

When Recorded Return to:

Sarah A. Strunk, Esquire
Fennemore Craig, P.C
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012

C2004-237

INTERGOVERNMENTAL AGREEMENT

BETWEEN

CITY OF TEMPE

THE ARIZONA TOURISM AND SPORTS AUTHORITY
d/b/a THE ARIZONA SPORTS AND TOURISM AUTHORITY

AND

ANGELS BASEBALL LP

PERTAINING TO

TEMPE DIABLO STADIUM COMPLEX
RENOVATION PROJECT

* * *

DATED TO BE EFFECTIVE: November 10, 2004

FILED THIS ____ DAY OF _____ 2004, IN THE OFFICE OF THE
MARICOPA COUNTY RECORDER, PURSUANT TO A.R.S. § 11-952(G)

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into November 10, 2004, by and between the CITY OF TEMPE, ARIZONA, a municipal corporation (the "City"), THE ARIZONA TOURISM AND SPORTS AUTHORITY, d/b/a THE ARIZONA SPORTS AND TOURISM AUTHORITY, a corporate and political body having all the rights, powers and immunities of a municipal corporation (the "Authority"), and ANGELS BASEBALL LP, a Major League Baseball team ("Angels"). The City, the Authority and the Angels may be referenced collectively below as the "Parties" and each individually as a "Party".

RECITALS:

1. Pursuant to Arizona Revised Statutes ("A.R.S.") Section 5-808, from monies in the Cactus League Promotion Account, the Authority is authorized to acquire land or construct, finance, furnish, improve, market and promote the use of existing or proposed Major League baseball spring training facilities that are located in Maricopa County and other structures, utilities, roads, parking areas or buildings necessary for the full use of the training facilities for sports and other purposes and to do all things necessary or convenient to accomplish those purposes.

2. The City has statutory authority to enter into agreements with other governmental entities and agencies, and the Mayor of the City is authorized and empowered by law to execute such agreements.

3. The Angels are a corporate entity organized under the laws of California and empowered by corporate bylaws and/or resolutions to execute agreements such as this. The Angels are a party to this Agreement because they have agreed to provide funding over the \$20,000,000 provided by the Authority and the City as required to complete the Project identified herein.

4. Pursuant to A.R.S. § 5-804, the Authority is authorized to enter into contracts, including intergovernmental agreements under A.R.S. Title 11, Chapter 7, Article 3, as necessary to carry out the purposes and requirements of the Authority.

5. Pursuant to A.R.S. § 5-808, the Authority must require that any Cactus League project partially funded by the Authority include financial participation from the municipality in which the project is located that equals or exceeds one-half of the amount to be spent or distributed by the Authority.

6. In connection with planned renovations to and improvement of Tempe Diablo Stadium Complex (the "Facility"), as described in Exhibit A attached hereto (hereinafter referred to as the "Project"), currently the spring training facility for the Angels, the City has requested that the Authority provide up to \$12,000,000 for the Project with the City and the Angels providing the balance of the costs of the Project,

provided that the Authority's contribution is no more than sixty (60) percent of the actual costs of the Project.

7. In consideration of the benefits of \$20,000,000 provided for renovation of the Facility, the Angels have agreed that they will not relocate the Angels' Spring Training, that they will move their Arizona Minor League activities to the Facility (collectively "Arizona Baseball Activities"), and that they will enter into a twenty-year lease with the City for the use of the Facility prior to or contemporaneous with the execution and delivery of this Agreement (hereinafter designated the "Lease Agreement"). The Parties' obligations under this Agreement are conditioned upon the execution of the Lease Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and consideration hereinafter contained, the receipt and sufficiency of which the Parties hereby acknowledge, it is agreed by and between the City, the Authority and the Angels as follows:

AGREEMENT:

**ARTICLE I
DEFINITIONS**

Section 1.1. In this Agreement, unless otherwise defined elsewhere herein, the following terms shall have the following meanings:

(a) "Agreement" means this Intergovernmental Agreement, as amended or supplemented from time to time.

(b) "Angels" means Angels Baseball LP, a California limited partnership.

(c) "Angels Contribution" means any amount of the Project costs in excess of \$20,000,000, except as more particularly described in the Memorandum of Understanding between the City and the Angels, including the exhibits thereto.

(d) "Angels Representative" means the person or persons designated by the Angels to act on behalf of the Angels.

(e) "Authority" means the Arizona Tourism and Sports Authority, d/b/a the Arizona Sports and Tourism Authority, a corporate and political body having all the rights, powers and immunities of a municipal corporation.

(f) "Authority Contribution" means \$12,000,000; provided, however, that if total project costs are less than \$20,000,000, the Authority Contribution shall be reduced proportionately such that the Authority's contribution remains no more than sixty (60) percent of the Project Costs.

(g) "Authority Representative" means the person or persons designated by the Authority's Board of Directors to act on behalf of the Authority with respect to the Project.

(h) "Business Day" means a day other than a Saturday, Sunday or day on which banks are not authorized by law to close in Tempe, Arizona.

(i) "Cactus League Promotion Account" means the Authority account authorized and established pursuant to A.R.S. § 5-837.

(j) "City" means the City of Tempe, a municipal corporation.

(k) "City Contribution" means an amount not to exceed \$8,000,000, which together with the Authority Contribution shall equal \$20,000,000 unless reduced in accordance with (f) of this section.

(l) "City Representative" means the City Manager or such other person or persons designated by the City Manager to act on behalf of the City.

(m) "Construction Contract" means any agreement or agreements for the installation or construction of all or part of the Project by and between a Contractor and the City and the Angels, including a Construction Manager At Risk -- Design Phase Services Agreement and a Construction Manager At Risk -- Construction Phase Services Agreement.

(n) "Construction Contractor" means any other person or entity entering into a Construction Contract to include a Construction Manager At Risk.

