

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution 94-64

Authorizing a request to enter into a Limited License Agreement between the Metropolitan Exposition-Recreation Commission and Portland Baseball, Inc.

The Metropolitan Exposition-Recreation Commission finds:

- 1. The Civic Stadium has been seeking the return of baseball to the facility;**
- 2. Stadium staff has been negotiating with Portland Baseball, Inc., owner and operator of a Single A franchise in the Northwest League;**
- 3. Portland Baseball, Inc. is a financially stable company with an aggressive approach to game marketing;**
- 4. Negotiations have been concluded and are satisfactory to both MERC and Portland Baseball, Inc.;**

BE IT THEREFORE RESOLVED that the Commission approves and authorizes the Chairman and Secretary-Treasurer to sign the attached Limited License Agreement returning baseball to Civic Stadium beginning with the 1995 season.

Passed by the Commission on October 19, 1994.



Chairman



Secretary-Treasurer

APPROVED AS TO FORM:
Daniel B. Cooper, General Counsel

By:



Mark B. Williams
Senior Assistant Counsel

LIMITED LICENSE AGREEMENT

THIS AGREEMENT is made and entered into this 19th day of OCTOBER 1994, by and between the Metropolitan Exposition-Recreation Commission, whose address is P.O. Box 2746, Portland, OR 97208, hereinafter called "Commission" and Portland Baseball, Inc. whose address is P.O. Box 998, Portland, Oregon 97207 hereinafter called "Club".

INDEX

| | <u>Page</u> |
|--|-------------|
| RECITALS | 1 |
| 1. Definitions | 2 |
| 2. Relationship of the Parties/Nature of Agreement | 3 |
| 3. Accounting | 4 |
| 4. Facilities | 4 |
| 5. Event Personnel | 4 |
| 6. Game Personnel | 5 |
| 7. Use of Dressing Rooms | 5 |
| 8. Scheduling Playing Dates | 5 |
| 9. Concessions, Novelties, and Programs | 5 |
| 10. Sale of Advertising | 6 |
| 11. Radio and Television Rights; Closed-Circuit and Cable Television | 7 |
| 12. Club's Practices | 7 |
| 13. Indemnity; Liability Insurance; Waiver of Subrogation | 7 |
| 14. Ticketing | 9 |
| 15. The Club's Failure to Use Stadium Reserved Dates: Credits, Re-Schedule Games | 9 |
| 16. Occurrences Preventing Use of Stadium | 10 |
| 17. License Fee | 10 |
| 18. User Fee | 11 |
| 19. Club's Contribution to Stadium Improvements | 12 |
| 20. Commission's Management of the Stadium; Commission's Right to Obtain Tickets | 12 |
| 21. Obligations Incurred by Club During Occupancy | 12 |
| 22. The Club to Make No Unlawful, Improper, or Offensive Use of Facilities | 12 |
| 23. Office Space | 12 |
| 24. Improvements | 13 |
| 25. Assignment by the Club | 13 |
| 26. Default of Agreement: Commission's Remedies | 13 |
| 27. The Club's Parking Spaces and Parking Credentials | 14 |
| 28. Press and Photographer Credentials | 14 |
| 29. Royalties | 14 |

| | | |
|-----|--|----|
| 30. | Term of Agreement | 14 |
| 31. | Club Promotions and Marketing | 15 |
| 32. | Modification and Amendment | 15 |
| 33. | Severability | 15 |
| 34. | Powers Reserved to the Commission | 15 |
| 35. | Notices | 16 |
| 36. | Taxes and Fees | 16 |
| 37. | Non-Discrimination | 17 |
| 38. | Use of Non-Licensed Areas | 17 |
| 39. | Hazardous Substances | 17 |
| 40. | Terms and Conditions | 17 |
| 41. | Arbitration | 18 |
| 42. | Waiver | 18 |
| 43. | Attorneys' Fees | 18 |
| 44. | Controlling Law/Situs/Construction | 18 |
| 45. | Return of Triple A Baseball to Civic Stadium | 19 |
| 46. | Miscellaneous | 19 |

WITNESSETH:

WHEREAS, Commission operates the Civic Stadium, hereinafter referred to as the "Stadium", in the city of Portland, Oregon;

WHEREAS, the Club possesses a baseball franchise in the Northwest League, and desires to use the facilities of the Stadium for professional baseball games in the Portland area;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter specified, the parties hereto agree as follows:

1. Definitions

The following terms are defined as follows:

a. "Commission," "MERC," or "Metro ERC" shall mean the Metropolitan Exposition-Recreation Commission, a subdivision of Metro, a municipal corporation organized under the 1992 Metro Charter.

b. "Concessions/Catering" shall mean the selling or dispensing of foodstuffs, beverages (alcoholic and non-alcoholic), flowers, tobaccos, or edible products of any kind.

c. "Director" or "Stadium Director" or "Facility Manager" shall mean the individual responsible for the overall day-to-day management of Civic Stadium, as well as any individual to whom the Stadium Manager has delegated any responsibilities.

d. "General Manager" shall mean the chief executive officer responsible for the overall day-to-day management of the Commission's facilities, as well as any individual to whom the General Manager has delegated any responsibilities.

