhibit D to the Agreement.

2.80. “Sponsoring Organization” means a non-profit organization selected by the City which is associated with Major League Baseball Clubs, within the meaning of Arizona Revised Statutes § § 42-1310.01(A) (30); 42-1310.09(C)(8); 42-1310.13(A)(3); and 42-1310.14(B)(4).

2.81. “Sports Complex Improvements Agreement” or “SCIA” means that certain agreement by and among the City, the Padres and TEAM 2 executed contemporaneously with this Agreement.

2.82. “Spring Training Advertising Benefits” has the meaning set forth in Section 8.5.2.

2.83. “Spring Training Season” means the annual use period during which Major League Baseball conducts spring training operations and/or training for the Major League Baseball championship season, this period generally running from February 1 through April 15 of each calendar year, but subject to change at the discretion of Major League Baseball.

2.84. “Spring Training Settlement” has the meaning set forth in Section 8.8.1.

2.85. “Stadium” means the sports stadium building located at the Site and to be improved in conformity with the Plans, where Games are to be played by the Padres.

2.86. “Stadium Facilities” means the land and Improvements within the area designated in the Plans as the Stadium Facilities Area, including the Stadium itself, the public Parking Lots adjacent to the Stadium, and all landscaped areas and other improvements to real property related to the Stadium within that Area, all as more fully described in the Plans.

2.87. “Substantial Completion” or “Substantially Complete” or “Substantially Completed” means, with respect to the applicable Project Phase, that (a) the affected areas are operational and usable in all material respects for the purpose(s) intended; (b) all required governmental permits, approvals and certificates of occupancy have been properly and validly issued; and (c) the Architect has certified to the Clubs or the affected Club and the City that such Phase has been completed in full compliance with the Plans (subject only to minor and insubstantial “punch list” items which do not affect operations by the Clubs or the affected Club in any material fashion; such punch list items shall be corrected to the reasonable satisfaction of the Clubs or the affected Club within 60 days after the date the applicable Project Phase is otherwise Substantially Complete, unless such Substantial Completion date falls immediately prior to a Spring

Training Season, in which case such punch list items shall be corrected within 60 days of completion of such Spring Training Season).

2.88. "TEAM 2" means the Major League Baseball club occupying or using the facilities identified as the "TEAM 2 Facilities" in the Plans and sharing the use of the Stadium with Padres during the Spring Training Season, which club is currently THE BASEBALL CLUB OF SEATTLE, LLLP.

2.89. "TEAM 2 Facilities" means the land and Improvements within the area designated in the Plans as the TEAM 2 Facilities Area, including TEAM 2's clubhouse, practice fields, batting cages and tunnels, pitching mounds, observation tower, practice area concession stand, and parking lot.

2.90. "Term" has the meaning set forth in Section 3.

2.91. "Third Party Surcharges" means ticket surcharges not approved by each of the City, the Padres and the Mariners.

2.92. "Third Party User" has the meaning set forth in Section 6.4.

2.93. "Ticket Agency" means the Person selected by the City to assist the City or the Sponsoring Organization in carrying out the City's obligations set forth in Section 8.1.2.

### **3. Term.**

3.1. Twenty-Year Term. The Term of this Agreement shall commence on February 1, 2013 and shall terminate, subject to the rights of early termination and options hereinafter provided in this Section, on January 31, 2034.

3.2. Options to Renew. The Padres shall have, and the City hereby grants to the Padres, the option of renewing this Agreement and extending the Term for up to two additional two year periods on the same terms as are set forth in this Agreement. Such options are exercisable by the Padres by written notification to the City not less than one year prior to the then scheduled expiration of the Term. No later than two years prior to the conclusion of the Term, the City and the Clubs shall meet to discuss the Clubs' future plans and the potential exercise of the options.

3.3. Early Termination.

3.3.1. Number of Cactus League Teams. If at any time fewer than a total of six (6) Major League Baseball Clubs conduct spring training in the Cactus League, then the Padres shall have the option at any time thereafter (so long as fewer than six Major League Baseball Clubs continue to conduct spring training

in the Cactus League) to terminate this Agreement, without penalty, by giving one year prior written notice thereof to the City.

3.3.2. Future Improvements Funding. If the City has failed to provide funding for the Future Improvements Budget in the schedule required in Section 12.5, the Padres shall have the option to terminate this Agreement, without penalty, by giving written notice thereof to the City with a copy of such notice to TEAM 2. The City shall have 90 days following receipt of such termination notice to fully cure the lack of funding. Any such termination will be effective on January 31 of the year following the date of the termination notice unless another later date is specified in such notice.

3.3.3. The Padres Opt-Out Option. The Padres shall have the option to terminate this Agreement at any time pursuant to this Section 3.3.3. If the Padres wishes to terminate this Agreement pursuant to this Section 3.3.3, it must comply with all of the following requirements:

(a) The Padres must provide written notice to the City two years prior to the desired termination date. For purposes of this Subsection, the date that the Padres provides the written notice shall be the “Option Date,” and the date two years from the Option Date shall be the “Opt-Out Termination Date.”

(b) On or before the Opt-Out Termination Date, the Padres shall pay to the City all remaining bond principal, including a bond call premium of up to 2%, owed by the City in connection with its initial financing of the Padres’ Clubhouse, as such amount may be reduced from time to time by regular or pre-payments of principal or a refinancing, provided that such refinancing does not increase the principal balance or extend the term of repayment, calculated as of the Opt-Out Termination Date.

(c) Within 90 days after the Opt-Out Termination Date, the Padres shall pay to the City a one-time penalty in accordance with the following schedule, but without duplication:

If the Opt-Out Termination Date occurs prior to:	The penalty payment amount shall be:
January 31, 2019	\$20,000,000.00
January 31, 2024, but on or after January 31, 2019	\$15,000,000.00
January 31, 2029, but on or after January 31, 2024	\$10,000,000.00
January 31, 2034, but on or after	\$5,000,000.00

(d) The Padres shall use its reasonable efforts to find another Major League Baseball Club to relocate to the City as a replacement for the departure of the Padres (“Replacement Team”) and the City shall reasonably cooperate in such efforts. All of the following requirements shall apply to the Replacement Team:

(i) The Replacement Team shall agree to a lease or use agreement with the City, including a term that is no shorter than the remaining term of this Agreement if the Padres had not terminated pursuant to this Section 3.3.3.

(ii) After the fifth Spring Training Season played by the Replacement Team, the City shall calculate the average annual attendance at all Games in which the Replacement Team is designated as the Home Team over the five-year period. The City will compare this attendance number to the average annual attendance at Games in which the Padres was the Home Team in the final five full seasons prior to the Opt-Out Termination Date. If the Replacement Team’s average annual attendance is less than the Padres’ average annual attendance, the City shall notify the Padres in writing of the deficiency (the “Annual Attendance Differential Charge”), if any. The Annual Attendance Differential Charge, if any, shall be calculated as follows: (a) the City’s share of Gate Receipts (as determined in accordance with Section 8.1.4) PLUS the City’s share of Net Parking Revenue (as defined below and determined in accordance with Section 8.1.4) from the final five full seasons of the Padres’ Home games MINUS (B) the City’s share of Gate Receipts PLUS the City’s share of Net Parking Revenue from the most recent five seasons of the Replacement Team’s Home games. If the Replacement Team is present at the Complex for less than five seasons, then the averages shall be adjusted accordingly. Unless the Padres disputes in writing the Annual Attendance Differential Charge, the Padres shall make payment of the Annual Attendance Differential Charge to the City within 30 days of receipt of the City’s notice. While this Subparagraph will survive termination of this Agreement, the requirement shall end after the Replacement Team’s first five seasons at the Complex.

(iii) After the Opt-Out Termination Date, and in the event that the Padres is unable to find a Replacement Team, for each full

season that a Replacement Team fails to play a Spring Training Season at the Complex, the Padres shall pay the City \$10,000,000.00 for each such year. While this Subparagraph will survive termination of this Agreement, the Padres' obligation to make such payments shall end on the earlier of January 31, 2034 and the date that a Replacement Team enters into a lease or use agreement with the City in accordance with the requirements set forth in Subparagraph 3.2.3(d)(i).

#### **4. Ownership and Use.**

4.1. City Ownership. The Complex is owned by the City. Except as set forth herein, the Padres or any of its Affiliates shall not own or have any possessory or other right, title or interest in the Complex. This Agreement does not create or grant any possessory interest or similar right, title or interest in the Complex to the Padres or any of its Affiliates.

4.2. City Reserved Use. Except as provided in Sections 5 and 6 of this Agreement, the City reserves the right to use the Complex and to enter any portion of it.

#### **5. Use of Complex During Spring Training Season.**

5.1. In General. The use of the Complex shall be divided into two distinct time periods: the Spring Training Season, and the Non-Spring Training Season. The use of the Stadium Facilities and the Padres Facilities during the Spring Training Season shall be governed by the following provisions:

5.1.1. The Padres Facilities. During the Spring Training Season in each year of the Term, the Padres will have a full complement of both Major League and Minor League players and coaching staffs at its Facilities for a majority of this time period. Because of the intensity of the contemplated use for this period, the Padres shall have the exclusive right to use the entirety of the Padres Facilities during the Spring Training Season. Should the City desire to use a portion of the Padres Facilities during the Spring Training Season, the City shall be required to obtain the prior written consent of the Padres as a condition to its doing so. Such consent may be granted or withheld in the Padres' sole and absolute discretion.

5.1.2. Stadium. During the Spring Training Season in each year of the Term, the Stadium Facilities will be subject to shared use between the Padres and the Mariners. Each of the City, the Padres and the Mariners shall use reasonable efforts to accommodate the other parties concerning the scheduling and use of the Stadium; provided, however, that unless mutually agreed by City,

the Padres and the Mariners, in no event shall the Stadium or any portion of it be utilized during the Spring Training Season at any time during the Term of this Agreement by any Person other than the Padres or the Mariners (except for Major League Baseball Clubs playing in Games against the Padres or the Mariners). If the City proposes a use of the Stadium or Stadium Facilities that does not involve any access to the field within the Stadium by the proposed user, then such agreement shall not be unreasonably withheld by the Padres. Such agreement shall not be required for tours and small receptions provided they do not interfere with the Padres' use of the Stadium or involve any access to the field within the Stadium.

5.2. The Padres Spring Training Commitment. Subject to Section 23.21, the Padres shall use its reasonable efforts:

5.2.1. To arrange for a schedule during each Spring Training Season that provides for Games as follows: (a) if the Padres is the only Major League Baseball Club using the Stadium as its "home" field during that Spring Training Season, a schedule of at least fifteen Games against other Major League Baseball Clubs; or (b) if the Padres and the Mariners are sharing use of the Stadium during that Spring Training Season, a schedule that results in at least one game against another Major League Baseball Club at the Stadium by either the Padres or the Mariners on each day from the first day of such schedule until the Padres break camp approximately four to five days prior to the start of the Major League Baseball championship season.

5.2.2. To schedule and play one charity game each year (such charity game to be played prior to the Spring Training Season Games), with the Padres' normal share of Gate Receipts, Net Concession Revenue, Net Novelty Revenue, and Net Parking Revenue to be donated to local non-profit organizations selected by the City. In advance of each charity game, the City and the Clubs shall mutually agree upon a list of potential recipients of this donation. The charity game may be played between the Padres and the Mariners. In the event that the charity game is played between the Padres and the Mariners, both Clubs' share of the Gate Receipts shall also be donated to local non-profit organizations selected by the City.

5.3. Partial or No Spring Training Season. Notwithstanding Section 5.2 above, in the event that the Spring Training Season is canceled or shortened due to events such as labor problems, strikes, lockouts, restrictions imposed by changes in Major League Baseball collective bargaining agreements, changes in the MLB Rules and Regulations, including without limitation Games required to be played outside of Arizona during the Spring Training Season, or other events that are beyond the control of the Padres, the obligations of the Padres under this Agreement shall be modified as follows:

5.3.1. In the event of a partial Spring Training Season consisting of eight or more Padres home Games at the Stadium, this Agreement shall remain in effect with no change.

5.3.2. In the event of (a) a partial Spring Training Season consisting of less than eight Padres home Games at the Stadium, or (b) a Spring Training Season consisting of no Padres home Games at the Stadium, where the Padres or any of its Minor League Affiliates nevertheless uses the Complex for purposes permitted by Section 5, then in addition to any fees or amounts paid to the City pursuant to this Agreement, the Padres shall also pay to the City the reasonable cost of overseeding the Fields within the Padres Facilities in anticipation of that Spring Training Season (if such overseeding was performed), and one-half of the cost of overseeding the field in the Stadium.

5.3.3. In the event that a Padres Spring Training Season is materially shortened or interrupted to permit the Padres to fulfill a commitment to Major League Baseball, such as playing games in another country, the Padres will make a reasonable good faith effort to seek from Major League Baseball a schedule change of relatively equal value.

5.4. City Scheduling. In the event that the City desires to use any portion of the Complex during the Spring Training Season, the City shall be required to obtain the prior written consent of the Padres as a condition to it doing so. Such consent may be granted or withheld in the Padres' sole and absolute discretion.

5.5. Right of Entry. The City reserves the right to enter any portion of the Complex upon reasonable prior notice to the Padres, notwithstanding the exclusive right of the Padres or any of its Affiliates to use such portion, if in the reasonable judgment of the City such entry is necessary to repair or maintain the Complex or is necessary as a result of an emergency.

## **6. Use of Complex During Non-Spring Training Season.**

6.1. In General. During the Non-Spring Training Season, the Padres shall have the non-exclusive right to use the Complex for its Major League Baseball operations, its Minor League baseball programs (including use by its Minor League Affiliates), its Player Development Programs, and any other use not inconsistent with this Agreement. The Padres' right to use the Complex, including its right to use portions of the Complex on an exclusive basis and to approve use of portions of the Complex by third parties, is set forth below.