(o) "Event of Default" means any of the events described in Sections 11.1 and 11.2 of this Agreement.

(p) "Facility" has the meaning set forth in Recital 6 of this Agreement.

(q) "Lease Agreement" means the City's Lease Agreement relating to the use of the Facility by the Angels.

(r) "Plans" means the conceptual and construction plans and specifications for the Project together with such other construction plans and specifications relating to the Project that are hereafter prepared by the City and the Angels approved by the Authority pursuant to Section 4.3(a) of this Agreement.

(s) "Project" means the project undertaken by City to improve the Facility, all as more particularly set forth and described in the Plans.

(t) "Project Financing Costs" means any fees, charges, costs and reserves incurred by the City or the Authority to issue, market, sell, make payment on and secure

any bonds, loans or financing arrangements, including, but not limited to, all reasonable and necessary financing costs, legal fees and costs and expenses incident thereto.

(u) "Project Costs" means the total costs for development, design, installation, construction, engineering, and expenses directly related to the construction of the Project, together with such costs as may constitute a Project Cost pursuant to Sections 4.1(b) and (c) of this Agreement, *but excluding* any Project Financing Costs and any Project contingency funds budgeted but not actually spent.

(v) "Subcontractors" means persons who have actually supplied labor, materials or services in connection with or incidental to any Construction Contract.

(w) "The Angels" has the meaning set forth in Recital 3 of this Agreement.

(x) "Term of the Lease Agreement" means twenty years from the termination of the current lease that the City has with the Angels.

ARTICLE II PURPOSE

Section 2.1. The purpose of this Agreement is to provide for the following:

- (a) Partial financing of the Project; and
- (b) The respective rights and obligations of the Parties with respect to the Project.

ARTICLE III AUTHORITY AND CITY OBLIGATIONS

Section 3.1. Contributions. This Agreement memorializes the terms under which the Authority will provide the Authority Contribution, the City will provide the City Contribution, and the Angels will provide the Angels Contribution for the purpose of renovating the Facility.

Section 3.2. City Payment to Authority. The City and the Authority have agreed to settle any claim with respect to the Authority's claim for Federal Aviation Administration related expenses relating to the abandonment of the Multipurpose Facility site at Priest and Washington roads in the City (the "MFP site"), with payment in the amount of \$405,642.41 to be made by the City to the Authority upon execution of this Agreement. Upon payment, and in consideration of this Agreement, the Authority hereby releases and forever discharges the City from any and all claims, either known or unknown related to the MFP site.

Section 3.3 Authority Contribution; Payments; City's Priority.

(a) After execution of the Construction Contract, from funds lawfully deposited in the Cactus League Promotion Account, the Authority shall deliver the Authority Contribution in accordance with the semi-annual schedule of payments set forth on Exhibit B attached hereto and incorporated herein by this reference

(b) The City understands and acknowledges that the Authority has: (i) issued \$32,400,000 Subordinate Tax Revenue Bonds (Professional Baseball Training Facilities Project) Series 2003 (the "Cactus League Bonds") to fund the new Major League Baseball Spring Training Facility in the City of Surprise and has pledged all of the Authority's revenues and funds, including those in the Cactus League Promotion Account, to repayment of the senior bonds of the Authority and the Cactus League Bonds; and (ii) committed to fund a bond reserve fund related to the Cactus League Bonds (the "Cactus League Reserve Fund"). The Cactus League Bonds and the Cactus League Reserve Fund are hereafter referred to as the "Prior Authority Commitments." The Authority will pay the Authority Contribution to the City out of funds lawfully contributed to the Cactus League Promotion Account, but only after payment of all debt service or monthly payments in connection with the Prior Authority Commitments. The City acknowledges and agrees that the Authority's Contribution shall have equal priority on funds in the Cactus League Promotion Account (after the Prior Authority Commitments) with any commitment the Authority makes to the City of Scottsdale in connection with a renovation of another Major League Baseball Spring Training Facility located in the City of Scottsdale. For example, if in any given fiscal year there is \$1,000,000 remaining in the Cactus League Promotion Account after payment by the Authority of the Prior Authority Commitments and the remaining obligations in that fiscal year to the City of Scottsdale and the City are equal to \$1,000,000 each, then the City of Scottsdale shall receive \$500,000 and the City of Tempe shall receive \$500,000 out of the Cactus League Promotion Account. A copy of the Statutory Flow of Funds is attached hereto as Exhibit C and incorporated herein by this reference.

Section 3.4 Project Plans. The Authority, the City and the Angels have reviewed and acknowledged the Plans and the preliminary Project Costs.

Section 3.5. City's Project Financing. The Parties acknowledge that the City will fund such construction of the Project for the portion of the Authority's Contribution and the City's Contribution by the issuance of municipal bonds, in the amount of \$20,000,000, which amount of \$12,000,000 with interest at the bond rate will be reimbursed by the Authority.

Section 3.6 Obligation to Complete the Project. The City and the Angels shall complete the construction of the Project in accordance with the Plans. The City's obligation to contribute and pay the Project Costs shall not exceed \$20,000,000. After the City has paid the maximum of \$20,000,000 then the Angels shall fund the balance necessary to complete the Project in accordance with the Plans. If the Project Cost exceeds \$20,000,000, the Angels shall provide sufficient additional funds to complete the Project. The City further acknowledges the necessity of providing the Angels with

sufficient control and management of the Project management, to the maximum extent allowed by law, to minimize the additional financial risk and burden undertaken by the Angels, as well as consideration for the Angels' commitment to conduct its Arizona Baseball Activities at the Facility. Based upon these acknowledgements and to facilitate the timely completion of the Project, the Angels will direct the work on the Project, to the maximum extent allowed by law, with consultation with and input from the City, as set forth in the Construction Contract.