e. "Civic Stadium" or "the Stadium" or "Facility" shall mean Civic Stadium, in Portland, Oregon.

f. "Novelties" shall mean the official items sold to the ticket-buyers at each show. These items include but are not limited to T-shirts, sweatshirts, programs, pins, buttons, hats, etc. "Novelties" does not include "Concessions/Catering."

g. "User Fee" shall mean a charge levied on each ticket sold to spectator seated events located in Civic Stadium. One hundred percent of the User Fee shall be retained by the Commission. In no event shall the User Fee be considered part of the license fee paid by the Club, or compensation in satisfaction of any other obligations owed by Club under this Agreement to Commission. The User Fee shall not apply to unsold or complimentary tickets. The User Fee shall be included as part of the total ticket price printed on the ticket.

2. Relationship of the Parties/Nature of Agreement

The parties agree that this agreement constitutes a limited license agreement, not a lease. This agreement does not confer any form of property interest or right, including but not limited to, a leasehold interest upon Club. This agreement has no monetary value.

This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. In the event that any governmental authority of competent jurisdiction determines that Club has a leasehold interest in any of Commission's facilities, Club shall be responsible for payment of any property or other taxes which may result. No covenant of quiet enjoyment shall be implied in this Agreement.

Any right of use conferred on Club shall not be exclusive. It is further understood and agreed by and between the Parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the Commission, its successors or assigns on the other part. It is further agreed that the Club will provide its own Workers' Compensation insurance or self-insurance program as required or permitted by Oregon Law. The Club shall, subject to the terms and provisions of this Agreement, have complete and independent control and discretion over the operation of the services contemplated by this Agreement.

3. Accounting

The Club shall, with respect to all business done under this Agreement, keep true and accurate accounting records, books, and data, which shall among other things, show all gross revenues derived from any sources, and shall establish and maintain accounting procedures that are acceptable to the Commission or its designee(s). The Commission and its designee(s) shall have the right at all reasonable times during normal business hours to inspect all books of accounts and ledgers of the Club related to this Agreement, and the right to make or cause to be made audits of these accounts. Further, the Commission reserves the right, and the Club agrees to allow its systems, hardware, and programs pertaining to this Agreement or business done pursuant to this Agreement to be inspected by the Commission or its designee(s), at any reasonable time.

4. Facilities

Commission shall provide the Stadium complete with bases, batting cage, pitching and fielding screens, turf and lines, dressing room, public address system, scoreboard, illumination of the Stadium, clean seating and rest room facilities, and water vacuum ready for use by the Club for all baseball games to be played as provided herein.

5. Event Personnel

The Club shall pay for an adequate number of ushers, ticket takers, gate attendants, security/medical personnel, message center operator(s), scoreboard operator(s), and box office supervision personnel (excluding sellers) according to the SCHEDULE OF LABOR CHARGES in effect on each game date. However, total per game event labor costs charged back to the Club shall not exceed the amounts shown in the guideline listed below. The Club shall provide the Commission to the best of its ability, timely and realistic attendance projections for purposes of planning the afore said staffing. All decisions regarding the number of staff shall be determined by the Stadium Manager whose decision shall be final.

Event Personnel Cost Guide Line

| <u>Year One</u> <u>1995</u> | <u>Year Two</u> <u>1996</u> | <u>Year Three</u> <u>1997</u> | <u>Year Four</u> <u>1998</u> |
|--------------------------------|--------------------------------|----------------------------------|---------------------------------|
| \$1,750.00 | \$1,837.50 | 1,930.00 | \$2,025.00 |

6. Game Personnel

The Club shall hire and pay all salaries of game personnel, including but not limited to players, coaches, umpires, and other officials as may be required for conduct of the game. Additionally, the Club agrees to provide the Stadium Operations Staff with an adequate number of personnel to efficiently cover and uncover the baseball field, should the game be delayed or called because of rain. If the Club is unable to provide personnel, a tarp crew shall be hired by the Stadium and that labor cost changed charged back to the Club.

7. Use of Dressing Rooms

The Club shall have exclusive use of their dressing room; however, such use shall be limited to storage and normal dressing room functions as associated with the regular and play-off season unless otherwise approved by the Stadium Manager in writing. For security reasons, the keys to the Club's dressing rooms will be given only to personnel designated by the Club and specified Commission employees. Security of the dressing rooms during the period of use by the Club shall be the responsibility of the Club. The Club shall not make any improvements to the dressing room area without prior written approval from the Stadium Manager. Improvements shall become the sole property of the Commission. All costs of any improvements shall be borne solely by the Club. Should the Stadium need the Club dressing room for other tenant use, the Stadium Manager shall request permission for such use from the Club, prior to occupancy by another Stadium tenant.

8. Scheduling Playing Dates

The Commission shall provide the Stadium facilities for the Club for Northwest League regular season and play-off games. Upon receipt of a proposed schedule from the Club, the Commission's Stadium Manager will meet with the Club to finalize the Club's schedule for regular season and play-off games, taking into consideration use of the Stadium by other tenants. Should other major tenants need a date(s) to present a major event in the Stadium which have been scheduled as home game play dates, upon request by the Stadium Manager, the Club will use its best efforts to move the game(s) to accommodate the request.