6.2. Use of the Padres Facilities.

6.2.1. Padres Use. During the Non-Spring Training Season, the Padres shall have the exclusive right to use, or subject to Section 9.3, permit a third party to use, the Padres Clubhouse, two-and-one-half practice fields (those not part of the four field cloverleaf), the batting tunnels, the practice pitching mounds adjacent to the Padres Clubhouse, and the parking spaces within the Padres Facilities (together, the “Exclusive Padres Facilities”). During the Non-Spring Training Season, the Padres shall have the non-exclusive right to use, or permit a third party to use, the remaining portions of the Facilities, excluding the exclusive facilities of TEAM 2 (the “Non-Exclusive Facilities”), with reasonable notice to the City and subject to availability and payment of normal consistent rental fees.

6.2.2. City Use. During the Non-Spring Training Season, the City may use, or permit a third party to use, any portion of the Padres Facilities not being used by the Padres; provided, however, that if the third party is to use any portion of the Exclusive Padres Facilities, the Padres shall have the right to approve or disapprove such use in its sole and absolute discretion; and provided further, that all use of the Non-Exclusive Facilities shall be restricted to baseball and baseball-related activities or for a purpose that will not materially alter or damage the Padres Facilities.

6.3. Use of the Stadium. The Padres and its Minor League Affiliate(s) shall have the right to non-exclusive use of the Stadium during the Non-Spring Training Season on a priority basis over other potential users of the Stadium (and on an equal basis with TEAM 2). In order to retain this priority, the Padres shall notify the City at least 180 days in advance of any planned use of the Stadium. The City may charge the Padres a fee for Non-Spring Training Season use of the Stadium, such fees to be reasonably set and consistent with set use fees, but in no event to exceed that charged to any other athletic organization for comparable use. All use of the field within the Stadium during the Non-Spring Training Season shall be restricted to baseball and baseball-related activities or for a purpose that will not materially damage the field within the Stadium. The parties agree that concerts and similar events are not prohibited by the preceding sentence as long as the City fully performs its obligations under Section 11.5.

6.4. Scheduling of Other Uses by the Padres. The parties to this Agreement recognize that a third party whom the Padres permit to use all or a portion of the Exclusive Padres Facilities (“Third Party User”) may also require use of a portion of the Non-Exclusive Facilities, and that the parties would lose shared revenues if scheduling conflicts prevented such use. To avoid such scheduling conflicts, the parties agree that a Third Party User shall have certain limited scheduling priority on the use of the Non-Exclusive Facilities, as set forth below.

6.4.1. Scheduling Priority. The Third Party User shall have priority in scheduling for use of the Non-Exclusive Facilities over all other potential users, except the Padres; provided, however, that this scheduling priority must be exercised in accordance with the procedure set forth in Section 6.4.2; and provided, further, that such scheduling priority must reasonably accommodate the needs of amateur baseball programs within the City.

6.4.2. Scheduling Procedure. To effectuate the scheduling priority established under Section 6.4.1, at least 120 days prior to the Third Party User's planned use of the Non-Exclusive Facilities, the Padres must give the City written notice (a) identifying the potential Third Party User; (b) describing the portion of the Facilities to be used; and (c) stating the proposed terms of such use. Following receipt of such notice, the City will make reasonable good faith efforts to reduce such terms to a written use agreement between the City and the Third Party User, subject to payment by the Third Party User of normal consistent rental fees. If such written use agreement is not executed by 90 days prior to the planned use, the Third Party User shall have no further scheduling priority.

6.5. Scheduling of Other Uses by the City. Consistent with Section 6.2.2, the City must have the consent of the Padres to schedule any use by a third party of any portion of the Exclusive Padres Facilities. The City may schedule use of any portion of the Non-Exclusive Facilities by a third party without the Padres' consent; provided, however, that the Padres' consent must be obtained if (a) the third party is a professional baseball team; or (b) the third party will also be using some portion of the Exclusive Padres Facilities; or (c) the City wishes to commit to use of a portion of the Non-Exclusive Facilities by a third party more than 120 days prior to the date of the planned use, or 90 days prior to such planned use if a Third Party User has been identified under Section 6.4.2.

6.5.1. Selection of Facilities. In the event that a third party contacts the City with a desire to use, in whole or in part, the Exclusive Facilities, the City shall select which Club's facility to use in the following fashion: (a) if the third party was referred to the City by one of the Clubs, the City shall give that Club the first priority in licensing use of its Exclusive Facilities to the third party, (b) if neither Club referred the third party to the City, the City shall coordinate with each Club to determine willingness of the Clubs to license the use of their Exclusive Facilities to the third party, and (c) if both Clubs are willing to license the use of their Exclusive Facilities to the third party, the City will attempt in good faith to alternate between use of the two Clubs' Exclusive Facilities.

6.6. Right of Entry. The City reserves the right to enter any portion of the Complex upon reasonable prior notice to the Padres, notwithstanding the exclusive right of Padres to use such portion, if in the reasonable judgment of the City such entry is

necessary to repair or maintain the Complex or is necessary as a result of an emergency.

## **7. Future Economic Development in and adjacent to the Complex.**

7.1. Economic Development. The Padres acknowledge and support the City's goal of promoting economic development, including further development of permanent structures on and around the Complex within the Economic Development Area (as defined below). The City acknowledges and supports the Padres' concern that such development not adversely impact any aspect of the Clubs' operations, the Spring Training experience of Padres officials, players or fans, or any rights or revenue streams reserved to the Padres in a material way. The Padres and the City pledge to work cooperatively to discuss openly and assess carefully any potential future economic development in the Economic Development Area, with the objective of fostering economic development that does not have an adverse impact on Padres interests. Any such future development in the Economic Development Area shall be subject to this advance consultation, and to the principle of "no material adverse impact" described above.

7.2. Economic Development Area. For the purposes of this Section 7, the "Economic Development Area" shall be considered to be the Complex, adjacent parking lots and other land adjacent to the Complex that is owned or controlled by the City as of the date of this Agreement, a map of which appears as Exhibit E to this Agreement. In conjunction with any proposed development or subpart thereof, if requested by the Padres, the City will provide the Padres with third-party technical studies and other independent analyses demonstrating that the proposed development or subpart being questioned would have not material adverse impact on the Padres' operations, the Spring Training experience for Padres officials, players or fans, or any rights or revenue streams reserved to the Padres. If following such consultation and analysis the Padres continue to believe that City-proposed development would have a material adverse impact, and if the City disagrees and wishes to proceed with the development plans proposed, the City will give the Padres written notice of its intent to proceed. Following receipt of such notice, the Padres shall have 30 days to challenge the City's decision by initiating the Expedited ADR procedure. If the dispute proceeds to arbitration, the arbitrator shall determine if a material adverse impact exists, as defined more fully in Section 7.1. If the arbitrator's decision is that a material adverse impact exists, the proposed development plans shall not proceed until such impact is fully mitigated. If the arbitrator's finding is that a material adverse impact does not exist, the proposed development plans may proceed in a manner no more impactful than as described in the Expedited ADR proceeding. The arbitrator may retain jurisdiction to ensure compliance with the intent of this Section.

## **8. Spring Training Season Revenues and Responsibilities.**

## 8.1. Tickets.

8.1.1. Sponsoring Organization. The City may, at its option, select a Sponsoring Organization to sponsor Games and/or to manage ticket sales, collect the proceeds of tickets sales, and account to the City and the Padres for Gate Receipts or to assist with other activities related to the Games.

8.1.2. Responsibility for Ticket Sales. The City, either by itself or through a Sponsoring Organization shall have the right and responsibility to manage the sale of tickets to all Games, which may include selecting a Ticket Agency reasonably acceptable to the Padres and TEAM 2. The Padres agree that the Peoria Diamond Club, as currently organized, is acceptable to the Padres as a Sponsoring Organization. The City shall not change the Sponsoring Organization without complying with the terms of this Section 8.1.2. The City, either itself or through the Sponsoring Organization or Ticket Agency, shall be responsible for sale of tickets, collection of the proceeds of ticket sales, and accounting to the Padres for all Gate Receipts consistent with Section 8.8.1.

8.1.3. Establishment of Basic Ticket Price. At least 180 days prior to the start of each Spring Training Season during the Term and after receiving input from the City, the Padres shall make a determination regarding the pricing structure and Basic Ticket Prices for the Padres home Games during that Spring Training Season. The Padres agrees that (a) it will not set a Basic Ticket Price such that its average ticket price will exceed the average ticket price of the two highest Cactus League teams from the prior year without the City's approval, (b) notwithstanding the provisions in (a) above, general admission seating shall not exceed the median ticket price for comparable seating at other Cactus League venues from the prior year, (c) prior to the sale of tickets each year, the City shall be entitled to submit a structure of meaningful discounts to City residents, which shall be subject to discussion with and approval by the Padres, with the Padres' approval not to be unreasonably withheld, and (d) prior to the sale of tickets each year, the City shall be entitled to submit to the Padres a structure of promotions of general applicability, which shall be subject to discussion with and approval by the Padres, with the Padres' approval not to be unreasonably withheld. The parties expressly agree that the discounts and promotions set forth in Sections 8.1.6 and 8.1.7 below are acceptable without further discussion or approval. The Padres and TEAM 2 shall give good faith consideration to employing a uniform pricing structure for tickets, but this shall not be mandatory. No surcharge, fee, tax, or premium may be added to the Basic Ticket Price unless agreed to by the Padres and the City, except for (i) a reasonable Service Charge, (ii) a Complex Improvement Surcharge, and (iii) a Non-General Admission Surcharge. Subject to Section 14.3, any tax on ticket sales that may at any time apply shall be included as part of the Basic Ticket Price, unless prohibited by law. In the event

that a new pricing structure is implemented by the Padres, the City shall not be required to incur any incremental, direct ticketing expenses (such as software acquisition, third-party contracts or other incremental operating costs) but excluding costs that can be borne by a third party ticket vendor. The City shall make a good faith effort to transfer any such costs to its third party ticket vendor.

8.1.4. Division of Gate Receipts. The City, either directly or through the Ticket Agency or Sponsoring Organization, shall collect all Gate Receipts and pay the Padres 80% of all Gate Receipts. The visiting team share, if any, shall be paid by the Padres or its designee from this eighty percent (80%) share. At the Padres' request, the City or its Sponsoring Organization shall pay the visiting team's share, if any, and offset it against this eighty percent (80%) share. If the Padres play a Game against the Mariners, the City shall pay each Club 40% of all Gate Receipts.

8.1.5. Complimentary Tickets and Passes. The Padres shall have the right to request and receive complimentary tickets to any of the Games as may be reasonably necessary for Padres' employees, families, associates or marketing or promotional needs. The Padres may require that the City or the Sponsoring Organization allocate certain seats in advance to the Padres for such purposes. Otherwise, such tickets will be provided on a best available seat basis. The Padres may also issue press and media passes on a complimentary basis. Such complimentary tickets and passes are excluded from calculation of Gate Receipts.

8.1.6. Resident Discount. The Padres agree that the City may offer a discounted ticket price for such Games as may be mutually agreed upon by the Padres and the City prior to each Spring Training Season. The discounted ticket price will be limited to only Peoria residents (the "Resident Discount"). For purposes of this Agreement, "Peoria resident" is defined as a person who by display of a valid Arizona Motor Vehicle Operator's License or a City of Peoria Utility Billing statement dated within 45 days of purchase can demonstrate that they are a resident of the City of Peoria, Arizona. The City shall be responsible for administering the Resident Discount and shall indemnify and hold the Padres harmless with respect to any claims or challenges related to the Resident Discount. The Padres expressly agree that the following Resident Discount program is acceptable to the Padres with no further discussion or approval required: for approximately one-third of the Padres' home Games (to be identified by the Padres after receiving input from the City and prior to each Spring Training Season), no Resident Discounts will be offered or accepted without express agreement of the Padres; for the remaining approximately two-thirds of the Padres' home Games, a Resident Discount of \$4 per ticket may be offered by the City; for one of those discounted games, mutually agreed upon by

the City and the Padres, the City may offer a \$7 per ticket Resident Discount. The Resident Discount shall be limited to reserved seating areas. The Padres may identify certain additional seating areas for which Resident Discounts will not apply. In choosing the games subject to the Resident Discount, the Padres agree to consider including at least one game occurring on a Saturday or Sunday. The parties agree to review the discount levels provided in this Section periodically during the Term to determine if any changes are desirable, but no changes shall be made without the prior written consent of the Clubs and the City.

8.1.7. Promotions. The Padres agree that the City may offer promotions of general applicability for such Games as may be agreed upon by the Padres and the City prior to each Spring Training Season. These promotions shall consist of discounted ticket prices (the "Promotions"), and the City shall be responsible for administering any Promotion and shall indemnify and hold the Padres harmless with respect to any claims or challenges related to the Promotions. The Padres expressly agree that the following Promotion program is acceptable to the Padres with no further discussion or approval required: for approximately one-third of the Padres' home Games (to be identified by the Padres after receiving input from the City prior to each Spring Training Season), a Promotion of \$3 per ticket may be offered by the City, provided, however, that the Padres may identify certain seating areas for which the Promotions will not apply, such as premium seating or seats priced close to the value of the Promotion, and any such Promotion may not be combined with any other discount or promotion, including a Resident Discount. The parties agree to review the discount levels provided in this Section periodically during the Term to determine if any changes are desirable, but no changes shall be made without the prior written consent of the Clubs and the City.