Section 3.7 Execution of Other Agreements. Concurrent with the execution and delivery of this Agreement: (i) the Authority, the City and the Angels shall execute a Memorandum of Understanding summarizing the project and the rights and duties of the parties hereto; and (ii) the City and the Angels shall deliver a proposed Lease Agreement providing for the Angels' continuous use of the Facility through at least 2025, which cannot be executed until such time as it is adopted by ordinance by the Tempe City Council, but embodies the terms under which the Parties have negotiated a lease of the Facility, and, if adopted and approved by the City, shall be executed in substantially the form attached to the Memorandum of Understanding; and (iii) the City and the Angels shall deliver a draft Construction Contract. The obligations of the Parties under this Agreement are conditioned upon the execution of the Lease Agreement.

Section 3.8 Books and Records Maintained by the City. The City shall at all times keep accurate and complete books, records and accounts with respect to all of the City's activities related to the Project, such books, records and accounts to be maintained at the City's principal place of business. The Authority, or any persons designated by it, shall have the right, without hindrance or delay, but only upon five (5) Business Days prior written notice and during normal business hours, to inspect, audit, check and make extracts from the City's books, records and accounts, including, without limitation, all journals, orders, receipts and any correspondence and other data relating to the books, records and accounts related to the Project as may be maintained, generated or stored.

Section 3.9 No Changes in Use. The City shall be obligated to operate and maintain the Facility as a Major League Baseball Spring Training Facility and the Angels shall be obligated to conduct its Arizona Baseball Activities at the Facility unless otherwise agreed to with the prior written consent of the Authority.

Section 3.10 Enforcement of Lease Agreement. The City, at its own cost and expense, shall enforce the terms of the Lease Agreement and manage, operate, maintain and insure the Facility in a manner that is in compliance with the terms and provisions of the Lease Agreement until the expiration of the full Term of the Lease Agreement. Furthermore, the City hereby agrees that it shall not, without the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole discretion, amend or waive the provisions of the Lease Agreement to: (i) shorten the Term of the Lease Agreement; or (ii) no longer require that the Angels or some other Major League Baseball franchise organization use the Facility for spring training activities.

Section 3.11 Fire or Other Casualty. If the Project or Facility shall be damaged or destroyed by fire or other casualty, the City's and the Angels' rights and obligations with respect thereto shall be as set forth in the Lease Agreement, provided that of the Project is not to be restored for full use as a Major League Baseball Spring Training Facility following a fire or other casualty, then the City and the Angels agree that the Authority shall be entitled to its pro rata share of the insurance proceeds based on the value of the facility prior to the fire or other casualty and the amount of the Authority's Contribution.

ARTICLE IV PROJECT COSTS, FINANCIAL PARTICIPATION AND PLANS AND SPECIFICATIONS

Section 4.1 Project Costs.

(a) Nature of Project Costs. The City and the Angels represent, warrant and covenant that the Project Costs: (i) are the best estimate by the City of all of the costs of the Project; and (ii) include only those costs necessary to complete the Project.

(b) Changes in Project Costs. Upon execution of the Construction Contract, the City and the Angels shall not change or in any manner cause or seek a change in Project Costs while the Project is being funded by the \$20,000,000 in City and Authority Contributions, except as follows:

(i) Any increase in the Project Costs relating to one item that exceeds \$50,000 or, in the aggregate, any increases in Project Costs caused by two or more items that exceeds \$100,000, shall be considered for approval by the Authority or Authority Representative within five (5) Business Days and if not disapproved in writing by the end of such period shall be deemed as approved, and such approval shall not be unreasonably withheld. The Authority's approval of any increase in the Project Cost shall not in any way increase the Authority's financial obligation to the Project beyond the Authority Contribution.

(ii) If the Authority, City and Angels are unable to reach agreement on the inclusion of an increase in the Project Costs, then the matter may be submitted to expedited Alternative Dispute Resolution ("Expedited ADR") in accordance with Article XII of this Agreement.

(c) Changes in Project Costs. Any change in the Project Costs that receives the applicable approval or approvals required by Section 4.1(b) or is resolved in favor of inclusion pursuant to Article XII relating to Expedited ADR hereof shall constitute a Project Cost and shall be eligible for payment by the City; provided, however, that any such change in the Project Costs shall not increase the amount of the Authority Contribution.

Section 4.2 Funding of the Contributions. Subject to the terms of this Agreement, the City Contribution shall be fully funded by City. Subject to the terms of this Agreement, the Angels Contribution shall be fully funded by the Angels. Subject to the terms of this Agreement, the Authority Contribution shall be fully funded by the Authority.

Section 4.3 Plans.

(a) Changes to Plans. Any aspect or portion of the Plans that are not final or completed at the time of execution of this Agreement shall be submitted, upon their completion, to the Authority for review and written approval of the Authority Representative. Prior to completion of construction, no changes to the Plans shall be made without the prior review and written approval of the Authority. The Authority Representative shall review such plans within five (5) Business Days of receipt and either approve or disapprove such Plans. Such Plans will be deemed approved if the Authority gives no approval or disapproval in writing within such five (5) Business Day period.

(b) No Changes Resulting in Change in Use. Following completion of construction and during the Term of the Lease Agreement, no changes to the Facility shall be made that will adversely affect the use or operation of the Facility as a spring training facility for Major League Baseball or Minor League facility without the prior written consent of the Authority.

(c) Minor Changes. Notwithstanding the foregoing, minor changes to the Plans shall be allowed by the Authority provided such minor changes, individually and in the aggregate do not cause a change in the character, quality or use of the Project or Facility as a Major League Baseball Spring Training Facility, provided the changes in the Plans do not increase the Project Costs pursuant to paragraph (b) of Section 4.1.