9. Concessions, Novelties, and Programs

Commission shall retain all concession management rights, provided that the Club shall be allowed the right to print and sell programs and advertising contained therein, as well as the right to sell novelty items. In the event that the Club elects to have the Commission or its designated concessionaire sell or manage the aforementioned items on behalf of the Club, a percentage of total sales will be negotiated between the Commission and the Club for such services.

The Commission shall use its best efforts to cooperate with the Club in maximizing concession income. Such cooperation shall include, but not necessarily be limited to, pricing decisions and product selection which will support and enhance the marketing and promotional efforts of the Club and improve service presentation ability for Commission's concessionaire, provided always that standards of quality and the cost of products are not adversely affected thereby, and that all necessary legal requirements can be met. The Commission's acceptance of products proposed by the Club for sale in the concession stands shall not be unreasonably withheld. The Commission agrees to approve product selections based on League-wide promotional campaigns, so long as selections otherwise comply with this section.

The Commission shall pay the Club a percentage of its net proceeds from the concession sales for the Club's regular and play-off games. According to the following formula:

| <u>Annual Gross Concession Revenue</u> | <u>Net Percentage To Club</u> |
|--|-------------------------------|
| \$ 0 - 448,500 | 35% |
| \$448,501 - 585,000 | 40% |
| \$585,001 and above | 50% |

The Commission shall provide detailed reports of daily concession activity after each home stand to the Club. The Club shall receive its concession payments within three (3) working days after the Commission has received its payment from the Stadium's concessionaire. The Club shall receive no concession revenue from games which are canceled or are not played. For purposes of this section, net proceeds shall be defined in the same manner as contained in the Commission's current Concessions and Catering Service Agreement. Throughout the season, payments shall be calculated on minimum percentage (i.e., 35 percent). Final reconciliation of concession split shall occur at season-end, when total gross concession revenue has been determined.

10. Sale of Advertising

The Club shall have the right to sell space for advertising on the existing outfield fences and signage along 18th Avenue which shall be inventoried annually by the Commission. Such inventory must be approved annually by the Club before sale of signage commences. Should existing outfield or 18th Avenue signage space be reduced due to renovation, re-design, or a new scoreboard(s), the Commission guarantees only to provide the Club with the remaining inventory after renovation or re-design has taken place. Additionally, the Club, at its own expense, shall have the right to place a sponsor logo on the field playing surface during the baseball season. Materials and labor to paint the field logo shall be approved in advance by Stadium Manager.

The Club shall have the right to post a "Starting Line-up" sign and "Coming Events" sign on the concourse area at a location to be agreed upon between Club and Stadium Manager. The Commission shall retain control of all outfield fences and 18th Avenue signage for advertising purposes outside the prescribed Club season and may mask or paint out signage for any other events. The Commission shall retain the right to sell space or sublease the right to sell space for advertising in the public restrooms, the inner and outer concourses, the grandstands, and other reasonable permanent locations. The Commission further retains the exclusive right to sell or sublease the right to sell space for advertising on the Stadium scoreboard(s), including on any new and/or larger scoreboard, and exterior plaza areas. A reasonable effort shall be made by both the Club and the Commission to avoid direct competition in the sale of such advertising.

11. Radio and Television Rights; Closed-Circuit and Cable Television

The Club shall retain all radio and television rights and may make and execute any contract with respect to television and radio required by the Northwest League or for any other games in which it may participate or sponsor without Commission approval; provided, however, that the Club shall to the best of its ability schedule live broadcasts only for the promotion of the baseball games to be played at the Stadium and shall not allow such broadcasts and telecasts to be detrimental to the attendance at such games. Any additional cost of operating the Stadium necessitated by radio or television coverage shall be borne by the Club.

12. Club's Practices

At no additional charge to the Club, the Commission shall make the Stadium available to the Club for daytime practice during normal working hours subject to availability. For all other practice time, as determined available by the Commission, the Club shall reimburse the Commission for labor necessitated by the practices and/or field lights. The decision as to the requirement for and quantity of labor shall rest solely with the Commission's Stadium Manager. All practices shall be closed to the public unless requested by the Club and approved by the Commission's Stadium Manager.

13. Indemnity; Liability Insurance; Waiver of Subrogation

a. Indemnification. Club shall defend, indemnify, and hold the City of Portland, the Commission, Metro, their agents, elected and appointed officials, and employees (the Indemnitees) harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorneys' fees and court costs, arising out of or in any way connected with: (1) the fact of this Agreement; (2) Club's performance of this Agreement; or (3) Club, its Agents, Employees, and Invitees use of Stadium or any Commission facilities. In the event that Club refuses or fails to defend as required herein, the Indemnitees may, at their sole option, settle or defend any claims, and may maintain an action in any court of competent jurisdiction against Club for the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.

b. Insurance. The Club shall, at its sole cost and expense, procure and maintain through the term of this Agreement the following insurance requirements:

1. Comprehensive General Liability with the Broad Form Comprehensive General Liability endorsement providing coverage against claims for bodily injury or death and property damage occurring in or upon or resulting from the facilities licensed hereunder, such insurance to offer immediate protection to the limit of not less than \$2,000,000 and such insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnification provisions established in this agreement in favor of the Indemnities.
2. Employee's Liability Insurance with limits not less than \$2,000,000 each accident.
3. Automobile Liability insurance with limits not less than \$500,000 each occurrence, combined single limit for bodily injury and property damage including coverage for owned, non-owned and hired vehicles including loading and unloading operations.
4. Comprehensive General Liability and Automobile Liability insurance policies required by this Agreement shall name as additional insured: City of Portland, Metro, Metropolitan Exposition-Recreation Commission, and the members, officers, directors, agents and employees of each entity.
5. Club shall maintain with respect to each such policy or agreement evidence of such insurance endorsements as may be required by the Commission and shall at all times deliver and maintain with the Commission a certificate with respect to such insurance in a form acceptable to the Commission.
6. Club agrees to procure and maintain all insurance required herein, and provide all required certificates of insurance to the Stadium Manager by November 1, 1994. Failure to do so shall constitute immediate breach of this Agreement by Club. It is agreed in that event that Commission, at its sole option, may terminate this Agreement and/or purchase such insurance, and deduct the cost of such coverage from any sums otherwise owed to Club, and/or exercise any other remedies available to Commission, without limitation.

7. The parties agree that the specified coverage of limits of insurance in no way limit the liability of the Club. Club shall obtain the written agreement on the part of each insurance company to notify Commission at least thirty (30) days prior to cancellation or non-renewal of any such insurance.

c. Waiver of Subrogation. Each party hereto hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the terms of this Agreement or any extension or renewal thereof for any loss of or damage to any of its property, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies to the extent that such loss or damage is recovered under said insurance policies. Said waivers shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement with respect to any loss or damage to property of the Parties hereto. Inasmuch as the waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), Club is advised to give each insurance company written notice of the terms of such waiver, and to have insurance policies properly endorsed, if necessary.

14. Ticketing

The Club shall have the right to determine ticket prices, including any discounts, and the right to reasonable complimentary ticket distribution. At no time shall the number of complimentary tickets exceed 2 percent of the ticket manifest. The Club shall separately agree to be responsible for the location, manner, and cost of the sale of season tickets, and shall supply Commission with detailed reports as may be required. All single game tickets, whether individual sales, telemarketing sales, or group sales, shall be sold utilizing the Commission's contracted, computerized ticket agent(s) systems. Methods of ticket distribution, convenience charge fees, handling fees, manifesting, tickets stock charges, etc., shall be agreed upon among the Club, the Commission, and the selected ticket agent in advance of the commencement of the computerized ticket process and shall abide by the current Commission box office policies and procedures if in effect at the time ticket sales are conducted. Under no circumstances will Commission be responsible for any ticketing expenses or charges imposed by the selected ticket agent. Tickets to Club games sold by Commission's own box office shall be subject to Commission's convenience and other charges.

15. The Club's Failure to Use Stadium on Reserved Dates

a. If the Club shall fail to use the Stadium on a date reserved by the Club, the Club shall not be given credit against its regular season license fee, but shall pay the license fee for such date as if the Stadium had been used. Notwithstanding, the Commission may make such other use of the Stadium on such date as the Commission desires.

b. Rain-outs. Notwithstanding subparagraph 15 (a) above in the event of rain-outs, the license fee due for the rained-out game shall be applied to the guaranteed annual minimum license fee owed by Club to Commission. In the event that the game is rescheduled, no further license fee shall be due for that game, except any percentage of gate that might be owed to Commission over and above the base license fee for each game. Club shall still be responsible for any other costs incurred by Commission notwithstanding the rain-out, such as event personnel, tarp crews, etc.

16. Occurrences Preventing Use of Stadium

If a labor dispute, disaster, closure of the Stadium by municipal or other governmental authority, or any other unforeseeable happening beyond the control of the Commission prevents the Commission from providing the Stadium to the Club on any date reserved for use by the Club, the Commission shall not be responsible for or liable to the Club for damages because the Club shall not be able to use the Stadium. Commission shall extend the Club a preference in re-scheduling on available dates any game canceled for any of the reasons mentioned in this paragraph. If such games cannot be re-scheduled, the Commission shall reduce the Club's guaranteed minimum license fee and guaranteed minimum annual User Fee by an amount equal to the appropriate per game license fee specified in paragraph 17 and by a proportionate reduction in the guaranteed minimum annual User Fee specified in paragraph 18. It is clearly understood that in this instance the above shall be the Club's only remedy against the Commission.