8.1.8. Establishment of Surcharges. The City may impose a Complex Improvement Surcharge of \$1.00 on each Game ticket sold (the "Complex Improvement Surcharge"). The amount of the Complex Improvement Surcharge from time to time may be amended by the City and the Padres by execution of a letter agreement signed by both parties. Proceeds from the Complex Improvement Surcharge shall be deposited into the existing Complex Improvement Account, dedicated exclusively to funding Complex Improvements, and shall be administered consistent with Section 12.4. The City may also impose a second ticket surcharge of \$0.50 on each Game ticket sold for a reserved seat (the "Non-General Admission Surcharge"). The proceeds from the Non-General Admission Surcharge shall be deposited into the Capital Improvements Account, which shall be administered consistent with Section 12.3. Following the 2016 Spring Training Season, each surcharge will be subject to adjustment consistent with the CPI for years after 2014, with the adjustment to

be applied once every three years (subject to a cap of a 15% increase for any such three-year period). If requested by the Clubs, the City shall cause the total amount of the surcharges to be disclosed as a “facilities surcharge” on all hardcopy and digital tickets for which such surcharges are imposed.

## 8.2. Concessions.

8.2.1. Selection of Concessionaire. The City shall have the right and responsibility to manage the sale of food and beverages at Games and to select the Concessionaire, with input from the Padres on the selection criteria and the terms of the Concession Agreement. The Padres shall have the right to approve the terms of the Concession Agreement and the prices of items to be sold by the Concessionaire, which approval shall not be unreasonably withheld.

8.2.2. Division of Concession Revenue. The City and the Padres shall share equally all Net Concession Revenue attributable to Games, provided that, when the Padres and the Mariners play each other, the Clubs will share their half of Net Concession Revenue equally without regard to which of the Clubs is the Home Team.

8.2.3. Concession Sales at the Padres Facilities. During the Spring Training Season, the City shall have the right and responsibility to manage the sales of food and beverages at the snack bar located within the Padres Facilities and/or by use of portable food carts or vendors located within the Padres Facilities. If the City conducts these sales through a non-profit-organization who retains all proceeds, the Padres shall not be entitled to any revenues from such sales. If the City receives any portion of the revenues from such sales or permits any Person other than a non-profit organization to conduct these sales, then Net Concession Revenues from such sales will be shared equally between the City and the Padres.

## 8.3. Novelty Sales.

8.3.1. Responsibility for Novelty Sales. The Mariners shall have the right and responsibility to manage the sale of Novelties and/or to select a Person responsible for sales of Novelties with input from the City. The Mariners shall receive a management fee of 5% of gross revenue from the sale of Novelties. The City and the Padres shall have the right to approve the terms of any agreement with a third party seller of Novelties and the prices of items to be sold, which approval shall not unreasonably be withheld.

8.3.2. Division of Novelty Revenue. The City and the Padres shall share equally all Net Novelty Revenue derived during Games, provided that, when the Padres and the Mariners play each other, the Clubs will share their half of Net

Novelty Revenue without regard to which of the Clubs is the Home Team. For Novelty sales on days that no Games are played, 50% of Net Novelty Revenue shall go to the City and 25% shall go to each Club.

8.4. Programs. The City shall have the right and responsibility to manage the production of Programs for and sale of Programs at Games. This right and responsibility includes the right and responsibility to sell advertising for Programs, subject to any product exclusivity requirements or limitations that the Padres may impose with reasonable notice to the City. The City may request that the Sponsoring Organization manage this responsibility. The Padres shall have the right to approve the price of Programs, which approval shall not be unreasonably withheld. The City and the Padres shall share equally all Net Program Revenue derived during Games, provided that when the Padres and the Mariners play each other, the Clubs will share their half of Net Program Revenue without regard to Home Team.

8.5. Stadium Advertising.

8.5.1. The City shall coordinate the sale of all advertising at the Stadium Facilities, recognizing that the Padres and TEAM 2 may assist in the sale of such advertising. All such advertising shall comply with all applicable MLB Rules and Regulations regarding stadium advertising. All Net Stadium Advertising Revenue attributable to the Spring Training Season shall be shared by the parties as follows: 50% of Net Stadium Advertising Revenue to the City and 25% to each of the Clubs. The Padres shall have the right to sell advertising on the two largest signage areas located on its respective side of the Stadium scoreboard (the "Scoreboard Signage"). The revenue received from the Scoreboard Signage shall be excluded from Net Stadium Advertising Revenue with the effect that the Padres will retain 100% of such revenue, less any costs of producing and installing the Scoreboard Signage. If the Padres wish to sell the Scoreboard Signage during a particular Spring Training Season, it shall notify the City in writing no later than November 30 of the relevant year. In the event that the Stadium scoreboard is replaced and the available signage is modified, the Padres shall retain the right to sell signage areas on its side of the new Stadium scoreboard that are at least as large as the current signage areas. The City and the Padres shall communicate with each other regarding potential advertising partners and existing or proposed exclusivities, if any, in connection with each party's efforts to sell advertising within the Stadium Facilities.

8.5.2. For purposes of this Agreement, Net Stadium Advertising Revenue shall be deemed to be "attributable to the Spring Training Season" in the following circumstances:

(a) If derived from the sale of signs (whether fixed or temporary), announcements or other visual or audio displays presented during the Spring Training Season only; or

(b) If derived from the sale of signs (whether fixed or temporary), announcements or other visual or audio displays, presented at any time during the Non-Spring Training Season, to an advertiser who also purchases signs (whether fixed or temporary), announcements or other visual or audio displays during the Spring Training Season (such Revenue to be consolidated with Revenue received from advertising presented during the Spring Training Season); provided, however, that the foregoing shall not apply to revenue from advertising presented during the Non-Spring Training Season and the City shall not be obligated to share such revenue if (i) such advertising is subject to a written agreement between the City and the advertiser which separates the advertising benefits to be provided during the Spring Training Season (the "Spring Training Advertising Benefits") from those advertising benefits to be provided during the Non-Spring Training Season (the "Non-Spring Training Advertising Benefits"), (ii) such written agreement separates the advertising revenue to be allocated to the Spring Training Advertising Benefits from the advertising revenue to be allocated to the Non-Spring Training Advertising Benefits, and (iii) the advertising revenue allocation for the Spring Training Advertising Benefits is fair and reasonable in comparison to both the advertising revenue allocation for the Non-Spring Training Advertising Benefits and the fair market value of the Spring Training Advertising Benefits.

8.5.3. Subject to compliance with MLB Rules and Regulations, as applicable, the City may sell signs (whether fixed or temporary), announcements or other visual or audio displays for year-round display, or for display only during all or part of the Spring Training Season, or for display only during all or part of the Non-Spring Training Season, or in any combination of the foregoing. The advertising rates for those various periods shall be set by the City, with the reasonable approval of the Padres and TEAM 2, the intent of the parties being that such advertising rates not artificially discourage advertisers from including the Spring Training Season within their advertising programs. Any Person who purchases the right to display signs or other visual messages during the Spring Training Season shall have the right to purchase the on-going display of such signs or other visual messages during the Non-Spring Training Season, at the established rates.

8.5.4. The parties recognize that advertisers may elect to purchase advertising space only during the Spring Training Season, making such space

available for sale by the City during the Non-Spring Training Season. Where such space remains available, the City may sell the right to display fixed and temporary signs and other visual displays, as well as audio messages, during the Non-Spring Training Season (with such display rights not extending into the Spring Training Season) to advertisers who do not also purchase signs, announcements or other visual or audio displays during the Spring Training Season. The City shall be entitled to keep all Net Stadium Advertising Revenue derived from such sales, or to allocate such Revenue among users of the Stadium or Stadium Facilities during the Non-Spring Training Season (which may or may not include the Padres), as the City sees fit.

8.6. Parking. The City shall have the right and responsibility to manage parking at the Stadium. The City may request that the Sponsoring Organization manage this responsibility. The Padres shall have the right to approve the price of parking at the Stadium, which approval shall not unreasonably be withheld. The City and the Padres shall share equally all Net Parking Revenue attributable to Games, provided that, when the Padres and the Mariners play each other, the Clubs will share their half of Net Parking Revenue without regard to which of the Clubs is the Home Team. The City acknowledges a common goal of preserving the existing parking revenues and developing additional parking if and when feasible.

8.7. Broadcasting. The Padres shall have and retain all rights relating in any way to the broadcasting of its Games via any media, and to all revenue derived from the sale of broadcast rights, broadcast advertising, or other sources of revenue relating to broadcasting of Games. The City shall have the right to charge reasonable hook-up fees for television production trucks or similar support equipment.

8.8. Accounting.

8.8.1. City's Responsibility. The City shall institute a method of accounting for the collection, calculation, and payment to the Padres of the Padres' appropriate share of Gate Receipts, Net Concession Revenue, Net Program Revenue, Net Stadium Advertising Revenue, and Net Parking Revenue. Except for Gate Receipts, the City shall furnish an accounting statement within 30 days following the final Game of each Spring Training Season and shall pay the Padres' appropriate share of each of these items within 60 days following the final Game of each Spring Training Season (the "Spring Training Settlement"). As to Gate Receipts, the City shall furnish an accounting statement and shall pay the Padres' appropriate share within five days after each Game.

8.8.2. The Mariners' Responsibility. The Mariners shall institute a method of accounting for the collection, calculation, and payment to the City and the Padres of the appropriate share of Net Novelty Revenue. The Mariners shall

furnish an accounting statement within 30 days following the final Game of each Spring Training Season and shall pay the City's and the Padres' appropriate share of Net Novelty Revenue within 60 days following the final Game in each Spring Training Season.

8.8.3. Right to Inspect. Each party may, upon reasonable notice and during business hours, examine, inspect and copy the books and records pertaining to Gate Receipts, Net Concession Revenue, Net Program Revenue, Net Stadium Advertising Revenue, Net Parking Revenue, and Net Novelty Revenue. Either party may, at its own expense, cause an audit to be performed of the other party's pertinent books and records.

8.8.4. Games Between the Padres and the Mariners. Notwithstanding any contrary provisions of this Section 8, at any Game where the Padres play the Mariners, Gate Receipts, Net Concession Revenue, Net Program Revenue, and Net Parking Revenue which otherwise would have been paid by the City to the Home Team shall be equally divided and paid one-half to each of the Padres and the Mariners.

8.9. Subservience. For the avoidance of doubt, all sections of this Article 8 shall be subject to Section 23.21.

## **9. Non-Spring Training Season Fees and Obligations.**

9.1. Use Fee. The Padres shall pay the City an annual use fee of \$1 for the use of the Complex. For the avoidance of doubt, the Padres shall not be required to pay any annual use fees in 2012 or 2013.

9.2. Sharing of Related Income. Should the City and the Padres agree to permit a third party to use any portion of the Exclusive Padres Facilities during the Non-Spring Training Season, as permitted and limited by the provisions of Section 6, the Padres shall receive from the City as a credit against future utility payments owing to the City a portion of any gross revenue received by the City from the third party for its use of that portion of the Exclusive Padres Facilities. The specific allocation of the gross revenue received from the third party by the City shall be negotiated and mutually agreed upon by the Padres and the City on a case by case basis, with both parties committed to the principle that the allocation will fairly reflect the degree to which the third party will (a) use the Exclusive Padres Facilities; (b) use the Non-Exclusive Facilities; and (c) cause the City to incur additional costs for maintenance, utilities or other items. Once the aggregate amount of such credit equals the Padres' share of the current year's utility payment determined in accordance with Section 15.2, the excess amount shall be paid currently to the Padres rather than credited against future utility payments. Any such credits remaining upon expiration or termination of this

Agreement, including any extensions thereof, shall be paid to the Padres within 30 days after such expiration or termination. As used in this Section 9.2, "gross revenue" means any and all monies paid or other value given by the third party without deduction for any costs, expenses, overhead, taxes, or offsets of any character. Credit for this share of gross revenue shall be made by the City to the Padres within ten days of receipt of the gross revenue by the City.

9.3. City Use of Fields. Section 9.2 shall not apply to revenue received by the City for use of any or all of the four practice fields located in the cloverleaf section of the Padres Facilities, as long as such use: (a) is not by a Major League Baseball team, Minor League team or Minor League Affiliate; and (b) is not by a third party which is also using any other portion of the Exclusive Padres Facilities.

9.4. Sharing of Other Income Generated During the Non-Spring Training Season at the Padres Facilities.

9.4.1. Admission and Parking Fees. Unless mutually agreed between the City and the Padres, no admission or parking fees shall be assessed by the City or the Padres for games, events or activities ("Activities") of the Padres occurring at the Padres Facilities during the Non-Spring Training Season. In the event that the City, the Padres proposes to charge for parking, programs or admission to such Activities, then the City and the Padres agree to meet and confer regarding the feasibility and appropriateness of such charges and the disposition of revenues from such Activities, if any. The requirements of this Section 9.4.1 shall in no way limit the ability of the City to assess charges or fees for events or games at the Complex unrelated to Padres' Activities.

9.4.2. Concession Sales at the Padres Facilities During the Padres' Non-Spring Training Season Activities. During such times in the Non-Spring Training Season that the Padres is conducting Activities at the Padres Facilities, the City shall have the right and responsibility to manage the sales of food and beverages at the snack bar located within the Padres Facilities and/or by use of portable food carts or vendors located within the Padres Facilities. If the City conducts these sales through a non-profit organization and said non-profit organization retains all proceeds, the Padres shall not be entitled to any revenues from said sales. If the City receives any portion of the revenues from such sales or permits other than a non-profit organization to conduct these sales, then Net Concession Revenues from such sales will be shared such that the City receives 50% of Net Concession Revenues and the Padres receives 50%. The requirements of this Section 9.4.2 shall in no way limit the ability of the City to conduct concession sales, either itself or through a non-profit organization of the City's choosing, for games, events or activities at the Complex unrelated to the Padres' Activities,

and all such unrelated sales, whether by City or a non-profit organization, are exempt from the requirement regarding sharing such revenues with the Padres.