**ARTICLE V
DISBURSEMENT OF FUNDS**

Section 5.1 Funding. The City will provide funding for this Project not to exceed \$20,000,000. The Angels will provide any additional funding over \$20,000,000 necessary to complete the Project in accordance with the Plans. Funding shall be as provided in Article III of this Agreement.

Section 5.2 Disbursement. The City will disburse funding periodically and in accordance with procedures as agreed to by the City and the Angels in the Memorandum of Understanding between the City and the Angels, including the exhibits thereto, to make payments to those performing work on the Project.

**ARTICLE VI
CONSTRUCTION OF THE PROJECT**

Section 6.1 Construction of the Project. The City and the Angels shall promptly commence and diligently pursue construction of the Project to completion. The City and the Angels shall perform such duties as may be necessary to complete construction of the Project pursuant to the Plans and in a good and workmanlike manner and all in full compliance with all applicable laws, zoning ordinances, municipal ordinances, regulations and orders of Federal, State, County, City, local and regulatory authorities of every kind and with all covenants, conditions and restrictions affecting the Project.

Section 6.2 Inspection by the Authority. The City and the Angels shall permit Authority's Representative and agents to enter upon the Project and to inspect the Project and all materials to be used in the construction thereof and will cause the Contractor and all subcontractors to cooperate with Authority's Representative and agents during such inspections.

Section 6.3 Licensing and Bonding. Each Contractor shall be fully licensed and bonded for payment and performance so as to be in full compliance with the provisions of A.R.S. Article 2, Title 34, as amended.

Section 6.4 Owner's Insurance Policy. The City and the Angels shall require in the Construction Contract that in connection with the Project, the Contractor: (i) retain the insurance policies as set forth in the form of the Construction Contract; and (ii) name the Authority as an additional insured under the insurance policies as set forth in the form of the Construction Contract. The City shall obtain and keep the following policies of insurance in force during the Term of the Lease Agreement: property insurance for the full replacement value of the Facility (including all improvements and personal property), with deductibles not exceeding One Hundred Thousand Dollars (\$100,000.00) per occurrence, protecting the City and Authority (as an additional insured) 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. The City may satisfy the insurance requirements under this section by providing the same through self-insurance.

Section 6.5 Notice of Design Meetings. The City shall provide the Authority Representative with reasonable written notice of the date, time and place of all Project design and construction meetings, including, but not limited to, all pre-construction meetings, weekly progress meetings, pre-bid conferences and bid openings.

ARTICLE VII FINANCING OF THE PROJECT

Section 7.1 Funding of the Project. Including the Authority Contribution, the City shall provide all funds to finance the Project except for that additional funding by the Angels over the City's \$20,000,000, all in accordance with this Agreement. Should this additional funding by the Angels be required for the Project, the Angels will provide appropriate guarantees or additional financing instruments to assure funding is available to complete the Project upon the City having paid \$19,000,000.

Section 7.2 Limited Obligation of the Authority. No obligation of the Authority under or arising out of this Agreement or any document executed by the Authority in connection with the Project shall impose, give rise to or be construed to authorize or permit a debt or pecuniary liability, or a charge against the general credit of the Authority or the State of Arizona but such obligation shall be limited to monies lawfully deposited into the Cactus League Promotion Account. The Authority makes no representation or warranty express or implied that such amounts that will be provided to the City for the construction will be sufficient to pay the Project Costs. The Authority's only obligation is to make the Authority Contribution and the City shall not be entitled to any other contribution or reimbursement for the payment of Project Costs in excess of this amount.

ARTICLE VIII UNAVOIDABLE DELAY

Section 8.1 A Party shall be excused from performing any of its obligations or undertakings provided in this Agreement to the extent that and only for as long as the performance of such obligation is prevented or delayed by any cause that is beyond the control of that Party (the "Affected Party"), including but not limited to the following: Act of God; fire, earthquake; flood; explosion; action of the elements; war; riot; sabotage; malicious mischief; acts of terrorism; inability to procure, because of general shortage or rationing or regulation of, labor, equipment, facilities, sources of energy (including, without limitation, electricity, gas, or gasoline), materials or supplies in the open market; failure of transportation; strikes; lockouts; action of labor unions; condemnation; requisition; order of government or civil or military or naval authorities; bankruptcy proceedings; litigation involving a party or others relating to zoning matters; other governmental action or inaction pertaining to the Project or Facility; inability to obtain government permits or approvals; or any other cause, whether similar or dissimilar to the foregoing, not within the control of the Affected Party. To be entitled to relief under this Section by reason of any event the Affected Party shall notify the other Parties as soon as practicable after the Affected Party becomes aware of a possible Unavoidable Delay. Further, the Affected Party shall give the other Parties notice of such event and the nature of such event within a reasonable time and in any event no later than thirty (30) days following the Affected Party's obtaining actual knowledge of the occurrence of such event and that an Unavoidable Delay will ensue as a result of such event. Any delay or cause excusing performance pursuant to the terms of this Section of this Agreement is

referred to herein as an “Unavoidable Delay.” An extension of time for any such Unavoidable Delay shall be only for the period of the Unavoidable Delay, which period shall commence to run from the time of commencement of the Unavoidable Delay, provided the Affected Party exerts diligent efforts to resolve the delay, and any deadlines for performance set forth in this Agreement affected by the Unavoidable Delay shall be extended for a period of time commensurate with the duration of the Unavoidable Delay.

ARTICLE IX WARRANTIES, REPRESENTATIONS AND COVENANTS

Section 9.1 Representation by the City. The undersigned only, on behalf of the City, but not in any individual capacity, represents and warrants to, and covenants with, the Authority that:

(a) The City is a municipal corporation duly organized and existing under the laws of the State of Arizona and has full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement, the Memorandum of Understanding and the Lease Agreement.