17. License Fee

a. Commission shall provide the Stadium facilities to the Club as specifically provided herein, for the following sums:

1. **Guaranteed Minimum Annual License Fee.** No later than October 1, 1994, and no later than each October 1 thereafter for the term of this Agreement, including any extensions thereof, Club shall pay to Commission a guaranteed minimum annual license fee of \$32,300.00. Commission's receipt of User Fees shall not constitute any part of the license fees paid by Club, but shall instead be over and above the license fees. This guaranteed minimum annual license fee shall be applied to the license fees required to be paid by Club for use of Stadium, as outlined below in subparagraphs 2 and 3, provided however, that Club guarantees that the minimum yearly license fee payable to Commission by Club shall be \$32,300. The Parties understand and agree that the guaranteed minimum annual license fee for each year of this Agreement is due and payable in advance on October 1 of each year of this Agreement, and shall not be refundable under any circumstances whatsoever. Any license fees owed to Commission by Club above the guaranteed minimum annual license fee shall be payable as provided for herein.

2. For each regular season and play-off game, the Club shall pay the Commission a license fee in the sum of \$850 or 10 percent of gross ticket sales, whichever is greater. Doubleheaders shall be considered as two games for the purposes of this section. Regular season game settlements will be calculated on a home stand basis.
3. Sponsored "buy-out" games shall be defined as a minimum of 5,000 tickets sold to not more than four sponsors at a reduced price. The Club shall offer not more than three "buy-out" games per season. For each "buy-out" game, all revenues received by the Club for the "buy-out" shall be considered ticket revenue and thus subject to the license fee terms listed above.

b. The Commission will furnish the Club with a box office statement on the first working day following each game(s), accounting for all tickets for which the Commission is responsible. The Club will furnish the Commission with a complete box office statement for each game(s) within two (2) working days after the game(s), to include accounting of all Club season tickets sales, all Club group sales, all Club individual sales, all Club telemarketing sales and all Club buyouts. The Commission and the Club shall both have the right to verify the number of sold tickets for each game.

18. User Fee

a. For all games, regular season and play-off, the Club shall charge the ticket purchaser, and pay to the Commission, the User Fee for each ticket sold to include, but not limited to season tickets, telemarketing sales, single and group ticket sales.

Current Commission resolutions impose the User Fee as follows:

| | |
|-----------------------------------|--------------------|
| Tickets priced \$10.00 and under | \$.50 User's Fee |
| Tickets priced \$10.01 to \$22.00 | \$ 1.00 User's Fee |
| Tickets priced \$22.01 and above | \$ 1.50 User's Fee |

In the event the User Fee is altered to a percentage basis, the percentage shall be applied to the base ticket price, but at no time shall be less than \$.50 per ticket sold.

b. For sponsor "buy-outs" the Club shall pay the Commission 10 percent of the Club's buy-out fee in lieu of the User Fee.

c. **Guaranteed Minimum Annual User's Fee:** Club guarantees that Commission shall receive no less than fifty-seven thousand dollars (\$57,000) annually in User Fees. In the event that Commission has not received this amount at the conclusion of Club's season each year, Club shall pay the balance of the guaranteed minimum annual User Fee to Commission upon receipt of an invoice from Commission.

19. Club's Contribution to Stadium Improvements

Club agrees to contribute at least \$25,000 during each year of this Agreement, and any extensions thereof, towards improvements to the Stadium. It is agreed between the parties that such improvements shall not be limited to improvements which are "behind the scenes" or which benefit exclusively baseball at Stadium, but shall instead be devoted to projects which enhance the Stadium generally for patrons. The parties shall negotiate with each other in good faith each year in order to determine exactly which projects Club's contribution shall be applied to.

20. Commission's Management of the Stadium; Commission's Right to Obtain Tickets

In allowing Club to use the Stadium facilities, the Commission does not relinquish the right to control the management thereof, and to enforce all necessary and proper rules for the management and operation of the same, at any time and on any occasion. The Commission reserves the right to obtain, without charge, up to fifty (50) complimentary reserved seat tickets per game.

21. Obligations Incurred by Club During Occupancy

The Club shall pay and punctually discharge any and all obligations of every character or description incurred in connection with operations by the Club during the Club's use of the Stadium.

22. The Club to Make No Unlawful, Improper, or Offensive Use of Facilities

The Club shall not make any unlawful, improper or offensive use of the Stadium facilities, and shall comply at its own expense with all orders, notices, regulations, ordinances, and requirements of any governmental authority at any time in force respecting the use of the Stadium facilities.

23. Office Space

The Commission agrees to make available to the Club existing administrative office space for its use during the term of this Agreement. The Commission shall not charge any fee for the use of the office space by the Club, however, the Club agrees to pay any utilities associated with the use of the space, upon presentation of an invoice from the Commission, and any taxes of any kind whatsoever that result from Club's use of office space.

Should the Club wish to construct new, remodel or add to existing office space inventory, all costs associated with construction shall be borne exclusively by the Club. The Commission shall approve in writing all plans, designs and specifications including site and location prior to the undertaking of any such construction. Prior to any construction, the Club also agrees to acquire all necessary permits and licenses and to pay all fees associated with any such construction.

24. Improvements

It is understood and agreed that the Commission provides the authorized areas of the Stadium to Club "as is", and that the Club will make, at its own expense, all changes, alterations, installations, and decorations therein that are previously agreed to by Commission, and that Club will restore, at its own expense, Stadium to the same condition in which it existed prior to any alterations made therein. Club shall be responsible for any costs to repair or replace property at Stadium damaged or lost during the term of this Agreement. Ordinary wear and tear is expected. This Agreement shall not, however, be interpreted so as to require Club to make any improvements to the Stadium required by any governmental agency as a result of the Americans with Disabilities Act.