9.4.3. Novelty Sales at the Padres Facilities during the Non-Spring Training Season. In the event that either the City or the Padres proposes to sell Novelties at the Padres Facilities during the Non-Spring Training Season, the following terms shall apply:

(a) For sales at the Exclusive Padres Facilities, the Padres shall have the exclusive right to conduct such sales itself or to select a Person to conduct such sales, if any. The City and the Padres shall share equally Net Novelty Revenue from such sales at the Exclusive Padres Facilities.

(b) For sales at the Non-Exclusive Facilities of professional baseball related Novelties only, the Padres shall have the right to approve the Person selected by the City to conduct such sales including the selection criteria, the terms of any agreement for such Novelty sales, and the prices of items to be sold, which approval shall not unreasonably be withheld. The parties shall share the Net Novelty Revenue from sales of professional baseball-related Novelty items sold during the Non-Spring Training Season at the Non-Exclusive Facilities so that the City shall receive 50% of Net Novelty Revenue and each Club shall receive 25%.

(c) For sales during the Non-Spring Training Season occurring at the Non-Exclusive Facilities of Novelties unrelated to professional baseball, the City shall have the right to conduct such sales itself or to select the Person to conduct such sales without any input from the Padres. The City is not required to share any of the proceeds of such sales with the Padres.

9.4.4. Advertising at the Padres Facilities. Unless mutually agreed between the City and the Padres, no fees or charges shall be assessed by the City or the Padres for advertising on the Padres Facilities during the Non-Spring Training Season Period. In the event that the City or the Padres proposes to charge for advertising to be located on the Padres Facilities, then the City and the Padres agree to meet and confer regarding the feasibility and appropriateness of such advertising and the disposition of revenues from such advertising, if any.

9.5. Sharing of Other Income Generated by the Padres During the Non-Spring Training Season at the Stadium Facilities.

9.5.1. Stadium Advertising. The City shall be responsible for the sale of all advertising at the Stadium and Stadium Facilities for the Non-Spring Training Season, subject to the provisions of Section 8.5 above. The City shall be entitled to keep all Net Stadium Advertising Revenue derived from such sales which is not attributable to the Spring Training Season, or to allocate such Revenue among users of the Stadium or Stadium Facilities during the Non-Spring Training Season (which may or may not include the Padres), as the City sees fit, as set forth in Section 8.5.4 above.

9.5.2. Other Stadium Income. In the event that the City or the Padres proposes to stage games, events or activities involving the Padres or its Minor League Affiliates within the Stadium during the Non-Spring Training Season, the City and the Padres agree to meet and confer regarding the feasibility and appropriateness of admission fees or charges; Parking Lot charges; sales of programs, concessions and/or Novelties; and additional sales of advertising and the disposition of revenues from these specific sales, if any. Unless mutually agreed by the City or the Padres, neither party shall charge any fees for admission or parking at proposed games, events or activities at the Stadium Facilities during the Non-Spring Training Season. The requirements of this Section 9.5 shall in no way limit the ability of the City to assess charges or fees for events, games or activities at the Stadium Facilities unrelated to the Padres' Activities.

## **10. The Padres Obligations.**

10.1. Stadium Home Games. Subject to MLB Rules and Regulations, the Padres shall utilize the Stadium as its "home field" for the Spring Training Season Games of the Padres throughout the Term of this Agreement; provided, however, that this obligation extends only until the Padres break camp approximately four to five days prior to opening day of the Major League Baseball championship season and in no way limits the Padres' right and ability to host games at other locations after breaking camp.

10.2. Game Day Operations. Without limiting the City's obligations under this Agreement, the Padres shall provide the following customary Game Day Operations for each Game played by the Padres in the Stadium during the Spring Training Season, at no cost to the City:

10.2.1. Game Supplies. Bats, balls and similar disposable supplies for the play of the Game.

10.2.2. Umpires. All umpires required to officiate at the Game.

10.3. Spring Training Program. All programs sold at the Games shall include a one-half page advertisement acknowledging the role of the City in providing and operating the Complex.

10.4. Spring Training Broadcasts. The Padres' regular play-by-play announcers shall use reasonable efforts to promote the tourism attributes and attractions of the City on all radio broadcasts of the Club's Spring Training Season Games.

10.5. Championship Season Promotion. The Padres shall make reasonable good faith efforts to promote the City and the next year's Spring Training activities. Such promotion may be through the Padres' publications, game programs, media advertising, or otherwise, subject to reasonable availability.

10.6. Clubhouse Equipment. The Padres shall be responsible for installing in its Clubhouse any furniture, photocopying machines, fax machines and other such office equipment, and the supplies for operating the same, for exclusive use by the Padres.

10.7. Clubhouse Maintenance. The Padres shall keep those portions of its Clubhouse over which it has exclusive use in neat, clean, safe and good order, condition and repair, consistent with the general industry standard, subject to reasonable wear and tear. In furtherance thereof, the Padres shall provide daily janitorial services to those portions of its Clubhouse for each day of its exclusive use by the Padres.

10.8. Willful Damage. The Padres shall be responsible for any maintenance, repair or restoration related to damage occurring to property as a result of any willful act of misconduct, misuse or abuse by the Padres, any Affiliate of the Padres, any of its officers, agents, employees or contractors, and any invitees of the Padres, including opposing teams.

10.9. Compliance with Law. The Padres shall conduct its business in a lawful manner and shall not use or permit the use of the Complex in any manner that will tend to create waste or a nuisance.

10.10. Security. The Padres shall provide and pay for security in its Clubhouse. During the Non-Spring Training Season, the Padres also shall provide and pay for security in its Clubhouse and Parking Lot at its Facilities.

## **11. City Obligations.**

11.1. Condition of Premises. On the commencement of the Term of this Agreement, the City shall make the Complex available for the Padres in an "as-is" condition. Upon completion of Phase I, the City shall make the Complex available for the Padres' use in a like-new, clean and Finally Completed condition. The City warrants

to the Padres that the plumbing, lighting, air conditioning, heating and other systems in the Complex shall at all times be in good operating condition. If it is determined that this warranty has been violated, then it shall be the obligation of the City, after receipt of written notice from the Padres setting forth with specificity the nature of the violation, to correct the violation promptly, at the City's sole expense.

11.2. Compliance with Law. The City warrants to the Padres that the Complex, in the state existing on the date that the Term of this Agreement commences, does not violate any Legal Requirements in effect on such date. In addition, but without limiting the Padres' obligations under Section 10 of this Agreement, the City shall, at the City's expense, promptly comply with all applicable Legal Requirements relating to the physical condition of the Complex, now in effect or which may hereafter come into effect during the Term, whether or not they reflect a change in policy from those now existing. If it is determined that this Section has been violated, then it shall be the obligation of the City, after receipt of written notice from the Padres setting forth with specificity the nature of the violation, to correct the violation promptly, at the City's sole expense.

11.3. Management of Complex. The City shall be responsible for managing the operation of the Complex. To carry out this responsibility and ensure appropriate communication with the Padres, the City will designate a representative of the City to be responsible for overall coordination of events and operations at the Complex. The City's representative shall be responsible for the overall management of the Complex, promotion of Games and other events at the Complex, and maximization of potential revenue for the City and the Padres under this Agreement. Included among these responsibilities are the overall responsibility to manage ticket sales and distribution, Stadium advertising sales, Program production and sales, concessions, parking, and other operational, logistical, and administrative requirements of the Complex; provided, that nothing in this overall management responsibility shall prevent the City from subcontracting specific operations, although the City must obtain the Padres' consent prior to subcontracting any operations, with such consent not to be unreasonably withheld.

11.4. Maintenance of Complex.

11.4.1. The City shall keep the Complex, including the Stadium, Clubhouse (except to the extent of the Padres' responsibility therefore under Section 10.7), Parking Lots, practice fields, batting cages and tunnels, pitching mounds, landscaped areas and all other Improvements within the Complex, in neat, clean, safe and good order, condition and repair, as a high-quality Major League Baseball Spring Training practice and playing facility, and in accordance with Major League Baseball standards, without regard to whether the maintenance, repair or restoration required to do so is interior or exterior, structural or non-structural, routine or extraordinary.

11.4.2. The City shall bear all O, M & R Costs that may be incurred in connection with the performance of its obligations under Section 11.4.1, except as otherwise provided in Section 11.4.3 below.

11.4.3. The City shall not be responsible for any maintenance, repair or restoration related to damage occurring to property as a result of any willful act of misconduct, misuse or abuse by the Padres, any Affiliate of the Padres, or any of their respective officers, agents, employees or contractors.

11.4.4. The City shall inspect the Complex as often as reasonably necessary to determine its compliance with the provisions of this Section.

11.5. Field Maintenance. The parties acknowledge that the condition of the Fields is of the utmost importance for the operations of the Padres. Maintaining it will require a high degree of expertise and care. Toward that end, the parties agree as follows:

11.5.1. The City shall provide and maintain all necessary Field equipment, such as bases, bullpen home plates, pitching rubbers, bullpen pitching rubbers, outfield fences, batting cages, protective screening and similar items for the play of each Game, but excluding bats, balls and similar supplies. The City shall also provide and maintain protective padding in the Stadium.

11.5.2. The City shall maintain the Fields, at the City's expense, strictly in accordance with the standards set forth in Exhibit C. In connection with its fulfillment of this responsibility, the City shall provide the services of an experienced groundskeeper who must have specific experience in the care and maintenance of baseball fields at the professional level, responsible for overall management of the maintenance of the fields. The City shall provide the Padres and TEAM 2 an opportunity for reasonable input regarding the selection criteria and performance of the groundskeeper, and shall give good faith consideration to such input. This groundskeeper shall be reasonably available at the Site as needed throughout the year, and on-site at the Complex on a full time basis during the 30 day period immediately prior to the first scheduled Game of each Spring Training Season during the Term of this Agreement and throughout the Spring Training Season itself.

11.5.3. If the Padres determines in good faith that the Fields are not being properly maintained, the Padres shall give written notice of that determination to the City. If the City fails to initiate actions to correct the problem within ten days after its receipt of the Club's notice, then the Padres may perform such maintenance to the Fields as it considers necessary to meet minimum standards for a Major League Baseball facility. As soon thereafter as practicable,

Expedited ADR shall be convened to determine whether the Fields were being properly maintained by the City:

(a) If it is determined by Expedited ADR that the Fields were being properly maintained by the City, then the Padres shall not be entitled to any reimbursement for any sums expended by it to effect what it considered to be proper maintenance of the Fields.

(b) If it is determined by Expedited ADR that the Fields were not being properly maintained by the City, then the City, at its election, shall either (i) immediately reimburse the Padres for all sums expended by it to effect proper maintenance of the Fields, plus interest thereon at the Default Rate, or (ii) cause all sums next-to-become-due to the City under this Agreement to be paid to the Padres instead of the City, until such time as the Padres has been reimbursed for all sums expended by it to effect proper maintenance of the Fields, plus interest thereon at the Default Rate (or until no further sums remain due to the City, at which time the City shall reimburse the Padres forthwith upon request).

11.6. Security. The City shall provide and pay for a level of security and police protection in and around the Stadium Facilities that is commensurate with other spring training facilities in the Cactus League. During the Spring Training Season, the City also shall provide and pay for a level of security and police protection in and around the Padres Facilities, excluding within the Clubhouse, that is commensurate with other spring training facilities in the Cactus League. In the event that the Padres desire a higher level of security or police protection, the City and the Padres shall meet to discuss an appropriate sharing of the relevant incremental costs.

11.7. Game Day Operations. Without limiting the Padres' obligations under Section 10.1 of this Agreement, the City shall provide the following customary Game Day Operations for each Game played by the Padres in the Stadium during the Spring Training Season, at no cost to the Padres:

11.7.1. Parking and Traffic Control. The City shall either provide, or designate an entity to provide, parking and traffic control, and the necessary personnel and equipment therefor, in and around the Complex on the days of Games.

11.7.2. Public Address. The City shall provide one public address announcer for each Game.

11.7.3. Scoreboard. The City shall provide one trained scoreboard operator for each Game.

11.7.4. Ticket Collection. The City shall provide sufficient personnel to collect tickets at each Game.

11.7.5. Ushering. The City shall either provide ushering, or designate an entity to provide ushering, in the Stadium on the days of Games.

11.7.6. Medical Support. The City shall either provide, or designate an entity to provide, medical support personnel in the Stadium for each Game.

11.7.7. Game Day Security. In addition to the City's obligations under Section 11.6 of this Agreement, the City shall provide and pay for on-site security and police protection in and around the Complex on the day of Games.

11.7.8. Stand-by Personnel. The City shall arrange to have electricians, plumbing and maintenance personnel, and such other personnel as are customarily made available at other Major League Baseball spring training facilities in the Cactus League, available on a stand-by basis on the days of Games.

11.7.9. Post-Game Cleanup. The City shall be responsible for all cleanup necessary to keep the Stadium Facilities neat, orderly, sanitary and odor-free (including, but not limited to, sweeping, power-washing, refuse disposal and other detailed cleaning).

11.7.10. Non-Smoking. The Stadium shall be designated "non-smoking" except for an area located in the outer part of the Stadium to be mutually agreed upon by the City and the Padres.