(b) Prior to the delivery of any portion of the Authority Contribution, any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement, the Memorandum of Understanding and the Lease Agreement have been held, enacted or granted and in the processing thereof all notice and hearing requirements under applicable law have been fully complied with, including, but not limited to, open meeting laws of the State of Arizona.

(c) Prior to the delivery of any portion of the Authority Contribution, the Council of the City: (i) have duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement, (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement, (iii) and that it will execute a Lease Agreement with the Angels.

(d) This Agreement, and the Memorandum of Understanding attaching the Lease Agreement has been duly executed and delivered by the City and is a legal, valid and binding agreement of the City enforceable in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief.

(e) The consummation of the transactions contemplated in this Agreement, and the Lease Agreement will not conflict with or constitute a breach of or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the City is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects

or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement and the Memorandum of Understanding. The City is not in breach of or default under any such provision, and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice of both would constitute, a breach of or a default under any such provisions, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement or the Lease Agreement. There are no such provisions that, either in any single case or in the aggregate, materially adversely affect or in the future might (so far as can reasonably be foreseen) materially affect the City's condition, financial or otherwise, or materially affect the City's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the City, threatened (i) in any way affecting the City's powers or the existence of the City (ii) in any way contesting or affecting the validity or enforceability of this Agreement, the Lease Agreement, or any agreements entered into in connection therewith, or (iii) that may adversely affect the City or the Project.

(g) The City has made all required filings with and has obtained all material approvals, consents and orders of any government authority, board, agency or commission having jurisdiction that would constitute a condition precedent to performance by the City of its obligations under this Agreement.

(h) Construction of the Project will be in accordance with the Plans and the operation of the Project will comply with Lease Agreement and all applicable laws, zoning ordinances, municipal ordinances, regulations and orders of Federal, State, County, City, local and regulatory authorities of every kind and with all covenants, conditions and restrictions affecting the Project.

(i) All building permits, authorizations and approvals required for construction of the Project in accordance with the Plans have been or will be obtained prior to the start of construction.

Section 9.2 Representations by the Authority. The undersigned, on behalf of the Authority but not individually, represents and warrants to, and covenants with, the City as follows:

(a) The Authority is organized and existing under the laws of the State of Arizona as a corporate and political body having all the rights, powers and immunities of a municipal corporation, and has full legal right, power and authority to: (i) enter into this Agreement; and (ii) carry out and consummate the transactions contemplated by this Agreement.

(b) Any and all hearings, ordinances and approvals prerequisite to the execution and delivery of this Agreement have been held, enacted or granted and in the processing thereof all notice and hearing requirements under applicable law have been fully complied with, including, but not limited to, open meeting laws of the State of Arizona.

(c) The Board of Directors of the Authority: (i) have duly authorized and approved the execution and delivery of, and the performance of its obligations under this Agreement; and (ii) have duly authorized and approved the consummation of all other transactions contemplated by this Agreement.

(d) This Agreement has been duly executed and delivered by the Authority and is a legal, valid and binding agreement of the Authority enforceable in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief.

(e) The consummation of the transactions contemplated in this Agreement will not conflict with or constitute a breach or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Authority is a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement. The Authority is not in breach of or default under any such provision, and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice or both would constitute, a breach of or a default under any such provisions, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Project or any of the transactions contemplated by this Agreement. There are no such provisions of any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Authority is a party or may be otherwise subject that, either in any single case or in the aggregate, materially adversely affect or in the future might (so far as can reasonably be foreseen) materially affect the Authority's condition, financial or otherwise, or materially affect the Authority's ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of the Authority, threatened (i) in any way affecting the Authority's powers or the existence of the Authority or (ii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreements entered into in connection therewith.

Section 9.3 Representations by the Angels. The undersigned, on behalf of the Angels, represents and warrants to, and covenants with, the City and the Authority as follows:

(a) The Angels are a limited partnership duly formed and validly existing under the laws of California.

(b) The Angels have full power and authority to enter into this Agreement, the Memorandum of Understanding and the Lease and the execution, delivery and consummation of all other transactions contemplated by this Agreement, the Memorandum of Understanding and the Lease by the Angels have been duly authorized by all necessary action.

(c) This Agreement, the Memorandum of Understanding and the Lease have been duly executed and delivered by the Angels and is a legal, valid and binding agreement of the Angels enforceable in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws in effect from time to time affecting the rights of creditors generally and subject to the availability of equitable relief.

(e) The consummation of the transactions contemplated in this Agreement, the Memorandum of Understanding and the Lease will not conflict with or constitute a breach or default under any provision of applicable law or administrative regulation of the State of Arizona or the United States of America or any department, division, agency or instrumentality thereof or any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Angels are a party or may be otherwise subject, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Memorandum of Understanding, the Lease, the Project or any of the transactions contemplated by this Agreement. The Angels are not in breach of or default under any such provision, and no event has occurred and is continuing that constitutes, or that with the passage of time or the giving of notice or both would constitute, a breach of or a default under any such provisions, to the extent that such conflict, breach or default adversely affects or impacts the terms or performance of this Agreement, the Memorandum of Understanding, the Lease, the Project or any of the transactions contemplated by this Agreement. There are no such provisions of any applicable judgment or decree or any loan agreement, bond, note, resolution, ordinance, indenture, agreement or other instrument to which the Angels are a party or may be otherwise subject that, either in any single case or in the aggregate, materially adversely affect or in the future might (so far as can reasonably be foreseen) materially affect the Angels' condition, financial or otherwise, or materially affect the Angels' ability to fulfill its obligations under or carry out the transactions contemplated by this Agreement, the Memorandum of Understanding and the Lease.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or, to the knowledge of

the Angels, threatened (i) in any way affecting the Angels' powers or the existence of the Angels or (ii) in any way contesting or affecting the validity or enforceability of this Agreement, the Memorandum of Understanding, the Lease or any agreements entered into in connection therewith.