25. Assignment by the Club

It is agreed and understood between the parties that Club has been chosen by Commission for its unique abilities and skills, and therefore the Club shall not assign, sublet or transfer this Agreement or its majority or controlling interest herein to anyone by operation of law or otherwise without first obtaining the written consent of Commission provided, that if such assignment is made to a Triple A Club, the Commission's consent shall not be unreasonably withheld. Any attempted assignment without such prior written consent of the Commission shall be null and void. Subject to the foregoing, this Agreement shall bind and benefit not only the parties hereto, but their respective successors and assigns.

26. Default of Agreement: Commission's Remedies

Club shall be in default of this Agreement if Club fails to pay any amounts due under the Agreement or any other written agreement between Club and Commission, breaches any provisions of this Agreement or any other written agreement between Club and Commission, including payment of fees and maintenance of required insurance in strict accordance with this Agreement, violates any applicable laws or ordinances during its use of Stadium, violates any Commission rules or policies, or should dissolve or cease doing business as a going concern or become insolvent or bankrupt. Upon such default by Club, the Commission after giving Club 10 days's notice of default, may have one or more of the following remedies, in its sole discretion if the default remains uncured:

a. Declare the entire amount of the balance due per the terms of the Agreement payable, provided that this particular remedy will only apply if the default involves Club's failure to pay Commission any sums owed to Commission pursuant to this Agreement.

b. Re-enter any licensed area(s) without being liable for damage therefore and re-license the licensed area(s) or any portion thereof, or operate the same for the balance of the Agreement's term, receive sums due and apply them first to any expenses of making the Commission whole, and second, to any expenses incurred for reentering the premises and re-licensing any licensed area(s).

c. Terminate the Agreement by giving the Club written notice of such termination, which shall not excuse breaches of the Agreement which have already occurred, and may reenter the licensed area(s) as in b. above.

d. Pursue any other remedies available to the Commission either at law or equity. No single or partial exercise of a right or remedy shall preclude any other or further exercise of a right or remedy.

e. Commission shall have the right, without resorting to legal action, to withhold from any and all sums, receipts, or deposits which may be in the possession of the Commission for or on behalf of Club, such sums as are necessary, in Commission's sole opinion, to apply to any claims Commission may have against Club, or to protect Commission against any loss, damage, or claim which may result from Club's performance or failure to perform under this Agreement.

f. Commission may, at its sole option, also terminate any other contract(s) with Club.

27. The Club's Parking Spaces and Parking Credentials

Commission shall provide to the Club without charge, ten (10) reserved parking spaces conveniently located for use by the Club, its officers, agents, servants, employees and special guests. Other than the 10 reserved parking spaces provided herein, the Commission, Metro and the City of Portland make no warranties, representations, or guarantees regarding the availability of parking for Club's patrons or potential patrons.

28. Press and Photographer Credentials

Press credentials and photographer credentials shall be issued exclusively by the Club and will be honored by the Commission, but the Commission may designate the entrance(s) where these credentials will be honored.

29. Royalties

In addition to all other amounts the Club is required by this Agreement to pay when due, the Club shall also pay amounts becoming due as royalties to any person, firm, corporation or licensing agency, by reasons of performance of any subject matter of copyright in the Stadium by Club.

30. Term of Agreement

The term of this Agreement shall be for three years (to include the 1995, 1996, and 1997 seasons) provided that the Commission shall have the option to extend this Agreement for one additional option year (1998) under the same terms and conditions. Provided further, that in the event that Civic Stadium is closed or shut down for financial or any other reasons, Commission may terminate this Agreement upon notice to Club, without being liable for damages, penalties, or restitution of any kind. Commission and/or its successors shall have sole discretion to determine if a closure of Civic Stadium is warranted.

31. Club Promotions and Marketing

The Club shall use its best efforts to maximize its marketing of Club games and events and shall provide the Commission with detailed budget and commentary outlining such efforts by March 1st each year.

32. Modification and Amendment

This Agreement may not be modified or amended except in writing signed by the parties.

33. Severability

If any provision of this Agreement or the Terms and Conditions, which have been incorporated into the Agreement by reference, shall be declared invalid or unenforceable, the remainder of the provisions shall continue in force and effect to the fullest extent permitted by law.

34. Powers Reserved to the Commission

In the event of a dispute between the Club and the Commission, the decision of the Commission and/or its designee(s) concerning the operation or management of the Stadium shall be final and binding on both Parties. By way of illustration and not as a limitation, the reserved powers of the Commission include:

a. The final determination of all policies and procedures relative to the operation and management of the Stadium.

b. Sole discretion to cancel, terminate, or interrupt any event, and cause the patrons to be dismissed during any event. The Commission shall not be liable to the Club or any third parties for any loss or cost occasioned by any such determination or action by the General Manager, the Stadium Manager, or their designee(s) taken in good faith for the benefit or protection of the Commission and the public generally or Stadium.