11.8. Defaults; Emergencies. If the City defaults in the performance of any of its obligations under this Section 11, the Padres shall provide written notice of such default to the City and shall afford the City such grace period to cure the default as may be provided in this Agreement. Notwithstanding the foregoing, however, and whether or not the City is in default, if the Padres in good faith determines that any obligation to operate or maintain the Complex imposed upon the City by this Agreement must be performed on an emergency basis (that is, that it must be performed prior to the expiration of the applicable grace period, in order to prevent an imminent danger to health or safety), then the following provisions shall govern:

11.8.1. Notice Practicable. If practicable, the Padres shall give written notice to the City specifying the nature of the emergency, and the date and time by which the Padres considers it necessary to commence work to remedy the matter. Following its receipt of such a notice:

(a) The City may commence such work prior to the date and time so specified by the Padres and prosecute the same diligently to completion; if the City does so, the Padres shall not undertake such work itself.

(b) If, however, the City disputes whether the requested work is an emergency, or whether it is required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility, the City shall so inform the Padres in writing prior to the date and time specified by the Padres in its notice. If the City gives timely notice, and if practicable, the dispute shall be submitted to Expedited ADR prior to the date and time specified by the Padres in its notice.

(c) If (i) the City does not commence such work prior to the date and time specified by the Padres and prosecute the same diligently to completion, or (ii) the City fails to give timely notice of a dispute, or (iii) it is not practicable to submit the matter to Expedited ADR prior to the date and time specified by the Padres in its notice, then in either such event, the Padres may commence the work necessary to remedy the matter on an emergency basis and prosecute the same diligently to completion.

11.8.2. Notice Not Practicable. If the nature of the emergency makes notice impracticable, then the Padres may commence work to remedy the matter on an emergency basis and prosecute the same diligently to completion.

11.8.3. Expedited ADR. If the Padres commences work on an emergency basis under this Section 11.8, then as soon thereafter as practicable, Expedited ADR shall be convened to determine whether the Padres' work was reasonably required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility:

(a) If it is determined by Expedited ADR that the work was not required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility, then the Padres shall not be entitled to any reimbursement for any sums expended by the Padres on the work it commenced on an emergency basis.

(b) If it is determined by Expedited ADR that the work was required to operate or maintain the Complex to meet minimum standards for a Major League Baseball practice and playing facility, then the City, at its election, shall either (i) immediately reimburse the Padres for all sums expended by it on the work it commenced on an emergency basis, plus

interest thereon at the Default Rate, or (ii) cause all sums next-to-become due to the City under this Agreement to be paid to the Padres instead of the City, until such time as the Padres has been reimbursed for all sums expended by it on the work it commenced on an emergency basis, without interest (or until no further sums remain due to the City, at which time the City shall reimburse the Padres forthwith upon request).

## **12. Reserve Accounts.**

12.1. In General. In order to provide sources of funds for the performance of the City's obligations under this Agreement in whole or in part, but not as a limitation on such obligations, the City shall establish certain reserve accounts as set forth in this Section 12.

### **12.2. O, M & R Reserve Account.**

12.2.1. The City shall maintain the previously-established "O, M & R Reserve Account" to provide assurance to the Padres that, in the event revenues generated to the City are not sufficient to fund the O, M & R Costs of the Complex, this additional source of funding will also be available.

12.2.2. During each year of the Term, if the balance in the O, M & R Reserve Account falls below \$100,000.00 the City shall appropriate within its budget an amount sufficient to return the balance of the O, M & R Reserve Account to \$100,000.00. If the balance in the O, M & R Reserve Account exceeds \$100,000.00 at any fiscal year-end, the City shall not be obligated to budget any additional amount to the beginning balance for the following fiscal year.

12.2.3. Interest on amounts in the O, M & R Reserve Account shall be credited to the O, M & R Reserve Account.

12.2.4. In the event revenues generated to the City from the Complex are not sufficient to fund the City's operation and maintenance of the Complex, the City may withdraw funds from the O, M & R Reserve Account to provide such funding.

### **12.3. Capital Improvement Account; Non-General Admission Surcharge.**

12.3.1. The City shall create a "Capital Improvement Account" to fund certain New Capital Improvements or to replace certain Existing Capital Improvements. The Capital Improvement Account shall be funded by the Non-General Admission Surcharge; interest accumulating pursuant to Section 12.3.2.

12.3.2. Interest on amounts in the Capital Improvement Account shall be credited to the Capital Improvement Account.

12.3.3. The City may use the funds in the Capital Improvement Account at its discretion.

(a) Not less than 30 days prior to the City's use of any Capital Improvement Account funds for a project, the City shall furnish to the Padres a written description of the project for the purpose of allowing the Padres to assess (x) whether the project is properly classified as a Capital Improvement, and (y) whether the proposed additional Capital Improvements would materially interfere with the Padres' use and enjoyment of the Complex. If the Padres disputes whether a project constitutes a Capital Improvement, or believes in good faith that a proposed project would materially interfere with the Padres' use and enjoyment of the Complex, then the Padres shall notify the City within ten business days following the Padres' receipt of notification of the project. If the Padres gives timely notice, the dispute shall be submitted to Expedited ADR.

(b) The Padres may at any time request that the City include a Capital Improvement Account proposed project by providing written notice of such request to the City not later than the conclusion of the Spring Training Season of each year, describing in reasonable detail the work to be performed. The City may elect to fund such project in the following year.

12.3.4. Incidental expenditures of the City directly related to Capital Improvements, including reasonable design, engineering, financial, administrative and legal expenditures, may be paid from the Capital Improvement Account.

#### 12.4. Complex Improvement Account Procedure; Complex Improvement Surcharge.

12.4.1. Administration of Funds. The proceeds of the Complex Improvement Surcharge shall be held in trust by the City, in an interest-bearing account (the "Complex Improvement Account"), for the exclusive purpose of funding Complex Improvements and shall not be used for Capital Improvements required to be funded by the Capital Improvement Account or for O,M&R Costs required to be funded by the O,M&R Reserve Account unless expressly agreed in writing by the City, the Padres and TEAM 2. Interest earned on amounts in the Complex Improvement Account shall be credited to the Complex Improvement

Account. Within 30 days following the end of the Spring Training Season, the City shall provide the Padres with an accounting of the Complex Improvement Surcharge collected that Spring Training Season, and the cumulative amount available in the Complex Improvement Account.

12.4.2. Approval and Funding of Complex Improvements. During each Spring Training Season, and at any other time as mutually agreeable, the Padres, the Mariners and the City shall meet to review the desirability of planning any Complex Improvements. Any of the Padres, the Mariners or the City shall be entitled to propose Complex Improvements, but no expenditure from the Complex Improvement Account shall be made without a letter agreement signed by the City, the Padres, and the Mariners, stating with specificity precisely the nature of the work to be done, who will manage the work, approval rights on budget and design of the non-managing party, and the amount authorized to be spent from the Complex Improvement Account.

12.4.3. Alternative Dispute Resolution. When the parties meet to review the desirability of planning proposed Complex Improvements, the parties should make a good faith effort to attempt to agree on Complex Improvements to be made. If any party believes that another party is not acting in good faith, has notified the other party of that belief, and has been unable to resolve the dispute, then the matter may be submitted to Expedited ADR for a resolution of whether the proposed Complex Improvements are consistent with the intent and purposes of this Agreement and the disapproving party is in breach of its obligation to consider such proposals in good faith. If the duly appointed arbitration panel determines that both of these conditions are met, it shall be empowered to direct that the proposed Complex Improvement proceed on such terms and conditions as it deems reasonable and appropriate; provided, however that the arbitration panel shall have no authority to approve any proposed Complex Improvement that the City is required to fund from either the O,M&R Reserve Account or the Capital Improvement Account.

12.4.4. Excess Funds. To the extent that funds in the Complex Improvement Account remain unspent at the end of the Term, they shall be divided between the City and the Padres as if they were considered to be included within the definition of Gate Receipts.

12.4.5. Effect. Complex Improvement Surcharges authorized by the parties and collected by the City prior to the date hereof, to the extent that they have not been spent on mutually agreed projects prior to the date hereof, shall be placed in the Complex Improvement Account and treated as Complex Improvement Surcharges collected pursuant hereto.

12.4.6. The City expressly affirms its intent to expand the Stadium to approximately 10,000 fixed seats or some other mutually agreeable size at such time as this expansion may be economically justified. In furtherance of this general objective, the City and the Padres will review the issue of Stadium expansion in good faith each year as part of the annual Capital Improvement budget process. This Section 12.4.6 is intended to express a general understanding between the Padres and the City that each will move forward in good faith when Stadium expansion is economically justified. This Section 12.4.6 does not create a binding obligation to proceed with expansion in the absence of appropriate financing sources.

12.5. Future Improvements Budget. The City agrees to use its best efforts to maximize potential AZSTA funding, or other similar funding sources, for future Complex Improvements beyond those contemplated elsewhere herein (the "Future Improvements"). The City agrees to provide or cause to be provided an additional \$12,000,000 ("Future Improvements Budget") for such additional Complex improvements to be completed no later than the start of 2027 Spring Training. The City will make such funds available for the Future Improvements at the rate of \$2,000,000 per year from 2021 through 2026. The first \$6,000,000 of the Future Improvements Budget shall go toward additional improvements to the Padres Facilities and the Mariners Facilities, as determined by each Club, with half of this amount budgeted to each Club. The remainder of the Future Improvements Budget shall go toward additional mutually agreed upon (among the City, the Padres and the Mariners) improvements to the Stadium, provided that all approval rights over the design of such improvements shall be reserved to the Clubs. If the promised Future Improvements Budget has not been made available for completion of work prior to the 2027 Spring Training, the Padres may terminate this Agreement pursuant to Section 3.3.2. See also Section 7.6 of the Sports Complex Improvements Agreement.

### **13. Alterations and Additions.**

13.1. Minor Improvements. The Padres may make "minor improvements" to the Complex without prior approval. "Minor improvements" shall mean any work, installation, construction, repair or the like which does not require a permit from any federal, state or local governmental agency; provided, however, that any such minor improvements shall (a) be solely for purposes permitted by this Agreement, and (b) shall not be commenced unless and until the Padres, at its expense, provides adequate security to the City for any such work, to the extent required by A.R.S. § 34-221 et seq., as it may be amended.

13.2. All Other Improvements. Except for the "minor improvements" described in Section 13.1, the Padres shall not construct any improvements on or otherwise alter, change or improve any part of the Complex, without the prior written consent of the City,

not to be unreasonably withheld but which may be conditioned upon such terms and conditions as the City may reasonably deem necessary (including, but not limited to, a requirement that the Padres, at its expense, provide payment and performance bonds to the City for any such work, to the extent required by A.R.S. § 34-221 et seq., as it may be amended). Requests by the Padres to construct any such improvements on or otherwise to alter, change or improve any part of the Complex shall be presented to the City in written form. If the City gives its consent to the Padres' undertaking such work, the consent shall be deemed conditioned upon the Padres' acquiring a permit to do so from applicable governmental agencies, furnishing a copy thereof to the City prior to the commencement of the work, and complying with all conditions of said permit in a prompt and expeditious manner.

13.3. Ownership of Such Improvements. All improvements, alterations or other changes made by the Padres to any part of the Complex pursuant to this Agreement, other than that which is so affixed to the Complex that it cannot be removed without material damage to it, shall remain the personal property or equipment of the Padres and may be removed by the Padres upon expiration or termination of this Agreement.

#### **14. Taxes.**

14.1. In General. The City shall pay all real estate, personal property and other taxes and assessments, if any, relating to the Complex; provided, however, that the City shall have no obligation, other than as provided in Section 14.2, to pay any personal property tax relating to the Padres' equipment, personal property and fixtures purchased and installed by the Padres at the Complex.

14.2. No Possessory Interest. The parties contemplate that no possessory interest or similar tax will be imposed upon the Padres by reason of this Agreement by any taxing authority during the Term of this Agreement, because, among other reasons, the Padres does not have exclusive and continuous use and control of the Complex. If any such tax is imposed upon the Padres by any taxing authority during the Term of this Agreement, then upon payment thereof by the Padres, all sums next-to-become-due to the City under this Agreement shall be paid to the Padres instead of the City, until such time as the Padres has been reimbursed for all such taxes paid (or until no further sums remain due to the City, at which time the City shall reimburse the Padres forthwith upon request). If any possessory interest or similar tax is imposed upon the Padres by any taxing authority during the Term of this Agreement, the Padres shall reasonably cooperate with the City in any effort to rescind or reduce it.

14.3. Ticket Sales and Other Taxes. If the City increases the rate of any tax on any revenue source in which the Padres shares under the terms of this Agreement at any time after the date of this Agreement, or if the City imposes any new tax on the sale of tickets or on any other revenue source in which the Padres share under the terms of

this Agreement that is not in effect on the date of this Agreement, then all sums next-to-become-due to the City under this Agreement shall be paid to the Padres instead of the City, until such time as the Padres has received payments in the same amount as it would have received, had taxes not been so increased or imposed by the City (or until no further sums remain due to the City, at which time the City shall pay such amount to the Padres forthwith upon request). The City shall make reasonable efforts to prevent any such increases or new taxes from being imposed by other governmental agencies.

14.4. Taxes Defined. As used in this Section 14, the term “tax” or “taxes” shall include any form of taxes, fees, levies, charges or assessments, general, special, ordinary or extraordinary (irrespective of the nature thereof, including without limitation, any amount taxed, levied, charged or assessed, based on the fact of a transaction or on a possessory right or interest), and any license fee, rental or other possessory tax, improvement bond or bonds, levy or other form of tax (other than inheritance, personal income or estate taxes) imposed by any authority having the direct or indirect power to tax, including, without limitation, any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, or any other governmental entity against (a) the Complex or any portion thereof, (b) any legal or equitable possessory or other interest of the Padres or any Affiliate of the Padres in the Complex or in any portion thereof, (c) the Padres’ or any Affiliate of the Padres’ right to revenues or other income therefrom, or (d) the Padres’ or any Affiliate of the Padres’ business conducted at the Complex.