(g) The Angels have sufficient funds available and will provide any additional funds required over and above \$20,000,000 to complete the Project in accordance with the Plans.

ARTICLE X ASSIGNMENT

Section 10.1 The Authority, the City or the Angels may not assign this Agreement without the prior written consent of the Parties.

ARTICLE XI EVENTS OF DEFAULT

Section 11.1 Authority Events of Default. The following shall be "events of default" by the Authority under this Agreement:

(a) If any warranty or representation of the Authority herein contained shall prove to be knowingly false, misleading, untrue or incorrect in any material respect.

(b) If the Authority breaches or defaults in the performance or observance of any of its covenants, promises, undertakings or agreements contained in this Agreement, and shall fail to cure the same or shall fail to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) calendar days after written notice to the Authority by the City of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the City shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Authority, as appropriate, within the applicable period and diligently pursued until the default is corrected.

(c) Filing by the Authority of a voluntary petition in bankruptcy, failure by the Authority promptly to lift any execution, garnishment or attachment, adjudication of the Authority as a bankrupt, the Authority's failure or inability to pay its debts generally as they become due, the Authority's admission in writing of its inability to pay its debts, general assignment by the Authority for the benefit of creditors, entry by the Authority into an agreement of composition with creditors, or filing of a petition applicable to the Authority in any proceedings instituted under the provisions of the Federal Bankruptcy statute, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) calendar days after service on the Authority; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the Authority's property or assets; or if the Authority has requested the

appointment of such receiver, trustee or custodian; or if the Authority is adjudged insolvent under any state insolvency law.

Section 11.2 City's Events of Default. The following shall be "events of default" by the City under this Agreement:

(a) If any suit or legal action materially affecting the Project, the construction of the Project or the operation and use of the Project is filed and the City fails to take steps to defend or resolve such action within ninety (90) calendar days after written notice to the City by the Authority.

(b) If the construction work on the Project is abandoned or stopped for a continuous period of thirty (30) calendar days (except for Unavoidable Delay or as required to reasonably accommodate the Angels' use of the Facility pursuant to the Lease Agreement) due to action by the City.

(c) If any warranty or representation of the City herein contained shall prove to be knowingly false, misleading, untrue or incorrect in any material respect.

(d) If the City breaches or defaults in the performance or observance of any of its covenants, promises, undertakings or agreements contained in this Agreement, and shall fail to cure the same or shall fail to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) calendar days after written notice to the City by the Authority or the Angels of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the Authority or the Angels shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City, as appropriate, within the applicable period and diligently pursued until the default is corrected.

(e) Filing by the City of a voluntary petition in bankruptcy, failure by the City promptly to lift any execution, garnishment or attachment, adjudication of the City as a bankrupt, the City's failure or inability to pay its debts generally as they become due, the City's admission in writing of its inability to pay its debts, general assignment by the City for the benefit of creditors, entry by the City into an agreement of composition with creditors, or filing of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy statute, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) calendar days after service on the City; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the City's property or assets; or if the City has requested the appointment of such receiver, trustee or custodian; or if the City is adjudged insolvent under any state insolvency law.

Section 11.3 Angels Events of Default. The following shall be "events of default" by the Angels under this Agreement:

(a) If any suit or legal action materially affecting the Project, the construction of the Project or the operation and use of the Project is filed and the Angels fails to take steps to defend or resolve such action within ninety (90) calendar days after written notice to the Angels by the Authority.

(b) If the construction work on the Project is abandoned or stopped for a continuous period of thirty (30) calendar days (except for Unavoidable Delay or as required to reasonably accommodate the Angels' use of the Facility pursuant to the Lease Agreement) due to action by the Angels.

(c) If any warranty or representation of the Angels herein contained shall prove to be knowingly false, misleading, untrue or incorrect in any material respect.

(d) If the Angels breach or default in the performance or observance of any of its covenants, promises, undertakings or agreements contained in this Agreement, and shall fail to cure the same or shall fail to diligently and continuously pursue or perform the actions necessary to cure the same within thirty (30) calendar days after written notice to the Angels by the Authority or the City of such breach or default; provided, however, if the failure stated in the written notice cannot be corrected within the applicable period, the Authority or the Angels shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Angels, as appropriate, within the applicable period and diligently pursued until the default is corrected.

(e) Filing by the Angels of a voluntary petition in bankruptcy, failure by the Angels promptly to lift any execution, garnishment or attachment, adjudication of the Angels as a bankrupt, the Angels' failure or inability to pay its debts generally as they become due, the Angels' admission in writing of its inability to pay its debts, general assignment by the Angels for the benefit of creditors, entry by the Angels into an agreement of composition with creditors, or filing of a petition applicable to the Angels in any proceedings instituted under the provisions of the Federal Bankruptcy statute, as amended, or under any similar acts that may hereafter be enacted, and such petition is not dismissed within sixty (60) calendar days after service on the Angels; or if a receiver or trustee or custodian has been appointed in any proceeding for all or substantially all of the Angels' property or assets; or if the Angels has requested the appointment of such receiver, trustee or custodian; or if the Angels is adjudged insolvent under any state insolvency law.

Section 11.4 Remedies of Non-Breaching Party. Provided the Party seeking to declare a breach is not in default under this Agreement, then upon the occurrence of any default by any party as set above, the non-breaching Party, at its option and not less than ten (10) Business Days after written notice has been provided to breaching Party, may do any one or more of the following in any order or combination as the non-breaching Party shall elect in its sole and unfettered discretion:

(a) Withhold making any further payments from the Authority Contribution, City Contribution or Angels Contribution, as the case may be, it being agreed that the

non-breaching Party may also take such action upon the occurrence of an event that would be an Event of Default except for any notice or cure periods set forth herein;

- (b) Seek legal remedies for any sums owing or for damages;
- (c) Terminate this Agreement; and
- (d) Take such other actions as may be allowed by law or in equity.