- c. The power to have access to any areas of Stadium at any time.
- d. The power to terminate or suspend this Agreement for acts of default by the Club.
- e. The power to change, modify, or increase Commission's User Fee.
- f. The Commission must approve in advance and in writing any agreements for subcontracting which may be proposed by the Club throughout the life of this Agreement.
- g. The Commission may, at its discretion, conduct a performance review and/or audit of Club's compliance with this Agreement on an annual basis or more frequently as appears necessary to the Commission or its designee(s).
- h. The Club acknowledges that Commission has the right to make and enforce standard rules and regulations governing the use of Stadium. Commission reserves the right to make changes in the standard rules and regulations.

35. Notices

All notices relative to this Agreement shall be in writing and shall be mailed by certified mail or delivered in person to the Commission or the Club. Said notices shall be addressed to the following:

TO: Portland Baseball, Inc.

Jack Cain, President
 Mary Cain, Vice President
 P.O. Box 998
 Portland, Oregon 97207

TO: Commission

Manager
 Civic Stadium
 1844 SW Morrison
 Portland, OR 97205

With Copies To:

General Manager
 MERC
 PO Box 2746
 Portland, OR 97208

General Counsel
 Metro
 600 NE Grand
 Portland, OR 97232

36. Taxes and Fees

Club agrees to pay promptly all sales, use, excise, and any other taxes required by any governmental authority and shall obtain at its own expense all permits and licenses required by law in connection with its use of the Stadium.

37. Non-Discrimination

Club agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

38. Use of Non-Licensed Areas

Commission shall have the right to use or permit the use of any portion of the Stadium not granted to Club under this Agreement to any person, firm, or entity. This right shall be subject to Commission's prudent business judgement.

39. Hazardous Substances

Club, its officers, employees and agents, and any performers, invitees, or other participants in the event(s) covered by the Agreement are prohibited from bringing any hazardous substance into Stadium or onto Commission property and are prohibited from allowing any hazardous substance to be brought into Stadium or onto Commission property. As used in this paragraph, "hazardous substance" has the meaning given that term in ORS 465.200(9). If any governmental authority or other third party demands that a cleanup plan be prepared and that a cleanup be undertaken because of any release of hazardous substances that occurs as a result of Club's use of Stadium or entry on Commission property, Club shall, at Club's expense, prepare and submit the required plan and all related bonds and other financial assurances, and Club shall carry out all such cleanup plans. Club agrees to indemnify Metro, Metropolitan Exposition-Recreation Commission, the City of Portland, and their respective members, officers, directors, agents, elected and appointed officials, and employees against any claims, costs, and expenses of any kind, whether direct or indirect, incurred voluntarily or pursuant to any state or federal law, statute, regulation, or order for the clean up, extraction, detoxification, or neutralization of any release of any hazardous substance associated with or arising from the Club's use of the Authorized Areas or entry on Commission property. As used in this paragraph, "release" has the meaning given that term in ORS 465.200(9). Club's obligations under this paragraph survive termination or expiration of the Agreement.

40. Terms and Conditions

Commission's Terms and Conditions are hereby incorporated into this Agreement by reference. Commission reserves the right to change such Terms and Conditions from time to time.

41. Arbitration

Any controversy or claim arising out of or relating to this Agreement or the breach or alleged breach thereof, shall be settled by binding arbitration in Portland under ORS Chapter 36. The parties shall mutually agree on a single arbitrator and if they cannot agree, then arbitrator shall be appointed by Presiding Judge of the Circuit Court of Oregon, County of Multnomah. The award may include reasonable attorneys' as provided herein, and costs of arbitration which award may be entered in any Court, state or federal, having jurisdiction thereof.

42. Waiver

The failure by the Commission to insist upon strict and prompt performance of the terms and conditions of this Agreement shall not constitute a waiver of the Commission's right to strictly enforce such terms and conditions thereafter. No waiver by the Commission of any default shall operate as a waiver of any other default on a future occasion or the same default. No delay or omission by the Commission in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise of a right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy.

43. Attorneys' Fees

In case any lawsuit, action, or arbitration is instituted by either party hereto arising out of this Agreement, the prevailing party in such litigation, including any appeal, shall be entitled, in addition to the costs and disbursements provided by statute, to reasonable attorneys' fees as determined by the court on trial or appeal. In the event that either party hereto employs in-house counsel, or if the Commission employs in-house counsel supplied to it by Metro or the City of Portland, said prevailing party shall be entitled to recover the full reasonable fair market value of their counsel's services. The prevailing party shall also be entitled to recover its full reasonable costs of litigation, including the expense of depositions and expert witnesses.

44. Controlling Law/Situs/Construction

This agreement is made in accordance with the laws of the State of Oregon, which shall be controlling in any dispute which arises under this agreement. The situs of this agreement is Portland, Multnomah County, Oregon. In any action, suit, or other proceeding relating to this Agreement, the parties mutually waive trial by jury. The parties agree that any arbitration or litigation respecting this agreement or performance hereunder shall be had at said city and county in the District or Circuit Court of the State of Oregon, or if jurisdiction exists in the United States District Court for the District of Oregon. This Agreement shall be construed as the joint work product of the parties.