## **15. Utilities.**

15.1. Services Provided by City. The City will furnish the following utility services for the occupied portion of the Complex:

15.1.1. Air conditioning (heating or cooling as required by the seasons), in temperatures and amounts which are reasonably required for comfortable occupancy under the Padres’ business operations, including evening, weekend and holiday operations.

15.1.2. Water for lavatory, shower and toilet purposes, cold water for drinking and hot water for lavatory purposes, all at points of supply provided for in the Plans.

15.1.3. Electrical service and lighting for the Complex.

15.1.4. Any hook-up or meter installation charges to provide specially or exclusively-metered water, gas, heat, light, electrical power, or other utilities to the Clubhouses.

15.2. Utility Charges. The City shall pay for all water, gas, heat, light, electrical power, and other utilities supplied to the Complex, including but not limited to field water, sewer and garbage pickup costs, except as follows:

15.2.1. The Padres shall pay for up to \$90,000 (the "Utility Cap") in 2014 for all water, gas, heat, light, electrical power, and other utilities incurred by the Padres at its Clubhouse, with such costs to be deducted from the Padres' Spring Training Settlement. In each year after 2014, the Utility Cap will be adjusted by the CPI on the later of January 31 of the relevant year or the date the new annual CPI information is released by the U.S. Bureau of Labor Statistics. The City shall be responsible during each year for any Clubhouse utility costs over the Utility Cap. For the avoidance of doubt, the Padres shall not be required to pay any Clubhouse utility costs in 2012 or 2013.

15.2.2. In addition, the Padres shall pay for telephone, cable television, fax and other communication usage charges incurred by the Club at its Clubhouse.

## **16. Insurance.**

### 16.1. Liability Insurance.

16.1.1. By the Padres. The Padres shall obtain and keep in force during the Term of this Agreement a policy of Commercial General Liability insurance protecting the Padres and the City (as an additional insured) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the Complex and all areas appurtenant to it in connection with the operations of the Padres. Such insurance shall be on an occurrence basis, providing single limit coverage in an amount not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate. A certificate of insurance shall be furnished by the Padres to the City each year at least 30 days prior to the opening of the applicable Spring Training Season.

16.1.2. By City. The City shall also obtain and keep in force during the Term of this Agreement, or may provide through self-insurance by a duly created municipal insurance trust authority created in accordance with state law, a policy of Commercial General Liability insurance protecting the City and the Padres and each of their subsidiaries or affiliated entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Padres, and their directors, officers and employees (as an additional insureds) against claims for bodily injury, personal injury and property damage based upon, involving or arising out of the ownership, use, occupancy or maintenance of the

Complex and all areas appurtenant to it. Such insurance shall be on an occurrence basis, providing single limit coverage in an amount not less than \$10,000,000 per occurrence and \$20,000,000 in the aggregate, with deductibles not exceeding \$25,000 per occurrence. A certificate of insurance shall be furnished by the City to the Padres each year at least 30 days prior to the opening of the applicable Spring Training Season.

16.2. Workers' Compensation Insurance.

16.2.1. Both parties shall maintain Workers' Compensation in compliance with state statutory laws, including Employers' Liability with minimum limits of:

\$1,000,000 Each Accident;

\$1,000,000 Disease - Each Employee;

\$1,000,000 Disease - Policy Limit.

16.3. Automobile Liability Insurance.

16.3.1. Both parties shall maintain Automobile Liability Insurance, covering owned, non-owned, leased or hired automobiles, with a minimum combined single limit of:

\$1,000,000 Each Accident.

16.4. Property Insurance.

16.4.1. By City. The City shall obtain and keep the following policies of insurance in force during the Term of this Agreement, or may provide the same through self-insurance by a duly created municipal insurance trust authority created in accordance with state law:

(a) Property insurance for the full replacement value of the Complex (including all improvements and personal property), with deductibles not exceeding \$25,000 per occurrence, protecting the City, the Padres (as a loss payee) against loss by "all risk" perils, including but not limited to fire, extended coverage, windstorm, hurricane, vandalism, malicious mischief and earthquake. Such insurance is to contain a replacement cost endorsement, and endorsements eliminating any coinsurance provisions.

(b) For any work of construction conducted on the Site by or at the direction of the City, builder's risk insurance, protecting the City and the Padres (as a loss payee) at any time that construction is in progress, with such limits, form, endorsements and coverages as are available and as are reasonably required by the Padres.

16.5. Policies. All insurance policies obtained pursuant to this Section 16 shall be with companies legally authorized to do business in the State of Arizona and reasonably acceptable to both parties with an A.M. Best rating of A- VIII or better. All liability insurance policies must contain Cross Liability Endorsements, or their equivalents. The General Liability policy shall include no third-party-over action exclusions or similar endorsements or limitations. At the City's election, all or a portion of the City's insurance may be provided by self-insurance. Upon commencement of the Term, each party shall furnish to the other party a certificate of insurance and a certified copy of all insurance policies required by this Section. Renewal policies shall be obtained in advance of termination of each policy, and renewal certificates shall be delivered by each party to the other party (together with certified copies of the applicable policy if requested) prior to termination (together with evidence of payment of all insurance premiums if requested). Each party shall provide the other with 30 days written notice of cancellation of the any of the insurance policies required herein. The named insured's liability insurance shall be primary and non-contributory with any insurance maintained by the additional insured for claims arising in connection with the Named Insured's operations.

16.6. Self-Insurance. If the City elects to self-insure, the City shall furnish the Padres with (a) a certification that the City is prepared to expend such funds as may be necessary to meet the requirements of this Section 16 and that City is duly authorized to self-insure for such purposes; and (b) an opinion of counsel that the City's obligation to expend such funds is valid, binding and enforceable against the City.

16.7. Remedies. If either party fails to obtain, keep in force or provide evidence of any of the insurance policies or insurance coverage required by this Section 16, the other party may give written notice to the defaulting party, and the defaulting party shall have until the earlier of (a) five days after its receipt of such notice, or (b) regardless of whether notice shall have been given, one (1) day before the date the required insurance will lapse, to cure the default. If the default is not cured with such period, then the other party shall have the remedies set forth in Sections 21 or 22 below.

16.8. Waiver of Subrogation. Each party hereby releases and relieves the other party, and waives its entire right of recovery against the other party, for direct or consequential loss or damage arising out of or incident to the perils covered by any property insurance carried by the other party, whether due to the negligence of the

released party or its agents, employees, contractors or invitees. If necessary, all property insurance policies required by this Agreement shall be endorsed to so provide.

## **17. Indemnification.**

**17.1. By the Padres.** The Padres agrees to and will at all times defend, indemnify, save and hold the City, its elected officials, officers, agents and employees harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs, including reasonable attorney's fees at trial or appellate level, and all court costs, arising out of:

17.1.1. Injury to or death of persons (including personnel or employees of the City or the Padres), and damage to any and all property, including loss of use thereof, resulting from or in any manner arising out of any willful and wanton or negligent act or omission of the Padres or any Affiliate of the Padres or any of their respective agents, officers, servants, employees, contractors or subcontractors.

17.1.2. Injury, death or damage with respect to any spectator or other invitees (excluding professional baseball players, coaches, umpires and managers) directly resulting from the course of play during any of the Games, even if the acts or omissions giving rise to such injury, death or damage are not willful, wanton or negligent.

17.1.3. Any breach or default in the performance of any obligation on the Padres' part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of the Padres shall not extend to liabilities caused by any willful, wanton, or negligent act or omission of the City or any of its agents, officers, servants, employees, contractors or subcontractors. In the event any action or proceeding shall be brought against the City by reason of any claim for which the City is entitled to indemnification hereunder, the Padres, upon notice from the City, shall defend the same at the expense of the Padres, with counsel reasonably satisfactory to the City, which consent shall not be unreasonably withheld.

**17.2. By City.** The City agrees to and will at all times defend, indemnify save and hold the Padres, and their respective employees, agents, officers, directors, shareholders, partners, successors and assigns, harmless, on a current basis, for, from and against any and all damages, liabilities, claims, demands, expenses and costs, including reasonable attorneys' fees at trial or appellate level, and all court costs, arising out of:

17.2.1. Injury to or death of persons (including personnel or employees of the City or the Padres), and damage to any and all property,

including loss of use thereof, resulting from or in any manner arising out of or in connection with any willful, wanton or negligent act or omission of the City or any agent, officer, servant, employee, contractor or subcontractor of the City.

17.2.2. Any act or omission (whether or not such act or omission is willful, wanton or negligent) occurring or failing to occur at the Complex at a time when the Padres or any Affiliate of the Padres or any of their respective agents, officers, servants, employees, contractors or subcontractors are (a) not present on any part of the Complex, or (b) not in control of that portion of the Complex at which the alleged act or omission occurred.

17.2.3. Any liability tied to the real property of the Site (whether or not such liability arises out of, or in connection with, any willful, wanton or negligent act or omission), including but not limited to environmental liability.

17.2.4. Any breach or default in the performance of any obligation on the City's part to be performed under the terms of this Agreement.

The foregoing indemnification obligations of the City shall not extend to liabilities caused by any willful, wanton, or negligent act or omission of the Padres or any Affiliate of the Padres or any of their respective agents, officers, servants, employees, contractors or subcontractors. In the event any action or proceeding shall be brought against the Padres or any Affiliate of the Padres by reason of any claim for which Padres or any of its Affiliates is entitled to indemnification hereunder, the City, upon notice from Padres, shall defend the same at the expense of the City, with counsel reasonably satisfactory to Padres, which consent shall not be unreasonably withheld.

## **18. Damage or Destruction.**

18.1. Decision To Rebuild. If any part of the Complex is damaged or destroyed by fire, flood or other casualty, but to such an extent that the Complex remains substantially suitable for the Padres' activities at the Complex, this Agreement shall continue in full force and effect, and the City shall repair and rebuild the Complex with reasonable diligence to the condition immediately before such loss. In the event that such damage or destruction is of such an extent as would substantially and adversely affect the Padres' activities at the Complex and repairing and rebuilding the Complex would result or does result in the Padres' being denied effective use of the Complex for more than one complete Spring Training Season, then the Padres may terminate this Agreement by giving written notice thereof to the City within 60 days after the date of damage or destruction. If such damage or destruction is total or of such extent as would substantially and adversely the Padres' activities at the Complex and insurance proceeds are not available to the City, then the City may elect not to repair or rebuild the Complex by giving written notice thereof to the Padres within 60 days after the date of

the damage or destruction, in which event the Padres may terminate this Agreement by written notice to the City within 120 days after the date of the damage or destruction. If the City does not timely notify the Padres of the City's election not to repair or rebuild, the City shall rebuild or repair such damage or destruction with reasonable diligence to the condition immediately before such loss, and this Agreement shall continue in full force and effect.

18.2. Limit to Insurance Proceeds. Notwithstanding any of the foregoing provisions of this Section 18, the City's obligation to perform any repair, restoration or rebuilding hereunder shall be limited to its expenditure of the sum of (a) all proceeds available under insurance policies required pursuant to Section 16 of this Agreement, plus (b) the amount of all deductibles and self-insurance coverage. If the foregoing sum is not sufficient to allow the City to repair and rebuild the Complex substantially to the condition immediately before the loss, the City shall advise the Padres of that fact within 60 days after the date of the damage or destruction, in which event the Padres may terminate this Agreement by written notice to the City within 120 days after the date of the damage or destruction.

18.3. Abatement. If, as a result of any repair, restoration or rebuilding hereunder, there is a substantial interference with the operation of the Padres' programs at the Complex requiring the Padres temporarily to utilize other facilities, the Padres shall have the right to schedule Games at another facility (notwithstanding any other provision in this Agreement to the contrary), and there shall be an equitable abatement of all fees due and other charges payable by the Padres under this Agreement during the period of such interference.

18.4. Failure To Repair. If the City is obligated to repair or rebuild the Complex under the provisions of this Section 18 and does not commence such repair or rebuilding within 90 days after the occurrence of the damage or destruction, or if the City commences such repair or rebuilding but does not prosecute the same diligently to completion, then the Padres may, at its option, cancel and terminate this Agreement by giving the City written notice of the Padres' election to do so at any time prior to substantial completion of the work of repair or rebuilding. In such event, this Agreement shall terminate as of the date of such notice.

## **19. Condemnation.**

19.1. Total Taking. In the event the entire Complex is appropriated or taken under the power of eminent domain, or sold under threat thereof (all of which will be referred to as a "condemnation"), by any public or quasi-public authority, this Agreement shall terminate as of the date the condemning authority takes title or possession, whichever first occurs. The Padres shall have claim to the award in condemnation for the City's interest in the Site and Complex; provided, however, that the Padres shall

have a claim to any portion of the award in condemnation for the interest of the Padres under this Agreement.

19.2. Partial Taking. In the event that only a portion of the Complex is condemned, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs; provided, however, that if so much of the Complex is taken by such condemnation as would substantially and adversely affect the Padres' activities at the Complex, the Padres shall have the option, to be exercised in writing within 60 days after the City shall have given the Padres written notice of the condemnation (or in the absence of such notice, within 60 days after the condemning authority shall have taken possession), to terminate this Agreement as of the date the condemning authority takes such possession. If the Padres does not give timely notice to terminate, this Agreement shall remain in full force and effect as to the remainder of the Complex that is suitable for the use then being made of the Complex by the Padres, with all fees and other charges payable by the Padres under this Agreement equitably adjusted for as long as reasonably necessary to account for the loss of the use of the condemned portion of the Complex, and the City shall, to the extent of condemnation proceeds received by it, acquire or add adjacent property and construct additional Improvements with reasonable diligence, in order to restore the Complex as nearly as possible to the condition immediately before the condemnation. Whether this Agreement terminates or continues in full force or effect, the Padres shall not have claim to the award in condemnation for the City's interest in the Site and Complex; provided, however, that the Padres shall have a claim to any portion of the award in condemnation for the interest of the Padres under this Agreement.