Section 11.4 Cumulative and Nonexclusive Remedies. Any and all remedies conferred herein shall be deemed cumulative with, and nonexclusive of any other remedy conferred hereby or by law, or in equity, and the Parties in the exercise of any one remedy shall not be precluded from and shall not be deemed to have waived the exercise of any other remedy or remedies.

ARTICLE XII ALTERNATIVE DISPUTE RESOLUTION

Section 12.1 All claims and disputes concerning Project Costs, City, Angels and Authority Contribution and payments that may arise between or among the Authority, the City and/or the Angels under this Agreement shall be resolved by Alternative Dispute Resolution as set forth below and in accordance with A.R.S. § 12-1501, et seq.

(a) Any Party by written notice to the other involved Parties within ten (10) Business Days after a controversy has arisen shall select a person to act as an arbitrator.

(b) The other involved Party may by written notice within ten (10) Business Days after receipt of such written notice by the first Party appoint a second arbitrator.

(c) If two arbitrators have been appointed as provided above, they shall agree on a third arbitrator within five (5) Business Days after their appointment and shall appoint him or her by written notice signed by both of them and a copy mailed to each Party involved. In the event that the Parties fail to appoint a third arbitrator, the Parties authorize the appointment of a third arbitrator by the American Arbitration Association.

(d) The City, the Angels or the Authority may join any other party to the arbitration proceeding who is needed for just adjudication to the arbitration. The standard for joinder of any other party shall be that provided under Rule 19, Arizona Rules of Civil Procedure.

(e) On appointment of three arbitrators (hereinafter, "the Panel") as provided for above, the Panel shall hold a hearing within ten (10) Business Days after the appointment of the third member of the Panel, or upon the expiration of the time period in Subsection (b) if no other arbitrator is appointed. The hearing shall be held in the City of Tempe or at any other place agreed to by the Parties involved. The Parties shall be entitled to reasonable discovery prior to the arbitration.

(f) At least five (5) Business Days prior to the hearing, the Parties shall meet, exchange exhibits, stipulate and agree on undisputed facts. No exhibit shall be admitted unless exchanged between the Parties. 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 arbitrator, or the Panel, as the case may be, shall allow each Party to present that Party's case, evidence and witnesses and render the decision as to the disputed matter. Each Party shall bear their respective expenses of arbitration.

(g) The award of the arbitrator or the majority of the Panel shall be final and binding on the Parties to this Agreement.

ARTICLE XIII RECOGNITION OF CONTRIBUTION

Section 13.1 Plaques; Public Recognition. Plaques that evidence the contribution to the Project by the Authority shall be prominently displayed at two of the primary public entrances to the Facility. All costs associated with such plaques shall be included as Project Costs. The plaques are intended by the Parties to inform visitors to the Facility that the Facility was renovated by a contribution from the Authority on behalf of the citizens of Maricopa County. Additionally, members of the Authority's Board of Directors and the Authority's professional staff shall be invited to participate in all public ceremonies concerning the Project such as, without limitation, a Project announcement ceremony or Project dedication ceremony.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Recording; Duration. Pursuant to A.R.S. § 11-952(B)(1) and (G), this Agreement shall be in full force and effect upon filing with the County Recorder of Maricopa County, Arizona, as provided for by A.R.S. § 11-952(G) and shall continue in full force and effect and shall be binding on the Parties until the expiration of the full Term of the Lease Agreement.

Section 14.2 Waiver. If any agreement contained in this Agreement should be breached by any Party and thereafter such breach is waived by the other Party, such waiver shall be in writing and signed by an authorized representative of the Party granting the waiver and shall not be deemed to waive any other breach hereunder.

Section 14.3 Accuracy of Representations and Warranties. The Parties acknowledge that each and every representation, warranty, term and condition in this Agreement shall be true and accurate as of the date of execution of this Agreement, shall constitute a material part of the consideration hereunder and shall survive the execution of this Agreement.

Section 14.4 Indemnification.

(a) The City shall (to the extent permitted by law) indemnify and hold harmless, jointly and severally, the Authority and each director, official, independent contractor or employee thereof (any such person being herein sometimes called as "Indemnified Party"), for, from and against any and all losses, claims, damages or liabilities, joint or several to which any such Indemnified Party may become subject, whether under any statute or regulation at law or in equity or otherwise, whether arising under statute, contract or tort, insofar as and to the extent such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or caused by the negligent or willful actions or inaction of the City under this Agreement and shall reimburse any legal or other expenses reasonably incurred by any Indemnified Party in connection with investigating or defending any such loss, claim, damage, liability or action, including the fees of expert witnesses.

(b) An Indemnified Party shall, promptly after the receipt of written notice of a threat or, or the commencement of, any action against such Indemnified Party in respect of which indemnification may be sought against the City pursuant to Section 14.4(a), notify the City in writing of the commencement thereof. The failure of the Indemnified Party to give such notice shall not reduce the liability of the City unless the City is actually prejudiced by such failure to receive notice. In case any such action shall be brought against an Indemnified Party and such Indemnified Party shall notify the City of the commencement thereof, the City shall defend the Indemnified Party therein.

(c) The provisions of this Section 14.4 shall survive the term of the Agreement and any termination hereof.

(d) All amounts due or otherwise arising pursuant to this Section 14.4 shall be paid to the Indemnified Party as soon as practicable after such amounts become due or otherwise arose.

Section 14.5 Amendments. This Agreement may not be changed, modified or rescinded, except in writing, signed by the Parties hereto, and any attempt at oral modification of this Agreement shall be void.