45. Return of Triple A Baseball to Civic Stadium

The parties agree and acknowledge that the eventual return of Triple A Baseball to Civic Stadium is in the best interests of the Metro region. In the event that the Portland territory is sought by a Triple A Baseball League and/or a Triple A Team through the rules of organized baseball or otherwise, Club shall not resist the efforts of such League and/or team to secure the Portland territory, and shall act in good faith in seeking compensation for territorial rights and cooperate in the transition. Club shall take no acts to hinder the return of Triple A Baseball to Civic Stadium.

46. Miscellaneous

a. Club's Assumption of Responsibility. The Club expressly assumes full responsibility for all persons connected with Club's use of the Facility, including all its employees, agents, members, invitees, and contractors.

b. Time is of the Essence. Time is of the essence to this Agreement.

c. Entire Agreement. Except as specifically provided herein, all prior understandings and agreements between the parties, whether oral or written, are merged into this Agreement, which embodies the entire agreement between them, and there have been and are no agreements, representations or warranties, oral or written, between the parties other than those set forth or provided for in this Agreement. This Agreement may not be modified or changed, in whole or in part, except by an agreement signed by both of the parties hereto.


d. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of this Agreement nor the extent of any provision thereof.

e. No Third Party Beneficiaries. This Agreement is not intended to benefit any individual, corporation, or other legal entity other than Commission, Club, and the Indemnitees. This Agreement shall not be deemed to vest any rights in, nor shall it be deemed to be enforceable by, any other parties in any proceeding whatsoever.


IN WITNESS HEREOF, the parties hereto have duly executed this Agreement in quadruplicate on the date first herein above written.

Portland Baseball, Inc.

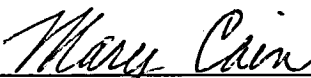
Metro
By and through its Metropolitan
Exposition-Recreation Commission



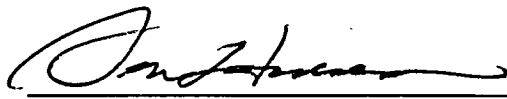
Jack Cain, President



Chairman



Mary Cain, Vice President

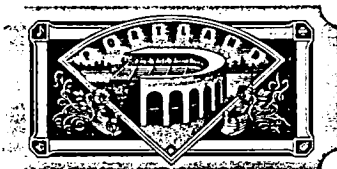


Secretary/Treasurer

Approved Form:
Daniel B. Cooper, General Counsel

By: 

Mark B. Williams
Senior Assistant Counsel



CIVIC STADIUM
METRO ER COMMISSION

May 14, 1996

Mr. Jack Cain, President
Portland Baseball, Inc.
P.O. Box 998
Portland, Oregon 97207

Dear Jack,

Per Page 7, Paragraph 9 Concessions/Catering, Novelties and Programs, Sub-Paragraph b Novelties and Programs of Portland Baseball, Inc.'s current contract with the Metropolitan Exposition-Recreation Commission, you have been given permission to use and develop the space on the Civic Stadium's concourse commonly called Plaza 12.

We understand you want to develop this space and have asked a qualified contractor to give you a design and bid on constructing such a space. The Civic Stadium's Technical Services Manager and M.E.R.C.'s Capital Projects Manager have reviewed the design and find it to be acceptable. We do have the following requirements:

1. The Contractor must secure all the proper building permits for the construction project.
2. The structure must meet all building codes.
3. M.E.R.C. will require an engineering review of the slab area structure will be constructed upon. Stadium staff will contact an engineering group, request the inspection and a short written report. The engineering group will bill us and, M.E.R.C. will, in turn, bill Portland Baseball, Inc. for the invoice amount.
4. Should Portland Baseball, Inc. opt to vacate Civic Stadium or should Portland Baseball, Inc.'s current contract or any future contract be assumed, the structure immediately becomes the property of Civic Stadium's owners.
5. If Civic Stadium renovation takes place and a re-design of the facility concourse requires the elimination of the structure, M.E.R.C. shall not be liable for any construction costs, loss of business, or any liabilities Portland Baseball, Inc. may have incurred in the construction of this structure.

6. Portland Baseball, Inc. shall promptly pay all legitimate claims by any contractors, suppliers, or subcontractors in connection with the construction. Portland Baseball Inc. shall defend and hold M.E.R.C. harmless from any and all claims filed against M.E.R.C, its officers, employees, and agents, that are in any way connected with the construction.
7. The insurance and indemnification provisions of the master agreement between M.E.R.C. and Portland Baseball, Inc., as well as any other applicable clauses, shall apply to the construction activities taking place pursuant to this agreement.
8. This agreement, together with the master agreement, constitutes the entire agreement between the parties.

Please sign in the space provided below indicating you are in agreement with these terms.

Sincerely,

Candy Cavanagh
Candy Cavanagh, Stadium Manager

Portland Baseball, Inc.

Metropolitan Exposition-Recreation
Commission

Jack Cain

Jack Cain, President

5/14/96

Date

Candy Cavanagh

Candy Cavanagh, Stadium Manager

5/15/96

Date