19.3. Abatement. If, as a result of any condemnation, there is a substantial interference with the operation of the Padres' programs at the Complex requiring the Padres temporarily to utilize other facilities, the Padres shall have the right to schedule Games at another facility (notwithstanding any other provision in this Agreement to the contrary), and there shall be an equitable abatement of all fees and other charges payable by the Padres under this Agreement during the period of such interference.

19.4. Failure To Repair. If the City is obligated to make the Complex suitable for use by the Padres following a condemnation under the provisions of this Section 19 and does not commence to acquire or add adjacent property or construct additional Improvements necessary to do so within 90 days after the date of the condemnation, or if the City commences such acquisition or construction but does not prosecute the same diligently to completion, then the Padres may, at its option, cancel and terminate this Agreement by giving the City written notice of its election to do so at any time prior to substantial completion of the acquisition or construction, whichever shall first occur. In such event, this Agreement shall terminate as of the date of such notice.

19.5. City Condemnation. The City agrees that the City itself shall not appropriate or condemn any interest of the Padres under this Agreement by power of eminent domain.

## **20. Assignment.**

20.1. Prohibition Against Assignment. The Padres shall not sell, assign or otherwise transfer all or any portion of its interest in this Agreement without the consent of the City, except as follows:

20.1.1. The Padres shall have the right, without such consent, to transfer all of its rights and obligations under this Agreement to any Person that shall thereafter own the Major League Baseball franchise now held by the Padres; provided, however, that such transferee shall assume the obligations of the Padres under this Agreement; and provided, further, that all necessary MLB Approvals have been obtained with respect to the transfer of such Major League Baseball franchise to such transferee.

20.1.2. Subject to Section 3.3.3, the Padres shall also have the right, without such consent, to transfer its interest in this Agreement freely to another Major League Baseball club; provided, however, that such transferee shall assume the obligations of the Padres under this Agreement; and provided, further, that the Padres must first obtain the consent of TEAM 2 before making an assignment to a team in the American League team. Additionally, in the event that such assignment would result in a reduction of the total number of Major League Baseball Clubs conducting Spring Training games within a 400 mile radius of the Stadium, the Padres must also obtain the consent of the City before making an assignment, such consent not to be unreasonably withheld.

20.2. Notice; Release from Liability. The Padres shall promptly notify the City of any transfer of its interest in this Agreement. Unless the transferee of such interest shall expressly assume the obligations of the Padres hereunder in writing (in which case the Padres shall be released from any liability arising hereunder from and after the date of such assumption and transfer), the Padres shall remain primarily liable under this Agreement notwithstanding any such transfer.

20.3. Right to Approve Assignment of Rights. The Padres shall have the right to approve the assignment to another Major League Baseball club of TEAM 2's rights to use portions of the Complex, and may deny such assignment in its sole and absolute discretion.

## **21. City Default.**

21.1. Default. If the City shall default in any of its obligations under this Agreement, the Padres shall provide notice of such default to the City and afford the City a grace period to cure said default, as follows:

21.1.1. Where a grace period is specifically provided for in any Section of this Agreement, that specific grace period shall apply.

21.1.2. Where a grace period is not specifically provided for in any other Section of this Agreement, the Padres shall provide notice of such default to the City and afford the City a grace period of 30 days to cure said default; provided, however, that if the default in question is a non-monetary default that cannot be cured within such 30 day period, the City shall be afforded such additional time (but in no event more than 60 additional days) as shall be reasonably required to cure such default if the City has commenced the appropriate cure within said initial 30 day period, and thereafter proceeds with reasonable diligence to cure said default.

21.2. Rights and Remedies. If the City remains in default hereunder beyond the expiration of the applicable grace period stated above, the Padres shall have the right (but not the obligation):

21.2.1. To cure such default on behalf of the City, in which event the City shall immediately reimburse the Padres for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

21.2.2. To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate, by set off against all sums next-to-become-due to the City under this Agreement; and

21.2.3. In the event of a material breach that substantially affects the Padres' ability to utilize the Complex for the purposes intended under the terms of this Agreement, to terminate this Agreement.

21.3. Cumulative Rights. The remedies heretofore described in this Section 21 shall be in addition to any other remedy that the Padres may have at law and in equity in the event of a default by the City, including without limitation:

21.3.1. An action to recover monies then due and owing from the City, together with interest thereon at the Default Rate from the date on which such monies were due; and

21.3.2. An action for specific performance of nonmonetary covenants and agreements on the part of the City; and

21.3.3. An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the Padres in connection with the default; provided, however, that in no event shall the City be liable for consequential damages suffered by the Padres, and the Padres shall in all events seek to mitigate their damages to the extent required by law.

## **22. Padres Default.**

22.1. Default. If the Padres shall default in any of its obligations under this Agreement, the City shall provide notice of such default to the Padres and afford the Padres a grace period to cure said default, as follows:

22.1.1. Where a grace period is specifically provided for in any Section of this Agreement, that specific grace period shall apply.

22.1.2. Where the default is a failure by the Padres to utilize the Stadium as its "home field" for Spring Training Season Games in breach of its obligations under this Agreement (a "Stadium Abandonment"), the City shall provide notice of such default to the Padres and afford the Padres a grace period ending five days after the next act or omission constituting Stadium Abandonment.

22.1.3. Where a grace period is not specifically provided for in any other Section of this Agreement, the City shall provide notice of such default to the Padres and afford the Padres a grace period of 30 days to cure said default; provided, however, that if the default in question is a non-monetary default that cannot be cured within such 30 day period, then the Padres shall be afforded such additional time (but in no event more than 60 additional days) as shall be reasonably required to cure such default if the Padres has commenced the appropriate cure within said initial 30 day period, and thereafter proceeds with reasonable diligence to cure said default.

22.1.4. In addition to any other events of default and any other remedies available under this Agreement, or as provided by law, the City may, at its option and following notice of default and opportunity to cure as provided in this section, terminate this Agreement for default following an additional 30 days prior written notice (during which time the Padres may cure such default) if the Padres files a petition in bankruptcy or commences a case for relief from creditors under state or federal bankruptcy law or an order for relief with respect to the Padres under federal or state bankruptcy law is entered against the Padres, or the Padres makes a general assignment for the benefit of creditors, or a receiver is appointed of substantially all of the property of the Padres including, in any event, this Agreement, in a proceeding based upon the Padres' insolvency

that shall not be discharged within 90 days after such appointment; but neither bankruptcy nor the filing of a petition in bankruptcy, nor the commencement of a case for relief from creditors, nor entry of an order for relief, nor insolvency, nor an assignment for the benefit of creditors nor the appointment of a receiver shall affect this Agreement or constitute a default hereunder so long as the covenants and obligations on the part of the Padres to be performed hereunder are being performed by the Padres or someone claiming under the Padres; provided that such termination shall not occur until the 10th day after the last day of the Spring Training Season occurring in the year of the Term during which the foregoing right to terminate is invoked by the City.

22.2. Rights and Remedies. If the Padres remains in default hereunder beyond the expiration of the applicable grace period stated above, the City shall have the right (but not the obligation):

22.2.1. To cure such default on behalf of the Padres, in which event the Padres shall immediately reimburse the City for all sums paid by it to effect such cure, together with interest thereon at the Default Rate; and

22.2.2. To collect all sums paid by it to effect such cure, together with interest thereon at the Default Rate, by set off against all sums next-to-become-due to the Padres under this Agreement; and

22.2.3. At the City's option, to terminate this Agreement, in which event the City shall have the right to re-enter or repossess those portions of the Complex subject to this Agreement, either by force (to the extent lawful), summary proceedings, surrender or otherwise, and dispossess and remove the Padres or other occupants therefrom, without being liable for any prosecution therefore; provided that such termination shall not occur until the 10th day after the last day of the Spring Training Season occurring in the year of the Term during which the foregoing right to terminate is invoked by the City.

22.3. Cumulative Rights. The remedies heretofore described in this Section 22 shall be in addition to any other remedy the City may have at law and in equity in the event of a default by the Padres, including without limitation:

22.3.1. An action to recover monies then due and owing from the Padres, together with interest thereon at the Default Rate from the date on which such monies were due; and

22.3.2. An action for specific performance of nonmonetary covenants and agreements on the part of the Padres; and

22.3.3. An action for recovery of all actual losses, costs and reasonable attorneys' fees incurred by the City in connection with the default; provided, however, that in no event shall the Padres be liable for consequential damages suffered by the City, and the City shall in all events seek to mitigate its damages to the extent required by law.

## **23. Miscellaneous.**

23.1. Estoppel Certificates. Each party (as "responding party") shall at any time within fifteen days' after written request from the other party ("requesting party") execute, acknowledge and deliver to the requesting party a statement in writing (a) certifying that this Agreement is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), (b) acknowledging that there are not, to the responding party's knowledge, any uncured defaults on the part of the requesting party (or specifying such defaults, if any are claimed), and (c) providing such other information regarding this Agreement as may reasonably be requested by the requesting party. Any such statements may be conclusively relied upon by any prospective purchaser or encumbrancer of the Padres or of its interests herein.

23.2. Consents. Whenever a party's approval, permission, consent or satisfaction is required under this Agreement, such approval, permission, consent or satisfaction shall not be unreasonably withheld or delayed, except as and to the extent expressly provided to the contrary in this Agreement.

23.3. Additional Instruments. The parties agree to execute and deliver any instruments in writing, necessary to carry out any agreement, term, condition or assurance in this Agreement, whenever the occasion shall arise and reasonable request for such instrument shall be made.

23.4. Force Majeure. A party shall not be in default under this Agreement if it is unable to fulfill any of its obligations under this Agreement because it is prevented or delayed in doing so by reason of a strike, lockout, labor dispute, boycott, material or energy shortage, casualty loss, weather conditions, acts of God, order of any government officer or court (but excluding orders promulgated by the City itself), national emergency, war, or other cause beyond the reasonable control of such party (collectively, "Force Majeure").

23.5. A.R.S. § 38-511. The Padres are hereby placed on notice of the provisions contained in A.R.S. § 38-511 (cancellation of contracts with state or political subdivision for conflict of interest).

23.6. Notices. Any notice required to be given hereunder shall be in writing and sent by either overnight courier service or United States certified or registered mail, postage prepaid, addressed to the parties as follows:

If to Padres: Executive Vice President, Chief Financial Officer  
Padres L.P.  
Petco Park  
100 Park Blvd.  
San Diego, California 92101

With a copy to: Senior Vice President – Business Admin. & General Counsel  
Padres L.P.  
Petco Park  
100 Park Blvd.  
San Diego, California 92101

If to Mariners: Executive Vice President, Ballpark Operations and Finance  
The Baseball Club of Seattle, LLLP  
P.O. Box 4100  
Seattle, Washington 98194

With a copy to: Executive Vice President, Legal & Governmental Affairs  
The Baseball Club of Seattle, LLLP  
P.O. Box 4100  
Seattle, Washington 98194

If to City: City Manager  
City of Peoria  
8401 West Monroe  
Peoria, Arizona 85345

With a copy to: City Attorney  
City of Peoria  
8401 West Monroe  
Peoria, Arizona 85345

Notices shall be deemed given when received or when delivery is refused. Notices by a person designated herein as counsel to a party to this Agreement (or as hereafter changed by notice from a party given as herein required) shall be deemed notice from the City or the Padres, as applicable. The address for notices to a party may be changed, from time to time, by notice from such party given as herein required.

23.7. No Joint Venture. The City and the Padres do not intend by entering into this Agreement to create a partnership, joint venture or any relationship other than licensor and licensee. Nothing in this Agreement shall be construed to create such a partnership, joint venture or other relationship.

23.8. Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. This Agreement shall not be construed for or against any party on the basis that such party drafted any portion of this Agreement.

23.9. Construe with Neutrality. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

23.10. Binding Effect. The covenants, terms, conditions, provisions and undertakings in this Agreement, or in any renewals hereof, shall extend to and be binding upon the heirs, personal representatives, executors, administrators, successors and assigns of the respective parties hereto as if they were in every case named and expressed, and wherever reference is made to either of the parties hereto, it shall be held to include and apply also to the heirs, personal representatives, executors, administrators, successors and assigns of such party as if in each and every case so expressed.

23.11. Entire Agreement. This Agreement and the Sports Complex Improvements Agreement, together with the attached exhibits and simultaneous writings, contains the entire agreement and understanding between the parties. There are no oral understandings, terms or conditions, and neither party has relied on any representation, express or implied, not contained in this Agreement or in simultaneous writings. All prior understandings, terms or conditions are deemed to merge in this Agreement, and this Agreement cannot be changed or supplemented orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought; provided that no such waiver, change, modification or discharge shall be entered into until such time as all necessary MLB Approvals have been obtained in advance thereof.

23.12. Severance. If any provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

23.13. Captions. The headings of this Agreement are for convenience only and shall not be deemed a part of this Agreement, nor shall they be deemed to affect the meaning or construction of any portion of this Agreement.

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

23.15. Interest on Delinquent Amounts. Any amounts owing from one party to the other party under this Agreement and not paid when due shall bear interest from and after the due date at the Default Rate until paid.

23.16. Waivers. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent right by either party under the same or any other provision.

23.17. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

23.18. Attorneys' Fees. If an action or proceeding is brought to enforce the terms hereof or declare rights hereunder, including without limitation Expedited ADR, the prevailing party in any such action or appeal therefrom shall be entitled to its reasonable attorneys' fees and costs, to be paid by the losing party as fixed by the court or arbitrator(s) in the same or a separate action or proceeding.