Section 14.6 Notices.

(a) The Authority, the City and the Angels shall notify each other in writing:

(i) Promptly of any claim, demand, action, or dispute that involves the rights, interests, properties or obligations of the Parties, particularly that which involves the interpretation of any of the provision of, or the rights of the Parties under, this Agreement, or the Lease Agreement or any other claim, demand, action or dispute that may, directly or indirectly, materially affect the Project.

(ii) Immediately upon the attachment or seizure, by process of law or otherwise, the Project, or funds comprising the Authority Contribution, City Contribution or Angels Contribution.

(b) All notices herein required shall be in writing, signed by the proper officers and either delivered to the proper officers of the City, the Authority and the Angels or sent by first class, certified mail, postage prepaid, not later than the date herein required to the following addresses or to such other addresses as shall be designated by the Parties in like fashion:

As to the Authority: President, Chief Executive Officer
and Executive Director
Arizona Sports and Tourism Authority
14500 N. Northsight Boulevard, Suite 312
Scottsdale, AZ 85260
Attention: Ted A. Ferris
Facsimile: (480) 505-0534

With a copy to: General Counsel
Arizona Sports and Tourism Authority
c/o Fennemore Craig, P.C.
3003 N. Central Avenue, Suite 2600
Phoenix, AZ 85012
Attention: Sarah A. Strunk, Esq.
Facsimile: (602) 916-5527

As to the City: City Manager
City of Tempe
P. O. Box 5002
Tempe, AZ 85280
Facsimile: (480) 350-8884

With a copy to: City Attorney
P. O. Box 5002
Tempe, AZ 85280
Facsimile: (480) 350-227

As to the Angels: Bill Beverage
Angels Baseball LP
2555 E. Camelback Road
Suite 780
Phoenix, AZ 85016
Facsimile: (602) 667-9501

With a copy to: William Shearer
Powell Goldstein LLP
One Atlantic Center
1201 W. Peachtree Street NW
14th Floor
Atlanta, GA 30309
Facsimile (404) 572-6999

Section 14.7 Entire Agreement. This Agreement, and the agreements contemplated herein, represent the entire agreement of the Parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement.

Section 14.8 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect.

Section 14.9 Time is of the Essence. Time is of the essence of this Agreement in which and all of its provisions.

Section 14.10 Governing Law. This Agreement shall be construed in accordance with the law of the State of Arizona.

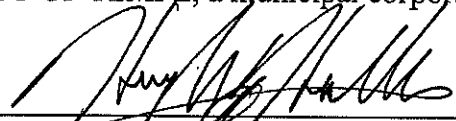
Section 14.11 Conflicts of Interest. The provisions of A.R.S. § 38-511 are applicable to this Agreement.

Section 14.13 Termination. If any action, rule, law or decision of any legislative or administrative body or of any court should materially impair or materially and adversely affect the enforceability of any material provision of this Agreement, the Parties may mutually terminate this Agreement.

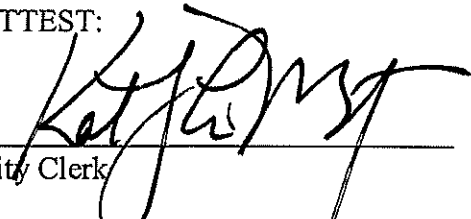
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective _____.

[SIGNATURE PAGES FOLLOW]

CITY OF TEMPE, a municipal corporation

By: 
Hugh Hallman, Mayor

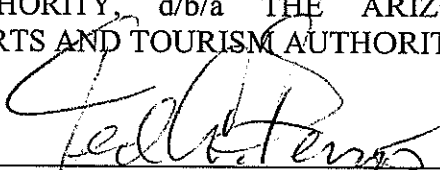
ATTEST:


City Clerk

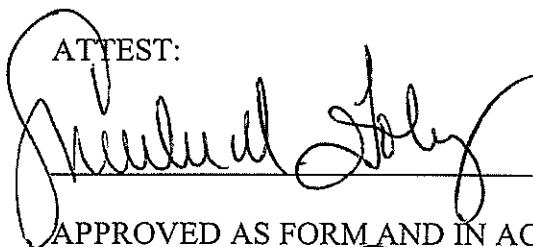
APPROVED AS FORM AND IN ACCORDANCE WITH
A.R.S. § 11-952(D)

Mailee A. Pontelle
City Attorney

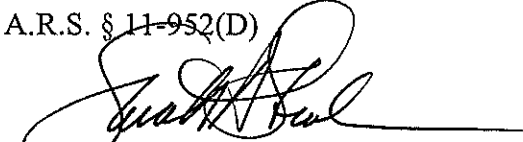
THE ARIZONA TOURISM AND SPORTS
AUTHORITY, d/b/a THE ARIZONA
SPORTS AND TOURISM AUTHORITY

By: 
Ted A. Ferris
President, Chief Executive Officer
and Executive Director

ATTEST:



APPROVED AS FORM AND IN ACCORDANCE WITH
A.R.S. § 11-952(D)


General Counsel

STATE OF ARIZONA)
 : ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 23rd day of November, 2004, by _____, Hugh Hallman, Mayor of the City of Tempe, a municipal corporation, on behalf of the City.

Karen M. Fillmore
Notary Public

NOTARY SEAL:

STATE OF ARIZONA)
 : ss.
COUNTY OF MARICOPA)



The foregoing instrument was acknowledged before me this 10th day of November, 2004, by _____, the Ted A. Ferris, the President, Chief Executive Officer and Executive Director of the Arizona Tourism and Sports Authority, d/b/a the Arizona Sports and Tourism Authority.

Kim Monroe
Notary Public

NOTARY SEAL:

ANGELS BASEBALL LP
By Its General Partner:

By: [Signature]

Attest: [Signature]