23.19. The Padres Liability. The term "Padres" as used herein shall mean only the entities owning, at the time in question, the rights and interests provided to the Padres under this Agreement. In the event of any transfer of such rights and interests, the entity originally named herein (and in the case of any subsequent transfers, the grantor) shall be relieved from and after the date of such transfer of all liability as respects the Padres' obligations thereafter to be performed. The obligations contained in this Agreement to be performed by the Padres shall, subject as aforesaid, be binding on the Padres' successors and assigns, only during their respective periods of ownership.

23.20. More Favorable Terms.

23.20.1. If at any time during the Term of this Agreement the City (itself, through a sponsoring organization or otherwise) directly or indirectly enters into an agreement with another Major League Baseball Club, which agreement includes among its terms the right to play more than two Spring Training exhibition games in the City during the Spring Training Season, the City shall immediately notify the Padres of all terms of such agreement. If the Padres reasonably believe that any or all of the terms of such agreement are more favorable than the corresponding term(s) contained in this Agreement, then the Padres shall have the right to require that the term(s) perceived to be more favorable be substituted for the corresponding term(s) of this Agreement for the remainder of the Term, retroactive to the date the City entered into the agreement with the other team. The City agrees to amend this Agreement to incorporate any such term(s).

23.20.2. For purposes of determining whether another agreement contains more favorable term(s), the Padres may either compare the agreement as a whole to this Agreement as a whole, or may compare individual term(s) of the agreement to the corresponding individual term(s) of this Agreement without regard to comparison of the whole. The Padres may at its option require substitution of the whole agreement or of any individual term(s) that it considers more favorable, consistent with the preceding paragraph.

23.20.3. Either prior to or immediately upon entering into an agreement with another Major League Baseball Club, the City may request that the Padres review the terms of said agreement and waive its rights under this Section 23.20. Upon receiving such a request together with a copy of the terms of the agreement or proposed agreement, the Padres shall have 30 days to review the agreement and to notify the City which, if any, of the terms it considers more favorable and would wish to substitute. Failure by the Padres to give the City such notice within the 30 day time period shall operate as a waiver of the Padres' rights under this Section.

#### 23.21. Major League Baseball.

23.21.1. MLB Approval. The Parties acknowledge that this Agreement is subject to the approval of the Office of the Commissioner of Baseball, which the Padres have received.

23.21.2. Subservience. Notwithstanding any other provision of this Agreement, this Agreement and any rights or exclusivities granted by Padres hereunder shall in all respects be subordinate to the MLB Rules and Regulations. The issuance, entering into, amendment or implementation of any of the MLB Rules and Regulations shall be at no cost or liability to any MLB Entity or to any individual or entity related thereto. The territory within which the City is granted rights is limited to, and nothing herein shall be construed as conferring on the City rights in areas outside of, the "Spring Training" territory of the Padres as established and amended from time to time. No rights, exclusivities or obligations involving the Internet or any interactive or on-line media (as defined by the applicable MLB Entities) are conferred by this Agreement, except as are specifically approved in writing by the applicable MLB Entities.

23.21.3. Changed Circumstances. If Major League Baseball hereafter adopts any new or amended MLB Rules and Regulations or enters into or modifies any of the MLB Rules and Regulations or applies any of the existing MLB Rules and Regulations, and the result thereof, individually or in the aggregate, materially and demonstrably impairs any rights or benefits granted to the City hereunder or results in a material increase in the cost of the City meeting

its obligations hereunder, all as measured from the Effective Date hereof (collectively, "Changed Circumstances"), the City will give the Padres written notice upon experiencing or believing that it may be experiencing Changed Circumstances. During the period of 60 days thereafter, the Padres and the City shall meet and attempt to negotiate in good faith an appropriate amendment to this Agreement, or other modifications or adjustments to the extent appropriate to mitigate the Changed Circumstances. In the event the parties, after good faith negotiations, are unable to agree on an appropriate amendment or other appropriate modifications or adjustments, the dispute shall be resolved by arbitration conducted in accordance with the Expedited ADR provisions of this Agreement. It shall be the City's burden, in any such arbitration, to provide demonstrable evidence establishing with reasonable certainty the magnitude and value of any diminution of its rights proximately caused by the Changed Circumstances. The Padres shall have no right to assert an independent claim for additional rights or compensation as a result of any Changed Circumstances that operate to the City's benefit. But if the City asserts a claim for compensation or other adjustments as a result of Changed Circumstances, then in any Expedited ADR proceeding that follows, the Padres may introduce evidence of any material positive effects received by the City which resulted from any changes to any of the MLB Rules and Regulations or changes in the application of policy under any of the MLB Rules and Regulations after the Effective Date hereof, to offset any City-proposed compensation or other adjustments, provided that the Padres shall bear a similar burden of establishing any such material positive effects.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first above written.

CITY OF PEORIA, ARIZONA

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

PADRES, L.P.

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

## EXHIBIT LIST

Exhibit A	[Reserved]
Exhibit B	Expedited ADR
Exhibit C	Field Maintenance Standards
Exhibit D	Site
Exhibit E	Economic Development Area

## **EXHIBIT B**

### **EXPEDITED ADR**

All claims, demands disputes, controversies and differences that may arise under this Agreement between the City and the Padres, the City and the Mariners, the City, the Padres and the Mariners, or between the Padres and the Mariners, concerning any controversies under the sections of this Agreement making reference to the use of Expedited ADR shall be resolved by the dispute resolution procedure set forth below.

#### **1. INFORMAL DISPUTE RESOLUTION**

1.1 Commitment. The Parties are fully committed to working with each other throughout each Project Phase and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Parties commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays and disruptions to any Project Phase.

1.2 Field Level Resolution. The Parties will first attempt to resolve disputes or disagreements at the field level through discussions between the City's designated representative and a representative from the Team(s) involved.

1.3 Senior Representative Resolution. If a dispute or disagreement cannot be resolved at the field level, a senior representative of each Party involved in the dispute, upon the request of any Party, shall meet as soon as conveniently possible, but in no case later than seven (7) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the senior representatives, the Parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

1.4 Mediation. If after meeting the senior representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to all involved Parties, the Parties shall consider submitting the dispute to non-binding mediation, time permitting. If the Parties elect to submit the dispute to mediation, the mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. An officer of each Party involved, having full authority to settle the Claim, must attend the mediation session. To the extent there are other parties in interest, their representatives, with full authority to settle the dispute, shall also attend the mediation session. The mediator's fee will be divided equally among the Parties participating in the mediation. Notwithstanding the foregoing, nothing in this Section 1.4 shall require the Parties to engage in mediation or prevent any Party from proceeding directly to Expedited Arbitration as provided in Section 2 below.

## **2. EXPEDITED ARBITRATION**

2.1 Expedited Arbitration. Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, that have not been resolved in accordance with the procedures set forth in Section 1 above shall be decided by the following Expedited Arbitration procedure and in accordance with A.R.S. §12-1501, *et seq.*, unless the parties mutually agree in writing otherwise. Any Party may commence Expedited Arbitration by initiating the Qualified Arbitrators selection process in Section 2.2 below.

2.2 Selection of Qualified Arbitrators. The Parties shall appoint one or more Qualified Arbitrators to an Arbitration Panel to hear the matter through the following process.

2.2.1 Any Party, by written notice to the other involved Party or Parties within ten (10) days after a controversy has arisen that is subject to this Section 2, shall select a Qualified Arbitrator to hear the matter.

2.2.2 The other involved Party or Parties, by written notice within ten (10) days after receipt of the notice by the first Party, shall appoint a second Qualified Arbitrator. In the event the controversy requiring Expedited ADR involves both the Padres and the Mariners being adverse to the City, the Teams shall be treated as a single party for the purposes of appointment of a Qualified Arbitrator. If the other involved Party fails to appoint a Qualified Arbitrator within the required time period, the first Qualified Arbitrator appointed shall serve as the sole arbitrator.

2.2.3 When two arbitrators have been appointed as provided above, they shall agree on a third Qualified Arbitrator within five (5) days after their appointment and shall appoint him or her by written notice signed by both of them, with a copy mailed to the Parties involved. In the event that the two arbitrators fail to appoint a third Qualified Arbitrator, the parties authorize the appointment of a third Qualified Arbitrator by the American Arbitration Association.

2.2.4 For purposes of this Section 2.2 a "Qualified Arbitrator" shall be either (a) an attorney admitted to the state Bar of Arizona and who engages in a practice of not less than 25% that is commercial related and 10% that is construction related, or (b) a current or former municipal official involved in the Arizona Cactus League Association and who during his or her tenure with a municipal entity had significant oversight of a facility used by a Major League Baseball Club in the Cactus League.

2.3 Joinder. Any Party may join any other Party to the arbitration who is needed for just adjudication. The standard for joinder of any other Party shall be that provided under Rule 19 of the Arizona Rules of Civil Procedure.

2.4 Arbitration Panel. On appointment of three arbitrators (hereinafter, "the Panel") as provided above, the Panel shall hold a hearing within thirty (30) days after the appointment of the third member of the Panel, or upon the expiration of the time period in Section 2.2.2 if only

one Qualified Arbitrator is appointed. The hearing shall be held at the City of Peoria, Municipal Complex, 8401 West Monroe Street, Peoria, Arizona, or at any other place agreed to by the parties involved.

2.5 Exhibits, Statements, and Memoranda. At least ten (10) days prior to the hearing, the Parties shall meet and exchange exhibits and pre-hearing statements and stipulate and agree on non-disputed facts. No exhibit shall be admitted unless listed on the pre-hearing statement and exchanged between the parties. No witness may be presented unless indicated on the pre-hearing statement or unless produced for rebuttal purposes. Prior to or at the hearing, the parties shall submit memorandums not to exceed five (5) pages outlining the relevant issues for the arbitrators. At the hearing, the laws of evidence of the state of Arizona shall apply, and the panel shall allow each Party to present that Party's case, evidence and witnesses and render their award, including a provision for payment of attorneys' fees and costs of arbitration to be paid by one or both of the parties to this Agreement, as the panel deems just.

2.6 Award. The award of the majority of the Panel shall be final and binding on the parties to this Agreement and judgment may be entered on such award in the Superior Court of the State of Arizona.

2.7 Costs of Expedited ADR. The costs of the Panel shall be divided equally between the involved Parties. Each Party shall be responsible for its own attorneys' fees and costs.

## Exhibit C

### Minimum Standards of Field Maintenance

This exhibit sets forth the minimum Padres quality standards for field maintenance at the Complex. These standards are to be followed with regard to all games and practices of Padres and its affiliates pursuant to this Agreement. It is understood that these standards will vary due to such factors as weather conditions and field usage. For example, on rainy days the infield would not be watered as outlined in Section I below. Nor would this watering program be adequate to prepare the fields during long dry spells.

#### I. Infields

- A. Stadium - Skinned area is to be lightly wet before matted with fine mat. After fine mat is complete a heavier watering will be added for desired moisture. Spike dragging will be done as needed. This procedure is to be followed before and after use of field. During periods when the field is not otherwise worked because it is not being used, the field should be "worked" as per the above procedures at least two times a week.

The City groundskeeper(s), in consultation with Padres representatives, shall use sound judgment in determining when the field is playable, as a Major League quality field.

- B. Practice Fields - Will follow the same procedure as above on skinned areas.

During periods when the practice fields are not otherwise worked because they are not in use, the above procedure is to be performed at least two times a week.

#### II. Pitching Mounds

On all fields, holes made on the pitching mounds are to be repaired prior to the next scheduled use of such fields. For example, if a hole is made during a morning practice, it must be repaired for the afternoon practice or game in a manner set forth below.

Upon the final use of the field(s) on any given day, any holes created during such day shall be repaired in the following manner, notwithstanding whether the holes have been temporarily patched in order to make the field ready for use on that day. The hole(s) is first to be swept out, wetted, then filled with a gumbo clay. The new clay will be tamped

down to where it is level with the area surrounding it, then watered as necessary and permitted to sit overnight. The next morning, the new clay is to be tamped, dampened again and top dressed.

### III. Batters Boxes

Holes in the batter's boxes on all fields are to be repaired in the same manner as those described in II above.

### IV. Grass

The grass on all fields is to be cut an average of two times a week when such fields are being used by Padres or its affiliates with a cutting height of 1/2 to 3/4 inches for hybrid bermuda grass and 7/8 inch for perennial rye. The grass is also to be watered as needed.

The infield grass is to be maintained in such a manner so as to prevent a "lip" forming between the edge of the grass and the infield dirt. Padres' Representative will submit a number of suggestions for maintaining this area.

At the end of October or beginning of November, the City groundskeeper(s) shall perform a seeding program in which all fields will be "over seeded," with a minimum seed usage of 15 pounds per 1,000 feet. The Stadium field will consist of a perennial rye seed, while the other areas will consist of an annual rye grass.

### V. Use of Soil Conditioner

The City groundskeeper(s) shall use a soil conditioner when working all fields throughout the year. The amounts needed for each circumstance will vary and are at the discretion of the City groundskeeper(s).

### VI. Airification

The City groundskeeper(s) will airify all fields on the Complex at least two times a year.

### VII. Fertilization

The City and Padres recognize that until complete analysis of all soils at the Complex can be performed, the actual ingredients for a complete fertilization plan cannot be determined. However, at a minimum, the City groundskeeper(s) will embark upon a plan that will include the fertilization of all fields at least two times a year. Such fertilization program will include the use of a pre-emergent herbicide. Other ingredients will be used following the completion of all soil tests.

**VIII. Top Dressing**

Will be done at Stadium at least once a year or as needed.  
Practice fields will follow same procedure.

**IX. Pest Control**

All fields are to be kept free of gophers, rodents, and other pests, and any hazards created by them.

Exhibit "D"



map not to scale

Exhibit "E"



map not to scale